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Indonesia Legal Aid Foundation: Access to Justice for Marginalized in the Context of Human Rights in Indonesia¹

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A. Introduction

The key element of access to justice is 'equality before the law'. It is declared in article 6 of the Universal Declaration of Human Rights that "all are equal before the law and are entitled without any discrimination to equal protection of law". Indonesia has implemented it into Constitution to guarantee all citizens to get access to justice but there is no specific law to regulate free legal services for poor people. This paper will discuss laws who regulate legal aid, legal aid scheme and history of legal aid in Indonesia in order to give overview about legal aid in Indonesia. It also determines Indonesian Legal Aid Foundation/YLBHI's reports to provide legal aid services for poor people in the context of human rights protection and the legal aid challenges in Indonesia.

B. Population and Lawyers

In this section, basic information is presented in order to give an overview about the number of people who will need legal services with it's comparison to the number of lawyers. According to Indonesian Bureau of Statistic in 2005, total population of Indonesia is 218,868,791. The most people live in East Java province (36,294,280) and the fewer people stay in West Papua (643,021).³ Indonesian Bar Association (*Perhimpunan Advokat Indonesia*) has a list of members about 20,400 advocates over Indonesia.⁴ Thus, one lawyer should stand for 10,728 people in Indonesia. Another problem is most of the

¹ This paper will be presented in ILAG Conference, Wellington, New Zealand, 1- 4 April 2009.

² Vice Chairperson I (Networking and Fundraising) Indonesian Legal Aid Foundation

³ Indonesian Bureau of Statistics, http://www.datastatistik-indonesia.com/component/option,com_staticxt/staticfile,depan.php/Itemid,17/219,204.7 at 6 February 2009.

⁴ Ministry of Law and Human Rights Urge Bar Association to Register a List of New Members. *Menhuk HAM minta PERADI sampaikan buku daftar anggota terbaru*, <http://www.peradi.or.id/in/detail.viewer.php?catid=ec8fe27135f984276782ff51cd2d938c&cgid>, at 7 February 2009.

lawyers reside in big cities, on the other hand Indonesia consists of big islands and little islands which influence legal aid services for people who live in those islands.

C. Legal Aid System in Indonesia

The Legislation

Indonesia is a state party to the International Covenant on Civil and Political Rights (ICCPR) which recognizes the right to access justice and fair trial of the people. It is implemented on Law No 12/2005 Ratification on Covenant Civil and Political Rights. Indonesian new constitution also states people have the right for fair trial (section 28 D (1)). In criminal cases, article 56 (1) Criminal Code Procedure said that if accused or defendant who commit a crime with threat of death penalty or 15 years or more in imprisonment do not have lawyers, the authority point out lawyers for them. In practice, Judge in court will ask accused whether she or he need a lawyer or not. The court appoints a lawyer to represent defendants from Legal Aid Post (*Pos Bantuan Hukum*) which is located in the district court. Lawyers' fees which are very minimal are covered by Department of Law and Human Rights. For example in Medan Province 1 case only US\$ 18 (IDR. 200.000) and only for 5 cases per year, in Samarinda Province 1 case US\$ 27 (IDR. 300.000) and many of cases did not get this fund.⁵ Department of Law and Human Rights affirmed that the budget for legal aid had replaced to Supreme Court in 2005 after the administration of court did not responsible of this department. Nevertheless, legal aid operational post in Supreme Court Budget did not cover fund for free legal aid services to Legal Aid Post in District Court.⁶

Indonesia has Act Number 18/2003 on Advocate (article 22) which said that advocates should give free legal services for poor people. In order to implement it, the Government makes government regulation number 83/2008 on Free Legal Aid Procedure and Requirement (*Peraturan Pemerintah tentang Persyaratan dan Tata Cara Pemberian Bantuan Hukum secara Cuma-Cuma*). Nonetheless, this act does not regulate about legal aid but regulate advocate as a profession even though the main function of lawyer is to do legal aid services.

As noted above, there is no specific rule as a ground for free legal assistances in Indonesia to regulate state responsibility to provide legal

⁵ Kadafi, Binziad et al, Indonesian Advocates Find Legitimation : Study about Responsible of Law Profession in Indonesia (2001), Central of Indonesian Study and Policy, Jakarta, 193 - 194. (Binziad Kadafi, Aria Suyudi dll, *Advokat Indonesia Mencari Legitimasi : Studi tentang Tangung Jawab Profesi Hukum di Indonesia*, Pusat Studi Hukum dan Kebijakan Indonesia (PSHK), 2001, hlm 193-194).

