



## **Inconsistency in Law Enforcement on Torture by Authorities: The Urgency of Harmonizing the Criminal Code and the Anti-Torture Convention**

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**Abstract:** This article aims to analyze the inconsistency in law enforcement regarding the practice of torture by law enforcement officers in Indonesia, as well as to examine the urgency of harmonizing the Indonesian Criminal Code (KUHP) with the Convention Against Torture. This study uses a normative juridical method with an approach based on legislation, conceptual analysis, and concrete cases. The discussion reveals that the practice of torture by law enforcement officers reflects a systemic pattern of violence, driven by weak regulations in the KUHP, suboptimal monitoring mechanisms, and a strong culture of impunity. Although Indonesia has ratified the Convention Against Torture, the absence of specific provisions on the crime of torture in the KUHP, the failure to ratify the Optional Protocol (OPCAT), and the delayed revision of the Criminal Procedure Code (KUHAP) are the main factors behind the failure to prevent and enforce accountability. This article recommends comprehensive reforms through the revision of the KUHP and KUHAP, ratification of the OPCAT, strengthening independent monitoring bodies, and a shift in the paradigm of law enforcement officials to respect human rights principles in order to effectively eliminate the practice of torture in Indonesia.

**Keyword:** Torture; Law Enforcement Officials; Legal Harmonization; Criminal Code, Convention Against Torture.

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# 1. Introduction

Even though Indonesia has ratified Convention Against Torture through Constitution Number 5 of 1998, practice torture by apparatus enforcer law still rampant happened.<sup>1</sup> This shows that ratification is not yet effective in to abolish torture in Indonesia. Convention This should become runway strong law For prevent And take action perpetrator torture, but in reality, implementation in the field still weak.<sup>2</sup> Lots case torture that is not followed up in a way serious, and perpetrator often not get appropriate punishment. This reflects the lack of commitment from the government and law enforcement officials in upholding human rights.<sup>3</sup>

Data from the National Human Rights Commission (Komnas HAM) shows that the practice of torture by law enforcement officers is still high. In 2021, Komnas HAM recorded 808 complaints related to torture, and this figure increased to 966 complaints in 2022, with a total of around 1,700 complaints during the two years. Most of these complaints involved members of the Indonesian National Police (Polri) as the perpetrators. This shows that torture is still a method used by officers in the law enforcement process, even though it has been prohibited by national and international law. The lack of effective oversight and accountability mechanisms exacerbates this situation.<sup>4</sup>

The report from the Commission for Missing Persons and Victims of Violence (KontraS) also revealed that the practice of torture by law enforcement officers is still occurring systematically. In the period from June 2021 to May 2022, KontraS recorded 50 cases of torture with 144 victims, of which 126 victims were injured and 18 others died. Most of these cases involved members of the National Police as the perpetrators. KontraS highlighted that torture is often used as a tool to obtain confessions from suspects, which is a serious violation of human rights. In addition, the lack of firm

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<sup>1</sup> Muhammad Mutawalli, "Implementasi Prinsip Konvensi Internasional Dalam Mengurai Pelanggaran HAM Di Indonesia," *Jurnal Arajang* 6, no. 1 (June 28, 2023): 1-21, <https://doi.org/10.31605/arajang.v6i1.2829>.

<sup>2</sup> Djamaludin Djamaludin, James Simanjuntak, and Reynhard Christian Fatunlibit, "Pendampingan Hukum Bagi Perempuan Dan Anak Korban Kekerasan Dalam Memperoleh Keadilan," *Legal Empowerment: Jurnal Pengabdian Hukum* 3, no. 1 (April 30, 2025): 1-8, <https://doi.org/10.46924/legalempowerment.v3i1.265>.

<sup>3</sup> Hukum Online.com, "Ratifikasi Konvensi Anti Penyiksaan Kurang Efektif," *hukumonline.com*, June 26, 2022, <https://www.hukumonline.com/berita/a/ratifikasi-konvensi-anti-penyiksaan-kurang-efektif-hol5859/>.

