

## Access To Justice Through Pro Bono Legal Aid

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**Abstract:** *The concept of access to justice basically focuses on two basic objectives of the existence of a legal system, namely: First, the legal system shall be accessible to everyone from all walks of life. Second, the legal system shall be able to make fair provisions and decisions to all groups, both individually and in group. The basic idea to be prioritized in this concept is to achieve social justice for citizens of all walks of life. In this connection, the right to legal aid is a small part of the access to justice. The fulfillment of the right to legal aid as part of access to justice means that the state shall use all its resources to realize the rights to progressive legal aid.*

**Keywords:** *Access to Justice; Legal Aid; Pro Bono.*

### INTRODUCTION

His article was presented at *Paralegal Program at Basic Level of Structural Legal Aid, Structural Gender Legal Aid and Clinical Legal Education*, organized by The Indonesian Legal Resource Center (ILRC) in collaboration with Consultation and Legal Aid Agency (BKBH) of Law Faculty of Cenderawasih University, at Horison Hotel Jayapura, November 12-15, 2018.

As we all know that “justice” is a basic human right in line with the

principle of equality before the law. Every person has the right to obtain effective remedy for violations of the rights, accompanied by the state’s obligation to ensure the fulfillment of these rights. The accumulation of these rights affirms that justice has become a universal human right – to be respected and guaranteed of its fulfillment. Therefore, access to justice is the most important thing to fulfill the basic rights of citizens. As a result, recognition and protection of the human rights of any individual or citizen shall be granted by the State as

a consequence of a legal state (*rechtsstaat*), where every citizen is equal in the eyes of the law (equality before the law). Through this principle, the State shall not discriminate with any argument or reason to any person or citizen. This principle is indeed easy to learn, discuss or study academically, but is not easy to practice.

Through this principle, a person has the right to be treated equally, including the poor who are having problems with the law. If a rich person is afford to pay an Advocate/Lawyer to assist in the judicial process, then the poor have the same right to be accompanied by an Advocate/Lawyer within the framework of legal aid, including pro bono legal aid. Deborah L. Rhode<sup>1</sup> defines equality before the law as the equality of access to the legal and justice system. The right to obtain a defense from an Advocate/Lawyer (access to legal counsel) is the basic right of every person and is one of the elements to obtain justice. Therefore, no one in a legal state may be denied the right to obtain access to justice

through the defense of an Advocate/Lawyer regardless of individual background, religious background, descent, race, ethnicity, political beliefs, socio-economic strata, skin color and gender.

## DISCUSSION

### Right To Legal Aid As A Manifestation of Access To Justice

The right to legal aid has been universally accepted as guaranteed in the International Covenant on Civil and Political Right (ICCPR). Article 16 and Article 26 The ICCPR guarantees all people the right to obtain legal protection and shall prohibit any discrimination. While Article 14 paragraph (3) of the ICCPR, provides conditions related to Legal Aid, namely: 1) interests of justice, and 2) does not have sufficient means to pay an Advocate.

Although Legal Aid is not expressly stated as state responsibility, the provision of Article 1 paragraph (3) of the 1945 Constitution affirms that “The State of Indonesia is a legal state”. In a legal state, the state recognizes and protects human rights for any individual, including the right to Legal Aid. The implementation of the

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<sup>1</sup> Deborah L. Rhode. (2004). *Access to Justice*. Oxford University Press. New York. p. 5.

provision of Legal Aid to citizens is an effort to fulfill and at the same time implement a legal state that recognizes, protects and guarantees the right of citizens to access to justice and equality before the law.

The term Access to Justice has been very popular in almost all parts of the world, including in Indonesia. Access to justice does not have a standard definition but is highly dependent on the context of the country developing the concept. In general, the United Nation Development Program (UNDP) defines access to justice as “the ability of people to seek and obtain remedy through formal and informal institutions of justice, and in conformity within human rights standards”.<sup>2</sup>

Further development regarding access to justice in North America is least identified into 3 (three) waves:<sup>3</sup>

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<sup>2</sup> Fran Hendra Winata. (2009). *Pro Bono Publico, Hak Konstitusional Fakir Miskin untuk Memperoleh Bantuan Hukum*. Gramedia: Jakarta. p. 1-2. See also Frans Hendra Winata. (2009). *Bantuan Hukum di Indonesia: Hak untuk Didampingi Penasehat Hukum bagi Semua Warga Negara*. Elex Media Komputindo. Jakarta. p. 101.

