

NATIONAL REPORT - INDONESIA

ESTABLISHING NATIONAL LEGAL AID SYSTEM THROUGH INDONESIA LEGAL AID ACT

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A. INTRODUCTION

This section will provide a basic information of Indonesia on the population, people living below poverty line, income per capita and the number of advocates. According to Indonesia Bureau of Statistic Census in 2010, total population of Indonesia is 237,556,363 which consist of 118,048,783 women and 119,507,580 men. Whereas, the population growth rate is about 1,49% per year. Indonesia is one of density population in the world and Java Island is the most heavily populated island in Indonesia. Thus, the national development policy by the government is focused on the western part of Indonesia. It will impact on distribution of development-funding from government throughout the country including access to justice for the poor. Income per capita of Indonesia in 2010 according to Central Bureau of Statistics is approximately Rp. 27 millions equivalent to U.S. \$ 3,004.9 per year. This number increased significantly to 13% compared to 23,9 million equivalent to U.S. \$ 2,349.6 in 2009. The nominal rate of per capita income is approximately 6,244.9 Trillion. However, The poverty line is still high reaching 31,02 million people (13,33%) of the total population.

It is clearly seen that poor people in Indonesia are difficult to get justice as the number of advocates in Indonesia are around 30,000 compared to 31,02 million of people who lives in poverty line. The relationship between welfare and justice has become a discourse regarding the ideal of social life and development system in developed country. It has been acknowledged that only certain groups in society obtain benefit from development. Poverty is an

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implication of the development process which can not be assessed from a low income. In addition, there is a social process that causes a group of people has been systematically marginalized by the policies made by the government in the development process due to their differences based by identity of the group or ideology on existing social structure. Poverty can be reduced not only through economic development but also through justice for vulnerable groups and marginalized people within society. It is the background that YLBHI and its 14 branch offices apply structural legal aid strategy in handling cases. Structural legal aid is an activity that aims to create conditions for the realization of the law. This law should be able to change the structure of the unbalanced moving towards a better condition, where the rule of law and its implementation ensures equality in both political and economic field. The ultimate goal of structural legal aid policy is not only provide legal aid services for the poor but also to change injustice system in the society to become more equitable.

B. LEGAL AID REGULATION IN INDONESIA

Indonesia Constitution states in article 28 D paragraph 1 that “*each person has the right to recognition, security, protection and certainty under the law that shall be just and treat everybody as equal before the law*”. Nevertheless, there is no specific regulation regarding legal aid mechanism, the state responsibility to provide free legal aid for the poor and state budget for legal aid. Some of legislation regulate a partial of legal assistance as follow:

- a. Law Number 8 of 1981 regarding Criminal Code Procedure.
- b. Law Number 18 of 2003 on Advocates.
- c. Law Number 12 of 2005 on Ratification on Covenant Civil and Political Rights.
- d. Law Number 48 of 2009 on Judicial Power.
- e. Government Regulation No. 83 Year 2008 on Terms and Procedure for *Pro Bono* Giving a Free Legal Aid.
- f. Supreme Court regulation Number 10 of 2010 concerning The Guideliness to Provide Free Legal Aid in the Court.

C. LEGAL PROVIDERS AND NUMBER OF CASES

Legal Aid Providers

Legal Aid Providers that have been continuously providing assistance to the poor are organized by civil society such as Indonesia Legal Aid Foundation (YLBHI) with 14 offices Legal Aid Institute (*LBH*), *PBHI*, *LBH Apik*, *LBH Masyarakat*. Few of legal clinic in Universities provide free legal aid for the poor which are managed by the lecturer and as a place to practice legal process for law students. In the past, Supreme Court through legal aid posts which are located in District Court has budget to provide legal aid for the poor in criminal cases Rp. 500.000,- per case (around U.S \$ 50). However, poor people are still difficult to get free legal aid as only few lawyers who are closed relationship with administrative staff in the court can obtain this fund and this staff cut the budget for lawyer who handles the case. The lawyers do not really defend the rights of poor people to get fair trial in the court. Nowadays, learning from the past experiences, Supreme Court enacted Supreme Court decree Number 10 year 2010 regarding the Guidelines for Providing Legal Aid in the Court to set up the mechanism and procedure for poor people to access to justice in the court. This is a good step which is created by Supreme Court, however after the legal aid bill is enacted this decree should not be employed.

Advocates Act and government regulation which implement this Act have provided an obligation for lawyers to provide legal assistance free of charge to the public, but until now only limited lawyers who provide free legal assistance. In most cases, lawyers when receiving a case from client who cannot afford to pay they will refer their client to seek legal assistance to the legal aid institution. There is a regulation to compel advocate to do free legal aid for the poor but not have been implemented yet. Indonesia Bar Association (*Persatuan Advokat Indonesia/Peradi*) is in the process to make regulation to urge lawyers to do free legal aid for the poor.

