

Protecting the Rights of Mental Health Patients: Comparative Study between Indonesia and Taiwan

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Abstract

The phenomenon of human shackling upon people with mental health disorder are still found in Indonesia. The latest data from Human Rights Watch shows that more than 18,800 people now live in shackled in Indonesia. The paper aims to elaborate the existing regulation on mental health patients in Indonesia and analyze necessary steps to be taken by the Indonesian Government to provide better protection for mental health patients. This normative legal research employs comparative approach. Comparison was made with Taiwan. The study shows that human shackling still persists in Indonesia due to some reasons including the inadequacy of regulations, the lack of mental health hospitals, the shortage of psychiatrists and other mental health providers, as well as the lack of educations.

Keywords: *mental health patients; human shackling; human rights*

1. Introduction

Human rights are fundamental to all human beings and include the right to life, liberty and security of a person; the right to an adequate standard of living; the right to seek and to enjoy in other countries in asylum from persecution; the right to own property; the right to freedom of opinion and expression; the right to education, freedom of thought, conscience and religion; and the right to freedom from torture and degrading treatment.¹ The Article 1 of the Universal Declaration of Human Rights 1948 states that all individuals are free and have equal rights and dignity. This protects the fundamental rights of individuals with physical or mental disabilities.² Globally, more than 21 million people are affected by schizophrenia. This is a severe mental disorder characterized by distorted thinking, perceptions, emotions, language, sense of self and behavior.³

¹United Nations, (2012) What are Human Rights? Available at: www.ohchr.org/EN/Issues/Pages/WhatareHumanRights.aspx [Accessed on May 13rd, 2019].

² United Nations General Assembly: Resolution 46/119: the protection of persons with mental illness and the improvement of mental health [Internet]. <https://www.un.org/documents/ga/res/46/a46r119.htm> [Accessed on May 23rd, 2019].

³ Schizophrenia, World Health Organization (WHO), 2017. <https://www.who.int/en/news-room/fact-sheets/detail/schizophrenia>, accessed on April 14th, 2019

The Office of the United Nations High Commissioner for Human Rights (OHCHR) states that “the right to health is a fundamental part of our human rights and of our understanding of a life in dignity”. Aside from that, in the preamble of 1946 Constitution of the World Health Organization (WHO) defines health as “a State of complete physical, mental and social well-being and not merely the absence of disease or infirmity.” The relationship between mental health and human rights is an integral and interdependent one.

Furthermore, in 1991, the United Nations (UN) adopted a resolution for the protection of human rights for people with a mental illness. This resolution included 25 principles (WHO 1996). The first principle of this resolution is that all people have the right to fundamental freedoms and basic human rights, and states ‘*All persons with a mental illness, or who are being treated as such persons, have the right to protection from economic, sexual and other forms of exploitation, physical or other abuse degrading treatment*’.⁴

People with mental disorders struggle to heal from illness; yet, they face stigmatization by society. Stigma is negative labeling toward a particular group of people, which could have deleterious effects on the sufferers of mental disorder. Enduring stigma and a chronic lack of mental health care and community support services mean its use remains widespread. People subjected to pasung can have their ankles bound with chains or wooden stocks for hours, days, months or even years. They are often kept outside, naked and unable to wash.

According to the Basic Health Research of Indonesia-2013 (Riset Kesehatan

Dasar known as Riskesdas), 14.3% of Indonesian households have a patient with a mental disorder and a majority are in rural areas.⁵ People suffering from severe mental disorders, such as psychosis, meanwhile, number an estimated 400,000, or 1.72 people per 1,000 of the population; with 57,000 of them shackled or having at least once been a victim to shackling.

Despite a 1977 government ban on the practice, families, traditional healers, and staff in institutions, continue to shackle people with psychosocial disabilities, sometimes for years at a time.⁶ *Pasung* continues to be practiced as a result of a lack of access to adequate and affordable community-based mental health services and cares and is more commonly found in rural areas. The practice is exacerbated by insufficient knowledge of mental health in the community. The practice is also linked to the superstitious beliefs of many Indonesians, who attribute psychosocial disabilities such as schizophrenia or depression to the result of curses, black magic and evil spirits. As a consequence, family or community members are less likely to seek medical care for the individual.⁷

2. Discussion and Analysis

2.1. Indonesia

2.1.1. The situation of people with mental illness in Indonesia

Increasing economic and social pressures are likely to contribute to a higher

⁴ WHO. (1996) *Guidelines for the Promotion of Human Rights of Persons with Mental Disorders*. Geneva. Available at: https://www.who.int/mental_health/policy/legislation/guidelines_promotion.pdf (accessed on My 12, 2019)

⁵ Balitbang Kemenkes R. Riset Kesehatan Dasar; RISKESDAS. Jakarta: Balitbang Kemenkes RI; 2013.

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<https://www.hrw.org/news/2016/03/20/indonesia-treating-mental-health-shackles>

⁷ Human Rights Watch, *Living in Hell: Abuses Against People with Psychosocial Disabilities in Indonesia*, 2016 <<https://www.hrw.org/node/287537/>>.

rate of mental health challenges. These pressures are compounded by stigma and a lack of awareness in Indonesian society about mental health problems and the importance of early detection, intervention and treatment.

