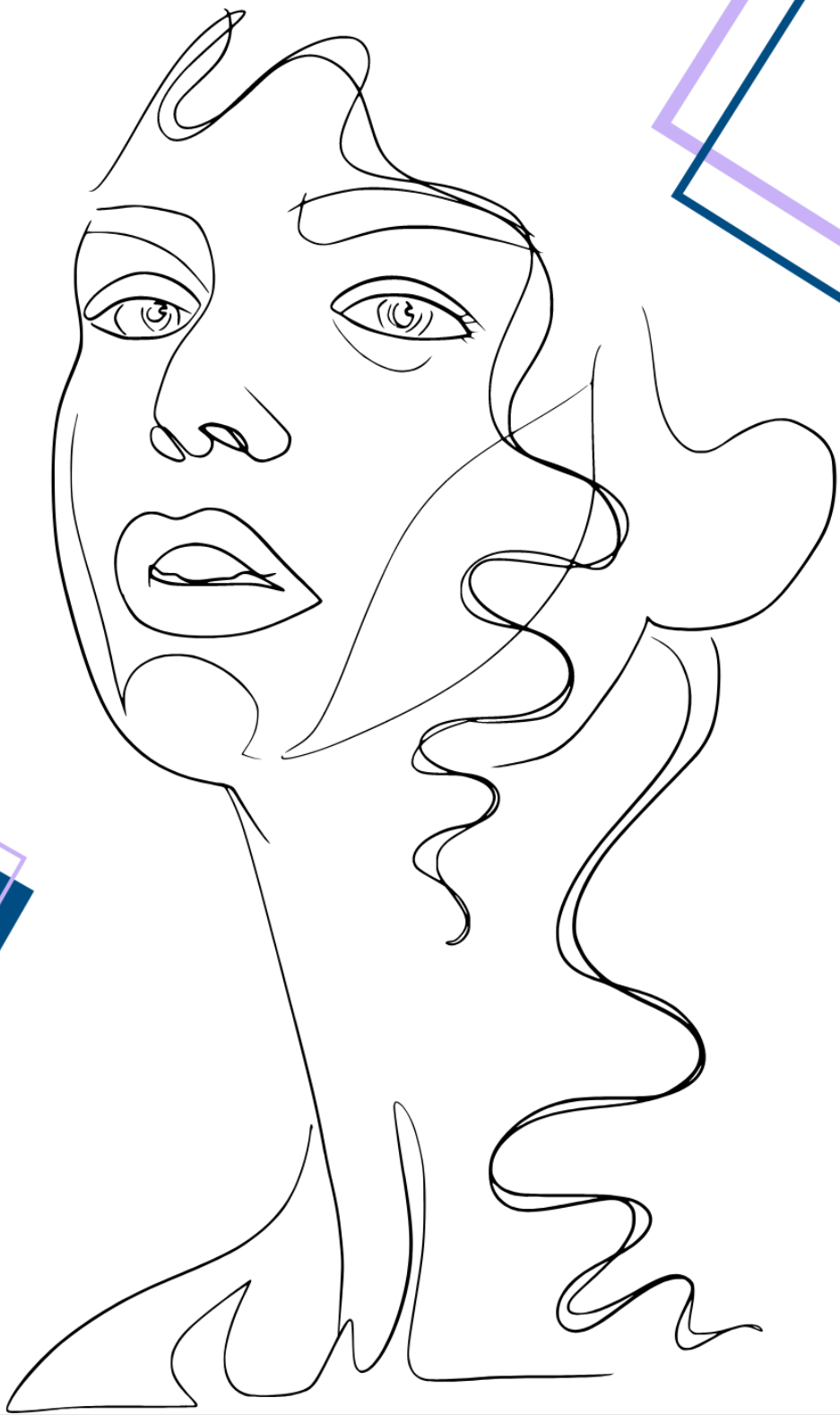
ADVOCACY FOR EQUITY IN SERVICE RESPONSES FOR WOMEN WHO USE DRUGS AS SURVIVORS OF GENDER BASED VIOLENCE

Based on TPKS Law (Law Number 12/2022)



Advocacy for Equity inx Service Responses for Women who Use Drugs as Survivors of Gender Based Violence Based on TPKS Law

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A. GENDER-BASED VIOLENCE EXPERIENCED BY WOMEN WHO USE DRUGS

Globally, woman who use drugs make up approximately one third of people who use drugs,[1] yet in drug policy, there is little or no special attention for this group. Woman who use drugs are more likely to have experienced gender-based violence than women in the general population.[2] Gender-based violence consists of multiple forms of violence against women, violence committed by intimate partners and violence from non -partners including law enforcement officers. While data is rare, analysis of available evidence indicates that women who use drugs experience rates of gender-based violence 5 and 24 times higher than that against women in the general population.[3,4]

Women who use drugs who experience violence have to overcome structural barriers associated with criminalisation if they report their case to law enforcement officers and in doing so, they risk becoming a victim of violence from law enforcement itself. For example, based on a study in Georgia, 13% of woman who use drugs had been asked by police officers to provide sex during their arrest.[5] In Azerbaijan, 15% of women who use drugs reported being physically assaulted by police and 7% reported having been raped and experiencing other coercive sex by police officers.[6] A study conducted in Guangxi China, found that guards at the mandatory rehabilitation center used

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[1] International Women's Rights Action Watch Asia Pacific (IWRAW Asia Pacific), *NGO Reporting Guidelines on CEDAW & Rights of Women Who Use Drugs*, 4. 2018 https://www.iwrawap.org/wpcontent/uploads/2018/07/NGO-Reporting-Guidelines-on-CEDAW-Rights-of-Women-who-Use-Drugs.pdf

[2] UNODC. *Women and Drugs : Drug use, drug supply and their consequences*, Austria, pp16. 2018.

[3] Stoicescu C, Cluver L, Spreckelsen TF, Casale M, Anindita G, Irwanto I. *Intimate partner violence and HIV-related sexual risk behaviour among women who inject drugs in Indonesia: A respondent-driven sampling study*. AIDS and Behaviour, 22, 3307–3323, 2018

[4] Gilbert L, Raj A, Hien D, Stockman J, Terlikbayeva A, Wyatt G. *Targeting the SAVA (Substance Abuse, Violence, and AIDS) syndemic among women and girls: A global review of epidemiology and integrated interventions*. Journal of Acquired Immune Deficiency Syndromes, 2015

[5] Pinkham, S. *Women and drug policy in Eurasia.* Eurasian Harm Reduction Network. pp6. 2011.

[6] Ataiants J, Merkinaite S, Ocheret D. *IDPC Briefing Paper – Policing people who inject drugs : Evidence from Eurasia,* IDPC. pp6. 2012.

