



Case Study

Formalising legal aid in Indonesia

A case study as part of an evaluation of the Australia Indonesia Partnership for Justice

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July 2016

NAMA PROYEK	: PENGELOLAAN OBYEK WISATA PENINGKATAN KAPASITAS MASYARAKAT
LOKASI	: KELURAHAN GUSUNG KEC. UJUNG TANAH KOTA MAKASSAR
JENIS KEGIATAN	: 1. OBYEK WISATA KEL. GUSUNG 2. PENGEMBANGAN DAN PELATIHAN KULINER 3. PENGEMBANGAN DAN PELATIHAN SENI TARI DAN MUSIK
PELAKSANA KEGIATAN	: LKM " PAOTERE "
KELURAHAN	: GUSUNG KEC. UJUNG TANAH
KOTA	: MAKASSAR
TOTAL BIAYA	: Rp. 78.600.000,-
BLM PNPM	: Rp. 75.000.000,-
SWADAYA	: Rp. 3.600.000,-
SUMBER LAINNYA	: Rp.
WAKTU PELAKSANAAN	: NOVEMBER - DESEMBER 2012



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Abbreviations and acronyms

AILDF	Australia-Indonesia Legal Development Foundation	NTB	West Nusa Tenggara province (Nusa Tenggara Barat)
AIPJ	Australia Indonesia Partnership for Justice	NTT	East Nusa Tenggara province (Nusa Tenggara Timur)
AusAID	Australian Agency for International Development	OBHs	legal aid organisations
Bappenas	Ministry of National Development Planning (Badan Perencanaan Pembangunan Nasional)	ODI	Overseas Development Institute
CSO	civil society organisation	OSJI	Open Society Justice International
DFAT	Australian Department of Foreign Affairs and Trade	PERMA	Supreme Court Regulation (Peraturan Mahkamah Agung)
IALDF	Indonesia Australia Legal Development Facility	PPH	legal services posts
KUBAH	Legal Aid Civil Societies Coalition	PPM	public complaint centres
LPHN	National Law Development Institute (Lembaga Pembinaan Hukum Nasional)	PSHK	Indonesian Centre of Law and Policies
MoLHR	Ministry of Law and Human Rights	SEMA	Supreme Court Circular Letter (Surat Edaran Mahkamah Agung)
MoU	memorandum of understanding	SKTM	poverty statement letter
		UNDP	United Nations Development Programme

Introduction

Universal access to justice has been part of Indonesia's constitution since the founding of the state. But it is only since the landmark 2011 Law on Legal Aid that the government systematically started supporting provision of legal aid to the country's poorest and most vulnerable citizens. The new law guarantees the state's obligation to protect citizens' right to have access to justice, and formalises a relationship with civil society organisations (CSOs) that for decades have been providing legal aid services and advocating for greater government responsibility.

This case study contributes to the 'Evaluation of CSOs Contributions to Justice Sector Reform', commissioned by the Australia Indonesia Partnership for Justice (AIPJ) and

undertaken by Overseas Development Institute (ODI) in 2015 and 2016.¹ It presents an overview and history of legal aid in Indonesia, highlighting in particular various dimensions of civil society involvement in developing the legal aid system – from initial advocacy calling for change through to technical support to implement the process itself. Different aspects of the partnership between CSOs and government institutions include some that are very willing to receive support and others that are more resistant. Finally, the case study explores AIPJ's strategies to support CSOs directly through capacity development and indirectly by focusing on government institutions with advocacy and technical support.

1 The evaluation sought to answer two overarching questions: to what extent and in what ways has AIPJ expanded the reach and strengthened the quality of the work of its CSO partners; and to what extent and in what ways have CSOs influenced changes in the justice system? The main evaluation report includes more detailed evaluation questions, methods, overall analysis and conclusions from the three case studies (court reform, legal aid, legal identity), and acknowledges the many people who contributed to the evaluation process.

1. Background

1.1 The foundations of legal aid (1950s-1990s)

The origins of legal aid in Indonesia date back to the 1940s and, in particular, to Professor Zelyemaker, a Dutch professor of law who developed a legal aid bureau at the law high school. Although the bureau did not survive, it raised legal aid as a political issue while modern Indonesia was in its infancy (Winarta, 2009). Following independence in 1945, the founders of the Republic of Indonesia (hereafter Indonesia) acknowledged the critical need for legal protection of citizens in the country's first Constitution, which states: 'everyone shall be entitled to fair legal recognition, certainty, protection, and assurance and equal treatment before the law' (The Ministry of Law and Human Rights, 2014: 27, Art. 28D [1]).² Numerous laws and regulations on legal aid have since been enacted and revised.

Todung Mulya Lubis, one of Indonesia's leading lawyers and justice activists, argues that the 1950s was an emerging era for legal aid (LBH Jakarta, 2013). As well as the establishment in 1958 of the National Law Development Institute (Lembaga Pembinaan Hukum Nasional, LPHN) to systematically reform the colonial laws and establish the national legal system, (BPHN, no date) the 1950s also marked the start of civil society engagement in legal aid.

In 1954, Sin Ming Hui, a Chinese-Indonesian Association, established a legal aid bureau that, although it primarily served the Chinese-Indonesian community, is regarded as the pioneer of modern legal aid (Winarta, 2009). In 1960, despite being few in number, Indonesian legal professionals joined to form *Balie van Advocaten*, subsequently the Indonesian Advocates Communion (PAI), and in 1964 was one of the founders of Peradin (Indonesian Advocates Association), the main umbrella body for legal professionals (Peradin, 2015).

In May 1963, the dean of the Faculty of Law of Universitas Indonesia formed the Legal Aid Consultation Institute (LKBH), a university-based bureau. LKBH became an example of how law faculties could contribute to providing universal legal aid services, including for the poor. This inspired the Padjadjaran University Faculty of Law, which, in 1969, initiated a legal aid programme focused on people living in poverty (Peradin, 2015).

University-based legal aid services then multiplied across the country allowing law students and academics to contribute to offering legal aid.

