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Criminal Liability of Police Officers for Torture in Indonesia: From Ratification Gap to Article 530

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ABSTRACT

This study analyzes the criminal liability of police officers for torture in Indonesia and asks why ratification of the Convention against Torture (CAT) did not produce effective accountability. It also assesses whether Article 530 of Law Number 1 of 2023 and the surrounding institutions now suffice. The study uses normative legal research with statutory, conceptual, and analytical approaches. The analysis tests the elements of Article 1 of the CAT against the former Criminal Code, Law Number 26 of 2000, and Article 530, and it examines defenses, procedural safeguards, ethics proceedings, and oversight bodies. The analysis indicates that, until January 2026, Indonesian law had no offense of torture, so officers were prosecuted under general assault and coercion provisions that did not reflect the purpose or official capacity that define torture. Article 530 closes much of this gap but differs from the Convention on severity, the mental element, the penalty ceiling, and the exclusion of defenses. Remaining obstacles include the good-faith plea of subordinates, unclear liability of superiors, weak protection against coerced evidence, the practical substitution of ethics hearings for prosecution, and the lack of an independent investigative body. The study recommends amending Article 530, excluding statements obtained by torture, referring credible allegations for criminal investigation, creating an independent police complaints body, and protecting victims and witnesses.

Keywords: *Article 530, Convention Against Torture, Criminal Liability, Impunity, Police Officers*

INTRODUCTION

Indonesia ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) through Law Number 5 of 1998.[1] It has never enacted a domestic offense that defines torture in the terms of Article 1 of the Convention.[2] A police officer who tortures a suspect is therefore charged, when charged at all, with ordinary assault (penganiayaan) under Articles 351 to 355 of the Criminal Code, or with the use of coercion to extract a confession under Article 422.[3] These provisions carry penalties that do not reflect the gravity of the conduct. They also fail to capture the purpose and official-capacity elements that make torture a distinct wrong. This article argues that the gap between ratification and domestic criminalization is not a drafting oversight. It is a structural consequence of the way treaty obligations enter Indonesian law, and it allows impunity for police torture to persist.

The problem is not hypothetical. Data presented by the National Human Rights Commission (Komnas HAM) in June 2024 show that the police were the institution most often named in torture complaints. They accounted for 176 of 282 complaints received between January 2020 and June 2024, or about 62 percent. The civil society organization KontraS recorded 40 police cases among 60 torture incidents between June 2023 and May 2024.[4] Both counts probably understate the problem, because many victims never report to the commission. Recent scholarship points in the same direction. Purwanto et al. describe suspects who died after alleged police abuse, including a 2023 case in Banyumas, and they attribute such conduct to investigators who treat a confession as the goal of the inquiry.[5] Susilo et

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[1] Naura Ardya, "AKIBAT HUKUM RATIFIKASI OPTIONAL PROTOCOL ON THE CONVENTION AGAINST TORTURE (OPCAT) DAN PENGARUHNYA PADA PERLINDUNGAN HAK ATAS RASA AMAN DARI PENYIKSAAN DI INDONESIA," *Jurnal Hukum To-Ra : Hukum Untuk Mengatur Dan Melindungi Masyarakat* 9, no. 1 (April 11, 2023): 10–23, https://doi.org/10.55809/tora.v9i1.167.

[2] General Assembly resolution 39/46, "Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment," OHCR § (1984), https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-against-torture-and-other-cruel-inhuman-or-degrading;
Republik Indonesia, "UU No. 5 Tahun 1998 Tentang Pengesahan Convention Against Tortureand Other Cruel, Inhuman or Degrading Treatment or Punishment (Konvensi Menentang Penyiksaan Dan Perlakuan Atau Penghukuman Lain Yang Kejam, Tidak Manusiawi, Atau Merendahkan Martabat Manus…," Sekretariat Negara § (1998).

[3] Republik Indonesia, "UU No. 1 Tahun 2023 Tentang Kitab Undang-Undang Hukum Pidana," Pub. L. No. 1, Sekretariat Negara (2023), https://peraturan.bpk.go.id/Details/234935/uu-no-1-tahun-2023.

[4] Najla Nur Fauziyah and Petir Garda Bhwana, "Police Reported as Perpetrators of Most Torture Acts in Indonesia: Komnas HAM, KontraS," Tempo English, 2024, https://en.tempo.co/read/1884608/police-reported-as-perpetrators-of-most-torture-acts-in-indonesia-komnas-ham-kontras.

