



**KOMISI  
PENANGGULANGAN  
AIDS**



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**NATIONAL CONSULTATION ON  
LEGAL AND POLICY BARRIERS TO HIV IN INDONESIA**

Bandung, Indonesia  
11 - 12 September 2013

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Economic and Social Commission for Asia and the Pacific

# FOREWORD

The HIV epidemic is one of the biggest public health challenges in Indonesia. Apart from aiming to confront the truly startling rates of infection among key populations, efforts to combat HIV also have to address the legal and social barriers that inhibit effective immediate response.

Deep-rooted stigma and discrimination surrounding the disease are obstacles that limit access to public health services, and efforts to address such obstacles have been constrained by Indonesia's legal system, which directly and indirectly affects the HIV epidemic. The absence of a strong legal framework to discourage stigma and discrimination and the misinterpretation of authority through decentralization has created disharmony and contradictions between the law and corresponding regulations related to HIV. The lack of access to information about national policy and guidelines for HIV programme have contributed to increased barriers, as have learned social norms on gender and discrimination against key populations, including sex workers, men who have sex with men, transgender persons, and injecting drug users.

The Global Commission on HIV and the Law (2010-2012), an initiative launched in 2010 by UNDP Administrator Helen Clark, examined how laws and practices can transform the global AIDS response. The Commission's findings and recommendations reveal that evidence-based laws and practices firmly grounded in human rights exist and are powerful instruments for challenging discrimination, promoting public health and protecting human rights. In addition, the benefits are felt beyond HIV responses to encompass health and development outcomes more broadly.

UNDP together with UNAIDS and the National AIDS Commission convened a national consultation on legal and policy barriers to HIV in Indonesia to further assess the legal barriers to effective implementation of the National AIDS Strategy and Action Plans 2010-2014. The objectives were to assess the implication of barriers to HIV response, identify opportunities under existing legal and supportive policy frameworks and provide concrete recommendations. The consultation involved representatives from relevant sectors, including academic institutions, civil society, faith-based organizations, members of key populations and government officials. The UN Country Team is thankful to all participants for their cooperation and feedback.

It is imperative that we as the UN together with the Government of Indonesia and civil society create an enabling socio-legal environment to collaboratively undertake efforts to make a significant impact on the national HIV response.

Jakarta, June 2015



Douglas Broderick

## CREDITS

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# LIST OF ACRONYMS

ABAT	Aku Bangga Aku Tahu (a communications campaign entitled 'I'm Proud I Know')
AIDS	Acquired Immunodeficiency Syndrome
ART	Anti-retroviral therapy
ARV	Anti-retroviral (medication)
BKKBN	Kepala Badan Kependudukan dan Keluarga Berencana Nasional (National Population and Family Planning Agency)
BNN	National Narcotics Board
BPJS	Badan Penyelenggara Jaminan Sosial (National Health Insurance Scheme)
BPOM	Badan Pengawas Obat dan Makanan (Indonesian national agency of drug and food control)
CSO	Civil Society Organization
CST	Care, support and treatment
DFSW	direct female sex workers
DPR	Dewan Perwakilan Rakyat (Peoples Representative Council)
ESCAP	Economic and Social Commission for Asia and the Pacific
FSW	Female Sex Worker
GF	Global Fund for AIDS TB and Malaria
Gol	Government of Indonesia
HCT	HIV counseling and testing
HIV	Human Immunodeficiency Virus
IAC	Indonesia AIDS Coalition
IBI	Ikatan Bidan Indonesia (Indonesian Midwives Association)
IDI	Ikatan Dokter Indonesia (Indonesian Doctors/Medical Association)
IBBS	Integrated Biological and Behavioural Survey
IBCA	Indonesian Business Coalition on AIDS
IDFSW	indirect female sex workers
IDU	Injecting Drug User
IPPI	Ikatan Perempuan Positif Indonesia (Indonesian Positive Women's Network)
IEC	Information, Education and Communication
KAP	Key Affected Populations
KomNasHam	Human Rights Commission
KPAN	Komisi Penanggulangan Aids Nasional (National AIDS Commission)
LGBT	Lesbian Gay Bisexual and Transgender
LKB	Layanan Komprehensif HIV-IMS Berkesinambungan
M&E	monitoring and evaluation
MoEC	Ministry of Education and Culture
MoH	Ministry of Health Indonesia

MoHA	Ministry of Home Affairs
MoLHR	Ministry of Law and Human Rights
MoM	Ministry of Manpower and Transmigration
MoRA	Ministry of Religious Affairs
MoSA	Ministry of Social Affairs
MoSAR	Ministry of State Administrative Reform
MoWE	Ministry of Women's Empowerment and Child Protection
MoY	Ministry of Youth and Sports
MSM	Men who have sex with men
NAC	National AIDS Commission
NSP	Needle and Syringe Program
OI	opportunistic infections
OPSI	Organisasi Pekerja Seks Indonesia (Sex Workers Network)
OST	Opioid Substitution Treatment
PerPres	Presidential Regulation
PLHIV	People living with HIV
PITC	Provider Initiated testing and counseling
PKNI	Perkumpulan Korban Napza Indonesia (People who inject/use drugs Network)
PMTCT	Prevention of mother to child transmission of HIV
PMTS	Pencegahan HIV Melalui Transmisi Seksual /comprehensive structural intervention
PPNS	Politeknik Perkapalan Negeri Surabaya (Polytechnic)
PUDS	People who use drugs
RPJMN	National Medium Term Development Plan 2010-2014
SRAN	National HIV Strategy and Action Plan 2010-2014
STI	Sexually Transmitted Infection
UNAIDS	Joint United Nations Programme on HIV/AIDS
VCT	Voluntary Counselling and Testing

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# BACKGROUND

## OBJECTIVES

The workshop on the national review and consultation of legal and policy barriers to HIV is intended to:

1. identify legal barriers and support (best practice) in implementing national policies on HIV/AIDS response
2. propose recommendations for removing existing barriers to ensure access to justice for key populations.

## PROCESS

A workshop was conducted following a UNDP-commissioned review of national legislation related to the implementation of the National HIV/AIDS Strategy, performed by consultants, Adhi Santika and Simplexius Asa. The workshop involves representatives from relevant sectors, key populations and civil society organizations, including the academia, as follow up to the review.

### 1. Opening Address by National AIDS Commission (KPAN) - Ms. Fonny

Indonesia's National AIDS Commission (KPAN) considers the workshop an important event, particularly as in recent years together with other stakeholders the Commission has advocated for policy change in the health sector in order to improve access for key populations. Numerous directives at the presidential and cabinet level have been issued and implemented, in addition to various joint ministerial policies and national human rights laws. A host of obstacles however still prevails, primarily due to extra-legal forms of stigma and discrimination within society and disharmony between laws and the corresponding regulations. This is made worse by the imposition of the law on regional autonomy that is not accompanied with a rigorous and well-defined monitoring mechanism for the effective implementation of laws.

### 2. National AIDS Commission (KPAN) - Mr. Halik Sidik

KPAN has identified several key issues pertaining to Indonesia's legal system that directly or indirectly affect the HIV epidemic. These issues cover the following: (1) poverty and unemployment, and how it affects the number of indirect sex workers vulnerable to HIV infection; (2) Indonesia's geographical location that makes it vulnerable to trafficking, including narcotics; (3) stigma and discrimination by the government and local values that attach negative labelling to homosexuals, commercial sex workers and people who use drugs, which are manifested in discriminatory practices that impede the effective implementation of HIV/AIDS response programs (4) service quality, coverage and sustainability that may be compromised due to political issues, such as decentralization and power shifts; (5) gender inequalities in Indonesian culture that influence power relations between men and women, leading to sexual exploitation; (6) how culture and the structure of law has a bearing on the implementation of government laws and regulations on HIV. These key issues need to be taken into account when formulating strategic measures related to HIV and the law in Indonesia.

### 3. Ministry of Health - Ms. Endang

From the standpoint of the Ministry of Health (MoH), a strong legal umbrella for HIV response programs along with its corresponding guidelines is crucial. For the purpose of enforcing the law, if required, sanctions should also be imposed when wrongly implemented. MoH firmly believes that PLHIV are equally entitled to the rights enjoyed by other citizens in accessing health services. The Ministry has introduced its own legal framework for HIV/AIDS control (ministerial regulations, circular letters and others) among others on logistics, referral ARV treatment and free anti-TB medications. Health Ministerial Regulation No. 21/2013 is part of the framework that sets a firm legal foundation for HIV/AIDS response programs in Indonesia. This ministerial regulation also sets out the program implementation guidelines that can be tailored according to the needs of the respective province. Furthermore, various local regulations in the respective region (gubernatorial regulations and others) reinforce the implementation of national programs as it becomes the commitment of local governments to tackle the issue of HIV/AIDS. In some regions however, there are contradictory regulations or policies. An example is the national program on 100% condom use, while local regulations stipulate that condoms can be admissible as evidence in a criminal case related to sexual



transactions, and this hampers the effective implementation of the condom use programme. MoH hoped that workshop discussions can help generate constructive inputs for dealing with “contradictions” like this.

