

## Implementation of Pro Bono in Indonesia

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One of the current concerns of the Government of Republic Indonesia is the lack of access to obtain legal aid, resulting in the inequality of law enforcement, as President Joko Widodo have said “*The current concern of the Government is to reduce the social gap does not mean to put aside Government’s commitment in enforcing the law. Joko Widodo, President of Indonesia, mentioned that there are some group of people that still lacking legal aid to exercise their right. It indicates that not everyone obtains an appropriate legal aid*”.<sup>1</sup> The Government of Indonesia is obliged to constitutionally provide a legal aid for everyone indiscriminately. This includes people who cannot afford legal service because of financial incapacity. Article 22 Clause (1) of Law number 18 of 2003 concerning Advocates stated that, “Advocates must provide free legal service to justice seekers who cannot afford it”.<sup>2</sup> This gives a legal basis for advocates to give a free legal service called *pro bono*. The mechanism to give *pro bono* is further elaborated on Government Regulation number 83 of 2008 regarding Requirement and Mechanism of *pro bono*, and further detailed on Indonesian Advocates Association Regulation number 1 of 2010 concerning the Implementation Guide of *pro bono*.

According to Article 1 Clause (1) of Indonesian Advocates Association Regulation Number 1 of 2010 concerning the Implementation Guide of *pro bono*, stated that *pro bono* is, “a legal service given by advocates without receiving honorarium that includes law consulting, exercising of power, to represent, to accompany, to defend, and to do any other legal action in the interest of the justice seeker who cannot afford it”.<sup>3</sup> This means an advocate must not receive any payment from the *pro bono* work it has completed. *Pro bono* works are divided into two, in litigation and non-litigation. In litigation, it involves litigation process, while non-litigation works involves legal education, case investigation, legal consultation, legal documentation, legal counseling, legal research, legal drafting, legal opinion writing, organizing, out of court settlement,

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<sup>1</sup> PresidenRI.go.id, *Legal Aid for Every Indonesian*. <http://www.presidentri.go.id/berita-aktual/perlindungan-hukum-bagi-semua-warga-negara.html>, Accessed on February 5<sup>th</sup>, 2019.

<sup>2</sup> See Law Number 18 of 2003, State Sheet Number 18 of 2003, Article 22 Clause (1).

<sup>3</sup> See Indonesian Advocates Association Regulation Number 1 of 2010, Article 1.

community empowerment and all activities that give contribution to the renewal of the national law, including legal aid picket.<sup>4</sup> It can also come in a form of consultation and also a guide about the legal aspect of a relatively small businesses.<sup>5</sup>

As stated on Article 22 Clause (1) of Law Number 18 of 2003 concerning Advocates, the main recipient of *pro bono* services are people who cannot afford legal services, i.e, poor people. However, Article 13 of Indonesian Advocates Association Regulation Number 1 of 2010 concerning the Implementation Guide of *pro bono* gives another recipient category which is called, “Groups of people with special needs,” that includes women, children, migrant workers, indigenous people, major human right violation victims etc.<sup>6</sup> This is done to allow advocates to help more people who are unable to get legal services.

The reason why *pro bono* services by advocates is still highly needed in Indonesia is more than because of the obligation put towards advocate as a “*officium nobile*” or ‘noble office’.<sup>7</sup> In Indonesia, legal services for people who cannot afford legal services are mainly provided by the Legal Aid Institution, which receives funding from the government, law institutions and funding institutions.<sup>8</sup> Right now, there are currently 405 Legal Aid Institutions that exist in Indonesia. However, according to the Central Bureau of Statistic, there are 25.95 million people who cannot afford legal services because of financial incapability.<sup>9</sup> That means a single Legal Aid Institution must be able to serve over 64,000 people, a number that is impossible to cater due to lack of human

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<sup>4</sup> See Indonesian Advocates Association Regulation Number 1 of 2010, Article 6.

<sup>5</sup> Hanalatur Qur’ani, “Mindset Advokat Indonesia tentang Pro Bono Harus Diubah,” <https://www.hukumonline.com/berita/baca/lt5ba8e7248fb66/i-mindset-i-advokat-indonesia-tentang-pro-bono-harus-diubah>, Accessed on February 6th 2019.

<sup>6</sup> See Indonesian Advocates Association Regulation Number 1 of 2010, Article 13.

<sup>7</sup> TIFA Foundation, “Gerakan Pro Bono, Paralegal dan Perubahan Transformasional,” <https://www.tifafoundation.org/gerakan-pro-bono-paralegal-dan-perubahan-tranformasional/>, Accessed on February 25th 2019.

<sup>8</sup>TIFA Foundation, *Gerakan Pro Bono, Paralegal dan Perubahan Transformasional*, <https://www.tifafoundation.org/gerakan-pro-bono-paralegal-dan-perubahan-tranformasional/>, Accessed on February 25th, 2019.