⁶ State Budget for Legal Aid is in Memorial?. *Anggaran Pemerintah untuk Bantuan Hukum Tinggal Kenangan?*

<http://cms.sip.co.id/hukumonline/detail.asp?id=12550&cl=Berita>, at 7 February 2008.

aid for marginalized people. According to this, Indonesian Legal Aid Foundation/Legal Aid Institutes have been persuading the Indonesian Government through Ministry of Law and Human Rights to have legal aid law in order to provide legal services for poor people. YLBHI, NGOs and Legal Aid in Universities have produced draft of legal aid bill and academic paper of legal aid.

A short history of legal aid in Indonesia

In the colonial period, legal services were provided by lawyers for defendant who could not afford money but they were limited for the death penalty cases. The first legal aid program which is organized is started by Indonesian Legal Aid Foundation/ legal aid in Jakarta (*Yayasan Lembaga Bantuan Hukum Jakarta/Lembaga Bantuan Hukum Jakarta*) at 28 October 1970. Social organization such as Tjandra Naya which is founded in Jakarta in 1950's has already provided legal aid for Chinese people. In addition, Legal Consultant Bureaus from Faculty of Law in State Universities such as University of Indonesia in Jakarta, Padjajaran University in Bandung, University of Airlangga in Surabaya, only give consultation for poor people and the primary aim of this service is to train students as an expert in law which is needed by society.⁷

Non-government Organizations or NGOs have a big legal assistance scheme for the poor such as Indonesian Legal Aid Foundation with 14 branch offices (Legal Aid Institute) and Legal Aid for Women (*LBH APIK*). Since 1978, there is an interesting change of legal aid in Indonesia concerning with the diversion of the names of legal aid which do not have connection with Legal Aid Foundation. There are legal aid institutes which are independent, legal aid which are built by political parties or mass organizations and legal aid which are related to education institution.⁸ In practice, the aim of these kinds of institutions/organizations could be different of the idea of free legal services for poor people because they use brand "legal aid" to get clients or to political purposed.

D. YLBHI's report

Indonesian Legal Aid Foundation has 14 branch offices in 14 provinces and 7 legal aid post at district level, from Aceh (west of Indonesia) to

⁷ Nasution, Adnan Buyung, History of Legal Aid in Indonesia, in Gatot (ed), Legal Aid : Access to Justice for Marginalized People (History, Concept, Policy, Implementation and Comparative Study from other Countries) (2007), Jakarta Legal Aid Institute, 5. Adnan Buyung Nasution, *Sejarah Bantuan Hukum di Indonesia, di dalam Gatot (editor), Bantuan Hukum : Akses Masyarakat Marginal terhadap Keadilan (Tinjauan Sejarah, Konsep, Kebijakan, Penerapan dan Perbandingan di berbagai Negara), Lembaga Bantuan Hukum Jakarta, 2007, hlm 5.*

⁸ Abdurrahman, Legal Aid Aspects in Indonesia(1980), Cendana Press, 51-52. Abdurrahman, *Aspek-aspek Bantuan Hukum di Indonesia, Cendana Press, 1980, hlm 51 - 52.*

Papua (East of Indonesia). YLBHI provides legal aid services for the disadvantaged and marginalized.

Picture 1

14 Legal Aid Institutes in YLBHI's coordination:



Indonesian Legal Aid Foundation/Legal Aid Institute provides legal aid in form of (1) legal consultation/ legal opinion; (2) case handling through criminal court system; (3) case handling through civil court system; (4) case handling through state administrative court and (5) case handling through out of court system (mediation and negotiation). In addition, there is a variety of legal aid programs in YLBHI/LBH, not only legal advice and representation but also law reform, advocacy work and community legal education as the implementation of a structural legal aid policy. This policy is based on the efforts to urge the realization of a constitutional state, which guarantees social justice.⁹ YLBHI/LBH's work is to change state policy which do not base on society aspirations and demands. It means that YLBHI is participating in urging the making of public policy, which determines the guarantee of economic, social and cultural rights and also civil and political rights.

YLBHI/LBHs' works are focused on cases related to human rights violation whether in social and political sectors (civil and political rights), economical, social and cultural rights, women rights and children rights. Below the number of cases which accepted by LBH offices all over Indonesia:

⁹ Indonesian Legal Aid Institution, The Profile of the Indonesian Legal Aid Institution : Hand in Hand with the People for Democracy, 9.