#### **4. Civil Society: Indonesian AIDS Coalition (IAC) – Mr Aditya Wardhana**

Indonesia AIDS Coalition as a civil society representative stated that HIV/AIDS response requires an enabling environment which Indonesia sorely lacks because HIV issues are still considered a taboo topic particularly from a moralist standpoint. IAC highlighted on several key issues that should be dealt with in the fight against HIV/AIDS in Indonesia:

- The need for appropriate national policies to ensure comprehensive cross-sectoral HIV/AIDS response;
- Policy review on financing HIV/AIDS responses specifically related to sustainability as 60% of HIV/AIDS program financing in Indonesia is derived from foreign/external sources;
- The need for discussions and policies on access to treatment and laboratory test for PLHIV in relation to drug patents and production, as well as services provided in the country; and
- The need to develop policies that do not discriminate against PLHIV and key populations.

IAC hoped for more serious efforts in developing policies based on evidence and needs, instead of moralistic ideologies.

#### **5. UN System, UNAIDS – Mr David Bridger**

The Global Commission on HIV and the Law has identified the following key issues related to HIV/AIDS response and the law:

- Punitive laws will lead to human rights abuses and accelerate the spread of HIV;
- Punitive laws will put available resources to waste and reduce the effectiveness and efficiency of HIV and health investments;
- Effective evidence-based public health laws and best practices that embrace human rights can strengthen HIV/AIDS global responses that should be urgently replicated or scaled up; and
- Structural guidelines, such as the law, play a vital role in bringing the HIV epidemic to an end.

Concerning the situation of HIV and the law in Indonesia, a background paper showed that regional autonomy has led to the enactment of local policies inconsistent with national laws that may undermine national HIV/AIDS responses.

In 2011, UNAIDS has published guidelines for introducing 7 key programmes: (1) reduce stigma and discrimination; (2) provide HIV-related legal services; (3) monitor and reform laws, regulations and policies related to HIV; (4) legal literacy; (5) sensitize lawmakers and law enforcement agencies on HIV issues; (6) train health care providers on human rights and medical ethics related to HIV; (7) reduce gender injustices and violence against women, and empower women in the legal, social and economic aspects within the HIV context. A UNAIDS study on these 7 programme areas in 7 institutions in Indonesia in 2012 revealed that 93% of HIV-related spending which amounted to US\$ 4.8 million were focused on the first programme area of reducing stigma and discrimination. There has been negligible investment for HIV/AIDS response in the other 6 programmes. National consultations are expected to build on the momentum to discuss on more creative ways to surmount challenges faced in implementing HIV/AIDS response in Indonesia, specifically relating to the law. In addition, discussions should also touch on strategies for supporting the other 6 programme areas in order to improve access to justice as part of national HIV/AIDS response, both in the National HIV/AIDS Strategy until 2014 and as input for the National HIV/AIDS Strategy for 2015-2019.

#### **6. Review Outcomes of the Global Commission on HIV and the Law from the UNAIDS Regional Support Team for Asia and the Pacific – Ms. Brianna Harrison**

The law has the potential to improve the lives of PLHIV and indirectly curb the spread of HIV by strengthening legal systems/legislation conducive for HIV responses. The Global Commission on

HIV and the Law was established to examine how the legal environment – laws, law enforcement and access to justice - can support or obstruct effective HIV responses. The Commission has conducted research, consultations and analysis, and observed data from 140 countries to deliver recommendations to governments and international bodies. The purpose is to help governments and international agencies to establish and enforce evidence-informed laws and regulations that are pragmatic, humane and just. Furthermore, it can be used as an advocacy tool by PLHIV, civil society and communities affected by HIV. Recommendations place emphasis on creating an enabling legal environment that upholds and promotes human rights and universally-recognized legal norms.

The Global Commission on HIV and the Law stressed that legal reform needs to consider the following:

- Discrimination
- Criminalization of HIV transmission, exposure and non-disclosure
- Key populations
- Women
- Children and adolescents
- Laws on intellectual property rights and global efforts to provide treatment

Recommendations offered by the Global Commission on HIV and the Law:

- Legal reform
- Improve law enforcement practices
- Strengthen access to justice

It should be kept in mind that Indonesia is bound by the shared commitment to conduct reviews of legal and policy barriers and to initiate national, multi-sectoral consultations concerning legal and policy barriers. By the end of 2014, every UNESCAP member country must submit a progress report to ESCAP of national reviews on HIV and the law.

## **7. Legal Review by Local Consultants – Mr. Adhi Santika and Mr. Simplexius Asa**

From the review of HIV and the law in Indonesia, it was found that not only is the legal framework weak, but laws are being ignored and the legal system mocked at. This urgently calls for legal reform, inter-agency collaboration and legal education. In reviewing HIV/AIDS policies in Indonesia, it is necessary to observe their hierarchy, whether they are implementable and have a definitive purpose, and to take into account local values and public participation.

A review of laws and regulations either directly or indirectly related to HIV/AIDS response was performed by a research team with the intent of providing answers to the following research questions: 1) Is there any guarantee for key populations and PLHIV to access basic services to meet their needs? 2) Is there legal protection and/or guarantee of equality before the law for key populations and PLHIV in leading their personal and social life? 3) Is there guarantee of legal protection specifically intended for key populations and PLHIV? 4) Is there guarantee of legal protection for key populations and PLHIV in receiving legal aid and/or access to justice?

The study examines 18 national laws and local regulations introduced in DKI Jakarta, East Java, Bali and North Sumatera. It was found that their formulation and criminalization process, including legal norms specifically for criminal offences, has yet to allow for factors that may affect their effective implementation and enforcement. The substance of law fails to formulate criminal law norms through a prescriptive approach and/or carries different meanings which often lead to multiple interpretations by law enforcement agencies and members of the public. In terms of the structure of law, reviewed legislation did not taken into consideration the capability of civil servants recruited as investigating officers (PPNS) in local governments, in terms of quantity and quality, in examining and investigating criminal offences, and neither has there

been any meaningful effort to develop well-trained and competent civil service investigators. There is also the absence of a proper mechanism for cooperation between PPNS within and outside of the local government with police investigators at the provincial and district/city level. The culture of law on the other hand relates to the contribution and/or support that the public can offer for enforcing local regulations. Under current circumstances, provisions on criminal law laid down in local regulations have yet to be effectively implemented and enforced.


The study pointed to the need for legal reform in terms of the substance, structure and culture of law, and for sensitizing politicians, law enforcement agencies and citizens, including PLHIV and key populations on the right to legal guarantee and the fulfilment of basic needs. Consultants however have not reviewed patent laws and have promised to do so within 2 weeks.

## **8. Law-Making Process – Mr. Adhi Santika**

Adhi Santika gave an introduction to the legislative process, primarily on the fundamental principles that need to be considered in drafting a law. In the formulation process, it should be kept in mind that the law should not merely be an instrument for dispute settlement and social order, but also as part of social engineering. A legal concept that also includes social engineering is the most appropriate and relevant legal development approach to date. The problem however lies in the extent to which the formulation of laws (in a neutral legal context) has anticipated its impact on the public. The law-making process is often not entirely anticipatory, but more reactive towards a situation occurring within society.

Strategic issues to be considered in the law-making process which should be prevented from manifesting are as follows: (1) inter-hierarchical (vertical) contradictions; (2) intra-hierarchical (horizontal) contradictions; (3) contradictions among clauses in a law or regulation. Law-making principles and methods are set out more explicitly in Law No. 12/2011 on the Formulation of Laws and Regulations. Ideally, the drafting of a law or regulation should take into consideration empirical evidence, local values, national and international situation, academic review, public participation and mechanisms for smooth implementation.

As a final point, the law should be seen as a system which in totality is inseparable from the values that society adheres to. If the purpose of introducing a law is too detached from social reality, then there will be adverse effects that need to be taken into account. The social engineering concept also does not end with the creation of written policies because the written law is subject to limitations. This concept necessitates the professional role of law enforcement bodies to give soul to the printed words set forth in a law or regulation.



# NOTES ON GROUP DISCUSSIONS

Group discussions were conducted according to the topic or issue identified or determined by UNDP and UNAIDS based on the consultants' report which cover:

- Children and youth (facilitator: Irawati Atmosukarto)
- Women (facilitator: Irawati Atmosukarto)
- PLHV and treatment (facilitator: Aditya Wardhana and Yogi Wirastra)
- People who use drugs (facilitator: Halik Sidik)
- Sex workers (facilitator: Halik Sidik)
- MSM and transgender (facilitator: Yogi Wirastra)

Participants were divided into several groups according to their interest, expertise and experience. Each topic was allotted  $\pm$  1.5 hours with a facilitator to guide the process. Discussion results were presented in a plenary session and jointly discussed to refine and agree on recommended actions to address the legal and policy barriers identified.

# LEGAL PROTECTION IN NATIONAL LAW

This was discussed in the review conducted by Adhi Santika and Simplexius Asa. The principles of human rights, including non-discrimination, have become part of national law enshrined in the second amendment to Indonesia's 1945 Constitution and Law No. 39/1999 on Human Rights. In reference to the legislative hierarchy and principles as laid down in Law No. 12/2011 on the Establishment of Laws and Regulation, laws that govern public life in Indonesia should adhere to the said principles and hierarchy. The review also examines various conventions and covenants that Indonesia has ratified and made part of its national law. Legal protection of HIV/AIDS prevention programs is therefore grounded in both national and international legal norms.

