

Towards Equitable Justice: A Comparative Study of Legal Aid Movement in Indonesia and Australia

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ABSTRACT: This paper discusses the legal aid movement in Indonesia and Australia. The inspiration for this paper stems from a curiosity about the intersection of law, social justice, and advocacy. This comparative approach sheds light on the strengths and limitations of each model, offering insights into how legal aid can adapt to evolving challenges and remain a vital tool for achieving equity and justice globally. Firstly, this paper examines the relationship between human rights and access to justice and compares laws between the two countries. Then, continue to the main point of this paper, namely the description of the comparison between Legal Aid Institute (Lembaga Bantuan Hukum, LBH) and Victoria Legal Aid (VLA) as the object compared in this paper. This research process uses normative juridical methods, namely legal research conducted by researching literature materials, which are secondary data. This research also employs historical-legal analysis, the study also compares the legal aid movements in both countries, tracing their development from historical origins to their application in cases handled from the past to the present. As a result, legal aid movement in Indonesia and Australia departs from the concept of access to justice as a part of the human rights. In Indonesia, legal aid is spearheaded by LBH-YLBHI, an institution that exists as a response to the conditions of an authoritarian state based on the Structural Legal Aid (BHS) approach. While in Australia, the legal aid movement was pioneered by the Legal Aid Act 1978, which exemplifies a structured, state-funded approach to legal aid.

KEYWORDS: legal aid movement, access to justice, human rights, LBH, VLA.



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I. INTRODUCTION

Historically, legal aid became an idea to provide legal assistance to the poor, widows, and orphans.¹ Even in the Middle Ages, legal aid was a theological tradition of justice and charitable concern for the poor. Judges in church courts also claimed the right to appoint advocates to argue without fee on behalf of poor and disadvantaged litigants (*miserabiles personae*) who might otherwise not be able to get the assistance they required to present their claims effectively.² However, the late 1960s and 1970s brought about new momentum to the idea of legal aid and access to justice. The Critical Legal Studies movement emphasised how law upheld society's inherent biases against marginalised groups. In this context, legal aid took on heightened meaning and, in some countries, became part of a broad human rights agenda.³

From these examples above, there is a shift in ideas. Initially, legal aid was used as a charitable tool, shifting to have a higher meaning and being made part of human rights. Unlike in the legal aid movement in Indonesia, legal aid is not only seen as a charity movement, but also a political movement to change the system. Todung Mulya Lubis, Adnan Buyung Nasution, and their contemporaries aimed to 'transform the legal aid movement from being legalistic-professional, as if it were simply charity from the professional class, to a more political movement, an oppositional movement to change the system.'⁴

Based on these things, this paper intends to discuss about legal aid in Indonesia and Australia. In particular, it explores the critical role of legal aid in promoting access to justice and protecting human rights, focusing on a comparative analysis of The Indonesian Legal Aid Foundation (Yayasan Lembaga Bantuan Hukum Indonesia, YLBHI), which was then specified at the Bandung Legal Aid Institute (Lembaga Bantuan Hukum Bandung, LBH Bandung), and Victoria Legal Aid (VLA) in Australia.

As for the legal system, Indonesia and Australia have quite firm differences. Indonesia adopted the Continental European legal system, commonly known as Civil Law, due

¹ Felice Batlan & Marianne Vasara-Aaltonen, eds, *Histories of Legal Aid: A Comparative and International Perspective* (Palgrave Macmillan, 2021) at 3.

² James A Brundage, *The Medieval Origins of the Legal Profession*, 98 (London: The University of Chicago Press, 2008) at 190.

³ Batlan & Vasara-Aaltonen, *supra* note 1 at 7.

⁴ Tim Mann, *Defending Legal Freedoms in Indonesia: The Indonesian Legal Aid Foundation and Cause Lawyering in an Age of Democratic Decline* (Abingdon: Routledge, 2024) at 43.

to the strong influence of Dutch law. The main characteristic is that Civil Law prioritizes the form of written law and the codification system created by the legislative institution together with the executive branch. In Indonesia, the sources of law have two understandings: material sources and formal sources. Material sources are sources that determine the content of a regulation, while formal sources refer to sources which determine the forms and the formulation of a certain regulation.⁵ Meanwhile, the law of Australia comprises a complex legal system shaped by its federal structure and historical roots in British common law. As a federal constitutional monarchy, Australia's governance is defined by a written constitution that outlines the powers and functions of both the national parliament and the individual states and territories.⁶ Australian law comes from two main sources: statute law and common law. Statute law is made by parliaments and common law is developed by courts.⁷ The differences in the legal system in the two countries will be related to how access to justice and legal aid are implemented in it.

The inspiration for this paper stems from a curiosity about the intersection of law, social justice, and advocacy. Legal aid represents a lifeline for individuals who lack the resources to navigate complex legal systems, but its implementation varies widely. In Indonesia, systemic resource constraints, political challenges, and societal perceptions of advocacy present unique barriers, while in Australia, legal aid operates under a structured statutory framework. This comparative approach sheds light on the strengths and limitations of each model, offering insights into how legal aid can adapt to evolving challenges and remain a vital tool for achieving equity and justice globally.

Firstly, this paper wants to describe the relationship between human rights and access to justice, as well as the comparison of laws between the two countries. Then continue to the main point of this paper, namely the description of the comparison between YLBHI-LBH and VLA as the object compared in this paper. In this section, the principles of legal aid used by the two organizations are also explained, including their application in the elaboration of case examples. Finally, this paper closes with a study of the challenges ahead in carrying out legal aid work as a fulfilment of human rights.

The novelty of this paper is that it compares the legal aid movement in Indonesia with YLBHI-LBH Bandung and Australia with VLA as a specific example. In comparison,

⁵ *Introduction to Indonesian Law*, by Herliana (2022) at 533.

⁶ Ruth & Michael, "Law of Australia" (2024), online: *EBSCO* <<https://www.ebsco.com/research-starters/law/law-australia>>.

⁷ *The Australian Legal System*, by Oxford University Press.

it is necessary to describe the principles underlying legal aid work and concrete examples of its application in the form of monumental cases handled. It is hoped that this paper can be a learning forum for legal aid activists and legal activists in general in looking at the legal aid movement in these two countries.

II. METHODS

This research was conducted using normative legal research methods, specifically by researching literature materials, which constitute secondary data.⁸ The analysis involved a comparative study of international legal instruments and the legal frameworks of Indonesia and Australia concerning human rights, access to justice, and legal aid. Employing historical-legal analysis, the study also compares the legal aid movements in both countries, tracing their development from historical origins to their application in cases handled from the past to the present.

III. HUMAN RIGHTS AND ACCESS TO JUSTICE

A. Indonesia and Australian Human Rights Law

Human rights are rights that human beings have solely because they are human. Humanity has it not because it was given to him by society or based on positive law, but solely on the basis of his dignity as a human being.⁹ Therefore, human rights apply to all people regardless of gender, race, religion, ethnicity, political views or social origin, and nation.¹⁰

In principle, human rights norms are universal. It means, in the sense that they have been accepted by almost all states as establishing obligations that are binding in international law.¹¹ So, the state must pay attention to the provisions of international human rights law, even though the state has the authority to make legal provisions in its territorial territory.¹²

⁸ Ronny Hanitijo Soemitro, *Metodologi Penelitian Hukum dan Jurimetri*, cet. 4 ed (Jakarta: Ghalia Indonesia, 1990) at 9.