<sup>4</sup> Amnesty International Indonesia, "Penyiksaan oleh aparat penegak hukum kian mengkhawatirkan • Amnesty International Indonesia," Amnesty International Indonesia, June 26, 2024, <https://www.amnesty.id/kabar-terbaru/siaran-pers/penyiksaan-oleh-aparat-penegak-hukum-kian-mengkhawatirkan/06/2024/>. See also in Hendri Agung Pratama, "Amnesty International: Jumlah Penyiksaan oleh Aparat Meningkat Tiga Tahun Terakhir, Didominasi oleh Polisi," *Tempo*, June 27, 2024, <https://www.tempo.co/hukum/amnesty-international-jumlah-penyiksaan-oleh-aparat-meningkat-tiga-tahun-terakhir-didominasi-oleh-polisi-45335>.

action against perpetrators of torture indicates a culture of impunity among law enforcement officers.<sup>5</sup>

Amnesty International Indonesia also noted an increase in the number of cases of torture by law enforcement officers in the last three years. In the 2021-2022 period there were at least 15 cases with 25 victims, then in the 2022-2023 period it rose to 16 cases with 26 victims, and in the 2023-2024 period it jumped to 30 cases with 49 victims. Most of the perpetrators of torture are members of the National Police. Amnesty emphasized that although the right to be free from torture is guaranteed by international law and the Indonesian constitution, the practice of torture continues due to weak law enforcement and lack of accountability.<sup>6</sup>

One example of a torture case that has received public attention is the death of a teenager with the initials AM (13) in Padang, West Sumatra, in June 2024. AM was found dead with injuries suspected to be the result of torture by police officers during a brawl. This case shows that torture does not only occur to adults, but also children, who should receive special protection in accordance with national and international law. However, until now, the handling of this case has not shown significant progress, reflecting the weakness of the justice system in handling torture cases.<sup>7</sup>

The lack of firm action against perpetrators of torture reflects a culture of impunity among law enforcement officials. Many cases of torture are not followed up seriously, and perpetrators often do not receive appropriate punishment.<sup>8</sup> This reflects a lack of commitment from the government and law enforcement officials to upholding human rights. In addition, internal oversight mechanisms in law enforcement institutions are often ineffective, and reports of torture tend to be ignored or covered up. This situation exacerbates public distrust of law enforcement officials and the justice system.<sup>9</sup>

To address this issue, concrete steps are needed from the government and law enforcement institutions. First, there needs to be a reform of the justice system to ensure that perpetrators of torture are punished in accordance with applicable laws. Second, monitoring and accountability mechanisms must be strengthened, including by involving independent institutions in the process of investigating torture cases. Third, training and education on human rights for law enforcement officers must be improved to prevent torture in the future. Without these steps, the ratification of the

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<sup>5</sup> Fatia Maulidiyanti, "Situasi Praktik Penyiksaan Dan Perlakuan Atau Penghukuman Lain Yang Kejam, Tidak Manusiawi, Atau Merendahkan Martabat Manusia Di Indonesia Periode Juni 2021 – Mei 2022," June 24, 2022, <https://kontras.org>.

<sup>6</sup> Adyatama, "KontraS: 80 Kasus Penyiksaan Terjadi dalam Setahun, Pelaku Didominasi Polisi," *Tempo*, June 25, 2021, <https://www.tempo.co/hukum/kontras-80-kasus-penyiksaan-terjadi-dalam-setahun-pelaku-didominasi-polisi-500504>.

<sup>7</sup> Amnesty International Indonesia, "Penyiksaan oleh aparat penegak hukum kian mengkhawatirkan • Amnesty International Indonesia."

<sup>8</sup> Putri Ayu Dewanti et al., "Sistem Peradilan Pidana Dalam Perspektif Hak Asasi Manusia: Analisis Terhadap Penyalahgunaan Kekuasaan Oleh Aparat Penegak Hukum," *Court Review: Jurnal Penelitian Hukum (e-Issn: 2776-1916)* 5, no. 05 (May 1, 2025): 113–24, <https://doi.org/10.69957/cr.v5i06.2077>.

<sup>9</sup> Ibid.

Convention Against Torture will remain a symbol without real meaning in protecting human rights in Indonesia.

## 2. Method

In this legal research, the method used is normative legal research, namely an approach that focuses on the study of positive legal rules by examining relevant laws and regulations, legal principles, and doctrines.<sup>10</sup> This research is prescriptive and structured,<sup>11</sup> with the aim of identifying inconsistencies between the norms in the Criminal Code (KUHP) and the provisions stipulated in the Convention Against Torture (CAT), which has been ratified through Law Number 5 of 1998. The main data sources in this study include primary legal materials such as the Criminal Code, Law No. 5 of 1998, and other international legal instruments, and secondary legal materials such as legal literature, scientific journals, and expert opinions. With this approach, the author analyzes the need for legal harmonization as a form of national legal reform effort to ensure the protection of human rights from torture practices carried out by state officials.