<sup>3</sup> Mauro Cappelletti & Byant Garth. (1978). *Access to Justice*. Vol. I: A world survey (Book I & II). Publisher: Giuffrè Editore/Sijthoff/Noordhoff [European University Institute].

*first wave*; the growth of legal aid for people who cannot afford it. This kind of legal aid is termed conventional legal aid; *second wave*; the orientation of access to justice has begun to develop from conventional legal aid (first wave) to the development of public interest litigation with the development of procedural rights facilitating collective communities to propose the restoration of violated rights through court, such as class action (including constitutional complaint: cursive by the author<sup>4</sup>); *third wave*; it began to realize the importance of alternative dispute resolution (ADR) and justice reform, such as the development of public access to judicial information.

Seeing the context of access to justice development in many countries, basically it is related to the issue of “legal aid” and access to

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<sup>4</sup> Constitutional Complaint is a form of protection of citizens’ rights that can be carry out by means of constitutional complaints. Constitutional complaint is a form of legal effort that can be carried out to provide protection for citizens’ constitutional rights. Constitutional complaint is a forum for citizens in which their constitutional rights or rights granted by the constitution are violated or ignored by a public institution. This constitutional complaint has been practiced in several countries such as: the United States, Germany, South Korea, the Slovak Republic and South Africa. The Constitutional Court has not had this constitutional complaint authority as in other countries.

court effectively. When following the theory of three waves mentioned above, the most relevant wave to be developed in Indonesia is the third wave, where there is an awareness to reform the justice system and find fair alternative dispute resolution for the community.

The concept of access to justice essentially focuses on two basic objectives of the existence of a legal system, namely: *First*; The legal system shall be accessible to everyone from all walks of life. *Second*; The legal system shall be able to make fair provision and decision to all walks of life, both individually and in group. The basic idea to be prioritized in this concept is to achieve social justice for citizens of all walks of life. And the right to legal aid is a small part of the access to justice. The fulfillment of the right to legal aid as part of access to justice means that the state shall use all its resources to realize the right of progressive legal aid.

In the Indonesian context, access to justice is defined as a condition and process in which the State guarantees the fulfillment of basic rights based on the 1945 Constitution and the

principles of universal human rights, and guarantees access for every citizen to have the ability to know, understand, realize and use these basic rights through formal and informal institutions, supported by a good and responsive public complaint mechanism, so that it can be obtained optimal benefits and the improvement of the quality of life.

The state through its apparatus seeks to realize its responsibility in fulfilling access to justice for the poor. As an effort, this should be appreciated, although in some respects it should be criticized. The effort to realize access to justice in its implementation includes three things, namely: *First*, the right to obtain benefits and use judicial institution; *Second*, a guarantee of the availability of means for fulfilling the rights of the poor to achieve justice; and *Third*, effective methods and procedures to expand public access to justice. Even though various efforts have been made in order to provide access to justice for the poor, in practice a large number of poor people find difficulty to gain access to justice.

In this connection, the strategy to realize the target of access to justice

in its implementation is: *First*, strengthening access to justice in the service and fulfillment of basic rights, such as through programs to accelerate and expand non-discriminatory and affordable public service and community empowerment and involvement program in planning, implementing and monitoring basic services; *second*, strengthening Access to Justice to Justice and Dispute Resolution through a program to strengthen public access to an effective and reliable justice system; a program to improve the quality of public services of law enforcement agency; a program to increase the effectiveness of non-formal dispute resolution forum; and a program to strengthen judicial mechanism that supports human rights protection; *third*, strengthening Access to Justice to Legal Aid through a program to improve legal aid that accommodates the poor and vulnerable groups; a program to strengthen work capacity, administration, and strengthening of legal aid information system; a program to increase the capacity and quality of legal aid organization; and community empowerment programs

on legal rights and legal aid rights through information socialization and sustainable education in order to increase community legal knowledge.