⁹ Jack Donnelly, *Universal Human Rights in Theory and Practice* (Ithaca: Cornell University Press, 2013) at 7-21; Rhona KM Smith et al, *Hukum Hak Asasi Manusia* (Yogyakarta: PUSHAM UII, 2008) at 11.

¹⁰ Thomas T Pureklolon, *Nasionalisme, Supremasi Perpolitikan Negara* (Jakarta: Gramedia Pustaka Utama, 2018) at 148.

¹¹ As Article 5 of the 1993 Vienna Declaration puts it, "All human rights are universal, indivisible and interdependent and interrelated.", see: Donnelly, *supra* note 9 at 31 & 94.

¹² Sefriani, "Kewenangan Negara Melakukan Pengurangan dan Pembatasan Terhadap Hak Sipil Politik" (2012) 1:1 Jurnal Konstitusi at 3.

But in practice, there are often differences in legal interpretation of human rights themselves. As is the case in Indonesia and Australia for example, both Indonesia and Australia interpret human rights principles within their legal frameworks, but they do so through unique approaches that reflect each country's legal, historical and political context. Both systems demonstrate the interaction between universal human rights principles and national priorities, showing how each country balances global obligations with local governance frameworks.

Human rights values began to be incorporated into the Indonesian legal system following the fall of Suharto's authoritarian regime in 1998. This period aimed to strengthen human rights protections by establishing new institutions, ratifying international human rights agreements, and incorporating human rights into the 1945 Constitution by amending it—specifically by adding Chapter XA as a dedicated section on human rights, comprising Articles 28A through 28J. These amendments explicitly enshrine protections for human rights, encompassing civil, political, and socio-economic rights, including freedom of speech, religious autonomy, and protection against discrimination.

Indonesia's ratification of the International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic, Social and Cultural Rights (ICESCR) reflects its commitment to aligning with international human rights standards.¹³ These principles are embedded in domestic law through constitutional amendments, comprehensive human rights legislation, and institutional frameworks designed to monitor and enforce these rights. However, Indonesia often adapts international standards to fit local values, leading to selective enforcement, especially regarding freedom of religion and speech.¹⁴

Unlike Indonesia, Australia lacks a formal Bill of Rights, instead protecting human rights through various legal sources, including case law and legislation. Australia is a human rights outlier among liberal democracies, with no national charter of human

¹³ International Convention on Civil and Political Rights, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976) ('ICCPR'); International Covenant on Economic, Social and Cultural Rights, opened for signature 16 December 1966, 999 UNTS 3 (entered into force 3 January 1976) ('ICESCR'). Indonesia has ratified the ICCPR and ICESCR through Law Number 11 of 2005 and Law Number 12 of 2005.

¹⁴ Manotar Tampubolon, *Human Rights in Indonesia* (Ankara: Iksad Publishing House, 2024).

rights. Its human rights protections are piecemeal and split across a patchwork of laws, authorities and jurisdictions.¹⁵

Australia's Constitution, created in 1901, was not initially designed to protect individual rights. Instead, Australia uses federal and state laws to protect specific rights, inspired by international standards, but applied selectively. Human rights are protected through anti-discrimination laws, such as the Racial Discrimination Act 1975, Sex Discrimination Act 1984, and Disability Discrimination Act 1992, which provide protections against discrimination based on race, gender, and disability.¹⁶ Inspired by international standards, these laws are foundational to safeguarding civil rights. The Australian Human Rights Commission Act 1986 established the Australian Human Rights Commission (AHRC) to investigate discrimination complaints and promote human rights education. However, AHRC's powers are limited, as it lacks direct enforcement authority, reflecting Australia's cautious approach to rights protection.

Without explicit constitutional rights, the High Court of Australia plays a central role in interpreting rights through implied freedoms, such as the implied freedom of political communication established in *Australian Capital Television Pty Ltd v Cth* (1992). This right supports democratic governance and illustrates the Constitution's adaptability, allowing the judiciary to interpret democratic principles.¹⁷ Furthermore, landmark cases, *Mabo v Qld (No.2)* (1992),¹⁸ where the High Court recognised Indigenous land rights, demonstrating the judiciary's role in incrementally shaping human rights protections within common law.

Australia's decentralised protections lead to varied implementation across states, especially for Indigenous Australians and asylum seekers, who face challenges in accessing consistent legal protections. Despite landmark cases, like *Mabo*, Indigenous Australians continue to face systemic discrimination, limited access to services and challenges in obtaining equal legal protections.¹⁹ The judiciary's role in interpreting rights offers a measure of protection, but without a formal Bill of Rights, there is a lack of uniformity in rights enforcement across the country.

¹⁵ Fiona McGaughey & Amy Maguire, "Is it time for Australia to pass a national Human Rights Act?" (2024), online: <<https://360info.org/is-it-time-for-australia-to-pass-a-national-human-rights-act/>>.

¹⁶ Racial Discrimination Act 1975 (Cth); Sex Discrimination Act 1984 (Cth); Disability Discrimination Act 1992 (Cth).

¹⁷ (1992) 177 CLR 106 ('*Australian Capital Television v Cth*').

¹⁸ (1992) 175 CLR 1 ('*Mabo v Qld (No 2)*').

¹⁹ *Mabo v Qld (No 2)*.

Human rights in Indonesia and Australia have some similarities as well as a series of different interpretations. Both Indonesia and Australia are signatories to major international human rights treaties, including the ICCPR and the ICESCR. These treaties inform each country's legal principles, providing a baseline for human rights protections, even if not fully incorporated into domestic law. Then, each country relies on specific laws to protect particular rights. Indonesia has implemented laws like the Human Rights Law No. 39 of 1999, while Australia uses various anti-discrimination acts (e.g. Racial Discrimination Act 1975, Sex Discrimination Act 1984).²⁰ These legislative tools address core civil, political, and socio-economic rights, reflecting each country's commitment to fulfilling parts of its international obligations.

The constitutional basis for rights also differs significantly. Indonesia's Constitution explicitly guarantees human rights, such as freedom of religion and protection from discrimination. Conversely, Australia's Constitution provides only limited rights, such as the right to vote, with most rights being implied or legislated. This places a greater emphasis on the judiciary in Australia to interpret and protect rights through common law and implied freedoms.

B. Access to Justice as a Human Rights

Access to justice is an essential component of human rights, referring to individuals' ability to seek fair treatment and remedy through legal processes when their rights are violated. as outlined in the resolution adopted by the General Assembly of the 30 November 2012, that without access to justice, people cannot make their voices heard, exercise their rights, cope with discrimination or hold decision-makers accountable.²¹

Recognised within international human rights frameworks, access to justice encompasses fair legal procedures, access to legal representation, and the guarantee of a transparent and impartial judicial process.²² This concept ensures that people can obtain justice efficiently, affordably and without discrimination. Access to justice involves not only the availability of legal services but also the ability to use these services effectively, meaning that legal processes must be transparent, fair and impartial.²³

²⁰ Racial Discrimination Act 1975 (Cth); Sex Discrimination Act 1984 (Cth).

²¹ Valesca Lima & Miriam Gomez, "Access to Justice: Promoting the Legal System as a Human Right" in W Leal Filho et al, eds, *Peace, Justice and Strong Institutions Encyclopedia of the UN Sustainable Development Goals* (Springer, 2019) 1 at 2.

²² *Strengthening Judicial Integrity through Enhanced Access to Justice*, by Joanna Brooks et al (2013).

