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# LEGAL AID IN THE FUTURE (A DEVELOPMENTAL STRATEGY FOR INDONESIA)

Mulya Lubis\*

## I. Introduction

During the last ten years or so, legal aid has grown very rapidly in Indonesia. Indeed, the development of legal aid in Indonesia can be considered the most advanced in Asia.<sup>1</sup> Among ASEAN countries, the Jakarta Legal Aid Institute (Lembaga Bantuan Hukum or LBH) is viewed as a model to be followed. To that end, in 1981, ESCAP (the Economic and Social Commission for Asia and the Pacific) requested the Jakarta LBH to assist in the development of legal aid institutes in Thailand and Malaysia.<sup>2</sup> LBH offices, sponsored by the Indonesian LBH Foundation, are frequently visited by various representatives of foreign legal aid organizations who wish to understand the progress of the Legal Aid Institute in Indonesia.<sup>3</sup>

Such international recognition of the LBH is gratifying. Yet we also wonder whether the legal aid movement has really developed all that well. How far has our legal aid movement progressed? We need to answer this question first.

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1. In other Asian countries, legal aid activity is a sideline of private lawyers' associations (Bar Associations and Legal Societies), of governments (Attorneys-General or Departments of Justice), and/or of the individual charitable activity of a private advocate. Thus it is not yet organized, as in Indonesia, in a national network. It is this that has brought many foreign lawyers to study and learn from the LBH. For relevant materials, see Jose W. Diokno, *Legal Aid and Development*, in HUMAN RIGHTS AND DEVELOPMENT (a compilation published by NOVIP, 1980). See also ESCAP, "Social Problems of Low Income Groups: Some Legal Approaches," (report of an ESCAP seminar, Bangkok, 17-23 Feb. 1981); T. Mulya Lubis, *Bantuan Hukum di Asean (Legal Aid in ASEAN)*, 13 *Hukum dan Pembangunan*, Jan. 1983.

2. To assist in the development of legal aid in the ASEAN countries, the LBH was asked to do two things: 1) to hold a regional seminar on legal aid, which was planned for Jakarta but did not go on for lack of government permission; and 2) to hold courses on legal aid in Bangkok, Kuala Lumpur, and Penang (1982).

3. Legal aid workers from India, Bangladesh, Sri Lanka, the Philippines, Malaysia, and Thailand, among others, have visited the LBH. Several among them remained at the LBH for some time.

From available data it appears that Indonesia now has a great many legal aid organizations,<sup>4</sup> over a hundred according to some.<sup>5</sup> But of these more than one hundred organizations, a considerable number are not fully legal aid institutes; they mix free legal aid for the poor with compensated legal services for the well-off. The perception of legal aid here is still one of a "professional charity." What is worse, this "professional charity" is used deceptively by some legal aid organizations, in order to make profits. "Legal aid" has been manipulated irresponsibly by various legal aid adventurers.

Legal aid has also begun to take on political overtones. A good number of legal aid organizations are of a second type: organizations attached to the banners of political forces.<sup>6</sup> Of course, every organization, political or not, has the right to establish a legal aid institute. But it has become clear that a legal aid institute sponsored by a political force is less likely to be autonomous and free. This may be only a worry, but the cause for worry is increasing. We have recently seen the legal aid institutes connected with Golkar (Golongan Karya, a ruling party) unite over the unified organization of advocates that, word has it, will take control of all legal aid institutes in Indonesia.<sup>7</sup> Our concern is that legal aid institutes cannot function soundly if they are attributes of a political force or subsidiary organizations of a political party, as was the case with many organizations during the Soekarno period.

A third type of legal aid institute, of which there are quite a few examples, consists of those attached to public and private law faculties. They are part of the program to develop legal education and, at the same time, a manifestation of the responsibility for social service contained in the Tri Dharma (the Three Responsibilities) of higher education.<sup>8</sup> Legal aid is usually subordinate to the primary responsibility of a law faculty: education. Moreover, personnel and funds are very limited. Not infre-

4. One gets the impression that, in some circles, the formation of legal aid institutes became all the fashion, so that they appeared here and there like mushrooms.

5. This data comes from the research of the PPBHI-LKUI (Indonesian Legal Aid Support Program—University of Indonesia Criminological Institute).

6. An example is the establishment of the LPPH (Institute for Legal Services), a kind of LBH, by the Golongan Karya (regime organization). This LPPH has opened offices in nearly all the provinces of Indonesia. The FBSI national labor union, the HKTI, Armed Forces Pensioners, and so on have also established legal aid institutes.

