

**Alternative Report**  
**for the Adoption of List of Issues Prior Reporting**  
**of Indonesia in the Human Rights Committee Session**

**Submitted by**  
**the Coalition of Indonesian Disability People Organizations**

*The report coordinated by:*  
**Association of Indonesia Women Disability (HWDI)**  
**Perhimpunan Jiwa Sehat/Indonesian Mental Health Association**  
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## **I. Introduction**

1. This report submitted by the Coalition of Indonesian Disability People Organizations and based on each organization's monitoring report. The organizations that involved in the process of drafting are:

- a. Himpunan Wanita Disabilitas Indonesia/ HWDI (Association of Indonesia Women Disability) with 14 branch provincial offices;
- b. Perhimpunan Jiwa Sehat/Indonesian Mental Health Association, the organization focusing on People with Psychosocial Disability;
- c. OHANA, the organization based in Yogyakarta that advocating the mobility of people with disability in Indonesia and SDGs programmes.
- d. SEHATI as a Secretariat of Disability Coordination Team of disability persons organizations, based in Solo, Central Java.
- e. HRWG is a coalition of Indonesian NGOs for international human rights advocacy.

## **II. Response to the Recommendations (Concluding Observation)**

### **A. Non-discrimination and Equality**

2. In term of women with disability rights in the scope of civil and political rights, Article 2 of Law No. 8/2016 emphasizes the principle of non-discrimination and equality. PWDs reserve the right to freedom from discrimination (Article 5 of Law No. 8/2016), including the right to work in both public and private sectors (Articles 11 and 45) and the right to public services (Article 19). These rights are further emphasized in Chapter 22 in this Law. Articles 144 and 145 of this Law mention the sanctions charged against anyone who impedes the enjoyment of disability rights. However, this Law does not elaborate the principle of non-discrimination and the sanctions charged against its violators. There has not been any mechanism to hold violators to account. Therefore, the Law does not create any significant impact on the lives of PWDs. Unequal treatment and discrimination against PWDs are still widespread.

3. Most women with mental and intellectual disabilities, according to the existing Law including the Civil Code, the Disability Act, can be declared legally incompetent. As a result, they do not have the legal capacity to report cases of violence they experienced. There are cases of women with psychosocial disabilities also who gave birth in the institutions lost the baby right away. The babies were handed over to the third party without their consent.

### **B. Response to Paragraph 6 and 30 of Concluding Observation**

4. Indonesia has ratified the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) that is contained in Law No. 7/1984, enacted on 24 July 1984, however, girls and women with disabilities still didn't get equal protection and legal guarantees compared to girls and women in general. Women with disabilities continuously experience discrimination in the fields of education, work, leadership participation, decision-making position, and suffer high-level physical, mental, and sexual abuse. Multiple discrimination and stigma endured by women and girls with disabilities have made them vulnerable to physical and sexual abuses, as well as exploitation by members of family and other people.

5. One of the challenges in the efforts to protect the rights of persons with disabilities in Indonesia is related to the existing policies that were enacted before the ratification of CRPD or the enactment of the Law No. 8/2016. Not only are these policies biased against disability, but they also contain gender-bias, rendering women with disabilities prone to multiple discriminations. Some of existing regulations that are still discriminative against women with disabilities are:

- a. The Law No. 1 Year 1974 that allows the practice of polygamy for husbands whose wives become physically disabled or afflicted by an incurable disease;<sup>1</sup> and a provision stipulating that one of the requirements to file for divorce is if one party becomes physically disabled or afflicted by a disease that render the said party unable to fulfill his/her obligations as a husband/wife.<sup>2</sup> In South Sumatera case, a women who become blind at the age of 37 was divorced and sent to her parents house by the husband, she has no activities in her daily life and made her stress out.
- b. The Law No. 17/2014 on Exclusive Breastfeeding, Article 6 clause (3) and (7) allow mothers with mental disabilities to not breastfeed their babies exclusively.

6. Related to the religious based local regulation, the Regent of Bireun Regency, Aceh Province, issued Circular Letter on the Standardization of Coffee Shops and Restaurants that must comply to Shariah rules, which forbid a man and a women to share a table unless the man is her *mahram* (an unmarriageable kin).<sup>3</sup> Another circular note issued by the Major of Lokshumawe on the prohibition for women to straddle on motorcycle or to ride on the back with a man who is not her *mahram*.<sup>4</sup>

7. In case of women with psychosocial disabilities who are placed in social institutions and psychiatric hospitals are also vulnerable to forced contraception and forced sterilisation. According to observations made by Komnas Perempuan at the Margo Widodo Social Institution, Semarang, Central Java, the institution inserted contraceptive implants into female residents of childbearing age. Meanwhile, the Dr Amino Regional Psychiatric Hospital performs tubectomy on female patients. All without direct consent of the women involved. The investigation carried out by Komnas Perempuan found that there were cases of forced contraception even sterilization of women with psychosocial disabilities living in social institutions without any consent.

8. Legal Aid Community organization (LBH Masyarakat) collected data on the decisions of district courts throughout Indonesia from 2011 to 2018 and found that in 7 years only thirteen cases of sexual violence against women with psychosocial disabilities were taken to court. Three of these cases were committed against minors. The number of cases that go to court does not compare to the actual number of cases that occur on the street, at home, or in social institutions, and this highlights the state's failure to provide optimal legal protection for women with psychosocial disabilities. Law enforcement institutions, such as the police, the public prosecutor's office and the courts are not adequately accessible to victims seeking justice and protection from possible retaliation from perpetrators.

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<sup>1</sup> Article 4 number (2) of the Law No. 1 Year 1974 on Marriage.

<sup>2</sup> Article 39 of the Law No. 1 Year 1974 on Marriage.

<sup>3</sup> Issued on 30 August 2018

<sup>4</sup> Issued on 7 January 2015

## Proposed List of Issues

- a. Are there any concrete steps taken to make an inventory of the regulations that are deemed discriminating and to harmonise such regulations to make it comply with international human rights standard?
- b. What steps the Indonesian Government are taking to eliminate all forms of discrimination against women with disabilities, including giving sanctions to those who violates the regulations as stipulated in the Article 144 and 145 of the Law No. 8/2016, including Law No. 1/1974 on Marriage that discriminated persons with disabilities as stated in point number 5 (a)?

## C. Response to Paragraph 7 of CO: NHRIs and National Commission of Disability

9. Related to the Persons with Disability (PwD), Indonesia does not have any independent and comprehensive mechanisms to deal with violence, exploitation and other forms of human rights violations against PwDs. Law No. 8/2016 mandates the establishment of the National Commission on Disabilities (*Komisi Nasional Disabilitas, KND*), yet the Commission is still nonexistent. The Government is allegedly reluctant to set up an independent commission that operates outside the Ministry of Social Affairs. The latest draft of Presidential Regulation on the Establishment of KND places the Commission under the purview of the Ministry of Social Affairs.

10. DPOs oppose the plan arguing that KND will not operate independently if put under the Ministry. The Ministry, however, insists on executing the plan because of the budget cuts that make it difficult to set up a new, independent institution. The Government does not seek out other options to ensure the independence of KND and the institution's future budgeting. In the other hand, the protection of the rights of people with disability from the violation of rights and discrimination not really effective from the other National human rights institutions (because of priority issues, capacity of the Commissioners, representative of DPOs, etc.).