In Indonesia, people with mental disorders are estimated to contribute to 10.7% of the global burden of disease (World Health Organization [WHO], 2008). The Indonesian Ministry of Health (MoH), which has responsibility for medical treatment and rehabilitation services through its Directorate General of Public Health and the Directorate General of Mental Health, estimates that 19 million people in Indonesia experience mental illness. Unfortunately, the situation of persons with mental disorders in Indonesia is still far from satisfactory from a human rights perspective. Even basic mental health services are not available in many parts of the country. Many people with mental illness have no access to treatment.

Primary health services do not have mental health as a priority and the skills of primary health clinicians are not sufficient to ensure detection and appropriate treatment of a mental disorder. Some persons with mental illness are confined and restrained in the community in inhumane ways. The quality of mental health services in hospitals is generally poor and human rights protections for patients are weak.⁸

Custodial treatments dominate in psychiatric hospitals. Involuntary treatment is common, even though there is no legal basis for involuntary admission. A person can be brought to the hospital without his or her consent by anybody who feels uneasy about the person's behavior. There are no

⁸ I. Irmansyah, Y. A. Prasetyo, and H. Minas, "Human Rights of Persons with Mental Illness in Indonesia: More than Legislation Is Needed," *International Journal of Mental Health Systems*, 3 (2009), 1-10 <<https://doi.org/10.1186/1752-4458-3-14>>.

guardianship laws or arrangements and there is no requirement for legal review of the need for involuntary hospitalization and treatment. As in many developing countries, standards of care are poor and, failure to protect the basic human rights of people with mental illness is common. There is strong evidence suggesting that factors that delay or prevent mental illness treatment include low levels of knowledge regarding mental illness and prejudice and discrimination against people with mental illness.⁹

2.1.2. The Practice of Human Shackling (*Pasung*) in Indonesia

In Indonesia, people with mental illness are not receiving appropriate mental health care. More than 50% of people with mental illness do not receive appropriate mental healthcare. Nearly 90% of them live in low and middle income countries. Unfortunately, the condition of people with mental disorders in Indonesia is unsatisfactory. Poor availability and access to basic mental health services have been highlighted. In fact, the family members often take regressive measures on patients with mental disorder due to stigma induced stress and a sense of helplessness.¹⁰

One of the regressive measures is physical restraint and confinement of the affected person and is commonly referred to as *pasung* in Indonesia. *Pasung* is common in developing countries, including Indonesia. In

⁹ Wainberg, M. L., Scorza, P., Shultz, J. M., Helpman, L., Mootz, J. J., Johnson, K. A. Arbuckle, M. R. (2017). Challenges and Opportunities in Global Mental Health: a Research-to-Practice Perspective. *Current Psychiatry Reports*, 19 (5), 28. doi:10.1007/s11920-017-0780-z

¹⁰ Laila. N.H, Mahkota, Krianto, T and Shivalli S, "Perceptions about Pasung (Physical Restraint and Confinement) of Schizophrenia Patients: A Qualitative Study among Family Members and Other Key Stakeholders in Bogor Regency, West Java Province, Indonesia 2017," *International Journal of Mental Health Systems*, 12.1 (2018), 1-7 <<https://doi.org/10.1186/s13033-018-0216-0>>.

addition to the use of wood or leg chains to restrict movements, *pasung* also involves confinement and neglect.¹¹ *Pasung* is an act of restraint that limits physical movement and the most inhumane treatment experienced by people with mental disorder.¹² The implementation of *pasung* violates human rights' law. On June 26th, 1987, the United Nations imposed on Indonesia a 1948 Convention against Torture and Degrading Treatment or Punishment and Other Cruel Inhuman Treatment, Indonesia ratified this convention in 1998.¹³ It is clear that the victims of *pasung* are tortured and treated unlawfully, yet this act is supported by families because, when the mentally ill person is removed from the *pasung*, their aggressive behavior can once again disturb public peace and order.

Aside from that, almost more than 40 years after Indonesia banned the practice of shackling people with mental health conditions, the number of people with psychosocial disabilities (mental health conditions) who are shackled or locked up in confined spaces dropped from nearly 18,800, the last reported figure, to about 12,800 in July 2018, based on Indonesian government data.¹⁴ Although the government banned *pasung* in 1977, families and traditional and religious healers continue to shackle people with psychosocial disabilities, the use of physical restraint is a common way of dealing with mental illness, resulting from the lack of available viable treatment options.

¹¹ Laila. N.H, Mahkota, Krianto, T and Shivalli S., *Page 4*.

¹² Eka Viora and Irmansyah, *Asean Mental Health System, Encyclopedia of Homelessness* (Jakarta, 2016) <<https://doi.org/10.4135/9781412952569.n105>>.

¹³ Daulima N.H.C, "Preventing *Pasung* by Mentally Ill Patients' Families," *Enfermería Clínica*, 28 (2018), 256-59.

