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Indonesian Legal Aid Foundation

1. GENERAL INFORMATION

1.1 Title of practice or experience

Indonesian Legal Aid Foundation

1.2 Category of practice/experience and brief description

Structural legal aid.

1.3 Name of person or institution responsible for the practice or experience

Indonesian Legal Aid Foundation (YLBHI)

1.4 Name and position of key or relevant persons or officials involved

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1.5 Details of institution

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2. THE PROBLEM OR SITUATION BEING ADDRESSED BY THE PRACTICE INNOVATIVE EXPERIENCE

In real life, it is not uncommon for the poor to experience difficulty in seeking legal redress. The Indonesian people are sometimes subjected to the high cost of court procedures, one-sided job termination, and other legal injustices. This imbalance is aggravated by unawareness of their rights in seeking justice. One irrefutable fact remains, that up to now most of Indonesian society, especially those living below the poverty line, are still legally illiterate.

There have been thousands of instances where civilians' rights had been infringed upon, from civil to criminal cases, from personal cases to those involving the society. Such injustices have opened the eyes of legal practitioners to the need to lend a hand to people needing legal services.

In the beginning, legal assistance programs in a basic form appeared in law faculties with their consultation bureaus, and then there are private legal assistance organizations managed by certain groups. But those efforts are limited to just providing legal advice and consultations, or limited to certain groups only. The Tjandra Naya legal aid organization, for example, only serves non-*pribumis*.

In the meantime, people from the low-income group could hardly obtain access to legal aid, until a prominent legal practitioner, Adnan Buyung Nasution, was moved on seeing the plight and backwardness of those legally illiterate people. In his practice as an attorney in the courts, Buyung apprehended the weak position of the accused in the court of law. They did not know their rights. Even if they did, economic poverty made them unable to do anything, including hiring a lawyer to get legal aid. With that realization upon him, Buyung strived to assist the illiterate, legally illiterate and very poor by giving free legal aid.

In 1959-60, in his capacity as an attorney, Buyung had the chance to study at the University of Melbourne, Australia. During that time, with the help of the Colombo Plan Program Officer, he got the opportunity to observe the various forms and work conduct of legal aid offices in Australia.

On returning from Australia, Buyung tried to realize his aspiration, but he had to give up due to the prevailing situation in the country. Under the decree of July 5, 1959, the legal aid efforts that he strived for did not materialize – not until the third congress of Persatuan Advocat Indonesia (Peradin)/Indonesian Lawyers Association, when Buyung proposed the establishment of a legal aid foundation for the masses. As a result, a group of young lawyers from Peradin founded the Lembaga Bantuan Hukum (LBH)/Legal Aid Foundation in Jakarta on October 28, 1970, coinciding with the Youth Pledge day.

3. DESCRIPTION OF THE PRACTICE/INNOVATIVE EXPERIENCE AND ITS MAIN FEATURES

LBH specializes in providing legal aid to the poor and legally illiterate who either do not know and are not aware of their rights as legal subjects or, due to their social and economic position and as a result of external pressures, do not possess the courage to defend and fight for their rights. Aside from providing legal aid services to the needy, LBH intends to educate the people, to cultivate and develop their awareness of their rights as legal subjects. In addition, it seeks to improve legal implementation in various fields.

The purposes of LBH as stated in its house rules are to:

- (a) provide legal services to the poor;
- (b) develop and increase people's legal awareness, especially on their rights as legal subjects: and
- (c) facilitate legal changes and improvements to fulfil the new needs of a developing society.

LBH seeks to provide legal aid to the weak and poor in relation to their rights as holders of a country's sovereignty who should be able to determine the livelihood of the people and nation as well as determine the direction toward which the nation is heading.