## 3. Analysis or Discussion

### 3.1. Inconsistency in Law Enforcement against Torture by Officials

In the past three years, the sky of justice in Indonesia has looked increasingly gray, shrouded in dark clouds of torture by law enforcement officers that are increasingly worrying. Data from Amnesty International Indonesia reveals heartbreaking facts: in 2021–2022, there were 15 cases of torture with 25 victims, increasing to 16 cases with 26 victims in 2022–2023, and soaring sharply to 30 cases with 49 victims in 2023–2024.<sup>12</sup> These are not just numbers, these are stories of wounds from innocent bodies, screams hidden behind the bars of silence. Ironically, the majority of perpetrators come from institutions that should be protecting the community, namely the Indonesian National Police (Polri), reflecting not only individual deviations, but a pattern of systemic violence that is rooted in law enforcement bodies.<sup>13</sup> This phenomenon raises fundamental questions about where accountability is and what will happen to the security sector reforms that were once loudly promised. When the law becomes sharp downwards and blunt upwards, perhaps even losing its direction, then torture by the authorities not only injures the victim, but also tears apart the foundation of the rule of law. If this pattern is allowed to continue, then it is not impossible that we are sowing the seeds of tyranny in the soil that should be fertile for democracy and justice.

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<sup>10</sup> Irwansyah Irwansyah, *Penelitian Hukum ; Pilihan Metode & Praktik Penulisan Artikel* (Yogyakarta: Mirra Buana Media, 2020).

<sup>11</sup> Peter Mahmud Marzuki, *Penelitian Hukum*, Edisi Revisi (Jakarta: Prenadamedia Group, 2014).

<sup>12</sup> Amnesty International Indonesia, "Penyiksaan oleh aparat penegak hukum kian mengkhawatirkan Amnesty International Indonesia."

<sup>13</sup> Rocky Marbun, Deni Setya Bagus Yuherawan, and Mahmud Mulyadi, *Kapita Selekta Penegakan Hukum (Acara) Pidana: Membongkar Tindak Tuturan dan Komunikasi Instrumental Aparat Penegak Hukum dalam Praktik Peradilan Pidana* (Jakarta: Publica Indonesia Utama, 2021). P. 1

Data shows that the Indonesian National Police (Polri) dominates as the main perpetrator in torture cases that occur in Indonesia, indicating a serious problem in the culture and governance of this law enforcement institution. Amnesty International Indonesia noted that since July 2019, around 75% of all identified torture cases involved Polri members, a figure that reflects not only individual negligence, but the potential for systemic failure in internal supervision, accountability, and enforcement mechanisms for the police profession's code of ethics.<sup>14</sup> This dominance illustrates how uncontrolled power can easily transform into a tool of repression that violates human rights, especially in the context of arrest, interrogation, and detention. These cases also reveal the dark veil of impunity, where perpetrators are rarely given appropriate punishment, thus strengthening a culture of silence and fear in society. This condition urges the need for comprehensive reform that is not only structural, but also cultural, starting from improving the police education curriculum, increasing transparency and public oversight, to establishing an independent and effective complaint mechanism. Without concrete steps and political courage to deeply reform the Polri institution, the practice of torture has the potential to continue, damaging the legitimacy of the rule of law and eroding public trust in the security forces as protectors of society. The reform in question is not just a normative jargon, but rather a reform from the roots to the top, so that human rights principles are not just a slogan, but a living breath in every law enforcement action.