HIV test data to determine which women who use drugs they would have sex with without the use of condoms.[7]

In Indonesia, which currently maintains the criminalisation of people who use drugs, these phenomena also occur. Women who use drugs in Indonesia are reported to experience high rates of gender-based violence according to various research and monitoring reports. Research was conducted by Rumah Cemara in 2007[8] in eight cities in Indonesia with a total of 193 respondents consisting of 52 women and 79 men who inject drugs and 62 women whose partners who inject drugs. It was found that women in drug circles experienced physical, psychological and sexual violence.[9] Some women experienced violence from their partners if they could not provide drugs or money for drugs for their partners. Women reportedly did not leave their violent partner because of fear of loneliness and being abandoned.[10]

> Women also reported being sexually exploited by drugs sellers.[11] Women who use drugs and are sent to rehabilitation centers also report experience of sexual harassment by their sponsor through the rehabilitation program; the very officer designated to protect them.[12]

In 2016, an Oxford University study collaborating with Persaudaraan Korban Napza Indonesia (PKNI) surveyed 730 women who inject drugs from DKI Jakarta and West Java.[13] It was found that most women who use drugs experience violence from intimate partners and from police during arrest. As many as 76% of the surveyed women experienced violence from an intimate

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[7] The Global Coalition on Women and AIDS, *Women who use drugs, harm reduction and HIV*. Geneva: Global Coalition on Women and AIDS), pp3. 2010

[8] Rumah Cemara. *Perempuan-perempuan di Lingkar Napza,* Jakarta : Rumah Cemara, pp26, 2007. https://rumahcemara.or.id/rumahcemara.or.id/perpustakaan/10.%202007%20Perempuan%20di%20Lingkar%20Napza.pdf

[9] Ibid

[10] Ibid. pp25, 2007

[11] Ibid pp24

[12] Ibid pp26

[13] Stoicescu C, *Perempuan Bersuara : Memahami Perempuan Pengguna Napza Suntik di Indonesia*, (Jakarta : PKNI) pp17. 2016.

partner; 50% of respondents experienced physical violence with 33% resulting in injury; 38% also experienced sexual harassment; and 5% even experienced sexual violence involving the use of weapons/beating to force them to have sex. During arrest[14] and detention, PKNI also found high levels of violence and harassment from police officers against women who use drugs. 60% of the women who had contact with police experienced verbal abuse, 27% experienced physical violence, and 5% experienced sexual violence (forced to have vaginal or anal sex or performing oral sex).

Drug-related offences are known to have a disproportionate impact on women with estimates that 35% of women in prison worldwide are imprisoned for drug offences, compared to 19% of men.[15] (Further, as of December 2021, Indonesian prisons were 336% overcapacity, with 46% of the 272,217 prisoners sentenced for drug use offences.[16]) In addition, 2020 data shows that more than half of all women in prison in Indonesia were sentenced for drug offences.[17] This indicates that Indonesia, a signatory to the Bangkok Rules, is not abiding by the Rules which encourage states to seek alternatives to incarceration of women for non-violent petty offences such as drug possession.

The 2018 Woman Rights Commission Indonesia (Komnas Perempuan) Monitoring Report also reported frequent cases of gender-based violence experienced by women who were convicted of drug related cases in Indonesia. Violence occurred in various contexts and stages, such as being forced to be involved in illicit drugs trafficking networks and continued violence experienced during the criminal process when women are prosecuted under the drug law.[18]

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[14] In Law Number 35/2009, arrest period can be up to 6 days without the guaranteed access of lawyers and family

[15] United Nations Office on Drugs and Crime. *World Drug Report* 2018

[16] Directorate General of Corrections. 2021

[17] *Submission to the UN Working Group on Arbitrary Detention on detention in the context of drug policies*, pursuant to Human Rights Council Resolution 42/22

[18] Komnas Perempuan, 2018. *Laporan Pemantauan: Kekerasan Terhadap Perempuan dalam Pusaran Migrasi, Perdagangan Manusia dan Narkoba : Interseksi dan Penghukuman*, (Jakarta : Komnas Perempuan) pp42 & 63. 2016.

During the investigation, women convicted of drugs offences experienced physical, psychological, and sexual violence. They experienced sexual harassment such as being taken to a hotel and stripped naked. During arrest, they were also terrorised and humiliated by police officers. Some also experienced physical torture by being beaten to permanent disability and threatened with rape, where these acts were carried out to obtain confessions for their involvement in the case. Their experience of violence is never taken into consideration and is ignored in the legal process. The women bear criminal conviction without any substantial consideration of the context of trauma and experience of violence being acknowledged or addressed.

In 2019, the Community Legal Aid Indonesia (LBHM) also conducted a study of 307 women convicted of drug offences committed in 4 Indonesian prisons and found that 60% had experienced physical torture such as being beaten with bare hands and other objects, 36.8% experienced psychological torture, and 3.2% of respondents had experienced sexual torture, where the perpetrators of torture were dominated by the police (as much as 78 times higher than other law enforcement officers, such as prison officers, judges and prosecutors).[19] In this study, LBHM also found that there were 7 respondents who experienced sexual violence, with six of these cases perpetrated by police while the rest were carried out by prison officers. Furthermore, four respondents also experienced verbal harassment and in three other cases it was also found that the respondents had been subjected to excessive searching, attempted harassment and attempted rape.[20]

In 2021, ICJR also undertook a study of 32 first-degree judgements in death penalty cases with women as defendants. 8 of the women were involved in the cases after they were trapped in coercive intimate relationships, with the majority (6 cases – 75%) drug cases; these women were exploited by the

[19] Lembaga Bantuan Hukum Masyarakat. *Yang Terabaikan : Potret Situasi Perempuan yang Dipenjara Akibat Tindak Pidana Narkotika,* (Jakarta : Komnas Perempuan) pp62. 2020
[20] Ibid pp63

intimate partners and, without their knowledge, lured to involvement in drug trafficking.[21]

B. IMPACT OF CRIMINALISATION OF WOMEN WHO USE DRUGS AS SURVIVORS OF VIOLENCE

Women who use drugs tend to be unwilling to report sexual violence to avoid arrest for drug use.[22] Given that perpetrators of violence against woman who use drugs include law enforcement officers, such as police and prison officers, naturally women will be reluctant to look for protection or to officially report their case.[23] Avoiding police interaction is a key obstacle for women who use drugs to report violence, look for assistance, or to access justice.[24]

Furthermore, reporting violence committed by intimate partners or by law enforcement officers can be complicated and challenging. Women who use drugs are often blamed for their experience of violence. This is confirmed by the lack of credence given to women who use drugs, the lack of enthusiasm to investigate the case and the priority given to other agencies (for example, the complaint concerns a trafficker who is under investigation). Additionally, there is structural violence enabled by law which fails to protect. How could women who use drugs imagine that the law will protect them? It is more a case of the law condemning and assigning blame to them. So lodging a complaint and coming forward as a survivor is quite illogical.[25]