One of the most crucial events in the history of legal aid was the third Peradin Congress in 1969, during which the late Adnan Buyung Nasution proposed the establishment of a legal aid institute (Rizal, 2015) Immediately following this in 1970, Buyung, together with other advocates who shared his frustration, established the Jakarta Legal Aid Institute (LBH Jakarta) (Saleh, 2011). This was supported by Jakarta Governor Ali Sadikin, Chief of Police Hoegeng Imam Santoso and the well-known journalist PK Ojong. In subsequent years, Peradin continued to establish LBH offices in other provinces and in the 1980s merged to form YLBHI (Indonesian Legal Aid Foundation). There are now 15 provincial LBH offices and 10 district legal aid posts from Sumatera to the Papua Islands. The spread of the LBH network promoted access to legal aid services across the country (Herwati and Fauzi, 2012) along with the establishment and expansion of other networks and organisations all across Indonesia.

The mandate of the LBHs was not just to provide legal aid services. As Abdul Rahman Saleh, one of LBH's founders, remarked, its work is about 'structural legal aid'. It recognises that as long as citizen-state relations are unbalanced, there can be no fair and equal justice (Nasution, 1981, in Wirawan, 2014). Therefore, its work includes: (1) advocacy on litigation and non-litigation cases; (2) educating and developing community legal capacities; (3) conducting legal reform research; (4) developing networks (local, national and international); and (5) campaigning and disseminating information.

The relationship between CSOs and state was very weak between 1966 and 1998 (a period known as 'the New Order' era) and although in principle the state supported legal aid, it did not support the CSOs that had taken on the responsibility of providing it. For example, one commentator remarked that the state 'undermined the development of civil society, weakening independent powers and voices of authority' (International IDEA, 2000). With little support from the state, legal aid was largely funded by international donors, including Novib from the Netherlands, 11.11.11 ('Triple 11') from Belgium and Swedish

2 Preamble: 'Protects all Indonesian people and the entire land of Indonesia and to develop the welfare of the people, the life of the nation, and participate in the world orderliness based on freedom, eternal peace and social justice' (The Ministry of Law and Human Rights, 2014: 2). 'The 1945 Constitution of the State of the Republic of Indonesia'. Available at <http://peraturan.go.id/inc/view/11e44c4f8dcff8b0963b313232323039.html>.

International Development Cooperation. This support enabled CSOs such as YLBHI to become an ‘embryo of democratisation’ (Santosa, 2012) as they bravely opposed the government and brought Indonesia to the reform era.

1.2 Turbulent times (1998-2004)

The fall of the New Order regime in 1998 encouraged more CSOs to form, including in the justice sector (Aspinall and Fealy, 2010). YLBHI was involved in the establishment of Indonesian Corruption Watch (ICW), the National Legal Reformation Consortium (KRHN) and Voice of Human Rights (Aspinall and Fealy, 2010). At the same time, many donors shifted away from supporting CSOs, as they considered other priorities for supporting good governance (Juhriyadi, 2003). The state could not provide much support to CSOs, beyond some small, inconsistent grants from provincial governments, as the monetary crisis and political turmoil preoccupied it, with three presidents and three different structures between 1998 and 2004.³ YLBHI, which was supporting all LBH provincial and district offices, tried to support the operational costs through individual donations from public figures and even emergency funding from donors (Kompas, 2008) but eventually had to shrink its operations (Winarta, 2003).

Inevitably, YLBHI and LBH offices had to reform their internal management since YLBHI could no longer sustain financial support yet it remained important to maintain the network and for the regional LBH offices to have national level representation [I66].⁴ The financial challenge did not prevent the aim of promoting equal access to justice, but it undeniably slowed down the process and meant that the capacity of the different LBH offices began to vary as resources in different provinces varied. The lack of financial support prevented the LBH offices from hiring more lawyers and limited their coverage. Despite this, there were lawyers who continued to offer their services pro bono, exercising their oath as advocates as regulated in the Law No. 18 of 2003 on Advocates (Art. 22 [1]). In addition, it is in this era that community participation was being promoted in legislation, which opened the opportunity for CSOs to contribute to the governance sector [I60].

1.3 Legitimacy for legal aid (2004-2011)

In 2004, President Yudhoyono became the first president to be elected into office by the people directly, and on a platform which included justice as one of four pillars. This provided a new stability and openness for the government and paved the way for greater voice from CSOs and

donor support. One of the first changes to legal aid was the ratification of the International Covenant on Civil and Political Rights through Law No. 12 of 2005. This protected the rights of all citizens to legal aid services, including those who could not afford to pay for legal assistance. Article 14, paragraph 3d:

‘To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it.’

During this era, a number of legal programmes were launched that supported the justice reform efforts and revitalised the sector. These included the Australian Agency for International Development (AusAID, now a functional body within the Australian Department of Foreign Affairs and Trade (DFAT)) the Dutch government, the World Bank, the United Nations Development Programme (UNDP), Open Society Justice International (OSJI) and Tifa Foundation.

CSOs were also in a stronger position to advocate for greater government support for legal aid. A positive consequence of the prior financial squeeze on CSOs was a strengthening of their independence and greater engagement with the government, especially at provincial and local levels, which still relied on CSOs to provide legal aid. In 2005, YLBHI published an academic paper and, together with academics and other CSOs in the legal sector, and with support from the Australia-Indonesia Legal Development Foundation (AILDF), drafted the Legal Aid Bill that put the establishment of a Legal Aid Commission as the ultimate goal. Not long after, the Legal Aid Civil Societies Coalition (KUBAH)⁵ was established to enhance the campaign for a national legal aid system and encourage the Prolegnas (national legislation programme) to review the draft.

In April 2006, YLBHI, again with support from AILDF, organised the Legal Aid and Access to Justice Summit, which was opened with a speech by President Yudhoyono and attended by the Attorney General, eight government ministers and representatives from other countries that had enacted legal aid legislation (KUBAH, 2010). It was at this event that the YLBHI Legal Aid Handbook was launched, the first book that included summaries of important issues for the poor, and which was subsequently distributed to all judges in the country, plus police, lawyers, academics and students.

In January 2009, the Minister of Law and Human Rights enacted Decree No. PPE.34.PP.01.02 of 2009 on the

3 Although it is during this era that the state acknowledges the importance of community participation in the enacted legislations (I60).

4 Key informant interview number 66. This is the notation used to refer to interviews throughout this paper.

5 KUBAH consisted of YLBHI, 15 LBH offices, PBHI, PBHI Jakarta, LBH Apik, LBH Pers, LBH Masyarakat, LBH Mawar Saron, BKBH Faculty of Law of Universitas Indonesia, BKBH Pelita Harapan University, Elsam, KontraS, KRHN, LEIP, PSHK, Imparsial, ICJR, MAPPI Faculty of Law of Universitas Indonesia, ICW, P2D, WALHI, JATAM, Sawit Watch, IHCS, AMAN, HUMA, UPC, FAKTA and others.