## D. Response to Paragraph 10 and 14 of CO: Death Penalty and Access to Justice of PwD

11. In practice, however, law enforcement systems in Indonesia are rife with practices of torture, making more vulnerable to torture. For example, Mr. Rodrigo Gularte (42) a Brazilian national executed in 2015 was suspected to have suffered from schizophrenia. Nevertheless, the government proceeded to execute him despite medical records from doctors and hospitals stating that the convict had long endured depression.<sup>5</sup>

12. He was arrested with two colleagues at the airport on charges of drug trafficking. His two colleagues, who were persons without disabilities, were simply deported back to Brazil without facing any legal charges, leaving Rodrigo alone. Without proper legal support, including expert

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<sup>5</sup> "Indonesia urged not to execute Brazilian Rodrigo Gularte, who has been diagnosed as mentally ill", 19 February 2015, <https://www.theguardian.com/world/2015/feb/19/indonesia-urged-not-to-execute-brazilian-rodri-gularte-who-has-been-diagnosed-as-mentally-ill>; "Am I being executed? Brazilian killed by Indonesia unaware until end, says priest", 30 April 2015, <https://www.theguardian.com/world/2015/apr/30/brazilian-executed-by-indonesia-was-hearing-voices-all-the-time>

witnesses and psychological examination, Rodrigo was sentenced to death. Rodrigo was executed by firing squad in 2015.

13. Another case of person with disability, Mr. Wendra Purnama (22), an intellectually impaired man who was found guilty of drug abuse and subsequently detained in Tangerang Juvenile Detention Center, was released by the Panel of Judges of the District Court of Tangerang in July 2019 after several trials. This case because he was deemed to be lacking legal qualifications to be legally responsible for his perpetration, as is also explained in Article 44 of the Indonesian Criminal Code.<sup>6</sup>

#### **E. Response to Paragraph 11 of CO: Political Representation of People with Disability**

14. Law No. 8 of 2016 on Persons with Disabilities has set the participation of persons with disabilities but it cannot be implemented because there is no government regulation as the guide for its implementation.

15. The state has had Law No. 8 of 2012 on Legislative Elections but there are no procedures, tools or infrastructure that are accessible for the fulfillment of the rights to elect and be elected. Starting in 2014 there has been a template for Blind in each polling station, but it is still very weak in its dissemination. The state also has Law No. 15 of 2015 on the Election of governors, regents and mayors, however due to the fact that the general election stakeholders have no understanding of disabilities and also the fact that the family are limited on politic education it is not guaranteed that persons with disabilities rights participate in politics.

16. Law No. 7/2017 served as a legal basis for the elections of House of Representatives (DPR), Regional Representative Councils (DPD), Regional House of Representatives (DPRD), and president in 2019—all at once. Although the rights of PWDs are guaranteed,<sup>7</sup> there are various challenges in the implementation, including the unavailability of data as to how many PWDs qualify to cast vote.

1. In practices, persons with psychosocial disabilities still face obstacles to be registered as voters in elections. According to Indonesian laws and regulations, to be a legislative candidate from local to national levels or head of government, from local to national levels one must go through a series of psychiatric examinations. Even tough General Elections Commission (KPU) tried to issue a regulation on this and ensure the rights of persons with psychosocial disabilities in the Election 2019.<sup>8</sup>

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<sup>6</sup> “Wendra, Man with Intellectual Disability Tried for Bringing 0.23 Grams of Methamphetamine,” *Tirto.id*, March 26, 2019, read more on: <https://tirto.id/dkij>; “Reasons why District Court of Tangerang Set Wendra Purnama Free,” *Tirto.id*, July 4, 2019, read more on: <https://tirto.id/edAW>; “Intellectually impaired drug defendant found guilty, but walks free”, Wed, July 3 2019, <https://www.thejakartapost.com/news/2019/07/03/intellectually-impaired-drug-defendant-found-guilty-walks-free.html>

<sup>7</sup> Article 27 paragraph (1) of the 1945 Constitution of Indonesia guarantees equality before law. This principle is adopted into Article 5 of Law No.7/2017 concerning Elections that says, “Qualified PWDs have the same chance to run for DPR, DPD, DPRD and presidential elections or election organizer.”

<sup>8</sup> Based on the DPOs’ monitoring, State has made efforts to enhance the participation of persons with disabilities. The General Election Commission (KPU) has included a program on how persons with disabilities can be a democracy volunteer. However, this has not yet been accompanied by capacity building program. In the 2015 Election in Solo, the participation rate of the persons with disabilities showed 38.25% only. Based on the information from one of the

2. In practice, the General Elections Commission (KPU) did little in providing access to PWDs; for example, there were very few campaign materials accessible to people with various disabilities.<sup>9</sup> KPU disseminated information to PWDs about how to cast vote, but they did little in ensuring access to voting polls. In practice, many PWDs are unable to go to voting polls because of constrained mobility.<sup>10</sup>

17. Below are some notes on Equal Access in 2019 Elections in Yogyakarta:

- a. KPU did not have any fixed vote list for PWDs.
- b. Difabike found that 23 voters with disabilities required assistance in visiting voting polls.
- c. In Bantul Regency, various vulnerable groups could not exercise their political rights due to constrained mobility.
- d. Some voting polls were not disability-friendly.
- e. Only 2 out of 4 ballot papers (for president-vice president and regional house of representatives) were equipped with braille.
- f. Some people with mental disabilities resided in voting polls since the morning but were told to return home.<sup>11</sup>

#### **Proposed List of Issues:**

- What will Indonesian government do to ensure that all persons with psychosocial disabilities can enjoy their right to vote in the elections (including by amending the laws that prevent the fulfillment of this right) without any conditions or requirements? **What will Indonesian government do to eradicate of all the discriminative laws and regulations? What will Indonesian government do to eradicate this discriminative policies?**

#### **F. Response to Paragraph 13 of CO: Violation against women (with disability)**

18. The condition of women with disabilities is also described in a number of reports written by Organisation of People with Disabilities such as the one published by SAPDA (the centre of advocacy for women and children with disability), in Yogyakarta, in 2015, 29 women with

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local media, from a total of 1.085 residents who are persons with disabilities registered in the final voters list, there were only 415 used their rights to vote.

<sup>9</sup> DPOs appreciate KPU's effort in providing sign language interpretation in news programs regarding elections, such as presidential debates.

<sup>10</sup> Some DPOs, such as Samasetara, Center for Improving Qualified Activity in Life of People with Disabilities (CIQAL), Difabike, and Organisasi Harapan Nusantara (OHANA Indonesia), set up Accessibility Movement for Democracy (GANDEM) in hope to provide mobility access to vulnerable groups, such as the elderly with disabilities in Yogyakarta City, Sleman and Bantul. This includes fetching and bringing them home from voting polls. This movement is meant to increase PWDs' participation in political life as mandated in Article 13 of Law No. 8/2016 concerning Persons with Disabilities. In the 2019 Elections, we received 15 volunteers, 6 three-wheeled bikes (to carry wheelchairs), 12 wheelchairs, 2 motorbikes, and 3 cars. The volunteers involved members of disability communities, students, automotive communities, and the general society.

<sup>11</sup> Based on the DPOs' monitoring during the Election 2019

disabilities were reported suffered from many forms of assaults: sexual violence, physical violence, and economical violence. As many as 33 cases occurred in 2016 and it was increased to 35 cases in 2017.<sup>12</sup> In 2016, only 3 out of 76 sexual violence cases that are reported to DPOs in Yogyakarta and legal aid institutions that went to trial.

19. Research conducted by HWDI on October – December 2015 found that there are 85 cases of sexual violence against persons with disabilities in 22 provinces, with the following typology: 35% (36 cases) against persons with psychosocial disability, 7.08 % (6 cases) against blind persons (sensory disability), 27.06% (23 cases) against deaf persons, 8.24% (4 cases) against people with physical disability, 10.59 % (9 cases) against people with multiple disabilities, and 4.71 % (4 cases) against people whose type of disabilities are unidentified.<sup>13</sup>

20. The new monitoring cases by HWDI in 2019 (covered 2017 – 2019) found 136 cases in 11 provinces with the following explanation in the graphics (Number of cases, type of abuses, type of victims' disability, and perpetrators).<sup>i</sup>

21. The latest observation in 2019 conducted by HWDI in 11 provinces shows that a number of regional regulations have been published to protect women and children from exploitations, violence, and harassment,<sup>14</sup> but in practice, there are still a number of obstacles between the regulations, the state apparatus and the government, and the availability of access to services and legal aid towards the protection of the rights of women with disabilities. Likewise, there are no comprehensive mechanisms to ensure such laws are effectively implemented. This condition has resulted in unsolved cases of violence, exploitation and the violation of the rights against persons with disabilities.