The number of Cases in the Court

In regard to the number of cases processed by the court and the Court hierarchy in Indonesia, all cases will be submitted in first level court which consists of several types of courts, namely: the District Courts, religious courts, military courts and state administrative courts. If the parties are not satisfied with the decision in the District Court they can appeal to the High Court until the highest court in Supreme Court. There are no restrictions on types of cases or the amount of money involved by the conflicting parties can be registered in Supreme Court. It will impact on the accumulation of cases and creation black-log cases in the Supreme Court. According to Supreme Court annual report in 2010, there are 3,037,036 cases in the District Court. This number decreased 14 % (3,531,613 cases) in 2009. It can be seen from the table below, the average ratio of settling disputes by the District Court in Indonesia is 96,42%.

Table 1: The number of unsolved and new cases in all first level courts of Indonesia in 2010

Court Type	Unsolved cases in 2009	New Cases	Total	Solved/Final	Cases left 2010
District Court	36,938	2,705,231	2,742,169	2,703,265	38,904
Religion Court	56,478	320,904	377,382	314,407	62,975
Military Court	785	2,856	3,641	3,149	492
Administrative Court	420	1,348	1,768	1,107	661
Tax Court	9,823	6,697	16,520	6,988	9,532
Jumlah	104,444	3,037,036	3,141,480	3,028,916	112,564

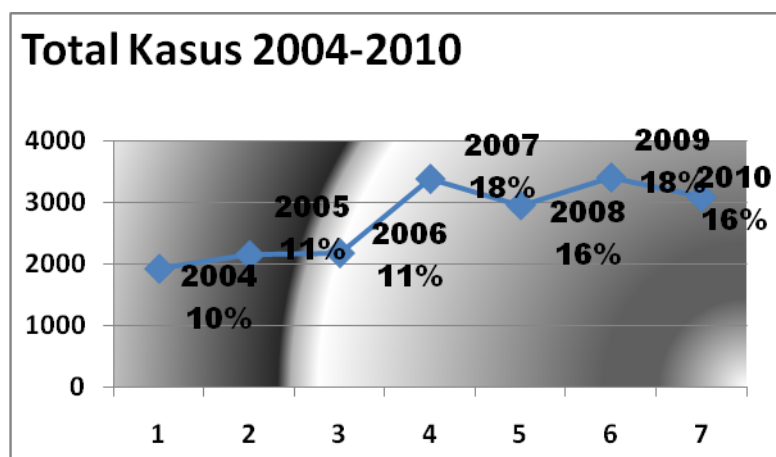
Source: Supreme Court Annual Report 2010

The number of cases in YLBHI-LBH

YLBHI and its 14 branch offices throughout Indonesia handles approximately 3,000 cases per year. The number of cases in 2010 are 3091 which are handled by 14 branch offices. These cases can be categorized into three types namely: Economic, Social and Culture (ESC) rights violations cases (72%), Civil and Political violations cases (22%) and 6% for the cases of Women and Children. ESC rights violations are conflicts related with land right, the right to housing and rampant evictions, a high education budget but has not guaranteed the right to education is fulfilled, latent problems that include the right to work related to job cuts, minimum wage violations, outsourcing, workers criminalization. On the other hand, cases of violations on Civil and Politics rights involving on Torture, violation of freedom of expression and opinion and violence against religious minorities. Women and children cases related to harassment, sexual abuses, domestic violence.

Perpetrators of violations of ESC rights are still characterized by municipal officers, dominant firms, government and police. While the highest perpetrators of violations of civil and political rights are the police. Perpetrators of the rights of women and children violation are husband, parent and others.

Graph 1. Case Handling YLBHI-LBH 2004-2010



Here are highlights of cases handled are:

1. Ahmadiyya Case

Mass crowd of 1500 attacked Ahmadi location in Umbulan Village, Cikuesik subdistrict, Pandeglang district, West Java, Indonesia. Stone throwing occurred. Resistance emerged. Victims fallen from Ahmadiyah side. Three people from Ahmadiyah followers were killed. Several severe attacks injured evacuated to hospital. In the morning before, Police Brought Parman, her wife and Tatep. Parman Ahmadiyah is a new convert and was born in Cikeusik, while Tatep is the head of Cikeusik Ahmadiyah youth section. Police brought them to Pandeglang subdistrict police for taking information. Regarding Parman's wife immigration status, as she is a citizen of the Philippines.