¹⁴ Human Rights Watch, *Indonesia: Shackling Reduced, But Persists*, <https://www.hrw.org/video-photos/video/2018/10/02/indonesia-shackling-reduced-persists> (accessed, May 20, 2019)

Pasung is more common in rural areas and is frequently committed by family members with low socioeconomic status. The duration of *pasung* can range from few days to some years. The most common reason behind the practice of *pasung* by family of the mentally ill is safety, of both the patient and the community.¹⁵ The most heartbreaking part is that this undignified and inhumane action is not only still prevalent in society but it is supported by the family, who should be closest to the people suffering from mental illness. Family members and community leaders perceived *pasung* as a necessary measure due to patients' aggressive and destructive behaviors. Financial constraints and dissatisfaction with existing mental health services were the reasons for not seeking mental health care. Poor knowledge and misconceptions about schizophrenia were prevalent in the study setting.¹⁶

A report conducted by Human Rights Watch across the Indonesian islands of Java and Sumatra found that 175 cases of persons with psychosocial disabilities in *pasung* or who were recently rescued from *pasung*.¹⁷ This report examines the abuses—including *pasung*—that persons with psychosocial disabilities face in the community, mental hospitals, and various

¹⁵ Hartini. N., Fardana. N. A., Ariana. A. D., Wardana, N.,D. "Stigma toward People with Mental Health Problems in Indonesia," *Psychology Research and Behavior Management*, 11 (2018), 535-41 <<https://doi.org/10.2147/PRBM.S175251>>.

¹⁶ Laila et al, "Perceptions about *Pasung* (Physical Restraint and Confinement) of Schizophrenia Patients: A Qualitative Study among Family Members and Other Key Stakeholders in Bogor Regency, West Java Province, Indonesia 2017," *International Journal of Mental Health Systems*, 12.1 (2018), 1-7 <<https://doi.org/10.1186/s13033-018-0216-0>>.

¹⁷ Human Rights Watch, *Living in Hell: Abuses Against People with Psychosocial Disabilities in Indonesia*, 2016 <<https://www.hrw.org/node/287537/>>.

other institutions in Indonesia, including stigma, arbitrary and prolonged detention, involuntary treatment, and physical and sexual violence. It also examines the government's shortcomings in addressing these problems.

In 2010, Indonesia's government launched a program called "Indonesia Shackling Free" (*Indonesia Bebas Pasung*) to set free all the mental health disorder patients from a scary scourge of shackling¹⁸, as they are still human being whatsoever. A psychiatry named Rama Giavani argued that the program is indeed important as we have to treat them humanly¹⁹ though, somehow, they lost their humanity. This type of inhuman treatment has been banned in Indonesia since 1977 as regulated on the Minister of Home Affairs Regulation Number: PEM.29/6/15. The Ministry sent instruction letters to all governors to ask for freeing mental health disorder patients from shackling and asking them to send the patients to the psychiatric hospital instead²⁰.

Years have passed; the program did not run well in fact. The Program is at stagnancy of running, where each province experienced a setback in freeing the patients from inhuman treatments. This setback shows the incapability of Indonesia to treat mental health disorder patients humanly and properly as it seems complex for the people

¹⁸ Wijayanti, Putri A. Masykur. Mujab. A (2016). "Lepas Untuk Kembali Dikungkung: Studi Kasus Pemasangan Kembali Eks Pasien Gangguan Jiwa". *Jurnal Empati*, 5(4): 787.

¹⁹ Leocata, A. (2015). "Before the Chains Are Broken: Considering Spaces and Accessibility of Mental Healthcare in Java". *Independent Study Project (ISP)*. Harvard College. Retrieved from http://digitalcollections.sit.edu/isp_collection/2190

²⁰ Tyas, T. H. (2012). Pasung Sebagai Isu Kesejahteraan Jiwa di Indonesia. In a book authored by Faturochman, T.H. Tyas, W. M. Minza, and G. Lutfiyanto (Ed), *Psikologi Untuk Kesejahteraan Masyarakat*. Yogyakarta: Pustaka Pelajar, pg. 186 – 211.

to do so²¹. In this case, the family of the patients is undoubtedly one most responsible for the wellbeing of them. However, they are also responsible for the violations.

A study done by Puteh, Marthoenis, and Minas (2011) found that more than a half of the total patients have ever been treated in a psychiatric hospital before they end in a shackled condition²². They ended up in such conditions due to financial restraint, so shackling is the last resort. As a sub-unit system in society, the family plays a central role in treating the mentally ill patients. Below is the table of mentally ill patient data that have ever been shackled in each province in Indonesia until 2013. The data of percentage of mentally ill patient Ever shackled in each province show in Table.1.

2.1.3. The Indonesia's mental health worker shortage

As a developing country, most Indonesian did not go to school, especially those who live in remote place. The underrated human quality makes them still have a negative opinion to those who experienced mental health disorders²³. People who live in the remote village areas still follow the rural folks that consider the mental health disorder as an incurable ill. They believe that such ill as a cure or mystical phenomenon that should be avoided. In conclusion, they tend to jail the patients and shackled them in a room left alone.

²¹ Wijayanti, Aldian Putri and Masykur, Achmad Mujab. *Op.Cit*, 788.