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[21] ICJR. *The Overlooked: She in the Vortex of Death Penalty,* ICJR: Jakarta, pp29. 2021

[22] Ibid, pp24

[23] Malinowska-Sempruch K, Rychkova O. *The Impact of Drug Policy on Women*. 2016 https://www.opensocietyfoundations.org/sites/default/files/impact-drug-policy-women-20160928.pdf

[24] Gilbert L, Jiwatram-Negron T, Nikitin D, Rychkova O, McCrimmon T, Ermolaeva I, Sharonova N, Mukambetov A, Hunt T. *Feasibility and preliminary effects of a screening, brief intervention and referral to treatment model to address gender-based violence among women who use drugs in Kyrgyzstan: Project WINGS (Women Initiating New Goals of Safety)*. Drug Alcohol Rev. 125-133. 2017

[25] Benoit T. Jauffret-Roustide M. *Improving the management of violence experienced by women who use psychoactive substances,* pp23 2015 https://rm.coe.int/improving-the-management-of-violence-experienced-by-women-who-use-psyc/168075bf22

In Indonesia's criminal justice processes, it is not mandatory for judges to assess and consider the history of violence experienced by women as defendants, let alone in drugs cases. This can be seen under Indonesian law in Article 197 of the Criminal Procedure Code; judges are not obliged to consider the vulnerability of women such as the history of violence. On the other hand, it should be noted that there is a Supreme Court Regulation Number 3 of 2017 concerning Guidelines for Trial involving Women in Conflict with the law, which explains that in trying women as defendants, judges need to consider the history of violence experienced by women.[26] However, Community Legal Aid Indonesia (LBHM) has used this regulation to build defence for cases of women who use drugs in court (in decision number 703/Pid.Sus/2019/PN Jkt.Tim), however the judge questioned the credibility of the gender analysis and instead stigmatised women as parties who do not want to be responsible for their subordinate role in society.[27]

Even if a case is processed, woman who use drugs who are also survivors of sexual violence receive treatment differently from emergency and gender based violence services. Discrimination occurs due to stigma against women who use drugs who are seen, by default, as contributing to the violence they experienced.[28] Women who use drugs who experience rape and harassment are treated very differently by authorised officers compared to other women reporting rape. The officers show prejudice, aggressive attitudes, and less empathy to woman who use drugs who are survivors of violence because they consider the violence experienced as the risk or consequence of being involved in drug circles.[29]

The criminalisation of women who use drugs is also worsen by stigma in society about how women should behave, where women who use drugs face

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[26] Article 4g Supreme Court Regulation Number 3/2017
[27] ICJR. *Mendorong Kebijakan Non-Pemidanaan bagi Penggunaan Narkotika: Perbaikan Tata Kelola Narkotika Indonesia.* ICJR: Jakarta, pp45. 2021
[28] Benoit T, Jauffret-Roustide M. *Improving the management of violence experienced by women who use psychoactive substances*, pp23. 2015 https://rm.coe.int/improving-the-management-of-violence-experienced-by-women-who-use-psyc/168075bf22
[29] Ibid

discrimination because they fail to comply with gender stereotypes. Women who use drugs are seen as women who break traditional social values as mothers and main caregivers.[30] This is another reason for women to be unwilling to report violence and access health or sexual health assistance.[31] In Russia and the United States and other jurisdictions, women who use drugs lose custody of their children regardless of their parenting capacity. This is echoed in Indonesia where Community Legal Aid Institute reported that women who were convicted of drug offences had to give up the custody of their children to other relatives or other parties[32], negatively impacting both mother and child. It is also common that women who were convicted to drug offences, stigmatised by their involvement with, avoid disclosing their experience of contact with criminal process to family members.[33] Komnas Perempuan also report that women convicted of drug offences will lose everything when faced with legal processes. They face a series of other punishments, including social stigma, family rejection, denial their rights to health and projections of being incapable of raising their children.[34,35]

Criminalisation of women who use drugs brings additional challenges and harms. Women targeted by drug law enforcement activities are reportedly more likely to experience drug related harm. Research published in 2022 shows that women with a history of drug-related arrest in Indonesia were nearly three times more likely to overdose than women who do not come into contact with the criminal justice system. Being a target of arrest or incarceration and being a

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[30] Kensy J et al. *Drug policy and women: addressing the negative consequences of harmful drug control"*, Briefing Paper (London, International Drug Policy Consortium). pp6. 2012.
[31] *Ibid,* pp9
[32] Community Legal Aid Institute , 2019, *Opcit* , pp.24
[33] Ibid. pp89
[34] Ibid. pp89
[35]Komnas Perempuan. *Laporan Pemantauan: Kekerasan Terhadap Perempuan dalam Pusaran Migrasi, Perdagangan Manusia dan Narkoba : Interseksi dan Penghukuman*, (Jakarta : Komnas Perempuan). pp76 & 96. 2018.

victim of police violence had cumulative negative effects: 38% of women who experienced both forms of criminalisation reported overdose.[36]

C. REHABILITATION AND HARM REDUCTION IN INDONESIA

This section first explores how existing rehabilitation structures do not meet the needs of women who use drugs. It then outlines how Indonesian rehabilitation services largely fail to reflect international standards for drug dependence treatment. Lastly, a short overview of harm reduction implementation in Indonesia is provided.

For people affected by drug dependence, the WHO and UNODC International Standards for the Treatment of Drug Use Disorders outline seven principles of a quality evidence-based drug dependence treatment system, including principle 5 responding to the needs of specific populations:

> "Several groups within the larger population of those affected by drug dependence require special attention, including adolescents and young people, women (including pregnant women), individuals with comorbid health conditions, sex workers, ethnic minorities and homeless people. Services should be tailored to address the unique vulnerabilities and needs of these groups while ensuring equity and nondiscrimination at all stages of the care continuum".[37]

However, both in policy and practice, there is a shortfall of such services designed to meet the needs of women in Indonesia. For example, in the Head of BNN Regulation No. 1 of 2019 concerning the Implementation of Rehabilitation Services at Rehabilitation Institutions within the National Narcotics Agency (BNN), it does not mention the obligation to establish gender-

[36] Stoicescu C, Pantelic M. *Women who use drugs in Indonesia: The harmful impacts of drug control,* IDPC: 2022, page 7. 2022 http://fileserver.idpc.net/library/WWUD_Indonesia_Harms_DrugControl_EN.pdf

[37] WHO, UNODC. *International Standards for the Treatment of Drug Use Disorders.* Geneva. 2017. www.who.int/publications/i/item/international-standards-for-thetreatment-of-drug-use-disorders.

responsive rehabilitation centers. This law only mentions the provision of rehabilitation in special clinics for women and children,[38] without guarantee that rehabilitation for women who use drugs must be gender responsive.