22. The absence of well-planned, systematic, and measurable efforts taken by the Government to protect women with disabilities has resulted in the occurrence of violence cases and violations. The data collected in the monitoring of the rights of persons with disabilities conducted by HWDI,<sup>15</sup> it was discovered that the problems in handling the victims of violence and exploitation cases lay in the investigation process, which caused by the lack of accessible facilities such as mobility, information and communication facilities. Whereas, in terms of service, there are four (4) aspects that have yet been fulfilled; assistance for the victim; the value of the testimony given by persons with disabilities (which is often deemed as legally incapable or is not qualified as a testimony); the rehabilitation of victims with disabilities; and institution.

23. Current mapping of women with disabilities condition carried out by HWDI in 2019, within 2017-2019 were collected 142 legal cases faced by women with disabilities were recorded. Majority of them are rape 33%, discrimination 20%, and other physical violence 17%, exploitation 9%, domestic violence 8%. Sexual harassment 7%, Psychological violence 5%, and inhuman degrading 1%.<sup>ii</sup> (*See, Endnote*)

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<sup>12</sup> Report by Sentra Advokasi Perempuan Disabilitas dan Anak (SAPDA) year 2017

<sup>13</sup> Research conducted by HWDI in 2015

<sup>14</sup> North Maluku Province Government Regulation No.5 year 2013, on the Protection and Services for women and children who become victims of violence Article 6, 8, and 11; East Kalimantan Province Government Regulation No. 1 year 2018,<sup>14</sup> Pasuruan Municipality Government Regulation No. 4 year 2018 on the Empowerment and Protection of Women and Children, East Java Governor Regulation No.93 year 2018 on the Regional Action Plan for Gender Mainstreaming in East Java Province year 2018-2019.

<sup>15</sup> 2015, ASEAN Disability Forum research on Sexuality & reproductive health of Persons with Disabilities



24. The perpetrators of the violence and exploitation cases and other violation are varied, ranging from family members, society, to government apparatus. The lack of social security outside family life renders women with disabilities prone to be the victim of violence at home, which happened in Palembang, South Sumatera, in 2019. The victim, who has Down syndrome, was alone in her house and was raped by his brother. The perpetrator threatened her to not tell anyone about it.<sup>16</sup> In Lhoksukon, Aceh, on September 2018, a man raped her step deaf daughter twice. He did it when the mother of the victim was not at home.<sup>17</sup>

25. Another case took place in East Java.<sup>18</sup> A blind woman di Sidoarjo district was raped and gave birth to a child from the rape. It happened in 2009 and was only found in July 2017 because it was never reported by her family or the village administration to police. The child is now 10 years old (as of 2019). In Pasuruan East Java, on 10 September 2018, a women with intellectual disability, 20 years old, in Beji District, Pasuruan Municipality, was raped by her neighbour and became pregnant. The family members of both sides took an amicable solution by marrying them off, but the perpetrator escaped and his whereabouts is unknown. This case was finally reported to the police, but there are no progress after two months. The police said that this case is difficult to process because the victim is mentally disability.<sup>19</sup>

26. Indonesian Government is currently drafting the Government Regulation (PP) on Reasonable Accommodation in Trial Process for Person with Disabilities. Even though the Law No. 8/2016 mandates that it should be carried out 2 years upon the enactment, until 2020 the government has yet to issue its regulation. On the other hand, there are no independent and effective mechanisms that can serve as an alternative for women with disabilities in filing their cases and seeking for justice, including claiming redress for violations.

27. To push the law enforcers to commit in handling the cases of violence against women with disabilities, Organisation of People with Disabilities (OPD) have created MoU to collaborate with State institutions. In October 2019, HWDI made an MoU with the Chief of Indonesian Police Force concerning the service and protection of the rights of women with disabilities. However, the biggest challenge is actually in implementing the MoU to local level due to the lack of understanding and awareness on the protection of women with disabilities among law enforcers.

28. The Indonesian Police Force has a Women and Children Protection Unit (UPPA), as stipulated in the Regulation of the Chief of Police Number 10 Year 2007 on the Organisation and Management of Women and Children Protection Unit within the Scope of Indonesian Police Force. Special police personnel have been given training and are in charge for the unit that specially established to handle the cases of violence against women and children. This unit can be found in 34 provinces across Indonesia. The problem, however, the mechanism to handle such cases have not fulfilled the requirements for reasonable accommodation for children and women with disabilities who are dealing with legal matters, including the proper facilities and infrastructure,

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<sup>16</sup> To this day, the case is being processed in the Palembang City Court.

<sup>17</sup> Once it was uncovered, the victim's mother reported this case to the police, but her husband (the perpetrator) took off and his whereabouts is still unknown.

<sup>18</sup> The data from PIK PPD, HWDI Siodarjo

<sup>19</sup> <https://radarbromo.jawapos.com/2018/09/10/remaja-disabilitas-dikerjai-hingga-hamil-warga-lurug-polsek/>

physical and non-physical,<sup>20</sup> such as an officer who understand sign language, accessible communication device, information media using Simple Language format.

29. HWDI as an Indonesia data collector for ASEAN Disability forum research (2015)<sup>21</sup> shows that sexual violence against women with disabilities continues to occur, due to the following causes: (a) Poor protection mechanism and the awareness among law enforcers. (b) Perpetrator is part of the family who has the authority to not proceed with the case. There is one case where the victim gave birth three times by the same perpetrator but there are no legal actions taken (c) Legal terms currently used are not in accordance with the needs of women with disabilities and children who are the victims of violence (d) Lack of infrastructure, support system and facilities for persons with disabilities, including sign language interpreter, assistants to help them understand documents and forms to be filled, since the beginning of the investigation until the trial (e) Since victims may have communication difficulties, the law enforcers mostly would deny the case. (f) Indonesian law does not recognize testimonies from persons with intellectual and psychosocial disabilities.

30. The observations conducted by HWDI on 2019 in 11 provinces in Indonesia shows that from one hundred and thirty-two (132) cases of sexual violence against women with disabilities (from 2016 to 2019), only 26 cases that received court ruling and the perpetrators were sentenced/*incracht*. There are 7 cases that progress very slow, which is caused by hesitations and lack of trust from the law enforcers on the testimony of persons with disabilities. Those cases occurred in East Java and Aceh. Meanwhile, there are 50 cases that are not processed or unclarified, there are no certainties if those cases will eventually be investigated, despite being reported to the police. The observation also notes that there are 21 cases that processed by law enforcers, but eventually they decided to go solve it in amicable manner (usually by marrying the victim with the perpetrator) or are covered up. The remaining 22 cases, until this report is written, are still being processed in the police or on trial process, and 6 cases that resolved by the advocacy by the DPOs and government officers (not criminal case).<sup>iii</sup>

31. The slow process of legal actions for women with disabilities who are the victims of violence is because of the stigma and reluctance among police officers and family, who deem that the victim is legally capable and unable to testify. Moreover, professional assistants such as psychologists or psychiatrists are not always available.<sup>22</sup>

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<sup>20</sup> A study by HWDI 2018-2019 on accessibility and reasonable accommodations in police services.

