

Dealing with Punishment: Risks and Rewards in Indonesia's Illicit Drug Trade

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with assistance from Arie Rahadi, Lucrezia
Rizzelli and Amalia Puri Handayani

We wish to acknowledge the support of, and continued partnerships with, Community Legal Aid Institute, LBH Masyarakat, the University Centre of Excellence HIV/AIDS Research Centre-HPSI at Atma Jaya Catholic University of Indonesia, the Human Rights Resource Centre at the University of Indonesia, and the Death Penalty Research Unit at the University of Oxford.

Special thanks to Muhammad Afif and Albert Wirya, at LBH Masyarakat. This work would not be possible without their support and involvement. Thanks are also due to the team at Atma Jaya Catholic University, Evi Sukmaningrum, Ignatius Praptoraharjo and Arie Rahadi, who were instrumental in designing the instrument and ensuring the research was completed. We are also grateful to Amalia Puri Handayani, Josephine Tahasy Barakah and Bonike Islam Mustaqiem for conducting the fieldwork. Jeffrey Fagan, Claudia Stoicescu and Ricky Gunawan were also part of the team, and provided insightful advice throughout. Thank you to Miki Salman for his assistance in translating the research findings into Bahasa. Finally, we are very grateful to Carolyn Hoyle, who we commissioned to conduct the study, and Lucrezia Rizzelli, who assisted the author in all stages of design, analysis and writing of the report.

This report was made possible by funds awarded to The Death Penalty Project from the European Union, the United Kingdom Foreign, Commonwealth and Development Office, and the John Fell Fund from the University of Oxford. The contents of this publication are the sole responsibility of The Death Penalty Project and do not necessarily reflect the views of the European Union, the Foreign, Commonwealth and Development Office, or the John Fell Fund.

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Copies of this report may be obtained from:

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ISBN: 978-1-8384709-2-0



Author's acknowledgements

The Death Penalty Project, in partnership with Community Legal Aid Institute, LBH Masyarakat, commissioned the University of Oxford Death Penalty Research Unit, in association with University Centre of Excellence HIV/AIDS Research Centre-HPSI at Atma Jaya Catholic University of Indonesia (AJCU) to conduct this study as part of its programme of research on the death penalty in Indonesia. To date, this work has comprised two feasibility studies – one on deterrence and the death penalty, the other on opinion research – as well as two substantive reports on public attitudes to the death penalty and the views of opinion formers, conducted in partnership with the University of Indonesia.

We were commissioned to collect data from a prison in Jakarta by interviewing prisoners convicted of drug offences. For this study, the Oxford team worked closely with the researchers at AJCU, and we are very grateful to them for their efficient and professional approach to collecting sensitive data from prisoners under challenging conditions. The research team in Indonesia, led by Arie Rahadi and Amalia Puri Handayani, assisted in reviewing the protocol, co-writing the research methods, and preparing the research tool and the research protocol, and secured access to the prison through the government Ministry of Law and Human Rights. Together with the enumerators in the fieldwork (Josephine Tahasy Barakah and Bonike Islam Mustaqiem), they spent time in the prisons, securing access to prisoners and interviewing them. They then transcribed and translated the interview data, before sharing it with the Oxford team. At all times, they adhered to strict ethical protocols, managing the empirical research with skill and care. We are particularly grateful to Evi Sukmaningrum and Ignatius Praptoraharjo, not only for their support and management of the Indonesia part of the research, but also for their advice and guidance throughout the process.

Throughout, we drew on the expertise and support of the team at LBH Masyarakat – in particular, Muhammad Afif and Albert Wirya – and Claudia Stoicescu, an International Visiting Scholar at AJCU. In designing the interview schedule, we benefited from advice from Jeffrey Fagan, of Columbia University New York, an international expert on deterrence studies. We are particularly grateful to Claudia Stoicescu, Jeffrey Fagan, Ricky Gunawan and Albert Wirya for their helpful comments on an earlier draft.

Finally, we are indebted to Parvais Jabbar and Saul Lehrfreund, Co-Executive Directors of The Death Penalty Project, for inviting us to be involved with this important programme of research in Indonesia that will have implications for many other countries in Southeast Asia. Parvais Jabbar ran the project, with excellent support from Joey Greene, Heshani Jayaratne and Svetlana Karadimova, and was fully involved at all stages of the project. His dedication to excellence in research was integral to the success of this collaborative effort.

Carolyn Hoyle

Oxford, March 2022

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Foreword

As the war against the illicit drug trade continues in Southeast Asia, Indonesia, like many of its regional neighbours, has turned to increasingly punitive measures to deter drug-related crime. Successive governments have reaffirmed their commitment to this zero-tolerance approach and, over the past two decades, hundreds of people have been sentenced to death - 60% for drug offences. In that time, 44 people have been executed, 24 for drug trafficking, and thousands more have been given long custodial prison sentences for low-level drug-related activity. The government has justified these harsh measures based on assumptions that such punishments are successful in deterring drug crime – yet, until now, no empirical research questioning the efficacy of the death penalty or long custodial sentences in relation to drug-related crime has been conducted.

The Death Penalty Project and LBH Masyarakat have been keen to undertake research on the use of the death penalty for drug crimes – specifically, to build empirical evidence and knowledge around who is being convicted for drug offences and to uncover the factors that have influenced their behaviour. Together, we aim to explore what motivates individuals to commit such crimes and the extent to which the existence of harsh punishments factors into their decision-making, and to establish capital punishment's true effect in deterring involvement in the illicit drug trade – factors critical to accurately assessing the effectiveness of harsh punishments.

This report – which we commissioned the Death Penalty Research Unit at the University of Oxford and Atma Jaya Catholic University of Indonesia (AJCU) to undertake – is the first phase of our research. It consists of interviews with a non-random sample of 57 prisoners currently serving sentences for drug crime at Lembaga Pemasyarakatan Narkotika Kelas II, a prison in Jakarta.

As the authors of this report describe, harsh punishments are justified by the rationale that they are effective in dissuading people from committing criminal offences, especially drug offences, because their severity outweighs the potential benefit of the crime. Moreover, capital punishment deters more than all other sentences and, thereby, is a uniquely effective measure of crime control.

To date, scientific research on the deterrence effect of capital punishment has mainly, though not exclusively, originated from the US, where it is only applied in cases of aggravated homicide. In an exhaustive analysis in 2012, the US National Academy of Science concluded that there was no evidence that executions have a greater deterrent effect than a lifelong sentence of imprisonment. In Southeast Asia, one study comparing the murder rates of Singapore and Hong Kong – two similarly-sized states with common ethnic and cultural backgrounds – found that, despite Singapore's retention of the death penalty, both states had comparable homicide figures.

Through a collaborative process with our partners, we created a nuanced research tool to shed light on the decision-making processes of those involved in illegal drug-related activity, and to better understand their motivations and their understanding of the associated risks.

All prisoners who took part in this initial phase of the study had been convicted of drug offences within the past five years, the majority sentenced to between eight and 12 years in prison. Although too small a sample from which to draw broad assertions, the study has allowed us to test the new research tool and has revealed some of the pathways to drug offending, as well as experiences of the criminal justice system. Importantly, it has given us an indication of the sorts of findings we can

expect from phase two of our research, which will consist of interviews with a random sample of 200 individuals convicted of drug offences and sentenced to death or to life in prison.

One significant finding we may expect to see repeated in phase two is that, despite a theoretically strong mechanism of crime deterrence in Indonesia, those interviewed were not dissuaded from committing drug offences. The majority of participants were living in relative poverty; most had used drugs and had turned to the drug trade to help cover essential and basic costs for themselves and those dependent on them, as well as to facilitate their addiction. Nearly all were aware of the risks and concerned about being arrested – yet, despite this, they continued with their illegal activity. Although we cannot make conclusions beyond this group – who were sentenced to relatively short terms compared with many of those convicted of drug crimes in Indonesia on which our second phase will focus – the findings, viewed through the established lens of deterrence theory, suggest that the current system may be failing in its stated aims.

Commissioning and carrying out such sensitive research during a global pandemic presented multiple challenges. There were issues with gaining permission to access the prison and conducting face-to-face interviews while following necessary social distancing and safety measures. AJCU was able to navigate both of these problems, and the political sensitivities, to carry out the interviews under stringent ethical guidelines around consent, which ensured that participants understood the potential implications of taking part in the study. We are extremely grateful for all the cooperation we received, and to the Indonesian Ministry of Law and Human Rights for providing permission to access the prison to conduct this important research.

We hope now to progress with phase two of our research, to deliver further evidence that can critically examine the assumptions on the deterrent effect of harsh punishments, particularly the death penalty, for drug-related offences. The research may help to provide policymakers and other key stakeholders in Indonesia with important data that can inform penal policy, to ensure proportionate punishments and a social justice-based model that can help tackle root causes and offer therapeutic remedies for those vulnerable to drug use and other related criminal activity.

Parvais Jabbar & Muhammad Afif

Co-Executive Director of The Death Penalty Project and
Director of Lembaga Bantuan Hukum Masyarakat
March 2022

Key findings

This small study serves as the first stage of a much larger project, and was aimed at developing an interview tool and assessing the feasibility of a wider study, to be conducted with those convicted of drug offences and sentenced to death or life in prison across Indonesia.

We conducted face-to-face interviews with a non-random sample of **57 prisoners**, from one prison in Jakarta, who had been convicted of drug offences, more than 80% of whom had been arrested in the past five years. The majority had been sentenced to **between 8 and 12 years in prison**.

While we cannot generalise from this small study, if the findings were similar in the planned 'Stage Two' study, they would imply that the rationale of deterrence may be flawed.

More than half of our interviewees (57%) had not completed high school. When they were arrested, **just less than half (47%) were unemployed**, and most others were not in stable or well-paying jobs.

The majority were making most of their money from the illicit drug trade, not from lawful employment.

Most participants **used drugs before their arrest**, and, for some, drug use preceded drug couriering, selling, or trafficking offences by a few years.

*'I've been using them from the age of 13.
... How about selling? ...
[from] the age of 17.'*

They were **experienced in the illicit drug trade**:

- about a quarter had been involved in the illegal drug trade in some form or other for several years before arrest, with many in relatively minor roles – 'foot soldiers' rather than 'kingpins' in an illicit organisation;
- almost half had prior convictions; and
- almost a quarter had been convicted of the same offence at least once before.

Most thought it somewhat inevitable that they would be caught and sentenced to prison.

The majority were **recruited into drug crime by a friend**, and, for most, these were relatively established relationships characterised by trust. Indeed, trust emerged as a pertinent feature of recruitment.

*'It started from a friend who saw me unemployed. We used [drugs] together
and [he] asked if I wanted to join [in drug dealing].'*

Almost all were **financially motivated**:

- most needed money for the basics, for them and their dependents;
- a minority wanted 'luxuries', such as a car;
- a few were thrill seeking.

Most had committed offences **fully aware of the risks** of doing so, and the majority were worried about going to prison.

Most thought it *likely* they would be arrested, convicted and sentenced to prison.

Almost all (90%) claimed to have taken some precautions to reduce the risk of apprehension.

Participants had reasonable and rational financial reasons for committing drug offences. They could not adequately meet their own and their dependents' needs through the legal economy, but the benefits of committing these offences did not seem to be irresistible. They chose to commit drug offences for a better life for themselves and their families.

Though we must be careful in generalising from our findings, given that we did not have a random sample of prisoners, deterrence theory does not seem to be supported by the decisions of our interviewees to commit offences. **The mechanisms for deterrence to work were clearly in place, and yet our participants were not deterred.**

This report suggests that the current 'war on drugs' in Indonesia and the wider region of Southeast Asia, which relies on harsh punishments to deter potential drug offenders, could be misguided. It may do further harm to people who use drugs without persuading them not to become involved in the illicit drugs trade.

One of our participants worried that this report would not make a difference:

'What I want to ask is, will this [interview] ... have an impact here? Because I'm very loud about this, when they don't. It's like there's no action from the government; it's getting worse here. When will the drug war be finished? If this still carries on, it won't be over until my children have their own child.'

This small study cannot determine whether or not the deterrence mechanisms would be ineffective for those higher up the organisational structure of the illicit drug trade – the importers or 'wholesalers' whose monetary stakes in the trade are significant and for whom, therefore, the 'risk-reward' ratios would be different. In such cases, different deterrence mechanisms may be at work.

Our forthcoming projects – which will focus on the experiences of a much larger, representative sample of prisoners sentenced to death or to life in prisons across Indonesia, those who are likely to be key players in the drugs trade, and the experiences of those similarly exposed to the drugs trade, but who have not been caught and convicted of drug offending – should be able to show if deterrence has a greater impact in these cases. They will explore whether or not government policy and practice in relation to the illicit drug trade reduces the incidence and prevalence of drug offences.



PART ONE

The purpose of the study

1.1 The context

The political and human rights imperatives that encouraged abolition of the death penalty across Europe are not persuasive in Asia, where drug offences are proliferating. In Southeast Asia in particular, the focus is not on protecting individuals' rights from the excesses of penal power, but on protecting society from the harms associated with drug use. At present, 35 countries retain the death penalty for drug offences.¹ Seven of these are 'high application' countries; all are in Asia, and the six highest death sentencing rates for drug offences are in Southeast Asia.² Clearly, in that region, the death penalty is best understood within the context of the 'war on drugs'. Moreover, even when drug traffickers or dealers are not sentenced to death, they tend to be subject to the next most severe punishment: long sentences in prison.

