

2009 International Forum on Legal Aid
National (or Regional) Report

1. Providers of Legal Aid

(a) Who are the providers of legal aid services in your country?

In practice, the civil society, especially the Legal Aid Institute (LBH) provides legal aid services in Indonesia.

(b) Does your organisation consolidate legal aid resources in your country, by carrying out legal aid work authorized by other government agencies?

The Indonesia Legal Aid Foundation (YLBHI) has 15 branch offices over 15 provinces in Indonesia. We have consolidated legal aid resources only in 1 province, namely the Province of South Sumatera. Besides that, the Provinces of West Sumatera and North Sumatera provide partial funding for legal aid programmes. In addition the Province of DKI Jakarta provides financial support for building our offices. See www.ylbhi.or.id

2. Organization

(a) How does your organisation organize its human resources?

The Board of Trustees is partially supportive and provides funding, in addition to funding provided by the provincial governments mentioned above. We also receive donations from the public to provide legal aid work. We recruit staff and paralegals regularly and provide them with legal aid education and training.

(b) Is the legal aid scheme in your country funded by the government or the private sector? Is the scheme organized on a centralized level or regional level? If the legal aid scheme in your country is organized by the government, how does it maintain independence from the government?

Until now we do not have an Legal Aid Act. Therefore, there is no funding for legal aid work based on state obligation. The Supreme Court provides limited resources for only persons who could be sentenced to more than five years in prison. Therefore recently only the 4 provinces mentioned above have supported legal aid work. We do not face significant problems in terms of independence during our work. We also take legal action against government agencies.

3. Financial Affairs

(a) What are the sources of legal aid funding in your country?

Each Legal Aid Institute has their own funding resources, mainly from their foundation, funding agencies and public donation.

(b) Does the legal aid scheme in your country adopt a charitable model or a rebate model? Are recipients of legal aid required to repay legal aid costs at the conclusion of court proceedings?

In practice, the legal aid scheme in Indonesia adopts a charitable model. Recently, 4 new laws have been enacted, namely the Law regarding Judicial Power, the Law on General Court (amended Law 2/1986), the Law on Administrative Court (amended Law 5/1986) and the Law on Religion Court (amended Law 7/1989). These laws contain the right of everyone to apply for legal aid and the state's obligation to provide legal aid services for people. However, mechanism and procedures should have been in place first in an Legal Aid Act, which have not been enacted yet.

(c) Are court fees/filing fees and security for costs covered by legal aid?

The court has provided limited funding of approximately Rp 500.000 (USD 52.3) per case for legal aid services. In comparison the Province of South Sumatera provides Rp 80.000.000 (USD 8,369) per case.

(d) If provided, does this assistance increase the burden on the government's budget? Interestingly legal aid funding in practice has been allocated not for the poor, but for high ranking officers that proceed in criminal cases including corruption cases. For instance, the Ministry of Finance enacted Ministry Regulation to provide legal aid budget for their officers. Therefore, the budget has been misallocated for many years until now.

4. Supervision

(a) Is the operation of your organisation supervised by another authority?

Our organization's legal entity is by way of a Foundation, established since 1970. The Board of Directors is supervised by the Board of Trustees and the Monitoring Board. Every year we publish our report including financial report in national newspaper. If fundings come from a funding agency or a provincial government, we are also supervised by those institutions. In addition, in practice we are supervised by the public and our clients.

(b) How does it supervise your organisation?

Regularly there are meetings between the Foundation and the Legal Aid Institute with our constituents, especially the poor.

(c) What are the difficulties involved in dealing with the organization's supervising authority?

We promote a paradigm and concept namely "the structural legal aid". This concept has been developing since 1980s. In short, the concept obliges all public lawyers not only representing their clients before the court but also take policy advocacy to change social and political system and structure that makes people still poor (see i.e http://www.hurights.or.jp/asia-pacific/no_38/02.htm). Therefore, not all authority or person that supervise our program understand this concept.

5. Procedures and Criteria for Granting Legal Aid

(a) Please briefly describe your organization's criteria for granting legal aid.

There are two criteria for being our client: firstly, the poor and the marginalized. Secondly, as we have limited resources, our criteria is based on the structural legal aid concept: the case should have impact on changing policies and the number of victims is massive, ie, more than 10 people.

(b) Are applicants means-tested? If so, please describe the financial eligibility criteria, any documentation required for applying, the procedures of application and assessment, and the timeframe for decision-making. Are there situations where means-testing is not required?

We are not implementing means-testing rigidly. However, every person should provide document to show they are really poor, for instance letters from local authority and/or electricity bills. Each Legal Aid Institute will decide which case should be aided, especially if they require assistance in litigation processes.