## Legal and Policy Barriers and Recommended Actions

### Present Reality

1. Estimates of Key Populations, MoH 2009: IDU (105,784), Female sex workers (214,054), MSM (695,026), Transgender (32,065).
2. HIV prevalence based on MoH Estimates, 2009: Transgender (18.96%), MSM (3.47%), FSW (6.12%), IDU (49.69%).
3. Social status: key population refers to a specific community considered as a social disease or to people given PKMS status (persons having social welfare issues) that hampers them from accessing public services due to stigma and discrimination. This manner of treatment causes them to live in poverty and adopt risk behaviours. Their impoverishment is not because of the inability to earn a decent living, but due to social and legal impediments that end in their povertization. (Note: The Ministry of Social Affairs – MoSA – is the authorized body to identify citizens considered as PKMS, and this nomenclature serves as the basis for the Ministry and its local offices to allocate program budgets specifically for this community)

### Legal Protection

LEGISLATION	SPECIFIC ARTICLE	CONTENT OF ARTICLE	IMPLICATION ON HIV/AIDS PREVENTION
Presidential Regulation No. 75/2006 on KPAN	Article 4	Membership: chair of national PLHIV organizations	Key populations are partners who should not be disregarded
People's Welfare Ministerial Regulation No. 33/2013 on the Executing Team of the National AIDS Commission	Annex	As KPA (AIDS Commission) team members: IPPI, PKNI, OPSI, GTMSM	
Health Ministerial Regulation No. 21/2013 on HIV and AIDS Response	Article 4 (b) PRINCIPLES	Respects human dignity and pays heed to gender justice and gender equality	The implementation protocol for prevention, care and support for PLHIV must engage key populations who should be treated equally as partners
	Article 4 (g)	Encourages the active role of key populations	
	Article 5 (a)	Legal empowerment of the people	
	Article 10 (7)	Key populations as the target group for health promotion	
	Articles 30 (1), 41 (1) & (2), 51 (4) a, b, c	Health facilities are prohibited from denying PLHIV treatment and care, and the public must not discriminate against them	

## Legal Barriers

National legislation that hampers key populations from fulfilling their social functions and from leading a decent life includes the following:

LEGISLATION	SPECIFIC ARTICLE	CONTENT OF ARTICLE	IMPLICATION TO HIV/AIDS PREVENTION
Penal Code (Chapter XIV: Crimes Against Morality)	Article 281	With the deliberate intent to publicly offend against decency.	Criminalization of the identity of transgender people
	Article 282	Criminalization of images/reputation in the media considered to be offensive against decency.	Difficulty in information, education and communication (IEC) of HIV prevention
	Article 283	Conveying/presenting/showing images/objects that violate moral principles, as well as instruments for preventing/terminating pregnancy in a person age 17 below	Hampers IEC for teenagers
	Article 296	Facilitate a person's obscene act with another person	Imparting messages on safe sex to any one is impossible
Law No. 35/2009 on Narcotics	Article 127 (1)	Criminalization of personal use of substance	Instils fear in the public from reporting or seeking help (e.g.: VCT), or accessing methadone maintenance treatment, etc.
Law No. 44/2008 on Pornography	Article 4 (1) a	Criminalization of unnatural sexual intercourse	Deepens the stigma of MSM (LGBT) and affects their access to services
Law No. 6/1974 on Basic Provisions on Social Welfare	Article 2 (1) & (2)	Labelling and stigmatization Right to social security (2) Social welfare efforts refer to all actions, programmes and activities intended for creating, facilitating, improving and developing social welfare.	Undermines the right to social security for every person and builds a certain image of specific communities who have rights but must undergo social rehabilitation. Failure to rehabilitate the person entails the withdrawal of social security.
Law No. 11/2009 on Social Welfare	Article 5 (2)	Labelling and stigmatization Right to social security that "prioritizes those leading less than decent and humane lives and with social issues to deal with"	This clause does not recognize the human dignity of LGBT individuals as they are perceived as deviants who require guidance, and need to be put right
Local regulations against immorality and intoxicants,		Criminalization of institutional violence	Significantly impedes the implementation of HIV/AIDS

and those that promote Islamic shari'a law			responses at the sub-national level
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### Implication to HIV/AIDS Prevention

1. Key populations are caught in a dilemmatic position when it comes to the law. On one hand, they are citizens entitled with the right to access government aid in order to lift themselves out of poverty and for social rehabilitation. On the other hand, apart from their impoverished status, they are also perceived as a community who has violated (lost) their sense of decency that distresses the public as they are condemned as a social disease. This institutionalized status has instead incited stigma and discriminatory treatment.
2. In other words, as a result of discrimination and stigmatization, the legal, formal recognition of key populations has instead become a major barrier for them to fulfil their social functions accordingly.
3. The foregoing situation somewhat reflects an insincere attempt at providing state protection. This is particularly evident in social rehabilitation efforts, whereby the state has treated them as mere objects in policy-making, made worse with their stigmatization and discrimination.
4. When it has been formally described in the law that key populations need to transform themselves in order to agree with social norms acceptable to society, the government is indeed giving a false impression of providing social protection and security.
5. This insincere attempt from the government has failed to change the risk behaviour of key populations because it has not succeeded in improving the quality of their lives.

### Proposed Solution

OBJECTIVE	OUTPUT	ACTIVITY	ACTOR	DURATION
To reaffirm the principle of non-discrimination in HIV/AIDS response and the role of key groups as KPAN's partner	Introduction of a new Presidential Regulation that confers the Ministry of Law and Human Rights (MoLHR) with the mandate to monitor the harmonization of laws and regulations relating to HIV/AIDS response programmes	Urge the MoLHR, KPAN and Ministry of State Administrative Reform (MoSAR) to mandate one of the existing agencies within the MoLHR or KPAN to monitor the implementation of HIV/AIDS programmer	Target: MoLHR MoSAR KPAN  Driving force: Civil society organizations Key population networks UNAIDS	Short-term
	Establishment of implementation protocols for HIV/AIDS response programmer supported by a Presidential Regulation	Sensitize all relevant state ministries and agencies and local government offices on the strategic plan for HIV/AIDS response and various implementation protocols	Target: MoLHR  Driving force: KPAN	Short-term
	Amendment to Law No. 11/2009, specifically Article 5 (2)	Propose the amendment or revision of restrictive legislation, specifically Law No. 11/2009 on Social Welfare	Target: MoSA MoLHR DPR (House of Representatives) Driving force: KPA executing team members: PKNI, OPSI,	Medium-term

			GTMSM-INA, IPPI	
	Amendment to Law No. 35/2009	Propose the removal of Article 5 (2), Law No. 35/2009 on Narcotics (provide a clearer definition of user and his/her rights, primarily related to rehabilitation)	Target: MoLHR BNN MoH BPPOM Driving force: KPA executing team members	Medium-term



# SPECIFIC LEGAL BARRIERS FOR KEY POPULATIONS

## Children and Youths

### Present Reality:

Children are part of the community whose quality of life and well-being heavily relies on how the public and state treat the parent and child. Several matters that need to be considered:

1. Children are more often considered as part of domestic affairs, both in a cultural and spiritual sense. Bringing children to the public domain therefore causes anxiety, fear and uncertainty in society.
2. There are a significant number of children/young persons with risk behaviours as a result of being victims of sex crimes or narcotic abuse, yet they have never been identified as target groups/direct beneficiaries for outreach programmes, IEC, VCT, NSP and substitution therapy.
3. Children at risk are an inseparable part of families within key populations.
4. There are numerous laws and regulations related to the interest of the child, but have different definitions of a child's age. This is made worse by the absence of executive guidance that clearly delineates age groups according to the scope of intervention within the range of 0-24 years old (pre-school 0-6; school-age 7-12; teenage 13-18; young adult 19-24).
5. There are still many national laws and regulations unfavourable to the best interest of the child.

### Legal Protection

LEGISLATION	SPECIFIC ARTICLE	CONTENT OF ARTICLE	IMPLICATION TO HIV/AIDS PREVENTION
Presidential Decree No. 36/1990 on Ratification of Convention on the Rights of the Child	Article 33  Article 34  Article 37	The state protects children from narcotics and illicit psychotropic substances.  The state protects children from all forms of sexual exploitation and sexual abuse  The arrest, detention or punishment of a child should be adjusted according to the law and should only be the last resort	A child is regarded as an individual who needs to be protected from different forms of exploitation, including in relation to the law.  Drug use among minors and prostituted children must not be criminalized, but should be treated as victims
Law No. 23/2002 on Child Protection	Article 59	Special protection: "The government and other state agencies have the obligation and responsibility to provide special protection"	Special protection should also be given to children living with HIV or affected by HIV.
Law No. 44/2008 on Pornography	Article 4 (1)	Prohibits and prosecutes offenders of child pornography	Child pornography directly affects the child as the victim
Law No. 11/2008 on Electronic Information and Transactions	Article 52 (1)	Prohibit the downloading of pornographic contents, including child pornography	This will encourage unsafe sex
Joint Decree of 5 Ministers	Annex	Introduce the Aku Bangsa Aku Tahu (ABAT) or I'm Proud	ABAT program is capable of surmounting legal barriers

		I Know program supported by MoH Circular Letter No. 129/2012 on HIV & AIDS Control	such as those found in Law No. 52/009. Accelerate comprehensive HIV information for the 15-24 age group (MoSA, MoH, Ministry of Education and Culture-MoEC, Ministry of Religious Affairs-MoRA and Ministry of Home Affairs-MoHA)
Government Regulation No. 25/2011 on Implementation of Mandatory Self-Reporting of Drug Users	Article 3	Drug dependence of a minor must be reported by the parent/guardian	Emphasize that children are victims and have the right to rehabilitation

It should be noted that many laws and regulations intended to protect children are in fact not implementable because of the enforcement of other legislation that undermines the purpose of providing protection (see the laws below). As a consequence, child protection as part of HIV/AIDS prevention shall continue to court controversy and unending debates.