Table 1

The number of cases in YLBHI/LBH in 2004-2008¹⁰:

Name of Offices	2004	2005	2006	2007	2008
LBH Banda Aceh	31	Tsunami	98	255	153
LBH Medan	82	60	25	197	152
LBH Palembang	91	54	79	127	100
LBH Padang	14	49	68	102	131
LBH Bandarlampung	17	26	20	37	43
LBH Jakarta	1026	1200	1123	1140	1144
LBH Bandung	181	80	90	71	99
LBH Semarang	90	131	164	231	158
LBH Yogyakarta	40	50	55	408	327
LBH Surabaya	204	276	57	480	258
LBH Bali	31	150	41	97	102
LBH Manado	-	-	137	122	82
LBH Makassar	31	30	45	73	53
LBH Papua	82	40	172	43	152
Total	1920	2146	2174	3383	2954

Source: LBHs' annual report

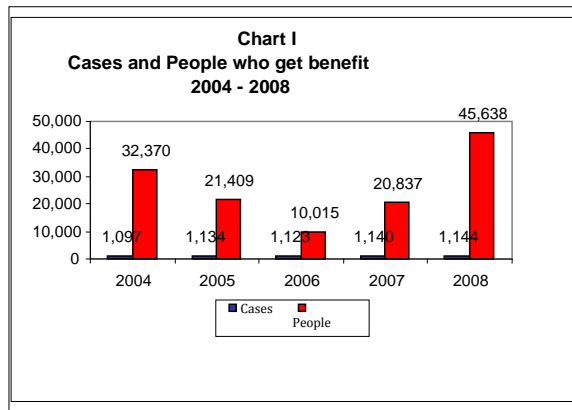
The number of people who obtain legal services from LBH is more than the number of people who is registered as a client because one case could represent more than one person. For example, Jakarta Legal Aid Institute as one of YLBHI's branch offices handles cases in Jakarta, Tangerang, Bekasi and Kerawang region, the institute handles 1144 cases with 45,638 people who get benefit from it in 2008.¹¹ The number of cases increased significantly every year from 1,097 in 2004 to 1,144 cases in 2008. For details see picture 2.

¹⁰ The number of cases which are reported are cases which are handled by LBH's through litigation and non litigation but consultation by phone, by mail and email did not contain of these numbers.

¹¹ The number of people who get benefit is the number of people who is represented. For example: the case of force eviction is registered by one person but he or she represents a lot of people who has the same case.

Picture 2¹²

Cases & People who get benefit 2004 – 2008:



Source: LBH Jakarta's Research and Development Division

Legal aid branch offices have different primary cases. Each office is established and developed according to social reality that exists in their areas. In the relation to the present social conflict map, all LBH offices are facing cases arose from natural resources management conflict with various conflict typology, according to the conflict's subject and objects in the area. All offices in Java Island, some in Sumatra and Sulawesi are facing intense labour conflict. LBH offices in Java Island, whose urban growth is very rapid, face cases connected to urban poor.¹³ In proportion to gender classification, women who obtain assistance from legal aid services in Jakarta Legal Aid Institute are 818 women and men are 13,360 in 2008.¹⁴

In advocating legal case, the foundation has been using a structural legal aid framework and approach. It means that legal aid is used as a tool to reform law and political structure that repress the marginalized and the disadvantaged. YLBHI found there were 3 weaknesses of the implementation of human rights in 2008. Firstly, the number of policies increased, but it threatened of human rights. For instance, Porn Act (*Undang-undang Pornografi*), Education Legal Entity Act (*Undang-undang Badan Hukum Pendidikan*). Indonesian Government also failed to ratify important international human rights norm which is already planned in national human rights action. A number of regulations, who support, protect and respect human rights were not planned to be discussed, for examples Indonesian Criminal Code Bill (*Rancangan Kitab Undang-*

¹² Law and Human Rights Report Jakarta Legal Aid Institute in 2008, 3.

¹³ Indonesian Legal Aid Institution, *The Profile of the Indonesian Legal Aid Institution : Hand in Hand with the People for Democracy*, 14.

¹⁴ Law and Human Rights Report Jakarta Legal Aid Institute in 2008, 5.

undang/RUU Hukum Pidana), Code of Criminal Procedure Bill (*RUU Hukum Acara Pidana*), Legal Aid Bill (*RUU Bantuan Hukum*).¹⁵

Secondly, the increasing of laws products did not guarantee the protection of human rights in the implementation. Indonesia has ratified International Covenant on Civil and Political Rights (Law Number 12/2005) and International covenant on economic, social and cultural rights (Law Number 11/2005). YLBHI reported that there were high intense of civil and political violations in 2008 such as fair trial and independent judiciary, freedom of religion and believe, freedom of live, freedom of fear and freedom from torture.¹⁶ On the other hand, in economic, social and cultural rights, the Government has better policies such as the Government allocates 20 % of National Budget for education, the Government carry out Law No. 20/2008 on National Social Warranty System (*Sistem Jaminan Sosial Nasional*) to make poor people get access to health. However, force eviction almost happened in big cities to poor people, people who trade on the street and another informal job.¹⁷