[5] Heri Purwanto et al., "Reconstructing the Legal Understanding of the Presumption of Innocence in Criminal Justice to Achieve Justice," *IJCLS (Indonesian Journal of Criminal Law Studies)* 10, no. 2 (November 1, 2025), https://doi.org/10.15294/ijcls.v10i2.32033.

al. likewise observe that human rights are most exposed during the investigation phase, when coercive measures may be taken before any formal order is issued.[6]

On its face, the Indonesian legal framework is protective. The 1945 Constitution protects freedom from torture as a right that cannot be limited under any circumstance, and Article 33 of Law Number 39 of 1999 prohibits torture and degrading treatment.[7] Article 4 of the CAT goes further. It requires each state party to ensure that all acts of torture are offenses under its criminal law, with penalties that take into account their grave nature.[8] Ratification by statute, however, does not by itself create such an offense. Indonesian practice follows a dualist approach, under which a treaty binds the state internationally but needs implementing legislation before it can ground criminal liability in a domestic court.[9] Adama, Sudiro, and Yuan note that Indonesia has ratified the main human rights treaties, including the CAT, yet implementation remains weak. They add that Indonesia has not ratified the Optional Protocol to the CAT, which leaves no independent mechanism to inspect places of detention.[10]

Two other statutes touch the subject, but neither fills the gap. Law Number 39 of 1999 is a human rights statute and does not set out criminal penalties for torture. Law Number 26 of 2000 on the Human Rights Court lists torture as a crime against humanity, but only when it is committed as part of a widespread or systematic attack directed against a civilian population.[11] Most torture by police officers does not meet that threshold. The typical case therefore falls between ordinary assault and a crime against humanity, in a space where no offense is defined. The experience with past gross violations suggests what this design costs. Marzuki and Ali report that attempts to resolve past violations through the courts, including the East Timor and Tanjung Priok cases, did not succeed, and that the Truth and Reconciliation Commission made little progress toward reconciliation.[12]

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[6] Erwin Susilo et al., "Justice Delayed, Justice Denied: A Critical Examination of Repeated Suspect Status in Indonesia," *Hasanuddin Law Review*, 2025, https://lk2fhui.law.ui.ac.id/portfolio/justice-delayed-justice-denied-a-critical-examination-of-repeated-suspect-status-in-indonesia/.

[7] Pemerintahan Republik Indonesia, "UU No. 39 Tahun 1999 Tentang Hak Asasi Manusia," Sekretariat Negara § (1999).

[8] General Assembly resolution 39/46, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

[9] Republik Indonesia, "UU No. 24 Tahun 2000 Tentang Perjanjian Internasional," Sekretariat Negara § (2000).

[10] Richard Chandra Adam, Amad Sudiro, and Luo Yuan Yuan, "Harmonization of Prisoners' Rights in National Law in Accordance with Global Standards," *IJCLS (Indonesian Journal of Criminal Law Studies)* 10, no. 2 (November 1, 2025), https://doi.org/10.15294/ijcls.v10i2.29702.

[11] Republik Indonesia, "UU No. 26 Tahun 2000 Tentang Pengadilan Hak Asasi Manusia," Sekretariat Negara § (2000).

[12] Suparman Marzuki and Mahrus Ali, "The Settlement of Past Human Rights Violations in Indonesia," *Cogent Social Sciences* 9, no. 1 (December 31, 2023), https://doi.org/10.1080/23311886.2023.2240643.

The new Criminal Code, Law Number 1 of 2023, entered into force in January 2026 and raises the question whether the gap has now been closed.[13] Arifin et al. found significant gaps between the code and international standards on human rights and due process.[14] Whether the code creates a standalone torture offense, or only reworks the assault provisions. The answer matters for any claim of reform, because a code that leaves torture to general assault provisions would repeat the structural problem identified above.

A second difficulty lies in criminal procedure. The Criminal Procedure Code authorizes arrest, detention, search, and seizure, and a police regulation governs the use of force.[15] These instruments authorize coercive measures but, as this article shows, they supply no clear standard for the point at which lawful coercion becomes torture. Without such a standard, an officer who injures a suspect during an examination can claim to have acted within official authority. A prosecutor, in turn, has no statutory category that separates the injury from routine force. The proof of intent, purpose, and official involvement then becomes harder than it should be.