²³ *Ibid.*

Access to justice is a fundamental human right, as well as a key to defend other rights.²⁴ In this way, access to justice is often deemed indispensable for the realisation of other human rights since it provides a means for individuals to challenge violations of their civil, political, and socio-economic rights. Thus, it can be said that access to justice is integral to human rights because it ensures that legal rights and protections are not merely theoretical but practically enforceable.

The relationship between human rights and access to justice is highlighted in several international human rights instruments. Such as article 8 of the Universal Declaration of Human Rights (UDHR),²⁵ which states that everyone has the right to an effective remedy by competent national tribunals for acts violating their fundamental rights. This provision underscores the essential nature of access to justice as a mechanism for enforcing human rights on a practical level; and articles 2 and 14 of the ICCPR, which outlines rights related to legal recourse and fair trial, ensuring all individuals have access to legal remedies and procedural fairness. These provisions are crucial for the protection of civil and political rights by providing individuals with a pathway to seek redress for rights violations. ICESCR also regulates it in Article 2, which obligates state parties to provide judicial remedy. In addition, the 2006 Convention on the Rights of Persons with Disabilities also obligates state parties to ensure effective access to justice for persons with disabilities on an equal basis with others.²⁶

Moreover, the United Nations has published a Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems. It is written that legal aid is an essential element of a fair, humane and efficient criminal justice system that is based on the rule of law.²⁷ Therefore, states should guarantee the right to legal aid in their national legal systems at the highest possible level, including, where applicable, in the constitution.²⁸ Specifically, these guidelines outline various obligations of the state in terms of fulfilling citizens' rights to legal aid, such as the state's obligation to provide adequate information about legal aid, the state's obligation to allocate funds for legal aid, and other obligations.²⁹

²⁴ Lima & Gomez, *supra* note 21 at 9.

²⁵ Universal Declaration of Human Rights, GA Res 217A (III), UN GAOR, UN Doc A/810 (10 December 1948) ('UDHR') art 8.

²⁶ Convention on the Rights of Persons with Disabilities, adopted on 12 December 2006 ('CRPD').

²⁷ *United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems*, by United Nations Office on Drugs and Crime (Vienna, 2013) at 5.

²⁸ *Ibid* at 8.

²⁹ United Nations Office on Drugs and Crime, *supra* note 27.

Despite its importance, access to justice is often impeded by numerous barriers, such as economic constraints, complex legal procedures, geographical isolation, and lack of legal awareness. Economic disparities impact low-income individuals, who often cannot afford legal representation, therefore restricting their access to justice.

In Indonesia, for example, regional disparities and economic inequalities mean that rural and low-income populations frequently face challenges in accessing adequate legal representation and fair treatment in the justice system.³⁰ Similarly, in Australia, socio-economic inequalities and funding limitations affect the availability of legal aid, especially for Indigenous populations and individuals in rural areas, underscoring how systemic inequalities can restrict access to justice.

Thus, it can be said that access to justice is a cornerstone of human rights, enabling individuals to defend their rights and seek remedies for violations. By making rights enforceable, it underpins accountability and ensures that rights have practical significance. Yet, barriers such as economic inequality, geographical isolation, and limited awareness highlight the challenges to ensuring universal access to justice. Legal aid remains a critical tool in bridging these gaps, though both Indonesia and Australia must continue to address systemic barriers to make justice accessible for all.

While both countries recognise access to justice as essential for rights protection, the effectiveness of this right is limited by socio-economic factors. Effective access to justice requires proactive measures to address structural inequalities, which remains a challenge in both Indonesia and Australia.

IV. INDONESIA LEGAL AID FOUNDATION AND AUSTRALIA'S VICTORIA LEGAL AID

A. Introduction to Legal Aid

Legal aid has often been connected to the ideal of equal access to justice.³¹ This concept is a critical mechanism that provides free or low-cost legal assistance to individuals unable to afford private legal representation. Its primary objective is to eliminate financial barriers to justice, ensuring fairness and equality within the legal system by enabling individuals to access necessary legal resources. Legal aid services typically include legal advice, representation in court, and assistance with legal documentation,

³⁰ Tampubolon, *supra* note 14.

³¹ Batlan & Vasara-Aaltonen, *supra* note 1 at 6.

thus allowing individuals to pursue remedies for rights violations and engage fully in legal processes.

As a cornerstone for upholding human rights, legal aid promotes access to justice for all, regardless of socio-economic status. It is often funded by the state, with services provided either directly by the government or through NGOs committed to ensuring legal representation for underprivileged communities.³²

Legal aid is founded upon several core principles, which drive its mission to ensure justice is accessible and equitable. Legal aid organisations emphasise equality, asserting that every individual should have access to legal support, regardless of socio-economic background or financial capacity. This principle aligns with universal human rights frameworks, underscoring the idea that all individuals are equal before the law.³³ A key principle of legal aid is ensuring that justice is universally attainable. By making legal resources accessible to marginalised communities, legal aid organisations bridge gaps that would otherwise prevent individuals from seeking and receiving justice.

As mentioned at the beginning of this paper, The idea of legal aid has been developed. Starting from just an act of helping the poor, to becoming a concept of fulfilment of human rights. Then, legal aid became a movement to change the system. Furthermore, legal aid not only provides representation but also aims to empower communities by educating individuals about their legal rights. This understanding departs from the concept of old-style legal aid which is still an expression of generosity and professional responsibility.³⁴ The description of this discussion will be elaborated in the next section.

B. YLBHI-LBH and Its Structural Legal Aid

The Indonesian legal aid movement was born amid and in response to authoritarianism.³⁵ Under Soeharto's authoritarian regime (1966-1998), law was largely meaningless as a weapon against a lawless state.³⁶ Furthermore, Soeharto prepared the

³² Herlambang P Wiratraman & Siti Rakhma Mary Herwati, *Legal Aid Movement and the Defence of Constitutionalism in Indonesia* (Hanoi: Vietnam National University Press, 2019) at 84.

³³ Donnelly, *supra* note 9 at 100.

³⁴ Rikardo Simarmata, "Pendidikan Hukum Kritis: Asal-Ustul, Faham, Prinsip dan Metode" (2003) *Jurnal Hukum Jentera*, Edisi Khusus.

³⁵ Mann, *supra* note 4 at 36.

³⁶ Tim Lindsey & Melissa Crouch, "Cause Lawyers in Indonesia: A House Divided" (2013) 31:3 *Wisconsin International Law Journal* at 624; Tim Lindsey, "From Soepomo to Prabowo: Law, violence and corruption in the Preman state" in Charles A Coppel, ed, *Violent Conflicts in Indonesia: Analysis, Representation, Resolution* (Abingdon: Routledge, 2006) at 19-36.

state political structure to maintain political stability by repressing voices that oppose its policies.³⁷

Under this era, Legal Aid Institute (Lembaga Bantuan Hukum, LBH) pioneered legal aid and legal activism in Indonesia, which defending political detainees, bravely speaking out against abuses of state power, and advocating for democracy, human rights and the rule of law in profoundly challenging circumstances.³⁸ LBH was founded by Adnan Buyung Nasution, one of Indonesia's most distinguished lawyers, statespeople, and a skilled advocate.³⁹ Originating as the LBH Jakarta which was established in the 1970s, LBH is one of the oldest and most prominent CSOs in Indonesia.⁴⁰ It can also be said that LBH is the pioneer legal aid organization in Indonesia.