All of these programs can be implemented, if all stakeholders have the same responsibility and commitment in realizing the target of access to justice for the poor/marginal people.

### **Advocate Obligation In Providing Pro Bono Legal Aid**

As mentioned above, the recognition and protection of the human rights of each individual or citizen shall be provided by the State as a consequence of a legal state (*rechtsstaat*), where every citizen has the right to equality before the law. Through this principle, the State may not discriminate any person or citizen for any reason.

In an effort to realize the principles of legal state in the life of the community and state, the role and function of the lawyer as a free, independent and responsible profession are important, in addition to law enforcement agencies such as judge, public prosecutor and investigator.

Article 22 paragraph (1) of Law No. 18 of 2003 concerning Advocates affirms that Advocates must provide free legal aids to needy persons seeking for justice. The provision of pro bono legal aid by Advocates is not a mercy, but rather an appreciation of human rights in realizing justice in society.

The obligation to provide pro bono legal aid by Advocates is inseparable from the principle of justice for all and the right of everyone to be accompanied by an Advocate without exception. The provision of pro bono legal aid is a form of service from Advocates in carrying out their profession as one of the elements of the justice system and one of the pillars in upholding the supremacy of law and human rights. The cases that can be requested for pro bono legal aid as confirmed in Government Regulations (*vide* Government Regulation No. 83 of 2008 concerning Terms and Procedures for Providing Pro Bono Legal Aid<sup>5</sup> *jo* Government Regulation No. 42/2013 concerning Terms and

Procedures for Providing Pro Bono Legal Aid and Distribution of Legal Aid Funds<sup>6</sup>) include; criminal and civil cases, state administration, and military crimes. Pro bono legal aid is also provided for non-litigation cases (without the court intervention).

This Government Regulation also regulates the process of submitting request for pro bono legal aid submitted by an applicant to Advocates, Advocates Organization, and Legal Aid Institutions with the terms to submit a certificate of inadequacy issued by an authorized official. In addition, it is also regulated regarding prohibitions or sanctions on Advocates who refuse requests for pro bono legal aid, receive or request compensation for pro bono legal aid. The sanctions include verbal reprimand, written warning, temporary termination of the profession for 3 (three) to 12 (twelve) consecutive months, or permanent termination of the profession.

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<sup>5</sup> Government Regulation No. 83/2008 was issued to implement the provision of Article 22 of Law No. 18 of 2003 on Advocates.

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<sup>6</sup> Government Regulation No. 42/2013 was issued to implement the provision of Article 15 paragraph (5) and Article 18 of Law No. 16 of 2011 on Legal Aid. Article 16 paragraph (1) of this Government Regulation states that: The Provision of Non-Litigation Legal Aid can be carried out by Advocate, Paralegal, Lecturer and Student of Law Faculty in the scope of verified and accredited Provision of Legal Aid.

Therefore, the issue of providing legal aid is the constitutional rights of citizens and is the obligation of the State to fulfill the constitutional rights of every economically poor citizen. This State's obligation is implemented through the provision of fund/budget to legal aid provider through the APBN (State Budget) whose implementation is further regulated in Law No. 16 of 2001 concerning Legal Aid (Law 16/2001). This law provides access to justice for people to obtain legal aid service from various parties as a form of State's responsibility to guarantee the constitutional rights of everyone to obtain fair recognition, guarantee, protection and legal certainty as well as equality before the law as a means of protection against human rights. In addition, the State is responsible for the provision of legal aid for the needy persons as a manifestation of access to justice.

The problem of access to justice, although it is limited to legal aid for "the poor", is a problem that is difficult to describe. This is because the problem of access to justice is not only a matter of law, but also a political problem, even further is a

cultural problem. The problem is complicated when it is seen from an economic standpoint, caused by widespread poverty, high illiteracy rates, and a state of poor health.