<sup>21</sup> 2015, ASEAN Disability Forum research on Sexuality & reproductive health of Persons with Disabilities

<sup>22</sup> Several cases that can be collected are as follows:

a. In Pasuruan, East Java, on September 2018: a 20-year old woman with intellectual disability was raped repeatedly by her three neighbours until she was impregnated. The victim's family initially settled the case amicably by marrying the victim to the perpetrator. However, the perpetrator fled. Once the case was reported, the police had problems with communication and the victim's testimony so it took longer time for them to work it on. The same case happened in Jember, East Java. The complaint case has been filed to the police department on May 2019, but it was put off for six months because they were still conducting a preliminary hearing on the case.

b. In Central Java, a deaf-mute woman in Surakarta was raped and mugged by six men. During the investigation process, the police hired a sign language interpreter. Unfortunately, the sign language used by the victim was different from that of the victim. Moreover, the victim was not allowed to be assisted by any other parties. As a consequence, the testimony was misinterpreted and the police concluded that it was not rape but consensual. The police only charged the perpetrator with robbery, which is lighter than it should have been.

32. The poor legal protection for women with disabilities is also depicted from the Law on Legal Aid that does not prioritise women with disabilities. Moreover, the said law does not include women with disabilities as a special group that is entitled for a special treatment (*affirmative*), the legal aid mentioned in the law is only dedicated for perpetrators, while the legal aid for victims is not regulated. According to LBH Apik the legal aid requested the most is for victims.

33. In terms of data, even though the data for legal aid receivers are segregated between men and women, the data available in the Ministry of Law and Human Rights are not segregated by the types of disability, including women with disabilities. As a consequence, there are no legal aid available for women with disabilities who are facing legal matter, such as providing them with a sign language interpreter or an aide.

34. On the other hand, the Bill of the Elimination of Sexual Violence drafted by the People's Representatives has not yet been passed. Whereas, this bill regulates special protection for women with disabilities who are prone to become a victim of sexual violence. The Article 45 of the Bill on the Elimination of Sexual Violence ensures that persons with disabilities have equal legal rights in giving testimonies and become a witness in a trial.

35. *Women with psychosocial/ mental disabilities* who are shackled/restrained are also extremely vulnerable to experiences of sexual violence. Some of them was raped and became pregnant while in shackling. After giving birth, the baby usually are given away to other people or put in institutions. Women with psychosocial disabilities who live on the street are also at extreme risk of sexual violence including rapes. There are quite a lot of news reports about women with psychosocial disability who are raped and discovered to be pregnant in the mass media.<sup>23</sup>

36. Women with psychosocial and intellectual disabilities, according to the existing Law including the Civil Code, the Disability Act, can be declared legally incompetent. As a result they do not have the legal capacity to report cases of violence they experienced. Most mental institutions in Indonesia are closed door institutions, just like prison. So if there is violence and other acts of discrimination experienced by women with psychosocial disabilities, they are not likely to be able to report cases of violence they experienced adding to the disadvantage of not have legal capacity to do so.

37. Further more, in Indonesia there are no shelters for women with psychosocial disabilities who have complained about the violence they experienced in the institution to ensure their safety.

38. Unfortunately, although these cases continue to appear in news, very rarely is there an effort from law enforcement agencies to trace the perpetrators of sexual violence against women with psychosocial disabilities.

39. In Indonesia there are no shelters for women with mental disabilities who have complained about the problems of violence they experienced in the institution to ensure their safety. It worse for the women with mental disability in social institutions.

### ***The Proposed List of Issues***

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c. A similar case also happened in Bireun, Aceh, which is currently being handled by law enforcers in Aceh. It took place on May 2019, when the victim was playing with the perpetrator's child, at his home. When she was in the bathroom, the perpetrator pulled, undressed, abused, and raped her. It happened repeatedly at different locations. The case is still being processed, but the progress is slow because the victim is said to keep changing her testimony.

<sup>23</sup> *Sindo News Report, 2017 "Shackled for five years, Husna was raped until she became pregnant "*

- 1) How is the process of drafting RPP Reasonable Accommodation in Trial Process for Person with Disabilities and have all aspects of women with disabilities dealing with legal matter been included, starting from investigation to trial?
- 2) There are many instances of sexual violence cases against persons with disabilities in Indonesia. How does Indonesian Government deal with it? How many cases of sexual violence against women with disabilities that have been filed? How many cases that have been processed, sent on trial with fair sentencing; how many perpetrators that managed to escape from punishment? Do victims receive legal remedies and compensation for their loss and suffering due to the crime?
- 3) How does Indonesian Government ensure the fulfillment of access to justice for women with disabilities? What steps that have been taken or being carried out; what are the targets that the Government tries to achieve? Does Indonesian Government has measurable plans to ensure that all components of law enforcers (police force, attorneys, and judges) have disability perspective in handling the case? Including also for the legal capacity of women with psychosocial disability that are not recognized by law?

### **Recommendations:**

- a) Indonesian government must abolish all provisions in the legislation that prevent women including women with psychosocial disabilities from legally reporting cases of violence experienced, including all laws that revoke a person's legal capacity such as the Civil Code Article 433, 434, 435 and the Disability Law Article 32.
- b) All forms of deprivation of liberty without legal process to women as happened to women with psychosocial disabilities confined in social institutions must be stopped immediately. There must be a clear mechanism to protect women with disabilities including establishing an accessible complain mechanism including for those who reside in social care mental institutions.
- c) The arbitrary deprivation of child custody from a woman with a disability must be stopped.
- d) The government must immediately stop the practice of forced contraception for women with disabilities.

### **G. Paragraph 19, 20, and 21 of CO: Torture, Detention Facilities and NPM**

40. Detention places in Indonesia generally do not provide reasonable accommodation for persons with disability – including for the PWPD. The lack of legal support and reasonable accommodation at courts also affected a case handled by the Community Legal Aid Institute and the Indonesian Mental Health Association when accompanied Rodrigo Gularte, a Brazilian death row prisoner who had long diagnosed with bipolar and schizopren.

41. In Indonesia there are thousands of people with mental disabilities who experience various torture and inhuman degrading treatment practices both in the community and in social care institutions, among others in the form of deprivation, slaughtering, and confinement without due process of law.

42. So far, all practices of torture or inhuman treatment against persons with psychosocial disabilities have been known by the government (public officials) because there have been a lot of coverage in the mass media and continuous information and advocacy from organizations of persons with disabilities.

43. However, this practice of cruel and inhuman treatment continues without adequate action from the government. All forms of regulations related to penal codes and other regulations in Indonesia have never reached torture and inhuman treatment for people with psychosocial disabilities.

44. So far, in the revision of the Criminal Code on torture, including the definition of torture, training for law enforcement, etc., did not touch the aspect of torture of persons with psychosocial disabilities. One of the reason is because of pervasive stigms that people with psychosocial disabilities are considered as less than human and that they do not have legal capacity.

### ***People with psychosocial disabilities in social institutions***

45. Most social institutions in Indonesia are closed/ no access for public, including for the disability organizations. So if there is violence and other acts of discrimination experienced by women with mental disabilities, they are not likely to report cases of violence they experienced.

46. Almost all of the women with psychosocial disabilities confined in social care mental institutions were forced into those institutions without their consent. They can be confined there from a few months to a dozen years.

47. Social institutions become business opportunities and to attract public donation. Part of the reason for the establishment of institutions is because many families do not want people with psychosocial disabilities to be discharged from the mental hospital even when there are no longer medical reasons for continuing treatment. This has been seen as a business opportunity by employees in mental hospitals, particularly psychiatrists and nurses as well as other employees.<sup>24</sup> Not surprisingly, institutions are a lucrative business. In one institution, owned by a fairly well-known psychiatrist in Jakarta, the cost per month range from US\$ 322 (class 3) to US\$ 1070 (class 1) or about more than three times Jakarta's minimum wage.<sup>25</sup> Still, people who are admitted to those institutions are not asked for their informed consent. In addition, those places still behave like a prison where residents were locked inside the facilities. These two things make the institutions owned or managed by psychiatrists remain an arbitrary detention centre.