7. The writer has drawn this conclusion after going through discussions of the "single basket" (one organization for all advocates) in the mass media, and also in his capacity as a member of the Team to Formulate the Wadah Tunggal.

8. See Hermien Hadiati Koeswadji et al, *PENDIDIKAN KLINIS HUKUM (Legal Clinic Education)* I, II, III, Airlangga University, Law Faculty, 1976.

quently, these legal aid organizations are no more than signboards. If such organizations do operate, the problem they face is this: to what extent do they have freedom in their work? Naturally, a legal aid institute in a private law faculty does not experience this problem, but governmental faculties belong to the bureaucracy, and will thus find it very difficult to work freely.

A fourth type of legal aid institute is that established by the Indonesian Advocates Association (PERADIN) in 1971. It now operates under the aegis of the Indonesian Legal Aid Institute Foundation (YLBHI).<sup>9</sup> There are now twenty-two such offices in all of Indonesia, and a branch will soon be opened in Irian Jaya. These LBH's are managed more professionally. Although most members of the Indonesian Legal Aid Institute Foundation belong to PERADIN, the foundation is autonomous and free nevertheless. In our survey, it is these LBH's, incorporated in the YLBHI, which can be classified as working solely on legal aid, and having great dynamism in their programs. It is these LBH's that have become the model for all legal aid institutes in Asia. In this connection, perhaps it is worthwhile to clarify the unique character of these institutes under the YLBHI.

## II. The Legal Aid Movement

Of all the legal aid organizations mentioned above, only those in the YLBHI possess a national organization. The number of those seeking justice who have come to these LBH's is also very large, more than 100,000; 30,000 have gone to court.<sup>10</sup> But this does not tell the whole story: through programs of education, information, and extending legal consciousness, the LBH's have been very active in going from village to village. Indeed, in the city of Labuhan Batu, North Sumatra, the LBH once held a human rights month. Thus we can see how many people have been reached by the LBH program.

All of this has been possible because the LBH perception of legal aid has not been narrowly defined in a traditionally passive sense. Legal aid must be capable of actively reaching out to those who seek justice but

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9. Adnan Buyung Nasution, *BANTUAN HUKUM DI INDONESIA (Legal Aid in Indonesia)* (Jakarta, LP3ES, 1981). *See also*, *LANGKAH TELAH DIAYUNKAN: SEPULUH TAHUN LEMBAGA BANTUAN HUKUM (LBH JAKARTA, 1981)*.

10. The figure of 30,000 cases is a rough calculation. In the book *LANGKAH TELAH DIAYUNKAN*, it appears that the LBH Jakarta has handled about 2,000 cases per year. Over thirteen years, the number should thus be about 26,000. The additional 4,000 cases are from branches outside of Jakarta which have been in existence for only two years.

have not the wherewithal, a legal aid pushing wherever possible towards the remaking of an unjust social structure into one that is more just. This legal aid, fundamentally, seeks to bring all social, economic, legal, and cultural resources to people hitherto unable to grasp these resources.<sup>11</sup>

This extensive view of legal aid must be carried out by involving as many "social" workers as possible from various disciplines, especially persons who work directly among the village strata. The work of legal aid must at length encourage the people to become conscious of rights and responsibilities. To this end, the people must also unite to defend the rights they already have, and to fight for new ones.<sup>12</sup>

In this legal aid work, we very often face a dilemma: in several respects, law does not support the process of changing the social structure, but rather serves to preserve the status quo. A monopoly of social, economic, political, legal, and cultural resources tends to be consolidated, with the result that the social asymmetry becomes more pronounced. This conservative function of law is characteristic of colonial law<sup>13</sup> and of laws made by governments and parliaments that are deficient in popular participation.<sup>14</sup> Legal policy of this kind appears in nearly all states, but especially in those which have not yet institutionalized systems of participation. We thus consider theories such as "law as an agent of development" carefully; formulations of "social engineering" and "development" need to be clarified, for it is not impossible that such legal policies are really intended to preserve order, security, and/or capitalism.<sup>15</sup>

Legal aid, it follows, can itself be trapped into doing the work of preserving the status quo, of keeping social, economic, political, legal, and cultural resources out of the reach of the people. Legal aid will be a rubber stamp or an instrument of the Establishment if it fails to evaluate the varieties of its work, and fails to identify the laws that are responsive to the needs of the majority. Legal aid of this kind no longer has the right to call itself legal aid.