Drug production and trafficking are rising each year, and drug markets are becoming more complex, with more than 35 million people suffering from drug-use disorders globally, disproportionately the socially and economically disadvantaged.³ The illicit production and trafficking of drugs in Southeast Asia is at record levels, with a market of more than US\$61bn and types and quantities of illegal drugs multiplying within and around the 'golden triangle', an area between Thailand, Laos and Myanmar historically prominent in opium production.⁴ While half a million people died globally in 2019 in connection to drug use, not all died ingesting drugs; some perished as a result of human rights violations associated with efforts to control drugs, including extrajudicial killings, mass incarceration, death sentences and executions.

Though some Southeast Asian countries, including Indonesia, have drug treatment programmes for users and minor drug offenders, they typically assert the need to impose the harshest of punishments for most drug offending, though there remains some variation in enforcement policies and legal thresholds on the amount and types of drugs sold and trafficked across the region. Hence, as the pace of abolition elsewhere increased from the end of the 1980s, many countries in Southeast Asia responded to international concern about the growth of trafficking in illicit drugs by introducing the death penalty for manufacturing, importation and 'possession for sale' of specific amounts – often arbitrarily determined – of particular drugs, or by making the death penalty mandatory for such offences where it was previously discretionary.

When the death penalty is not applicable, long prison sentences are common, even for relatively low-level drug offences.⁵ For example, Singapore inflicts a range of harsh penalties for drug selling and trafficking: the death penalty, imprisonment, and whipping.⁶ Thailand continues to sentence drug offenders to death, and though Malaysia is in the third year of a moratorium, it imposed 25 new death sentences for drugs in 2020, further increasing the population of more than 1,200 people on death row, 70% of whom are convicted for drug trafficking.⁷ Recently, President Rodrigo Duterte moved

¹ Harm Reduction International (2021) *The Death Penalty for Drug Offences: Global Overview 2020*.

² Ibid.

³ United Nations Office on Drugs and Crime (UNODC, 2021) *World Drug Report 2021*, www.unodc.org/unodc/en/data-and-analysis/wdr2021.html [accessed 22 February 2022]

⁴ Wojcik J, Southeast Asia has a Synthetic Drug Problem, China has Key Stake in Fixing It, *Oxford Political Review*, 15 August 2020.

⁵ This can include personal drug consumption, drug possession for personal use, and possession of equipment used in drug preparation and consumption. Some countries in the region criminalise the latter, even in settings where harm-reduction programmes distribute sterile injecting equipment to reduce the risk of disease.

⁶ Clift-Matthews A and Jabbar P, Singapore Should be Ashamed of Lashings, *The Times*, 3 September 2020.

⁷ Harm Reduction International (2021) *The Death Penalty for Drug Offences: Global Overview 2020*.

to reintroduce the death penalty for drug offences⁸ and Sri Lanka has threatened to break its 45-year moratorium on executions for some drug offenders currently on death row.⁹

Across the region, the war on drugs has created an environment of penal populism that is likely to have the greatest impact on the most vulnerable and disadvantaged people.¹⁰ In all of these countries, harsh punishments are justified primarily by the deterrence rationale; governments and many of their citizens believe that potential offenders will be deterred from committing drug offences, and thereby justify extreme punishments by reference to purported reductions in the harms caused by drug trafficking.

1.2 The rationale for deterrence research: an Indonesian case study

Many states in Southeast Asia consider it inevitable that the risk of death or other extremely harsh penalties must deter potential criminals, just as some US economists believe it is a violation of the law of demand that the risk of execution does not deter at least some murderers there.¹¹ In Indonesia, the death penalty is justified as a necessary weapon in the government's arsenal for eradicating drug crimes.¹² Indonesia's zero-tolerance approach to drugs¹³ – in evidence since the enactment, in 1997, of harsh contemporary drug laws, further amended in 2009¹⁴ – has been visible in the steady pace of death sentences. The majority of the 553 people who have been sentenced to death over the past 20 years were convicted of drug trafficking, including 101 in 2020¹⁵; this resulted in 24 executions, with the government justifying the 18 executions for drug offences in 2015 and 2016 in terms of a 'state of emergency'.¹⁶ Increased efforts devoted to the zero-tolerance approach are clearly visible in Figure 1, showing the trends in death sentences and executions over time for all crimes in Indonesia. Meanwhile, many thousands of people are serving long terms in prison for a range of drug use-related offences, including those who, in some countries, would be treated through therapeutic interventions.

⁸ An Act Strengthening Drug Prevention and Control, Amending for the Purposes Republic Act No. 9165, As Amended, Otherwise Known as the 'Comprehensive Dangerous Drugs Act of 2002' 2021 (the Philippines), House Bill No 7814.

⁹ Human Rights Watch, *Sri Lanka: Resuming Death Penalty a Major Setback*, 30 June 2019, www.hrw.org/news/2019/06/30/sri-lanka-resuming-death-penalty-major-setback – accessed 22 February 2022.

¹⁰ Kenny P D, Populism and the War on Drugs in Southeast Asia, *The Brown Journal of World Affairs*, XXV(II) Spring/Summer 2019, pp121-136.

¹¹ Rubin P, Don't Scrap the Death Penalty, *Criminology and Public Policy*, 8(4) 2009, pp853-9.

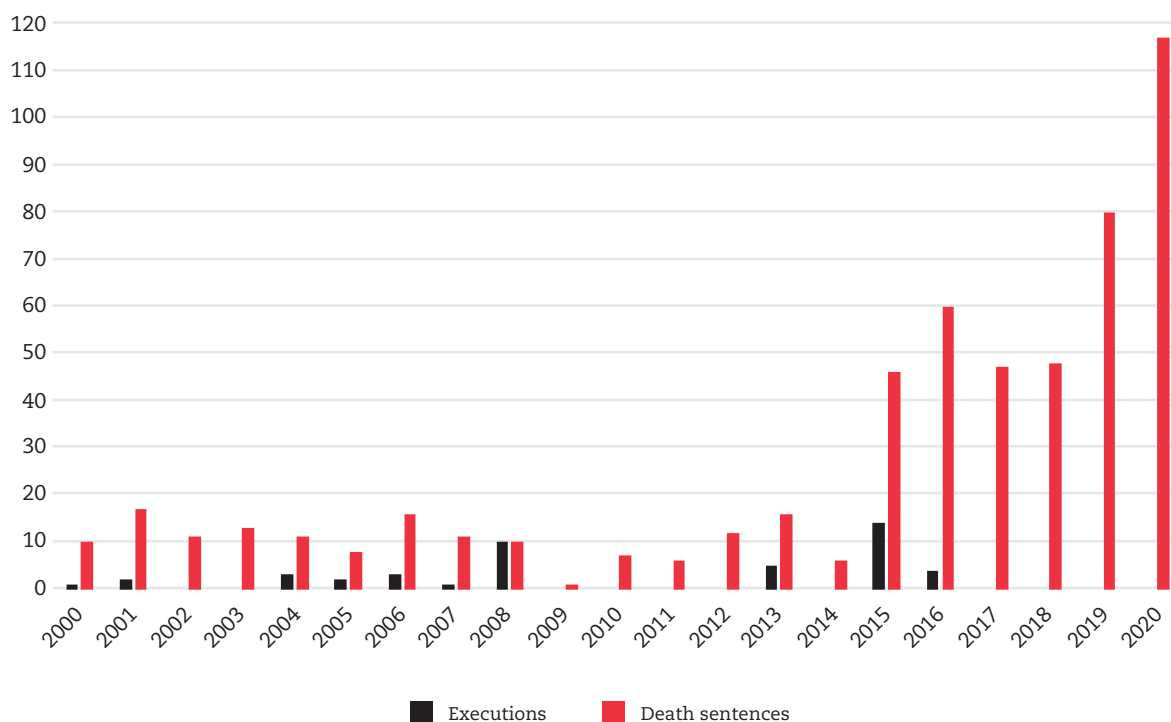
¹² Edwards G, Babor T, Darke S, Hall W, Marsden J, Miller P and West R, Drug Trafficking: Time to Abolish the Death Penalty, *International Journal of Mental Health and Addiction*, 8(4) 2010, pp616-619; Hood R and Hoyle C, *The Death Penalty: A Worldwide Perspective* (Oxford University Press 2015).

¹³ Gunawan R and Pamintori R T, Populism Versus Justice, *Inside Indonesia*, 137 2019.

¹⁴ Stoicescu C and Palmer W, Drugs and Drug Policy, *Inside Indonesia*, 137 2019.

¹⁵ Amnesty International, *Amnesty International Global Report: Death Sentences and Executions 2020* (Amnesty International Publications 2020).

¹⁶ Maulana A, *Indonesia: Indonesian Death Row and Problems of Unfair Trial* (Asian Human Rights Commission 2018) at www.humanrights.asia/news/ahrc-news/AHRC-PAP-002-2018 – accessed 22 February 2022.

Figure 1: Death sentences and executions in Indonesia (2000-2020)

Political rhetoric relies on official statistics reporting high rates of drug-related deaths and claims that drug use has devastating consequences for the health of the nation,¹⁷ though the statistics are based on questionable methods and measures.¹⁸ Although harsh penalties appear to have had no impact on trafficking,¹⁹ perhaps suggesting flaws in the deterrence rationale, public funding is directed towards drug control and punishment, rather than public health-oriented programmes. The Indonesian government has set aside around US\$25m per year to address the public health needs of people who use drugs, but it is spending more than five times as much on drug-control measures that punish drug use.²⁰ Regardless, proponents of harsh penal practices claim, without rigorous evidence, that Indonesian society is committed to the death penalty and that it must be retained for its deterrent effect.²¹

With the exception of a study on deterrence and homicide in Asia,²² almost all deterrence research on capital punishment has been conducted and modelled in the global north, focusing on homicides – as the only crime punishable by death in that region – with no known deterrence studies on drugs and the death penalty.²³ American research is inconclusive as to the deterrent effect of capital punishment; a review of five decades of research concluded that the belief in deterrence is unfounded and unreliable, with policy-makers advising against determining sanctions on the promise of deterrence.²⁴ Moreover,

¹⁷ Hoyle C, *Appetite for Abolition: Opinion Formers' Views on the Death Penalty in Indonesia* (The Death Penalty Project 2021).

¹⁸ Maulana A, *Indonesia: Indonesian Death Row and Problems of Unfair Trial* (Asian Human Rights Commission 2018) at www.humanrights.asia/news/ahrc-news/AHRC-PAP-002-2018 [accessed 22 February 2022]; Stoicescu C., Indonesia Uses Faulty Stats on 'Drug Crisis' to Justify Death Penalty, *The Conversation*, 5 February 2015.

¹⁹ Winarso I, Irawati I, and Handoyo P, *Country Report on Drugs, Indonesia: 1976-2016*, 2019; Rowe E, From Drug Control to Harm Reduction, *Inside Indonesia*, 137 2019.

²⁰ Rowe E, From Drug Control to Harm Reduction, *Inside Indonesia*, 2019, 137.

²¹ McRae D, *A Key Domino?: Indonesia's Death Penalty Politics* (Lowy Institute for International Politics 2012).

²² Zimring F E, Fagan, Jeffrey and Johnson, David T, Executions, Deterrence, and Homicide: A Tale of Two Cities, *Journal of Empirical Legal Studies* 7 2010, pp1-29.

²³ Fagan J, Deterrence and the Death Penalty in International Perspective, in United Nations Human Rights (ed.) *Moving Away from the Death Penalty: Arguments, Trends and Perspectives* (United Nations 2015).

²⁴ Nagin D and Pepper J V, (eds.), *Deterrence and the Death Penalty* (The National Academic Press 2012); Blumstein A, Cohen J and Nagin D, *Deterrence and Incapacitation: Estimating the Effect of Criminal Sanctions on Crime Rates* (National Academy of Sciences 1978).

analysis of hundreds of deterrence studies in the US and Europe shows that, while deterrent effects can be found in relation to *minor crimes*, there were no such effects on murder for any punishment, including execution.²⁵

No prior studies have sought to explicate the impact of the threat of harsh punishments on drug offending, and there is clearly a need for research on drugs and deterrence in Asia, particularly Southeast Asia. This study on deterrence and drugs in Indonesia takes an innovative approach, adapted to the local context and conditions, to test the assumption that harsh punishments deter drug offenders. Although it focuses on Indonesia, our findings are relevant to wider Southeast Asia.

Previous deterrence research was framed by rational choice and econometric perspectives, and based on quantitative methodologies comparing homicides and execution rates, or estimating possible lives saved after every execution.²⁶ Though this approach has methodological shortcomings,²⁷ our exploratory research with the University of Atma Jaya considered continuing in this quantitative tradition.²⁸ However, while we sought to overcome the limitations of previous research by computing a wide range of variables beyond executions and crime rates, we lacked a counterfactual.²⁹ Furthermore, executions are too infrequent in Indonesia to be able to draw statistical significance from such data.³⁰

To achieve an in-depth understanding of the contextual, situational and interactional factors and decision-making processes that lead people to commit drug crimes, we abandoned the general deterrence theory framework based on rational choice for a more perceptual conceptualisation of deterrence theory.³¹ Deterrence theories based on perceptions were born out of the realisation that ‘what people think or perceive the risk or level of official punishment to be might not be the same as the objective or actual risk of punishment, but the perception they have is what influences what they do’.³²

Keen to explore the role that the subjective perception of risk plays in people’s decision-making processes and their motivations to commit drug crimes, our aim was to examine pathways to, motivations behind, and decision-making processes preceding engagement in drug-related criminal activities, including the risk and reward calculation. Perceptual deterrence theory allows for consideration of more than just monetary rewards when thinking about how potential offenders might balance risks and rewards. There may be emotionally salient rewards (such as thrills) and costs, too, not least the risk of damaging significant relationships.³³

²⁵ Dolling D, Entorf H, Dieter H, and Rupp T, Is Deterrence Effective? Results of a Meta-Analysis of Punishment, *European Journal of Crime Policy Research* 15 2009, pp201-224.