²² Puteh I., Mathoenis, M., and Minas, H. (2011). "Aceh Free Pasung: Releasing the Mentally Ill from Physical Restrain". *International Journal of Mental Health Systems*, 5. Retrieved from <http://www.ijmhs.com/content/5/1/10>

²³ Eddy Imanuel Dolok Saribu and R. A. Valentina Napitulu. (2010). "Is There Any Regulation to Protect People with Mental Disorders in Indonesia? (Case Study of Pasung)". *Jurnal Hukum Internasional*, 6(3): 519

Table 1. Percentage of Mentally Ill Patient Ever Shackled in each Province

No.	Province	Percentage (%)
1.	Nanggroe Aceh Darussalam	13.3
2.	North Sumatera	17.2
3.	West Sumatera	13.9
4.	Riau	17.8
5.	Jambi	41.8
6.	South Sumatera	14.4
7.	Bengkulu	13.9
8.	Lampung	21.1
9.	Bangka Belitung	5.1
10.	Riau Islands	5.9
11.	DKI Jakarta	26.7
12.	West Java	10.4
13.	Central Java	7.3
14.	DI Yogyakarta	7.7
15.	East Java	16.3
16.	Banten	10.3
17.	Bali	15.9
18.	West Nusa Tenggara	31.4
19.	East Nusa Tenggara	24.4
20.	West Kalimantan	4.0
21.	Central Kalimantan	27.0
22.	South Kalimantan	28.5
23.	East Kalimantan	9.6
24.	North Kalimantan	Not Available
25.	North Sulawesi	20.2
26.	Central Sulawesi	9.8
27.	South Sulawesi	17.6
28.	Southeast Sulawesi	19.6
29.	Gorontalo	18.4
30.	West Sulawesi	8.8
31.	Maluku	28.6
32.	North Maluku	8.7
33.	West Papua	1.6
34.	Papua	50.0

Legally speaking, mental health disorder patients considered as incapable of fulfilling legal rights and conducting any legal means. The legal treatments to fulfill their liability shall be waived and helped by relatives. This condition brings them into a negative stigma of living, discriminated by surroundings, even marginalized from social life. Shackling them in a room often becomes

a choice of resort to settle the problem. As most Indonesians live under the poverty lane, it worsens the condition of the patients.

Indonesia, with 260 million population and ranked as the 4th biggest population in the world, Human Rights Watch Indonesia (HRW) recorded that Indonesia has only around 600 - 800 psychiatry²⁴. It means that psychiatry has to deal with 300.000 until 400.000 patients. With minor facilities, it leads to the violation of the basic rights of the patients when they get hospitalized. HRW illustrates various violations experienced by the patients, such placing both female and male in the same room where it might lead to sexual harassment to the female patient. Another one illustrated sexual harassment done by the health caretaker when they examine the female patients.²⁵

There is not only shackling as a choice of resort to deal with mental health disorder patient in Indonesia²⁶, but also tied with ropes, place inside a cage, and lock them in a closed-room²⁷. These methods are applied to those who show uncommon and abnormal attitude, behavior, and emotion²⁸. In this

²⁴ Human Rights Watch. (2016). *Living in Hell: Abuses Against People with Psychosocial Disabilities in Indonesia*. Retrieved from <https://www.hrw.org/report/2016/03/21/living-hell/abuses-against-people-psychosocial-disabilities-indonesia> on May 29th, 2019 at 8:15 am.

²⁵ *Ibid*

²⁶ Minas, H., and Diatri, H. (2008). "Pasung: Physical Restraint and Confinement of the Mentally Ill in the Community". *International Journal of Mental Health System*, 2: 1-8.

²⁷ Irmansyah, I., Prasetyo, Y. A., and Minas, H. (2009). "Human Rights of Persons with Mental Illness in Indonesia: More than Legislation is Needed". *International Journal of Mental Health System*, 3: 1-14.

²⁸ Lestari, W. and Wardhani, Y. F. (2014). "Stigman dan Penanganan Penderita Gangguan Jiwa Berat yang Dipasung". *Buletin Penelitian Sistem Kesehatan*, 17(2): 157.

section, shackling can be defined into three types, namely: restraint (*Pengikatan*), Seclusion (*Pengurungan*), and Confinement (*Pasung*). Basic difference between these three types depends on who have done it – Restraint and Seclusion are done by professional health workers and Confinement is opposed.²⁹

2.1.4. Human Rights and Mental Health Legislations in Indonesia

Under international and national law, Indonesia has an obligation to respect the rights of persons with disabilities. Basically, Indonesia is a party to most major international human rights conventions, including the International Covenant on Civil and Political Rights (ICCPR), International Covenant on Economic, Social and Cultural Rights (ICESCR), Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), and Convention on the Rights of the Child (CRC). In 2011, Indonesia ratified the Convention on the Rights of Persons with Disabilities (CRPD), but it has not signed the treaty's Optional Protocol.³⁰

Indonesia's ratification of the Convention on the Rights of Persons with Disabilities (CRPD) in 2011 provides a strong foundation to formulate better legal frameworks and policies on disability. As a consequence, Indonesia is now bound and obliged to implement the content of the Convention on Rights of Persons with Disabilities in all sectors of life. CRPD