In 1981, The Indonesia Legal Aid Foundation (Yayasan Lembaga Bantuan Hukum Indonesia, YLBHI) was founded and serves as the umbrella organisation for numerous LBHs. Nowadays, the numerous LBHs are distributed across Indonesian regions, which is currently spread across 18 provinces. Together, these organisations embody the principles of legal aid by providing essential legal assistance to those unable to afford it, advocating for marginalised groups such as labourers, women, and indigenous communities, and holding the government accountable on human rights issues.

LBH is dedicated to both legal representation and a systemic reform, offering Structural Legal Aid (Bantuan Hukum Struktural, BHS), an approach developed by the YLBHI-LBHs.⁴¹ It was therefore based on Nasution's idea that cause lawyering

³⁷ It's such as a *dwifungsi* (dual function) ABRI concept, which consolidated military control over political life. ABRI officers were appointed to posts in the legislature and bureaucracy, and then shadowed civilian government structures all the way down to the village level with their territorial commands. Moreover, Soeharto sought to construct a comprehensive ideological justification for authoritarian rule. Government agencies fashioned a revived "Pancasila ideology," which stressed social harmony and the organic unity between state and society. According to the "family principle" (*asas kekeluargaan*), individuals and groups were expected to subordinate their own interests to those of the society as a whole. All forms of division, and political opposition in particular, were labelled inimical to the Indonesian national character. For more details see: Edward Aspinall, *Opposing Suharto: Compromise, Resistance, and Regime Change in Indonesia* (Stanford: Stanford University Press, 2005).

³⁸ Mann, *supra* note 4 at 4.

³⁹ Adnan Buyung Nasution inspired by the concept of Public Solicitor in Sydney, where he learned about the provision of free legal aid there. This happened in the 1950s, when Buyung was studying at Melbourne Law School. Referring to the concept in Australia, Buyung returned to Indonesia and was determined to introduce free legal aid and a public defender's office in Indonesia. For more details see: Adnan Buyung Nasution, "Defending Human Rights in Indonesia" (1994) 5:3 *Journal of Democracy* 114-123 at 35; Mann, *supra* note 4.

⁴⁰ Mann, *supra* note 4 at 34.

⁴¹ The writing of YLBHI-LBH in this paper is to show that the LBH discussed here is LBH under YLBHI. Because currently, there are so many legal aid organizations in Indonesia that use the name LBH.

should involve not just routine casework for the poor but should also extend to what he called.⁴² BHS, at that time, emerged as a criticism of the legal aid movement that was still very limited, which is focused on individuals, and further wanted to turn legal aid into a social reform movement.⁴³ This is a broad notion that includes public interest litigation as well as non-litigation activities such as legal and political criticism, research, publication, and community education.⁴⁴ Nasution also said, unlike comparable legal aid bodies found elsewhere in the world, LBH is less concerned about drafting winning briefs and racking up legal precedents than about choosing cases that have a major "structural" element that fits into one of the Foundation's four key issue areas: land use and ownership, environmental protection, labour relations, and political crimes.⁴⁵ This approach defines its unique identity and mission in advancing access to justice and targets not only individual cases but also structural inequalities within the legal system. Structural legal aid aims to tackle the systemic inequalities ingrained in Indonesia's legal and social frameworks rather than focusing solely on individual legal needs. In line with the goals of the LBH remain those which are set forth in the second paragraph of its articles of association. First, to provide legal assistance, in the broadest sense, to those whose civil, political, socioeconomic, and cultural rights are violated, including the right to development, in particular for those social groups lacking wealth and political power, regardless of religious differences, parentage, race, ethnic group, gender, political beliefs, or social and cultural background. Second, To uphold and defend human rights and the values of the rule of law within the legal and political system, [and] through constitutional means to carry forward social transformation in order to realize a just, equitable, and democratic society.⁴⁶

LBH's work through BHS extends beyond courtroom representation, aiming to influence laws and policies that affect marginalised communities, thereby advancing human rights through legal empowerment.⁴⁷ Legal empowerment departs from the principle of advocacy that must be centred on victims considering that access to justice can only be realised when the community is empowered.⁴⁸ By empowering individuals and communities to understand and advocate for their rights, BHS aims to foster

⁴² Lindsey & Crouch, *supra* note 36 at 624.

⁴³ Herlambang P Wiratraman, "Mempertimbangkan Kembali Orientasi Gerakan Bantuan Hukum di Indonesia" (2016) 2:2 *Veritas et Justitia* 466-487 at 480.

⁴⁴ Lindsey & Crouch, *supra* note 36 at 624.

⁴⁵ Nasution, *supra* note 39 at 119.

⁴⁶ *Ibid* at 117.

⁴⁷ Wiratraman & Herwati, *supra* note 32 at 83-85.

⁴⁸ *Ibid* at 83.

sustainable, long-term social change and promote human rights for all. This approach underscores LBH's commitment to legal empowerment as a transformative force in Indonesia's justice system. BHS's dream is to change the social order that is inhuman and unjust. That is why the legal aid movement must be able to free the oppressed from the injustice practices of the political, legal, economic and socio-cultural systems.⁴⁹

A notable example of BHS in action is LBH involvement in opposing the Beautiful Indonesia Mini Park (Taman Mini Indonesia Indah, TMII) in the 1970s, a pet project of the wife of President Soeharto, Siti Hartinah.⁵⁰ The proposed project faced significant opposition for its extravagant costs and the displacement of local communities. LBH and other activists criticised the project, arguing that public funds would be better allocated to poverty alleviation rather than a state-funded showcase. LBH supported affected residents by organising protests and raising awareness of the forced evictions and financial strain the project imposed on the public. Although the government labelled dissenters as threats to national stability and ultimately banned anti-TMII movements, LBH's resistance showcased its commitment to BHS by challenging government policies that disproportionately affected marginalised communities.

Through BHS, LBH continuously engages in major cases that illustrate its principles. Another example of LBH's defence against forced evictions, such as in Simprug, where LBH lawyers not only represented residents in court but also organised and empowered them to negotiate with the government. LBH defended 108 families (or about 700 people) who were to be displaced by the Simprug housing estate. This was the first time LBH lawyers "got their boots dirty" (literally as well as figuratively) and put their professionalism on the line.⁵¹ This case demonstrated LBH's dual role of providing direct legal support while also mobilising communities to advocate for their rights collectively, embodying the core principles of BHS.

In addition, there are several other historical cases in which LBH was involved. These cases are an advocacy to support transgender woman Vivian Rubiyanti in changing her gender on official documents following sex reassignment surgery in 1973; defended student council administrators in the wake of the Bandung Institute of Technology

⁴⁹ Wiratraman, *supra* note 43 at 480.

⁵⁰ Mann, *supra* note 4 at 5.

⁵¹ *Ibid* at 39.