One of the main roots that causes the rampant practice of torture by law enforcement officers in Indonesia is the weak regulation in the national criminal law system, especially in the Criminal Code (KUHP). Until now, the Criminal Code has not explicitly regulated the crime of torture as a stand-alone crime, so that perpetrators are often only charged using ordinary abuse articles, which have elements of a crime and threats of sanctions that are much lighter and do not reflect the severity of violations of human dignity. This condition creates a legal loophole that facilitates impunity, where torture is not recognized as a form of extreme violence that is contrary to the principles of human rights and international law. The Institute for Criminal Justice Reform (ICJR) has strongly highlighted this issue and pushed for a more progressive revision of the Criminal Code to align with the mandate of the *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* which has been ratified by Indonesia through Law Number 5 of 1998.<sup>15</sup> The ratification actually requires the state to adjust all national legal instruments to be in line with international standards, including in defining, preventing, and punishing acts of torture firmly and effectively.<sup>16</sup> However, the absence of clear norms in the Criminal Code shows that the ratification of the convention has not been accompanied by concrete implementation in domestic regulations. This is a great irony, because Indonesia has *de jure* bound itself to a global commitment to eradicate torture, but *de facto* still allows legal loopholes that protect perpetrators and ignore

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<sup>14</sup> Pratama, "Amnesty International."

<sup>15</sup> Niniek Karmini, "Amnesty Says Indonesia Suppresses Free Speech with Crackdowns on Public Protests | AP News," *apnews.com*, April 29, 2025, <https://apnews.com/article/indonesia-amnesty-international-human-rights-report-d604e050110bb42614642245d7e4ccc8>.

<sup>16</sup> Triantono and Penerbit Pustaka Rumah C1nta, *Perlindungan Tahanan dari Penyiksaan dan Ill Treatment di Indonesia* (Magelang: Penerbit Pustaka Rumah C1nta, 2023).

victims.<sup>17</sup>In the context of a state based on law that respects human rights, regulations on torture should not only exist in legal texts, but also be operational in the justice system.<sup>18</sup>

Internal supervision within law enforcement institutions, especially the Indonesian National Police, is still relatively weak and ineffective, thus opening up wide space for the practice of torture to continue without significant consequences for the perpetrators.<sup>19</sup>This weakness is reflected in the low level of discipline enforcement and minimal accountability for members who are proven to have committed violence against suspects or detainees. The Jakarta Legal Aid Institute (LBH) even revealed a surprising finding: around 84% of police members consider the practice of torture to be normal, even commonplace in order to speed up or facilitate the investigation process.<sup>20</sup>This finding not only shows a lack of understanding of human rights principles, but also indicates institutional tolerance for violent methods that should have long been abandoned. When violence is considered part of the “work routine”, then it is clear that there has been a deformation of values and a degradation of ethics within law enforcement institutions. Furthermore, this reflects a deep-rooted culture of impunity, where violations are not responded to with firm sanctions, but are often tolerated, hidden, or even indirectly justified by superiors and colleagues. This kind of culture is very dangerous, because it not only damages public trust in the authorities, but also closes the door to justice for the victims. Without a strong, independent, and transparent oversight mechanism, both internally such as the Propam Division, and externally such as public complaint institutions and ombudsmen, efforts to eradicate torture will always be hampered by the walls of corps loyalty and internal institutional politics.

The culture of impunity has become the biggest stumbling block in law enforcement efforts against perpetrators of torture in Indonesia, creating a dark space where justice is lost and victims are left to suffer without certainty. Amnesty International Indonesia noted a shocking fact: of the 21 cases of torture by police officers that occurred in just one year, only one case was actually processed through legal channels.<sup>21</sup>This figure is not just a reflection of minimal action, but a strong symbol of the accountability crisis in our criminal justice system. When officers who should be enforcing the law are allowed to escape the law, the message conveyed to the public is that power is higher than justice. The lack of transparency in the internal investigation process, coupled with power relations that protect perpetrators behind institutional hierarchies,

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<sup>17</sup> Ibid.

<sup>18</sup> Ruslan Renggong, *Hukum Acara Pidana: Memahami Perlindungan HAM dalam Proses Penahanan di Indonesia* (Jakarta: Prenada Media, 2025).

<sup>19</sup> Jeremi Genard Johanes Ngangi, “Penegakan Hukum Terhadap Oknum Polisi Yang Melakukan Pemasaran Dengan Kekerasan Terhadap Pedagang Hasil Bumi,” *LEX CRIMEN* 12, no. 5 (November 9, 2024), <https://ejournal.unsrat.ac.id/v3/index.php/lexcrimen/article/view/59188>.

<sup>20</sup> Mohammad Bernie, “LBH Jakarta: Penyiksaan Lazim Dilakukan Aparat Penegak Hukum,” *tirto.id*, April 24, 2018, <https://tirto.id/lbh-jakarta-penyiksaan-lazim-dilakukan-aparat-penegak-hukum-cJld>.