²⁶ For a review of the literature, see Hood R and Hoyle C, *The Death Penalty: A Worldwide Perspective* (Oxford University Press 2015) ch.9.

²⁷ For example, data aggregations, restrictive assumptions, and low execution rates.

²⁸ This would have involved a comprehensive, multi-factored time-series study of capital punishment and drug crime trends in Indonesia, through structural equation modelling with latent variables. See Fagan J, *The Feasibility of Systematic Research on the Deterrent Effects of the Death Penalty in Indonesia* (The Death Penalty Project 2019).

²⁹ See Nagin Daniel S, and Sampson Robert J, The Real Gold Standard: Measuring Counterfactual Worlds that Matter Most to Social Science and Policy, *Annual Review of Criminology* 2 2019, pp123-145; Morgan Stephen L, and Winship Christopher, *Counterfactuals and Causal Inference* (Cambridge University Press 2015).

³⁰ Manski C F and Pepper J V, Deterrence and the Death Penalty: Partial Identification Analysis Using Repeated Cross-sections, *Journal of Quantitative Criminology* 29(1) 2013, pp123-141.

³¹ Williams Kirk R, and Hawkins Richard, Perceptual Research on General Deterrence: A Critical Review, *Law & Society Review* 20 1986, p545; Fagan Jeffrey and Meares Tracey L, Punishment, Deterrence and Social Control: The Paradox of Punishment in Minority Communities, *Ohio State Journal of Criminal Law* 6 2008, p173; Waldo G P, and Chiricos T G, Perceived Penal Sanction and Self-reported Criminality: A Neglected Approach to Deterrence Research. *Social Problem*, 19(4) 1972, pp522-540; Geerken M R, and Gove W R, Deterrence: Some Theoretical Considerations. *Law & Society Review* 9(3) 1975, pp497-514.

³² Paternoster R, and Bachman R, Perceptual Deterrence Theory, in Cullen F T, and Wilcox P, (eds.), *The Oxford Handbook of Criminological Theory* (Oxford University Press 2012) p3.

³³ Ibid.

1.3 Research design and methods

Our goal is to conduct an ambitious quantitative study of approximately 200 prisoners (both those sentenced to death and to life in prison) across Indonesia, and another approximately 100, similarly situated people within the drug-using community who have not been to – or are not currently in – prison (see Figure 2 and s.1.3.1, below) to test whether, or to what extent, people can be deterred from drug offending. To develop a rigorous research tool for that survey, and to test the feasibility of conducting such research, we carried out this ‘Stage One’ study in one prison in Jakarta (see s.1.3.4, and Figure 2, below).

1.3.1 Study design

We aimed to conduct in-person, semi-structured interviews with prisoners convicted of drug crimes in a prison in Jakarta. The interview tool was designed to explore what motivates people to commit drug offences, how much the risk of being caught and being punished factored into their decision-making, and to what extent the amount or type of punishment was a feature of their choices. We also sought to explore the weight of other ‘push’ and ‘pull’ factors, seeking information on their perceptions of the risks and costs of potential sanctions, as well as their perceptions of the benefits of engagement in drug offending, primarily financial, but also in terms of psychological benefits, such as excitement or social benefits – for example, their standing in the drug community.

Along with questions relating to perceptual deterrence theory, the interviews aimed to gather information on prisoners’ backgrounds (socio-economic, familial, employment, educational, etc., but also biographical, including gender, nationality and citizenship) to assess the extent of their precarity, vulnerability and disadvantage. Gathering prisoners’ accounts of their crimes, their reasons for involvement and their experiences of criminal justice allows us to explore relative disadvantage among those subject to penal power.

1.3.2 Ethical approaches to participant recruitment

Having received ethical approval for our research,³⁴ we secured permission from the Directorate General of Correctional Facility, Ministry of Law and Human Rights, to interview prisoners convicted for drug offences within a prison in Jakarta. Prisoners fall within the category of vulnerable or ‘at risk’ participants because of the limits on their ability to make a free choice about their participation because of the somewhat coercive conditions they are in. To ensure the prisoners were willing to participate in the study, they were given a participant information form and consent sheet in Indonesian by a prison officer allocated to the task. They were given sufficient time to read this before being invited, by the prison officer, to meet a researcher from the HIV/AIDS Research Centre, Atma Jaya Catholic University, in an interview room, to ask further questions and make an informed choice about whether or not to participate in the study.

Those who indicated an interest in participating in the study were met by a researcher who gave them further information about the study verbally, read to them the participant information form if they did not indicate that they had already read and understood it, and asked if they wished to participate.

³⁴ Ethical protocols for the study were approved by the University Research Ethics Committees of the University of Oxford (ref. no. R74247/RE001) and Atma Jaya Catholic University.

The information sheet, consent form and interview questions were in simple language, accessible to reading ages 7-10, and oral consent was available for illiterate participants.

Once the prisoner had indicated agreement to be interviewed, by signing the consent form, the interviewer administered the Brief Jail Mental Health Screening tool, to screen for severe mental illness. Sixty-four prisoners expressed interest in participating in the study. However, seven were deemed to be ineligible; one changed his mind about participating and six were shown by the Mental Health Screening tool to be suffering from mental health or cognitive problems.

Prisoners were reminded before the beginning of the interview that they were under no obligation to participate and that they could interrupt the session at any time, as well as withdraw their data, with no consequence to them or their status. Once informed consent was provided and there was no evidence of severe mental health problems, the interview was conducted by a researcher.

One of the risks in conducting research with prison populations is the possibility that participants will make incriminating statements during the interview. To mitigate such risk, participants were informed before each interview about the limits of anonymity and confidentiality. The questions in the interview were not aimed at eliciting incriminating information, however. They focused on the person's state of mind and motivations prior to offending, rather than the criminal behaviour itself. While there was a prison officer in the interview room during interviews, he was not sufficiently close to hear the conversation between the interviewer and the prisoner.

All interviews were digitally recorded with the prisoner's consent; in the two cases where permission for a recording was not forthcoming, detailed hand-written notes were taken (the data from these interviews is incomplete). The recording started after the participant stated their name. All identifying information was deleted from the file to ensure anonymity and confidentiality. Although this research took place while some Covid-19 restrictions remained in place, our experienced researchers at the HIV/AIDS Research Centre, Atma Jaya Catholic University, were able to complete all interviews face to face. To reduce the risk of transmission of the virus, they adopted a range of measures, including face masks, sanitisers and physical distancing between interviewers and prisoners or prison staff.

1.3.3 Participants and limitations of the study

We conducted qualitative, semi-structured interviews with 57 prisoners who were convicted of a range of drug-related crimes. Our sample of drug offenders was generated with help from the prison officers. While this made the research possible, it limited the researchers' ability to directly identify and select sampled cases from the target group. Officers had been informed that we wanted to interview a sample of prisoners convicted and sentenced for *serious* drug offences, primarily trafficking, including those sentenced to life in prison and to death. In the event, they primarily secured interviews with somewhat less serious offenders, none of whom were sentenced to death. We therefore excluded from our study instrument a small number of questions relating to the potential threat of a death sentence or execution as these were not applicable to our interviewees, focusing instead on questions about prisoners' choices in committing offences, and about their weighing relative potential costs and benefits of offending.

While we refer in this report to those involved in the drug trade as 'drug offenders', in most cases, these are relatively minor drug sellers. We do not have reliable data on where our participants were situated in the hierarchy of drug selling. Most seemed to be fairly low down in the supply chain. This could have implications for testing the impact of policies and laws aimed at deterring drug offending, as these may be aimed at those who are likely to benefit, at least financially, much more than those we interviewed and for whom the risks of capital punishment are likely to be much higher. That said, there is no reason to believe that the ambition in Indonesia is to deter only the kingpins; indeed, it would seem that the government hopes to deter local drug sellers and couriers, too. Hence, our data from this small study may be of interest to those responsible for penal policy and practice.

Finally, it is important to remind the reader that our sample is not representative of the total population of prisoners serving sentences for drug offences in Jakarta or across Indonesia. Our sample is neither random nor sufficiently large to generalise from. It is a small study that might well indicate what we are likely to find in a large, random and representative population of drug-convicted prisoners across Indonesia, but it may be different on two key issues. First, we have not interviewed prisoners in a woman's prison. Furthermore, while we were prepared to interview foreign nationals – with our research materials translated into other languages that the research team was able to converse in – the prison provided us only with Indonesian nationals to interview. Hence, our Stage Two study may find some differences in motivations to commit crimes and in perceptions of risk among foreign nationals, women and others facing the threat of execution.

1.3.4 Preparation for a comprehensive Stage Two study

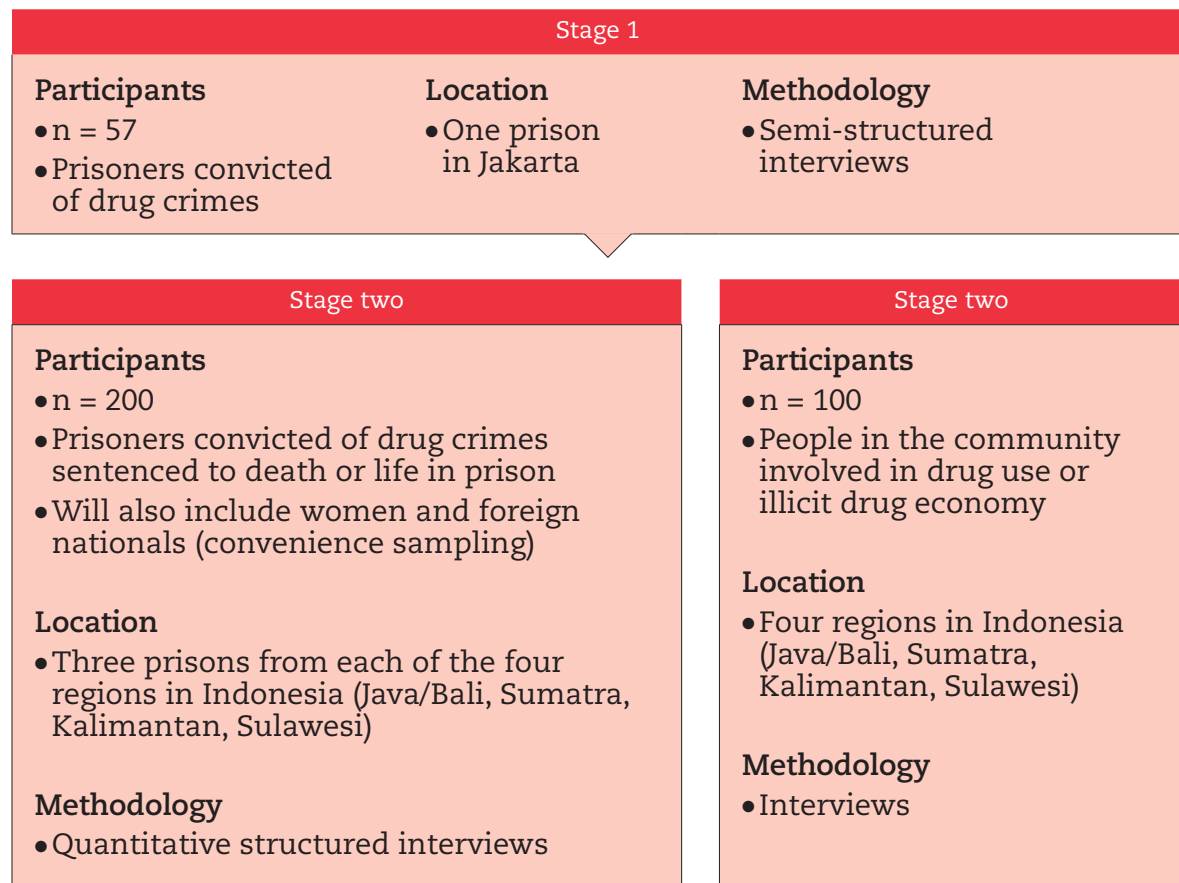
In addition to collecting data to explore prisoners' pathways to drug offending and the extent to which possible punishments influenced their choices about offending, analysis of the data collected in this Stage One study will assist our preparation for a comprehensive Stage Two drugs and deterrence study.

Analysis of the narrative (pathways) accounts in this project will inform the development of a quantitative survey to be administered to a larger representative sample of prisoners sentenced to death or to life in prison from different regions of the country. Furthermore, this study has demonstrated the feasibility of conducting this research in Indonesia in partnership with the HIV/AIDS Research Centre, Atma Jaya Catholic University, the leading academic institution in the country for research on drugs and punishment. The wider survey of prisoners will be administered in three prisons from each of four regions in Indonesia with the highest population of drug offenders (Java/Bali, Sumatra, Kalimantan, Sulawesi). Up to 20 respondents will be selected randomly from each, producing an overall sample of approximately 200 prisoners. We will use 'convenience sampling' to ensure sufficient numbers of women and foreign national prisoners are included.

While interviews with prisoners expose the factors that shaped their decisions to commit drug crimes, they do not reveal the thought processes and decisions of those who resisted involvement, notwithstanding similar socio-economic conditions or situational pressures. For this, we need to interview those beyond the prison gate. So, in Stage Two of the research, we will aim to gather network contacts of our prison interviewees, including individuals in the community involved in illegal drug use or the illicit drugs economy. We will conduct face-to-face interviews with about 100 people across Indonesia (25 in each of our target regions) who present a similar demographic to the prisoners, similarly situated within a community of people who use drugs, but who did not commit

offences of sufficient seriousness to be sentenced to prison or to death. These interviews will reveal the factors that inform decision-making and, in particular, whether the threat of a death sentence deters some potential drug traffickers. They may also tell us if some drug offenders avoid detection by exposing other, more precariously situated or more vulnerable people, including non-citizens, to higher risk. In other words, they may reveal the ‘disposable’ people within the drug networks (see Figure 2).