(c) If applicants are means-tested, has consideration been given to raise the financial eligibility criteria, thus increasing the number of people eligible for legal aid?

Ideally, it should be a main consideration to raise financial eligibility and increase the number of people eligible for legal aid.

(d) Who assess legal aid applications? How are these personnel recruited?

In the Legal Aid Institute, every application is assessed by the Director or senior public lawyers who have been working for more than 5 years in the office. They are recruited by the selection processes of the Legal Aid Institute.

(e) For court cases, is the prospect of success a consideration for deciding applications?

No. Because of the “legal aid structure” concept, we are not considering the prospect of success. Moreover, we often use the court session as a medium for increasing public awareness and criticize decision makers.

(f) Is there a requirement that an application must be made by the applicant personally?

Yes.

6. Models of Service Delivery

(a) How are legal aid cases assigned to lawyers? Are legal aid services provided by salaried lawyers, contracted lawyers, or by lawyers or law firms in other ways?

The Directors and senior public lawyers are assigning to their lawyers of Legal Aid Institute.

7. Legal Aid Fees

(a) Please compare the fees paid to legal aid lawyers with fees charged by private practitioners.

There are no fees for legal aid lawyers. However the Legal Aid Institute or the foundation provide monthly salary of approximately Rp 1.000.000 to Rp 3.000.000 (USD 104.6 to 303), comparing with private lawyer’s fees charged approximately Rp 15.000.000 (USD 1569.04) to hundreds billion rupiahs per case depends on their “popularity”.

8. Legal Aid for Specific Communities

(a) Does your organisation tailor and provide legal aid services to specific communities (for example, aboriginal people, foreign workers, plaintiffs in environmental litigation)

Yes. Basically our clients are indigenous people, workers, peasants, urban poor community, human rights and environmental disaster victims.

9. Scope and Types of Services

(a) Is legal aid available for the following matters:

- (i) Litigation in civil law, criminal law, administrative law and claims for national compensation?
- (ii) Alternative dispute resolution?

Yes

(b) Does legal aid provide the following services?

(i) Face-to-face or telephone legal consultation? What are the procedures of providing these services? Are applicants for legal consultation means-tested? How are applicants' finance assessed?

Yes. There are no particular procedures for providing telephone legal consultation. Basically everyone could consult by telephone. However, usually we will suggest them to consult in the office.

(ii) Assistance during interviews at police stations?

Yes.

(c) Is legal aid available for foreign nationals?

Yes. We have experience to provide legal aid for asylum seekers from Iraq and Afghanistan.

10. Innovative Legal Aid Initiatives

(a) What are the unique features of the legal aid practices in your country?

Legal aid have been implemented since 1970 without adequate support from the State and regulation by a Legal Aid Act,

(b) What are your organization's innovative legal aid initiatives in the recent years?

We are developing and using SMS (short message service) as a gateway to provide information regarding law and legal aid. Therefore every person could receive the information through their cellular phone. People should register first, type in "hukum" (law) and send to 7475 (operator). They also could select the type of information they wish to receive, for instance labour law, financial, family law and property law.

11. Access to Legal Aid

(a) How does your organisation provide potential legal aid applicants with knowledge of the availability of legal aid services?

By website, leaflet and media campaign.

(b) How are legal aid services provided to applicants who live in areas that lack legal resources?

One of our programmes is legal aid training for the community, students and local leaders as well as training for paralegals who live in remotes areas. Nevertheless,

there are no services and in practice it is very difficult for individuals to obtain legal resources in this area especially in village and remote areas.

- (c) Does your organisation arrange outreach programs for legal aid lawyers? What is the performance of these programs?

We provide 3 main programmes: (1) special education for profession of lawyers (PKPA) in cooperation with the Indonesia Bar Association; (1) advocacy skills training for legal aid lawyers – supported by Indonesia-Australia Legal Development Facility, Ausaid; (3) Karya Latihan Bantuan Hukum (Legal Aid Training for Student and Fresh Graduate).

12. Legal Aid Lawyers

- (a) What are the sources of recruiting legal aid lawyers?

Basically, all legal aid lawyers who work for the Legal Aid Institute are recruited from the Karya Latihan Bantuan Hukum (Legal Aid Training for Students and Fresh Graduate).

- (b) Compared with lawyers in private practice, are legal aid lawyers as highly regarded by the police, prosecution and the courts? Do they provide facilities to make legal aid lawyers' work more convenient?