Cikuesik Ahmadi were evacuated to Parman family's house, one hour from the location. There were 25 Ahmadi people, the which majority are elders and children. Receiving this information, Ahmadi youth from Jakarta and Serang went off to Cikeusik. Their intention was to protect the Ahmadi who are still living in Cikeusik. They arrived 8:00 am the following day, 6 February. They were 18 people [plus three Cikeusik residents]. They stand guard in Parman's house. In that time there were six police officers from the Criminal Investigation unit at the location. Around 9:00 am, there were one police pick-up car and two mass-control trucks. Dialogue occurred between the Ahmadi and the police, in which the police ask them to leave the house. The Ahmadi rejected it as in many cases fundamentalist organization attacked Ahmadiyah but the Police did not do anything to prevent the violence happened. The Police only evacuated Ahmadi who being attacked, the group of people who did violations did not be brought to the court.

Since then no more dialogue occurred, the Ahmadi gathered in the house at 10 : 00 am, mass from the north came towards the Ahmadi location. They were shouting while waving their machetes

"Burn down Ahmadiyah!"

"Disband Ahmadiyah"

"Police get lost! We are in charge here! "

Police around the location just stood by and did nothing. When they approached Parman's houses yards, representative Ahmadis tried to calm them down. But the mass went hostile. Beatings occurred, seeing the 21 Ahmadis get out of the house, the mass step back temporarily. But more masses gathered in the rear of the house. The Attackers increasingly went wild. The attacks enlarged also from the south. The Attackers totaled around 1500 people. An Eyewitness stated: "We hold back, they threw stones, they keep pushing, we were the cornered, we went down to the field, we flee, we were chase, beaten" The Attackers pursued Ahmadis. They who were caught in the fields striped down before brutally beaten up together. The Attackers equipped themselves with sharp weapons like: machetes, swords and spears. The Attackers keep beating caught Ahmadis, three were three people. Stones were used to beat the Victims to death. Three Ahmadis were killed in the assault location and one get away amid severe injury. Ahmadis who ran away sustained many serious injuries from sharp weapons and bruises. Most of their bodies were full with Machete cuts, wounded faces, and bruises. This violation is happened to Ahmadiyah because of their belief is different from the mainstream religion in Indonesia.

2. Criminalization Farmers Case

On 16 April 2011 there have been brutal actions by the military to the resident (mostly farmers) in Kebumen. As a result, civilian and the local farmers became victims. There are 4 (four) Farmers criminalized and detained at the Kebumen police station, 13 injured, 6 of them suffered injuries from rubber bullet. In addition, 12 motorcycles owned by residents were damaged and some items, such as mobile phone and cameras and digital data are also deprived by force. Brutal acts by the military do not stop there, because up at 17:00 pm by the army of Republic of Indonesia (TNI) still sweep into the homes of villagers. Some houses on the locked door, broken down until broken

The brutality of TNI is because of the agrarian conflict that is not resolved. TNI make a claim on the grounds Urutsewu region, Kebumen (which consists of

sub Mirit, Ambal and Buluspesantren) has been used as a military training exercise area since the colonial era. In addition to military training areas, the TNI also "annexed" the public lands for the physical building. In that area there are many buildings including *Dislitbang AD* (Army Research and Development Department) infrastructure that was built without the approval of the peasants landowners.

D. LEGAL AID BUDGET

The allocation of legal aid budget are distributed in the Government Institutions such as Ministry of Finance, Bank of Indonesia, and General Election Commission and so on however these funds do not allocated for poor people and marginalized. It is for the staff of those institutions which faces legal problems. Others fund is for law enforcement institution such as Police, Prosecutor and Court. The government has allocated Rp. 304,3 Billion in the period 2010-2014 for legal aid budget in the general courts, religious courts, military courts and state administrative courts. Nevertheless, the realization of the legal aid budget in the Supreme Court in 2010 only spent Rp. 7,532,817,863 from the amount of Rp. 41,965,900,000 which are already planned.

In addition there are also some areas in Indonesia that provides legal aid budget for poor people who allocated from local budget funds, such as North Sumatra province, district and regional Prabumulih Palembang - South Sumatra, Semarang - Central Java, Sinjai District and Napier City - South Sulawesi, and others. For example in South Sumatera province allocated Rp.1,5 Billion for the application of cases which are handled by the local legal aid.

E. THE BIRTH OF LEGAL AID ACT

Since the discussion of the draft Criminal Procedure Code in the 80s, the idea of granting legal aid has been raised. This also occurs when the discussion of

the Advocate Law. However, until now there is no specific law which regulates legal aid.

The initiative encourages the important of legal aid act in Indonesia is led by the Indonesian Legal Aid Foundation. In 2005, YLBHI-LBH held several researches, focus group discussion in three regions in Indonesia. Then, on April 24, 2006, President Susilo Bambang Yudhoyono was officially opened the International Legal Aid Summit. Since then, policy advocacy had planned to encourage the preparation of legal assistance. The advocacy works properly as the House of Representative decided Legal Aid Bill as priority in the National Legislation program which should be discussed by the House of Representative and the Government.