<sup>9</sup> MaPPI FH UI, *Pro Bono: Prinsip dan Praktik di Indonesia*, (Jakarta: Badan Penerbit Fakultas Hukum-Universitas Indonesia: 2019), p.15.

resources.<sup>10</sup> This is where *pro bono* services come to take care of the huge need for legal services for those who cannot afford it and for groups of people with special needs.

At the previous statement stated that it was commonly agreed that *pro bono* is needed, considering the fact that such services are scarce. It is necessary to give *pro bono* service to those who needed the most. Relevant question that must be arisen is the clarity of procedure and whether advocates in general has the right idea as mandated by the law such as Advocate Law, Government Regulation of Pro Bono and Indonesia Advocates Association Regulation number 1 of 2010. If advocates are still having the wrong idea about *pro bono*, the system will never work well. Thus, the unwanted consequence is the reduced quality of the service, and the idea of amending social gap on access for legal services will never turn into reality.

## *Analysis*

### **Misconception of Pro Bono Service**

One of the issues in providing *pro bono* services in Indonesia is common understanding of advocates. According to survey conducted by Indonesian Judicial Monitoring Society, Faculty of Law University of Indonesia (MaPPI FHUI), 15% of advocates define *pro bono* as structural legal aid which means legal aid financed by government conducted by Legal Aid Organization . This survey also mentioned that 43.6% of respondent think that legal basis of conducting *pro bono* is Law number 16 of 2011 regarding legal aid. Thus, some interpretation is not in line with Government Regulation 83 of 2008 and Indonesia Advocates Association Regulation number 1 of 2010. Another problem on misconception of *pro bono* is determining the rightful recipient of *pro bono* service, which the Indonesia Advocates Association Regulation on that is still ambiguous.<sup>11</sup>

Another problem related to *pro bono* misconception is defining the criteria for *pro bono* service recipients in the Indonesia Advocates Association Regulation number 1 of 2010. The

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<sup>10</sup> TIFA Foundation, *Paralegal Tak Boleh Tangani Kasus Litigasi, Upaya Perluasan Akses Keadilan Bisa Terhambat*, <https://www.tifafoundation.org/paralegal-tak-boleh-tangani-kasus-litigasi-upaya-perluasan-akses-keadilan-bisa-terhambat/>, Accessed on February 25th 2019.

<sup>11</sup> Gita Nadia Pramesa, *Apa Kabar Pro Bono Kita? Potret Praktik Pro Bono di Indonesia*, <http://mappifhui.org/2018/12/06/apa-kabar-pro-bono-kita-potret-praktik-pro-bono-di-indonesia/>, Accessed on March 3rd, 2019.

definition of poor people is well defined in Article 1 Clause (4) Government Regulation Number 83 of 2008 concerning the Requirement and Mechanism of *pro bono*. However, the Indonesia Advocates Association Regulation does not provide a detailed criterion on the groups of people with special needs that can be deemed eligible to receive *pro bono* services, such as what deems a woman entitled to receive *pro bono* services? Is it just by being a woman? Or there are other criteria? Another important question whether the groups of people with special needs must also fulfill the criteria of being poor people or other significant criteria, which might lead to ambiguity for both advocates and clients.<sup>12</sup> However, the result of this is there are still advocates giving free legal services to celebrities and calling them as *pro bono* services.<sup>13</sup>

### **Mechanism of Pro Bono Report**

Current circumstances, which has been explained in the previous part is due to the lack of supervision by Indonesia Advocates Association toward its members. Indonesia Advocates Association shall have a precise and comprehensive data on unpaid services.<sup>14</sup> Indonesia Advocates Association shall have a precise and comprehensive data on unpaid services. As stated in Article 31 of Indonesia Bar Association regulation number 1 of 2010 that “Each advocates who gives a free legal service should be reporting it to the Indonesia Advocates Association”. The technicality of the report submission can be done by following the mechanism provided under Article 32 and 34. According to Article 32 stated that “stipulated that such report can be done by sending a report signed by the advocate and his client along with relevant requirements.”, On the other hand, as stated in Article 34 that “the report can also be submitted through the website”.

As a matter of fact, it is possible that the report mechanism does not run as it is supposed to be. According to personal interview with Siska Trisia, a researcher with specialty in *pro bono* issues from Indonesia Judicial Monitoring Society – Faculty of Law University of Indonesia (MaPPI FHUI), many advocates on practical level did not submit their *pro bono* report to Indonesia

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<sup>12</sup> See Indonesian Advocates Association, Regulation Number 1 of 2010, Article 13.