²⁹ Malfasari, E., Keliat, B. A., and Daulima, N. H. C. (2014). "Analisis Legal Aspek dan Kebijakan Restraint, Seklusi, dan Pasung pada Pasien dengan Gangguan Jiwa". *Proceeding Konferensi Nasional XI Keperawatan Kesehatan Jiwa 2014*, 352-371

³⁰ Human Rights Watch., *Living in Hell: Abuses against People with Psychosocial Disabilities in Indonesia*. 2016, <https://www.hrw.org/node/287537/>

reinvigorates the movement of civil society and Disabled Persons Organizations (DPOs), as well as boosting government effort to address issues that continue to hinder the rights of persons with disabilities. CRPD stimulates the amendment of the disability law issued back in 1997, and the adoption of new law on persons with disabilities or the Law No.8/2016 on April 2016 contains provisions that are more in line with the commitment stipulated under CRPD.³¹

After the ratification in 2011, the Government of Indonesia then passes a new law on Persons with Disabilities, namely Law No. 8 of 2016. The new law replaced Law No. 4 of 1997 on People with Impairment that had been in place long before the UN CRPD was ratified. The ratification of the UN CRPD, and the enactment of Law No. 8 of 2016 can be considered as a new chapter in the fulfillment of the rights of persons with disabilities in Indonesia, a law which we all should appreciate, protect, and support.

In National Law, the Constitution of Indonesia guarantees fundamental rights to all its citizens. Although the constitution does not explicitly refer to persons with disabilities, it lays the foundation for other disability-rights laws and provides the legal basis against discrimination. The equality of all Indonesian citizens as well as their right to non-discrimination is guaranteed under various legal provisions, namely: The 1945 Constitution of the Republic of Indonesia, in Article 28 I Paragraph (2) on freedom from and protection against discriminatory treatment on any basis. Then, Law No. 39/1999 on Human Rights in Article 3 Paragraph (2) on equality before the law, and

³¹ First Report of the Republic of Indonesia on The Implementation of the United Nations Convention on The Rights of Persons with Disabilities, 20 December 2016 https://tbinternet.ohchr.org/Treaties/CRPD/.../IDN/CRPD_C_IDN_1_6963_E.doc. accessed on 24 May 2019.

paragraph (3) on freedom from discrimination.

Likewise, Indonesia's Constitution has guaranteed the fulfillment and protection of human rights to all citizen, including persons with disabilities. Within the last decade, and in line with the spirit of reformation taken place in Indonesia, the government has taken fundamental steps to strengthen its legal and institutional frameworks to promote and protect human rights for all. In this context, the breakthrough in the effort to promote and protect the rights of persons with disabilities is by changing the mindset of policy maker and community as a whole. The government mainstreams a rights-based perspective in the current development planning, budgeting and in the implementation of relevant policies and programs to overcome barriers and discrimination, as well as accommodate the rights and empower persons with disabilities.³²

The laws governing mental health in Indonesia is revolving. The first policy to attend is the Law on Mental Health No.3/1966 passed and enacted in Jakarta on June 11, 1966 by President Soekarno and canceled through the ratification of Law No. 23/1992 about Health. Then, this law applied for 17 years ago was replaced with Law No. 36/2009 about Health. In this law there is a chapter on mental health, as mandate for the government to establish a Government Regulation that regulates mental health efforts. However, the Government Regulation was never prepared.

In July 2014, the Indonesian parliament passed the Mental Health Act

(MHA) to address the country's dire mental healthcare situation. The law puts the onus on the government to provide access to mental health services from the local level to the national level. The MHA aims to do this by integrating basic mental health into general health services, building human resource capacity, making affordable drugs available, and most importantly providing accessible community-based services.³³

The MHA also emphasizes the need for the government to set standards for care and monitor the licensing of mental health facilities. Furthermore, the law includes provisions for raising awareness and reducing stigma and bias against persons with psychosocial disabilities, including encouraging the mass media to project a positive image of persons with mental health conditions.

Beside that, The Mental Health Act emphasizes that treatments for mentally ill people should "provide protection and guarantee services" and ensure no human rights violations in the process (Article 3). Article 86 of the law addresses the issue more specifically, stating that "anyone intentionally shackling, abandoning, harassing and/or ordering other people to shackle, abandon and/or harass mentally troubled and mentally ill people or committing other activities violating the rights of [the patients] will be criminalized in accordance with existing regulations."³⁴

The Study by Ayuningtyas D, Rayhani M, Misnaniarti, Maulidya A.N said that the implementation of Law No.18/2014 is considered lacking, seen from the

³² First Report of the Republic of Indonesia on the Implementation of the United Nations Convention on the Rights of Persons with Disabilities, 20 December 2016. https://tbinternet.ohchr.org/Treaties/CRPD/Shared%20Documents/IDN/CRPD_C_IDN_1_6963_E.doc Accessed on 18 April 2019.

³³ Indonesia Mental Health Act, 2014, arts. 7, 26, 34, 40, 79.