The early years

Initially, as a new-born baby, **LBH** was understandably unable to accomplish much of note. Physically, it was not ready. The absence of a permanent secretariat, and the lack of office equipment were problems in the initial phase. LBH could only occupy its permanent office one year after it was established. Meanwhile, technical difficulties such as the unavailability of tables, chairs, cabinets and typewriters were solved with the help of the Jakarta Governor, Ali Sadikin, who gave a monthly subsidy of Rp. 300,000, which was quite significant at that time.

Even with minimal equipment and capital, LBH was still able to resolve 22,290 cases between 1971 and 1986, or more than 1,600 cases annually after the first two years. It won a large number of big and spectacular cases involving the interests of thousands. Examples include the case of Simprug land which became a national issue in 1973 because one village located in a very strategic area in the middle of Jakarta, and which was home to 108 families or around 700 people, was to be demolished to make way for a modern luxury housing area; the case of Halim Perdana Kusuma lot which was to have been demolished based on the grounds that the occupied land belonged to the Air Force and the people there had been relocated since the Japanese era; and, more recently, the case of Sunter lot covering about 200 hectares, consisting of mostly prime rice fields owned by 58 families, which was to be taken over with very low compensation and converted into an entrepot warehousing complex.

Aside from the cases involving hundreds or thousands of clients, most of whom were legally illiterate and poor, LBH also successfully resolved other private cases which turned out to be no less spectacular, such as the case of the small farmer in the small town of Brebes who was detained and had his business padlocked on suspicion of opening a business without a permit from the Regent. It emerged that the permit had been applied for but was never approved because the business was considered to be competing with a similar business belonging to a wealthy official. Then there was the case involving 27 poor and legally illiterate people from Cibereu village in Bogor, West Java, who were demanding their fair share of the 7 kg of gold and 4 kg of diamonds worth US\$2,500,000 which they had unearthed in 1945 while farming. Since the period during which they found the treasure was a revolutionary era, they had consigned it to the government, which later declared it lost. So it was that 27 years later, they demanded compensation from the government through the judicial process.

The first big case handled by LBH in 1971 proves the stance and independence of this foundation. This case started when the Jakarta Regional Government wanted to build Taman Mini Indonesia Indah, a recreational area covering 100 hectares, in Lubang Buaya, East Jakarta. This construction plan ignited a protest from the community in Lubang Buaya since they would have to be relocated. LBH then represented about 500 families refusing the relocation.

In the end, the compensation price was increased by Rp. 110 per square meter, supplemented by other assistance like the availability of a relocation place, giving work priority to local people, and compensation for plants. This decision did not satisfy the community.

Even so, LBH's outspoken defense of the community was a very bold

move. The Jakarta Governor himself had given significant financial help to LBH.

Reactions to LBH from the media, community and government

LBH's lawyers became favourites with the journalists and would be featured almost every week in the mass media.

Without such support from the media, some of which are nationwide publications like dailies *Kompas* and *Sinar Harapan*, and weekly *Tempo*, LBH would not have the opportunity to increase its influence or even possibly just be able to survive. Relations between LBH and the press were founded on a mutual concern regarding advice for change, and therefore nurtured mutual spirit of transformative action. With the help of the press, complaints forwarded by LBH's clients, and information what was taking place in Jakarta were soon widely circulated all over the country.

The regions would produce similar news to what was happening in Jakarta. Various kinds of fraud, legal violations, improper use of power, extortion by attorneys, etc. in various regions were revealed. The legal situation in these regions prompted people and legal observers to urge LBH to branch out to the provinces.

However, acknowledgement of LBH by the provinces did not seem to be well received by the authorities.

The stance of Buyung and his friends in the Advisory Board of the Indonesian Legal Aid Foundation (YLBHI) as outspoken spokespersons and as defenders of the people sometimes caused tensions with the government.

The government's misgivings were acknowledged by Dewi Novirianti, LBH Jakarta's Public Relations Officer. According to her, it was because LBH oftentimes seemed to oppose the government in clients' cases that it could not run from touching on issues pertaining to government policy. "In the end, we were forced to confront the politics, because although our perspective is legal, we could not avoid political analysis," she added.