The current situation on legal aid advocacy that the House of Representative and the Government agree that the legal aid act is important to be enacted as the demands and aspiration from poor people and marginalized. In Indonesia, The House of Representative and the Government have authority to propose the bill and they should discussed together in order to pass the Act. The legal aid bill is proposed by the House of Representative, these are some issues in the bill as follow (see attachment Indonesia Legal Aid Bill) :

1. Legal Aid Beneficiary

The beneficiaries of legal aid are poor people who are faced with the legal problems. The poor people are people or group of people who are marginalized due to a public policy, whose civil and political rights neglected, customary people's communities, who are considered to be appropriate and who meet the requirements as specified by National Legal Aid Commission. (Article 4 Draft Legal Aid Bill which is proposed by the House of Representative). YLBHI and CSO add vulnerable groups experiencing violence and discrimination law including women and children as recipient.

2. Legal Aid Providers

The legal aid shall be rendered by Advocates, Paralegal, Lecturers and University students from faculty of law. Paralegal and university students from faculty of law render legal aid the form of legal consultancy and out of court dispute settlements. (Article 5). Civil Society in Indonesia agrees with this article as the role of paralegals are very important to be recognized in Legal Aid Act as the limited number of lawyers in Indonesia compared to justice seekers.

3. Scope of Legal Aid

The legal aid shall include the acts to exercise power of attorney, to assist, to represent, to defend, and/or to perform other legal measures for the legal interests of the legal recipients. (Article 4 point 6). The legal problems shall be given in civil, criminal, labor and administrative cases. (Article 4 point 5). YLBHI and CSO argue to extend the scope of legal aid including Constitutional cases as this is important for citizen to fulfill human rights which are guaranteed in the Constitution. The provision proposed by the house of representative does not explain in detail about the scope of legal aid does include litigation and non litigation. It is important to accommodate the activities of legal aid that had been running outside the judicial process of mediation, consultation, preparation / creation of legal documents, community empowerment, education and legal training. This is intended to create a society that is conscious of their rights so that they can participate in the development process.

4. Institutional (National Commission on Legal Aid/*Komnas Bankum*)

Komnas Bankum is an independent institution and shall be responsible to the public upon the exercise of their duty. *Komnas Bankum* shall submit open and regular report to the President, House of Representatives and State Supreme Audit Agency.(Article 13 point 2 and 3). In order to exercise the duties, *Komnas Bankum* shall have the authority to establish Regional *Komnas*

Bankum in the provincial and district/city level. To appoint Advocate and Paralegal to render the legal aid (Article 26 point a,d). Civil society strongly supports the idea of the House of Representative to establish independent institution (Komnas Bankum). To avoid judicial corruption cannot appoint directly Advocate and Paralegal to provide free legal aid for the poor but *Komnas Bankum* choose the intuitions of Advocate, paralegal, legal aid institution. The government refuse this concept due to there are a lot of independent commission but not effective and the allocation to establish commission spent much money in the state budget. The government intend legal aid institution should be under Ministry of law and Human Rights.

In order to push the birth of the Legal Aid Act which aims to facilitate the poor to get justice then YLBHI and Civil Society Coalition for the Legal Aid Act formulate academic paper and legal aid bill. We have some strategies to monitor the process in parliament as follow :

1. Monitoring Legal Aid Bill in Parliament
2. A campaign that involving public opinion to pressure the house of representative and the government.
3. Lobby stakeholders which involve in legal aid.
4. Strengthen the role of legal aid institution independently.
5. Public discussion

F. CONCLUSION

The improvement to establish legal aid system through Legal Aid Act is the House of Representative and the Government agrees that Legal Aid Act should be passed immediately in order to meet aspirations and demands of poor people and marginalized. This bill becomes one of the bills which are priority to be discussed in National Program on Legislation 2009-2014. However, there are many articles that are still a constraint and debate between the Government, Parliament and civil society. It is necessary for a variety of advocacy strategies to urge the Parliament and Government of the Legal Aid Act enact legal aid where institutions must be independent and autonomous.

DRAFT
LAW OF THE REPUBLIC OF INDONESIA
NUMBER ... YEAR ...
CONCERNING
LEGAL AID
WITH THE GRACE OF THE ONE ALMIGHTY GOD
THE PRESIDENT OF THE REPUBLIC OF INDONESIA,

- Considering:
- a. That the state guarantees the constitutional rights of every person to obtain recognition, guarantee, protection, and fair legal certainty as well as the same treatment before the law as a means to protect human rights;
 - b. That the provisions of legal aid to poor people as a realization of access to justice are not optimally met;
 - c. That the guarantee for the provision of free-of-charge legal aid for poor people is not regulated by Law;
 - d. That based on the considerations as referred to in letter a, letter b, and letter c, it is necessary to make Law concerning Legal Aid;

In view of: Article 20, Article 21, Article 27 paragraph (1), Article 28D paragraph (1), Article 28H paragraph (2), and Article 28I paragraph (4) and paragraph (5) of the 1945 National Constitution of The Republic of Indonesia;

With Joint Approval from

THE HOUSE OF REPRESENTATIVES OF THE REPUBLIC OF INDONESIA

and

THE PRESIDENT OF THE REPUBLIC OF INDONESIA,

HAS DECIDED:

To issue: LAW CONCERNING LEGAL AID.