<sup>21</sup> “Amnesty Ungkap Ada 21 Kasus Penyiksaan Oleh Polisi Dalam Setahun, Tapi Hanya 1 Yang Diproses,” *Kompas*, July 22, 2024, [https://nasional.kompas.com/read/2024/07/22/14201431/amnesty-ungkap-ada-21-kasus-penyiksaan-oleh-polisi-dalam-setahun-tapi-hanya?utm\\_source=chatgpt.com](https://nasional.kompas.com/read/2024/07/22/14201431/amnesty-ungkap-ada-21-kasus-penyiksaan-oleh-polisi-dalam-setahun-tapi-hanya?utm_source=chatgpt.com).

strengthens the belief that the law applies selectively, sharply downwards, but bluntly upwards. This situation not only offends the public's sense of justice, but also creates a damaging domino effect: distrust of legal institutions, fear of reporting cases, and the normalization of violence as a tool of law enforcement. In a system that is left like this, victims not only lose their right to reparation, but are also forced to live in the shadow of trauma with no guarantee that the perpetrators will be held accountable. Therefore, dismantling and eradicating the culture of impunity is no longer an option, but a moral and constitutional imperative in order to uphold the principle of the rule of law and ensure that every violation of human rights, no matter how small, will never be left without consequences.

Torture by law enforcement officers not only violates the rights of adults, but also drags children into a cycle of cruel and inhumane violence. A heartbreaking tragedy occurred in June 2024 in Padang, West Sumatra, when a teenager with the initials AM, who was only 13 years old, was found dead with injuries that were strongly suspected to be the result of torture by police officers while controlling a brawl.<sup>22</sup> This case shook the public conscience and showed how fragile legal protection for children is, especially in situations involving state violence. Children, who should be positioned as subjects of special protection in every law enforcement policy, are instead victims of the arrogance of power and systemic failure to implement a child-friendly approach. The Commission for Missing Persons and Victims of Violence (KontraS) highlighted that incidents like this do not stand alone, but are part of a pattern of violence that is ignored and continues to recur due to weak accountability and the absence of effective protection mechanisms. If even children can become victims without any guarantee of justice, then it is time for us to ask again: to what extent is the state carrying out its obligations as protector of the most vulnerable citizens?

In facing the problem of torture that continues to be rooted, a fundamental step that cannot be postponed is to harmonize national law with international norms that have been agreed to by Indonesia. *The Institute for Criminal Justice Reform* (ICJR) emphasizes the urgency to revise the Criminal Code (KUHP), to include specific provisions related to the crime of torture, as regulated in the Convention Against Torture *which* has been ratified by Indonesia through Law Number 5 of 1998. Currently, without an article that explicitly regulates torture as a stand-alone crime, officers who commit extreme violence are often only charged with ordinary assault articles, which do not reflect the gravity of the violation and do not provide a deterrent effect. This legal harmonization is not only normative, but is a strategic step to strengthen the justice system, create a real deterrent effect for perpetrators, and demonstrate Indonesia's commitment to carrying out its constitutional and moral obligations in the eyes of the world. Moreover, the reformulation of criminal law in line with international principles will be an important foundation in building a justice system that is more humane, accountable, and oriented towards protecting the human rights of every individual without discrimination.

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<sup>22</sup> Adyatama, "KontraS."

Torture not only leaves physical wounds, but also leaves deep and lasting psychological trauma. In the KontraS report, it was noted that between June 2022 and May 2023, there were 60 incidents of torture that resulted in 74 people being injured, 18 of whom lost their lives.<sup>23</sup> These figures are actually just the tip of the iceberg of untold suffering. The victims often experience anxiety disorders, post-traumatic stress (PTSD), loss of trust in the authorities, and even permanent disabilities. For them, torture does not stop when the physical torture is over, but continues to live in haunting memories, in recurring nightmares, in fear of the sound of sirens or certain uniforms. In addition, torture also has an impact on the families of the victims who have to bear the emotional, economic, and social burdens. A country that allows the practice of torture without clear consequences is planting seeds of fear in its own society. Therefore, the urgency of eliminating torture is not just a legal issue, but a humanitarian call to restore the dignity of victims and prevent future generations from living in the shadow of legalized violence.