Political cases became LBH's focus

Political cases seem to be the trademark of LBH. LBH almost always defends political cases. Statistics from 1984 to 1990 showed that political cases dominated LBH's work. Political cases handled by LBH as a percentage of all cases handled were 52% in 1984, 50% in 1987, and 46% in 1990.

Ironically, all these cases in the political court broke the spirit, since none of the accused were released. Instead, there is a trend in the opposite direction, as in the case of an East Timor student in Central Jakarta High Court

who was escorted by an LBH lawyer and ended up receiving a heavier sentence. On the other hand, some of those unescorted by any lawyer were even released immediately.

Even though the defences did not always result in freedom to the defendants, LBH is still consistent in its attitude and views. The failures have not deterred LBH from pursuing its aim of always defending political cases or criminal cases with political nuances. This is still being done consistently.

LBH is seen by many as already being in politics. According to Todung Mulya Lubis, member of YLBHI's Board of Trustees, this is because LBH's core is legal aid in a broad scope and movements like this everywhere are always in close proximity to politics. LBH's political role, Todung said, if any, is minimal. Its role is to remind everyone that Indonesia is a lawful and democratic country which should be able to uphold legal and democratic authority.

Agreeing with Todung, Mulyana W. Kusumah said that LBH is really not just a law office, but also an organization that works toward actualizing the goals of a lawful country. Thus, it not only handles cases but also conducts systematic claims in a legal reformation context. "This means that we intentionally enter the political space, since forcing legal products to be pulled out is inseparable from political force," stated this former 1993 Executive Director of YLBHI as quoted by *Republika* daily, March 11, 1996.

But, added Mulyana, LBH still stands as a legal aid foundation, not a political aid foundation, let alone a socio-political organization.

The joining of regional LBHs into YLBHI

Other legal aid foundations soon began to grow. University Legal Aid Bureaus or BBH, which initially only gave legal consultations especially to the needy, started to gain ground. The BBH in some universities such as the University of Indonesia, University of Pajajaran and University of Brawijaya started providing legal aid in the courts. Provincial LBHs soon sprouted and spread all over Indonesia.

All those regional LBHs were then centralized, for easier coordination, in the form of the Indonesian Legal Aid Foundation (YLBHI) in 1981. As of LBH's 25th anniversary, YLBHI owned 10 regional offices in Jakarta, Bandung, Semarang, Yogyakarta, Surabaya, Medan, Palembang, Ujungpandang, Manado and Jayapura. Aside from that, four project bases were also established in Banda Aceh, Lampung, Bali and Padang. The employees and lawyers in LBH offices up to December 1994 numbered 129 people.

The spread of YLBHI branches over almost all of Indonesia is a manifes-

tation of Peradin's target of developing LBH. The presence of these branches enables LBH's legal aid activities to be operated all over Indonesia. These LBHs under YLBHI work one hundred percent for legal aid with all its dynamics in their programs.

With an active nationwide organization, and having connections with international legal aid and human rights groups, YLBHI is the most prominent among the legal aid organizations in Indonesia.

More than just its free role, Indonesian legal aid as pioneered by YLBHI also gives the impression of an official movement with a healthy ideological perspective, supported by the community and by a pool of highly dedicated lawyers, although there is still internal debate over its methods and goals.

4. DESCRIPTION OF THE INSTITUTION RESPONSIBLE AND ITS ORGANIZATIONAL ASPECTS

The organizational structure of YLBHI basically consists of

- (a) national-level foundation, which is the Yayasan Lembaga Bantuan Hukum Indonesia (YLBHI)/Indonesian Legal Aid Foundation; and
- (b) regional-level foundation, which is the Lembaga Bantuan Hukum (LBH)/Offices of Legal Aid Foundation.

YLBHI as a national-level foundation has a main status as an institution; therefore basically its main function is to collect and raise funds for funding the program needs of the Legal Aid Foundation offices.