CHAPTER I GENERAL PROVISIONS

Article 1

Terminologies used in this Law are defined as follows:

1. Legal Aid is a legal service provided by Legal Aid Providers free of charge to the Legal Aid Recipients.
2. Legal Aid Recipients are poor people, people or groups or people as defined in this Law.
3. Legal Aid Providers are Advocates (=barristers), Paralegal, lecturers, and university students from faculty of law as defined in this Law.
4. Advocates are people whose profession is to provide legal service within and outside the court and meet the requirements pursuant to the provisions in the legislations.
5. Paralegal are people who have legal studies as their educational backgrounds or who have work experience in the field of law who assist in providing legal aid pursuant to this Law.
6. National Commission on Legal Aid which shall here in after referred to as Komnas Bankum is the commission that has the authority to administer legal aid within the territory of The Republic of Indonesia.
7. Legal Aid Standards are the guidelines issued by Komnas Bankum on the provision of legal aid.
8. Advocates' Code of Ethics is the code of ethics as issued by professional associations of advocates which applies for Advocates.

CHAPTER II PRINCIPLES AND OBJECTIVES

Article 2

Legal aid shall be rendered based on the following principles:

- a. justice;

- b. equality before the law;
- c. transparency;
- d. efficiency and effectiveness; and
- e. accountability.

Article 3

The provision of Legal Aid is aimed at:

- a. ensuring and fulfilling the rights of poor people to gain access to justice;
- b. realizing the constitutional rights of citizens in accordance with the principle of equality before the law;
- c. ensuring that the provision of Legal Aid is carried out equally throughout the territory of the Republic of Indonesia; and
- d. realizing effective, efficient, and accountable judiciary.

CHAPTER III

SCOPE

Article 4

- (1) Legal Aid is given to poor people that are faced with legal problems.
- (2) The poor people as referred to in paragraph (1) include any person who cannot meet their basic rights properly and independently.
- (3) The basic rights as referred to in paragraph (2) include the rights to food, clothing, health care, education service, employment and business undertakings, and housing.
- (4) In addition to poor people as referred to in paragraph (1), the Legal Aid shall be provided to:
 - a. People or group of people who are marginalized due to a public policy;
 - b. People or group of people whose civil and political rights are neglected;
 - c. Customary people's communities; and
 - d. People who are considered to be appropriate and who meet the requirements as specified by Komnas Bankum.
- (5) The legal problems as referred to in paragraph (1) shall be given [legal aid] in civil, criminal, labor, and administrative cases.
- (6) The Legal Aid as referred to in paragraph (1) shall include the acts to exercise power of attorney, to assist, to represent, to defend, and/or to perform other legal measures for the legal interests of the Legal Aid Recipients.

Article 5

- (1) The Legal Aid shall be rendered by Advocates, Paralegal, lecturers, and university students from faculty of law.
- (2) Advocates and lecturers shall render legal aid in all legal problems as referred to in Article 4.
- (3) Advocates may engage Paralegal and university students from faculty of law in rendering legal aid as referred to in paragraph (2).
- (4) Paralegal and university students from faculty of law shall render legal aid in the form of legal consultancy and out-of-court dispute settlements.
- (5) Lecturers as referred to in paragraph (2) shall render the legal aid only on the basis of this Law.
- (6) Provisions concerning the requirements and procedure of the rendering of legal aid by Advocates, Paralegal, lecturers and university students from faculty of law shall be regulated under Komnas Bankum Regulation.

CHAPTER IV

RIGHTS AND OBLIGATIONS OF LEGAL AID RECIPIENTS

Article 6

Legal Aid Recipients have the right to:

- a. Obtain Legal Aid until their legal problems are resolved and/or until their case has obtained final and binding decision, as long as the concerned Legal Aid Recipients do not revoke their power of attorney;
- b. Obtain Legal Aid in accordance with Legal Aid Standards and/or Advocates' Code of Ethics; and
- c. Obtain information and documents which are relevant with the performance of rendering of Legal Aid.

Article 7

Legal Aid Recipients have the obligation to:

- a. Submit proofs, information, and/or statements on the case truthfully to Komnas Bankum or Legal Aid Providers; and
- b. Help in facilitating the provision of Legal Aid.