Thirdly, the Government failed to prove human rights violation cases. YLBHI reviewed cases that happened in the past but until now they did not finish yet, such as Tanjung Priok case and disappeared people case, murder of human rights defender Munir.¹⁸ There is a problem for years about human right court and human right ad hoc between Attorney General and Human Rights Commission. The attorney general did not agree to continue on more than five human rights commission's reports to investigate human rights violations, due to various reasons such as a formal procedure which have to complete, weak evidences and there is no recommendation letter from house of representative. These facts make truth and reconciliation commission is an important option to handle human rights violations in the past. The Government should build the commission as a priority program for victims to get justice.¹⁹

Legal Aid Funding

Indonesian's Government do not allocate legal aid fund for legal services for the poor. The Government distributes legal aid services program in Central Government Budget (*Anggaran Pendapatan Belanja Negara*) for Law Institutions such as Supreme Court, Attorney General, Department of law and human rights, Police, Human Rights Commission, Corruption Eradication Commission and Judicial Commission. There is no budget for lawyer to provide legal aid for the poor or for all the expenses to go to the court. In spite of this, some of Legal Aid Institutes for instance Jakarta

¹⁵ Indonesian Legal Aid Foundation, A Brief of Human Rights Enforcement in 2008: No improvement in Human Rights Enforcement, 2008, 4. YLBHI, *Ulasan Penegakan HAM Tahun 2008 : Penegakan HAM terbukti mandek*, hlm 4 - 5.

¹⁶ Ibid, 9.

¹⁷ Ibid, 1.

¹⁸ Ibid, 21.

¹⁹ Ibid, 24.

Legal Aid Institute, Medan Legal Aid Institute, Padang Legal Aid Institute got fund from Regional Government Budget for programs such as publish law books, training/seminar. In addition, Jakarta Governor supports to build YLBHI's office.

YLBHI sources of fund are from funding agencies and funds from domestic. Fund from funding agencies are only for programs and it do not cover legal aid services for the poor. The new trend of funding agencies in the last five years is only to give fund for short time period such as 6 months or one year. As a result, there are not continuity programs in the society, programs are not base on people's need but funding agencies programs. YLBHI focuses to develop domestic sources such as make an event to get fund from Indonesian's society, Training/seminar for professional, publish books, magazine, news on line.

Conclusion and Recommendation

The idea of structural legal aid policy makes YLBHI/LBH as one of key subjects against New Order authoritarianism and became a key role in pro-democracy movement. The diversity of YLBHI/LBH programs will improve access to justice for disadvantages people in Indonesia. Human Rights Violation cases which is handled by YLBHI/LBH will be brought to the Government, House of Representative and other Institutions to urge them to change their policies in line with marginalized interest. Indonesia has stated equality before the law as the main elements of access to justice in constitution and laws. However, there is no specific rule to regulate free legal aid for poor people as the implementation of those laws. According to this, there are some challenges of Legal Aid in Indonesia:

1. The number of lawyers is not sufficient with the number of people who need legal services. In order to enable more people to have access to legal services, paralegals or non lawyers should involve in legal work especially for disadvantaged groups. Government regulation Number 83/2008 on Free Legal Aid Procedure as the implementation of Number 13/2003 on Advocate cannot afford all person who need help in legal services because of limitation of lawyers in Bar Association. The demography of lawyers who is located in big cities and the diversity of people who live in rural area will impact on delivery of legal aid services.
2. There are many kinds of legal aid service providers in Indonesia such as legal aid institutes which are coordinated by YLBHI, legal aid which is related to political parties, mass organization or educational institution. The aim of these organizations could be different of the idea of free legal aid services because there is no coordination or connection between them. It might be used by other parties to get profit from society.
3. Poor people are difficult to get access to justice because government do not allocate fund for legal services. The legal aid services program in Central Government Budget is only for state institutions.

According to the challenges in meeting access to justice for marginalized people in Indonesia through legal aid, there are several recommendations as listed below:

1. YLBHI advocates government should make Legal Aid Bill in order to make poor people get access to justice in court or outside court. This bill will regulate main points such as state obligation on legal aid services fund, recognize paralegal as a partner of lawyers, the organization of legal aid services providers.
2. Bar Association and legal aid institutes should make a networking to do pro bono work as a part of lawyers' moral obligation in government regulation on free legal aid services.
3. Students or clients should be encouraged to work as paralegals to provide legal aid for marginalized people.
4. The implementation of legal aid services should be supported by telecommunication technology to resolve the demography problem.

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