Figure 2: A programme of research





PART TWO
The findings

2.1 Demographics of sample of prisoners

Interviews were carried out with 57 Indonesian prisoners in a men's prison in Jakarta. One interviewee identified as female, and three preferred not to identify their gender.³⁵ As Table 1 shows, there was an equal proportion of married and separated/divorced people in the sample, but the largest proportion of interviewees were single.

Table 1: Participant demographics and information on offences

		No	%	n
Relationship status	Single	22	40%	55
	Married	15	27%	
	Separated/divorced	15	27%	
	Widowed	3	6%	
Educational level	Elementary	8	14%	56
	Vocational school	16	28%	
	Junior high school	8	14%	
	High school	21	37%	
	Post-secondary education	2	4%	
	University	1	2%	
Current age	20-30	14	26%	53
	31-40	18	34%	
	41-50	20	38%	
	51-60	0	0%	
	61+	1	2%	
Age at first drug crime	10-19	24	46%	52
	20-29	16	31%	
	30-39	9	17%	
	40-49	3	6%	
	50+	0	0%	
Crimes	Claims innocence	3	5%	57
	Possession	9	16%	
	Storage	4	7%	
	Delivering	18	32%	
	Selling	11	19%	
	Dealing	14	25%	
Sentence	5-7 years	12	22%	54
	8-10 years	28	52%	
	11+ years	14	26%	

Fourteen of our interviewees were under the age of 30, but the largest group (38%) was aged 41-50, followed by 34% of prisoners aged 31-40. There was only one person in the sample who was over 50 (see Table 1).

³⁵ As explained in s.1.3 above, we conducted interviews with 57 prisoners, but two refused to have their interviews digitally recorded. While detailed notes were taken, some data from these two interviews are missing, and in some of the other interviews a few of the questions were not answered, or were not relevant for that interviewee. Hence, some responses do not add up to 57.

Most of the prisoners had completed high school or had received vocational training, but only three had completed post-secondary education, including one person who had attended university. As Table 1 illustrates, 14% of the prisoners had only completed elementary school.

Given that the majority were not particularly well educated, we asked interviewees about employment at the time of arrest. Just more than half (55%) were employed, 43% (12) of whom were in a permanent job or on a long-term contract, with the others in temporary employment. The most common type of job among our interviewees was a driver (mainly motorcycle drivers), and some among the unemployed reported having previously been drivers. Others reported that they were shop owners (4), office workers (7), in hospitality (3) or in other customer service industries (2), with some employed in a range of manual or security jobs (11).

Several of those who had been unemployed at the time of arrest said they had become involved with the illegal drug trade because they were *'between jobs'*: *'I became involved with drugs because I was fired from my previous job'*. At arrest, some had only recently been released from prison and were finding it difficult to secure employment, with the financial strain pushing them towards the drug trade, given the ease by which they could find *'employment'* there: *'I had just been released [from prison] so my activities were limited'* – a theme we explore in depth below (see s.2.4.2).

2.2 Prisoners' offences and punishments

One in six interviewees was imprisoned for possession of drugs; the others were convicted of drug couriers (18), dealing/selling (25), and storing drugs (4) (Table 1). Almost all (91%) of the interviewees had been charged with Article 114 of Law 35 of 2009³⁶, 66% were charged with Article 112³⁷ (which does not require *mens rea* [intention] if someone has drugs in their possession), but only 8% were charged with Article 132, which requires the prosecution to demonstrate that there are other people involved in the criminal activity. This was somewhat surprising given that many interviewees mentioned several people they worked with in the illicit drug trade. Indeed, many of their responses made reference to people higher up in the drug network who had authority over the prisoner. A third of the participants estimated their network to consist of three or fewer people, but two-thirds said their network was more than four, and three of those thought it was more than 10 people. The majority (38) of participants' offences related to amphetamine-type stimulants, such as methamphetamines, with four arrests relating to ecstasy and one to heroin. Eleven involved cannabis only.

Three of the prisoners we interviewed claimed to be innocent of all charges against them, though a further two said they had only *'partly'* known their activities were against the law. For example, one explained that he had not realised that by having such a high quantity of drugs in packages he could be charged with selling. All but four participants knew what kind of drugs they had in their possession. Overall, our data suggest that most of the prisoners we interviewed were fully culpable for the offences for which they had been convicted.

³⁶ Article 114: Any person which is not entitled or against the law offers to be sold, sell, purchase, receive, being intermediary within transaction, exchange or deliver Narcotics Group 1.

³⁷ Article 112: Any person which is not entitled or against the law to plant, maintain, own keep, control or provide Narcotics Group 1 (not in the form of a plant).

Some had been caught because others in the drug network had already come to the attention of the police:

I stored, I picked up, and delivered. I would deliver them to whomever my boss directed me to [...]. One day I delivered to a customer who was already monitored by the police.'

'A friend buys, so I service. Met up, at a park. Apparently it was a police officer.'

'One of my friends was caught first. The person was then interrogated by the police.'

The prisoners in our sample had been sentenced to prison for anywhere between five and 15 years for drug offences; as Table 1 shows, most had been sentenced to between eight and 12 years, with an average sentence among our interviewees of nine years.

In Indonesia, 'subsidiary fines' are almost always imposed, in addition to prison sentences, for drug offences.³⁸ If a convicted person cannot pay the fine, a further, relatively short, period of time is added to their prison sentence. Almost all interviewees had received a subsidiary fine in addition to their sentence. For the majority, this was one billion Indonesian rupiah (IDR), more than £51,000 (€60,600). This is a staggering amount, beyond the reach of most people, let alone those who were dealing in drugs to support their families. A fifth of the prisoners we interviewed had fines between IDR800m (£41,000, €48,700, which is the minimum fine for Article 112, relating to possession) and IDR1bn. Clearly, payment of such fines is highly improbable and none of the interviewees had been able to pay. In consequence, they had to serve additional time in prison. For the vast majority, this was up to six months (18 for 1-3 months, 21 for 4-6 months), but for three others it was longer.

The rationale for these additional fines is unclear, though clearly speaks to the 'war on drugs' and may have been designed to financially hurt drug 'kingpins'. In almost all criminal cases where subsidiary fines are permitted, judges will include that in the verdict. This would seem to be a customary practice continued even though judges must be aware that most defendants will not have the means to pay. An article based on information from one High Court in Indonesia shows that none of the offenders convicted of drug-related crimes paid their fines. The author therefore claims that any possible deterrent effect of the legislation fails.³⁹ Indeed, it is unimaginable that anyone would pay such a figure in exchange for just a few months of prison relief and, therefore, we must assume that the fines serve the symbolic function of further punishing drug offenders.

2.3. Finances, responsibilities and family life

While just more than half of the interviewees were in employment at the time of arrest, and the majority reported that their financial situation was 'good' (22) or 'more than good' (8), further inquiry about their earnings suggests that most were not making a decent wage from their lawful employment.

As Figure 3 (opposite) shows, none of the 14 interviewees who did not have enough money, the

³⁸ According to Law 35 of 2009, every conviction has a fine associated with it, with the exception of Article 127, which refers to drug users only, and has a lighter sentence, usually including rehabilitation. However, the fines were already a feature of the 1997 legislation.

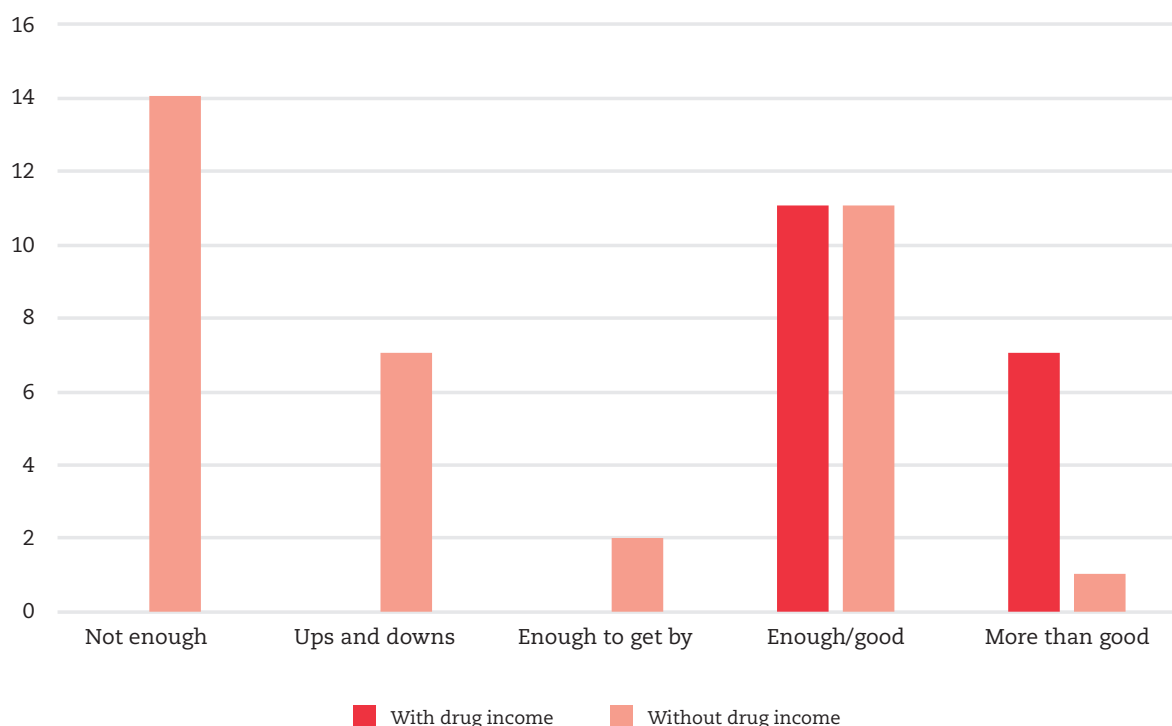
³⁹ Hushendar Mas *Efektivitas Pidana Denda Dalam Perkara Narkotika*, badilum.mahkamahagung.go.id/index.php?option=com_attachments&task=download&id=679 – accessed 20 February 2022.

seven who sometimes, but not always, had enough (what was described by some participants as ‘ups and downs’), or the two who had just enough to get by had a legal income sufficient to support their everyday needs and live a fulfilling life (participants’ financial situation without drug income is shown by the pale-red bars in Figure 3). In other words, without drug income, almost half the interviewees did not have enough money.

Among the 22 participants who were in a good or ‘more than good’ financial position, half were in that financial situation because of earnings from the illicit drug trade, and all but one of those who had *more* than enough money considered themselves to be financially secure because of the drug trade (illustrated in Figure 3 by a dark-red bar).

Just more than a quarter of prisoners had ‘just enough’, ‘enough’, or ‘more than enough’ without earnings from the illicit drug trade. Put another way, three-quarters did not have enough money to get by without the income they received from the drug trade, though some said they had a satisfactory financial situation before their involvement. As one explained: *‘I failed. Everything crumbled down. I was doing great at the hotel. The job was great. How stupid was I? I ended up being involved in drugs again. I wonder why people are never satisfied with anything?’*

Figure 3: Financial situation with or without drug earnings



Based on both illegal and legal earnings across those in the sample who provided relevant information⁴⁰, the mean average legal income per month at the time of arrest⁴¹ was IDR5.30m (approximately £325). While this is not a high income by any standards, it is more than the average for Indonesia,⁴²

⁴⁰ We did not ask interviewees about their illegal income and so do not have data for the full sample. However, in answering a question about income at the time of the offence, 29 of our participants provided further information about illicit earnings.

⁴¹ This is an adjusted mean income, after removing two ‘outliers’ (with the two outliers, the average is IDR6.81m – approximately £349).

⁴² According to the National Statistics Agency, the average monthly salary in Indonesia is IDR2,736,463 (approximately £140) www.bps.go.id/indicator/19/1521/1/rata-rata-upah-gaji.html – accessed 20 February 2022.

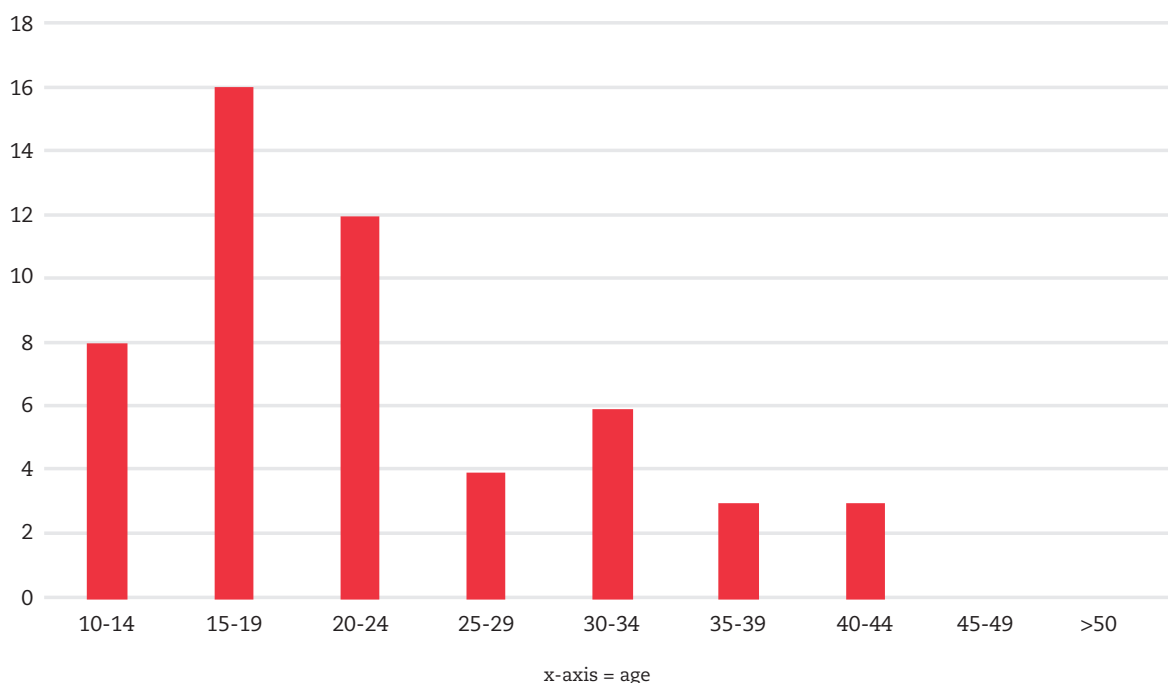
indeed, it is more than double. This suggests that our sample of prisoners were not among those in the direst financial need. What is much more interesting is the mean average for illegal income. This was IDR39.34m a month (approximately £2,030), which is considerably higher. It is clear that some of our participants were significantly enhancing their incomes, though they were relatively minor players in the illicit drugs trade.