CHAPTER V
RIGHTS AND OBLIGATION OF LEGAL AID PROVIDERS

Article 8

Legal Aid Providers have the obligation to:

- a. Provide Legal Aid to Legal Aid Recipients based on the requirements and procedures as stipulated in this Law until the case is resolved, unless there is a legitimate excuse;
- b. Maintain the confidentiality of data, information, and/or statements obtained from Legal Aid Recipients in relation to the case being handled, unless stipulated otherwise by the Law; and
- c. Comply with and act in the manners which are in accordance with the Legal Aid Standards and/or Advocates' Code of Ethics.

Article 9

Legal Aid Providers have the right to:

- a. Issue opinion or statement in defending the case in which they are responsible for in the court hearings in accordance with the Legal Aid Standards and/or Advocates' Code of Ethics;
- b. Obtain information and other data from government or other agencies, for the interest of defending the case;
- c. Obtain assurance on legal protection, security, and safety during the provision of Legal Aid.

Article 10

Legal Aid Providers may not be sued either in civil or criminal matters in providing the Legal Aid in which they are responsible for and which is carried out with good faith in court hearings in accordance with Legal Aid Standards and/or Advocates' Code of Ethics.

CHAPTER VI
REQUIREMENTS AND PROCEDURES IN APPLYING FOR LEGAL AID

Article 11

- (1) In order to obtain Legal Aid, Legal Aid applicants must meet the following requirements:
 - a. To file a written application which describes the identity of the applicant and brief description of the matters in which the Legal Aid is sought for;
 - b. To submit documents which are relevant to the case; and

- c. To enclose a certificate of being-poor from *lurah* (head of urban village), *kepala desa* (head of rural village), or other officials of the same level in the place of domicile of the Legal Aid applicants.
- (2) In the event the Legal Aid applicants are unable to compose a written application, the application can be made verbally.

Article 12

- (1) Legal Aid applicants shall file the application for legal aid to Komnas Bankum.
- (2) After the legal aid application is deemed to be completed, Komnas Bankum must, within 3 (three) working days at the latest, provide answer of whether the application for legal aid is accepted or rejected.
- (3) In the event that the legal aid application is accepted, the Legal Aid Provider shall render Legal Aid based on Special Power of Attorney from Legal Aid Recipients.
- (4) In the event that the legal aid application is rejected, Komnas Bankum is obliged to specify the reasons of rejection.
- (5) Further provisions concerning the procedure and administration of rendering legal aid shall be regulated under Komnas Bankum Regulation.

CHAPTER VII

NATIONAL COMMISSION ON LEGAL AID

Part One

Domicile

Article 13

- (1) In order to ensure the administration of Legal Aid, Komnas Bankum shall be established.
- (2) Komnas Bankum is an independent institution.
- (3) Komnas Bankum shall be responsible to the public upon the exercise of their duties and shall submit open and regular report to the President, House of Representatives, and State Supreme Audit Agency.
- (4) Komnas Bankum is domiciled in the capital city of the Republic of Indonesia.

Part Two

Institutional Arrangements

Article 14

Komnas Bankum shall have 5 (five) members which consists of 2 (two) people representing the advocates element, 2 (two) people representing the academics element, and 1 (one) public figure who has experience in the fulfillment of legal aid and/or advancement of human rights.

Article 15

- (1) Komnas Bankum shall have one Chairperson who shall also act as member, and four other members.
- (2) The Chairperson of Komnas Bankum shall be elected from and by members of Komnas Bankum.
- (3) If the Chairperson is unavailable, members may appoint one of the members to act as acting-Chairperson in accordance with Komnas Bankum Regulation.
- (4) Further provisions concerning the procedures of electing Chairperson of Komnas Bankum shall be regulated under Komnas Bankum Regulation.

Article 16

- (1) The term of service of Komnas Bankum members shall be 5 (five) years.
- (2) After the term of service as referred to in paragraph (1) ends, members of Komnas Bankum can be reelected for the same position, for only 1 (one) more period.

Part Three Appointment and Termination

Article 17

- (1) A member of Komnas Bankum must meet the following requirements:
 - a. Indonesian citizen;
 - b. Physically and mentally healthy;
 - c. Has never been convicted with imprisonment based on a final and binding court ruling due to commission of crime that is punishable by minimum 5 (five) years of imprisonment;
 - d. Is minimum 35 (thirty-five) year old and maximum 65 (sixty-five) year old when the election is carried out;
 - e. Holds minimum S 1 (strata one) degree;
 - f. Experienced in the field of law and human rights for 10 (ten) years at the minimum;
 - g. Has integrity and untainted personality; and
 - h. Has taxpayer registration number.
- (2) The selection and election of Komnas Bankum members shall be carried out by a Selection Committee which shall be formed by the President.
- (3) The Selection Committee as referred to in paragraph (1) shall consist of 5 (five) people, with the following composition:
 - a. 2 (two) people representing the government element; and
 - b. 3 (three) people representing public figures element.
- (4) Members of selection committee may not be nominated as Komnas Bankum member.
- (5) Further provisions concerning the composition of selection committee, the procedure of selection and election of Komnas Bankum members shall be regulated under Presidential Regulation.