Internal accountability adds a further layer. Regulation of the Indonesian National Police Number 7 of 2022 establishes the professional code of ethics and the commission that enforces it.[16] Research on police discipline shows that this track runs separately from criminal proceedings. Winarno, Amiq, and Prawesthi find that an officer convicted of a drug offense may be dismissed dishonorably for breaching the ethics code once the judgment becomes final.[17] Yahman et al. find that ethics violations continue despite the existing rules, and they call for stronger internal investigators and greater transparency in disciplinary enforcement.[18] The question for this article is whether, in cases of alleged torture, ethics proceedings complement prosecution or take its place.

The studies cited above address prisoners' rights, past gross violations, suspect designation, and the presumption of innocence. In these studies torture appears as context rather than as the object of analysis.[19] The criminal liability of

[13] Republik Indonesia, UU No. 1 Tahun 2023 tentang Kitab Undang-Undang Hukum Pidana.
[14] Ridwan Arifin et al., "Indonesia's New Penal Code: Harmonizing with Global Justice or Defying International Norms?," *Lex Scientia Law Review* 8, no. 1 (September 27, 2024): 561–94, https://doi.org/10.15294/LSLR.V8I1.14271.
[15] Republik Indonesia, "UU No. 8 Tahun 1981 Tentang Hukum Acara Pidana ," Sekretariat Negara § (1981); Republik Indonesia, "Perpol No. 1 Tahun 2009 Tentang Penggunaan Kekuatan Dalam Tindakan Kepolisian," Sekretariat Negara § (2009).
[16] Republik Indonesia, "Perpol No. 7 Tahun 2022 Tentang Kode Etik Profesi Dan Komisi Kode Etik Kepolisian Negara Republik Indonesia," Sekretariat Negara § (2022).
[17] Hadi Winarno, Bahrul Amiq, and Wahyu Prawesthi, "LAW ENFORCEMENT ON DRUG ABUSE PERPETRATORS COMMITTED BY INDONESIAN POLICEMEN," *Journal of Law Theory and Law Enforcement* 2, no. 2 (March 9, 2023): 16–29, https://doi.org/10.56943/jlte.v2i2.281.
[18] Yahman Yahman et al., "DISCIPLINARY ACTIONS UNDER THE POLICE CODE OF ETHICS FOR OFFICERS INVOLVED IN ADULTERY," *Journal of Law Theory and Law Enforcement* 3, no. 4 (January 10, 2025): 24–35, https://doi.org/10.56943/jlte.v3i4.680.
[19] Adam, Sudiro, and Yuan, "Harmonization of Prisoners' Rights in National Law in Accordance with Global Standards."

police officers for torture, assessed against the elements of Article 1 of the CAT, remains underexamined in the literature reviewed here. This article therefore asks why Indonesia's ratification of the CAT has not produced effective criminal accountability for police torture, and what legal and institutional reforms are required to close that gap. It uses normative legal research with statutory and conceptual approaches. The analysis tests the elements of criminal responsibility, namely the act, the mental element, available defenses, and participation, against the CAT definition. The article concludes that a specific law on torture, adopting the CAT definition and supported by independent oversight, is needed.

RESEARCH METHODOLOGY

This study used normative legal research.[20] It treated the law as a body of norms and asked whether those norms adequately establish the criminal liability of police officers for torture. The study did not collect empirical data on court practice. It therefore makes claims only about the adequacy of the legal framework and not about how often courts convict or how severe their sentences are. Data from Komnas HAM and KontraS were used only to show the scale of the problem and were not analyzed as findings.

Three approaches were combined. The statute approach examined the norms that apply to torture by police officers: the Convention against Torture (CAT), Law Number 5 of 1998, the 1945 Constitution, Law Number 39 of 1999, Law Number 26 of 2000, the Criminal Code provisions on assault and on coercion by public officials, and Law Number 1 of 2023. It also covered the Criminal Procedure Code, Law Number 2 of 2002 on the Indonesian National Police, and the police regulations on the use of force and on the professional code of ethics. The conceptual approach clarified the doctrines on which the argument depends: the dualist reception of treaties, the principle of legality, individual criminal responsibility, and impunity. The analytical approach is the core of the method and is described next.