It is not easy to discuss about the issue of legal aid in Indonesia when it is associated with legal aid services provided by an Advocate. This is certainly a problem for a Professional Advocate. Because on the one hand, an Advocate is required to carry out his profession to gain profit (profit orientation), but on the other hand, an Advocate is also obliged to provide pro bono legal aid to the needy persons seeking for justice (*the justitabelen*) without a service fee.

Nevertheless, the Law concerning Advocates (No.18/2003) regulates that Legal Aid shall be legal services given by an advocate pro bono to deficient clients (*vide* Article 1 No. 8 of Law concerning Advocates). This is an obligation of an advocate as part of his service as a noble and honorable profession (*officium nobile*). This is also an obligation for other groups such as university, employer, and others who are different from the constitutional obligations of the State based on the

1945 Constitution. The terms and procedures for providing pro bono legal aid by Advocates are further regulated in Government Regulation No. 83 of 2008 concerning Terms and Procedures for Pro Bono Legal Aid. Pro bono legal aid is a form of advocate service in carrying out his profession as one of the pillars in upholding the supremacy of law and human rights.

Although paralegals, lecturers and law school students are given the opportunity to provide legal aid through the Law concerning Legal Aid, the obligation of advocates to provide pro bono legal aid is not limited, not reduced, and not eliminated by the enactment of the Law concerning Legal Aid. This is confirmed in the Explanation of Article 6 paragraph (2) of the Law concerning Legal Aid stating that “This provision does not reduce the obligation of the Advocate profession to hold Legal Aid based on the Law on Advocates”.

The provision of pro bono legal aid by Advocates as stipulated in the Law on Legal Aid is a manifestation of the implementation of the provision of legal aid by the State to

citizens to fulfill and implement the principles of legal state that recognize, protect, and guarantee the rights of citizens, especially people or group of needy persons to gain access to justice and equality before the law. Therefore, the country’s responsibility is implemented through the Law on Legal Aid involving Advocates to provide legal aid.<sup>7</sup>

Legal aid is an effort to help the needy persons. Therefore, legal aid efforts have three interrelated aspects, namely the formulation of legal rules, supervision of legal aid mechanism so that the legal rules shall be adhered, and public education so that the legal rules are internalized. In connection with these three aspects, the role of the Minister running the government in the field of law needs to supervise the implementation of legal aid, so that legal aid is targeted to expand the access of the needy persons to justice and the public is able to understand the law comprehensively to achieve legal compliance.

Furthermore, in relation to the fulfillment of the right to obtain legal

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<sup>7</sup>The statement of the Constitutional Court in Legal Consideration in Testing the Law No. 16 of 2011 concerning Legal Aid (*vide* Decision Number: 88/PUU-X/2012), dated May 31, 2018.



aid and the role of non-profit institutions in Higher Education, particularly in the Faculty of Law, according to the Constitutional Court's statement in Testing the Law on Legal Aid (Law 16/2001) [*vide* Decision No. 88/PUU-X/2012, dated December 19, 2013], states that the existence of these institutions is essential for the ones seeking for justice, especially for those who are classified as the needy persons to use the services of legal advisor or professional advocate. Therefore, the existence of the institutions is considered important as an instrument for higher education, especially the Faculty of Law, to implement the Three Pillars of Higher Education in the function of community service. In addition, the provision of legal aid service is included as part of the curriculum of Law Faculty in Higher Education with the category of clinical law education subject and it brings great benefits to the development of legal education and social change, as demonstrated by the experience of Latin American, Asian, European, South African countries, even countries classified as developed countries, such as the United States.