Article 18

- (1) The selection committee shall nominate 15 (fifteen) candidates who have met the requirements to the President.
- (2) The president shall propose 15 (fifteen) candidates as referred to in paragraph (1) to the House of Representatives.
- (3) The House of Representatives shall select and approve 5 (five) people from the candidates as referred to in paragraph (2).

Article 19

- (1) The House of Representatives shall give their approval within 30 (thirty) hearing-days at the latest starting from the date when the proposed candidates of Komnas Bankum members is received.
- (2) In the event the House of Representatives does not give their approval on one of more candidates as proposed by the President, then within 30 (thirty) hearing-days at the latest starting from the date when the proposed candidates of Komnas Bankum members is received, the House of Representatives must notify the President along with their explanation.
- (3) In the event the House of Representatives does not give their approval as referred to in paragraph (2), the President shall propose alternative candidates amounted to 2 (two) times of the number of members not being approved by taking into account the composition of represented elements as referred to in Article 17.
- (4) The House of Representatives must give approval to the alternative candidates as referred to in paragraph (3), within 30 (thirty) hearing-days at the latest starting from the date when the proposed names of alternative candidates is received.
- (5) The President shall appoint the candidates that have been approved by the House of Representatives as members of Komnas Bankum within 30 (thirty) days at the latest starting from the date when the approval is received by the President.

Article 20

- (1) Before holding their position, members of Komnas Bankum shall take an oath according to their religion, or to solemnly promise, as follows:
“In the name of Allah, I swear that I will perform my duties as member of Komnas Bankum to the best of my ability and as justly as possible, and that I will strictly observe the 1945 National Constitution of the Republic of Indonesia, and to serve the country and the people”.

The promise of Komnas Bankum member:

“I solemnly promise that I will perform my duties as member of Komnas Bankum to the best of my ability and as justly as possible, and that I will strictly observe the 1945 National Constitution of the Republic of Indonesia, and to serve the country and the people”.

- (2) The taking of the oath or promise as referred to in paragraph (1) shall be performed before the President.

Article 21

Members of Komnas Bankum are prohibited to hold dual position as member and caretaker of political party, state official, or civil servant.

Article 22

Members of Komnas Bankum shall be terminated on the basis of:

- a. death;
- b. expiry of term of service;
- c. personal request;
- d. physical or mental illness which incapacitates the person to exercise their duties for 90 (ninety) days in a row;
- e. commission of disgraceful acts which can undermine the dignity and reputation, and/or lessen the independency and credibility of Komnas Bankum; or
- f. conviction with imprisonment based on a final and binding court decision for a commission of crime which is punishable of minimum 5 (five) years of imprisonment.

Article 23

Further provisions concerning the procedures of appointing and terminating members of Komnas Bankum shall be regulated under Presidential Regulation.

Article 24

- (1) In the exercise of its duties, Komnas Bankum shall be supported by a secretariat general that is led by a secretary general who has the duty to provide administration service for the activities of Komnas Bankum.
- (2) The Secretary General shall be appointed and terminated by the President based on the proposal from Komnas Bankum.
- (3) Further provision concerning the hierarchy, composition, organization, duties, and responsibilities of the secretariat general as referred to in paragraph (2) shall be regulated under Presidential Regulation.

Part Four Duties and Authorities

Article 25

Komnas Bankum shall have the following duties:

- a. To develop and decide the policies on the administration of legal aid;
- b. To develop and formulate general strategies and policies concerning the provision of legal aid;
- c. To develop plans, and to decide and manage the use of legal aid budget;
- d. To develop Guidelines on the Provision of Legal Aid;
- e. To implement standards or principles of good governance in the provision of legal aid;

- f. To implement the principles of efficiency and effectiveness in the use of legal aid budget and human resources; and
- g. To submit report on activities and financial statement to the President, the House of Representatives, and State Supreme Audit Agency.

Article 26

In order to exercise the duties as referred to in Article 25, Komnas Bankum shall have the following authorities:

- a. To establish Regional Komnas Bankum in the provincial and district/city level;
- b. To coordinate the administration of legal aid with relevant agencies/institutions;
- c. To monitor and to ensure that both the administration and the provision of legal aid are carried out in accordance with the principles and objectives as stipulated in the Law; and
- d. To appoint Advocate and Paralegal to render the legal aid in accordance with the provisions as set forth in this Law.