11. T. Mulya Lubis, *Bantuan Hukum Struktural: Redistribusi Kekuasaan dan Partisipasi dari Bawah* (Structural Legal Aid: Redistribution of Authority and Participation from Below), PRISMA, no. 5 (May 1981). See also Abdul Hakim G. Nusantara, *Bantuan Hukum dan Kemiskinan Struktural* (Legal Aid and Structural Poverty), PRISMA, no. 1 (Jan. 1981).

12. *Id.* See also M.W. KUSUMAH, *HUKUM DAN HAK-HAK ASASI MANUSIA; SUATU PEMAHAMAN KRITIS*. (Law and Human Rights: A Critical Understanding) (Bandung, Alumni, 1981).

13. Lubis, *Politik Hukum di Dunia Ketiga: Studi Kasus Indonesia* (Legal Policy in the Third World: an Indonesian Case Study), PRISMA, no. 7 (July 1982). See also Lev, *Judicial Authority and the Struggle for an Indonesian Rechtsstaat*, 13 L. & SOC. REV. 37 (1978).

14. *Id.* See also Upendra Baxi, "Community Participation and the Law," (unpublished paper, New Delhi, date unknown).

15. Francis G. Snyder, *Law and Development in the Light of Dependency Theory*, 14 L. & SOC. REV. 723 (1980).

We thus see that legal aid workers must be creative and do some "meta-legal" work: that is, acceptable activity outside the positive law (acceptable because it does not violate the positive law) to improve the social order, to make it more just.<sup>16</sup>

Legal aid workers in the Third World, including Indonesia, must be competent in broad scale (or structural) legal aid. The attitude must be active and collective, in an approach fusing law and meta-law. Only then can legal aid expand its reach, grasp the essence of problems in society, and, more than that, become a movement. Legal aid no longer consists simply of office work.

This is an ideal. But with all its limits, legal aid in Indonesia has increasingly aimed to become a movement. Legal aid is at least no longer something alien. Indeed, the very term "legal aid" has come to mean a struggle to preserve rights, a struggle to win new rights, and a struggle for a more just social order.

### III. The Role of Adat Law

In order to become truly familiar, no longer alien, legal aid cannot but speak in the languages and symbols understood by the majority. Not only that, but legal aid must also speak about the living law of the people, the law that fits their sense of justice. It is unjust when people are forced to accept law which they feel is alien or which does not suit the values maintained among them.

This raises a huge problem in the law: legal unification. To what extent is unified law acceptable, and when will we be able actually to achieve this unification? These questions are very difficult to answer. Among the community of lawyers and legal scholars, there has long been no consensus on this matter. Van Vollenhoven, for instance, consistently believed that the *adat* (roughly, customary law) must be retained, which meant that it was not yet time for us to have unified law.<sup>17</sup> Many of our lawyers, even now, accept Van Vollenhoven's view, although many also believe that the concept of a unified state makes unified law an absolute requirement. These two lines of thought still contend with one another; there is no agreement.

Our attitude towards this matter should be one of caution. Given the

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16. Jose W. Diokno, "Development Legal Aid in Rural ASEAN: Problems and Prospects," (seminar paper, Human Rights and Development in the Rural Areas of ASEAN region, ICJ, Penang, 30 Nov.-4 Dec. 1981).

17. C. van Vollenhoven, *AN ADAT LAW CODE FOR ALL NETHERLANDS-INDIES*. (Jakarta, Bhratara, 1972). See also, B. TER HAAR, *JUSTICE IN THE FIRST INSTANCE COURTS ACCORDING TO THE UNWRITTEN LAW* (Jakarta, Bhratara, 1972).

social and cultural complexity of Indonesia, it is not possible to impose a fully-unified law. Yet to preserve a fully plural law is also impossible. That is: there are spheres in which unification is possible, such as in constitutional and criminal law, but in other areas, including matters of family law, inheritance, and marriage, plural law is still the reality. It is necessary to identify those legal areas where unification is possible and where it is not. We must be realistic.

How does legal aid interact with this problem? If legal aid wishes to deal with the problems of the majority of people, it must work in the villages; it cannot remain in the large cities alone. If legal aid wishes to become a movement, it must deal more with problems that arise in the villages. Here, inevitably, the role of *adat* law becomes important.<sup>18</sup>

If we examine the cases which come to LBH offices, civil issues are the most numerous. This means that if the LBH goes to the villages, civil issues will dominate there too. *Adat* law will be very relevant, because people will feel more comfortable if their problems are taken care of according to values with which they are familiar. For if unified law is applied to people without paying attention to the living law, this may mean a new injustice for them.