³⁴ Indonesian Mental Health Law Passed After Five Years http://www.psychologymatters.asia/psychology_news/2506/indonesian-mental-health-law-passed-after-five-years/129/. Accessed on 1ST June 2019.

implementing regulations have not been made as mandated for no longer than one year since enacted in 2014. Its impact is a failure to reach the program target, with the worst are still found cases restraint. The law should be a policy to protect people with mental disorders from various discriminatory issues.³⁵

On the other side, law no. 36 of 2009 on Health, also mentioned about Mental Health, including the right for protection and mental health services for those who are mentally handicapped and abandoned or homeless with the financing from government and regional governments as contained in Article 149 paragraph (2): "*The Government, regional government, and the community shall get medical treatment at the health care facility for person with mental disorders who are displaced, homeless, threatening the safety of himself and/or others, and/or disrupt public order and/or public security*" in accordance with the obligations of his/her family to refer them to a mental health care provider".³⁶

Due to the explanation above, legislation is one of the most important instruments of government in organizing society and protecting citizens. It determines amongst others the rights and responsibilities of individuals and authorities to whom the legislation applies. In term of the protection of the rights of mentally-ill people, legislation can represent an important and effective means to protect mentally-ill individuals and to empower them to access basic economic, social and political rights, both in institutional setting and in their communities. Thus, legislation can:

1. Prevent human rights violations and discrimination;
2. Promote autonomy and liberty of people with mental disorders, particularly against excessive institutionalization;
3. Promote access and provision of community-based mental health care, and
4. Protect the economic, social and cultural rights of mentally-ill persons.³⁷

2.2. Mental Health in Taiwan

Compare to Indonesia, Taiwan has only 11.5% of its population with nearly 23 million people³⁸. This island country has the vast majority of people reside in the low lands of the western part of the main island. Speaking of mental health care, Taiwan has developed its psychiatry rapidly since the 20th century. In 2013, it was recorded that there are 1,329 psychiatrists in Taiwan which correspond to 17,597 individuals for each psychiatrist³⁹. This proportion is considered higher than the global average, where there one psychiatrist covers 200,000 or more individuals. Otherwise Indonesia has only a half of it, 773 psychiatrists and corresponds 347,463 individuals approximately.

³⁷ WHO, *A Systematic Approach to Developing and Implementing Mental Health Legislation, World Health, Report of a Regional Meeting of Experts New Delhi, India, 6-8 December 2004.*

³⁸ According to the National Statistics Bureau of the Republic of China (Taiwan), total population-both sexes is 23,589,870 per May 2019 (<https://eng.stat.gov.tw/point.asp?index=9>), whereas Indonesia has nearly ten times of Taiwan population counted 268,074,600 people by January 2019, based on the data issued by the National Development Planning Agency of the Republic of Indonesia (https://www.bappenas.go.id/files/5413/9148/4109/Proyeksi_Penduduk_Indonesia_2010-2035.pdf).

³⁹ Hsu, Wei-Tse & et. al. (2017). "A History of Mental Health Laws in Taiwan". *Taiwanese Journal of Psychiatry*, 32(3): 196

³⁵ Ayuningtyas and others, "Implementation of Mental Health Policies toward Indonesia Free Restraint," *Policy & Governance Review*, 2.2 (2018), 161 <<https://doi.org/10.30589/pgr.v2i2.85>>.

³⁶ Indonesia Shadow Report., *Implementation of the United Nations Convention on the Rights of Persons with Disabilities*, Indonesia Disability Convention Team, 2016.

In 2007, Taiwan's Law on Handicapped Welfare Law was renamed to be Act on People with Disability Rights Protection or Mental Health Act (MHA). It amends and classifies mental health illness patients as an internationally recognized diagnoses and environmental context⁴⁰. On its Article 16 stipulated to respect and to guarantee the dignity, legal rights, and interests of people with disabilities. Data issued by the Ministry of Health and Welfare of Taiwan in 2017 stated that 10% of 1,125,113 registered individuals having disabilities are diagnosed with mental disabilities⁴¹.

Previously, the patients had mainly been cured through medication, social intervention, rehabilitation, and psychotherapy. The traditional outpatient clinics, home visit treatment, half-way houses, and sheltered workplaces were available for community service in helping the patients. However, mental health patients often do not receive proper medical treatment if there is no sense of illness, and if there are cognitive judgment impairments. In this case, they may harm themselves and may be harmful to others⁴².

Under the MHA 2017, there are 5 amended points stipulated in it, namely⁴³:

1. To protect and prohibit discrimination against psychiatric patients

This point highlights (Article 22) the protection of patients' personality, legitimate rights, and interests. The law speaks justly where mental health illness patients under stable conditions cannot be refused to access school, examination, employment or implement any other unfair treatment for the reason of mental health illnesses.

⁴⁰ Mackelprang, Romel W. & Salsgiver, Richard O. (2009). *Disability: A Diversity Model Approach in Human Service Practice (3rd Edition)*. Chicago: Lyceum Books.

⁴¹ <https://www.mohw.gov.tw/mp-1.html>

⁴² Hsu, Wei-Tse. *Ibid.*

⁴³ Hsu, Wei-Tse. *Op.cit*, 197 - 202

2. To aid patients and their families with recovery and to help mental health providers and the police in research and treatment decisions..