However, considering YLBHI's status as an organizational founding body which should also implement its national mission, it must carry out other and wider functions beyond providing funds to LBH offices with its programs:

- (a) policy holder of a national organization;
- (b) planner, director and evaluator of organizational programs at the national and regional levels; and
- (c) primary manager of LBH offices.

Given these functions, basically YLBHI should push for the implementation of the development programs of LBH offices in broadening its networks.

Meanwhile, the status of LBH offices is basically that of organizational implementer, so that their functions are focused on program operationalization in an effort to achieve organizational goals at the national level and at the same time have local relevance as well as fulfil local needs.

Aside from the sprouting of various branch offices, as an institution, YLBHI has also enjoyed growth. When Adnan Buyung Nasution again became a leader in 1993, after Todung Mulya Lubis and Abdul Hakim Garuda Nusantara, YLBHI revised its management structure. Some of its resources

were directed toward settling management issues. Meetings and seminars were conducted to develop YLBHI's management pattern. This developmental step changed the organizational structure of YLBHI's Board of Management. The first layer is now the Board of Management, while the second layer is the Executive Board.

In the Executive Board, an Executive Director leads three other directors: the Directors of Operations, Internal Affairs, and Communication and Special Program. The Operations Directorate, in turn, covers the Divisions of Civilian and Political Rights, Workers, Land, and Environment. Under the Internal Affairs Director are the Office Manager and Finance Manager. The Communication and Special Program Directorate covers Information and Documentation, Networks, Strategic Research, Special Affairs, and Publishing and Publication.

YLBHI's organizational structure really mirrors developments outside of it. Before, the initial format only covered litigation and non-litigation. In its development, the formats of Civilian and Political Rights, Workers and Informal Sector, Land, and Environment, as well as Information and Documentation, were included. Toward the end of Abdul Hakim's management came the Special Division. This handles cases that need investigative expertise like the Dili case of November 12, 1991, the case of Gerakan Aceh Merdeka (Free Aceh Movement) of 1990-92, the Talangsari case of 1989, the case of Pulau Pangung and Gunung Balak (Lampung), and the Marsinah murder case.

YLBHI's multifaceted activities mean that it is not monopolized by law graduates. Many without any legal background have also contributed to the development of YLBHI.

5. PROBLEMS OR OBSTACLES ENCOUNTERED AND HOW THEY WERE OVERCOME

The poor and the legally illiterate usually do not know how to get access to legal aid to settle their cases. Even if they do, some of them do not have enough courage to exercise their rights.

Another difficulty faced by LBH relates to funds, a very basic issue in the operation of its activities. The subsidy from the Jakarta Regional Government which initially amounted to Rp. 300,000 per month during the first few years, then increased to around Rp. 2,000,000 per month, but was stopped in **1986**. LBH then received funds from NOVIB (Nederlandse Organisatie Voor Internationale Bijstand), a Dutch non-governmental organization funded by

the Department of Dutch Development Cooperation. However, this funding also eventually came to an end.

Meanwhile, LBH activists did not seem to have successfully sourced local monetary support. Up to the present time, LBH depends mostly on assistance from foreign fund foundations.

The chairman of LBH had actually tried to develop fundraising efforts domestically without concrete results. One of the causes is political apprehension; another, according to Dewi, is the recent sprouting of new legal aid bodies. Society, Dewi added, perceives that YLBHI is already established, so people are more interested in channeling their funds to newer and smaller legal aid bodies.

This funding problem naturally affects the smooth operation of YLBHI's activities. It is hard enough with the available funds to cover expenses, let alone increase its staff to widen its networks. It is not easy to overcome the aforementioned problems. Society must first be assured that the legal avenue is open to everybody facing legal problems. The availability of legal aid facilities that they can turn to at any time in the form of LBH must also be socialized. In terms of funds, LBH has formed a separate body to handle its funding needs.