This does not mean that we disagree with legal unification, but, because of the present social and cultural complexity, it is not yet time to unify the law in several problem areas. If we want to provide justice, and not unease, we must respect the living *adat* law. For a time the legal aid movement must live with this kind of perspective.

#### IV. Traditional Conflict Resolution

Given our legal history, the forms of traditional conflict resolution are not strange at all. Indeed the colonial government, following its policy of discriminating among distinct law groups, encouraged the use of *adat* law. *Adat* leaders also manage conflicts in indigenous society, especially in rural areas.<sup>19</sup> Only the Europeans and some Foreign Orientals went to the courts which subjected them to the same law in a unified legal framework. But the majority was unfamiliar with unified law. It was more used to the law of *adat* and religion.

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18. *Ibid.* See also, R. SOEPOMO, PERTAUTAN PERADILAN DESA KEPADA PERADILAN GUBERNEMEN (The Relationship of Village Justice to Government Justice) (Jakarta, Bhratara, 1972).

19. R. SOEPOMO, SISTIM HUKUM DI INDONESIA SEBELUM PERANG DUNIA KE-II (The Legal System in Indonesia before the Second World War) (Jakarta, Pradnya Paramita, 1972).

20. *Id.* See also, B. ter Haar, *supra* note 17.

The work of the courts was thus made lighter by a selection process having at least two advantages. The first was a judicial efficiency, in the sense that cases did not pile up and judges had more leeway to examine case files. Second, traditional communities felt better because their cases were settled according to their own *adat* law, more closely in tune with their own sense of justice. There were of course other advantages of this judicial system, but the points just mentioned will suffice to portray its superior quality, especially in an exceedingly complex society remote from a unified law.<sup>20</sup>

It follows that the availability of village judges can be a positive advantage in our judicial system; these village judges will become the gatehouse that selects out cases before they go to the *Pengadilan Negeri* (court of first instance). Judges there will not be at so much of a loss in dealing with the stream of cases. Unfortunately, we no longer recognize the institution of village judge or conciliation judge,<sup>21</sup> although their existence "in *adat* communities is an institutional *sine qua non* of village authority, so long as the villages are able to maintain their original character and qualities as autonomous social-economic units."<sup>22</sup>

Furthermore, it is evident that the authority of these village judges is not limited to conciliation alone, but extends to settling disputes whatever the areas of law involved, without distinguishing among concepts of criminal, civil, and public law.<sup>23</sup> We thus see the substantial role the village judge can play in helping the *Pengadilan Negeri* to deal with their case-loads.

Unfortunately, as was mentioned earlier, our judicial system no longer recognizes the presence of the institution of village judges. Thus all cases must go to the roughly 290 *Pengadilan Negeri* in all *kabupaten* (district) capitals.<sup>24</sup> But we have about 65,127 villages and hamlets,<sup>25</sup> and we can imagine how limited is the reach of our *Pengadilan Negeri* and its 2,217 judges.<sup>26</sup> Much of our society does not make use of the *Pengadilan Negeri*, because of lack of knowledge of them, yet the number who are aware and use them has already put our *Pengadilan Negeri* at their wits end, as many judges complain. It is for this reason that the number of judges must be increased at all levels.

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21. *Id.* See also Hazairin's introduction to Soepomo, *supra* note 18.

22. *Id.*

23. *Id.*

24. See President Suharto's state address before Parliament of 16 August 1983.

25. *Id.*

26. *Id.*



The idea of adding judges is good, yet it is not the best solution. It is hard to imagine what may happen if the flow of cases swells, as the legal awareness of the people rises. However many more judges there are, they will not be able to manage the cases that may come to court. For this reason we need to seek an efficient, institutional solution to the problem.

To restore the institution of village judge is apparently not possible. Even the judicial system set up in the Basic Law on Judicial Authority (Law 14/1970), yet cannot be implemented fully.<sup>27</sup> But one thing is clear: the increasing number of cases in the *Pengadilan Negeri* is caused by the growing potential for conflict that results from an increased consciousness of rights. The greater volume of cases is also the effect of a development process that produces a goodly number of victims.<sup>28</sup> Such conflicts will lead to suits, not only in the cities but also in the villages.