The analytical approach broke Article 1 of the CAT into four elements. These are severe physical or mental suffering, intentional infliction, a prohibited purpose, and the involvement of a public official. Each element was tested against the provisions of Indonesian law that could apply to the same conduct, namely the assault provisions, the coercion provision, and Law Number 26 of 2000. The test showed which elements these provisions capture and which they omit. The same logic was applied to the defenses an officer may invoke, such as official duty, superior orders, and necessity under Articles 48 to 51 of the Criminal Code, and to command responsibility under Law Number 26 of 2000. The relationship between criminal and ethics proceedings under Regulation Number 7 of 2022 was

[20] Dr. Suyanto Suyanto, *Metode Penelitian Hukum Pengantar Penelitian Normatif, Empiris Dan Gabungan* (Gresik: Unigress Press, 2022).

assessed in the same way. Where norms of different rank or date overlapped, the principles of lex specialis and lex posterior were applied. Where wording was unclear, grammatical, systematic, and teleological interpretation were used.

The legal materials were collected through library research and analyzed qualitatively. The primary materials were the statutes and regulations listed above, together with the authoritative interpretations of the Committee against Torture. The secondary materials were peer-reviewed articles indexed in Scopus, published between 2020 and 2025, and recognized doctrine on criminal responsibility. The old Criminal Code served as the baseline for the existing assault provisions, and Law Number 1 of 2023, in force since January 2026, was treated as the current law. The analysis moved deductively from the CAT standard to the domestic provisions and then drew prescriptive conclusions on the reforms needed.

RESULT AND DISCUSSION

The analysis produced four results. First, until January 2026 Indonesian law did not define torture as a separate offense, and police torture was prosecuted under general assault and coercion provisions. Second, Article 530 of Law Number 1 of 2023 now fills part of that gap, but it departs from the CAT on several points that matter for prosecution. Third, the rules on defenses, the procedural safeguards, and the two accountability tracks still leave room for impunity. Fourth, no body exists that can investigate police torture independently and refer it for prosecution. The sections below take these results in turn. The last section compares them with the studies cited in the Introduction.

From a Structural Gap to Article 530

Before 2026, the law on police torture had three tiers. Law Number 5 of 1998 ratified the CAT, but ratification by statute neither defined an offense nor set a penalty.[21] Article 33 of Law Number 39 of 1999 prohibited torture without attaching a criminal sanction to the prohibition. Law Number 26 of 2000 reached torture only as a crime against humanity, which requires a widespread or systematic attack on a civilian population.[22] An isolated act of torture in a police station therefore fell to the general provisions. Under the former Criminal Code, basic assault carried a maximum of two years and eight months, and premeditated serious assault resulting in death carried fifteen years. Coercion by an official to extract a confession carried four years. None of these provisions required a

[21] Republik Indonesia, UU No. 5 Tahun 1998 tentang Pengesahan Convention Against Tortureand Other Cruel, Inhuman or Degrading Treatment or Punishment (Konvensi Menentang Penyiksaan dan Perlakuan atau Penghukuman Lain yang Kejam, Tidak Manusiawi, atau Merendahkan Martabat Manus….

[22] Republik Indonesia, UU No. 26 Tahun 2000 tentang Pengadilan Hak Asasi Manusia.

prohibited purpose or official capacity. A conviction under them did not record that the offender was a state agent who inflicted suffering to extract information.

Article 530 of Law Number 1 of 2023 changes this. It applies to a public official, to a person acting in an official capacity, and to a person acting at the instigation or with the knowledge of a public official. The conduct must cause physical or mental suffering for one of four purposes: obtaining information or a confession, punishing, intimidating or coercing, or discriminating. The maximum penalty is seven years of imprisonment. The elucidation states that the provision gives domestic effect to the CAT.[23] The article tracks Article 1 of the CAT on purpose and official involvement, which are the two elements that make torture a distinct offense.[24] For conduct after January 2026, the definitional gap described above is closed on paper.

The article nevertheless differs from the CAT in ways that will matter in court. The text consulted does not use the qualifier "severe," so the threshold between torture and assault is lower than in the Convention and less clear than it should be. It contains no express mental element, although the purposive wording implies intent. It uses "with the knowledge of" where the CAT uses "consent or acquiescence," and courts will have to decide whether the two reach the same conduct. The seven-year ceiling sits uneasily with Article 4(2) of the CAT, which requires penalties that take the grave nature of torture into account. It is also lower than the ceilings the former assault provisions allowed when serious injury or death resulted. Finally, the text consulted does not state that no exceptional circumstance can justify torture, as Article 2(2) of the CAT does. This study examined Article 530 and the general provisions on defenses. A systematic check of the rest of the new Code against the CAT remains to be done.