6. EFFECTS OF THE PRACTICE-INNOVATIVE EXPERIENCE

LBH has proven to be more effective than other state or private institutions in drawing people's attention to the challenges faced by Indonesia. Its impact on social, political and legal issues cannot be disputed, particularly its role in instilling public legal awareness. As such, the masses place great hope and trust in LBH.

Since LBH's establishment, awareness of the need for real legal protection for the poor has grown and developed. Public awareness about their legal rights has increased in line with LBH's popularity among lower-income society. Through educational programs and seminars, LBH had actively entered small villages to inculcate legal awareness. "They more or less know the law now, at least laws that concern their problems," admitted Dewi, who has been an LBH staff member for four years. Moreover, Dewi added, if the cases being processed are those that would typically be settled not in one or two months, but in the space of years, "all the while they continue studying, asking us about the laws that concern their cases."

7. SUITABILITY AND POSSIBILITY FOR UPSCALING

Five years ago, on average, 2,000 people came to LBH annually. At present, already more than 500,000 people have come to LBH. From this figure, 75% of the cases were closed every year.

However, the figure of 2,000 LBH clients annually is actually none too fantastic a number. Given the population of Jakarta which is roughly six million, of whom 40% belong to the poor and legally illiterate groups, LBH's achievements are nothing spectacular at all. If annually just 1% of this 40% who are poor and legally illiterate have legal cases, it means there are 24,000 people who need legal aid. These figures reflect just Jakarta alone and the legal aid needs of the rest of the Indonesian population is far greater still. LBH's reach is thus clearly still minimal (due to, among others, the problems encountered by it as described in Section 5), with a lot of room for upscaling.

8. SIGNIFICANCE FOR (AND IMPACT ON) POLICY-MAKING

In conducting legal aid, YLBHI strives to produce concrete social impacts, such as the following:

- (a) Qualitative changes in the people or groups of people who are legal aid recipients, enabling them to see the problems not only as legal cases that need to be solved, but also as symptoms of their position in the social system. The legal aid process can likewise show how far their interests have or have not been covered in the legal system, and what the mechanisms are that can hamper the resolution of their problems. Alongside such thinking, there is also a thinking process toward improving welfare.
- (b) Results from scientific researches and study on politics and law that are beneficial to law enforcers or formal foundations, as well as levels of the policy-making body.
- (c) Non-formal education in the field of law for groups of people who are deemed able to support activities in legal aid, such as university students, informal leaders, reporters and others.

9. POSSIBILITY AND SCOPE OF TRANSFERRING TO OTHER COMMUNITIES OR COUNTRIES

LBH could become a major model for legal aid programs all over the world, since it has not only survived, but grown rapidly, recruited loyal experts and received major public support as well toward achieving its goals.

The following reasons may point more specifically to why LBH can become a source of inspiration for and be emulated by other legal aid programs.

Firstly, it can raise the spirit and loyalties of many young lawyers. Secondly, there is a real public need for LBH's services. Thirdly, LBH is a very bold experiment, and very ambitious, especially when one considers that more traditional and less forward-reaching movements have been restricted in many other countries. Fourthly, LBH's courage and impressive development have been facilitated by its autonomy as a private movement. It grew from proposals and experiences within the community itself, without being hampered by bureaucracy or internal politicking. Fifthly, LBH is successful because it also adopts an intellectual perspective and keeps on moving forward with new ideas, perspectives, targets and analyses about what is needed and what must be done. It never stalls intellectually, because of continual internal debate on its missions, out of which it emerges wiser.

It is not surprising that LBHs under YLBHI can become a model for all legal aid movements in Asia. Of all LBHs, only YLBHI possesses a nationwide organization. At present, there are many legal aid organizations in the country, but YLBHI is still the most active, having connections with the international legal aid network and human rights institutions.

YLBHI's success story can be imitated by other Third World countries, considering the similarity in situation and conditions among these countries, such as the presence of an economic gap, where the reality of poverty will challenge legal aid workers to do something for the poor; political limitations; and the presence of private legal professional institutions which are moved to help the people.