(Institut Teknologi Bandung, ITB) 1978 ‘White Book’ controversy; advocated for female students’ right to wear headscarf at school, at a time when the New Order regime sought to suppress public expressions of Islam; involved in advocacy following the death of labour activist Marsinah; represented communities evicted during the construction of the Kedung Ombo reservoir; and defended activists charged with subversion after they established the leftist Democratic People’s Party (Partai Rakyat Demokratik, PRD).⁵²

Even in its time, LBH became a key centre of civil society opposition to the Soeharto regime, and a meeting point for activists, students and other pro-democracy actors. Moreover, LBH even labelled itself a “locomotive of democracy”.⁵³ Robertus Robet said that terms meant LBH was a hub, a gathering point. Because LBHs has strong networks and has maintained its ethos as a social movement, a movement for human rights, using the law.⁵⁴

C. LBH Bandung: Implementation of Structural Legal Aid in West Java

LBH Bandung is one of the LBH offices under YLBHI which primarily operates in West Java Province. It was first established on February 16, 1981 by advocates who were members of the Indonesian Advocates Association (PERADIN). After the ITB White Paper Incident (buku putih), members who were members of the Red and White Defenders Team, an advocacy team formed by Adnan Buyung Nasution in defending and assisting ITB students because they compiled the white paper, became an important part of the acceleration of the establishment of LBH Bandung. LBH Bandung was led by Amartiwi Saleh as the first director.⁵⁵

This paper highlights three major cases handled by LBH Bandung, selected from among many others. These cases are the Badega Case, an agrarian conflict in South Garut; Limbangan Market Case, a case of revitalization of traditional markets that harm market traders; and Dago Elos Case, a case regarding the threat of eviction in the city of Bandung that is still ongoing today.

1. Badega Case (Garut, 1980s)

Badega is a rural area located in South Garut. The economic activities of the community there are generally sourced from the people's agricultural sector and from

⁵² *Ibid* at 5.

⁵³ *Ibid*.

⁵⁴ *Ibid* at 234-235.

⁵⁵ “Sejarah LBH Bandung”, online: *LBH Bandung* <<http://www.lbhbandung.or.id/sejarah-lbh-bandung/>>.

the large plantation sector. The surrounding community really enjoys their peaceful life because they are blessed with fertile soil conditions.⁵⁶

However, in 1986, the plantation land in Badega was given the right to cultivate (*hak guna usaha*, HGU) to Surya Andaka Mustika Company. This triggered agrarian conflicts between the cultivating farmers and the Company.⁵⁷ How could it not, the land that farmers have cultivated for 30 years was immediately confiscated through the issuance of HGU for the company. Until February 1987, Badega farmers came to LBH Bandung to ask for legal assistance for the land dispute they faced.⁵⁸

Criminalization also involved in this case. A total of 13 farmers were convicted of committing the crime of incitement. The trial of the case was held at the Garut District Court since January 11, 1989.⁵⁹ LBH Bandung became a legal attorney in defending the farmers at the trial.

In addition, the military is also actively involved in this agrarian conflict. In October 1988, it was recorded that there was a joint operation between government and military officials to install permanent stakes on farmers' land. The operation also forced the farmers to immediately hand over their land and 'receive a gift' from the Regent of Garut in the form of land covering an area of 0.12 ha per family.⁶⁰ The stigma of 'PKI', 'anti-government', and 'people's instigator' was also thrown at the farmers who continued to cultivate their land.⁶¹

In handling the Badega case, LBH Bandung also practiced BHS values in it. LBH Bandung also invites students in Bandung to be involved in solidarity. Even in February 1989, there was a long march by students from Bandung to Garut with a distance of 60 kilometres as a form of solidarity with the farmers who were being tried at the Garut District Court.⁶² The student solidarity also ignited the solidarity action of women activists by forming the Women's Coalition for Badega Farmers.⁶³ In addition,

⁵⁶ YLBHI & JARIM, *Laporan Kasus (Cases Report): Cimerak, Badega, Pulau Panggung* (Jakarta: YLBHI & JARIM, 1990) at 45.

⁵⁷ *Ibid* at 46.

⁵⁸ *Ibid* at 48.

⁵⁹ *Ibid* at 27.

⁶⁰ *Ibid* at 50.

⁶¹ *Ibid* at 49.

⁶² Ismail Hasani & Halili, eds, *Jejak Aktivisme Hendaridi: Dari Gerakan Mahasiswa ke Advokasi Hukum dan HAM* (Jakarta: Kepustakaan Populer Gramedia, 2020) at 40.

⁶³ Teddy Wibisana, Nanang Pujalaksana & Rahadi T Wiratama, *ALDERA: Potret Gerakan Politik Kaum Muda 1993-1999* (Jakarta: Penerbit Buku Kompas, 2022) at 104.

in Bandung, there is cooperation between study groups and action groups in advocating for the Badega case.⁶⁴

2. Limbangan Market Case (Garut, 2010s)

This case is an effort to resist traditional market capitalization. The problem began with the issuance of a building permit (izin mendirikan bangunan, **IMB**) as part of the Limbangan Market Revitalization plan in 2013 by the Regent of Garut. As the winner of the tender, PT Elva Primandiri then unilaterally determined the price of stall rental in the market without involving the old market traders. Capitalization is increasingly visible when the construction of the third floor is carried out, which according to market traders is actually very unnecessary.⁶⁵ So, the question arises, who is the development for? In fact, the management also increased the price of stalls at an expensive price, 12 million per meter for small ones and 22 million per meter for large ones.⁶⁶ This series of things finally triggered resistance from market traders.

As written in the *Panduan Bantuan Hukum Struktural LBH-YLBHI* book, the resistance and advocacy carried out are not only limited to the economic aspect. Market traders then found a gap in terms of the environment, namely market revitalization which turned out to have the potential to have an environmental impact.⁶⁷ This was welcomed by the traders with the filing of a lawsuit against **IMB** to the Bandung State Administrative Court (Pengadilan Tata Usaha Negara, **PTUN**). As a result, the traders won so the court ordered the **IMB** to be revoked.⁶⁸ The Regent of Garut then appealed this decision, but it was rejected by the State Administrative High Court (Pengadilan Tinggi Tata Usaha Negara, **PTTUN**) in 2015.⁶⁹

The struggle is not over, because even though it has been ordered by the court, the Garut Regency Government continues to revitalize the market. This forced the traders

⁶⁴ *Ibid* at 46.

⁶⁵ Asfinawati et al, *Panduan Bantuan Hukum Struktural I LBH-YLBHI* (Jakarta: YLBHI, 2020) at 112.

⁶⁶ "Pasar Gotong Royong: Gugatan Para Pedagang terhadap Proses Revitalisasi Pasar Limbangan" (2017), online: *Tifa Foundation* <<https://www.tifafoundation.id/artikel/pasar-gotong-royong-gugatan-para-pedagang-terhadap-proses-revitalisasi-pasar-limbangan/>>.

⁶⁷ Asfinawati et al, *supra* note 65 at 112.

⁶⁸ *Ibid*; detikNews, "Digugat Warga Pasar Limbangan, Bupati Garut Kalah di PTUN" (2014), online: *detikNews* <<https://news.detik.com/berita-jawa-barat/d-2725818/digugat-warga-pasar-limbangan-bupati-garut-kalah-di-ptun>>.

⁶⁹ Asfinawati et al, *supra* note 65 at 112; Muhamad Syarif Abdussalam, "Bupati Garut Rudy Gunawan Ajukan Banding Dikabulkannya Gugatan P3L" (2014), online: *Tribun Jabar* <<https://jabar.tribunnews.com/2014/10/23/bupati-garut-rudy-gunawan-ajukan-banding-dikabulkannya-gugatan-p3l>>.

to move to a new building. The process was marked by intimidation by thugs and state officials.⁷⁰

This case shows the resistance of market traders to non-participatory and arbitrary policies. LBH Bandung also showed the application of BHS in the advocacy process, such as the implementation of community legal empowerments, together with the community to encourage resistance into a collective movement to seize justice.⁷¹

3. Dago Elos Case (Bandung, 2016-Present)

One of most significant cases is the ongoing Dago Elos land dispute, which exemplifies the organisation's commitment to protecting marginalised communities and challenging systemic injustices. This case highlights key issues in Indonesia's land law, the rights of citizens, and suspected land mafia practices, underscoring the importance of legal aid in addressing deeply entrenched systemic inequalities.