Regulation on the importance of gender-responsive rehabilitation centers has only been found in BNN Regulation Number 5/2021 on Technical Guideline of the National Plan for Prevention and Eradication of Narcotics Abuse 2020-2024, mentioning that rehabilitation places must be gender and age responsive.[39] What is meant by gender responsiveness is:

- Taking into account the needs of women and men and providing equal impact/benefits for women and men.
- Consider four aspects, namely: roles, access, benefits and control that is carried out equally between women and men.
- Taking into account the aspirations, needs and concerns of women and men.[40]

The regulation itself was issued recently (2021) and to date there is no evaluation of its implementation. In reality, a number of obstacles for women who use drugs to access rehabilitation services remain, ranging from cost as the treatment,[41] a lack of women and children friendly facilities[42] and 78% of addiction counselors are men.[43] To date there are no specific rehabilitation program addressing the needs of woman who use drugs. Also, when women

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[38] Article 6(1)c, BNN Regulation Number 1/2019
[39] BNN Regulation Number 5/2021 on Technical Guideline of the National Plan for Prevention and Eradication of Narcotics Abuse 2020-2024, pp63
[40] Ibid. pp9
[41] Larasati A, Christian D, Misero Y, *Pemetaan Pemulihan Ketergantungan Narkotika di Indonesia*, Jakarta: LBH Masyarakat,, pp viii, 2017 https://lbhmasyarakat.org/wp-content/uploads/2017/12/PemetaanPemulihan-Ketergantungan-Narkotika-di-Indonesia-LBH-Masyarakat-3.pdf
[42] Stoicescu C. *Perempuan Bersuara : Memahami Perempuan Pengguna Napza Suntik di Indonesia*, (Jakarta : PKNI) pp12. 2016
[43] Suselo Wulan I, Riwayanto E, Rinsu, *Pedoman Perencanaan dan Penganggaran Reponsif Gender dalam Bidang Pencegahan dan Pemberantasan Penyalahbunaan dan Peredaran Gelap Narkotika* (P4GN), (Jakarta: Badan Narkotika Nasional dan Kementerian Pemberdayaan Perempuan dan Perlindungan Anak), pp17 2012 https://www.kemenpppa.go.id/lib/uploads/list/98fe1-pprg-bnn.pdf

access the existing services, they often experience gendered discrimination. [44] It is difficult for women to open themselves up to share their experiences of violence, let alone to address trauma. In addition, the rehabilitation centers are sometimes far from their home or do not provide day-care for children.[45]

The mixed voluntary and compulsory rehabilitation approach used in Indonesia functions within the context of punishment. As with other countries in the region, compulsory treatment without client consent, which may be considered as a form of imprisonment, is commonplace. People who use drugs are, by law, obliged to report their drug use and failure to report leads to punishment. Evidence shows that this approach is expensive, not cost-effective and also usually not beneficial to the individual or the community. [46] Yet rehabilitation in Indonesia, despite lack of efficacy (with estimated relapse rates of 60%[47]), is the primary 'treatment' response to drug use in Indonesia. Recalling that an estimated one in nine people who use drugs do so without developing dependency issues [48,49],this policy is not appropriate for most people who uses drugs and also fails to address gender based violence.

Rehabilitaton in Indonesia is normally based on morality from a religious interpretation perspective rather than public health and evidence. Commonly, 'social rehabilitation' is a feature, with religious underpinnings where drug use is depicted as a sinful act. This is inconsistent with the WHO and UNODC international standards, and sharpens the stigma against people who use drugs,

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[44] Stoicescu C. *Perempuan Bersuara : Memahami Perempuan Pengguna Napza Suntik di Indonesia*, (Jakarta : PKNI) pp12, 2016

[45] Putu Indah Savitri. *Memahami kebutuhan rehabilitasi untuk perempuan dan transpuan.* 2022 https://www.antaranews.com/berita/2934765/memahami-kebutuhan-rehabilitasi-untuk-perempuan-dan-transpuan

[46] Eastwood N, Fox E, Rosmarin A. *A quiet revolution: Drug decriminalisation across the globe* (Second ed.). Release. 2016

[47] UNAIDS. UNODC. *Compulsory Drug Treatment and Rehabilitation in East and Southeast Asia. Regional Overview.* 2022

[48] Schlag AK. *Percentages of problem drug use and their implications for policy making: A review of the literature.* Sage Journals. 2020

[49] UNODC. *World Drug Report*. 2018

who would be better served by a sound public health approach prioritising evidence based harm reduction.[50]

Nonetheless, mandatory rehabilitation remains in place in Indonesia despite calls from the United Nations to abolish this approach given that "… there is no evidence that compulsory rehabilitation centres represent an appropriate and effective environment for the treatment of drug dependence or for the protection and rehabilitation of those detained" as declared in March 2012, when 12 United Nations entities issued a Joint Statement calling for the closure of compulsory rehabilitation centres.[51] This statement was reinforced in 2020, urging that compulsory rehabilitation centres in Asia and the Pacific instead align with international guidelines and principles of drug dependence treatment, drug use and human rights.[52] Compulsory rehabilitation is associated with physical and sexual violence and inadequate access to health care and harm reduction services, forced labour, lack of due process, and lack of adequate nutrition and sanitation.[53] The 2021 Working Group on Arbitrary Detention conducted research to identify how drug policies can lead to human rights violations. The resulting report likewise called on States to "close without delay state-run compulsory drug detention centres and private treatment facilities that hold persons against their will", and "make available voluntary, evidence-informed and rights-based health and social services in the community" as an alternative to compulsory rehabilitation facilities.[54]

Beginning in 2002, Indonesia has introduced a policy framework for harm reduction services, including needle-syringe programmes, opioid agonist treatment and condom promotion to: provide bridges to overcome barriers to health; prevent HIV and viral hepatitis transmission; facilitate access to evidence

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[50] Kusuma EF, 2016, Jaksa Agung: Ada 1 Juta Orang di RI Jadi Sampah Masyarakat karena Narkoba (detik.com)
[51] United Nations. *Compulsory drug detention and rehabilitation centres.* 2012. https://www.unodc.org/documents/southeastasiaandpacific/2012/03/drug-detention-centre/JC2310_Joint_Statement6March12FINAL_En.pdf
[52] ibid
[53] ibid
[54] OHCHR Working Group on Arbitrary Detention. 2021

based treatment for drug dependency, HIV, TB, hepatitis and sexually transmitted infections and other relevant services; prevent and manage overdose and foster engagement with people who use drugs to become part of the solution to the so called 'drug problem'. A growing body of evidence demonstrates that benefits exceed costs for harm reduction programmes.[55] However, barriers to harm reduction services experienced by women who use drugs include policing practices that amplify risk of arrest and incarceration, health system barriers, stigma, discrimination, disinformation and poor treatment from healthcare providers.[56] Further, women who use drugs access to harm reduction services in Indonesia is limited by gender-based violence and a lack of services designed to address both drug use and experiences of violence; as well as a lack of services focused on the specific needs of women, including particularly sexual and reproductive health services.[57]

D. PROGRESSIVE ASPECTS OF THE LAW ON SEXUAL OFFENCES (UU TPKS/TPKS LAW)

On April 12, 2022, the Government and the DPR approved the passing of The Law on Sexual Offences (UU TPKS/ TPKS law) and on May 9, 2022, the TPKS Law was passed into Law Number 12 of 2022. This law is a legal breakthrough in that it provides the basis for regulating against sexual violence in Indonesia. The ratification of the TPKS Law has important meaning in strengthening regulations regarding responsibility of the state to prevent and respond to cases of sexual violence and guarantee the comprehensive fulfillment of all survivors' rights.