In combating the entrenched practice of torture, the role of oversight institutions and civil society is vital as the last bastion of human rights. Institutions such as the Ombudsman of the Republic of Indonesia have highlighted the importance of a comprehensive evaluation of the performance of law enforcement officers, including prison officers who are vulnerable to committing violence in detention. Strengthening the capacity of internal and external oversight institutions is urgently needed to ensure that there is an accountability mechanism that works effectively and does not stagnate in bureaucracy. On the other hand, civil society through organizations such as Amnesty International Indonesia, LBH, and KontraS plays a role as a guardian of the public conscience, encouraging transparency, voicing cases that have been silenced, and providing advocacy and legal assistance for victims. Synergy between the state and civil society must be built on the principles of openness, trust, and participation. Without such collaboration, oversight efforts will always lag behind the violations that continue to occur in silence.<sup>24</sup>

Eradicating the practice of torture is not enough with moral condemnation; it requires systemic and multi-layered reform. This reform includes revising the Criminal Code (KUHP) to explicitly include the crime of torture, complete with definitions, sanctions, and enforcement mechanisms. In addition, it is necessary to strengthen the oversight mechanism both internally within law enforcement institutions and externally through independent institutions and civil society so that acts of violence are no longer hidden behind uniforms and job hierarchies. Continuous training for law enforcement officers on human rights is also a must, not just as a formality, but as a re-formation of a humanist paradigm of power. Reform must also include protection for reporters and victims so that they do not experience intimidation, as well as access

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<sup>23</sup> diginusa studio, "Update Situasi Penyiksaan 2024: Normalisasi Dan Berulangnya Kultur Kekerasan Dalam Penegakan Hukum," August 12, 2024, <https://kontras.org>.

<sup>24</sup> Ombudsman RI, "Penting Penguatan Kapasitas Dan Evaluasi Petugas Lapas, Aparat Penegak Hukum Dan Aktor-Aktor Negara Lainnya Terkait Larangan Penyiksaan Dan Perlakuan Tidak Manusiawi," August 10, 2023, [https://ombudsman.go.id:443/artikel/r/penting-penguatan-kapasitas-dan-evaluasi-petugas-lapas-aparat-penegak-hukum-dan-aktor-aktor-negara-lainnya-terkait-larangan-penyiksaan-dan-perlakuan-tidak-manusiawi?utm\\_source=chatgpt.com](https://ombudsman.go.id:443/artikel/r/penting-penguatan-kapasitas-dan-evaluasi-petugas-lapas-aparat-penegak-hukum-dan-aktor-aktor-negara-lainnya-terkait-larangan-penyiksaan-dan-perlakuan-tidak-manusiawi?utm_source=chatgpt.com).



to physical, psychological, and justice recovery. Without these real steps, torture will continue to be a ghost in the Indonesian justice system—invisible, untouched, but destroying from within. Therefore, reform is a long road, but the only one that can save us from institutionalized violence.

### **3.2. Urgency of Harmonization between the Criminal Code and the Convention Against Torture**

#### **3.2.1. Legal Vacuity in the Criminal Code**

Although Indonesia has demonstrated a formal commitment to protecting human rights by ratifying the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) through Law No. 5 of 1998, the reality on the ground is still far from ideal. One of the most striking weaknesses is the absence of explicit provisions regarding the crime of torture in the Criminal Code (KUHP). When law enforcement officers commit torture, they are generally only charged with ordinary abuse, which not only carries a light sanction but also fails to reflect the seriousness of the violations they have committed against basic human rights. This not only weakens the deterrent effect, but also harms the sense of justice for victims and their families. In this context, the law seems to be a tool that protects the perpetrator rather than upholds justice.

The Institute for Criminal Justice Reform (ICJR) has repeatedly emphasized the urgency of revising the Criminal Code as a crucial step to close the gap of impunity and build a legal system that is in line with international principles that have been adopted by Indonesia.<sup>25</sup> Without legal norms that specifically regulate and qualify torture as a serious crime, law enforcement officers who violate human rights will continue to hide behind regulatory ambiguity. This gap has a direct impact on the ambiguity in the law enforcement process, hinders recovery for victims, and damages the credibility of the justice system as a whole.<sup>26</sup> The revision of the Criminal Code is not only a matter of legislative technicalities, but also a matter of the state's commitment to placing human dignity as the main pillar in the national

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<sup>25</sup> Institute for Criminal Justice Reform, "Pemerintah Undang ICJR Bahas RUU Anti Penyiksaan," August 29, 2014, [https://icjr.or.id/pemerintah-undang-icjr-bahas-ruu-anti-penyiksaan/?utm\\_source=chatgpt.com](https://icjr.or.id/pemerintah-undang-icjr-bahas-ruu-anti-penyiksaan/?utm_source=chatgpt.com).