48. In some cases, social institutions are a family business. Almost all the social care workers at the *Galuh* Foundation still have a blood relation with the founder of the foundation. Several institutions receive donations from various parties, whether in the form of money, goods, infrastructure *development*, and so forth. Galuh Foundation has received Rp 11,7 billion from a charity foundation within 2 years.<sup>26</sup>

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<sup>24</sup> PJS interview with one of the psychiatrists from the Ministry of Health on 1 January 2020.

<sup>25</sup> PJS interview with Prima Guna Bhakti social institution receptionist, Jakarta, on 3 January 2020.

<sup>26</sup> See. <http://semestafoundation.org/yayasan-galuh-bekasi/>

49. Many institution buildings are shaped like prisons using iron bars on the doors, windows and walls so that it looks like an animal cage. The residents, both men and women, are confined in these wards. One ward can have dozens of people in it.<sup>iv</sup>

50. Apart from large wards, there are also institutions that place people with psychosocial disabilities in small individual cells about 1.5 x 2,5 meters in size.<sup>v</sup>

51. In some institutions, residents, male, female and minors, are not only detained but also chained by binding their hands, feet or both using iron chains. Of the 25 institutions visited, 17 of them used chains to detain residents. At Padepokan Mbah Marsiyo in Kebumen District, Central Java Province shackling is exceptionally cruel. The majority of residents are all subject to shackling, chained to large round cement weights. Even those working around the premises have chains wrapped around their ankles. Much of the facility is open to the elements. Residents do not appear to have extra clothing; some are in rags. All are terribly hungry.

52. The institution residents who are shackled do everything in the place where they are chained, including sleeping, eating and drinking. If they are lucky, they are allowed to defecate in the toilet. However, quite a few have to defecate in the same place. In several institutions visited, the shackled residents sleep next to their own filth.<sup>vi</sup>

53. **Isolation Cells:** Residents of the institutions who are considered to be breaking the rules or considered dangerous can be locked in isolation confinement where they are not allowed to go out at all even to eat and have to do all activities in the cell. They could be kept in isolation cells for months.

54. **Forced Treatment:** Anti-psychotic drugs are given arbitrarily without adequate examination and without informed consent. IMHA' observations at the Galuh social care institution in October 2018 found that all residents in Galuh social care institution were injected with anti-psychotic drugs without examination and determination of the individual diagnosis. All residents of Galuh social care institution, numbering around 400, regardless as to whether they were adult or minors, having psychotic diagnose or not, were all injected with the same drug at the same dosage. The residents could not refuse the injection which was given once every two weeks.

55. Some residents even said they did not know what drugs were injected. One of the social institution residents PJS succeeded in interviewing said that he did not know what drug was injected into him. He complained that his body was always stiff and sore without knowing why.<sup>27</sup>

56. Based on information from management of institutions, the drug injected is Sikzonoate (*Fluphenazine Decanoate*) which is an anti-psychotic drug indicated for the treatment of chronic schizophrenia.<sup>28</sup> Sikzonoate is an old generation anti-psychotic that has severe side effects including dyskinesia, dystonia, akathisia, and hyperreflexia which cause symptoms such as stiffness, stiff and inarticulate tongue, drooling, the continual movement of fingers, and so forth.

57. The violation is made worse when it was discovered from institution managers that the person injecting this anti-psychotic drug is not health worker but merely regular worker who do

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<sup>27</sup> IMHA Interview with Ade Nawir, one of Galuh social care institution's resident on June 1, 2018.

<sup>28</sup> Information from institution officers when visited by IMHA on October 2, 2018.

not possess license as health worker. However, this person introduces himself to the residents as a doctor.<sup>29</sup>

58. In addition to medical treatment, many institutions use traditional non-medical treatments. include vigorous painful massage, submerged in water, spray with water, midnight bath, drinking herbal concoctions, reciting of scripture close to the ears.<sup>vii</sup>

59. As with medical treatments, these non-medical treatments were also given without informed consent. This was confirmed by the National Commission on Human Rights' (Komnas HAM) findings in 2018 at six social institutions in Java. All institution residents interview by Komnas Ham admitted that they were not given clear information or requests for consent prior to actions being taken on them.<sup>30</sup>

60. **Mortality:** mortality rates in institutions are quite high. Based on IMHA observations and interviews with residents in several social care institutions in Bekasi it was found that every month someone dies.<sup>31</sup> In Al Fajar Berseri, Bekasi district, information boards about patients, including patients who died in social care institutions, every month 1 to 6 people died (average 3 to 4 persons per month) There were even three residents in Aura Welas Asih institution, Sukabumi, West Java who died on the same day at the institution.<sup>32</sup>

61. The high mortality rate in institutions is never discussed among policy makers including within the ministry of health and social affairs and local health and social service. Institution residents die quietly without anyone making a fuss.

62. Many of female residents who were pregnant did not get adequate health checks or at all including during childbirth. Delivery were often conducted just by institution's staff without medical knowledge. There was a case in an institution in Bekasi where both the mother and her child died in childbirth.<sup>viii</sup> The institution managers said this occurred because there was no medical assistance during delivery.<sup>33</sup>

63. **Starvation:** There were several institutions where residents have been left to starve, including Padepokan Mbah Marsiyo in Kebumen. A resident interviewed said that he was very hungry and only received inadequate meals twice a day.<sup>34</sup> Some of the residents were very thin

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<sup>29</sup> The National Committee on Violence against Women (*Komnas Perempuan*) found several institutions in Wonosobo and Semarang, Central Java Province, where residents were infected with scabies, treated the infection with a carbolic and sulfur mixture applied directly to the infected skin.

<sup>30</sup> Felani and Isneningtyas. (2018). *HAM Penyandang Disabilitas Mental Di Panti Rehabilitasi Sosial (PWPD's Human Rights in social care institution)*. Jakarta: The National Commission on Human Rights of Republic Indonesia, pp: 33-34.

<sup>31</sup> IMHA interview with management and residents in several social care institutions in Bekasi on October 2, 2018

<sup>32</sup> Tribunnews.com. (2019). *Pengelola Panti Aura Welas Asih Kebingungan, Dalam Sehari Tiga Penghuni Panti Meninggal (Management of Aura Welas Asih social care institution confused, 3 residents died in the one day)*. (2019, November 2). Tribunnews.com. Retrieved from: <https://www.tribunnews.com/regional/2019/11/02/pengelola-panti-aura-welas-asih-kebingungan-dalam-sehari-tiga-penghuni-meninggal>

<sup>33</sup> IMHA interview with institution management in Bekasi, October 2018.

<sup>34</sup> Andrea Star's observations in Padepokan Mbah Marsiyo, Kebumen, Central Java on 24 October 2018.

and skeletal-like. At another institution in Sragen District, Sehat Waras Sejahtera Foundation, the residents appeared to be hungry and subdued.<sup>35</sup> See Endnote.<sup>ix</sup>

64. **Sanitation issues.** Hygiene problems are also cause for concern. The Galuh social care institution has shallow gutters that cross the room. The residents defecate in these gutters. When IMHA visited this institution in October 2018, a foul odour wafted from the direction of the wards. At Padepokan Mbah Marsiyo in Kebumen, the place where they live is full of rubbish.<sup>x</sup>

65. Women with psychosocial disabilities who are held in social institutions are vulnerable to sexual harassment. IMHA, Human Rights Watch as well as National Commission on Violence Against Women found cases of gender based violence during visits to social care institutions. Often the perpetrators are the staff of the institutions. Frequently, bathrooms and toilets are open without doors, that male staff members are able to see the women's bodies. Persons/ women with mental disabilities in social institutions are losing custody and opportunities to care for their children.