People tend to want more than the basics, even to have some luxuries, so we were keen to explore what our interviewees could afford with or without access to illicit earnings. While only eight of the prisoners had been in debt when arrested, nine people reported not being able to afford basic necessities, two said they were only able to afford them some of the time, and a further nine could only take care of their basic needs because of their illicit earnings.

Half said they could not afford luxuries and some⁴³ of those who could made it clear that this was only possible through drug money. Furthermore, several interviewees said they needed a higher income from drug offences to support their own drug use, which would not have been sustainable on their earnings from legal work.

Perhaps not surprisingly, the vast majority (44 interviewees) said they used drugs before their arrest, with 10 having been in compulsory rehabilitation at some point. Drug use was the most common introduction to the world of narcotics, and may, for some, have been a pathway to selling or delivering drugs, especially where people were in poor financial situations and needed to fund their own use. Most of the interviewees (36) first became involved in drug crimes before the age of 25, with 8 of them starting before they were 14, as Figure 4 shows.

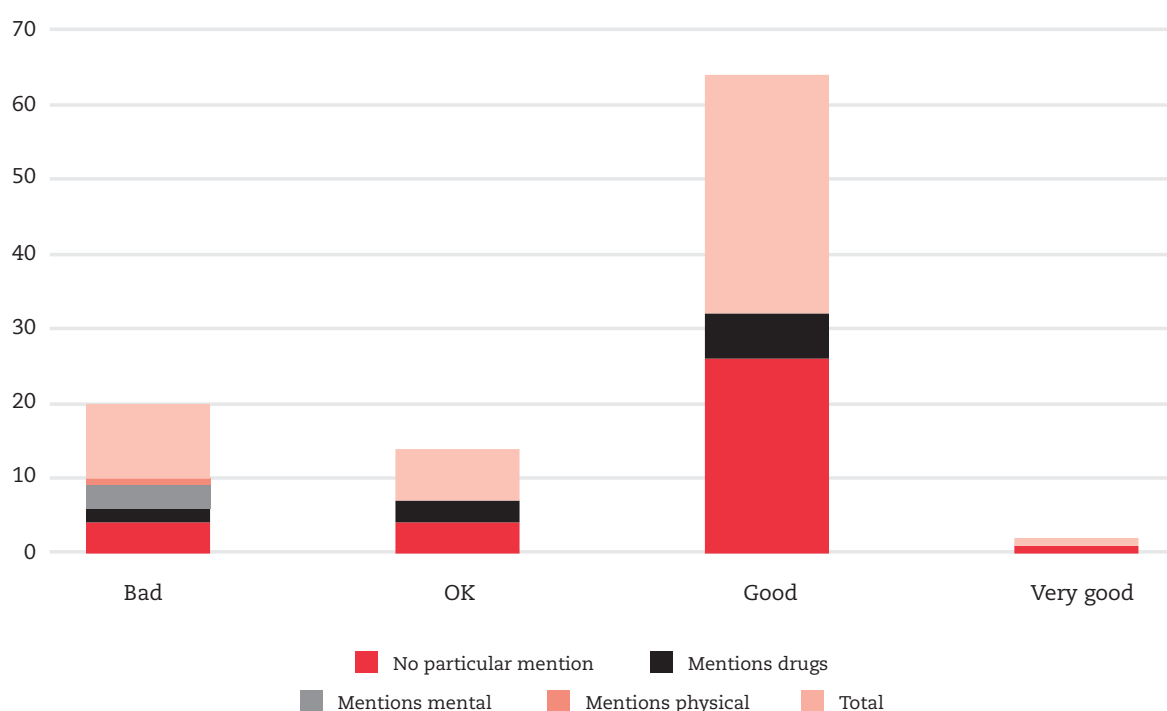
Figure 4: Age at first drug crime (years)



⁴³ The data on this question were missing in many cases. Answers to other questions suggest that a significant number, probably a majority of those who could afford luxuries, could only do so on account of drug earnings.

Given that regular drug use can impact on physical and mental health, we asked participants how their health was. Just less than a fifth said their health was bad, with three of those mentioning poor mental health and two of these associating their poor health with drug use. A few referred to their positive HIV status, with two respondents claiming they only found out about their status while at the police station or in prison, and one person reporting having been healthy before being arrested, but now having HIV and TB. As Figure 5 shows, however, the majority enjoyed good health, suggesting that, as yet, their drug use was not thought to be debilitating.

Figure 5: Health of participants



Families are a source of support and guidance and can have a positive impact on people's mental health, but they can also be a source of stress, specifically when financially dependent. We asked interviewees to describe their family life to establish whether family may be a protective factor or a possible criminogenic risk factor, a reason for seeking illicit earnings. While eight participants lived alone, and one with a friend, most lived with a partner (12), a partner and other family members (14), or with parents and/or siblings (19). Importantly, the majority (43) had dependents. While, on average, they had 1.41 child dependents, they had on average 3.02 dependents overall (including siblings and parents), with eight having only one dependent, but 10 having five or more. More than two-thirds (68%) of those who lived with other people were financially responsible for them, and a further few were financially responsible for at least some of those people.

Not surprisingly, some interviewees made reference to their financial difficulties: *'We lived from hand to mouth... I had financial issues'; 'I was part of the less fortunate'*. A few were explicit that their responsibilities for dependents encouraged them to commit offences: *'I have responsibility to provide for my wife and child. Finally, I took a shortcut [became involved in drug crimes] even though my life was decent'* – a point we return to in s.2.4.2, below. Nonetheless, others spoke about the happiness that family brought them: *'My family was always harmonious'; 'My family was amicable. We often*

laughed, talked, and discussed things'. Sometimes, however, such comments were followed by a negative statement about the stress caused to the family by the interviewee himself:

'My family lives in harmony. But I am a burden as a person with HIV AIDS.'

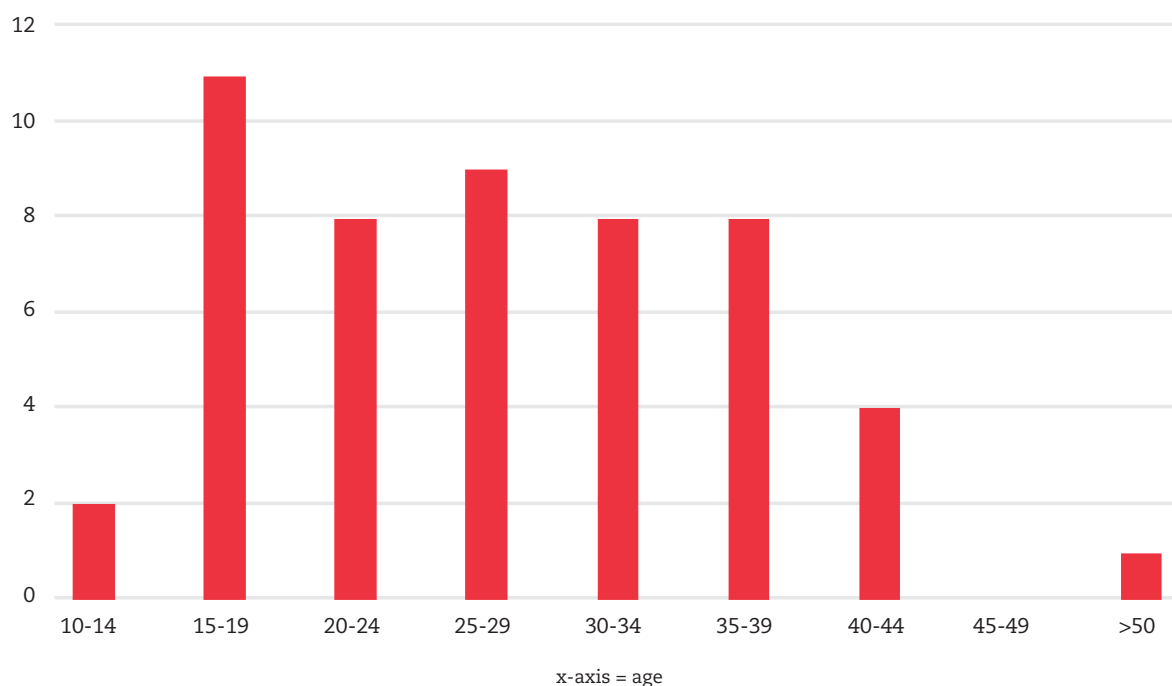
'I was a delinquent, taking injections, smoking weed, doing meth and taking sedatives.'

Thus far, our data suggest that the majority of our interviewees had financial responsibilities and most felt they could not meet those, or even live comfortably themselves, without illicit earnings. While some clearly worried about involvement in the drug trade, the financial rewards may have been imperative in their decisions about committing drug offences. With this in mind, we turn now to the offences the prisoners were convicted of and explore their cognisance of what they were doing at the time they decided to commit the offence.

2.4 Pathways to drug offending

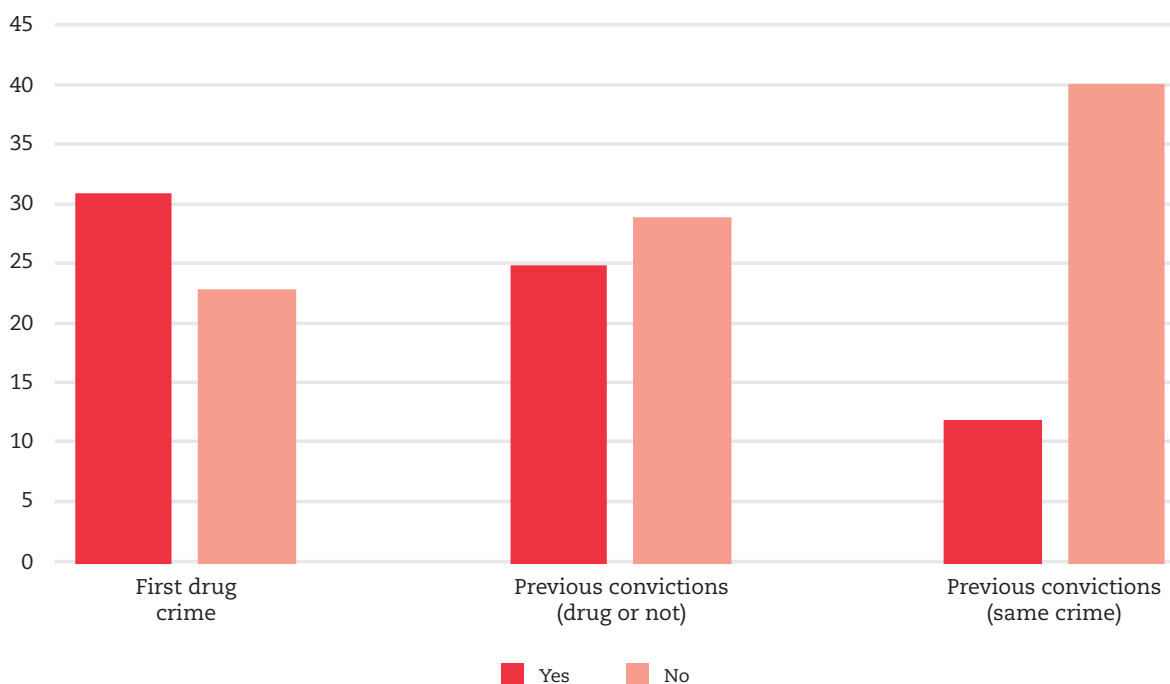
To understand what motivates some people to commit drug offences, or what might create the conditions whereby people make that choice, we need more than information on financial need. After all, there are many people who are in financially precarious situations and yet do not commit offences. Other individual factors, such as drug use, prior convictions and, importantly, significant relationships with 'recruiters', may have played a part in individuals' decisions to commit drug offences. First, we sought information on participants' onset of offending and their prior criminal activities.

Figure 6 shows the age at which participants first engaged in the illicit activity that led to their present sentence. It is interesting to note that 13 of our interviewees started their current type of offending over the age of 35. This would seem to be rather late entry into drug selling, and a few of these claimed to have been involved in the illicit drug trade for only a few months or years, though others had been involved in other drug offending for more than a decade. When we take into account the age of the interviewees (Table 1, above), this suggests that about a quarter had been involved in drug offending for at least a few years before the arrest that had resulted in this prison sentence. Furthermore, when Figure 6 is considered alongside Figures 4 and 7, we see that, for 43% of respondents, the current crime had not been the first drug-related offence, and that it had been preceded by a few years by drug use. Indeed, many interviewees spoke about their careers as drug couriers being preceded by a period of time as drug users.