### Legal Barriers

LEGISLATION	SPECIFIC ARTICLE	CONTENT OF ARTICLE	IMPLICATION TO HIV/AIDS PREVENTION
Law No. 11/2012 on Juvenile Criminal Justice System	Article 1 (3)	Definition of a child in conflict with the law: age of criminal responsibility is 12 years old	The age limit differs in each law and this leads to uncertainties in carrying out direct prevention to children and youth. Prevention programmes for children and young persons depend on the programme's success on adults
	Article 32	Age at which a child can be detained is at 14 above	
Law No. 23/2002 on Child Protection	Article 19	The responsibility of a child: to have good morals and ethical behaviour	Can be misused for penalizing children
Law No. 1/1974 on Marriage	Article 7	Age of marriage: male at 19, female at 16	Marriage at a young age can be used to gain legitimacy to enter the sex industry
Law No. 40/2009 on Youth	Explanatory Note to Article 20	Young persons have the right to be protected from destructive influences (e.g.: HIV)	Deepens the stigma of HIV and impedes IEC on HIV prevention for the younger generation
Law No. 52/2009 on Population and Family Development	Article 21	Access to reproductive health services and counselling for young persons is directed at married couples	Difficulty in providing IEC on HIV prevention for the younger generation
	Articles 23 and 24	Access to information, education, counselling and services on contraception. Birth control services are	

		responsibly provided to the husband and wife	
	Article 27	Prohibit the misuse of equipment, drugs and contraceptive methods other than the predetermined method and procedure	
	Article 28	Information shall be delivered by health workers and trained employees	
Health Ministerial Decree No. 567/2006 on Guidelines for Implementing Harm Reduction of Narcotics, Psychotropic and Addictive Substances	Page 41	Methadone maintenance therapy is accessible to persons at a minimum age of 18	For child/teenage victims of narcotic abuse, there is still no clear indication of the type of substitution therapy that needs to be administered
Health Ministerial Decree No. 1507/2005 on Guidelines for Voluntary Counselling and Testing for HIV & AIDS (VCT)	Page 20	Require the consent of the parent/guardian/competent officer of a person age 12-18 as it involves the drawing of blood samples Does not deny children access to information	This is a dilemmatic situation because VCT must be kept confidential, yet a child/adolescent is considered incapable of taking responsibility of herself/himself, thus the need for the guardian's consent

### Implication on HIV/AIDS Prevention

1. There is doubt and uncertainty from implementers (especially the government) of HIV/AIDS prevention, treatment and care programs when dealing with children and young people which result in failure to act accordingly. The exception however for HIV/AIDS response programs initiated by NGOs that provide direct services to the public; anyone at risk (regardless of age) becomes the program's target group.
2. As it is best not to impose direct intervention on the child, the ability to prevent HIV transmission greatly depends on the effectiveness of programs that seek to change the behaviour of adults → 100% condom use, PMTCT, PICTR, access to sterile needles and syringes and methadone/substitution therapy.
3. Absence of an oversight mechanism on programmes aimed at preventing infection among children and young persons, and as a result no best practices have been documented.

### Proposed Solution

OBJECTIVE	OUTPUT	ACTIVITY	ACTOR	DURATION
To improve access to information and services on reproductive health for teenagers without the structural barriers	Government regulation on teen health that meets the needs of adolescents toward reproductive health information and services without the structural barriers	Monitor the finalization of government regulation on teen health to ensure that there are no structural barriers for teenagers to access reproductive health information and services	Target: MoLHR MoH MoRA - Ministry of Religious Affairs Driving Force: ARI KPPA KPAI	Short-term

		Propose the inclusion of a clause on minimum age of consensual sex in the (draft) government regulation on teen health, that should be separate from the minimum age of marriage and minimum age to access information and services for their reproductive health	Target: MoLHR MoH MoSA MoRA Driving Force: KPAI KPAN	Long-term
	An additional provision on the guardianship of a child victim of narcotic abuse, primarily those who no longer live with their parents, to undergo a health examination and obtain access to direct services, including VCT and substitution therapy in HR and VCT protocols	Propose an additional provision on the guardianship of a child victim of narcotic abuse, primarily those who no longer live with their parents, to undergo a health examination and obtain access to direct services, including VCT and substitution therapy in HR and VCT protocols	Target: MoH  Driving Force: KPAN and its executing team Working Group on Gender and Human Rights KPAN Working Group on Teenagers KPAN	Short-term
	Omission of HIV/AIDS as one of the destructive influences to the younger generation as mentioned in the explanatory note to Article 20(a) Law No. 40/2009 on Youth	Propose the removal of naming HIV as a destructive influence for the younger generation as mentioned in the explanatory note to Article 20 of Law No. 40/2009 on Youth, because HIV/AIDS is a communicable disease and its infection has nothing to do with social and cultural values	Target: MoLHR MoY (Ministry of Youth and Sports) Driving Force: ARI KPAN KPAI	Medium-term
	Evaluation and broadening of the scope and coverage of ABAT program	Broaden ABAT program scope and coverage in various formats easily accessible to children and young persons in school, outside of school and among	Target: BKKBN MoH MoSA MoEC (Ministry of Education and Culture) MoHA	Short-term

		LGBT children	MoRA Driving Force: ARI Young GTMSM Young transgender KPAN Working Group Gender and Human Rights	
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## Women

This section will explain on women's position in general. Women in each key population will be discussed further.

### Present Reality:

1. In patriarchal culture, women's sexuality falls under male domination, where women are expected to satisfy men's sexual urges and become their emotional sponge. Women have no control over their partner's sexual behaviour nor do they have the power to negotiate condom use. Furthermore, a woman may be subject to violence if she refuses to serve her partner's sexual needs. This state of powerlessness further makes women more vulnerable to HIV infection.
2. The number of reported HIV/AIDS cases among women by June 2013 reached 12,593 cases with a cumulative percentage of 28% (MoH 2<sup>nd</sup> quarterly report 2013). There has been a significant rise in HIV/AIDS cases among women (from 17% in 2006 to 35% in 2011).
3. Those most vulnerable to HIV infection (80%) are clients of sex workers and long-term partners (girlfriend/wife). The second highest cumulative number of HIV/AIDS cases occurs among housewives (5,006 cases). This reflects how women are highly vulnerable to being infected from the husbands. Not surprisingly, the number of HIV/AIDS cases among housewives tends to increase each year.
4. Women bear multiple burdens when a family member is infected with HIV:
  - Must care for her ailing husband
  - Becomes the primary breadwinner of the household
  - Vulnerable to HIV infection due to lack of negotiating power in condom use
  - The child of an expectant mother is at risk of contracting HIV
5. The imposition of certain requirements (perceived or interpreted) that discriminate against women from accessing specific health services. For example, registration form for pap smear (Ms./Mrs.), partner notification for PMTCT services.
6. Main reasons why women are overlooked with regard to HIV issues:
  - Women do not know about the HIV status of their partner, and are therefore unaware if they are already infected
  - Even if they know of their HIV status, women are fearful of telling their family members lest they become subject to stigmatization and discrimination
  - In accessing health services, women are normally not questioned about her own high risk behaviour or that of her partner, thus failure of early detection.
  - 'Decent' women are not targeted for HIV/AIDS prevention and response programmes because they are perceived to be not at risk, and as a consequence they lack the required knowledge and skills to prevent HIV infection.