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[55] Harm Reduction International. *Making the investment case: Cost-effectiveness evidence for harm reduction.*

[56] Iryawan AR, Stoicescu C, Sjahrial, F. et al. *The impact of peer support on testing, linkage to and engagement in HIV care for people who inject drugs in Indonesia: qualitative perspectives from a community-led study*. Harm Reduct J 19, 16. 2022.

[57] Shirley-Beavan S, Roig A, Burke-Shyne N. et al. *Women and barriers to harm reduction services: a literature review and initial findings from a qualitative study in Barcelona, Spain*. Harm Reduct J 17, 78 2020

The TPKS Law has 93 articles and 12 chapters. The material includes 1) General Provisions, 2) Types of Sexual Violence Crimes, 3) Other Crimes Related to Sexual Violence, 4) Investigation, Prosecution, and Examination in Court Sessions 5) Rights of Victims, Victims' Families and Witnesses 6) Implementation Integrated Services for the Protection of Women and Children at Central and Regional levels, 7) Prevention, Coordination, and Monitoring, 8) Community and Family Participation, 9) Funding, 10) International Cooperation, 11) Transitional Provisions, 12) Closing Provisions.

If we look further into the general explanation of the TPKS Law, one of the basic objectives is to carry out reforms by providing guarantees to realise the comprehensive rights of survivors including rights related to treatment, protection and recovery as the occurrence of the Crime of Sexual Violence mandates state obligation[58] in accordance with the needs and best interests of the survivor.[59] Responses for survivors are to be provided immediately after the occurrence of sexual violence.[60]

The regulation of victim rights has been updated by introducing progressive aspects, ranging from the right to treatment, the right to protection, notably including the right to protection from the attitudes and behavior of law enforcement officers who demean and blame the survivor,[61] as well as the right to comprehensive recovery including guarantees for health treatment and other social assistance including economic empowerment to meet the needs of survivors.[62]

As a comprehensive response for survivors, an immediate protection mechanism has been introduced as regulated in Article 42. Within 24 hours, the police can provide temporary protection to survivors. This protection is provided for a period of 14 days. The implementation of temporary protection is carried out in collaboration with the Witness and Victim Protection Agency

[58] Article 3 and 67(2) of Law Number 12/2022 on Sexual Offences/ TPKS Law,
[59] Article 2 of Law Number 12/2022 on Sexual Offences/ TPKS Law
[60] Article 40 of Law Number 12/2022 on Sexual Offences/ TPKS Law
[61] Article 22 of Law Number 12/2022 on Sexual Offences/ TPKS Law
[62] Article 70 of Law Number 12/2022 on Sexual Offences/ TPKS Law

(LPSK) which includes shelter facilities.[63] This protection facility is also carried out in collaboration with UPTD PPA—a local level government institution responsible for providing assistance to survivors.[64] The immediate protection can be combined with restraining for the offender to prevent further violence or victim-offender confrontation.[65]

As mentioned, one of the responsibilities mandated to UPTD PPA is also to identify the need for temporary shelter for survivors.[66] Further from this, UPTD PPA is also obligated to provide shelter for survivors of sexual violence. Both obligations are rooted from the needs to immediately provide protection for the security and privacy of survivors.

As previously noted, this law also guarantees the right to treatment. [67] The survivor's rights to treatment include right to obtain information on the entire process, the right to obtain documents from the results of the treatment, the right to legal services, the right to psychological support, the right to health services including examinations and medical treatment. Survivors will also have the right to services and facilities according to their needs.[68]

In addition, survivors will have the right to protection which includes providing access to information on the implementation of protection, protection from threats or violence by perpetrators of violence, confidentiality, protection from attitudes and behavior of law enforcement officers so that survivors are not humiliated, protection from job loss, and access to education or politics and security and the protection of survivors from criminal charges or civil lawsuits for crimes of sexual violence that they have reported.[69]

The law also comprehensively regulates the survivor's right to recovery which includes medical, psychological and social rehabilitation, social

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[63] Article 12A(1)f Law Number 31/2014 on Victim and Witness Protection
[64] Article 44 Law Number 12/2022 on Sexual Offences/ TPKS Law
[65] Article 42(3) Law Number 12/2022 on Sexual Offences/ TPKS Law
[66] Article 41 (1) a Law Number 12/2022 on Sexual Offences/ TPKS Law
[67] Article 67 Law Number 12/2022 on Sexual Offences/ TPKS Law
[68] Article 68 Law Number 12/2022 on Sexual Offences/ TPKS Law
[69] Article 69 Law Number 12/2022 on Sexual Offences/ TPKS Law

empowerment, restitution and/or compensation and social reintegration. Provisions regarding the right to recovery can be applied before, during and after the judicial process.[70]

Another progressive aspect in this law is the introduction of a more comprehensive range of types of sexual violence, namely, non-physical sexual harassment; physical sexual harassment; forced contraception; forced sterilisation; forced marriage; sexual torture; sexual exploitation; sexual slavery; electronic-based sexual violence along with provision of responses.[71] The substantial aspects of this law are more comprehensive than before, reaching out to forms of sexual violence that occur without consent based on the power imbalances between the perpetrator and the survivor, for example physical sexual harassment and forced contraception that are experienced by women who use drugs.[72] Sexual violence against women who use drugs is exacerbated by gender stereotyping stigma, social inequalities and lack of social and economic resources.[73]

With the guarantee for the rights of victims, it is very important to ensure that these rights are accessible to all survivors, including women who use drugs. Importantly, in article 69 point g, it is also mentioned that the victim of sexual violence will be protected from any criminalisation they may face after filing a complaint of sexual violence, which is also in line with article 10 of Law Number 31/2014 on Victim and Witness Protection that stipulates the same protection. From this legal framework, it must be guaranteed that reports of sexual violence