It can be said that public legal aid lawyers of the LBH are highly regarded by the media. In general, there are no facilities provided by the police, prosecution and the courts in order to make our work more convenient.

13. Quality Assurance

- (a) How does your organization ensure the quality of legal aid lawyers' work?

Comparing with other legal aid providers, legal aid lawyers of the LBH can be said to have achieved good quality and trust from people.

14. Participation in Reforms

- (a) Does your organization participate in campaigns for social reforms or law reforms, with a view to reduce legal disputes?

Yes, including judicial review on laws before the Constitutional Court.

15. Challenges

- (a) What are the difficulties and challenges facing your organisation in promoting legal aid services?

(1) Until now, Indonesia does not have an Legal Aid Act. Therefore the right to legal

aid in Indonesia is not a legal right, and there is no obligation for the state to allocate budget for the poor. (2) Many law offices are using the term “legal aid” to manipulate people who are seeking justice. Indeed they are not legal aid lawyers but private lawyers. (3) Million of Indonesia people are poor and Indonesia is also a big country. As a consequence, we need more people who work as legal aid lawyers as well as paralegals. (4) There is no significant contribution from the Indonesia Bar Association in order to promote legal aid services. Recently, the Indonesia Bar Association has splitted into two organizations, namely the Perhimpunan Advokat Indonesia (Peradi) and the Kongres Advokat Indonesia (KAI). (5) Not all police, prosecutor and the court support the idea of legal aid, as it will give more work for them including the problem of judicial corruption.

Panel Discussions

Panel Discussion I: The Rights of Non-nationals and Legal Aid

1. Scope of Services:

(a) Does your organisation provide legal aid services for foreign workers, foreign spouses and other non-nationals in your country?

Yes.

(b) Is legal aid available for undocumented foreigners, refugees and victims of human trafficking in your country?

Yes.

(c) In providing legal aid, does your organisation distinguish between the lawfulness of foreigners’ presence in your country?

No.

2. Application Procedures:

(a) Are application procedures the same for local applicants and non-nationals, including foreign workers/spouses, undocumented foreigners, refugees, victims of human trafficking and other non-nationals?

In practice, each Legal Aid Institute will decide whether they will accept the case or not.

(b) If your organisation provides legal aid for refugees, what are the criteria for identifying an applicant as refugee? Is your organisation responsible for making the identification, or is this done by another agency?

In practice we consult the UNHCR in Indonesia.

- (c) What are the challenges facing legal aid lawyers in providing services to foreign workers/spouses, undocumented foreigners, refugees, victims of human trafficking and other non-nationals? What are the ways of overcoming them? Does your organisation provide any assistance?

The main challenge is budget and limited number of legal aid lawyers who work for our organization.

- (d) When non-nationals are placed in shelters that restrict their liberty under the relevant laws, are they informed of the progress of their court cases? While they are in these shelters, are they able to exercise their right of appeal? How do legal aid lawyers provide assistance on this point?

Based on our laws, there are no different procedures or mechanisms between Indonesian citizens and non-nationals.

3. Understanding Issues Facing Non-nationals

- (a) Do lawyers and the judiciary in your country have sound understanding of the legal issues and barriers to the judicial process facing foreign workers/spouses, undocumented foreigners, refugees, victims of human trafficking and other non-nationals?

In general yes. Our organization is also a member of the Asia Pacific Refugee Rights Network (APPRN). See i.e. <http://sites.google.com/site/apcrr2008/background>

- (b) How does your organisation improve their understanding of these issues?

The Legal Aid Institute Jakarta and the UNHCR office in Jakarta regularly organize advocacy trainings especially focus on international human rights standards and norms.

- (c) How does your organisation help them become more ethnically sensitive and improve their awareness towards multi-culturalism?

We usually involve local community during advocacy.

4. International Cooperation:

- (a) In providing legal aid for foreign workers/spouses, undocumented foreigners, refugees, victims of human trafficking and other non-nationals, does your organisation engage in international co-operation with governmental agencies or NGOs from other countries?

Yes, for instance the Asia Pacific Refugee Rights Network (APPRN)

5. Marketing Activities:

- (a) Does your organisation inform non-nationals of the availability of legal aid for foreign workers/spouses, undocumented foreigners, refugees, victims of human trafficking and other non-nationals? What are the methods and channels of marketing (eg, work with NGOs)? How does your organisation overcome any language barriers?

We have not developed marketing activities yet.

6. Advocacy:

- (a) Does your organisation participate in the advocacy and reform of international human rights laws?

Yes. For instance, promotion and advocacy of the Optional Protocol on International Covenant on Economic, Social and Cultural Rights.