### Legal Protection

LEGISLATION	SPECIFIC ARTICLE	CONTENT OF ARTICLE	IMPLICATION TO HIV/AIDS PREVENTION
Law No. 23/2004 on Elimination of Domestic Violence	Article 1	Domestic violence refers to any act committed against a person, particularly women, that results in physical, sexual or psychological suffering or affliction and/or domestic neglect, including threats, coercion or denial of freedom in an unlawful manner within the domestic realm	Domestic violence results in women's lack of bargaining power to protect themselves and to impart information on PMTCT to the husband/male sex partner.  Legal protection for women or vulnerable persons is part of protection against the risk of HIV infection
	Article 3 PRINCIPLES AND	Domestic violence is to be eliminated according to the	

	OBJECTIVES (b) (c)	following principles: Gender justice and equality Non-discrimination	
	Article 8	Sexual violence includes: <ul style="list-style-type: none"> <li>Forced sexual intercourse committed against a person living in the household;</li> <li>Forced sexual intercourse committed against a person living in the household with another person for commercial gain and/or for a specific intention.</li> </ul>	
	Article 12 (1d)	Conduct training and education on gender sensitivity and domestic violence, and set gender sensitive service standards and accreditation	
	Article 13 (c)	Develop and establish systems and mechanisms for cooperation in service delivery that engages relevant parties for easy access to victims	
	Article 20 (b)	Domestic violence is a crime against human dignity	
Law No. 44/2008 on Pornography	Article 3 (d)	Provides legal certainty and protection for citizens, specifically children and women, against pornography	Women are the main target for protection against pornography

### Legal Barriers

LEGISLATION	SPECIFIC ARTICLE	CONTENT OF ARTICLE	IMPLICATION ON HIV/AIDS PREVENTION
Law No. 1/1974 on Marriage	Article 3 (2)	The court of law may allow a husband to have more than one wife if so desired by all parties concerned	This law relegates wives/women as second-class citizens; powerless in a marital relationship  Divorced women increase their vulnerability to behaviours that put them at risk to HIV infection
	Article 4 (2)	The court of law shall only allow a husband to have more than one wife if:	Women are powerless to negotiate protection for themselves upon knowing that

		<ul style="list-style-type: none"> <li>• The wife is incapable of fulfilling her duties as a wife;</li> <li>• The wife is physically impaired or terminally ill;</li> <li>• The wife is incapable of producing an heir.</li> </ul>	their partners are engaged in risk behaviours
	Article 5 (2)	Consent is not required by the husband if it is not possible to ask for his wife/wives consent and they cannot be made party to an agreement; or if there is no news of the wife for at least 2 years or due to other reasons that should require further examination by the court judge.	
Law No. 52/2009 on Population and Family Development	Article 23	Access to information, education, counselling and services on birth control. Contraceptive services is to be responsibly delivered to a husband and wife.	Restricted access to information on contraceptive services for unmarried individuals. Health services also discriminate against women (e.g.: the need for partner notification to access PMTCT)
Civil Code	Articles 1329-1331	Ability to make an agreement. Women are perceived to be incompetent. This was revoked by Supreme Court Circular Letter No. 3/1963.	

### Implication to HIV/AIDS Prevention

1. Women do not see the importance of having knowledge of HIV/AIDS because they do not consider themselves as part of populations at risk.
2. When their sex partners engage in high risk behaviour, women are incapable of effectively negotiating protection for themselves (such as with regard to condom use).
3. When the health system detects a woman at risk of being infected, the system is unable to effectively initiate intervention for the male sex partner. Example: to participate in PMTCT, partner notification is required.
4. When a woman is affected by HIV under the worst circumstances (husband falls ill or dies due to HIV), her access to economic resources is restricted by law. Women are left with no other option but to live in poverty and may engage in risk behaviours.



## Proposed Solution

OBJECTIVE	OUTPUT	ACTIVITY	ACTOR	DURATION
To strengthen the legal position of women before men (create equal standing between male and female) in a marital relationship	Amendment to Articles 3, 4, 5 Law No. 1/1974 on Marriage	Propose the amendment or revision of the Marriage Law in order to strengthen women's position	Target: MoLHR MoRA DPR Driving Force: Komnas Perempuan IPPI Komnas HAM KPAI	Long-term
Reduce stigma and inconveniences that women experience, specifically single women, in accessing reproductive health services	Availability of an oversight mechanism on the implementation of reproductive health service protocols	Document registration forms for health and reproductive health services that discriminate against women	Target: Health facilities  Driving Force: MoH Komnas Perempuan	Medium-term
		Enforce and oversee compliance of health workers in implementing the protocols for reproductive health care, such as pap smear and PMTCT, to ensure that unmarried clients are not stigmatized and feel comfortable and safe throughout the delivery of services	Target: MoH IDI (Indonesian Medical Association) IBI (Indonesian Midwives Association) Indonesian Hospital Association Driving Force: Komnas Perempuan KPAN Working Group on Gender and Human Rights	Short-term
	Health workers/professionals understand about gender equality	Propose the organizing of education/training on gender equality for health workers and professionals	Target: IDI IBI Indonesian Nurses Association Dir.General for Higher Education /Private University Coordination Agency	Short-term

			(Dikti/Kopertis) Driving Force: MoH Komnas Perempuan	
To integrate rehabilitation services for women victims of violence into health care, including for reproductive health	Broaden the mandate of Komnas Perempuan to not only have the authority to deal with complaints but also to provide services	Establish service centres for women, including female teenagers, until the local level – among others through cooperation between Komnas Perempuan and P2TP2A	Target: DPR MoLHR Ministry of Women’s Empowerment and Child Protection (MoWE)  Driving Force: Komnas Perempuan	Short-term



## MSM and Transgender

### Present Reality:

1. Transgender people face obstacles in arranging for their identity documents (especially in major cities such as Jakarta and Surabaya) which denies them access to various services (health, government aid, legal process, etc.).
2. The terminology LGBT is still not formally recognized by the state and this robs this community the right to the freedom of association and assembly (e.g.: hampers the process of acquiring legal recognition of organizations/application for notarial deed → affects work programmes).
3. The transgender and gay community is given PMKS status which makes them vulnerable to violence and charged with minor offences (e.g.: arrested by the Satpol PP, a special policing unit that maintains public order).
4. Limited freedom of expression for transgender people (e.g.: prohibited from outwardly showing their gender identity in the workplace).
5. Transgender people are marginalized by society from an early age which denies them of the opportunity to develop their work skills. As a consequence, any opportunity that they may have in entering formal employment is obstructed by social norms that refuse to acknowledge their presence, in addition to administrative issues that fail to recognize their identity, and their lack of proper work skills.

### Legal Protection

LEGISLATION	SPECIFIC ARTICLE	CONTENT OF ARTICLE	IMPLICATION TO HIV/AIDS PREVENTION
1945 Constitution*	28D (1)	Legal recognition, guarantee, protection and certainty	Transgender people are citizens recognized by the law, and as such they are equally entitled to intervention through HIV prevention programmes
Law No. 23/2006 on Civil Registration	Article 2	Every citizen has the right to obtain: <ol style="list-style-type: none"> <li>a. civil registry documents;</li> <li>b. equal access to services for civil registry and records;</li> <li>c. protection of personal data;</li> <li>d. legal certainty of document ownership;</li> <li>e. information related to civil registry and records on himself/herself and/or his/her family members; and</li> <li>f. compensation and reclaiming of good name as a result of an erroneous entry in a civil register and record, and misuse of personal data by the implementing agency.</li> </ol>	
	56 (1)	The recording of other vital events shall be done by the Civil Registrar on request by the concerned citizen once the district court has ruled as such, and having permanent legal force.	

		In the explanatory note to the article, "other vital events" refer to events that the district court has identified for entry into government records by the Implementing Agency, that include sex change.	
Law No. 13/2003 on Manpower	Article 5	Every member of the workforce has equal opportunity to secure employment without discrimination.	In the economic sector, transgender people are considered as a marginal group. They are perceived to have violated conventional norms that makes them unacceptable to society for employment in the formal sector.  This reality compels them to undertake high-risk work as sex workers.
	Article 6	Every worker/labourer is entitled to equal treatment from the employer without discrimination.	
	Article 153	Employment shall not be terminated on the grounds of ideology, religion, political belief, ethnicity, skin colour, class, sex, physical condition, or marital status.	

\*See Legal Protection for Key Populations

## Legal Barriers

LEGISLATION	SPECIFIC ARTICLE	CONTENT OF ARTICLE	IMPLICATION TO HIV/AIDS PREVENTION
Law No. 44/2008 on Pornography	Article 4(1)	Homosexuality is a deviant form of sexual behaviour	Criminalization of LGBT people restricts their movement
South Sumatera Provincial Regulation No. 13/2003 on Eradicating Immoral Acts in the Province of South Sumatera	Article 2 (2)	Homosexuality constitutes as an immoral act	
Palembang City Regulation No. 2/2004	Article 8	Homosexuality constitutes as an act of prostitution	
DKI Jakarta Provincial Regulation No. 8/2007 on Public Order	Articles 41 and 42	This local regulation criminalizes informal work undertaken by the urban poor. The LGBT community in Jakarta who work in the informal sector that is criminalized by the local regulation shall therefore be directly affected.	Despite the enactment of the Manpower Law, the LGBT community is still subject to discriminatory treatment in formal employment. Consequentially they can only work in the informal sector. On the other hand, the enforcement of a regulation that criminalizes their work further worsens stigmatization and the people's perception of the LGBT population
Unwritten norms on MSM and transgender people		Negative opinions shaped by certain beliefs/myths that society continues to hold are passed on across generations	

## Implication to HIV/AIDS Prevention

1. Most transgender people from a relatively young age have been marginalized by their families and communities, leaving them without any opportunity to pursue proper education that can help them develop their skills to seek legitimate work. As a consequence, they have to adjust to group culture, often leading to sexual risk behaviours in order to survive.
2. Government and society's treatment towards them makes it impossible for transgender individuals to secure permanent, decent work. Under such circumstances, they are more inclined to violate ethical and moral norms simply to survive. This means that they have not changed their lifestyle and behaviour.
3. The situation is made worse by lack of access to employment that society dictates as appropriate and respectable. This makes it near impossible to help transgender persons avoid from adopting risk behaviours.
4. The health of transgender people living with HIV who are criminalized by the DKI Jakarta Regulation on Public Order is often compromised due to denied access to ARV treatment.