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[70] Article 70 Law Number 12/2022 on Sexual Offences/ TPKS Law

[71] Article 4 Law Number 12/2022 on Sexual Offences/ TPKS Law

[72] In the United States and the UK, the non-profit organization "Project Prevention" pays women who use illicit drugs to be sterilised or to accept long-term contraception, based on the OSF report "Against Her Will". This is a form of coerced sterilisation, https://www.opensocietyfoundations.org/uploads/62505651-2c58-4c12-a610-46499e645a2c/against-her-will-20111003.pdf

[73] Women who use drugs are subject to gender related stigma because they are perceived as contravening their roles as mothers and caregivers. Stigma gives context for perpetrators, while discriminatory and unsupportive services may deter help-seeking, https://www.emcdda.europa.eu/topics/women_en#moreInfoTopic. Higher stigma faced by women who use drugs and lack of gender-sensitive treatment facilities lead to a deficit in women's access to treatment: https://www.unodc.org/wdr2018/prelaunch/WDR18_Booklet_5_WOMEN.pdf

from women who use drugs must always be responded to by the law enforcement officers who receive the report, prioritising the complaint of sexual violence rather than seeking to punish survivors' use of drugs.

E. CHALLENGES FOR WOMEN WHO USE DRUGS WHO ARE SURVIVORS OF SEXUAL VIOLENCE REQUIRING EMERGENCY SHELTER

To develop an overview of how sexual violence faced by women who use drugs is handled in government shelters, interviews were conducted with 8 government- gender based violence service providers, namely:

- P2TP2A DKI Jakarta
- P2TP2A Bogor city
- UPTD PPA Pekanbaru
- UPTD PPA West Java
- UPTD PPA East Java
- UPTD PPA South Sulawesi
- UPTD PPA Makassar and
- P2TP2A Surabaya

Community-based service providers were also interviewed to get more perspective, namely LBH Apik Jakarta, LBH Apik Makassar, LBH Makassar and LBH Surabaya. All of these organisations accept all survivors of sexual violence in their respective jurisdiction, including women who use drugs.The shelter centres accept all woman that have experienced sexual violence, but in the process, they will undertake assessment. If they find the woman uses drugs, they will initiate coordination with law enforcement. This represents a major disincentive for women who use drugs experiencing violence who are therefore unlikely to seek shelter support even when their personal safety is in jeopardy.

Of all the shelter service providers, only UPTD South Sulawesi reports experience in handling of a sexual violence case faced by women who use drugs. The South Sulawesi UPTD gave assistance to two women who use drugs who experienced human trafficking for the purpose of sexual exploitation involving intimate partner violence. However, the two survivors chose not to proceed with

the case due to their fear of being arrested by the police/BNN because of their drug use.

UPTD South Sulawesi has previously collaborated with Wolangi Prison on legal consultations in which the majority of the prison population are women who use drugs and drugs couriers. In the course of collaboration with the prison, UPTD South Sulawesi found that most of these women had experienced sexual violence from intimate partners. This fact goes unrecorded and unnoticed, so the women do not receive needed services. Moreover, because the use of drugs is categorised as a legal issue, women who use drugs avoid help seeking or restitution following incidents of sexual violence.

Among other GBV service providers, the response given to women who use drugs who are survivors of sexual violence is the same as the UPTD. This involves case management processes with initial assessment collecting information related to identity, chronology, social environment and family. Follow-up assessment is carried out to map needs and interventions required by survivors. During assessment, if women are assessed as drug dependent, the UPTD will coordinate with the police/BNN. However, it is unclear how the coordination is conducted between the UPTD and BNN, and whether or not gender analysis and survivor perspective is applied.

The assistance process from UPTD South Sulawesi reveals that women who use drugs are unwilling to report violence because they are compelled to avoid exposure to criminal processes and punishment. The UPTD South Sulawesi service provision system presents additional obstacles when considering the intersectionality between the drug cases and human trafficking cases. Victims of human trafficking also tend not to report their cases if they are using drugs, as drugs use is still considered primarily as a criminal act. In order to secure protection, they need to report the case to the police, which is not possible while they are avoiding police interaction. Many survivors of sexual violence associated with human trafficking likewise do not report. Reporting barriers result in women who use drugs not being able to access services otherwise provided under the law.

F. CONCLUSION

Victims' rights which are regulated comprehensively in the Law on Sexual Offences, are not applied evenly when considering survivors of sexual violence who use drugs. In interviews conducted, each UPTD that provides GBV services will collect data and assess survivors. In this context, if drug use is identified, the UPTD will coordinate with the police/BNN. This is highly problematic as the use of drugs is primarily subject of law enforcement, effectively superseding the rights of survivors of violence. Nonetheless, the UPTD is obliged to implement the law and based on the current Narcotics Law, people who use drugs are required to report their use of drugs even though reporting drugs use frequently leads to punishment.

In accordance with the recommendations of the United Nations at the 2016 United Nations General Assembly Special Session on the World Drug Problem (UNGASS), party countries, including Indonesia, have committed to address the world drug problem comprehensively. The outcome document highlights the importance of mainstreaming gender and age perspectives in drug-related policies and programmes[74] From this recommendation, it should be noted that the evidence-based health approach with gender perspective must be reflected in national drugs policy.

In 2018, the United Nations also issued their common position supporting the implementation of international drug control which clearly mentions the commitment to promote increased investment in harm reduction measures.[75] Further, in terms of ensuring harm reduction services with gender perspective, the UNODC policy brief on women who inject drugs and HIV recommends gender-specific harm reduction services with tailored medical and social

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[74] UNGASS, *Outcome Document of the 2016 United Nations General Assembly Special Session on the World Drug Problem* New York, 19-21 2016, https://www.unodc.org/documents/postungass2016/outcome/V1603301-E.pdf, pp3. 2016

[75] *United Nations system common position supporting the implementation of the international drug control policy through effective inter-agency collaboration*. pp14. 2021 https://unsceb.org/sites/default/files/2021-01/2018%20Nov%20-%20UN%20system%20common%20position%20on%20drug%20policy.pdf

services which respond to the specific needs of women. Programmes and policies at all levels integrating the needs women should be guaranteed, with the aims to achieve gender equality, human rights and universal access to health.[76]

However, it should be noted that the criminalisation of drug use heavily influences the accessibility of harm reduction and other essential services including gender based violence services, presenting a major barrier to women who use drugs. The criminalisation of drug use and possession for personal use has led to negative consequences for the health, security, and human rights of individuals and communities worldwide. Criminalisation fuels incarceration rates and overcrowded prisons, placing individuals in conditions of inhuman or degrading treatment in the community and while incarcerated. WHO, UNAIDS, UNODC and the OHRCR have called for education, services and support to be an effective alternative to criminalisation. [77] The United Nations Special Rapporteur on health has likewise endorsed the adoption of decriminalisation for personal use of drugs.[78] The decriminalisation of drug use is essential to reduce stigma, violence, HIV transmission and overdose risks and expand access to services, evidence-based treatment and harm reduction programs.