<sup>26</sup> Ahmad Ahmad, "Measuring The Application of Corporate Social Responsibility of PT. Gorontalo Minerals," *Estudiante Law Journal* 4, no. 2 (February 15, 2022): 132–45, <https://doi.org/10.33756/eslaj.v4i2.16489>; Putri Regina Datunsolang, Fenty Puluhulawa, and Ahmad Ahmad, "Penegakan Hukum Terhadap Sungai Taluduyunu Akibat Pencemaran Limbah Pertambangan," *Terang: Jurnal Kajian Ilmu Sosial, Politik Dan Hukum* 1, no. 3 (July 4, 2024): 179–200, <https://doi.org/10.62383/terang.v1i3.415>; Indah Amanah Poetri Soedarno Oei Pantouw and Ahmad Ahmad, "Perlindungan Hukum Terhadap Masyarakat Akibat Penambangan Emas Di Sungai Tulabolo Yang Tercemar Merkuri," *Borneo Law Review* 6, no. 2 (2022): 187–204, <https://doi.org/10.35334/bolrev.v6i2.3242>; Mohammad Syauqi Pakaya and Ahmad Wijaya, "Efektivitas Penegakkan Hukum Terhadap Lingkungan Hidup Dalam Pertambangan Emas Tanpa Izin Di Desa Popaya, Kecamatan Dengilo, Kabupaten Pohuwato," *Borneo Law Review* 6, no. 2 (2022): 236–53, <https://doi.org/10.35334/bolrev.v6i2.3246>; Novia Rahmawati A. Paruki and Ahmad Ahmad, "Efektivitas Penegakan Hukum Tambang Ilegal," *Batulis Civil Law Review* 3, no. 2 (August 26, 2022): 177–86, <https://doi.org/10.47268/ballrev.v3i2.966>.

legal system. Without clear and firm corrective steps, ratification of international conventions will remain an empty promise that is never truly realized in practice.

### **3.2.2. The Need for Ratification of the Optional Protocol to the Convention Against Torture (OPCAT)**

Until now, Indonesia has not ratified *the Optional Protocol to the Convention Against Torture* (OPCAT),<sup>27</sup> even though this protocol is a crucial element in the human rights protection system, especially in preventing torture practices in places of detention. OPCAT not only strengthens the commitment to the Convention Against Torture (CAT), but also requires countries to establish a *National Preventive Mechanism* (NPM)—an independent institution that has a mandate to conduct periodic and unannounced inspections of all places that have the potential to be locations for torture, such as detention centers, correctional institutions, and police stations. This mechanism is designed to prevent torture through systemic monitoring and a preventive approach, not just a responsive one. In the Indonesian context, where reports of torture still often emerge and internal supervision is often considered ineffective, the existence of the NPM will be a concrete step towards transparency and accountability in the law enforcement system.<sup>28</sup>

LBH Masyarakat and *the Institute for Criminal Justice Reform* (ICJR) have repeatedly called for the importance of ratifying the OPCAT as part of a comprehensive reform of Indonesia's criminal justice system. Without this protocol, Indonesia does not have an adequate legal framework to establish a truly independent oversight body with broad access to places of detention. As a result, the potential for torture and inhumane treatment will continue to occur without meaningful oversight, and victims will find it increasingly difficult to obtain justice.<sup>29</sup> Ratifying the OPCAT is not just a formality of international law, but an important foundation in building a protection system that prioritizes prevention, transparency, and respect for human dignity. By taking steps in this direction, Indonesia can demonstrate its seriousness in breaking the chain of structural violence and upholding the principles of a civilized state of law.

### **3.2.3. Revision of the Criminal Procedure Code to Accommodate the Principles of the Convention Against Torture**

The Criminal Procedure Code (KUHAP) as the procedural foundation of the criminal justice system in Indonesia actually needs urgent updates to align with international

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<sup>27</sup> Naura Ardy Fabian, "Akibat Hukum Ratifikasi Optional Protocol on the Convention Against Torture (Opcat) Dan Pengaruhnya Pada Perlindungan Hak Atas Rasa Aman Dari Penyiksaan Di Indonesia," *ResearchGate* 9, no. 1 (April 2023), <https://doi.org/10.55809/tora.v9i1.167>.