In this connection, the non-litigation service of providing legal aid by lecturers and students of law faculty is an act that shall be realized because it is the implementation of the third function of the Three Pillars of Higher Education, namely Community Service. This is in line with the provisions of Article 16 paragraph (1) and paragraph (2) of Government Regulation No. 42 of 2013 concerning the Terms and Procedures for Provision of Legal Aid and Distribution of Legal Aid Funds which state that "*Non-litigation Legal Aid can be provided by Advocate, Paralegal, Lecturer and Student of Law Faculty within the scope of verified and accredited Legal Aid Provision*". Paragraph (2) states "*Provision of Non-Litigation Legal Aid includes activities: (a) Legal counseling; (b) Legal consultation; (c) Case investigation, both electronically and non-electronically; (d) Legal study; (e) Mediation; (f) Negotiation; (g) Community empowerment; (h) Mentoring outside the Court; and/or (i) drafting legal documents.*

The provision of Non-litigation Legal Aid is not only carried out by

an Advocate, but can also be carried out by Paralegal, Lecturer and Student of the Law Faculty. Thus, the means taken by the Government in carrying out legal aid by providing opportunities for parties to participate as well as increase the legal awareness of the wider community is the right policy for upholding the principles of a democratic legal state.

In relation to Pro bono Legal Aid, it has been confirmed in Government Regulation No. 83 of 2008 as an implementation of the provisions of Article 22 of Law No. 18 of 2003 concerning Advocates, where it is stated in Article 2 that “*Advocates must provide pro bono Legal Aids to needy persons seeking for justice*”. This is also in line with the provisions of Article 22 of Law No. 18/2003 which states that “*Advocates must provide pro bono Legal Aids to needy persons seeking for justice*”. The provisions regarding the terms and procedures for providing pro bono legal aid as referred to in paragraph (1), are further regulated by Government Regulation. [*vide* Article 22 paragraph 1 and paragraph 2 of Law 18/2003]. Furthermore, Article 7

letter h of the Indonesian Advocates Code of Ethics states that “*Advocates must provide pro bono legal aid to the poor or small people seeking for justice*”.

Thus, the obligation to provide pro bono legal aid by the Advocate is a form of service in carrying out their profession as one of the elements of law enforcement officer.

In addition to the aforementioned provisions, the National Board of Indonesian Bar Association (*DPN PERADI*) through Decree Number 016/PERADI/DPN/V/2009, on May 11, 2009 concerning the Establishment of the Indonesian Bar Association’s Legal Aid Center (PBH PERADI), PERADI<sup>8</sup> is committed to fulfilling social responsibility and actively taking part in efforts to uphold the law and justice, developing the law, and realizing the principles of the legal state in Indonesia. Therefore, PERADI is committed to fulfill its responsibilities

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<sup>8</sup> As the only Advocate organization based on the Law concerning Advocates, the existence of PERADI has been strengthened by the decision of the Constitutional Court No. 014/PUU-IV/2006 dated November 30, 2006. The Constitutional Court stated that “... *PERADI as the only organization of the Advocate profession is basically an independent state organ in the broad sense which also carries out state functions*”.

to 3 (three) main beneficiaries, namely: Society, Advocate and State, through: *First*; providing access to quality services for disadvantaged and marginalized community. *Second*; increasing advocate capacity and capability; and *Third*; active participation in the development of law, justice and prosperity. As part of the organizational structure, PBH PERADI as an integral part of PERADI is assigned to implement the pro bono system, namely:

1. To carry out pro bono legal aid by advocate in accordance with the Law on Advocates, Establishment of Legal Aid Center, Code of Ethics of Indonesian Advocates, and PERADI Regulation governing the provision of Pro bono Legal Aid;
2. To distribute request for pro bono legal aid to advocate and/or legal aid agency;
3. If it is deemed necessary, after obtaining approval from DPN PERADI, it can form legal aid agency to directly provide pro bono legal aid in the area as stipulated by PBH PERADI;
4. To carry out activities needed in order to socialize the

implementation of pro bono legal aid by Advocates;

5. To carry out other activities needed in order to succeed the implementation of pro bono legal aid program by Advocates.