The Dago Elos case began in 2016 when a group known as the Muller Brothers--consisting of three men--claimed inheritance rights to over six hectares of land in the Dago Elos area of Bandung. They asserted their claim based on an eigendom, a Dutch Indies-era land ownership certificate, purportedly linked to their grandfather, a Dutchman named George Hendrik Muller. The Muller Brothers subsequently sold the land to the Dago Inti Graha Company and sued the Dago Elos citizens in the Bandung District Court (Pengadilan Negeri Bandung, PN Bandung), alleging the residents were illegal inhabitants.

The Bandung District Court ruled in favour of the Muller Brothers, recognising their inheritance rights and invalidating all existing land certificates held by the residents.⁷² The court declared that the Dago Elos citizens were illegal occupants and ordered their eviction, leaving them at risk of losing their homes and livelihoods. This verdict raised significant legal and human rights concerns, particularly regarding the right to adequate living standards and incompatibility with Indonesian Land Law. The decision threatened to displace hundreds of residents, violating their right to secure living conditions. Under Law Number 5 of 1960 concerning Basic Agrarian Regulations (Undang-undang Pokok Agraria, UUPA), Dutch Indies land rights are no longer recognised, as Indonesia has established its own legal framework for land ownership. Furthermore, Indonesian law prioritises the rights of those who have

⁷⁰ Asfinawati et al, *supra* note 65 at 113.

⁷¹ *Ibid.*

⁷² See Bandung District Court Decision No. 454/Pdt.G/2016/PN Bdg.

utilised land for over 20 years, emphasising equitable access to land resources in line with Sukarno's socialist principles.⁷³

LBH Bandung began representing the Dago Elos residents in 2017, filing an appeal to the Bandung High Court (Pengadilan Tinggi Bandung, PT Bandung), which unfortunately upheld the district court's decision.⁷⁴ The citizens, with LBH Bandung's assistance, pursued cassation to the Supreme Court of the Republic of Indonesia (Mahkamah Agung Republik Indonesia, MA) in 2019. The Supreme Court ruled in favour of the residents, declaring the Muller Brothers's eigendom was invalid under Indonesian Land Law and the residents had legal rights to the land due to their long-term utilisation, which exceeded 20 years.⁷⁵ Despite this victory, the Muller Brothers filed a judicial review (peninjauan kembali) in 2020, where the Supreme Court reversed its previous decision, prioritizing the Muller Brothers' inheritance claim.⁷⁶ This decision revived the legal and human rights challenges for the Dago Elos residents.

Amid ongoing disputes, allegations of fraud against the Muller Brothers surfaced, including falsified birth certificates used as evidence in their lawsuit. Following a police investigation, the Bandung District Court in October 2024 sentenced members of two of the Muller Brothers to 3,6 years in prison for these fraudulent practices which violates the provisions of Article 266 paragraph (2) of the Criminal Code.⁷⁷ However, issues surrounding land rights and the validity of the residents' land certificates remain unresolved, leaving the Dago Elos community in a precarious position.

LBH Bandung together with the advocacy team and other civil society alliance's work in this case extends beyond courtroom representation, embodying the principles of structural legal aid (BHS). Their efforts include organising protests and engaging in state agencies to highlight the residents' plight and advocate for fair resolutions. In addition, citizen empowerment is carried out through education and collective organizing, so that they are able to assert their rights and fight systemic injustice effectively.

⁷³ For details, see LBH Bandung official release: LBH Bandung, "Warga Dago Elos Berhak Atas Tanahnya", online: *LBH Bandung* <<http://www.lbhbandung.or.id/warga-dago-elos-berhak-atas-tanahnya/>>; *Catahu LBH Bandung 2023*, by LBH Bandung (Bandung: LBH Bandung, 2023) at 60-63.

⁷⁴ See Bandung High Court Decision No. 570/Pdt/2017/PT Bdg.

⁷⁵ See The Supreme Court of the Republic of Indonesia Decision No. 934 K/Pdt/2019.

⁷⁶ See The Supreme Court of the Republic of Indonesia Decision No. 109 PK/Pdt/2022.

⁷⁷ LBH Bandung, "Banding di Tolak, Muller Bersaudara Tetap Dihukum 3,6 Tahun Penjara!", online: *LBH Bandung* <<http://www.lbhbandung.or.id/banding-di-tolak-muller-bersaudara-tetap-dihukum-36-tahun-penjara/>>.

The Dago Elos case reveals persistent issues in Indonesia's land governance, including legal inconsistencies, the exploitation of outdated land rights, and the influence of suspected land mafias. The case underscores the critical role of legal aid in not only providing legal representation but also challenging systemic inequalities and advocating for marginalised communities at multiple levels of the legal system. This ongoing case highlights the necessity of continuous legal reform and vigilant civil society advocacy to ensure justice for Indonesia's most vulnerable populations.

D. Victoria Legal Aid in Australia

Victoria Legal Aid (VLA), a statutory authority established in 1978 under the Legal Aid Act 1978,⁷⁸ exemplifies a structured, state-funded approach to legal aid in Australia. VLA provides free or low-cost legal assistance, especially in areas such as family, criminal, and civil law, and partners with other legal support organisations to amplify its reach.

VLA is driven by a commitment to social justice, with a particular focus on marginalised groups, including Indigenous communities, people with disabilities, and those experiencing financial hardship. VLA's emphasis on community education and advocacy promotes equitable access to legal services and helps address systemic barriers within the Australian legal system.⁷⁹

Under section 4 Legal Aid Act, VLA is mandated to provide legal aid in an efficient, cost-effective, and equitable manner. Its objectives include managing resources to ensure affordable legal aid, coordinating services to meet the community's legal needs, providing accessible information on legal assistance, and exploring innovative ways to minimise reliance on individual legal services. VLA also consults with professional bodies like the Law Institute of Victoria (LIV) and the Victorian Bar to align its services with professional standards.⁸⁰

1. Dietrich v The Queen Case (1992)

A landmark case demonstrating VLA's importance is *Dietrich v The Queen* (1992)⁸¹, where the High Court of Australia affirmed the right to legal representation in serious criminal trials. This decision reinforced the importance of procedural fairness and VLA's role in safeguarding access to justice for all Australians, particularly in serious

⁷⁸ Legal Aid Act 1978 (Vic).

⁷⁹ *Victoria Legal Aid: Independent Review of Victoria Legal Aid Chambers*, by Deloitte Legal (2019).

⁸⁰ *Ibid.*

⁸¹ [1992] HCA 57 ('*Dietrich v The Queen*').

criminal matters. This significant decision arose after Olaf Dietrich, charged with importing heroin, was denied legal representation during his trial. Dietrich had applied for assistance from the Victorian Legal Aid Commission, but his application was rejected unless he pleaded guilty. This denial of representation ultimately led the High Court to quash his conviction, ruling that forcing a trial to proceed without legal counsel in serious criminal cases could result in an unfair trial.

The High Court emphasised that while there is no absolute right to state-funded legal representation, the principle of a fair trial is integral to Australian law. If an accused cannot obtain representation through no fault of their own, courts may stay or adjourn proceedings until adequate legal representation is secured. This judgement affirmed the critical role of legal aid in ensuring access to justice for individuals facing serious charges and shaped the approach to providing legal assistance in Australia.