Article 27

- (1) Komnas Bankum shall appoint Advocate and/or Paralegal or may fully employ Advocate and/or Paralegal in order to render the Legal Aid in accordance with the provisions as set forth in this Law.
- (2) If Komnas Bankum fully employs Advocate and/or Paralegal, the working conditions and relations shall be determined by Komnas Bankum.

Part Five Cooperation

Article 28

- (1) Komnas Bankum shall cooperate with legal aid institutions in order to provide Legal Aid.
- (2) The legal aid institutions as referred to in paragraph (1) shall be institutions that perform legal services.
- (3) Further provisions concerning the requirements and procedures of cooperation with legal aid institutions shall be regulated under Komnas Bankum Regulation.

Article 29

- (1) Komnas Bankum shall cooperate with advocates' organizations or advocates' law firms to administer and/or to render Legal Aid as regulated under this Law.
- (2) Advocates' organizations shall submit list of advocates to Komnas Bankum.
- (3) Advocates shall perform and/or undertake Legal Aid based on the terms and conditions as regulated under this Law or other legislations.
- (4) Rejection by advocates to render Legal Aid without clear reasons shall be deemed as violation of Advocates' Code of Ethics.

(5) Further provisions concerning the requirements and procedures on the cooperation between Komnas Bankum and advocates' organizations or advocates' law firms shall be regulated under Komnas Bankum Regulation.

CHAPTER VIII

FUNDING

Part One

General

Article 30

- (1) The funding for required legal aid and which shall be used to administer legal aid in accordance with this Law shall be borne to the State Revenue and Expenditure Budget.
- (2) In addition to paragraph (1), the sources of fund for legal aid are derived from:
 - a. Regional Revenue and Expenditure Budget;
 - b. Grant or donation; and/or
 - c. Other sources of funding which are legitimate and non-binding.
- (3) Further provisions concerning the procedures in obtaining and managing the funding for Legal Aid as referred to in paragraph (2) shall be regulated under Government Regulation.

Article 31

Any costs and expenses that are related with the provision of legal aid to Legal Aid Recipients shall become the responsibility of Komnas Bankum.

Part Two

The Obligation of Government and Regional Government

Article 32

The government must allocate the funding for the administration of Legal Aid in the State Revenue and Expenditure Budget.

Article 33

The Regional Government must allocate the funding for the administration of Legal Aid in the Regional Revenue and Expenditure Budget.

CHAPTER IX

PROHIBITION

Article 34

Legal Aid Providers are prohibited from receiving or requesting anything from Legal Aid Recipients and/or other parties which are related with the case being handled by Legal Aid Provider.

Article 35

Legal Aid Recipients are prohibited from receiving anything from other parties which are related with the case being handled by Legal Aid Provider.

Article 36

Komnas Bankum is prohibited from refusing to provide legal aid to legal aid applicants without reasons as regulated by Komnas Bankum.

CHAPTER X

CRIMINAL PROVISIONS

Article 37

Legal Aid Providers who are proven to have received or requested anything from Legal Aid Recipients as referred to in Article 35 shall be convicted with imprisonment for maximum 3 (three) years and fined with the maximum amount of Rp 150,000,000 (one hundred and fifty million rupiah).

Article 38

Legal Aid Recipients who are proven to have received anything from other parties that are related with the case being handled as referred to in Article 36, shall be convicted with imprisonment for maximum 1 (one) year or fined with the maximum amount of Rp 50,000,000,- (fifty million rupiah).

Article 39

The Chairperson or members of Komnas Bankum who refused to provide legal aid to legal aid applicant without any reasons as regulated by Komnas Bankum as referred to in Article 37, shall be convicted with imprisonment for 4 (four) years and fined with the maximum amount of Rp 200,000,000,- (two hundred million rupiah).

CHAPTER XI

TRANSITIONAL PROVISIONS

Article 40

All provisions concerning legal aid shall remain to be valid as long as they are not in contradiction with this Law.

Article 41

The Komnas Bankum shall be established at least 1 (one) year after this Law comes into force.

CHAPTER XII

CLOSING PROVISIONS

Article 42

This Law shall come into force on the date of its enactment.

For anyone in the public to know, it is instructed that this Law shall be promulgated through the State Gazette of the Republic of Indonesia.

Issued in Jakarta

Dated

THE PRESIDENT OF THE REPUBLIC OF INDONESIA,

SUSILO BAMBANG YUDHOYONO

Promulgated in Jakarta

Dated

THE MINISTER OF LAW AND HUMAN RIGHTS OF THE REPUBLIC OF
INDONESIA,

PATRIALIS AKBAR

STATE GAZETTE OF THE REPUBLIC OF INDONESIA YEAR ... NUMBER...