Formation of Legal Aid Bill. In December that year, based on YLBHI's advocacy and the support from the Minister of Law and Human Rights, who was an activist himself,⁶ the Indonesian House of Representatives discussed the draft Legal Aid Bill in its plenary session and agreed to pass it to the next stage.⁷ The KUBAH coalition, supported by Tifa Foundation, initiated a public petition to strengthen its advocacy.

Amid the flurry of renewed activity around this time, a number of laws and regulations relating to legal aid were enacted: the Government Regulation No. 83 of 2008 on Requirements and Procedures for Free Legal Aid Provision; a series of four laws on courts (Law No. 48 of 2009 on Judicial Authority, Law No. 49 of 2009 on the Anti-Corruption Court, Law No. 50 of 2009 on Religious Courts and Law No. 51 of 2009 on State Administrative Courts); and the Supreme Court Circular Letter (SEMA) No. 10 of 2010 on Guidelines for Provision of Legal Aid.

One of the main outcomes of this new legislation was the establishment of the legal aid posts (Posbakum) in the

General Courts and Religious Courts across the country. Posbakum provide free access to a range of court services to poor people, including representation by a court-appointed lawyer.

The Legal Aid Bill (Law No. 16 of 2011) was made enacted shortly after this, through a relatively fast and highly anticipated process (I32, I39, I66, I70).⁸ It represented a major step as it acknowledged the state's responsibility to provide access to justice for the poor, and committed the government to developing a national legal aid system which didn't depend on court administered services but supported the accreditation of independent legal aid providers, predominantly the same civil society organisations that had been providing legal aid for decades. The law also acknowledges the roles of the community-based paralegals to support the legal aid services that the advocates provide (I60, I68, I70).

⁶ Denny Indrayana, who was the Minister of Law and Human Rights at the time, and a Professor in Constitutional Law, is a well-known activist in the justice sector too with anti-corruption as the specialty. He is one of the founders of the Indonesian Court Monitoring and the Anti-Corruption Study Center.

⁷ Ibid.

⁸ As a comparison, the Law No. 23 of 2004 on the Elimination of Domestic Violence took seven years from the public consultation up to its enactment (I66).

2. AIPJ's legal aid programme

AIPJ was launched in 2011, just months before the enactment of the Legal Aid Law. It was designed as the follow-up to the Australia Indonesia Legal Development Facility (IALDF), which operated from 2004 to 2009, with the major difference that AIPJ provided core funding to CSOs as well as project funding and technical support to CSOs and government institutions. Legal Aid was one of the five priority areas highlighted in the 2010 AIPJ Design Document and as of the end of 2015, AIPJ had spent AU\$4.2m (or roughly 13% of its spending) on the legal aid programme. The purpose of this programme was to support the Indonesian government in meeting its objectives regarding legal aid, including to support the passing and implementation of the legal aid law, and to strengthen the provision of services by civil society organisations. The approach taken by AIPJ included working with government directly and supporting CSOs to work with government, aligned with the renewed strategic movement of the activists.⁹

One of AIPJ's primary roles was to facilitate policy dialogue between government, the national parliament and legal aid CSOs. Its approach was necessarily emergent and responsive to the changes that were taking place in the government, due to the uncertainty of whether the government would pass the legal aid bill and how it would plan to implement it. AIPJ took a three-pronged approach: first, to support BPHN to implement the new legal aid system; second, to strengthen legal aid providers including helping them to achieve accreditation status and to increase the institutional strength of key CSOs through increasing the number of skilled and trained legal aid lawyers; and third, to contribute to the evidence base on effectiveness of legal aid delivery, primarily through funding research by CSOs, and supporting the publishing of a comprehensive *Legal Aid Resource Manual*. The direct support to legal aid provision was focused on five regions: Jakarta, Kupang, Makassar, Mataram and Medan.

Two major components providing support to CSOs are the Increasing Legal Aid Lawyers programme and the

Criminal Defense Lawyers pilot programmes in Jakarta and Makassar. The Increasing Legal Aid Lawyers programme was launched in August 2013 as a result of a consultation with legal aid CSOs, who reported that funding shortages in previous years had left a shortage in skilled and committed legal aid lawyers. To address this, AIPJ developed a basic legal aid training course focusing specifically on issues faced by the poor and the kind of work expected of legal aid lawyers. The course was offered to potential candidates, with the most successful being offered internships in nine LBH organisations from Aceh to Papua, and then the best interns would be selected for further periods of funded supervision as junior legal aid lawyers.

The Criminal Defense Lawyers pilot programmes were initiated in October 2014 in response to research commissioned by AIPJ and conducted by KontraS and PSHK on legal aid and the criminal justice system and other research by LBH Jakarta showing that over 80% of those arrested in Indonesia had been subjected to some form of torture. The aim was to test a new approach to the provision of legal assistance in criminal cases in two CSOs: LBH Jakarta and LBH Makassar. The pilot created a team of legal aid lawyers in each CSO, with senior lawyers mentoring junior lawyers and teams forming relationships with police and prosecutors.

Even more, to support the legal aid service providers to improve their institutional capacities, AIPJ, via The Asia Foundation, provided core funding to six legal aid service providers, namely LBH Jakarta and LBH Makassar providing general legal aid; LBH APIK Jakarta and LBH APIK Makassar focusing on women's rights; and LBH Nusra in NTT and LPA Mataram focusing on juvenile rights.

To manage and deliver this programme, AIPJ drew in significant expertise to form their legal aid team, including experts from other donor programmes and experienced legal aid specialists from CSOs.

⁹ After Indonesia arrived in its reform era, the legal activists started to reconsider their movement efficiency. It was then that Mas Achmad Santosa introduced the 'capacity from within, pressure from without.'

3. Changes in the justice sector

3.1 Institutional change in government institutions

Some of the most significant changes since the passing of the Legal Aid Law in 2011 have been the development of public institutions to adapt to the new responsibilities that the law requires. Given that, prior to the legislation, legal aid had been the de facto responsibility of CSOs, the shift to government administration was a slow process that required substantial support from CSO specialists and donors. This section looks at changes in the National Law Development Agency (BPHN), the national police, the Attorney General's office and the courts following the enactment of the law.