Figure 6: Age of onset of current type of drug crime (years)

We asked them specifically how long they had been involved in drug offending. While seven prisoners had been committing offences for less than one year, more than half (28) had been involved for between one and five years, with almost a quarter involved for between six and 10 years, and a further eight having been committing similar types of drug offences for between 11 and 35 years. Their involvement did not seem to be age-dependent, with considerable variation in the length of time across the different age groups. Given the length of time involved in drug offending, it was not surprising to us that almost half had prior convictions (for either or both drug and other offences) and almost a quarter had been convicted at least once before of the same offence (see Figure 7). That said, for more than half of the interviewees (31) this conviction was their first for a drug offence. If this information is accurate, it suggests a rather high chance of being convicted of drug offences. A few people reported that they had previously been arrested but then released, because they were able to provide money to bribe the authorities after only a few days of incarceration, though we cannot verify this.

Figure 7: Prior convictions

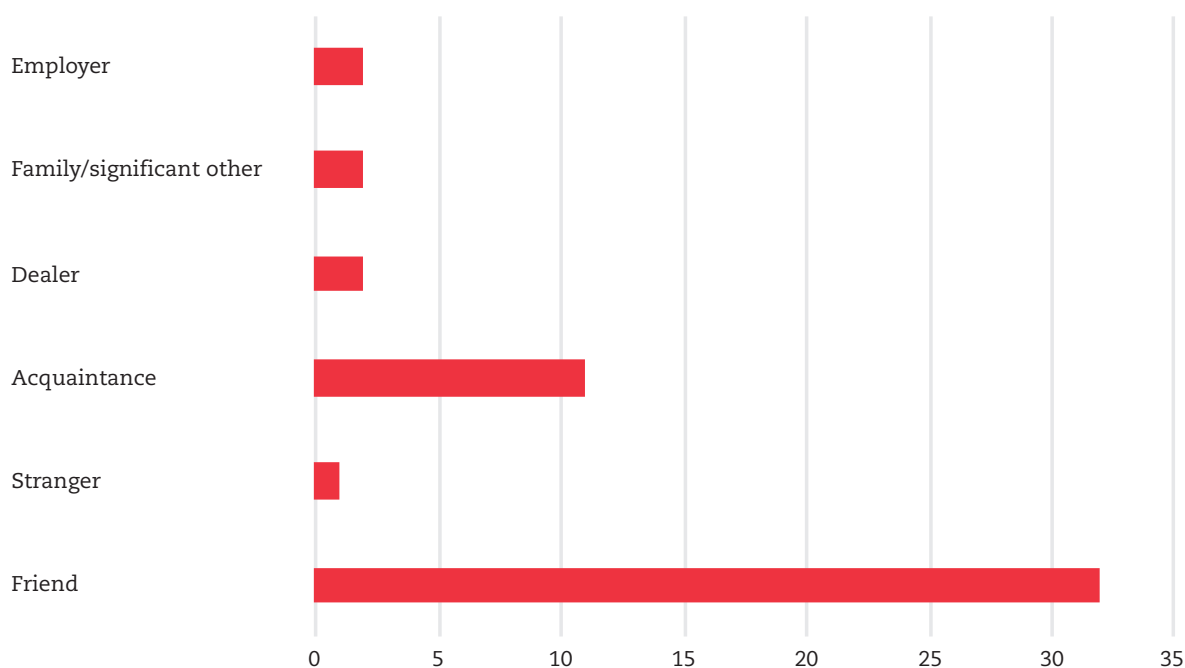


2.4.1 Recruitment into drug offending

In seeking to understand people’s pathways to crime, it is helpful to consider not only when they start offending, but how they start, who recruited them or persuaded them to commit drug offences, and what they knew of the risks of committing offences at the time of their decision. As Figure 8 makes clear, the majority of interviewees were recruited into drug crime by a friend, and while 10 of them had only recently become acquainted with the recruiter (one year or less), and nine had known them for more than 20 years, the average length of the relationship was eight and a half years – more than enough time to develop a meaningful relationship, one that was typically characterised by mutual trust. This fits with studies from the US and the UK showing that entry into drug crime is often tied to people’s social networks.⁴⁴

⁴⁴ Windle James and Briggs Daniel, Going Solo: The Social Organisation of Drug Dealing Within a London Street Gang, *Journal of Youth Studies* 18(9) 2015, pp1170-1185; Taylor Matthew and Potter Gary R, From ‘Social Supply’ to ‘Real Dealing’ Drift, Friendship, and Trust in Drug-dealing Careers, *Journal of Drug Issues* 43(4) 2013, pp392-406.

Figure 8: Relationship of the participant to the recruiter



Indeed, consistent with a number of American ethnographies of drug communities, trust emerged as a pertinent feature of recruitment (see Figure 9), suggesting that Indonesian drug sellers become involved in the illicit drug trade through a somewhat organic social process.⁴⁵ When asked why they may have been recruited, five interviewees referred to their recruiter's knowledge of their financial needs, but almost half of those who answered (19 of 42) said it was because they were considered to be 'trustworthy', with a further nine referring to the fact that they had known their recruiter for a long time, implying this was a relationship characterised by trust:

'We were regular friends who hung out together, and then this person introduced me to their boss.'

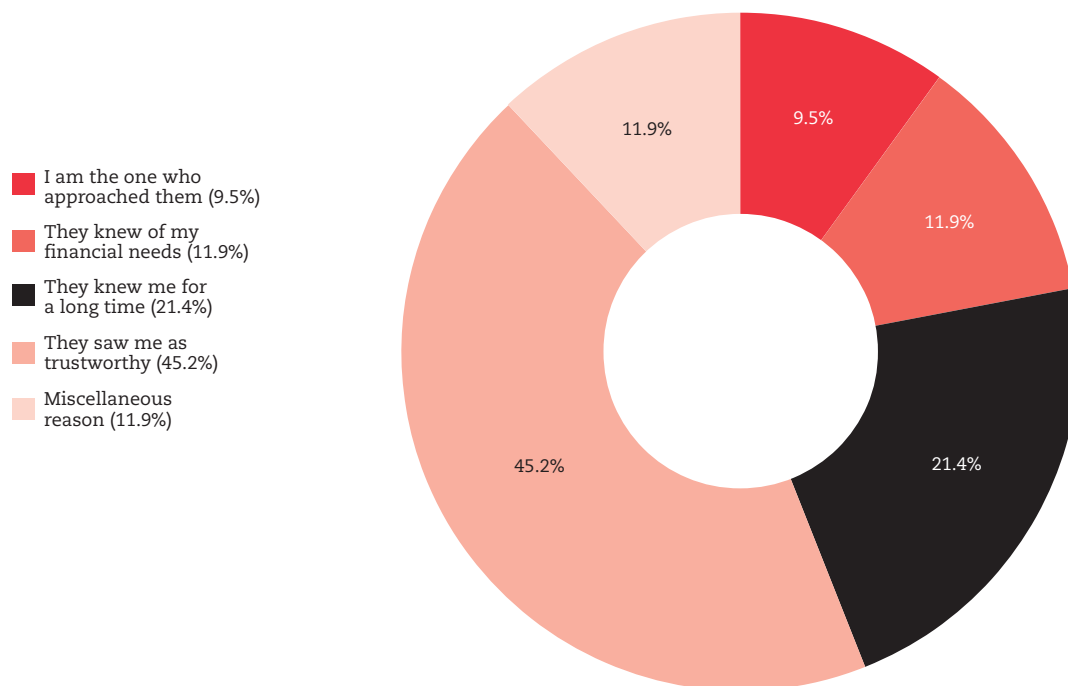
'He was like my brother. We were together during the hard times. After I got released, he was still in prison. One week after that, he told me that he wanted to offer me a job. I said that I wanted to rest first, and that I would contact him when I was ready. Then, I contacted him because, well, I was unemployed, and I needed to eat. He was the one who directed me if I had to pick up.'

'My girlfriend was a dealer and her family too. They offered me "Do you want a gig?"'

'It started from a friend who saw me unemployed. We used together and [he] asked if I wanted to [become involved in drug dealing].'

⁴⁵ See, for example, Adler Patricia, *Wheeling and Dealing: An Ethnography of an Upper-level Drug Dealing and Smuggling Community* (University of Columbia Press 1993).

Figure 9: Trust and recruitment into drug offending



Given that most of the interviewees were recruited by friends whom they had known for many years, it is perhaps not surprising that a third of the prisoners we interviewed decided to commit the crime they were convicted of in less than an hour, and half of the respondents took less than 24 hours to make the decision, as one exchange between an interviewer and a prisoner shows:

Interviewer: 'How long did it take for you to decide that you would do it?'

Participant: 'Right away.'

Another interviewee referred to his decision as spontaneous: *'I immediately answered yes ... because I thought that a chance doesn't come by twice.'*

Some took a little longer, but still made reasonably quick decisions (eight took 1-2 weeks). One explained that they considered other (legal) sources of income:

Interviewer: 'How long did it take you [to decide to commit a drug offence] after learning [about the opportunity] from your friend?'

Participant: 'A week.'

Interviewer: 'One week, OK.'

Participant: 'Because in that one week, I tried to find other jobs but couldn't get any.'

Beyond that, two took 3-4 weeks and nine took 1-3 months, but only two people took more than three months to decide.

Many had either previously been involved with drugs (mostly as users), or had some familiarity with drug crime and networks. The option of entering the drug trade was but one of a few opportunities within their reach to support their families or their own drug use. Often, the offer – by a friend or another contact – to become a courier is presented as a ‘job’ opportunity, which may speak to perceptions of legal against illegal employment. While they were aware of the illegal nature of their drug dealing, in a previous question about their families’ legal employment, or how much they would accept as a salary for legal work, a few seemed to be confused by the distinction between legal and illegal work. This might point towards a more fluid conceptualisation of employment, in a world where the underground economy is perhaps as developed as the legitimate one, but also where the informal economy (which implies illegal or illicit activities) can be very lucrative and often the only way for a significant proportion of the population to secure some form of employment. In this sense, informal and illicit can be quite fluid concepts.

Within this fluid conceptualisation of activities in the underground economy, it is possible that some had not initially fully comprehended the illegal nature of their role in the drug trade, or that their recruiters had been less than honest in delineating their role, leading them to underestimate the risks associated with engaging in illicit and illegal activities. A number referred to their recruiters saying they would *just* need to pick up something, or *only* have to carry a package, describing a simple activity in a similar way to the tasks required for an entry-level job. Defence lawyers in Indonesia have considerable experience of their clients referring to their activities as ‘just’ or ‘only’ relatively minor, a concept that translates in Indonesia as ‘*cuma*’, suggesting a failure to comprehend the consequences or gravity of their actions. This could suggest some naivety among our sample and dissembling among recruiters, though – given that some had been imprisoned for drug crimes before, and must have known that receiving and delivering drugs is illegal – we should treat such comments with caution:

‘I only needed to take the stuff and deliver it.’

‘I just had to call the number they gave me. [...] You just need to stand by at 5PM, and someone will call you. You just need to pick the stuff up and deliver it. After you are done, let us know, and you’ll get the money.’

‘I was just to pick up stuff, receive it, and that was it.’

‘Well, this was safer since I only pick up and deliver and everything has been arranged.’

‘It was not very complicated. I only had to deliver.’

Of course, a few of the prisoners we interviewed were not recruited but started to sell drugs without encouragement from others, sometimes to fund their own, or others’ drug use, as one interviewee explained:

‘At first, I was working to fulfil my wife’s needs ... I was tempted with the profits ... We were using drugs too. Instead of buying, which cost money, we buy more and sell some drugs to get profit.’

This speaks to participants’ motivations for drug offending, to which we now turn.

2.4.2 Motivations for drug offending

None of the prisoners we interviewed were coerced by threats of violence into drug offending; they had agency and the vast majority (84%) were motivated by financial gain. However, this was not, in the main, to provide themselves with luxuries, but to help others, typically those dependent on them. For many, choices about offending were made while they were mindful of the lack of other profitable opportunities. For a few, drug offences provided the money to support their own drug use:

'I was already addicted to [drugs]. It was the only reason.'

'Because at that time, I was addicted to drugs, and I needed to fulfil my basic needs.'

Indeed, for many, the offer from a friend to become part of a drug network came while they were heavily involved in drug use, with the promise of alleviating financial difficulties. Some spoke about the positive effects of drug use:

'I used it because it made me feel more relaxed, and I enjoyed it.'

'My body was tired, and I needed the dopamine to work.'

Two marijuana users described its beneficial effects in alleviating the symptoms of cancer. Among those involved in drug deliveries or drug dealing, one of the main benefits was the possibility of using the drugs 'for free':

'I could use drugs freely.'

'I could have the leftovers to myself.'

'I did it on my own, because I need to use and [it] would be free if I became a dealer.'

More than half (57%), however, committed drug offences to help someone else, typically members of their families. Basic necessities were mentioned by interviewees in relation to providing for their family. Several mentioned the need to fund their child's education, as well as making their parents comfortable, including, for one man, paying for his mother's medical treatment:

'I want to pay for my kid's graduation.'

'I actually had a desire to make my mother happy.'

'Also pay my debts.'

'I saw my kids who wanted to buy things [...] My kids' needs [...] Yes, and my family. I was financially responsible for them.'

Participants spoke of the difficulty of finding legal employment, especially if they already had a criminal record. This information was provided by some participants in response to questions about

finances. It was not related to a specific question, so we do not have data for the majority of our interviewees. However, lawyers who represent people convicted for drug offences have told us that many private companies in Indonesia require applicants for jobs to submit a criminal record letter (*Surat Keterangan Catatan Kepolisian*) released by the police only when the applicant does not have a criminal record. It is plausible, then, that some of our participants could not secure legitimate employment because of past convictions and, therefore, turned to illicit earnings. In this sense, rather than deterring them from further involvement in the illicit drug trade, a conviction and a prison sentence might indirectly push them towards offending, as convictions are a burden for those seeking employment. Three of our interviewees explained that they had no other option but to accept involvement in drug crimes because of the lack of alternative job opportunities:

'It was fairly hard for me to find jobs and to do any other routines.'