<sup>13</sup> Dany, *Sangarnya Hotman Paris, Pengacara 30 Miliar yang Jadi Rebutan Artis-artis Tanah Air*, <https://today.line.me/id/pc/article/Sangarnya+Hotman+Paris+Pengacara+30+Miliar+yang+JADI+Rebutan+Artis+artis+Tanah+Air-9Zmv7r>, Accessed on March 3rd, 2019.

<sup>14</sup> According to interview with Dio Ashar Wicaksana, February 4<sup>th</sup> 2019 in Fakultas Hukum Universitas Indonesia.

Advocates Association.<sup>15</sup> Another occurrence is the systematical aspect of registration of potential recipient of *pro bono* service, where it must be tested its eligibility before they declared as the rightful recipient. Only after the client declared as rightful, only by then the service can be given. This particular stage is prone toward misaim target of recipient. If the advocate did not register the potential recipient, there will be no supervision given and self-claimed by the advocate might take place, where in fact they are not the rightful recipient, resulting the service is rather mistargeted.

Why such predicament exists? MaPPI FHUI stated that the implementation of said regulations is not run as it is supposed to be due to the fact that lack of compliance by the advocates. Reaffirmation to oblige advocates to give *pro bono* services is lacking from the bar association, and the lack of disciplinary act for those who did not take their *pro bono* duty seriously makes the providing of *pro bono* services is not working well. Things got worse as there are some advocates that simply have no knowledge about this obligation.<sup>16</sup> In addition, the website does not accommodate this method of report, due to the absence of website feature to submit the report.<sup>17</sup>

### **The Consequences of The Failure of Report System**

The failure did bring a significant impact to the *pro bono* services itself. From the first up to the final stage of *pro bono*, self-claimed is an abundant occurrence and the program has failed to meet the expectation to actually serve poor people. Another consequence of the failure of the system to works is the absence of reliable data of unpaid service in Indonesia, thus there are no trustworthy parameter whether *pro bono* has been done well or not.<sup>18</sup>

Lack of reliable data will result in the lack of mechanism to supervise and evaluation to the advocate who does not take his unpaid services seriously. Relevant rules on *pro bono* services stipulate some penalties and fulfillment of unpaid service obligation, thus the penalty cannot be implemented ideally due to the system that has failed to operate. In addition, toward evaluation and sanction, reward system that is governed for those who dedicate their time cannot be done

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<sup>15</sup> According to interview with Siska Trisia, February 8<sup>th</sup> 2019 in Fakultas Hukum Universitas Indonesia.

<sup>16</sup> Gita Nadia Pramesa. *Apa Kabar Pro Bono Kita? Potret Praktik Pro Bono di Indonesia*. <http://mappifhui.org/2018/12/06/apa-kabar-pro-bono-kita-potret-praktik-pro-bono-di-indonesia/>, Accessed on February 26<sup>th</sup> 2019.

<sup>17</sup> PERADI. <http://www.peradi.or.id/>. Accessed February 13<sup>th</sup> 2019.

<sup>18</sup> According to interview with Siska Trisia, February 8<sup>th</sup> 2019 in Fakultas Hukum Universitas Indonesia.

because the data is simply non-existent. Reward in this context is a form benefit for those who fulfill their obligation to provide *pro bono* service to people such as a considerable variable to be eligible to be promoted, wider social connection, and their expertise in practicing the law is improving. There are also several form of rewards for those who reward others for their duty, such as Hukum Online. Due to the limited data of those who has fulfill their *pro bono* duty, the scope of people who were awarded is also limited, as they are involving not more than 57 correspondents and cover merely 16 provinces in Indonesia.<sup>19</sup> If the report mechanism is working ideally, it is possible to implement the reward and punishment system for those who comply and those who neglect their duty as an advocate.

### ***Conclusion***

The implementation of *pro bono* has yet to reach an ideal state in a way that is neatly organized and reach all rightful recipient of unpaid service that is truly in accordance to prevailing rules due to the absence of mutual understanding of the relevant regulations.

The implementation of *pro bono* in Indonesia has yet to be clearly measured due to the report mechanism does not complied by most advocates, which results in self-claiming over the service that lack the reliable data for those who has done the service. The data is also relevant to provide an appropriate reward and punishment for advocates, which also gives an implication towards measurement whether *pro bono* service is successful or not in providing legal assistance for those who are in need. In the process of writing, there are some issues that was not explored due to the absence of reliable data on *pro bono* services that can be deemed as a reliable source and suffice. Thus, to appropriately determined whether *pro bono* services in Indonesia is successful or not is still relatively hard.

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<sup>19</sup> Mochamad Januar Rizki, *Hukumonline Pro Bono Awards 2018, Ini Para Pemenangnya*, <https://www.hukumonline.com/berita/baca/lt5c1b9e6617dd9/hukumonline-pro-bono-awards-2018--ini-para-pemenangnya>. Accessed on February 13<sup>th</sup> 2019.