2. Bayley v Nixon and VLA Case (2015)

Another significant case highlighting the importance of VLA is *Bayley v Nixon and Victoria Legal Aid*.⁸² This case demonstrates how legal aid plays a critical role in ensuring that even individuals accused of heinous crimes have their legal rights protected. Adrian Ernest Bayley, a convicted serial offender, sought legal aid to appeal additional sentences that increased his non-parole period. His application was rejected by an independent reviewer on the grounds that granting assistance would not align with public confidence in the stewardship of VLA's limited funds.

Bayley challenges this decision, arguing that it failed to consider his right to a fair trial under Victoria's Charter of Human Rights and Responsibilities Act 2006.⁸³ The Victorian Supreme Court ruled in Bayley's favour, finding the decision unreasonable and tainted by jurisdictional error. Justice Bell emphasised that legal aid is closely connected to human rights and integral to providing vulnerable individuals with access to justice. The ruling reinforced the principle that legal aid must be impartial, objective, and non-arbitrary, even when the applicant is unpopular or controversial.

The *Bayley v Nixon* case illustrates VLA's commitment to procedural fairness, ensuring that all individuals have equal access to justice regardless of their circumstances. This aligns with the LBHSs principles, which also works to protect marginalised communities through structural legal aid (BHS). However, the

⁸² [2015] VSC 744 ('Bayley v Nixon').

⁸³ Charter of Human Rights and Responsibilities (Vic) s 24.

approaches diverge in scope and strategy. While *Bayley v Nixon* highlights the importance of individual legal representation to uphold human rights, LBH Bandung often combines representation with systemic reform efforts.

E. Comparison Between LBH and VLA

Both organisations demonstrate a commitment to human rights. Justice Bell's acknowledgment of legal aid's role in upholding rights parallels LBH's focus on empowering communities to advocate for equitable outcomes and challenge injustices. While VLA operates within a statutory framework emphasising procedural fairness and resource efficiency, LBH focuses on addressing systemic inequalities through structural legal aid (BHS). The Dietrich case highlights how VLA ensures fair trial rights in individual cases, often within institutional parameters, whereas LBH combines legal representation with community empowerment and systemic advocacy.

Cases like *Bayley v Nixon* and the work of LBH Bandung underscore the essential role legal aid organisations play in safeguarding the rights of vulnerable populations. VLA's procedural focus complements LBH's structural approach, collectively demonstrating how diverse legal aid strategies can address injustices at both individual and systemic levels.

For instance, LBH Bandung's involvement in the Dago Elos case demonstrates its broader approach. Beyond courtroom advocacy, LBH Bandung together with other civil society organise protests, strengthens community resilience, and challenges systemic injustices, such as land mafia practices and outdated legal frameworks. In contrast, the Dietrich case reflects a narrower focus on ensuring procedural fairness rather than addressing underlying systemic issues.

Despite these differences, both organisations share a commitment to advancing access to justice. VLA's impact in Dietrich reinforced the principles of equality before the law, ensuring no individual faces a criminal trial unfairly. Similarly, LBH's advocacy underscores the importance of empowering marginalised communities and challenging structural barriers to justice. These cases exemplify how tailored approaches to legal aid address diverse justice challenges in different socio-political contexts.

Legal aid plays an indispensable role in promoting human rights and ensuring access to justice, acting as a lifeline for individuals who would otherwise be excluded from legal recourse due to financial constraints. The work of LBH in Indonesia and VLA

in Australia demonstrates the power of legal aid as a tool for empowerment, advocacy and systemic change. Despite facing challenges such as limited funding and political resistance, these organisations persist in their mission to create a more just and equitable legal system. Their efforts highlight the need for continued support and institutional commitment to expanding legal aid services, thus ensuring that the fundamental principles of equality, accessibility, and empowerment remain in pursuit of justice.

V. FUTURE CHALLENGES FOR THE LEGAL AID MOVEMENT

As Indonesia faces a new era of government, concerns over the future of human rights and democracy have intensified. The new president has ties to significant human rights abuses from the 1998 era, a period marked by state-backed violence under Soeharto's New Order regime. During this time, the government employed repressive tactics to silence dissent, criminalise activists, and suppress marginalised communities. The president-elect's involvement in these past atrocities raises serious questions about Indonesia's commitment to human rights and suggests a potential return to practices that stifle civil liberties and enforce authoritarian control.⁸⁴

Indonesia's political landscape is also entering a "dark era" marked by the consolidation of power. The government's requirement for major political parties to join its coalition has effectively eliminated an opposition presence in the legislative branch.⁸⁵ This concentration of power weakens the checks and balances essential to a functioning democracy, as the legislative branch can no longer effectively counterbalance executive power. Without robust opposition, the legislature lacks the capacity for meaningful debate or institutional challenges, heightening the risk of unchecked executive power. Historically, such erosion of checks and balances recalls Indonesia's colonial past, where the legal profession was structured to uphold the

⁸⁴ His actions have not been proven legally in court. However, both civil societies, CSOs, and the international community often highlight the alleged human rights violations he committed. Such information can be seen in one of the following articles: Carolyn Nash, "In Indonesia, Prabowo's Dark Past Casts a Pall Over His Presidency" (2024), online: *World Politics Review* <<https://www.worldpoliticsreview.com/indonesia-prabowo-human-rights/>>.

⁸⁵ For more details see: Rendy Pahrin Wadipalapa, "Against Indonesia's toxic alliances" (2024), online: *New Mandala* <<https://www.newmandala.org/against-indonesias-toxic-alliances/>>; Stanley Widiyanto & Ananda Teresia, "Indonesia's Prabowo courts largest party for coalition" (2024), online: *Reuters* <<https://www.reuters.com/world/asia-pacific/indonesias-prabowo-courts-largest-party-coalition-meets-candidates-govt-posts-2024-10-15/>>; Fika Ramadhani, "How will Indonesia cope with Subianto's bloated government?" (2024), online: *Deutsche Welle* <<https://www.dw.com/en/indonesian-president-prabowo-subiantos-bloated-government-could-lead-to-more-inefficiency/a-70553653>>.

interests of the ruling elite rather than serve justice for marginalised communities.⁸⁶ Under Dutch rule, the legal system was hierarchically designed to reinforce economic and social disparities, a framework that persisted into Suharto's regime and could resurface in the current political climate.⁸⁷

The absence of political opposition also extends to the judiciary. A government free from opposition influence risks pressuring courts to align with its interests, transforming the judiciary into an extension of executive power rather than an independent body upholding the rule of law. This lack of judicial independence compromises legal protections, especially for marginalised communities that rely on a fair judicial system to defend their rights. In the colonial era, the judiciary and legal profession were similarly constrained, as Indigenous Indonesians faced systemic barriers to accessing justice. Early advocates, trained in institutions like the *Rechtsschool*, challenged these inequities by representing marginalised groups and resisting colonial authority.⁸⁸ This historical precedent underscores the importance of maintaining an independent judiciary to safeguard democracy.