## Proposed Solution

OBJECTIVE	OUTPUT	ACTIVITY	ACTOR	DURATION
To gain legal recognition of the identity of transgender people	A civil registration system is in place to accommodate the status of a transgender person	Advocate for the right to be define oneself (transgender) to the civil registrar	Target: Local Civil Registrar  Driving Force: Arus Pelangi KPAN	Short-term
	Opening/creating wider employment opportunities for transgender people in all employment sectors	Advocate for the right to work as a transgender* to companies and the Ministry of Manpower and Transmigration (MoM)	Target: MoM APINDO  Driving Force: KPAN Working Group on Gender & HR IBCA	Short-term
Eliminate criminalization of LGBT's sexual behaviour	Amendment to Article 4 Law No. 44/2008	Conduct a judicial review of Article 4 Law No. 44/2008 on Pornography	Target: MoLHR DPR MoRA Driving Force: GTMSM-INA Arus Pelangi KPAN	Long-term

\*e.g., in Thailand and the Bissu tradition of the Bugis community



## Sex Workers

### Present Reality:

1. Estimated number of FSW (female sex worker) in 2009 is 177,962 – 258,007 with 80% spread across 12 provinces (DKI Jakarta 17%, West Java 12%, East Java 9%, Central Java 8%, North Sumatera 6%, West Kalimantan 5%, Riau Islands 5%, Bali 5%, Maluku 4%, Papua 3%, Riau 3%, and Banten 2%).
2. In 21 provinces, estimates of indirect FSW (108,043) are higher than direct FSW (106,011). HIV prevalence among direct FSW however is higher compared to indirect FSW.
3. The number of AIDS cases among sex workers (1,712) is the fifth highest after the self-employed housewives, non-professionals/employees and manual labourers.
4. Five provinces with the highest number of prostitution tolerance zones are DKI Jakarta (7%), East Kalimantan (5%), Riau Islands (4%), Bangka Belitung (4%), and East Java (4%).
5. Estimated percentage of sex workers vulnerable to HIV infection is 3.3%.
6. FSW has no right to resist or defy the wishes of the procurer, with no objection whatsoever, including with regard to condom use.
7. 58% of HIV/AIDS cases are caused by infection during unprotected sex.
8. Local regulations on HIV/AIDS response are in contradiction with other local regulations that allow condoms as admissible evidence.
9. No legal foundation that governs on sex workers and the sex industry.
10. Inclusion of clauses in the Anti-Pornography Law that may instead instigate violence.

### Legal Protection

Government Regulation No. 32/2004 on Guidelines for Special Policing Unit (Satpol PP) Article 7(a): In carrying out their work, Satpol PP has the obligation to uphold legal norms, religious norms, human rights and other social norms that exist and develop within society.

See legal recognition of key populations.

### Legal Barriers

LEGISLATION	SPECIFIC ARTICLE	CONTENT OF ARTICLE	IMPLICATION TO HIV/AIDS PREVENTION
Social welfare policies		See legal barriers for key populations.	
Law No. 44/2008 on Pornography	Article 1	Pornography is picture, sketch, illustration, photograph, written words, vocalizations, sounds, moving image, animations, cartoon, conversation, body movements or other forms of messages through various communication media and/or public performances that is indecent or sexually exploitative that contravene moral codes within society → deepens stigma.	An excessively broad definition of pornography leads to subjective interpretation. Furthermore, Article 21 allows the public to be involved in guiding and counselling FSW and this makes them feel insecure when engaging in their work. FSW feel restricted because in addition to legal sanctions, they are also subject to social sanctions.
	Article 3 (e)	Prevents the spread of pornography and commercialization of sex in society.	

	Article 21 (1d)	Educates the public on the dangers and impact of pornography	
Local regulations on immoral and indecent acts		See TG-LGBT.	Hampers prevention program outreach and development

### Implication to HIV/AIDS Prevention

1. Social rehabilitation services for FSW provided by the government have failed to bring about significant improvements and most FSW continue with their profession and sexual risk behaviours.
2. Failure of social rehabilitation programs has led to the diminishing trust of this particular group towards the government and those in power.
3. The majority of FSW have never felt safe or protected in their profession, leading to negligible bargaining power and heightened vulnerability towards STIs and HIV.

### Proposed Solution

OBJECTIVE	OUTPUT	ACTIVITY	ACTOR	DURATION
To provide legal protection for sex workers	Amendment to Article 1 Law No. 44/2008 on Pornography	Propose the amendment/judicial review of Article 1 Law on Pornography to reduce stigma attached to key populations	Target: MoLHR MoWE MoEC MoRA  Driving Force: KPAN executing team members	Medium-term
	Protocols for Satpol PP are prepared in accordance to Government Regulation No. 32/2004 Article 7(a) along with the oversight mechanism	Propose to local governments to issue implementation protocols for Satpol PP according to Government Regulation No. 32/2004 Article 7(a) along with its oversight mechanism	Target: Local governments (Satpol PP) Driving Force: KPAN executing team members	Long-term
	Evaluation of policy impact on the closure of prostitution tolerance zones	Re-assess the policy on closure of prostitution tolerance zones	Target: MoSA MoRA  Driving Force: KPAN OPSI GTMSM-INA	Short-term
	Effective coordination and cooperation has been fostered between law enforcement agents and implementers of	Engages law enforcement agents in HIV/AIDS response programs	Target: All local government agencies State ministries/agencies	Medium-term

	HIV/AIDS responses		Driving Force: KPAN/P Working Group on Gender & HR	
	Availability of legal assistance and crisis centres/social services for sex workers	Propose the establishment of legal aid centres/services and crisis centres for sex workers facing legal problems or who are victims of violence	Target: MoLHR MoSA Community legal aid institutes (LBH) Driving Force: KPAN OPSI GTMSM-INA	Short-term
	Availability of a database (proper records) on best practices related to activities/programmes aimed at empowering FSW	Document and compile best practices that can help empower FSW	Target: Local governments KPAD Driving Force: OPSI GTMSM-INA	Short-term





## PLHIV and Treatment

### Present Reality:

1. Available health insurance schemes, both jamkesmas and jamkesda (state-run health insurance coverage for low-income citizens), do not include PLHIV as their beneficiaries. Due to their HIV-positive status, PLHIV face difficulty in accessing these health insurance programs even though in terms of their economic status, they are eligible beneficiaries. Similarly, private insurance also do not accept PLHIV as beneficiaries.
2. Trend in Treatment for PLHIV

YEAR	NUMBER OF CST SERVICES	NUMBER OF PLHIV ON ARV TREATMENT
2005	25 hospitals	2,381
June 2011	207 primary referral hospitals and 69 satellites	21,775
June 2013	267 primary referral hospitals and 116 satellites	34,961

3. Although hospital service standards are governed in guidelines and SOPs, the actual delivery of health services to PLHIV still varies (e.g.: admission procedure for HIV-positive patients, treatment including what is covered by the public insurance scheme and cost/fee).
4. Roadmap for IO is already included in BPJS. Under the BPJS scheme, ARV and NSP will be part of the program, while condom use is in the process of being incorporated into the program.
5. Law on Trade/Patents impedes access to affordable, quality drugs for PLHIV.
6. No calculations have been made on treatment for PLHIV to justify the inclusion of PLHIV treatment into the social security or private insurance scheme.
7. There are still policies that make it mandatory for a person to be tested → initially it was intended to protect the general public, but became counter-productive as it meant disclosure of a person's HIV status (with regard to employment, education and pre-marriage).

### Legal Protection

LEGISLATION	SPECIFIC ARTICLE	CONTENT OF ARTICLE	IMPLICATION TO HIV/AIDS PREVENTION
Law No. 40/2004 on National Social Security System	Articles 1 & 2	Social security is a form of social protection to guarantee that every person can sufficiently meet their basic necessities	The health of PLHIV highly depends on the availability of ARV treatment. Despite being able to access such treatment for free, PLHIV needs the guarantee of the availability and accessibility of medication. PLHIV should to be included among the beneficiaries of the National Social Security System
Health Ministerial Decree No. 1190/2004 on the Provision of Free Anti-Tuberculosis Drugs and Anti Retroviral (ARV) Medication for HIV/AIDS		Guarantee the availability of affordable essential drugs as part of HIV/AIDS response	
Health Ministerial Decree No. 189/Menkes/SK/III/2006, on National Drugs Policy for HIV/AIDS		Governs on the uninterrupted supply of drugs, including their equal distribution and accessibility. This Decree also stipulates that the availability of essential drugs is to be the obligation of the government and health providers, both public and private	

Presidential Regulation No. 76/2012 on the Implementation of Patents by the Government of Antiviral and Antiretroviral Drugs.	Article 1	The government's implementation of patents for antiviral and antiretroviral drugs is intended to ensure availability and meet the demand for such medication as part of treatment of Human Immunodeficiency Virus-Acquired Immuno Deficiency Syndrome (HIV/AIDS) and Hepatitis B.	Although a regulation has been introduced on ARV patents, ensuring the domestic supply of medication remains difficult as it relates to TRIPS and FTA between the European Union and India who are ARV patent holders.
	Annex	Provides the names of active substances, names of patent holders and duration of patent implementation.	
Law No. 13/2003 on Manpower.	Article 5	Every member of the workforce has equal opportunity to secure employment without discrimination.	PLHIV shoulders a heavier economic burden compared to the rest of society, but on the other hand it has been hard for them to obtain dignified work due to their HIV status.
	Article 6	Every worker/labourer is entitled to equal treatment from the employer without discrimination.	
	Article 153 (1)	Prohibits termination of employment on the grounds of physical condition.	HIV infection does not mean being ill.