3.1.1 The National Law Development Agency

The BPHN division of the Ministry of Law and Human Rights has frequently had to adapt to the political agenda for law and justice of the time. It was initially established as LPHN by Presidential Decree, with the mandate to systematically reform the colonial laws and establish the national legal system, and reporting directly to the Prime Minister. It underwent several reforms in the 1960s and 1970s as the socio-political context changed: it moved from the Prime Minister's office to the Ministry of Law, was renamed to its current name and its mandate was expanded to become more active, probably in response to the increasing civil society activity through the LBH that were being established across the country. At this time it had four areas of responsibility: law development and codification, law research and development, legal documentation and later, the Legal Counselling Centre (Pusluh). In the early years of the reform era, BPHN was again reformed, particularly to strengthen its research and development role and to extend its responsibilities for national legal development from planning to dissemination.

Shortly after the legal aid law was enacted, the National Development Planning Agency (Bappenas), the Ministry of Finance (MoF) and the Ministry of Law and Human Rights appointed BPHN as the legal aid administration agency. Prior to this it had had no involvement in legal aid and was expected to develop a new system from scratch by 2013, giving little time to adapt and develop its own systems. There was no provision in the legal aid budget for

organisational development support, capacity development activities or additional staff for BPHN, leaving it particularly reliant on specialists from CSOs and donor programmes (I47, I51).

Against this deadline, BPHN was able to develop the legal aid system, including developing the implementing regulations, creating an accreditation scheme, managing the accreditation of legal aid providers (OBHs) and socialising and disseminating the services. Even though BPHN was legally mandated to implement this system, the mandate alone would not have been sufficient to implement the necessary changes. BPHN showed a high level of commitment from the start to adapt to its new responsibility, which was essential in driving the change (I50, I57, I68). Even in the face of personnel relocation and promotion, which is commonly one of the key challenges in public sector reform in Indonesia as senior leaders are swept away to different posts, this did not seem to hold up the transformation process.

The openness of BPHN to feedback and willingness to engage with the CSOs and donors, AIPJ in particular, were the enabling factors (I57, I58). 'BPHN have the good intention to dive into the legal aid organizations' perspectives', as one informant noted. YLBHI, LBH Jakarta and KontraS (Commission for the Disappeared and Victims of Violence) are included in the list of CSOs that have regular, intensive communication with BPHN. Most of the activities that the CSOs arranged to support BPHN were funded by AIPJ, which also initiated study visits for the key actors, including the former head of BPHN and former Head of Pusluh, to South Africa and Australia.

The system was, however, far from perfect and had many problems. The reimbursement process was complex at both ends: legal aid organisations (OBHs) found the application process difficult and BPHN struggled to process all the applications in the first year. Many of the informants admitted that OBHs in general had limited capacity to comply with the public finance management system and lacked the resources to hire more lawyers to take on the increased case load, or administrative staff and specialists to develop the case management system. BPHN's reimbursement system requires the OBHs to cover the legal aid cost up front and apply for reimbursement

once the verdict has in final and binding (*inkracht*) status. This is a particular burden for those with limited financial resources, as the process can take more than a year. At the government end, the Ministry of Law and Human Rights was allocated 8.9% of the total legal aid budget to fund the development and administration of the system, as well as the monitoring of the implementation process and information dissemination to ensure the understanding of the Kanwils administering the process at provincial level (MoLHR, 2014). The disbursement process was therefore very slow.

In 2014, BPHN started to search for solutions to establish a more effective reimbursement system and then in 2015 BPHN formally decentralized their legal aid services to Kanwils (ministerial representative at provincial level), which aligns with the national policy to improve access to public services (I15, I25, I26, I47, I58, I32, I57). Kanwils are able to verify and approve the case submission documents, SKTM (certificate of low income status) can be provided by the correctional institutions, and the online system (Sidbankum) was established. These policies improved the effectiveness and efficiency of the reimbursement process but Kanwils officials' capacities still had to be improved in facilitating the process.

3.1.2 Cross-government changes

Another progressive change in government bodies was in the way they understood legal aid services (I54, I68, I70). In response to Bappenas's inquiries, AIPJ supported research on the use of legal aid funds across government and identified that ministries or government bodies were providing 'legal aid' funds and services (Soedarsono, 2013). The research, published in 2013, found that in the majority of cases, the government was interpreting legal aid as legal assistance which had no requirement to be provided to the poor. This was in contradiction with the new legal aid law, which limited the definition of legal aid to assistance provided to the poor. For example, since the Chief of Police Regulation No. 7 of 2005 was enacted, the national police had a fund of 1.5 billion Indonesian Rupiah (US\$112,000) annually from the state budget. The beneficiaries were the current officials and their families, the widows of police officers and veterans, and they were able to draw on up to Rp. 4 million (US\$300) per case.

After the research was published, Bappenas stated that they would issue a request for all ministries to apply the proper definition of legal aid in the current year's national budget proposals.

3.1.3 National police

The national police, an important group of actors in the provision of legal aid, has undergone other significant changes. In 2009, through the Chief of Police Regulation No. 12 of 2009, the rights of suspects or defendants to

a fair legal process were protected, but the law focused primarily on controlling the administrative process and made no mention of the rights to be defended by lawyers or any legal aid provision for suspects or defendants.

The reform that then took place indicated commitment to change. The Chief of Police Decree No. 14 of 2012 on Criminal Investigation Management guarantees all suspects to be defended by lawyers. In cases where suspects do not have their own lawyer or could not afford to pay for one, the investigators are obliged to appoint a lawyer and the fee will be met by the relevant police office. While the investigators are sworn upholders of the law who respect the codes of conduct, the legal community still questions the investigators' independence in the process (I53). Research conducted through the criminal justice pilot project of LBH Jakarta supported by AIPJ found that a large proportion of those entitled to a legal aid lawyer were pressured by law enforcement officials to sign a form stating that they did not wish to be legally represented. Another problematic issue is that this decree protects only those who face criminal cases with a potential sentence of at least five years while the legal aid law states that legal aid is to be made available to all kinds of cases.