The offense is also new. Conduct before January 2026 remains governed by the former provisions under the principle of legality, and no judicial interpretation of Article 530 was available for this study. Any statement about how the article works in practice is therefore prospective. This changes how the central argument should be put. Historical impunity followed from a structural gap that treaty ratification alone could not fill. The remaining risks lie in the design of Article 530 and in its enforcement, which the following sections examine.

Elements, Proof, and Defenses

Under Article 530 the prosecution must prove the suffering, the purpose, and the official link. The purpose element is the hardest. Purpose is rarely admitted and must be inferred from circumstances, such as the timing of injuries in relation to an examination or a demand for a confession. The evidence is also

[23] Republik Indonesia, UU No. 1 Tahun 2023 tentang Kitab Undang-Undang Hukum Pidana.
[24] General Assembly resolution 39/46, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

held by the institution under investigation. The victim is often in custody, and the witnesses are often other officers. Forensic documentation by visum et repertum must therefore be prompt and independent. Where the examination is delayed or arranged through the accused institution, the causal link between conduct and injury weakens. Article 12 of the CAT requires a prompt and impartial investigation for this reason.

The defenses raised by officers deserve separate treatment. Under the former Code, Article 50 excused acts that carry out a statutory provision, and Article 51(1) excused acts done on an official order given by a competent authority. Neither can justify torture. The Constitution protects freedom from torture as a right that cannot be limited under any circumstance, and Article 2(3) of the CAT states that an order from a superior may not be invoked as a justification. No competent authority can lawfully order the infliction of suffering to obtain a confession. Article 51(2) is the greater risk. It excuses a subordinate who believed in good faith that the order was authorized and that carrying it out fell within his duties. In a hierarchical institution this plea is easy to make. Courts should read it narrowly, because an order to extract a confession by causing suffering is manifestly unlawful.

Necessity and self-defense fare no better.[25] Article 48 concerns a force that cannot be resisted or an emergency. An officer's wish to obtain information is not an emergency.[26] Article 49 requires an immediate and unlawful attack. A suspect who is already restrained in custody rarely poses one. Article 49(2) excuses excessive defense only when it results directly from intense emotion caused by the attack. A purposeful interrogation does not fit that description. These defenses can therefore be answered in doctrine. Their practical risk lies in how readily they are invoked, because they can delay proceedings and move the debate from the officer's act to the officer's state of mind.

Superior responsibility is the least developed part of the framework. Article 42 of Law Number 26 of 2000 holds commanders and civilian superiors liable, but it applies only to gross violations of human rights.[27] Article 530 has no equivalent. A superior who orders torture can be reached through the rules on participation in Articles 55 and 56 of the former Code, which cover ordering, inciting, and aiding. A superior who knows of the practice and tolerates it has no clear liability, unless the words "with the knowledge of" in Article 530 are read to cover him. Courts will have to settle that point, and until they do, supervisors of officers who torture may escape liability.

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[25] James Manwaring, "Unnecessary Self-Defence," *Oxford Journal of Legal Studies* 46, no. 1 (March 11, 2026): 87–110, https://doi.org/10.1093/ojls/gqaf035.

[26] Muhammad Zainal, "STUDI KOMPARASI PERBUATAN PEMBELAAN DIRI OVERMACHT, NOODWEER DAN NOODWEEREXCES DALAM PERSPEKTIF KITAB UNDANG-UNDANG HUKUM PIDANA," *Justness : Jurnal Hukum Politik Dan Agama* 2, no. 1 (May 23, 2022), https://doi.org/10.61974/justness.v2i1.16.

[27] Republik Indonesia, UU No. 26 Tahun 2000 tentang Pengadilan Hak Asasi Manusia.

Coercive Powers and the Line Between Lawful Force and Torture

The procedural framework authorizes coercive measures without saying where lawful coercion ends. The former Criminal Procedure Code regulated arrest, detention, and search, and Article 117(1) required statements to be given without pressure.[28] The police regulation on the use of force sets graduated levels of force for police action.[29] That regulation is built around resistance by the person being controlled. Torture in custody is aimed at a person who is already controlled. The level-of-force scale therefore cannot answer whether a given act is torture. Article 530 supplies a better test, because it turns on purpose. Force used to obtain a confession, to punish, or to intimidate is torture whatever its level.