### Legal Barriers

LEGISLATION	SPECIFIC ARTICLE	CONTENT OF ARTICLE	IMPLICATION TO HIV/AIDS PREVENTION
Law No. 14/2001 on Patents		Consultants need to look further into the matter to ascertain on whether this national law can hold up in the event of discord with WTO-TRIPS.	May affect the supply of ARV drugs and other medication that PLHIV will need in the future when Global Fund's assistance is terminated.

### Implication to HIV/AIDS Prevention

1. Most PLHIV become impoverished as they alone must bear all costs.
2. Most PLHIV are still discriminated against in seeking decent employment. More thought should be given on how government programmes can help PLHIV who carry a heavier economic burden than the rest of society.

## Proposed Solution

OBJECTIVE	OUTPUT	ACTIVITY	ACTOR	DURATION
To provide continual and easily accessible health services for PLHIV	Recommendations/policy papers as outcome of the review of the Patent Law	Review of Law No. 14/2001 on Patents	Target: MoTI MoF  Driving Force: MoH PLHIV organizations	Short-term
	Availability of generic ARV drugs produced domestically at an affordable price	Encourage the domestic production of generic ARV drugs	Target: MoH WHO Kimia Farma pharmaceutical company  Driving Force: KPAN IAC	Short-term
	Inclusion of PLHIV into the health insurance scheme, including private insurance	Review treatment expenses for PLHIV to justify the inclusion of PLHIV treatment into the social security scheme or private insurance program	Target: Academia  Driving Force: PLHIV organizations KPAN	Short-term
		Advocate for the inclusion of PLHIV as beneficiaries to social security administrators and private insurers	Target: Insurance Association MoH MoLHR  Driving Force: PLHIV organizations	Medium-term
	Availability of a policy on minimum service standards for puskesmas (community health centres) and other health facilities with well-defined referral flows	Prepare minimum health service standards for PLHIV and the referral flow in puskesmas and other health facilities	Target: MoH MoLHR  Driving Force: PLHIV organizations KPAN	Short-term
	PLHIV have better understanding and awareness of their health rights	Organize training on the health rights of PLHIV	Target: MoH KPAN Driving Force: PLHIV organizations	Short-term

To reduce stigma and discrimination of PLHIV	PLHIV have better understanding and awareness of their right to work	Organize training on the right to work of PLHIV	Target: IBCA MoM PJTKI (private recruitment agencies) Driving Force: KPAN Komnas HAM	Short-term
	HIV testing becomes part of general check-up	Advocate to health providers	Target: MoH Driving Force: KPAN	Short-term



## People who Use Drugs

### Present Reality:

1. Estimated number of people who use drugs through injecting in Indonesia is 105,784 people (MoH 2009). HIV prevalence among IDUs may have seen a downward trend, but intervention for IDUs related to harm reduction remains inconsistent with contradictory local policies.
2. Social status: people who use drugs are marginalized members of society as they are considered to have abnormal behaviour and perceived as law-breakers.
3. Law enforcement agencies are not wholly committed to the idea of IDUs requiring rehabilitation, while there are still policies that continue to criminalize them. As a consequence, IDUs dealing with the law are liable to criminal punishment without access to rehabilitation or other required services.
4. MoH is mandated by the law to support Government Regulation No. 25/2011, yet still finds it hard to implement the regulation due to many ambiguities with regard to the financing mechanism and other state responsibilities.
5. Estimated HIV prevalence reported to MoH among IDUs is 49.69% from the estimated population (MoH 2009).

### Legal Protection

LEGISLATION	SPECIFIC ARTICLE	CONTENT OF ARTICLE	IMPLICATION TO HIV/AIDS PREVENTION
Government Regulation No.25/2011 on Implementation of Mandatory Self-Reporting of Narcotic Users	Chapter I Article 2 (a)	The purpose of this provision on mandatory self-reporting for narcotic users is to fulfil the rights of people who use drugs in obtaining treatment and/or health care through medical and social rehabilitation.	The clause on mandatory self-reporting is necessary to prevent people who use drugs from receiving criminal sanctions, but this has not proven to positively impact on people who use drugs.
	Article 5	IPWL (appointed institution where a people who use drugs should report to) is required to have the necessary personnel and facilities that meet rehabilitation standards.	Even though this regulation has set out the capacity requirement that the IPWL must meet, the absence of an agreement between the 3 key players (MoH, MoSA, BNN) has lead to ambiguities in implementing rehabilitation programmes.
Supreme Court Circular Letter No.7/2009 on Enrolling Drug Users in Therapy and Rehabilitation Centres	Point 1	To consider that the majority of prisoners and detainees on drug charges are users themselves or are even victims, and with respect to their health, these individuals are indeed suffering from an illness, and as such imprisoning them is not an appropriate measure because it disregards their need for treatment and care.	This Circular Letter is considered to be less forceful in preventing the criminal sanction of people who use drugs. It gives the impression that the Circular Letter is only applicable to the judiciary and not for the police force (investigation stage) and the attorney's office (prosecution stage). The word 'expected' suggests that the judge has

			no obligation to rule for the rehabilitation of people who use drugs.
	Point 2	Judges as much as possible are expected to hand out sentences as set forth in Article 41 Law No. 5/1997 on Narcotics and Article 47 Law No. 22/1997 on Narcotics, which is to decide/declare/instruct that the defendant undergo treatment and/or medical care	
Law No. 5/1997 on Psychotropic Substances	Article 41	Psychotropic drug users suffering from dependence syndrome associated with a criminal offence involving psychotropic substances can be ordered by the judge presiding over the case to undergo treatment and/or medical care.	Can be used for advancing the right to rehabilitation/treatment/care
Law No. 35/2009 on Narcotics	Article 54	Narcotic users and victims of narcotic abuse must undergo medical and social rehabilitation.	
	Article 103	The judge examining the case of a narcotic user may deliver a verdict that instructs the said person to undergo treatment and/or medical care if the person is proven guilty of committing a drug-related offence or to instruct the narcotic user to undergo medical treatment and/or medical care if the person has not been proven guilty of a narcotic-related offence.	
Health Ministerial Decree No. 567/2006 on Harm Reduction of Narcotics, Psychotropic and Addictive Substances		To protect IDUs in accessing substitution therapy and sterile needles and syringes.	The NSP program has proven to be effective in bringing down HIV prevalence among IDUs, but difficult to scale up. This is because existing legislation that regulates on NSP is only a Health Ministerial Decree that is less compelling for guaranteeing protection for IDUs in accessing the programme

## Legal Barriers

National legislation that hampers key populations from carrying out their social functions and leading a decent life includes the following:

LEGISLATION	SPECIFIC ARTICLE	CONTENT OF ARTICLE	IMPLICATION TO HIV/AIDS PREVENTION
Law No. 35/2009 on Narcotics	Article 127 (1)	Criminalization of personal use of drugs → liable to imprisonment, while clause 2 stipulates that in handing down a decision, the judge needs to consider Article 54 that makes it mandatory for a person who uses drugs to undergo social and medical rehabilitation → in practice, Article 127 (1) is mostly applied → opening up room for the abuse of power	Often proposed by the police and public prosecutor  Depends on the judge's consideration.  If applied, progress made with regard to legal protection will slide backwards and the HIV situation in prison will remain unchanged.
	Article 55	Mandatory self-reporting	The word 'mandatory' in this regulation has the potential to criminalize and impose sanctions on people who use drugs and families that fail to report on drug dependence.
	Relationship between Article 103 and Article 54	Confusing, primarily with the inclusion of the phrase: The Judge CAN what is interpreted as NON-MANDATORY, as REQUIRED in Article 54.	
Government Regulation No. 25/2011	Article 10	Self-reporting card is only applicable twice.	Setting a limit to the maximum number of times a person can be caught for using narcotics and be diverted to rehabilitation by the legal system (limit to the number of relapses), when in fact addiction is a disorder highly susceptible to relapses.

## Implication to HIV/AIDS Prevention

1. NSP (Needle and Syringe Programme) is part of the harm reduction program set out in Health Ministerial Decree No. 567/2006 and has been clinically and empirically proven to be capable of reducing HIV prevalence among IDUs, but difficult to scale up. With only the Health Ministerial Decree as the legal foundation for NSP, it has been less forceful in guaranteeing protection for IDUs in accessing services and ensuring program continuity, particularly as other policies are still in the form of the People's Welfare Ministerial Regulation and Health Ministerial Guidelines.