66. DPOs observed a female resident being bathed by male staff members while naked and in chains at the Syamsul Healing Center, Brebes District, Central Java.<sup>36</sup> We encountered female residents bathing in open spaces while male staff passed by.<sup>37</sup> The risk of sexual violence in social institutions is also a result of the limited number of female staff. Almost in all institutions observed, the number of male staff are much higher than female staff. Many female residents are cared for by male staff. Male staff also easily enter women's rooms including in the evenings.

**Recommendation:** The definition of torture in the penal code must include the torture of persons with psychosocial disabilities (among others, deprivation of liberty, chaining, shackling confinement)

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<sup>35</sup> Andrea Star's observations in Sehat Waras Foundation, Sragen District, Central Java on 20 October 2018.

<sup>36</sup> Observation of Andrea Star at the Syamsul Healing Center, Brebes District, 2012.

<sup>37</sup> Observation in Galuh institution, on October 2, 2018



## **ANNEX: CONTACT OF ORGANIZATIONS**

### **Indonesian Association of Women with Disabilities (HWDI)**

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### **Ohana Indonesia**

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Mobile : +6282137482981

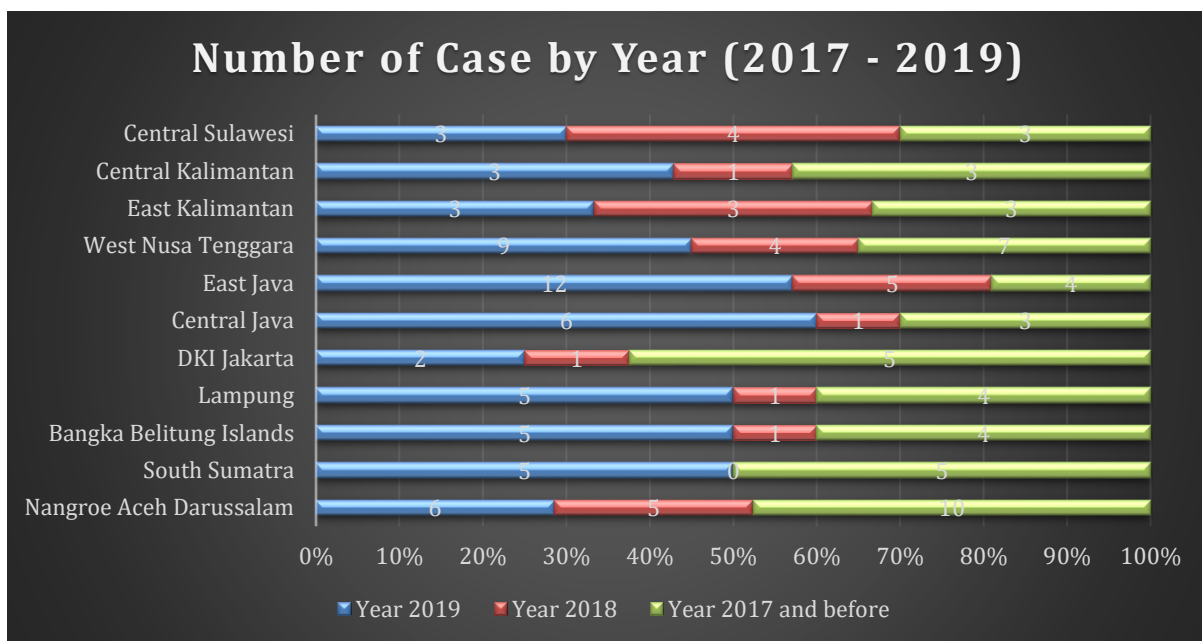
www.ohanaindonesia.org

**Human Rights Working Group (HRWG)** - The Indonesia's NGO Coalition for International Human Rights Advocacy (HRWG) was established by a the majority of NGOs working in different issues but share interest in human rights to serve the need for elaborate advocacy works already in place with the aim of maximizing the goals and putting more pressures on the Indonesian government to execute its international and constitutional obligations to protecting, fulfilling, respecting and promoting human rights in the country. Website: <https://hrwg.org/> email: [hrwg.indonesia@gmail.com](mailto:hrwg.indonesia@gmail.com) / [hrwg@hrwg.org](mailto:hrwg@hrwg.org)

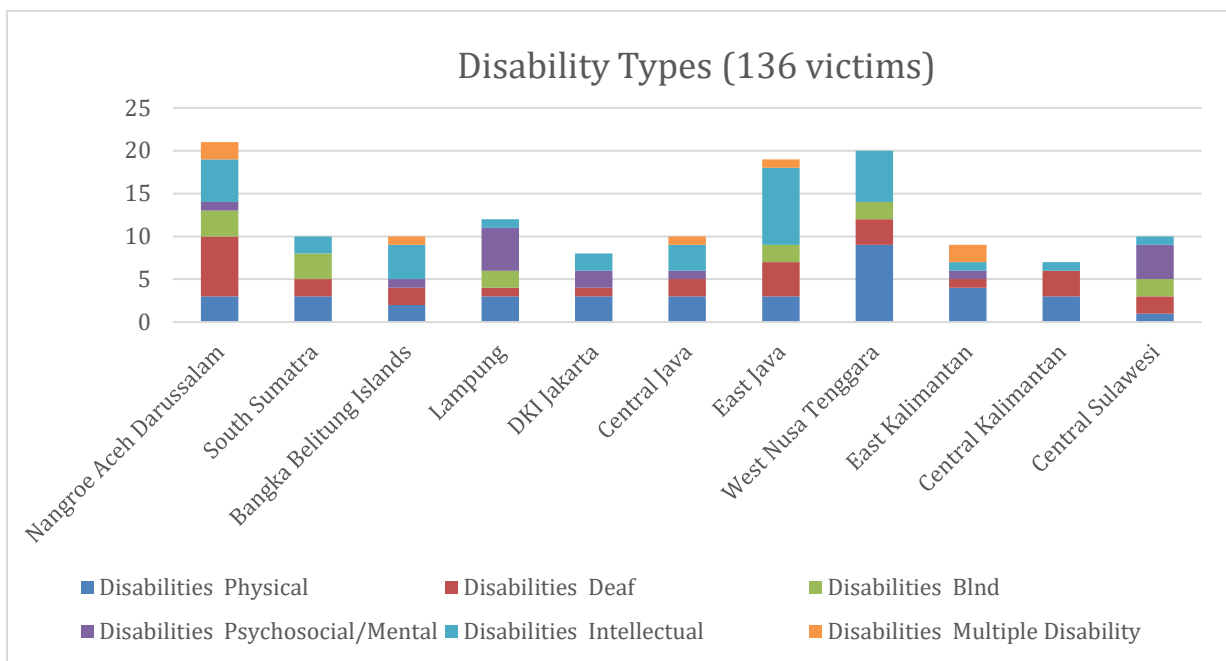
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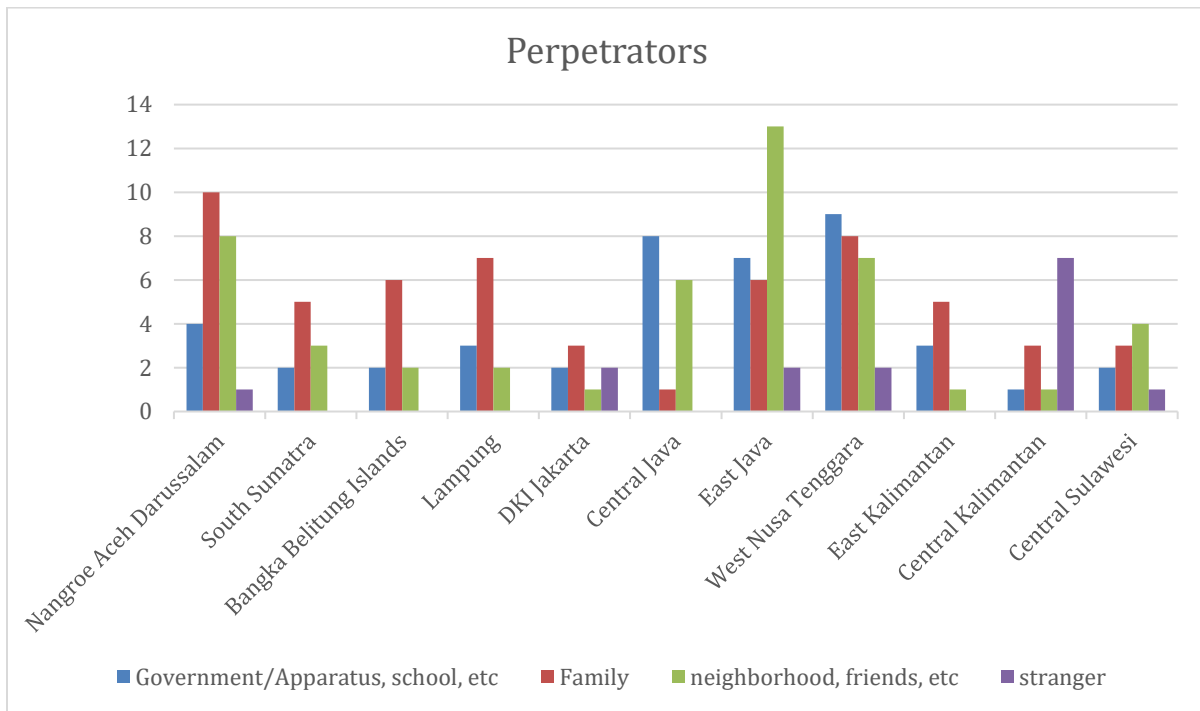
<sup>i</sup> Number of cased collected by HWDI:



Source: HWDI, 2019 (see the table of cases in the end note)<sup>i</sup> (see, Endnote)



Source: HWDI, 2019

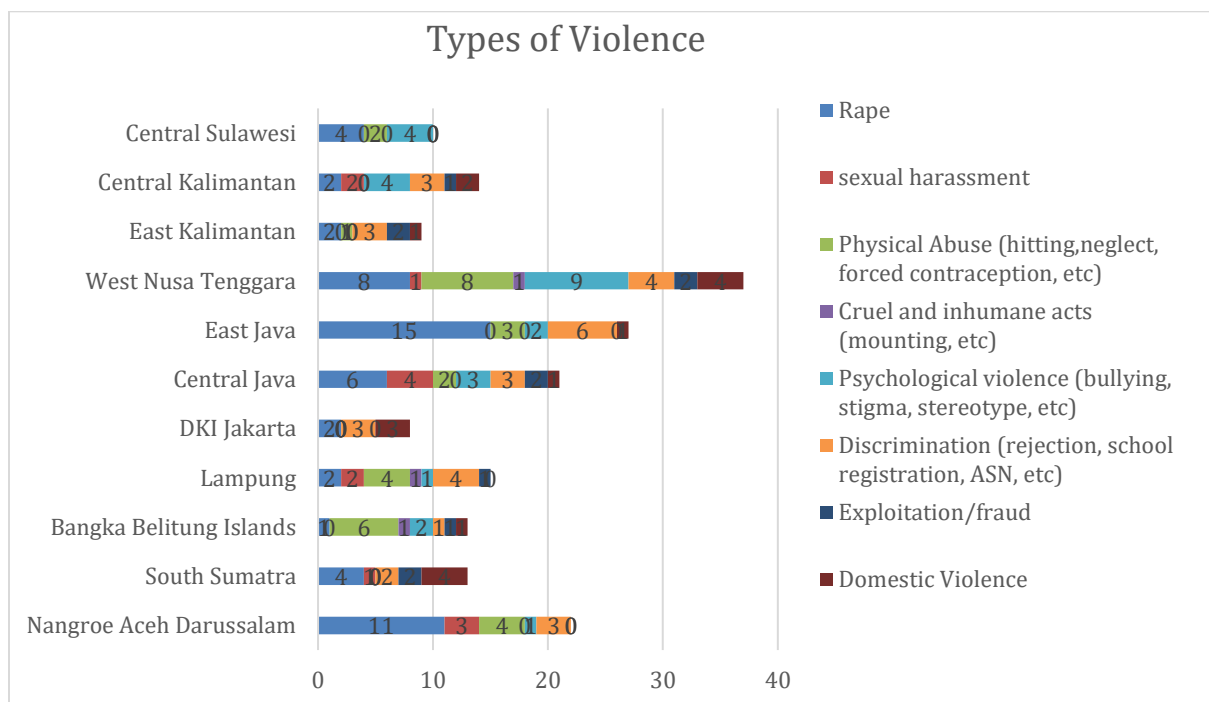


Source: HWDI

<sup>ii</sup> Type of violence 2017 – 2019:

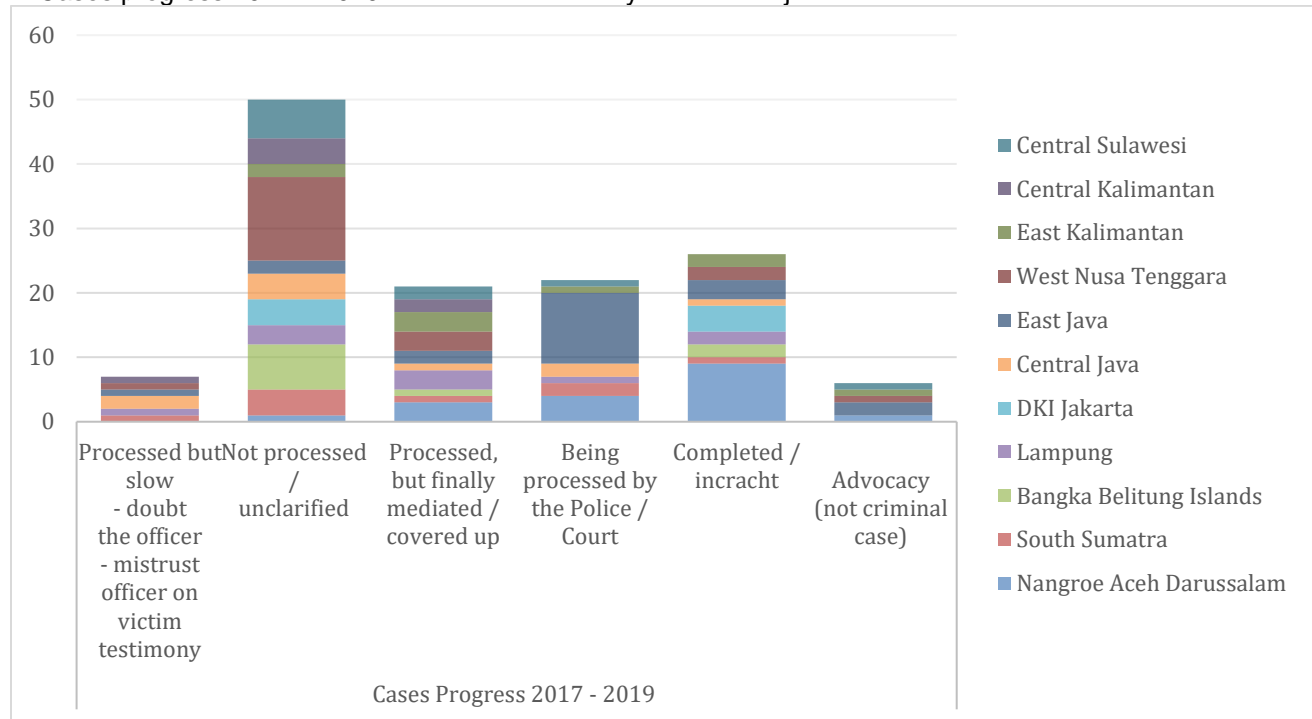
Province	Type of Violence
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	Rape	sexual harassment	Physical Abuse (hitting, neglect, forced contraception, etc)	Cruel and inhumane acts (mounting, etc)	Psychological violence (bullying, stigma, stereotype, etc)	Discrimination (rejection, school registration, ASN, etc)	Exploitation/fraud	Domestic Violence
Nangroe Aceh Darussalam	11	3	4	0	1	3	0	0
South Sumatra	4	1	0	0	0	2	2	4
Bangka Belitung Islands	1	0	6	1	2	1	1	1
Lampung	2	2	4	1	1	4	1	0
DKI Jakarta	2	0	0	0	0	3	0	3
Central Java	6	4	2	0	3	3	2	1
East Java	15	0	3	0	2	6	0	1
West Nusa Tenggara	8	1	8	1	9	4	2	4
East Kalimantan	2	0	1	0	0	3	2	1
Central Kalimantan	2	2	0	0	4	3	1	2
Central Sulawesi	4	0	2	0	4	0	0	0
<b>TOTAL</b>	<b>57</b>	<b>13</b>	<b>30</b>	<b>3</b>	<b>26</b>	<b>32</b>	<b>11</b>	<b>17</b>