The new Criminal Procedure Code, Law Number 20 of 2025, adds safeguards. It gives a suspect the right to be free from torture, intimidation, and degrading treatment. It requires witness statements to be given without pressure. It allows an advocate to object to intimidation during an examination and requires the objection to be recorded. It also provides legal aid at every stage of examination.[30] These provisions fit the preventive logic of the CAT. The text consulted does not state, however, that a statement obtained by coercion is inadmissible, which Article 15 of the CAT requires. Without such a rule, the incentive to extract confessions remains.

That incentive is not hypothetical. Purwanto et al. describe investigators who treat a confession as the goal of the examination.[31] Susilo et al. show that coercive measures can precede a formal order and that orders may later be signed with earlier dates.[32] Safeguards of this kind depend on records, and the police largely control the records. The advocate's recorded objection and an independent record of the examination therefore carry more weight than the declared rights. A right to be free from torture protects a suspect only if a breach can be proved by evidence that the accused institution does not control.

Ethics Proceedings and Oversight

Criminal liability and ethics proceedings run on separate tracks. Regulation Number 7 of 2022 establishes the professional code of ethics and the commission that enforces it.[33] Winarno, Amiq, and Prawesthi show that an officer convicted

[28] Republik Indonesia, UU No. 8 Tahun 1981 tentang Hukum Acara Pidana .
[29] Republik Indonesia, Perpol No. 1 Tahun 2009 Tentang Penggunaan Kekuatan Dalam Tindakan Kepolisian.
[30] Pemerintahan Republik Indonesia, "UU No. 20 Tahun 2025 Tentang Kitab Undang-Undang Hukum Acara Pidana," Sekretariat Negara § (2025), https://peraturan.bpk.go.id/Details/337302/uu-no-20-tahun-2025.
[31] Purwanto et al., "Reconstructing the Legal Understanding of the Presumption of Innocence in Criminal Justice to Achieve Justice."
[32] Susilo et al., "Justice Delayed, Justice Denied: A Critical Examination of Repeated Suspect Status in Indonesia."
[33] Republik Indonesia, Perpol No. 7 Tahun 2022 tentang Kode Etik Profesi dan Komisi Kode Etik Kepolisian Negara Republik Indonesia.

of a drug offense may be dismissed dishonorably from the force once the judgment becomes final.[34] The two tracks have different purposes. Criminal law punishes and deters a wrong. Ethics enforcement protects the integrity of the profession. The principle of ne bis in idem in Article 76 of the former Code bars a second prosecution after a final court judgment. An ethics hearing is not a court judgment, so it does not bar prosecution in doctrine. The real risk is practical. A case that ends in a hearing before the commission may never reach a prosecutor, and the officer may leave the force without ever facing a criminal court.

The record on internal enforcement gives little reason for confidence. Yahman et al. find that ethics violations continue despite existing rules, and they attribute this partly to the weak quality of internal investigators.[35] Their study concerns adultery, a violation with little institutional cost to the force. Torture is different, because a finding of torture reflects on the institution itself. In Indonesian usage, institutional loyalty of this kind is described as solidaritas korps. This study did not test it empirically, so it is offered as an explanation that needs empirical study and not as a finding. The imported phrase "blue wall of silence" was not used for that reason.

The oversight architecture does not fill the gap. The National Police Commission is established by Law Number 2 of 2002, but it has no power to investigate crimes or refer cases for prosecution.[36] The Ombudsman handles maladministration and not crimes.[37] Komnas HAM monitors and mediates under Law Number 39 of 1999, and its investigative powers under Law Number 26 of 2000 cover only gross violations. The Witness and Victim Protection Agency protects witnesses and victims but does not investigate.[38] No body combines independence, investigative power, and the ability to refer a case for prosecution. Articles 12 and 13 of the CAT require both a prompt and impartial investigation and protection of the complainant. Adama, Sudiro, and Yuan also point to the lack of an independent preventive mechanism, which they link to the absence of ratification of the Optional Protocol.[39]

The results support several earlier findings. Adama, Sudiro, and Yuan found that Indonesia has ratified the main human rights treaties and that implementation is weak. This study reaches the same conclusion for police