However, the most critical challenge facing legal aid in Indonesia is the issue of funding and resource constraints. Providing free legal services requires significant financial and human resources, yet many legal aid organizations operate with limited budgets, relying heavily on external donors or state support. The limited support from the government towards legal aid funds has caused legal aid providers to find ways to fulfil their promise to provide legal aid to the community.⁸⁹ As happened at LBH Bandar Lampung, they once sold granulated sugar in their office to meet the needs of providing legal assistance. They are even willing not to be paid because of the limited office cash funds. LBH Bandung has also experienced the same thing, namely in 2020 it had not received an honorarium or salary for more than three months so it had to reach out of its own pocket and pay for all its own activities and advocacy needs.⁹⁰

⁸⁶ Daniel S Lev, "Origins of the Indonesian Advocacy" (1976) 21 Southeast Asia Program Publications at Cornell University 134-169.

⁸⁷ *Ibid.*

⁸⁸ *Ibid.*

⁸⁹ Madina Nusrat, "Free Legal Aid Providers Face a Difficult Path, Why Is That?" (2024), online: *Kompas.id* <https://www.kompas.id/baca/english/2024/08/07/en-pemberi-bantuan-hukum-gratis-hadapi-jalan-terjal-mengapa-demikian?open_from=Search_Result_Page>.

⁹⁰ Hidayat Salam, Susana Rita Kumalasanti & Nobertus Arya Dwiangga Martiar, "Selling 3.5 Kg of Granulated Sugar and Willing to Use a Motorbike Without Lights to Accompany Residents" (2024), online: *Kompas.id* <<https://www.kompas.id/baca/polhuk/2024/08/02/jual-35-kg-gula-pasir-dan-rela-pakai-sepeda-motor-tanpa-lampu-demi-dampingi-warga-2>>.

It is undeniable that NGOs in Indonesia are highly dependent upon international donors for funding and support.⁹¹ This is also related to the fact that lawyering is highly dependent on donor funding.⁹² These funding shortages make it difficult to retain skilled advocates and support long-term advocacy efforts. Additionally, the profession of advocacy in Indonesia is often associated with wealth and status, deterring many profit-oriented lawyers from participating in social justice work. As a result, legal aid organizations struggle with high turnover rates and difficulty recruiting committed professionals, further weakening their capacity to address systemic injustices.

The public perception of advocacy as a profit-driven profession compounds this issue. Becoming an advocate is costly, with expensive education, certification, and licensing requirements. Given this financial burden, the idea of pursuing legal aid—often seen as low-paying or voluntary work—lacks appeal for many aspiring lawyers. The sentiment, ‘Why bother being a lawyer if you're still going to be poor?’ reflects the societal challenge of incentivizing advocacy for marginalized communities.

In the end of the day, Indonesia’s path forward is filled with challenges that threaten democratic integrity, human rights and social equity. As Herlambang P Wiratraman said, the 1998 Reformasi still maintains a situation similar to what emerged during the Soeharto era. A time when the law is so easily weakened, discriminatory and has the character of legitimizing human rights violations and corrupt practices. In other words, the legal system reforms that occurred in the early 2000s failed to achieve their goals, even giving rise to a worse situation.⁹³

Without sufficient support for legal aid institutions, the fight for justice and equity in Indonesia risks being undermined, particularly as systemic inequalities deepen under a politically consolidated government. Safeguarding these values will require not only strong advocacy from civil society but also structural changes to make legal aid work sustainable and appealing for future advocates.

Also in Australia, the Australian legal aid sector, including Victoria Legal Aid, is confronting a range of challenges that threaten its capacity to provide essential services to those in need. A significant concern is the persistent underfunding amidst escalating demand for legal assistance. A report by National Legal Aid highlights that the sector

⁹¹ Hans Antlöv, Derick W Brinkerhoff & Elke Rapp, “Civil Society Capacity Building for Democratic Reform: Experience and Lessons from Indonesia” (2010) 21:3 *Voluntas* 417–439 at 437.

⁹² Mann, *supra* note 4 at 95.

⁹³ Wiratraman, *supra* note 43 at 482.

is under severe pressure and requires urgent increased funding to continue delivering vital services to the community.⁹⁴

In Victoria, efforts are underway to address these challenges. The Victorian Legal Assistance Strategy 2022-2025 outlines initiatives to tackle workforce shortages, particularly the scarcity of trial counsel, by implementing programs like the Trial Counsel Development Program and granting exemptions for counsel not on the Preferred Barrister List in appropriate cases.⁹⁵

Despite these initiatives, the sector continues to face significant hurdles. An independent review of legal service funding found that current levels are insufficient to meet Australia's legal assistance needs, especially for vulnerable populations.⁹⁶ This underfunding not only limits the availability of legal aid but also leads to broader societal costs. Research indicates that unresolved legal problems can shift costs to other areas of government spending, such as healthcare, child protection, housing, and incarceration, with cascading costs estimated to be 2.35 times those of direct spending on legal aid services.⁹⁷

To mitigate these issues, there have been calls for increased and sustained investment in legal assistance services. A coalition of legal assistance services has urged federal and state governments to implement reforms to address the funding shortfall and ensure the sector's sustainability. Additionally, new funding streams, such as the \$7 million boost for community organisations in Victoria, aim to enhance the provision of vital legal services across regional and metropolitan areas.⁹⁸

In conclusion, while VLA and the broader Australian legal aid movement are taking proactive steps to address current challenges, significant obstacles remain. Addressing funding shortfalls, workforce constraints, and the increasing demand for services is

⁹⁴ National Legal Aid, "Justice on the Brink - Stronger Legal Aid for a Better Legal System" (2024), online: *National Legal Aid* <<https://nationallegalaid.org.au/policy-and-advocacy/reports/justice-on-the-brink>>.

⁹⁵ Department of Justice and Community Safety, "Victorian Legal Assistance Strategy 2022-2025" (2022), online: *Victoria State Government* <<https://www.justice.vic.gov.au/justice-system/legal-assistance/victorian-legal-assistance-strategy-2022-2025>>.

⁹⁶ Georgia Roberts, "Legal service funding can't meet Australia's needs, independent review finds" (2024), online: *ABC News* <<https://www.abc.net.au/news/2024-05-29/review-of-legal-services/103903398>>.

⁹⁷ Kristen Connell, "The long-term costs of underfunding legal aid", online: *Law Council of Australia* <<https://lawcouncil.au/media/media-releases/the-long-term-costs-of-underfunding-legal-aid>>.

⁹⁸ Victorian Legal Services Board and Commissioner, "New legal funding stream a game changer for regional Victorians" (2024), online: *The Victorian Legal Services Board* <<https://lsbc.vic.gov.au/news-updates/news/new-legal-funding-stream-game-changer-regional-victorians>>.

crucial to ensure that legal aid can continue to fulfill its vital role in promoting access to justice and upholding human rights across Australia.

VI. CONCLUSION

All descriptions in this paper conclude that the legal aid movements in Indonesia and Australia originate from the concept of access to justice. This concept serves as a critical mechanism that provides free or low-cost legal assistance to individuals who cannot afford private legal representation. As a fundamental human right, access to justice is realized in practice through legal aid.

In Indonesia, legal aid is primarily provided by LBH-YLBHI, an institution established in response to the conditions of an authoritarian state, based on the Structural Legal Aid (BHS) approach. BHS is reflected in the cases handled, which not only position legal aid as a litigation movement but also BHS extends beyond courtroom representation. Its aim is to influence laws and policies affecting marginalized communities, thereby advancing human rights through legal empowerment. In Australia, the legal aid movement was initiated by the Legal Aid Act of 1978, which exemplifies a structured, state-funded approach to legal aid. One of the institutions responsible for implementing legal aid in Australia is the Victoria Legal Aid (VLA), which is mandated to provide legal aid in an efficient, cost-effective, and equitable manner.

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