The opinions of the mental health illness patients under stable conditions and their families must be included in the making of public mental health policies, prevention of psychiatric diseases, resource planning, specific treatment and right to access medical care. This important role is given under the MHA 2007 by "patient-centered" system of mental health, and shapes the mutual partnership between the policy-makers and the enjoyer.

3. To encourage patients to return and stay in the community.

The rehabilitation for mental health illness patients shall be defined as assisting patients to re-adapt to social life gradually. The rehabilitative treatments offered the patients to feel the community as home just like it was. It is including such programs as the ability of work, attitude of work, psychological reconstructions, skills for social life, and ability to manage daily life.

4. To enhance preventive psychiatric medicine for mental health promotion.

The amendment of MHA in 2007 gives stricter instruction to the municipality and county which hold the competent authorities to compulsorily set up community psychology health centers where it was a suggestion in the previous act. The role of this center is not only to give treatment to the mental health illness patients, but also to do campaign, education, counseling, referral, and transfer services, resources networking. Furthermore, it emphasizes also the treatment of suicide and substance abuse to mental health illness patients.

2.3. State Obligations

The right to health was affirmed at the International level in the article 25 of the

Universal Declaration of Human Rights in 1948. The United Nations expanded upon the "Right to Health" in article 12 of the International Covenant on Economic, Social, and Cultural Rights in 1966. Article 12 of the covenant recognizes the right of everyone to "the enjoyment of the highest attainable standard of physical and mental health.

The Right to Health was affirmed at the international level in Article 25 of the Universal Declaration of Human Rights in 1948. The United Nations expanded upon the "Right to Health" in Article 12 of the International Covenant on Economic, Social and Cultural Rights in 1966. Article 12 of the Covenant recognizes the right of everyone to "the enjoyment of the highest attainable standard of physical and mental health." Article 12.2 requires States parties to take specific steps to improve the health of their citizens. The Committee on Economic, Social and Cultural Rights has, in General Comment 14, extensively elaborated on the obligations of States parties to implement Article 12 of ICESCR. The Committee emphasizes that the entitlements under Article 12 "include the right to a system of health protection which provides equality of opportunity for people to enjoy the highest attainable level of health."

As the main entity that plays an important role in enforcing human rights, especially in abolishing human shackling for psychological disorders, the State is obliged and responsible for making the following efforts: (a) Respect: The State's duty not to interfere in controls its citizens when exercising their rights. In this case, the State has an obligation not to take actions that will obstruct the fulfillment of human rights, (b) Protect: It is the duty of the State to actively protecting its citizens. The actions can be shown through guaranteeing protection of the human rights of citizens and the State is obliged to take measures to prevent violations of all human rights by third parties, (c) Fulfill: It is the obligation and

responsibility of the State to actively fulfilling the rights of its citizens. The State undertakes all appropriate legislative, administrative and other measures for the fulfillment of human rights.

In 2016, the Indonesian government has campaigned for the elimination of stigma of person with disabilities, in particular people with mental health issues, through training and education for 9000 health officers in 12 provinces with the highest number of mental health patients. Furthermore, to increase coordination and partnership in combating shackling, 6 Ministries/Agencies (Coordinating Ministry of Human Development and Culture, Ministry of Social Affairs, Ministry of Home Affairs, Ministry of Health, National Police and National Social Security Agency/BPJS) has recently signed a MoU on Elimination of Shackling ("Gerakan Stop Pemasungan").⁴⁴

The enforcement of the Law of The Republic of Indonesia number 18 of 2014 concerning mental health has become a trigger for the government's commitment to overcoming the issues pertaining mental disorders, including but not limited to the practice of *pasung* against people with mental illness. A number of anti-*pasung* programs have been carried out, such as Indonesia Bebas Pasung (pasung-free Indonesia) and Jawa Timur Bebas Pasung (*pasung-free East Java*), which were targeted to be accomplished by 2019. In spite of the constant efforts to release mental health patients from *pasung*, these programs are still considered unsuccessful, which is indicated by the repeated postponement of the programs. Initially planned to be completed by 2015, the accomplishment year of these programs has

⁴⁴ First Report of the Republic of Indonesia on the Implementation of the United Nations Convention on the Rights of Persons with Disabilities, 20 December 2016. https://tbinternet.ohchr.org/Treaties/CRPD/Sha%20Documents/IDN/CRPD_C_IDN_1_6963_E.doc

been changed to 2017 before and is changed to 2019 now. This implies that release of the mentally ill is not enough and a more effective evidence-based strategy is required to eliminate *pasung* as a product of stigma attached to the mentally ill.⁴⁵

Human rights are fundamental to all human beings and include: the right to life, liberty and security of a person; the right to an adequate standard of living; the right to seek and to enjoy in other countries asylum from persecution; the right to own property; the right to freedom of opinion and expression; the right to education, freedom of thought, conscience and religion; and the right to freedom from torture and degrading treatment. Most countries protect human rights through their legal systems, but violations still occur when, for example, the right to freedom is restricted. The risk of human rights violations increases when people are vulnerable because of a medical condition such as a mental disorder.⁴⁶

In accordance with the principle of equality before the law, every citizen is equal before the law and entitled without any discrimination to equal protection of the law". Thus, everyone must be treated equally under the law regardless of race, gender, national origin, color, ethnicity, religion, disability, or other characteristics, without privilege, discrimination or bias as mentioned in Article 7 of the Universal Declaration of Human Rights (UDHR). Furthermore, human shackling is the act that contrary to human rights and it's clearly stated in the Law No. 39 Year 1999 on Human Rights on section 9, namely: (1) Everyone has the right to life, to sustain life, and to improve his or her standard of living.