[34] Winarno, Amiq, and Prawesthi, "LAW ENFORCEMENT ON DRUG ABUSE PERPETRATORS COMMITTED BY INDONESIAN POLICEMEN."
[35] Yahman et al., "DISCIPLINARY ACTIONS UNDER THE POLICE CODE OF ETHICS FOR OFFICERS INVOLVED IN ADULTERY."
[36] Republik Indonesia, "UU No. 2 Tahun 2002 Tentang Kepolisian Negara Republik Indonesia," Sekretariat Negara § (2002).
[37] Republik Indonesia, "UU No. 37 Tahun 2008 Tentang Ombudsman Republik Indonesia," Sekretariat Negara § (2008).
[38] Republik Indonesia, "UU No. 31 Tahun 2014 Tentang Perubahan Atas Undang-Undang Nomor 13 Tahun 2006 Tentang Perlindungan Saksi Dan Korban," Sekretariat Negara § (2014).
[39] Adam, Sudiro, and Yuan, "Harmonization of Prisoners' Rights in National Law in Accordance with Global Standards."

torture. Susilo et al. and Purwanto et al. found that the investigation phase is where rights are most exposed and where the pursuit of confessions drives abuse. The elements of Article 530 describe the same pattern, since two of its four purposes are obtaining information and obtaining a confession. Winarno et al. and Yahman et al. found that the ethics track runs separately from the criminal track and enforces discipline unevenly. The analysis above supports both findings and shows what they mean when the alleged wrong is torture.

The results also extend earlier work. The earlier studies treat torture as context. They address prison conditions, suspect designation, the presumption of innocence, and past violations. This study treats torture as the object of analysis and tests the CAT definition element by element against Article 530 and the older provisions. That test yields results the earlier work could not. Article 530 matches the Convention on purpose and official involvement but not on severity, penalty, or defenses. The study also extends the analysis of ethics proceedings. Earlier work did not ask whether such proceedings complement prosecution or replace it, and this study shows that the risk lies in practice and not in the doctrine of ne bis in idem.

In two respects the results qualify or differ from earlier findings. Adama, Sudiro, and Yuan describe a strong domestic framework with weak implementation. For police torture the weakness lay in the norm itself until January 2026, so implementation was not the only problem. Arifin et al. found significant gaps between the new Criminal Code and international human rights standards. On torture, the Code moves toward the Convention, so their general finding holds only in part. Marzuki and Ali show that court proceedings and truth-seeking failed to resolve past gross violations. Their finding concerns past violations of a political and collective kind. Police torture today is an individual offense that ordinary prosecution can reach. Their conclusions about the limits of courts should not be carried over to it without that distinction.

CONCLUSION

This article asked why Indonesia's ratification of the CAT has not led to effective criminal accountability for police torture, and whether Article 530 of Law Number 1 of 2023 now settles the matter. The answer has two parts. For most of the period since 1998, the problem lay in the structure of the law. Ratification by statute created no offense. Law Number 39 of 1999 forbade torture but attached no penalty. Law Number 26 of 2000 applied only when torture formed part of a widespread or systematic attack. An officer who tortured a single suspect was prosecuted for ordinary assault or coercion, and neither charge records that the offender was a state agent acting for a prohibited purpose. Article 530 closes most of that gap for conduct after January 2026. Yet it departs from the Convention on the threshold of severity, the mental element, the penalty ceiling, and the bar on

defenses. Pleas of official duty, superior orders, and necessity can be rebutted in doctrine, but the good-faith plea for subordinates remains open and superiors have no clear liability. Weak safeguards against coerced evidence, the practical use of ethics hearings in place of prosecution, and the absence of an independent investigative body add further room for impunity.

The study offers three contributions. It treats torture as the main object of analysis and tests the CAT definition element by element against both the former provisions and the new offense. It shows that the risk of impunity has shifted from the lack of an offense to the design and enforcement of the one now in force. It also shows that the real danger in the relation between criminal and ethics proceedings is substitution in practice and not double jeopardy. These findings are normative. Article 530 is new, and no court has yet interpreted it, so later research on actual prosecutions will have to show whether it delivers accountability.

Five reforms follow. Article 530 should be amended to set a clear severity threshold that separates torture from assault, to raise the penalty ceiling to match the gravity of the offense, and to state that neither exceptional circumstances nor a superior's order can justify torture. Criminal procedure should exclude any statement obtained by torture and should require prompt, independent forensic examination after every allegation. Credible allegations should go to criminal investigation and should not end in an ethics hearing alone. An independent police complaints body should be created, with power to investigate, to compel evidence, and to refer cases directly for prosecution. Victims and witnesses in torture cases should receive automatic protection from the Witness and Victim Protection Agency. Together, these measures would carry Indonesia from the formal criminalization of torture to accountability in practice.

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