Decriminalisation is the removal of criminal penalties for drug law violations (usually possession for personal use), reversing the harm associated with punitive drug law, by enabling people who use drugs to access essential services without being stigmatised by criminal labels. This involves reforming drug policy from the realm of criminal law into a non-criminal response focused on health services.[79]. By eliminating the threat of criminal penalties and stigma against people who use drugs, access is enabled to health, gender-based

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[76] UNODC, UNWomen, INPUD, WHO. *Women who inject drugs and HIV: Addressing specific needs.* 2014 https://www.unodc.org/documents/hiv-aids/publications/WOMEN_POLICY_BRIEF2014.pdf

[77] UNODC, *From coercion to cohesion: Treating drug dependence through health care, not punishment, Discussion Paper*. New York, pp5. 2010

[78] United Nations. Special Rapporteur on the right to health. *Drug policy and drug use*. https://www.ohchr.org/en/special-procedures/sr-health/drug-policy-and-drug-use

[79] Unlu A, Tammi T, Hakkarainen P. *Drug Decriminalization Policy Literature Review: Models, Implementation And Outcomes*, Helsinki, Finnish Institute For Health And Welfare, pp17, 2020

violence and other services as needed.[80] This approach is pragmatic, effective, cost effective and humane.

Decriminalising drug possession and redirecting savings from policing, court costs and incarceration to instead invest in treatment and harm reduction services can provide substantive benefits for people who use drugs and society at large, including:

- Reducing the number of people arrested and incarcerated[81] (important given the overcrowding problem in Indonesian prisons)
- Minimising the marginalisation of people who use drugs, increasing uptake into drug treatment, HIV testing and treatment, and other essential health and social services;
- Redirecting law enforcement resources and activities to instead prevent serious and violent crime;
- Improving relations between law enforcement and the community
- Protecting people from the otherwise wide-ranging, long lasting negative consequences of a criminal conviction.[82]

Countries that do not punish people for drug possession have not experienced any significant increases in drug use, drug-related harm or crime relative to countries that continue to commit extensive resources to punitive policing for drug possession. [83] , [84] As the first country to implement decriminalisation for all drugs, Portugal has also demonstrated that decriminalisation is humane strategy and has proven to reduce drug consumption, dependency, recidivism, overdose and HIV infection. This policy also enables diversion of policing resources away from petty drug possession

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[80] Bajekal N. *Want to Win the War on Drugs? Portugal Might Have the Answer.* Time. August 1, 2018 https://time.com/longform/portugal-drug-use-decriminalization/

[81] UNODC. Handbook on strategies to reduce overcrowding in prisons. pp55-56 2010 https://www.unodc.org/documents/justice-and-prison-reform/Overcrowding_in_prisons_Ebook.pdf

[82] Drug Policy Alliance. *Approaches to Decriminalizing Drug Use and Possession*. 2015

[83] Vuolo M. *National-Level Drug Policy and Young People's Illicit Drug Use: A Multilevel Analysis of the European Union*. Drug and Alcohol Dependence 131, no. 1-2. 2013

[84] Room R et al., *Cannabis Policy: Moving Beyond Stalemate.* Oxford University Press, USA. 2010

'offences' to focus instead on major crime and protection for citizens, improving the social credibility and utility of the police force.[85]

The implementation of decriminalisation (both de facto and de jure)[86] has proven successful in reducing the burden on the criminal justice system.[87] Decriminalisation models with a focus on health service as in Portugal, have a positive impact not only on reducing the burden on the criminal justice system, but also being able to achieve the goal of improved social and health outcomes.[88] Decriminalisation can shift significant savings from policing operations, court proceedings, incarceration and mandatory rehabilitation into treatment and other harm reduction programs.[89] People who have convictions often struggle to re-enter the workforce, so applying health oriented drug policy also results in increased net productivity and may also reduce recidivism.[90,91] Drug use becomes a health rather than a legal concern, while the black market is undermined, eliminating the environment where corruption otherwise flourishes. Drug-related mortality and new cases of HIV among people who use

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[85] Grund JP, Breeksema J. *Coffee Shops and Compromise: Separated Illicit Drug Markets in the Netherlands, New York: Open Society Foundation*, 2013. https://www.opensocietyfoundations.org/uploads/4516426f-086e-405c-9385-76363993d8f2/coffee-shops-and-compromise-20130713.pdf

[86] In the legal framework, the decriminalisation model is divided into two categories, de facto and de jure decriminalisation. In de facto decriminalisation, the possession of drugs for personal use is still regulated as an offence, while in de jure decriminalisation, possession of drugs for personal use are not recognised as criminal acts by law.,Ali Unlu Tuukka Tammi Pekka Hakkarainen, *Drug Decriminalization Polic*y Literature Review: Models, Implementation and Outcomes, Finnish institute for health and welfare: 2020, page 23.

[87] Hughes C, Stevens A, Hulme S, Cassidy R. *Models for the decriminalisation, depenalisation and diversion of llicit drug possession: An international realist review,* dipresentasikan ISSDP Conference, 2019, pp15

[88] Ibid pp12

[89] Greenwald, in Ali Unlu Tuukka Tammi Pekka Hakkarainen, *Drug Decriminalization Polic*y *Literature Review: Models, Implementation and Outcomes*, Finnish institute for health and welfare. page 23. 2020,

[90] Eastwood N, Fox Edward, Rosmarin Ari. *A quiet revolution: Drug decriminalisation across the globe* (Second ed.). London: Release Publication. 2016

[91] Saito, Miki. *Decriminalize Drugs Now: A Dire Situation Becomes Much More Urgent*, *Seattle Journal for Social Justice*: Vol. 20: Iss. 1, Article 23. 2021

drugs also decreases.[92] Additionally, there is no strong evidence that the abolition or reduction of criminal penalties for the use or possession of narcotics immediately results in an increase in the number of drug users.[93],[94]

Decriminalisation is gaining momentum worldwide as the effective response to drug use with 30 countries implementing decriminalisation in various forms to date.[95] This paper has highlighted some of the negative impacts of criminalisation on Indonesian women including particularly in terms of risk of violence, hyper-incarceration and exclusion from health and gender based violence services. As highlighted by UN Women, it is clear that criminalisation is undermining gender equality, and that a gender perspective is needed in all efforts to prevent and respond to drug use.[96]

In considering the merits of drug law reform in terms of the situation of women who use drugs, it is important to recall Sustainable Development Goal 5 indictors, to achieve gender equality and empower all women and girls' which are otherwise held back by punitive drug policy, particularly those relating to ending all forms of discrimination against women (indicator 5.1), eliminating all forms of violence against women (indicator 5.2), ensuring women's participation in decision making (indicator 5.5), ensuring universal access to sexual and

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[92] Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, 2010, Sixty-fifth session, Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms , A/65/255 https://documents-dds-ny.un.org/doc/UNDOC/GEN/N10/477/91/PDF/N1047791.pdf?OpenElement

[93] Eastwood N, Fox E, Rosmarin A. *A Quiet Revolution: Drug Decriminalisation Across The Globe*, London: Release Publication. 2016. https://www.release.org.uk/sites/default/files/pdf/publications/A,%20Quiet%20Revolution %20-%20Decriminalisation%20Across%20the%20Globe.pdf.