⁴⁵ Hartini and others. Stigma toward people with mental health problems in Indonesia., *Psychology Research and Behavior Management*. 11 (2018), 535-541.

⁴⁶ Nurjannah. and others, "Human Rights of the Mentally Ill in Indonesia," *International Nursing Review*, 62 (2015), 153-61.

(2) Everyone has the right to peace, happiness, and well-being. (3) Everyone has the right to an adequate and healthy environment.

Aside from that, Article 3 of the mental health act 2014 also emphasizes that treatments for mentally ill people should "provide protection and guarantee services" and ensure no human rights violations in the process. While Article 86 of the Act, addresses the issue more specifically, stating that "anyone intentionally shackling, abandoning, harassing and/or ordering other people to shackle, abandon and/or harass mentally troubled and mentally ill people or committing other activities violating the rights of [the patients] will be criminalized in accordance with existing regulations."

Currently, human shackling is not specifically regulated in Indonesian Penal Code (KUHP). Nevertheless, this kind of offense could be categorized as the unlawful act as stated in section 333 of Indonesian Penal Code: *Any person who with deliberate intent and unlawfully deprives someone or keeps someone deprived of his liberty, shall he punish by a maximum imprisonment of eight years.*

Likewise, in Indonesia, there are still no adequate regulations that can be used as a legal basis for law enforcement officials regarding the issue of human shackling. Nonetheless, the act of shackling can be categorized as an act of deprivation of independence which is contained in Article 333 of the Indonesia Penal Code. Aside of that, Law No. 18 of 2014 concerning Mental Health also should have juridical qualifications between crimes and offenses so that it does not cause juridical problems in its application.

In fact, the implementation of Mental Health Law 2014 is not yet optimal. Factors affecting the implementation include the diverse level of public understanding and the ability to access information, limited resources that are still centered on the island of Java, low budget for mental health programs because it has not been a priority and disintegration in the primary service.

There are still problems caused by stigma and human rights abuses in people with mental disorders.⁴⁷

Furthermore, for mental health legislation to have any real effect, there must be the political will to support it. It can be difficult to persuade low-resourced countries to do this, especially when there are many other pressing health problems. Even where legislation exists, a patient's ill health may prevent access to legal redress for human rights violations. Healthcare workers should inform patients at regular intervals of their rights under a statute. The procedure for challenging failures in implementation or non-compliance with legislation must be simple and clear, and ideally free legal assistance should be provided. To comply with international treaty obligations and best practice, an independent body to hear inpatients' appeals against the removal of their liberty must be established.⁴⁸

3. Conclusion

Human shackling of people with a mental disorder is an act that is contrary to human rights. This act is one of a common symptom in developing countries, including Indonesia. The absence of legal rules, low levels of education, lack of understanding of mental disorders symptoms and also the limitations of economic are the main factors in the emergence of human shackling. The government needs to make mental health as a national priority because it is a human right. Human rights for mental health patients should be the same as for anyone else.

The Government's commitment to provide accessible health services and rehabilitation for persons with disabilities is stipulated inter alia in Law No.36/2009 on Health, Law No.18/2014 on Mental Health in conjunction with Law No.8/2016 on persons with disabilities. The legal guarantee for equal rights and opportunities in all aspects of life and livelihood, including rights to access health services, is further emphasized under Article 5, Article 6, and article 18 of the Law on Health. The Indonesian government also should immediately order inspections and regular monitoring of all government and private institutions and take action against facilities that practice shackling or abusing of people with a mental disorder.

Indonesian government needs to address the limited access for mental health services and treatment, because it has always been a challenge for Indonesia. The number and distribution of health worker as well as mental rehabilitation institutions are still low. Currently, there are only 26 mental rehabilitation institutions among 34 Provinces. Moreover, the prevalence of professional health workers is only 3 per 100.000 populations.

Furthermore, the government must prevent the victimization of mentally ill people by implementing proactive and reactive measures of protection. Proactively promoting rights of mentally ill people, and reactively imposing harsh punishments for violence or abuse towards mentally ill individuals. Nevertheless, the government also needs to reduce this stigmatisation and promote the rights of mentally ill individuals by implementing the educational programmes focused 'on how to avoid, recognise and report instances of exploitation, violence and abuse' of mentally ill individuals. Basically, the stigmatization of mental health provokes acts of violence against mentally ill individuals.

⁴⁷ Ayuningtyas and others.

⁴⁸ Davidson, L., *Mental health laws would diminish stigma and improve the lives of millions.* <https://www.theguardian.com/global-development-professionals-network/2016/apr/26/mental-health-law-diminish-stigma-improve-lives> Accessed on 9 April 2019.

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