Source: HWDI, 2019

iii Cases progress 2017 – 2019 women with disability's access to justice



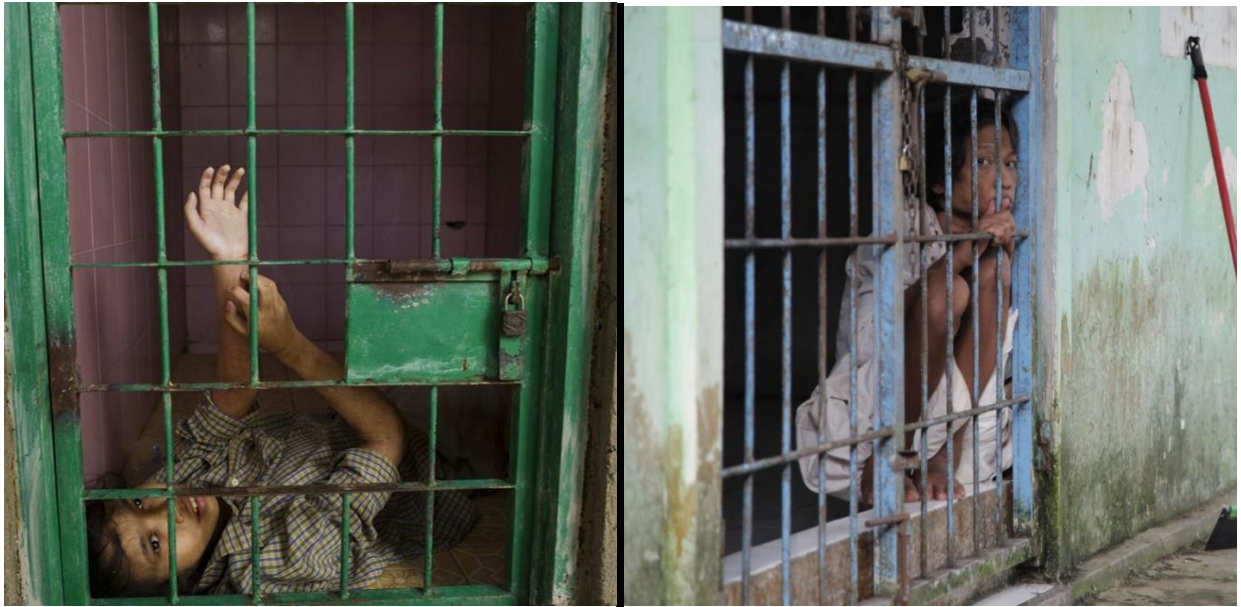
Source: HWDI, 2019

iv Photo's note: Galuh social care institution in Bekasi City, not far from Jakarta, October 2018. Photo by IMHA



v Photo's note: Cell for women residents at social institution in Cilacap, 2018, left, photo by Andrea Star Reese and Brebes 2017, right, photo by IMHA





x

<sup>vi</sup> Photo's note: Mbah Marsiyo social care institution in Kebumen, Central Java, 2019, left (Photo by Andrea Star Reese) and Al Ridwan, Cilacap, Centarl Java, 2019, residents laid next to his filth, right, photo by IMHA



vii *Photo's note: Vigorous painful massage, reciting of scripture close to the ears in Cianjur, West Java. Photo by Andrea Star Reese (Human Rights Watch and IMHA observations in 2016)*



viii *Information boards about residents in Fajar Berseri social care institutions, including residents who died, from January to September 2018. Every month 1 to 6 residents died.*

**Mutasi Kelayan / pasien Disabilitas Mental**  
**Yayasan Al-Fajar Berseri Tahun : 2018**

NO	BULAN	KELAYAN DATANG / MASUK ORANG	KELAWAN PERGI / MENINGGALKAN YAYASAN			BEKERJA	MENIKAH	JUMLAH YANG ADA SAAT INI		
			SEMBUH PULANG KE KELUARGA	PERGI TANPA IJIN	MENINGGALDUNA			LAKI	PEREMPUAN	TOTAL
1	JANUARI	24	10	5	4			210	77	295
2	FEBRUARI	17	5	1	6			209	32	300
3	MARET	20	13	-	3			224	90	314
4	APRIL	15	9	2	2			224	61	315
5	MEI	17	7	4	1			245	58	331
6	JUNI	15	12	-	2			260	108	354
7	JULI	22	8	1	2			222	39	259
8	AGUSTUS	22	8 + 7	-	2			245	18	262
9	SEPTEMBER	21	10	-	6			233	35	268
10	OKTOBER									
11	NOPEMBER									
12	DESEMBER									
JUMLAH		194	78	13	25					

KETUA YAYASAN.  
MARSAN.

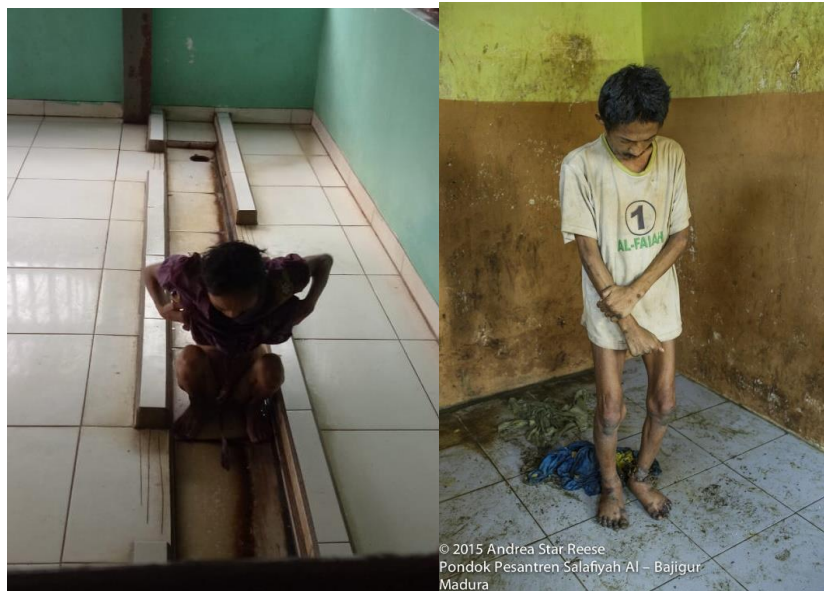
KEPALA PERAWAT  
HERI SUHERI

ix *Photo's note: Starving residents at Mbah Marsiyo social care institution, Kebumen, Central Java, 2019 (Photo by Andrea Star Reese)*





*x Photos' note: Men defaceted in their cell, Galuh institution, left, Al-Bajigur, Madura, right*



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Pondok Pesantren Salafiyah Al – Bajigur  
Madura