To carry out its duties, PBH PERADI is authorized:

1. To coordinate with agency, institution or body, both those within the organizational structure of PERADI and outside of PERADI in order to implement its obligation to provide pro bono legal aid by Advocates;
2. To appoint advocates to carry out pro bono legal aid;
3. To employ non-advocate staff and advocate to assist PBH PERADI Management in carrying out their duties;
4. To prepare technical regulations relating to the implementation of pro bono legal aid to be issued/authorized by DPN PERADI;
5. To report Advocates who refuse to provide pro bono legal aid, receive or request any kind of assistance from the one seeking for justice in providing pro bono legal aid to PERADI for sanctions

according to the Code of Ethics and applicable procedures;

6. To report Advocate, forward third party report, and/or give information to PERADI or PERADI bodies related to Advocates who allegedly violated the Code of Ethics of Indonesian Advocates when carrying out the obligation to provide pro bono legal aid;
7. To make agreements with third parties both private and government agency in order to implement pro bono legal aid;
8. To issue report on the implementation of pro bono legal aid by Advocate on a regular basis through reachable media by the public, and perform other things needed in carrying out its duties and obligations.

To support PBH's performance, PERADI has issued PERADI Regulation No. 1 of 2010 concerning Instruction for Pro Bono Legal Aid. Even though it is based on the Law on Advocates and the Establishment of Legal Aid Center, this regulation extends the definition of disadvantaged person or group not

only economically, but also socio-politically.

Other provisions affirmed in this PERADI Regulation are "*advocates are recommended to provide at least 50 hours of pro bono legal aid for deficient client*", whether it is carried out individually or appointment through PBH PERADI. Thus, the professional duties, authorities and obligations adhered to an Advocate in providing pro bono legal aid shall be oriented to the Standard for Probono Legal Aid System, where PERADI Advocates can play an active role in the interests of the Nation and State in realizing access to justice for all levels of society without discriminating between tribes, religions, races or certain groups, so that the noble and honorable profession (*officium nobile*) adhered to an Advocate will be more dignified in the eyes of the public. This is where the noble and honorable profession is adhered to an Advocate when he is able to provide Pro bono legal aid to the needy persons.

In addition, PBH PERADI can strengthen its role and function in order to deal with Pro bono cases on an ongoing basis by building

partnership with Regional Government, strengthening partnership with Law Enforcement Officials (Police, Prosecutor, Court and Correctional Institution), collaborating with Legal Aid Organizations (OBH) such as LBH, NGOs and Universities, especially law faculty, including the media to support the Pro bono's existence and works for the benefit of economically disadvantaged communities in order to realize access to justice for the community. Only by strengthening networking with various parties, the pro bono program and system can provide benefits of justice for every economically disadvantaged citizen or group to gain access to justice and equality before the law.

### **Legal Standing Of Paralegal In Providing Legal Aid After The Decision Of Supreme Court In The Republic Of Indonesia**

As we all know that the Government through the Indonesian Ministry of Law and Human Rights has issued Ministerial Regulation No. 01 of 2018 concerning Paralegals in the Provision of Legal Aid (PERMEN 1/2018), where Legal Aid Provider (LBH or Correctional Institution) can recruit Paralegal as Legal Aid service

provider according to specified conditions, including: at least 18 years old; have knowledge of community advocacy; and/or fulfill other terms determined by the Legal Aid Provider.

The legal standing of paralegal is confirmed in Article 11 of Ministerial Regulation 1/2018 stating that "Paralegals shall provide Litigation and Non-litigation Legal Aid after being registered in the Legal Aid Provider and obtaining a Basic Paralegal Training Certificate". Furthermore, Article 12 paragraph (1) and paragraph (2) states that "Provision of Legal Aid in litigation by Paralegal is carried out in the form of advocacy assistance in the same scope of Legal Aid. Paragraph (2) states "Assistance as referred to in paragraph (1) includes: (a) assistance and/or exercising authority starting from the level of investigation and prosecution; (b) assistance and/or exercising authority over the Legal Aid Recipient in the State Administrative Court.