In 2014, KontraS and the Indonesian Centre of Law and Policies (PSHK), with AIPJ's funding, invited the national police office and its provincial offices to be involved in monitoring the implementation of the legal aid law, as the key informants as well as the targeted audiences of the results. Through these discussions, the National Police Office had requested KontraS to undertake a judicial review of internal legislation in order to enhance implementation of the legal aid law. Following completion of the judicial review, the National Police Office, through the Headquarter Public Relations Division Head, committed itself to welcoming the implementation of the law. Furthermore, as described in its internal report, the National Police Office agreed to develop internal regulations on legal aid and support the engagement of or sign a memorandum of understanding (MoU) with other relevant organisations (BPHN, the Attorney General's Office and verified legal aid providers in the area). As confirmed by key informants, these commitments are still under discussion in the national police office legal division (I50, I53). Regardless, the related ministers signed a MoU on legal aid in late January 2016, demonstrating progressive achievement.¹⁰

3.1.4 Attorney General's Office

Regardless of the doubts expressed by many informants (I50, I57, I58), the Attorney General's Office has also indicated willingness to adopt the law implementation. The legal aid service provision in the Attorney General's Office is based on Law No. 16 of 2004, which states its obligation

10 The MoU is signed by the Ministers of MoLHR, Kemendagri (Ministry of Home Affairs), Kemendesa (Ministry of Village, Development of Disadvantaged Regions and Transmigration), the National Police Office and the Attorney General's Office. (BPHN, 2016).

to improve community legal awareness. There were some laws that were enacted afterwards, such as the Attorney General Circular Letter in 2010, the regulation in 2010 and the instruction in 2012. These interpret the legal aid services through the establishment of legal services posts (*posyankum*, PPH) and public complaint centres (PPM). These services are intended for internal use, for government bodies including state-owned enterprises, and the community. However, the community only have rights to receive legal counselling and/or information that PPH and PPM provide, while the budget is allocated for their own officials who have legal cases. There is concern among CSOs that the information given to those units could be used to feed the Intelligence Unit of the Attorney General's Office.

Similar to the National Police Office, as described earlier, the Attorney General's Office also took part in the monitoring undertaken by KontraS and PSHK. It also requested KontraS to conduct a judicial review of its internal legislation. It was during the presentation of the results that the Special Criminal Case Investigation Director of the Attorney General's Office expressed its commitment to encourage implementation of the law. He also hinted at the possibility of a Circular Letter from the Attorney General or at least the Deputy Attorney General for General Crimes (Jampidum) to confirm that the legal aid law would be part of its internal policy. However, at the time of writing, the team was unable to get further feedback from any representative of the Attorney General's Office regarding this commitment.

3.1.5 Courts

The courts offer more progressive legal aid service provision, through the Supreme Court Circular Letter No. 10 of 2010, whereby the Supreme Court allocates the budgets for all courts to meet their mandates. The General Court and Public Administrative Court provide legal aid services, namely through legal aid posts (Posbakum), advocate fee support, fee waivers for criminal, civil cases, and in permanent plenary sessions (*zittingplaats*). The beneficiaries are individuals or groups whose poverty is proven through the poverty statement letter (SKTM) or other social allowance letters or cards.

Through the same circular letter and regulation, the Religious Court also provides legal aid services, including free services of legal aid post, circuit courts arrangements and lawyers as well as Sharia advocates. Interestingly, it does not restrict services to those living in poverty but includes those who have limited or no knowledge of the law and other marginalised groups such as women, children and persons with disabilities. The Religious Court's legal aid posts also refer poor justice seekers to the verified legal aid organisations in the area, an example of engagement with the legal aid organisations/providers under the Legal Aid Law system administered by BPHN. Due to this inclusivity, it is said that the Religious Court has shown the most progressive reform in relation to legal

aid service provision. One civil society actor acknowledges that the Religious Court is more cooperative than other government bodies.

Their responsiveness is also being appreciated as the Supreme Court enacted the PERMA No. 1 of 2014 on the Guidelines for Provision of Legal Services for the Poor in Court, as a response to the legal aid law. It regulates that the Supreme Court covers the cost of the trial inside and outside the courts, and transforms legal aid posts into to be legal services posts (The Indonesian Directorate General of Religious Court, 2015).

3.2 A national system for legal aid

The Indonesian legal aid system was launched by MoLHR/BPHN in July 2013. For the first time, after decades of depending on CSOs to fund their own legal aid services, the government assumed the responsibility for funding legal aid. The law not only set the long-awaited commitment but also acknowledged the important roles of the legal-aid CSOs to provide extension services for communities.

As with other government initiatives, implementation requires an established mechanism and secure budget. The mechanism had to be established by BPHN as the appointed administrator, including calculating and negotiating the budget with the MoF. Specifically on the budget, the Indonesian budgeting process is usually approved around October/November for the following year, so allocation of the legal aid budget began under the 2013 national budget. BPHN therefore only had one year to develop and establish the mechanism. Due to this steep learning curve and limited resources, there was strong encouragement to engage and collaborate with CSOs.

The CSOs took the opportunity to support the process, as well as AIPJ. The CSOs got involved in developing the regulations, while AIPJ funded many discussions, meetings and study visits. The process was quite tense, as one of the civil society actors involved in the process remarked (I57), as BPHN did not understand the legal aid concept properly, while others noted that CSOs did not understand the public finance management system. Yet neither party gave up; both continued to support each other. And so, in May 2013, one government regulation and two ministerial regulations were enacted, just one year and seven months after the law entered into force.

The regulations state that only those which are verified and accredited can be reimbursed for legal aid services to the poor. The amount of funding available is dependent on the accreditation to a category: A, B or C, with category A organisations eligible for the most funding. BPHN and the provincial MoLHR officials (Kanwils) conducted the verification process. A seven-member verification committee, including CSO members, was created to corroborate the results of the process. The process in 23 provinces was funded by AIPJ, while UNDP and Tifa Foundation funded

the rest. The organisations had to fulfil five criteria: (1) to have legal status; (2) be accredited; (3) have a permanent office or secretariat; (4) have officials (including at least one lawyer); and (5) have a legal aid programme (Legal Aid Law 16/2011: Art. 8 [2]). In theory, these are appropriate and feasible. In practice, some organisations had a long history of providing legal aid services but had not obtained their legal status or did not have permanent offices, and so were ineligible for reimbursement. Many said that the lack of funds and personnel to proceed with obtaining legal status were the main challenges (I25, I32), while a few said that it was simply because they did not care about obtaining it (I48, I51).¹¹

Regardless, an adjustment was made during the verification process. There were organisations that were verified and conditionally accredited without having legal status, but were given a note to say that they must proceed immediately to rectify this. The Head of BPHN had to negotiate and seek for support from the MoLHR's Directorate General of General Law Administration (Ditjen AHU) to assist and accelerate the process of obtaining legal status. This compromise had to be taken in order to provide legal aid services as widely as possible since otherwise there would have been provinces with no accredited legal aid organisation at all. Subsequently, 310 organisations were verified, including LBH offices, advocates' firms or associations, CSO legal aid units (such as the Nahdlatul Ulama, one of the biggest Indonesian Islamic organisations), and university-based legal aid consultation institutes (BPHN, 2013).