2. Despite having Law No. 35/2010 and Government Regulation No. 25/2011 on mandatory self-reporting in place, to date there is still no policy that deals with therapy. What steps should therefore be taken if a diversion to rehabilitation is deemed necessary given the absence of a comprehensive set of directives on therapy? No agreement has still been reached on the definition of therapy, what are the appropriate therapy modalities, who will be providing the therapy as it will be between the three key players (MoH, MoSA, BNN). Government Regulation No. 25/2011 in fact clearly stipulates that IPWL must demonstrate the capacity to assess the needs (rehabilitation) of the person reporting to the institution and provide services according to the need. In reality, many IPWL lack the capacity to function as required.
3. The paradigm underlying mandatory self-reporting (Government Regulation 25 – IPWL) appears to be driven by the need to conduct a census of people who use drugs, instead of preventing victims of narcotic abuse from criminal sanctions. To date, mandatory self-reporting has not proven to bring about positive impact on people who use drugs, and even has the potential to criminalize users and family members. The Supreme Court Circular Letter that is in favour of rehabilitation appears to be only applicable for the judiciary, and not for the police force (for the investigation phase) and the public prosecutor (for the prosecution phase). In addition, the decision to grant rehabilitation ultimately rests with the judge, and an earlier ruling in favour of rehabilitation does not set a precedent for subsequent sentencing.

### Proposed Solution:

OBJECTIVE	OUTPUT	ACTIVITY	ACTOR	DURATION
To enhance legal protection in order to support rehabilitation of people who use drugs	Law No. 35/2009 on Narcotics with consistency among articles and in favour of rehabilitation for people who use drugs	Conduct a preliminary study and documentation as the basis for the amendment of the article on criminalization in Law No. 35/2009	Target: Universities in cooperation with KPAN  Driving Force: PKNI	Short-term
		Propose the amendment of the article on criminalization in Law No. 35/2009 on Narcotics	Target: MoLHR BNN  Driving Force: KPAN MoH PKNI	Medium-term
	Operational policies that support diversion at the investigation and prosecution stage, and during court proceedings	Advocate for operational policies (Government Regulation, Presidential Regulation, Supreme Court Regulation) that support diversion at the investigation and prosecution stage, and during court proceedings	Target: MoLHR Supreme Court  Driving Force: MoH KPAN PKNI Community LBH	Short-term
	A judicial system that supports rehabilitation of people who use drugs	Strengthen institutions (investigation units, judiciary) to monitor the Supreme Court Circular Letter on rehabilitation	Target: Judicial bodies Driving Force: MoH KPAN	Short-term



			PKNI Community LBH	
	Availability of legal aid institutes capable of dealing with cases involving people who use drugs	Develop a legal service delivery mechanism from the outset for cases involving people who use drugs	Target: MoLHR Lawyers LBH  Driving Force: KPAN PKNI Stigma JANGKAR Community LBH	Short-term
To provide better legal protection for harm reduction programmes	More affirmative policies at a higher level	Desk study on the effectiveness of NSP as the basis for drafting more affirmative policies at a higher level	Target: Academia  Driving Force: KPAN Civil society organizations	Short-term
		Advocate on the protection of NSP through policies at a higher level	Target: MoLHR MoH  Driving Force: KPAN PKNI Community LBH	Medium-term
		Develop more affirmative policies at a higher level on NSP (Government Regulation, Presidential Regulation, Supreme Court Regulation)	Target: MoLHR MoH  Driving Force: KPAN PKNI Community LBH	Medium-term



# CONCLUSION AND FOLLOW-UP

The meeting concluded with a statement from Ibu Fonny from the National AIDS Commission that the consultation was well received and that it would be critical for the momentum to continue through the re-establishment of the NAC Working Group on Human Rights and Gender. Through this multi-stakeholder mechanism convened by the NAC, the important follow-up of the consultations findings can be reviewed and folded into the mid-term-review process of the current National HIV Strategy and Action Plan (SRAN).



# ANNEX 1 LIST OF PARTICIPANTS

NR	MINISTRY, INSTITUTION, OR ORGANISATION	PARTICIPANT (PERSONS)
1.	Coordinating Minister for People Welfare	1 people
2.	Ministry of health	1 people
3.	Ministry of law and human rights	2 people
4.	Ministry of Social affairs	1 people
5.	Ministry of Manpower and Transmigration	1 people
6.	Ministry of Trade	1 people
7.	State Minister for Woman Empowerment	1 people
8.	Ministry of Religious Affairs	1 people
9.	Ministry of National Education	1 people
10.	DPR Komisi IX	1 people
11.	National Aids Commission	4 people
12.	Human rights commission	1 people
13.	National women's commission	1 people
14.	DKI PAC	2 people
15.	Jawatimur PAC	2 people
16.	Bali PAC	2 people
17.	Sumatera Utara PAC	2 people
18.	Indonesia AIDS Coalition	1 people
19.	Organisasi Perubahan Sosial Indonesia (OPSI)	1 people
20.	GWL-Ina	1 people
21.	PKNI	1 people
22.	IPPI	1 people
23.	Forum LGBT	1 people
24.	LBH Masyarakat	1 people
25.	Universitas Atma Jaya Research Center	1 people
26.	Universitas Indonesia Research Center	1 people
27.	Nahdlatul Ulama	1 people
28.	Interna	1 people
29.	GWL-Muda	1 people
30.	Aliansi Remaja Independen Indonesia	1 people
31.	UN Family (UNAIDS, UNDP, WFP, ILO, UNFPA)	8 people
Total		46 people



ANNEX 2: WORKSHOP PROGRAMME

# ANNEX 2 WORKSHOP PROGRAMME

# Working Agenda

## Day 1

TIME	AGENDA ITEM	RESOURCE PERSONS
08.30 – 09.00	Registration	
09.00 – 09.15	Welcome by meeting facilitator <ul style="list-style-type: none"> <li>logistics</li> <li>introductions</li> </ul>	Facilitator
09.15 – 10.00	Panel Presentation – setting the context <ul style="list-style-type: none"> <li>Representative of NAC</li> <li>Representative of MoH</li> <li>Representative of civil society</li> <li>4. UN Representative</li> </ul>	NAC Director / Representative MoH Civil Society UNAIDS
10.00 – 10.30	Break	
10.30 – 11.00	Panel Discussion – Q & A	Facilitator and Panel
11.00 – 11.15	Critical issues of Law related to HIV <ul style="list-style-type: none"> <li>Overview of the Global Commission on HIV and the Law</li> </ul>	UNAIDS
11.15 – 12.00	Overview of the national legal review <ul style="list-style-type: none"> <li>Key legal issues raised in the review: positive and negative laws.</li> </ul>	Review consultants
12.00 – 12.30	Questions and answers	
12.30 – 13.30	Lunch	
13.30 – 14.00	Introduction to group work <ul style="list-style-type: none"> <li>Outline of principle questions to be answered and framing of recommendations</li> <li>Use of results grid</li> </ul>	Facilitator
14.00 – 17.00	Group work - National Priority Issues 3 parallel sessions #01 PLHIV and Treatment #02 Women #03 Drug Use Priority issues identified by Steering Committee through the national review, referencing Global Commission recommendations. Discussions to cover; i) the specific laws / policies; ii) law enforcement practices; iii) access to justice Develop <u>time-bound actions</u> to address each ; i) the specific laws / policies; ii) law enforcement practices; iii) access to justice	Resource persons and rapporteur for each group; #01 - #02 - #03 -
17.00 – 17.15	Close and quick feedback on issues with process	Facilitator

## Day 2

TIME	AGENDA ITEM	RESOURCE PERSONS
09.00 – 09.15	Welcome to day 2 <ul style="list-style-type: none"> <li>Logistics for the day</li> <li>Urgent issues from the previous day</li> </ul>	Facilitator
09.15 – 09.45	Making law <ul style="list-style-type: none"> <li>Who makes the law and how!</li> </ul>	Ministry of Law and Human Rights
09.45-11.00	Plenary session <ul style="list-style-type: none"> <li>Review of results from yesterday's three Groups covering #01, #02, #03</li> <li>Presentation of results grid</li> </ul>	Facilitator and Rapporteurs
11.00 – 12.30	Group work - National Priority Issues 3 parallel sessions #04 Sex work #05 Young people #06 MSM and Transgender Priority issues identified by Steering Committee through the national review, referencing Global Commission recommendations. Discussions to cover; i) the specific laws / policies; ii) law enforcement practices; iii) access to justice Develop <u>time-bound actions</u> to address each ; i) the specific laws / policies; ii) law enforcement practices; iii) access to justice	Resource person and rapporteur for each group; #04 - #05 - #06 -
12.30 – 13.30	Lunch	
13.30 – 15.00	National Priority Issues 3 parallel sessions (continued)	
15.00 – 16.45	Plenary session <ul style="list-style-type: none"> <li>Review of results from today's three Groups covering #04, #05, #06</li> <li>Presentation of results grid</li> </ul>	Facilitator and Rapporteurs
15.00 – 17.30	Bringing it all together <ul style="list-style-type: none"> <li>Follow-up and monitoring mechanism</li> <li>Discussion on follow-up actions developed, identify a mechanism for monitoring progress</li> </ul>	NAC (Ibu Fonny)
	Closing and Vote of thanks	

## Resource Materials

- Agenda
- Background paper
- Executive Summary of Report (Desk Review)
- Executive Summary of Global Commission on HIV and the Law