<sup>28</sup> Komisi Nasional Hak Asasi Manusia, "Ratifikasi OPCAT, Upaya Strategis Pencegahan Penyiksaan," Komisi Nasional Hak Asasi Manusia - KOMNAS HAM, March 18, 2021, <https://www.komnasham.go.id/index.php/news/2021/3/18/1715/ratifikasi-opcat-upaya-strategis-pencegahan-penyiksaan.html>.

<sup>29</sup> Dian Ekawaty Ismail et al., "Collocation of Restorative Justice with Human Rights in Indonesia," *Legality : Jurnal Ilmiah Hukum* 32, no. 2 (September 20, 2024): 394–417, <https://doi.org/10.22219/ljih.v32i2.35374>.

principles, especially the Convention Against Torture (CAT). One of the most glaring weaknesses in the current KUHAP is the absence of explicit provisions prohibiting the use of evidence obtained through torture. This lack of norms opens up loopholes for law enforcement officers to continue using repressive methods to obtain confessions or information from suspects. This not only contradicts the principle of due process of law and the right to a fair trial, but also undermines the integrity of the criminal justice system as a whole. The Institute for Criminal Justice Reform (ICJR) and the Jakarta Legal Aid Institute (LBH) firmly propose the implementation of *the exclusionary rule*, a doctrine that states that any evidence obtained through torture must be excluded from the judicial process. The application of this principle will send a strong signal that the state does not tolerate torture in any form.<sup>30</sup>

In addition to the legal substance aspect, the revision of the Criminal Procedure Code must also include more modern and preventive procedural aspects. One of them is strengthening the monitoring mechanism during the investigation process which is often a vulnerable point for torture. The Criminal Procedure Code Bill should ideally require the installation of CCTV in all examination rooms, including interrogation rooms, with a recording management system regulated by an independent institution, not by the police institution itself. This is important to ensure transparency and objectivity in the legal process and provide maximum protection for the rights of suspects. This technology-based monitoring can also be an effective social control tool and a fair instrument of proof if there are allegations of violations by the authorities. Without comprehensive reform of the Criminal Procedure Code based on human rights principles, efforts to eliminate the practice of torture will only be rhetoric without direction, while victims of torture continue to fall in silence.

## 5. Conclusion

The phenomenon of torture by law enforcement officers in Indonesia reflects a serious crisis in the justice system that is not only incidental, but shows a pattern of systemic and structured violence. The dominance of cases by the National Police institution, weak regulations in the Criminal Code, low accountability, and a deep-rooted culture of impunity have created a climate of violence that is allowed to grow unchecked. Even children become victims, and the impact is not only physical, but also prolonged trauma that tears at human dignity. In the midst of this dark situation, the role of supervisory institutions and civil society is a ray of hope, but it is not enough without comprehensive legal reform starting from the revision of the Criminal Code, strengthening supervision, to the transformation of the paradigm of law enforcement officers. Without fundamental change and political courage, the practice of torture will continue to be an open wound in the body of a state of law that should guarantee justice and protection for all.

Although Indonesia has ratified the Convention Against Torture, the practice of torture by law enforcement officers is still systematic due to weak regulation and

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<sup>30</sup> Mutia Yuantisya, "Koalisi Masyarakat Sipil Tuntut 9 Materi Krusial dalam RUU KUHAP | tempo.co," Tempo, March 29, 2025, <https://www.tempo.co/hukum/koalisi-masyarakat-sipil-tuntut-9-materi-krusial-dalam-ruu-kuhap-1225794>.

effective supervision. The absence of specific provisions on the crime of torture in the Criminal Code and the non-ratification of the Optional Protocol (OPCAT) are major obstacles in enforcing accountability and preventing torture. This situation is exacerbated by a culture of impunity, weak internal supervision, and the failure to revise the Criminal Procedure Code to accommodate anti-torture principles. Therefore, concrete steps are needed in the form of reform of the Criminal Code and Criminal Procedure Code and ratification of the OPCAT to align national laws with international human rights standards and ensure comprehensive protection of citizens' rights from the practice of torture.

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