Throughout the process, there were other challenges. First, many justice seekers found it hard to obtain the poverty statement letter (SKTM) that was mandatory to qualify for legal aid (I26, I46, I48). Application for the letter involved several steps: the applicant had to seek the recommendation letter from the neighbourhood head, then the community head, the village office and the sub-district office. A common yet shameful reality is that the process also requires a certain amount of money to bribe the officials to smooth the process. Second, was the internal challenge among the verified organisations, who had to change the way they administered and documented their cases and create new systems (I26, I49, I54, I70, I71). This delayed submission of documentation affected BPHN, which then had only limited time to verify the submitted documents. As BPHN gradually realised this through the slow disbursement of the legal aid reimbursement budget it started to develop potential solutions (I48, I51, I71).

Prisons were a particular problem area for the legal aid system as many prisoners could not easily obtain an

SKTM. To respond to this difficulty, BPHN worked with the prisons to simplify the application process to make it faster, easier and free of charge to obtain an SKTM. This policy was relatively straightforward as the prisons report to MoLHR, so it did not require too many administration and political agreements, while at the same time there were anti-corruption efforts already underway so it was in their interest to improve the SKTM process.

As for the second challenge, BPHN was overwhelmed by the number of documents it had to verify. There were piles of copies of the 2,000 or so cases submitted to BPHN near to the deadline. The limited staff had to work overtime in order to reimburse as many claims as possible in the 2013 financial cycle. In the end they were only able to disburse 12.4% of the 2013 budget (MoLHR, 2014).

BPHN was also unable to inform the legal aid providers which cases had or had not been approved and for what reasons. In addition to the delayed reimbursement, the lack of clarity and information caused anxiety among the verified legal aid organisations, which accused BPHN of being ineffective and bureaucratic (I15, I32, I67, I69).

BPHN continued to focus on its mandate and, by making a case to the Ministry of Law and Human Rights, the head of BPHN was successful in preventing a budget reduction that would usually have happened in the event of an underspend (I48, I51). Aside from that, BPHN had been in consultation with other organisations with experience in managing online systems, such as UNDP's legal programme and the Ditjen AHU, which has the AHU online system to facilitate notary-related activities. It was then decided to develop an online reimbursement system, to facilitate immediately after electronic submission of the documents. The system benefits the verified legal aid providers as well since they would no longer have to physically post the documents and would be able to manage the documents electronically and monitor submissions as well as to monitor the process. Through the system, both parties can observe the progress of the case and reimbursement process.

AIPJ responded to this initiative by financing BPHN to develop the online system, and provided funding and expertise. In 2015, Sidbankum was born. In addition, BPHN, with support of AIPJ, also simplified the regulations and requirements for the reimbursement and reporting process. Anticipated or not, all of these developments improve public information that leads to the greater transparency and accountability of BPHN and the verified organisations that the government and CSOs have been seeking.

11 This is part of the challenge stated by MoLHR in the report (MoLHR, 2014).

4. Changes in civil society organisations

As indicated, institutional management is one of the challenges of the reimbursement system. While it is a common view that organisational development has not traditionally been the main focus of legal aid CSOs, the fact that there were still organisations that had not obtained legal status came as a surprise to many informants, especially given that they were working in the justice sector (I32, I49, I57, I46, I52). Even among those that were legally registered there were a few organisations that failed the verification and accreditation process, including LBH Bandung, LBH Surabaya and LBH Manado, which had been providing legal aid services since the 1980s (I57, I26, I47). This was due to a combination of communicative and administrative errors between BPHN, the Kanwils and the applicants, which could easily have been avoided. For example, in several cases, the BPHN-led accreditation team arrived to inspect the organisation at a time when the director was away, and since the director kept the official certificates the required documentation could not be provided.

Once verified and accredited, organisations still had a lot of work to do to improve their internal management, or, for most, to develop new systems from scratch. To illustrate, LBH Jakarta, which has been working in the justice sector for more than 40 years and is considered a leading actor, only recently developed standard operating procedures for case handling and a case-management system to digitise its extensive archive (Sistem Informasi Kasus, SIK). The main factor preventing it from doing this in the past is not lack of awareness but a lack of resources – both financial and personnel. It was unable to hire more staff to work on organisational development because the case load was already beyond capacity. In 2010, for instance, LBH Jakarta only had 12 lawyers to handle between 32 and 35 cases that each required 3-4 consultations as well as conducting literature reviews, developing the pleas and the follow-up, and at the same time each of them was responsible to have 3-5 public advocacy activities per year (I32, I49).

LBH Jakarta was among the first verified legal aid providers to receive core-funding from AIPJ in June 2013 with the specific aim to contribute to organisational development. Supported by AIPJ and The Asia Foundation, it identified its organisational challenges and developed a plan to use the core funding to solve these. The core

funding enabled LBH Jakarta to finalise the standard operating procedures, which had been in development for six years already, develop internal case-management systems and hire 52 staff including 21 public lawyers (LBH Jakarta, 2016). The additional staff complement enables it to activate the Development, Planning, Monitoring and Evaluation Division as well as strengthen the Development Community Legal Resources Division. It has even started to build a strategic campaign mechanism as part of its sustainability plan (I32, I49).

SIK has been a huge success and is considered an exemplar for legal aid providers. It enables LBH Jakarta to develop reports of legal aid services performed and apply for reimbursement. It can also digitise cases with up to around 14,000 already digitised. LBH Jakarta has been promoting SIK to other legal aid organisations and some have indicated their interest, including LBH Makassar, as the early adopters (I15). Even BPHN have shown interest in the system and plans to align their system with SIK and promote it among other OBHs.

Aside from the administration and internal management improvements, the reimbursement system has expanded the networks of CSOs and their level of engagement with government bodies – mainly the close partnership that CSOs (accredited legal aid organisations or not) have with BPHN as well as with other government bodies including the Indonesian National Police and the Attorney General's Office. This is partially thanks to KontraS, which connected those two government bodies with the CSOs and with BPHN. Prior to this effort, BPHN had not invested much in engaging with law enforcement as it was more focused on legal aid organisations (I50). Given that KontraS had developed a relationship with the Indonesian National Police through a study it had conducted, it found it relatively easy to initiate the partnership.