'I didn't actually choose, but I had to [commit drug offences] because it was hard to get a job outside prison.'

'Well, the money's good [...] I thought to myself, what else can I do? I'm a junior-high school graduate. What can I do? There's nothing I can do.'

A few participants were explicit that they wanted to acquire wealth, and saw the drug trade as a good way to make quick and easy profits. They spoke about their aspirations to own things beyond their reach, such as a car. They distinguished between the high profits of the drug trade and their less-than-fortunate personal situation, with many experiencing loss of employment and an inability to provide for their families or support their drug use:

'At that time, I was only a user. So maybe my salary wasn't enough.'

'I had many dependents, and I was also chased by the debt collectors.'

'I was just tempted. Drugs easily yield money.'

However, a few of these also spoke about the lure of the illegal drug trade, saying:

'It was fun.'

'I wanted to become a mafia [...] a cartel – just like how it is in other countries.'

'I wanted to be famous at the time.'

Ethnographic studies suggest some people do indeed commit crimes, including drug crimes, for the thrills, as a way to avoid the dreariness of low-wage legal work.⁴⁶ One respondent wryly commented: *'It was my passion. Imagine being asked what your passion was and answering "drugs". Damn, that's insane.'*

While they were largely motivated by helping those close to them, and though in three-quarters

⁴⁶ Bourgois Philippe, *In Search of Respect: Selling Crack in El Barrio*. No.10 (Cambridge University Press 2003); Fagan Jeffrey and Freeman Richard B, Crime and Work, *Crime and Justice* 25 1999, pp225-290.

of the cases their loved ones knew about their offending, families and partners were not keen on participants getting involved in the illicit drug economy. Indeed, in 85% of cases where their loved ones knew, they had tried to dissuade them from committing drug offences. Three-quarters of those who tried to dissuade them were family members, with a handful being a romantic partner, a child or a friend.

A few family members attempted to forbid the criminal activity, while others told them to find a legal job, but most warnings focused on the risks of apprehension and punishment:

'Stop, you should be careful. You are playing with drugs like this. You know the risks.'

'Just stop it already, before you got arrested.'

'This stuff is illegal. If you get caught by the police, you'll be jailed.'

'Just stop. How long are you going to live like this? Do you want to rot in prison?'

Family members were of the view that prisoners should be deterred from drug offending by the threat of prison and, in a few cases, by the threat of the death penalty:

*'What are you doing? You better find the right kind of work. What if you got caught?
It would be long, or worse, you could be sentenced to death.'*

2.5 Potential for punishments to deter drug offending

The theory of deterrence relies on the threat of punishment being sufficiently credible, and the amount of punishment being sufficiently high to influence behaviour. Hence, for potential drug offenders to be deterred, states would need to deliver a clear message that drug crimes will be detected and that offenders will be punished with sufficient severity. If the rational actor of deterrence theory thinks there is a reasonably strong likelihood that they will be caught, convicted and punished if they engage in illicit behaviour – and if they worry that the costs (long term of imprisonment or a death sentence) outweigh the benefits (financial rewards, excitement or elevated status) – they should avoid such activity. Thus, deterrence research is clear that the necessary preconditions of decision-making by potential drug offenders are that:

- they are knowledgeable about the law and its implications;
- they are rational in allowing their knowledge and understanding to influence their behaviour;
- they will avoid drug offending if they think it is likely that they will be caught and convicted, and if they think the punishment outweighs the rewards.⁴⁷

2.5.1 Knowledge about the law

Though almost a third (31%) of interviewees did not know about the relevant laws on drugs in Indonesia, the majority (59%) were knowledgeable, and five interviewees somewhat knowledgeable.

⁴⁷ Fagan J, *The Feasibility of Systematic Research on the Deterrent Effects of the Death Penalty in Indonesia* (The Death Penalty Project 2019) pp.11-12.

We asked what they were worried might happen to them if they were caught by the police. While we expected them to express fears of prison or even death sentences, one referred to the risk of extra-judicial executions: *'I would be sentenced to prison if I was not dead. If I ran, I would definitely be shot.'* Others worried about the consequences for significant relationships:

'I would lose my family and my future.'

'I imagined that, first I'll lose my job, the legal job, and I'll lose respect from my family. Both family and society.'

But some thought they could rely on others to get them out of a difficult situation or mitigate the risks of punishment by bribing officials:

'There will be someone to bail me out.'

'I could bribe my way out of a serious sentence. Thought I'd call my boss and get out of it.'

'Thought I could negotiate and bribe to get a lighter sentence. Probably only two years.'

These responses reflect perceptions about corruption within policing in particular, and the potential for them to benefit from such, as well as faith in others in their drug network to assist them, which is not surprising given the close friendship bonds within these networks.

When asked what they had thought the penalties would be for their offending, some participants thought their punishment would be lighter than it transpired to be:

'I didn't know that the punishments were this lengthy.'

'Some friends of mine got arrested and they didn't get more than two years. So, I thought the risk was low, and I tried to be brave and didn't think much of the risks.'

Others, however, had calculated the prison sentence with some precision: *'Prison time. I had already calculated 8 years.'*

In addition to seeking information on their existing knowledge, we asked a related question about whether those directly involved in recruiting them for drug offences had informed them of the risks of drug offending. Just more than a third (35%) had not been told, but just more than half (51%) had been told something of the risk. Interestingly, nearly one in five (19%) said they had already known of the risks. Therefore, the majority of interviewees had committed offences while fully aware of the risks involved.

2.5.2 Concerns about potential punishment for drug crimes

Understanding risks and being sufficiently worried about the consequence of taking those risks are separate, though related, concepts. We sought to establish whether prisoners had in fact been worried about the potential punishment while deciding whether or not to commit a drug offence. More than

four in five were worried about being caught and sent to prison; 54% were worried ‘a lot’, 27% ‘a little’. As one man explained: *I feared about going in jail again. Didn't want to get caught.* Fewer than one in five was not worried.

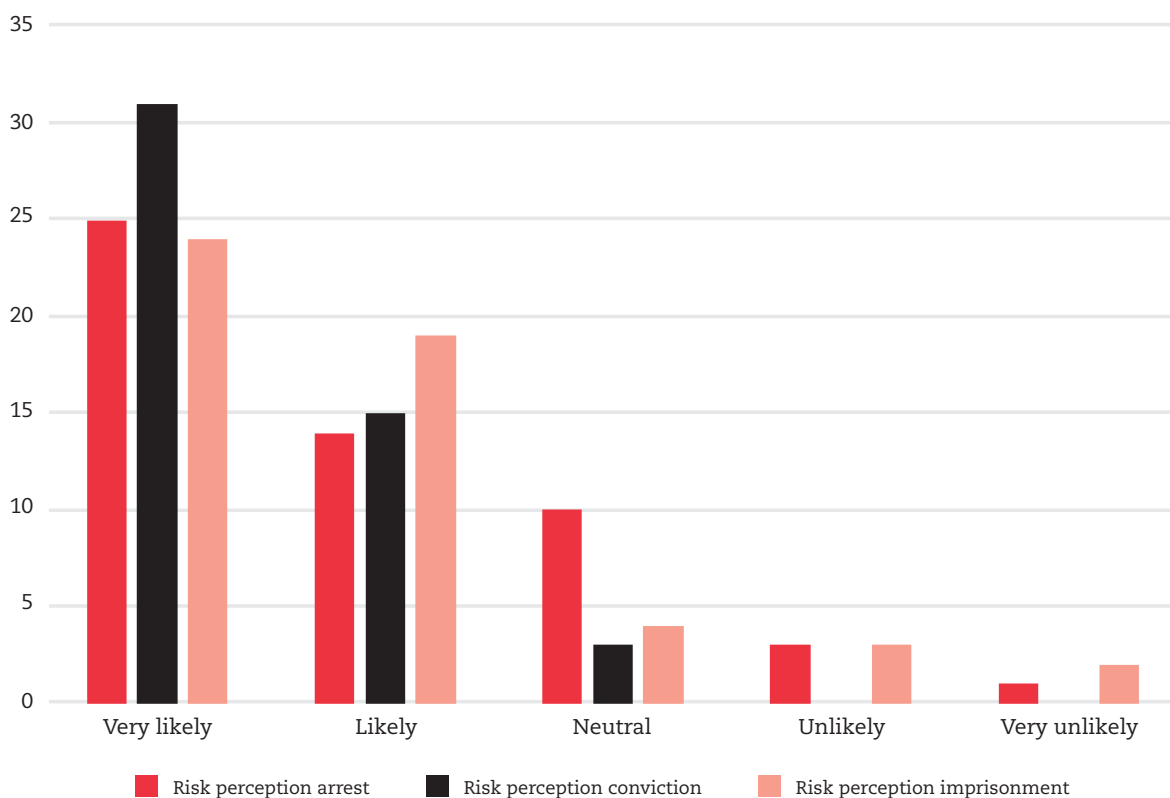
These findings show that most interviewees had the information and had gone through the cognitive processes to be deterred from offending, and yet were not. Of course, deterrence theory cannot account for those who were lacking in knowledge.

2.5.3 Perceptions of the risk of apprehension, conviction and punishment

It could be argued that knowledge of the law and fears about the consequences could perhaps not be sufficient to deter someone who, nonetheless, thinks it *unlikely* that they would be arrested, convicted and punished. People can be worried about bad things happening to them, but still believe that it is unlikely that those events will transpire. In such cases, they may not be deterred. However, our data show that not only were most of the prisoners we interviewed worried about being caught and sent to prison, but they also thought these outcomes were *likely* at the time they made the decision to commit the crime. This finding appears to contradict deterrence theory.

As Figure 10 shows, almost half (47%) of the participants thought it very likely that they would be caught and arrested, with a further 26% thinking this likely. In other words, almost three-quarters of the prisoners had committed drug offences when they were worried about the consequences and thought it likely they would be arrested. They were not deterred.

Figure 10: Perception of the risks of arrest, conviction, and imprisonment



We asked a similar question about how likely they thought it was that they would be convicted at the time they made the decision to commit the crime. Again, as Figure 10 illustrates, the majority (63%) thought this was very likely, and a further 31% thought it likely. No-one thought it unlikely – and yet they committed the offences.⁴⁸

At the time they made the decision to commit the crime, they also thought it very likely that they would receive a prison sentence, with 46% thinking this very likely and a further 37% thinking it likely.

Our interviewees were not a homogenous group, and though only one was more than 50 years old, the others ranged in age from 20-50. Older people, past their mid-late 20s, are thought to be more risk averse, so we explored the potential relationship between age and perceptions of risk of arrest, conviction and imprisonment (computing Spearman's rank correlation⁴⁹). We found a positive correlation between age and perceived risk of arrest ($r(50) = .46, p < .001$) as well as between age and perceived risk of conviction ($r(47) = .32, p = .03$); however, we detected no correlation with perceived risk of imprisonment. These findings suggest that, within our sample, younger age at the time of the crime was associated with a lower perception of risk compared with the perception of the interviewees who were older at the time of the commission of the crime.⁵⁰

Our data above demonstrate that almost half had previous convictions and more than half had been involved in the illicit drug trade for more than a year, regardless of respondents' age. To understand whether previous convictions or engagement in drug-related activities had influenced our interviewees' risk perceptions of arrest, conviction and imprisonment, we conducted a 'nonparametric test'⁵¹, but found no evidence supporting a difference in the way these risks are perceived by the various groups.

It is obvious that the prisoners we interviewed had not been deterred from offending, otherwise they would not be in prison in the first place. Advocates of deterrence theory may argue that those in prison have not been deterred because they did not know the laws, or did not think they would be arrested and convicted, did not think they would be sent to prison, or could even have been sentenced to death, or that they were not worried about these potential consequences of their actions. For the participants of the study, however, this was not the case. Though most knew the laws, thought they were likely to be arrested and convicted, and were worried about these outcomes, they nonetheless chose to commit drug offences. The motivations for doing so were reasonably strong and largely related to financial need, but none of the motivations seemed to be overwhelming. None had been coerced into drug offending. Some, of course, had made choices while using drugs, as was probably the case for one of our interviewees:

⁴⁸ Our Stage Two study will explore the extent to which those convicted of drug offences significantly discount the costs of illegal activities; see Moeller Kim and Sandberg Sveinung, Putting a Price on Drugs: An Economic Sociological Study of Price Formation in Illegal Drug Markets, *Criminology* 57(2) 2019, pp289-313.

⁴⁹ Spearman C, The Proof and Measurement of Association between Two Things, *The American Journal of Psychology* 15 1904, pp72-101.

⁵⁰ We used the age of the interviewees at the time when they started committing the crime for which they are currently imprisoned.

⁵¹ Mann H B, and Whitney D R, On a Test of Whether One of Two Tandom Variables is Stochastically Larger than the Other, *The Annals of Mathematical Statistics* 1947, pp50-60.

'Before I got married, I used to go to the discotheque a lot, and I had sold drugs like ecstasy at that time. I stopped everything when I got married in 2009. I started going to the market again, because it's impossible to give illegal money to my child and wife. When I moved here, I started becoming a seller. When I was acquainted with the nightlife from 2003 and 2008, I went to the market just to sit and watch instead of selling. [...] In 2015, the profit was 10 million per day. My wife died, and I got into drugs again. My friend invited me to use. I became addicted, and I became a drug user once more. I could get 3 million per day in 2017, but that money was spent on nightclubs and on drugs. I was out of control.'