Provision of Non-litigation Legal Aid by Paralegal is carried out through: (a) *Legal counseling*; (b) *Legal consultation*; (c) *Case*

*investigations, both electronically and non-electronically; (d) Legal study; (e) Mediation; (f) Negotiation; (g) Community empowerment; (h) Mentoring outside the Court; and/or (i) drafting legal documents. (vide Article 13 of Regulation of Minister of Law and Human Rights No. 1 of 2018).*

In addition to providing Legal Aid, Paralegals shall provide legal services in the form of: (a) policy advocacy for regional apparatus at village/kelurahan level up to regency/city level; (b) Program Assistance or activities managed by Ministry, government agency, non-ministry, Provincial, Regency/City governments or village government, and/or shall cooperate with legal counselor to form and/or foster legally aware families (*kadarkum*).

In line with the provisions of Article 11 and Article 12 of PERMENKUMHAM 1/2018, a Material Test of Article 11 and Article 12 of Regulation of Minister of Law and Human Rights (PERMENKUMHAM) has been carried out by 18 Advocates, in which the PERMENKUMHAM has caused concern among Advocates with the

argument that Paralegal known as Advocate assistant in the practice of court process or litigation in developed countries such as the United Kingdom and United States, has a legal standing similar to an Advocate in Indonesia due to the issuance of PERMENKUMHAM RI No. 01/2018. The definitions of Paralegal in developed countries, such as the United Kingdom and the United States are as follows:

1. National Association of Licensed Paralegals in the United Kingdom defines Paralegal: as a person who qualifies with education and training to perform legal duties, but does not qualify as a lawyer;
2. ABA (American Bar Association) defines Paralegal: as a person who qualifies with education and training or work experience in a lawyer office, law office, corporation, government agency or other agencies to carry out substantive legal work delegated to him, but under the direct responsibility of lawyer. This definition states that legal responsibility for paralegal job rests directly under lawyer;

3. The National Federation of Paralegal Association (NFPA) of the United States defines Paralegal as a person who qualifies with education, training and work experience to carry out substantive legal work that requires general knowledge of legal concept, but not exclusively carried out by lawyer. Paralegal job may be carried out by lawyer, at law office, government agency or other agencies or can be authorized by the law or court to perform his work. Substantively, this job needs recognition, organizational evaluation, analysis and communication of relevant facts and legal concept;
4. National Association of Legal Assistants (NALA) in the United States defines that Paralegal, also known as legal assistant, is a person who assist lawyer in legal services through formal education, training and experience, paralegal has knowledge and expertise about the substantive legal system and procedural law and is eligible for legal work under the supervision of a lawyer;
5. American Association for Paralegal Education (AAFPE): Paralegal carries out substantive and procedural legal work authorized by the law when the job cannot be carried out by a lawyer. A paralegal has legal knowledge obtained from his education and work experience so that he is qualified to carry out legal work. Paralegal adheres to ethical standard and rules of professional conduct.

Based on various definitions of Paralegal in several countries above, the definition of paralegal as stipulated in PERMENKUMHAM 1/2018 is considered to have caused concern for Advocates when a Paralegal in Indonesia has proceedings before the court without having a minimum background in Bachelor of Law (S.H.) Therefore, according to the Supreme Court, PERMENKUMHAM No. 1/2018 has the potential to cause confusion and uncertainty in the community and is suspected of taking over the position of Advocate Profession. In this connection, according to the Supreme Court, PERMENKUMHAM No. 1 of 2008 is considered unfounded and

legally flawed because it violates the legal principles of *Lex Superiori Legi Derogat Inferiori* (a law higher in the hierarchy repeals the lower one), and therefore contradicts the Law No. 18 of 2003 concerning Advocates.

Thus, according to the Supreme Court's consideration, it is evident that Article 11 and Article 12 of the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia No. 01 of 2018 concerning Paralegal in the Provision of Legal Aid are contrary to Law No. 18 of 2003 concerning Advocates, so that the Articles shall be revoked. With the existence of the Supreme Court Decision, the position and existence of Paralegal in the Provision of Legal Aid both with and without the court intervention (litigation and non-litigation) cause Paralegal to be unable to provide assistance to litigant in court.