All CSO informants remarked that their knowledge and network had expanded in recent years. Among the justice sector CSOs, there are now, at national level, the Civil Society for Reform of the Criminal Law Procedures Code Coalition, Together in Against the Corruptors and Civil Society Movement Against Criminalization. At the regional level, LBH Jakarta is now the coordinator and secretariat of the Southeast Asia Lawyers Network Secretariat.

One significant benefit of working with AIPJ, as reported by CSOs, is the knowledge and awareness of

issues concerning disability. They not only now have better understanding and sensitivity to disability-related legal issues but are also now advocating on these issues (I15, I17, I32, I54). For example, the legal aid organisation network in Makassar has been advocating the Provincial Election Commission on accessible elections and LBH Jakarta has a consultation room that is accessible for people with mobility-related disabilities. This is significant since disability is still an emerging issue in Indonesia, especially now that the government has ratified the United Nations Convention on the Rights of Persons with Disabilities (ratified in October 2011) (Institute

on Disability and Public Policy, 2014). The fact that the disability perspective is now a mainstream consideration among AIPJ's partner organisations is appreciated.

Notably, LBH Jakarta has started to consider its sustainability beyond donor programmes. Through the support from AIPJ, LBH Jakarta is developing SIMPUL (Justice Enthusiast Community Solidarity) as a platform for the public who may be concerned with the justice sector. The hope is that by 2018, half of the organisational cost can be covered through contributors who join the platform (I32, I49).

5. AIPJ's contribution to the legal aid system

AIPJ is identified as 'quite open-ended' in nature (Cox et al., 2012) while still reflecting the lessons learned from Australian government's supported legal programmes. It adopts a unique approach in that it intervenes with the government and CSOs in each of its targeted sectors (I46, I49, I50). In the legal aid sector, AIPJ mainly supports BPHN and a long list of CSOs who work as legal aid providers as well as those who work in a broader justice sector.

The timing of AIPJ, just as the Legal Aid Law was passed, was significant. AIPJ took the opportunity to support the implementation of the law without any hesitation. The law provided that the Ministry of Law and Human Rights should verify and accredit civil society legal aid providers, and this was quickly delegated to BPHN. AIPJ provided funds, training and technical assistance to BPHN to develop the implementing regulations and systems. After the regulations were enacted, AIPJ funded and advised the process of verification of applicant organisations, resulting in 375 out of 593 organisations being verified in 23 of the 34 provinces (68%) (MoLHR, 2014). AIPJ also supported socialisation and information dissemination of the new system to OBHs and provincial offices in NTT, NTB, Sulsel, Gorontalo, Sulawesi Tenggara, Papua, Papua Barat and Bali. After initial implementation of the system it appeared that there were challenges and complications due to the complexity of the system. AIPJ supported simplification of regulations and requirements and the development of an online reporting and reimbursement system. Following the verification a further process was required for an organisation to be accredited and therefore eligible to receive funding support.

Aside from these activities AIPJ facilitated BPHN in building partnership with other ministries and government bodies, the legal aid providers, the CSOs as well as disabled people's organisations (DPs). These engagements happen either directly, with AIPJ, or indirectly through their partner organisations. As for the government bodies, there are the partnerships with the Supreme Court in aligning the legal aid mechanism in the two bodies, and with the National Team for the Acceleration of Poverty Reduction (TNP2K) in discussing the possibility of using TNP2K's poverty database to verify legal aid beneficiaries (I48, I51).

The collaboration with CSOs is more extensive as there were many discussions, workshops and other related activities between AIPJ and CSOs. The reports cited in

this case study are just some of the examples of AIPJ's commitments to facilitating the legal aid implementation as well as in promoting evidence-based policy making. Key contributions include the development and publishing of the Legal Aid Resource Book through YLBHI and the monitoring report of KontraS and PSHK that leads to a better understanding with the National Police Office and the Attorney General's Office (I50, I57).

The inclusion of disability issues in the services provided by CSOs is another example. Prior to this engagement, they were not involved in or informed about disability issues; in less than five years they are now involved in providing judicial review on disability.

On the CSO side, AIPJ's support has been substantial. The Criminal Defense Lawyers pilot programme (CDL) that was trialled within LBH Jakarta and LBH Makassar is a success story (I25) even though it only ran for two years (October 2013 to October 2015). The aim was to recruit and train sufficient numbers of lawyers specialising in criminal law so that every accused person in a serious criminal case has proper representation and thus is not at risk of mistreatment or torture. Eight newly-graduated lawyers were recruited in Jakarta (LBH Jakarta, 2016) and seven in Makassar (LBH Makassar, 2015). The CSOs were supported to develop a new criminal case management system with routine meetings within the teams. The CDL also included seminars on legal aid law implementation, cases exposure events (*gelar perkara*) to share active cases and discuss the best defence strategies, information dissemination to the local/regional police offices (Polsek/Polres), mayor and sub-district offices, and correctional centre offices to build the awareness on the rights of legal aid, as well as a 24-hour hotline. Within the short period, there was a significant increase in criminal case-handling (500%), increased awareness of the importance of having a lawyer represent every accused person in serious criminal cases, higher potential of release of clients prior to trial and the development of best practices for other CSOs (I25).

Likewise, AIPJ's Increasing Legal Aid Lawyers programme directly led to the employment of more than 60 lawyers in nine CSOs, and over 200 young law graduates participating in specialist legal aid training. This not only contributes to the expansion of legal aid services available to the poor but it has also exposed a cohort of young lawyers to important issues facing the poor and the potentially

transformative role of the legal community, influencing them towards equitable, pro-poor and ethical practice.

The core funding that AIPJ provides to 17 national and provincial CSOs is an interesting story itself. AIPJ is not the first programme that provided this type of funding mechanism, but it could be the first to use such a stimulating approach. AIPJ do not only provide grants, they also discuss and advise on how the funds could be used. That the approved work plans of the CSOs could be amended with valid justification is another proof of AIPJ's responsiveness to change (I15, I49).

Finally, it is clear that one of the major factors enabling effective public and civil society collaborations is AIPJ's ability to identify the key actors. Many of the former key actors in the justice sector were recruited by AIPJ either as staff or advisors. This is an effective and efficient initiative as the actors are able to adapt the topics quickly and build rapport with the key stakeholders as necessary. Remarkably, we can see the outcomes in the legal aid sector within the programme's lifespan, which is quite remarkable in a public reform initiative.