This man describes himself as 'out of control' because of drug use, suggesting that his fragile emotional state following his wife's death had precipitated this. That is doubtless the case, but he had been involved in the drug trade in the past and, we assume, made a rational choice at that stage. Most, however, talked about their use of drugs as simply part of their lifestyle, making clear that they were not dependent on drugs, but just *'having fun'*:

*'I wasn't an addict, and I did that just for fun and entertainment.
That was just living in a metropolitan city like ...'*

For many, while drug use was the context within which they had become familiar with the drug trade, it was not presented as significantly diminishing their ability to make rational decisions based on needs or desires.

Given that some of our interviewees had previously been in prison for drug offending, neither the threat nor their prior experiences of incarceration had deterred them. As one interviewee put it:

'Before I was released, my friend told me that if I ever needed to come back doing that [drug offending], I could just inform him. We were just helping each other. If they had more help, they could get [more] money. That money could be used for them inside the cell or be sent to their wife or children at home. That was how it rotated inside the prison. It was less than a week – after I was released – that I decided that I wanted to get back on that road again.'

In other words, the majority of those people interviewed had made a choice: *'I was not a heavy user, but because I saw it was pretty beneficial, I decided to join it.'* Such people had clearly weighed up the options, been rational, but still committed the offence' and all had received heavy – some might say disproportionate – penalties.

A close-up photograph of a hand gripping a metal bar, overlaid with a red tint. The hand is positioned in the lower right quadrant, with fingers wrapped around the bar. The background consists of vertical metal bars, creating a grid-like pattern. The overall image has a strong red color cast.

PART THREE

Conclusion

The Indonesian state, like many neighbouring Southeast Asian countries, asserts, though without rigorous evidence, that very harsh punishments, including the death penalty, must be retained for their deterrent effect. There have been no studies on the deterrent effect of the threat of punishment for drug offences.

This study (Stage One) was intended to test our approach and methodology in advance of a larger study across Indonesia that will focus on prisoners sentenced to death or to life in prison. We also aimed to generate mixed-methods data from our interview schedule, including quantitative and qualitative (open-ended) questions to allow us to develop a comprehensive quantitative interview tool for the larger Stage Two study.

The Stage Two project will gather information from a random sample of such prisoners of sufficiently high numbers to allow us to generalise from our findings. It aims to test the key rationale for the death penalty in Indonesia and across Southeast Asia: deterrence.

This study of prisoners convicted of drug offences in one prison in Jakarta was based on a convenience sample from which we cannot generalise, and, in particular, the sample was drawn from a men's prison, and comprised relatively low-level participants in the illicit drug trade. While we have no reason to believe that the data we gather from a larger, representative sample will be particularly different, because these prisoners were not chosen for any specific characteristic or experience, these factors are likely to make the risk-reward assessment somewhat different. Our findings from this study, however, imply that the rationale of deterrence may be flawed.

As some of our questions relied on prisoners' recollections about what they were thinking and feeling at the time they decided to commit the offence for which they had been convicted, it is important to note that their memories of past events are likely to be reliable. Most had been arrested relatively recently; the vast majority (82%) had been arrested in the past five years, with two-thirds having been arrested up to three years before we interviewed them. Furthermore, when we repeated, by rewording, several questions at different points in the interview, participant responses were highly consistent, suggesting veracity in answers and accuracy in recall.

3.1 Findings

The prisoners interviewed were not especially well educated, and when they were arrested for drug offences they were not in particularly stable or well-paying jobs; in many cases, their employment was neither secure nor lucrative, indicative of rather precarious positions. While most prisoners were in a reasonably stable financial position at the time of arrest, the majority were making most of their money from the illicit drug trade, not from their lawful employment. Those who were not earning money from drugs were in financially precarious positions, unable to afford even the bare necessities without illicit earnings. Most had children, family members or partners who were financially dependent on them, and some of these had particular needs that our interviewees would have found hard to meet without illegal earnings.

The vast majority of prisoners used drugs before their arrest and, for some, drug use preceded drug couriership, selling, or trafficking offences by a few years. Furthermore, about a quarter had been involved in the illegal drug trade for several years before the arrest that resulted in their current prison

sentence. The majority had been committing drug offences for some years, with almost a half having prior convictions and almost a quarter having been convicted of the same offence at least once before. That is to say, they were experienced in the illicit drug trade.

For most, time in prison and the availability of therapeutic interventions had not dissuaded them from continuing drug use or engagement in the illicit drug trade. Of course, while Indonesia continues to criminalise drug possession for personal use, drug users may be dissuaded from seeking therapeutic support. They may continue to use drugs and be persuaded by financial imperatives to engage in the illicit drug trade to support their drug use.

The majority had been sentenced to between eight and 12 years in prison, fairly heavy sentences for the crimes they had committed. Some spoke about being ‘half in and half out’ of prison all the time, referring to the inevitability of being caught and being sent to prison when they were committing drug offences.

*‘In my mind, it’s bad if I rejected it [offer to deal drugs].
But If I do this, half of my body is already in prison.’*

‘If we are involved there, it means that our left foot is already here [prison].’

We had anticipated that some prisoners would have been coerced into offending by powerful and intimidating drug kingpins, and while there will certainly be people of that kind in Indonesian prisons, none of our interviewees were, though this could be a product of ‘selection bias’ as the prison authorities may have chosen not to give some prisoners the opportunity to be recruited into the study. The majority were recruited into drug crime by a friend, and, for most, these were relatively established relationships characterised by trust. Indeed, trust emerged as a pertinent feature of recruitment. In large part because of this, a third decided to commit the offence in less than a day. Almost all made the decision in less than three months, with some first trying other legitimate means of earning money before turning to drug offending.

To understand the contextual, situational and interactional factors and decision-making processes that led our interviewees to commit drug crimes, we asked a range of questions about their understandings of the criminal justice and penal system in Indonesia as regards drug offences, about their perceptions of the risk or level of punishments, about their fears of being caught and punished, and about their particular motivations to commit drug offences.

While the social, psychological and economic pathways to drug selling are heterogenous,⁵² which clearly poses a challenge for a general theory of deterrence from drug offending, almost all of our interviewees were financially motivated. Most needed money for the basics – to pay for housing, medicine, or education, typically for their dependents – though a minority wanted ‘luxuries’, such as a car, and even fewer spoke of the thrill and excitement associated with drug crime. Some, of course, committed drug crimes to earn the money to feed their own drug use. Though they wanted to support their dependents and found it hard to secure legal employment that was as lucrative as drug crime, their families were, in the main, very concerned about their activities. Most had tried to persuade

⁵² Paternoster R, and Bachman R, Perceptual Deterrence Theory, in Cullen F T, and Wilcox P (eds.), *The Oxford Handbook of Criminological Theory* (Oxford University Press 2012).

interviewees not to commit drug offences, referring primarily to the risks of apprehension and harsh punishment. Families thought that the participants should be deterred by the threat of prison.

Deterrence theorists argue that, for potential drug offenders to be deterred, they need to see the risks as salient. They need to know about the laws and punishments, they need to rationally weigh up the costs and benefits of offending and think that the punishment will outweigh the benefits (mainly financial need).

Most interviewees knew of the risks of getting caught and punished for drug offending, and the majority had also been warned of the risks by those who had recruited them – in the main, friends whom they trusted. In other words, most of the drug offenders we interviewed had committed their offences fully aware of the risks of doing so. Moreover, they were not only cognitively aware; the majority of the prisoners were worried about going to prison. Most thought it *likely* they would be arrested, convicted and sentenced to prison. Among the respondents in this study, we also detected no differences in risk perceptions of arrest, conviction and imprisonment between people with previous convictions and/or engagement in drug crimes and interviewees who had never been involved in, or convicted of, a drug crime prior to the one for which they are currently imprisoned. These findings suggest that the familiarity some participants had with the drug trade and their higher levels of experience did not increase their perceptions of risk. If the people in our sample had behaved like the rational actors deterrence theory assumes them to be, then the risk perception should have varied between more experienced individuals and first-time criminals, as well as between people who had already been arrested and convicted in the past and those serving their first sentence.

It could be argued that, in spite of their awareness of and concerns about the risks, some of the prisoners we interviewed may not have been deterred by potential severe punishments because they thought they could reduce the risks by taking 'precautions'. Indeed, in response to other questions, 90% claimed to have taken precautions to reduce the risk of apprehension, including more than a third who avoided dealing in certain types of drugs to reduce the risk of a lengthy prison sentence. More than two-thirds had considered further attempts to minimise the risk of punishment, including bribes, producing drugs in remote places, using a 'drug runner' (courier), and keeping drugs away from their residence. In other words, they saw themselves, rightly or wrongly, as mitigating the risks.⁵³ That they were not successful could speak in part to the nature of our sample; these were all people who had committed offences, had been caught and had been punished. It may be that if we interviewed similarly situated people in the wider drug community, we would find people who had been successful in reducing their risks. Indeed, the length of time some of the interviewees had spent within the drug community suggests that they too have been successful in the past.

Of course, it is possible to ask people directly if knowledge about the law and the potential punishment had affected their behaviour – a perfect example of a question aimed at exploring deterrence – and we did. Though they had all gone on to commit the offence for which they had been convicted and had clearly not been deterred by the perceived high risks of apprehension and punishment, the majority (59%) said they *had* been *influenced* by their knowledge of likely justice responses. The same proportion said that knowledge of the law had made them *hesitate* in making the decision to commit a drug crime, and even more (two-thirds) had been *worried* about committing the offence because

⁵³ Behavioural economics suggests that such discounting of risks, and perhaps inflation of rewards, is not uncommon; see Moeller Kim and Sandberg Sveinung, Putting a Price on Drugs: An Economic Sociological Study of Price Formation in Illegal Drug Markets, *Criminology* 57(2) 2019, pp289-313.

they knew about the law and potential punishment. While our data cannot fully explain this apparent contradiction, it is possible that their perceptions about corruption in the criminal process, and the potential to bribe their way out of it, allowed them to somewhat discount the risks.

3.2 Implications of our findings

Even though they were mindful of risks and of reducing them by their behaviours, and had hesitated to consider the risks before committing the offence, they nonetheless made the decision to commit the drug offences knowing they were engaging in highly risky behaviour, and perceiving it likely that they would be caught and punished. In other words, they perceived the risk and level of punishment to be high. According to deterrence theory, this should mean that the benefits would need to be exceptionally high to outweigh the high costs of committing drug crimes.

The notion of perceived benefits speaks to offenders' motivations for committing offences. They commit drug crimes because they will bring certain benefits in the short and medium term. The perceptions of benefits among those we interviewed appear to be explicable. Offenders had reasonable – and, it might be argued, rational – reasons for committing drug offences. They needed the money that such offending would provide. They could not adequately meet their own needs and, importantly, their dependents' needs through the legal economy, given that many were in relative poverty. However, their financial motivations were not overwhelming; the benefits of committing these offences were surely not irresistible. They were not, by and large, utterly desperate and they were not coerced. They chose to commit drug offences for a better life for themselves and their families. This is understandable perhaps if the potential punishment was a fine, a community service order or even a short prison sentence, but harder to fathom if the likely punishment is a long prison sentence and maybe even a death sentence.

The rational actor of deterrence theory may not have made such choices given their perceptions of the risks. They would not have weighed up the costs and benefits and chosen to commit these offences. Though we cannot generalise from our findings, given that we did not have a random sample of prisoners, deterrence theory does not seem to be supported by the decisions of interviewees to commit offences. The mechanisms for deterrence to work were clearly in place, and yet the participants were not deterred.

If our Stage Two study, which will draw on a large and representative population of male and female prisoners convicted of more serious drug offences, supports the findings of this small qualitative study of prisoners in one Jakarta prison, it could demonstrate that long prison or death sentences in Indonesia do not deter drug offenders. That finding could assist policy-makers, practitioners and politicians who want evidence-led penal policy on drug offending. Such a policy should include consideration of alternative responses, such as therapeutic interventions.

About the authors

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Professor Carolyn Hoyle has been at the University of Oxford Centre for Criminology since 1991. She is Director of the Oxford Death Penalty Research Unit, and co-author of the leading international study on the death penalty, *The Death Penalty: A Worldwide Perspective*, the last edition of which was published in 2015 by Oxford University Press. She has conducted several empirical projects for The Death Penalty Project, including studies of opinion formers' views on the death penalty in India, Bangladesh, Zimbabwe, Kenya and Taiwan. She is also working closely with The Death Penalty Project and other leading international and national NGOs on a study of foreign nationals at risk of the death penalty in Asia and the Middle East.

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The Death Penalty Project

The Death Penalty Project is a legal action NGO in the UK, with special consultative status before the United Nations Economic and Social Council.

For more than three decades, it has provided free legal representation to death row prisoners around the world, to highlight miscarriages of justice and breaches of human rights. It also assists other vulnerable prisoners, including juveniles, those who suffer from mental health issues, and prisoners who are serving long-term sentences.

The Death Penalty Project has been commissioning, supporting and publishing independent academic research on attitudes towards the death penalty for almost a decade. It uses original data from public opinion surveys and other empirical research to engage in dialogue with policy-makers and politicians, and to challenge popular misconceptions around the death penalty.

In Indonesia, we have previously published a two-part study titled *Investigating Attitudes to the Death Penalty in Indonesia*.

All publications by The Death Penalty Project are available to view and download at www.deathpenaltyproject.org

Lembaga Bantuan Hukum Masyarakat

Lembaga Bantuan Hukum Masyarakat (LBHM) is a frontline not-for-profit, non-governmental organisation that provides free legal services for the poor and victims of human rights abuses. It also undertakes community legal empowerment for marginalised groups and advocates for law reform and human rights protection through campaigns, strategic litigation, policy advocacy, research and analysis.

LBHM focuses its work in the following areas: abolition of the death penalty, drug policy, HIV and human rights, mental health, and the protection of LGBT rights.

For further information, please visit lbhmasyarakat.org

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Co-funded by the European Union:



Foreign, Commonwealth
& Development Office