[94] Stevens A, Hughes CE, Hulme S, Cassidy R. *Depenalization, Diversion and Decriminalization: A Realist Review and Programme Theory of Alternatives to Criminalization for Simple Drug Possession.* European Journal of Criminology. 2019

[95] *Interactive decriminalisation map data from Release UK:* https://www.talkingdrugs.org/drug-decriminalisation

[96] *UN Task Force on Transnational Organized Crime and Drug Trafficking as Threats to Security and Stability – Policy Brief on Gender and Drugs*, UN Women. 2014

reproductive health (indicator 5.6), and adopting policies to empower women and promote gender equality (indicator 5.C).[97]

The 2021 Committee on the Elimination of Discrimination Against Women (CEDAW) Indonesia review concluding observations specifically mandated the Indonesian government to ensure that woman using drugs have access to health services, including sexual and reproductive health services and HIV and drug treatment.[98] (It is also important to note here that the Lancet Guttmacher Commission definition of sexual and reproductive health services specifically includes gender based violence services - and also mentions people who use drugs as an under-served population[99]). To provide unfettered access to these essential services for women who use drugs, decriminalisation is key and without such reform, Indonesian achievement of gender equality and women's empowerment will remain limited.

Currently the government and the DPR are discussing the revision of Law no. 35 of 2009 on Narcotics. As part of this process, the option of decriminalisation of drug use has been voiced. Part of the rational to support decriminalisation is to support women who use drugs as survivors of sexual violence to access justice and gender based violence services such as womens shelters, irrespective of their drug use status.

G. RECOMMENDATIONS:

[97] Nougier M. *Improving Drug Policy Metrics and Advancements in Measuring Gender-based Drug Policy Outcomes*. Buxton J. Margo G. Burger L. (Ed.) The Impact of Global Drug Policy on Women: Shifting the Needle, Emerald Publishing Limited. 2021

[98] Cedaw/C/Idn/Co/8: *Concluding Observations On The Eighth Periodic Report Of Indonesia*. 2021. Https://Www.Ohchr.Org/En/Documents/Concluding-Observations/Cedawcidnco8-Concluding-Observations-Eighth-Periodic-Report

[99] *The Lancet Commissions, Accelerate progress-sexual and reproductive health rights of all : report of the Guttmacher-Lancet Commission*. 2018. https://www.thelancet.com/action/showPdf?pii=S0140-6736%2818%2930293-9

- The progressive regulation of victims' rights regulated comprehensively in the Law on Sexual Offences must be evenly applied to all women including survivors of sexual violence who use drugs. All gender-based violence services, including crisis shelter, should be available to women who use drugs.
- The UU TPKS/TPKS Law also stipulates, in line with article 10 of Law Number 31/2014 on Victim and Witness, that survivors of sexual violence will be protected from any criminalisation they may face after filing a complaint of sexual violence. It is essential that reports of sexual violence from women who use drugs prioritise the complaint of sexual violence rather than seeking to criminalise the survivors use of drugs.
- Recognising that drug use is a health rather than a criminal justice issue is the critical starting point for reform. The decriminalisation of drug use is essential to reduce stigma, violence, HIV transmission and overdose risks and expand access to services, evidence-based treatment and harm reduction programs. Education, services, regulated supply and support are the effective alternative to criminalisation.
- Indonesian drug policy requires review and reform to reflect evidence-based health approaches with a gender perspective. This must include actions to respond to CEDAW instructions to ensure that woman using drugs have access to health services, including sexual and reproductive health services and HIV and drug treatment. Gender sensitive harm reduction services be introduced and expanded to meet the scale of need.[100]
- Compulsory drug treatment and rehabilitation must be abolished. The ideal drug policy response is not dichotomous, which exposes a person to choose only mandatory sanctions or rehabilitation. Because, it depends on the type of drug a person consumes, dose, method, and history of use, the possibility of the person does not need any response (which is mandatory). Therefore, the drug law needs to stop the binary approach (criminal or mandatory rehabilitation) for people who use drugs and open up the possibility of other options that can be voluntary which has been proven to be more successful, allows outpatient care, and provide harm reduction services on an even larger scale.

[100] see, for more detail, UNODC, UNWomen, INPUD, WHO. *Women who inject drugs and HIV: Addressing specific needs.* 2014 https://www.unodc.org/documents/hiv-aids/publications/WOMEN_POLICY_BRIEF2014.pdf

- The judicial system should be obliged to include considerations of women's history of violence in all court and sentencing processes, in line with the Supreme Court Regulation Number 3 of 2017 concerning Guidelines for Trial involving Women in Conflict with the law, which explains that in trying women as defendants, judges need to consider the history of violence experienced by women. Gender-based violence occurs against women convicted of drug offences in various contexts and stages, which should be considered as critical mitigating factors; in particular how violence against women is background context, the pattern used and exploited by drug syndicates, and violence in particular IPV and violence from law enforcement.
- Gender sensitive harm reduction services must be introduced and expanded to meet the scale of need. Gender-sensitive services must respond to the background of woman, including the violence they have experienced, according to the stated needs of women clients themselves.
- With regard to implementation of UU TPKS for women who use drugs - principles and practices can be developed with through public health and criminal justice partnership approaches to drug related harm. This requires a sustained, adequately resourced partnership between criminal justice, health services and social services at central and local levels. This pragmatic, step by step approach may resemble a de facto decriminalisation. Activities include:
    - Formalised and accountable exercise of police discretion with regard to charging people for minor drug offences . This includes not targeting settings where women who use drugs may be staying (shelters) or investigating possible drug offences when they report GBV.
    - Training and resourcing for law enforcement and criminal justice staff regarding the public health approach to drug related harm and their role in this.
    - This should include education about drug use, dependency and the rights of people who use drugs.
    - Also includes training and procedures for criminal justice, health and social services staff regarding existing laws and regulations (including as referred to in this document)
    - In a broader context consider Introduction of alternatives to arrest for drug related offences , ie warnings, cannabis cautioning

- Use of non-custodial remedies ie bail rather than remand, referral for non-compulsory counselling or rehabilitation, drug courts