Conclusions

The legal aid system in Indonesia is still in development but the progress made since the passing of the legislation in 2011 has been significant. There are more skilled lawyers with more cases, more funding to legal aid organisations, which are better organised to manage their cases, and a government department which is improving year on year its administration of the system. It has required the commitment all of the key stakeholders, including the government and CSOs. It could be said that 2011-2015 provides a promising foundation for access to legal aid. It even could contribute to the justice reform in the bigger perspective as the system aligns with the transparent public information that feeds into the Indonesian government's accountability efforts. The former and current governments have taken serious action rather than the lip service paid by the pre-Reformasi government.

These outcomes have taken place less than three years after the law was enacted. This is an astonishing achievement that many would have thought was impossible given the Indonesian governance system and its complicated bureaucracy. The persistence of legal aid CSOs in pushing for change and the willingness of their government counterparts to undertake change have been crucial in the development of the system.

That is not to say that the system is working optimally yet. There are still challenges for the Government of Indonesia and for legal aid organisations alike. The legal aid budget is not yet being fully spent and not all of the accredited organisations are applying for reimbursement. Compared to other countries, the 50 million Rupiah legal

aid budget for around 240 million Indonesians is still very low. However, signs indicate that CSOs are in a strong position to support future reforms and the government has the willingness and mandate to continue improvements.

AIPJ has made a clear and significant contribution to the implementation of the legal aid law, working strategically with all actors in the sector. AIPJ's funding to develop the government systems was crucial in meeting the targets set in law. Likewise, the support to certain legal aid organisations has been instrumental in helping them get accredited and to adjust to the increasing caseloads, particularly in training and recruitment of lawyers.

The strategic efforts made by AIPJ in recruiting leading actors in the sector and its engagement with both CSOs and the government have also contributed to the achieved outcomes. The expanding networks and partnership among the key stakeholders are not only a positive outcome but will also be a strong basis upon which to build a more conducive environment for a greater collaboration. The core funding mechanism that AIPJ has provided CSOs has contributed to great improvements in internal management and the development of shared goals.

This case study has demonstrated the dual role that many CSOs play in the justice sector in Indonesia, working as both service providers and as advocates for change. This unique role will continue to be a challenge for CSOs as they shift more towards government funding for provision of services and at the same time increase pressure to improve implementation at local level.

Annex A. Timeline of key events in legal aid

1940

Professor Zelyemaker initiated the legal aid bureau in the Law High School, which did not survive

1954

A legal aid bureau of Sin Ming Hui, a Chinese-Indonesian Association, is established

1958

The National Law Development Institute (LPHN) is established, which later became BPHN

1963

The Legal Aid Consultation Institute (LKBH) of Universitas Indonesia is established

1964

Peradin (Indonesian Advocates Association) is established

1970

LBH Jakarta is established

1980

14 LBH offices merged to form YLBHI as the umbrella organization (now there are 15 LBH offices that are under YLBHI)

1981

Law No.8 of 1981 on Criminal Procedures Code is enacted

1998

The Indonesian reformation

1999

Law No.39 of 1999 on Human Rights is enacted

2003

Law No.18 of 2003 on Advocates is enacted

2005

- Indonesia ratified the International Covenant on Civil and Political Rights (ICCPR) through Law No. 12 of 2005
- YLBHI published an academic paper and, together with academics and other CSOs in the legal sector, drafted the Legal Aid Bill.
- KUBAH Coalition is established — advocating the importance of Legal Aid Law

2006

YLBHI hosted the Access to Justice and Legal Aid Summit

2008

Government Regulation No.83 of 2008 on Requirements and Procedures for Free Legal Aid Provision is enacted

2009

- A series of four laws on courts are enacted (Law No.48 of 2009, Law No.49 of 2009, Law No.50 of 2009 and Law No.51 of 2009)
- The Minister of Law and Human Rights enacted Decree No.PPE.34.PP.01.02 of 2009 on the Formation of Legal Aid Bill
- The National Strategy on Access to Justice is formed

2010

The Supreme Court Circular Letter (SEMA) No. 10/2010 on Guidelines for Provision of Legal Aid is enacted

2011

Law No.16 of 2011 on Legal Aid is enacted — BPHN becomes the legal aid administrator

2013

- Regulations on the legal aid implementation are enacted (Government Regulation No.42 of 2013, Minister of Law and Human Rights Regulation No.3 of 2013 and Minister of Law and Human Rights Regulation No.22 of 2013)
- The verification and accreditation process of 593 organizations (375 were assessed and verified by AIPJ) — with 310 selected
- The reimbursement system is started — challenging for BPHN and the legal aid providers

AIPJ published reports:

- Soedarsono, B. (2013). “Assessment Report to the Legal Aid Programme Implementation and Legal Aid Fund Utilization in the Ministries and Government Bodies” (in Bahasa Indonesia). Jakarta: Bappenas and AIPJ.
- YLBHI (2013) Legal aid: Not a given right (in Bahasa Indonesia). Jakarta: YLBHI and AIPJ.
- YLBHI (2013) The legal aid system pocket book set (in Bahasa Indonesia). Jakarta: YLBHI and AIPJ.
- LBH Jakarta (2013) Balancing the Scales for the Poor: Study of Mechanisms and Disbursement of Legal Aid Funds across five areas in Indonesia”(in Bahasa Indonesia). Jakarta: LBH Jakarta

2014

- Disbursed only around 12.4% with almost 2.5 billion that should have carried over and be paid with the 2014 budget
- BPHN started seeking potential solutions, such as to learn about online systems (added because placing online is only part of the solution) from UNDP's SAJI project and Ditjen AHU's online system

AIPJ published reports:

- KontraS (2014) Legal assessment to the Legal Aid Law implementation: Legal aid in the National Police and the Attorney General's Office (in Bahasa Indonesia). Jakarta: KontraS and AIPJ.
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- YLBHI (2014) Legal aid handbook: A guideline to understand and resolve legal cases (in Bahasa Indonesia). Jakarta: YLBHI and AIPJ.

2015

Decentralized legal aid reimbursement system — Kanwils able to verify, SKTM from the correctional institution, the online reimbursement system (Sidbankum) is active

AIPJ active

State activities

CSO/AIPJ activities and/or involvement

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