Nevertheless, the Supreme Court's Decision [*vide* Decision No.22 of P/HUM/2018, dated May 31, 2018] received criticism from many circles, especially from organizations such as; Indonesia Legal Aid Foundation (YLBHI), Indonesian Judicial Monitoring

Society (MaPPI FH UI), Community Legal Aid Institute, Indonesia Roundtable, and LBH APIK Jakarta - which in the press release considered that the Supreme Court's ruling was a step backward towards efforts to expand legal aid services and access to justice. In addition, pro bono legal aid provided by Advocates has not been optimal. Therefore, the existence of Paralegals is needed to help people who cannot access paid legal assistance. Another reason is that currently, there is no data to verify whether advocates have carried out pro bono obligation or not. According to these organizations, there are a large number of Advocates who have not carried out pro bono obligation to help the poor.

In line with the Supreme Court's Decision, the Provision of Non-litigation Legal Aid by Paralegal can be carried out through (a) Legal counseling; (b) Legal consultation; (c) Case investigations, both electronically and non-electronically; (d) Legal study; (e) Mediation; (f) Negotiation; (g) Community empowerment; (h) Mentoring outside the Court; and/or (i) drafting legal documents (*vide* Article 13 of



Ministerial Regulation No. 1 of 2018).

Even though a paralegal does not work as an advocate, but has a basic understanding and adequate legal knowledge, the existence of paralegal in the context of legal aid is needed and has a portion of responsibility for carrying out non-litigation legal aid, in addition to being provided with tiered program from the basic to advanced level, so that he has professional abilities in the field of non-litigation legal aid. Therefore, it is expected that the role of Higher Education (especially law faculty) through its Three Pillars (*Tri Dharmas*) in the community service function, can cooperate with legal aid institutions, including working with the PERADI Legal Aid Center to continuously provide tiered Paralegal Program to improve skills of Paralegals, so that their existence is needed in order to realize and provide access to justice for citizens, especially for disadvantaged people or group to gain access to justice and equality before the law. Thus, the service of providing non-litigation legal aid by Paralegals, lecturers and students of Law Faculty is an act that

shall be realized because it is the implementation of the third function of the Three Pillars of Higher Education, namely Community Service on an ongoing basis.

## CONCLUSION

1. That the concept of access to justice basically focuses on two basic objectives of the existence of a legal system, namely: the legal system shall be accessible to all people from various walks of life. Therefore, the legal system shall be able to make fair provision and decision to all walks of life, both individually and in group;
2. That in the Indonesian context, access to justice is defined as a condition and process in which the State guarantees the fulfillment of basic rights based on the 1945 Constitution and the principles of universal human rights, and guarantees access for any citizen to have the ability to know, understand, realize and use these basic rights through formal and informal institutions, supported by a good and responsive public complaints mechanism, in order to

- obtain optimal benefits and improve the quality of life.
3. That the basic idea to be prioritized in the concept of access to justice is to achieve social justice for citizens from all walks of life. In this connection, the right to legal aid is a small part of the access to justice;
  4. That the fulfillment of the right to legal aid as part of access to justice means that the state shall use all its resources to realize the right to progressive legal aid;
  5. That the obligation to provide pro bono legal aid by the Advocate is a form of advocate service in carrying out his profession as one of the elements of law enforcement officer;
  6. That pro bono legal aid is an effort to assist the disadvantaged group. Therefore, legal aid efforts have three interrelated aspects, namely the formulation of legal rules, supervision of legal aid mechanisms so that legal rules are adhered to, and public education so that the legal rules are internalized;
  7. That even though Paralegal does not work as an Advocate, but has a basic understanding and adequate legal knowledge, so its existence in the context of legal aid is needed and has a portion of responsibility to carry out non-litigation legal aid, in addition to being provided with tiered program from basic level to advanced level so that he has professional abilities in the field of non-litigation legal aid.
  8. That it is expected that the role of Higher Education (especially law faculty) through its Three Pillars (*Tri Dharma*) in the community service function shall cooperate with legal aid institutions, including cooperating with the PERADI Legal Aid Center to continuously provide tiered paralegal program to improve skills for Paralegals so that their existence is needed in order to participate in realizing and giving access to justice for citizens, especially for disadvantaged people or group to gain access to justice and equality before the law.

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