What must we do? Several things seem possible. First, we can make use of the village leader as an intermediary in civil conflicts, before they become trials in court.<sup>29</sup> This was the proposal of the Chairman of the *Pengadilan Tinggi* (appellate court) of North Sumatra, Bismar Siregar. He pointed out the following considerations:

- 1) Security and legal order greatly enhance the steadiness of life in society, especially in the villages, the core of the life of our nation and state;
- 2) Life in the villages was greatly influenced and is still influenced by the life within the family, whether the nuclear family or the wider kinship order (which among the Batak people of North Sumatra is called *Dalihan na Tolu*);
- 3) *Adat* relationships (*Dalihan na Tolu*) have for centuries preserved the balance between members of village society and, in my view, these should still be respected and even strengthened, although adjusted, of course, to changing circumstances;
- 4) The foundations of village life have recently seemed shaken.

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27. We do not yet have the administrative courts (provided for in Law 14/1970) whose functions are so important for strengthening the law. A draft law on administrative courts was once submitted to Parliament, but was withdrawn by the Government for the sake of revision. It has not yet been submitted again to Parliament.

28. The dismissal of workers in many companies can be cited as an example. See Lubis, *Keadaan Buruh Kita Dewasa Ini: Sebuah Tinjauan Hak-Hak Asasi Manusia (The Condition of Law during the Present Period: A Review of Human Rights)*, PRISMA, no. 1 (Jan. 1981).

29. See the letter of the chairman of the North Sumatran Appeals Court, Bismar Siregar (now a supreme court justice) of 20 Sept. 1983, to the Governor of North Sumatra and all of the Bupatis (district administrators) of North Sumatra, concerning the role of village heads as intermediaries in civil disputes that have not yet gone to court.

Maybe it is intentional; from a survey of disputants in court, no small number of those engaged in conflicts are bound by kinship and live in the same village, and the conflicts are encouraged by third parties fishing in troubled waters — bush lawyers roaming the villages;

5) The existence of such symptoms is not a healthy sign. On the contrary. Any conflict, whatever the motive and reason and whatever the result, not settled peaceably will become the cause of malaise in that village;

6) From this assessment arose the thought: If there is a dispute between members of a village, what is wrong with entrusting the village leader to try to work out a settlement first, based on *adat* efforts to reach a consensus;

7) We see nothing peculiar in the village leader taking this preliminary action (for the Batak especially through the institution of *Dalihan na Tolu*), even though the old *Rapat Kecil* (small tribunal), *Rapat Besar* (large tribunal) and *Rapat Distrik* (district tribunal) of the Dutch colonial period no longer exist. At that time, the village head acted as a judge or as a member of the above courts. Even though the role of village judge no longer attaches to the office of village head, this does not diminish his authority and responsibility as the “*primus inter pares*” of his village;

8) In this way, the village head can play a part in resolving disputes among his villagers. Settlements would be given form in an “act of conciliation” rendered before the village head which, if necessary (as it is by my view), would be reinforced by the *Pengadilan Negeri*. This will prevent unfinished disputes from germinating and causing vindictive relations among villagers. And, at the least, there will be a reduction of those cases that do not actually have to be handled by the courts.

Bismar Siregar’s views are very useful for us to think about, because the role of village leader elsewhere gives similar prospects for success.<sup>30</sup> It is up to us to make use of and institutionalize it.

Second, we can possibly make use of what has been called the Community Law Center (*Pusat Hukum Masyarakat*. *Puskummas*). According to plan, these will be established at the kabupaten and major city level throughout Indonesia during the fourth Five Year Development period.<sup>31</sup> Our only regret is that they are limited to kabupaten and major

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30. KHUNTOROO BASUKI DAN SUJITNO, (research report on the settlement of civil disputes by village leaders and its influence on legal development, particularly in the kabupaten of Sleman) (Gajah Mada University Law Faculty, 1982).

31. See Minister of Justice Decision no. M-11-PR.07.08-1983, concerning the formation of Community Law Centers in every kabupaten/major city in Indonesia.

cities. Why not at the village level? We do not, however, want the work of the Puskummas to be limited to legal information alone; rather, it should extend to the settlement of minor and local civil disputes.

These Puskummas could certainly reduce social unrest and anxiety. The problem is, of course, one of the enormous funds required. How can the Department of Justice obtain sufficient funds and personnel? This is indeed a huge task, and it will demand huge sacrifices as well. Perhaps law graduates can be conscripted for obligatory social work before they take up their careers.<sup>32</sup>

Third, the expansion of legal aid institutions (LBH) into village areas can rely on informal leaders as local LBH "posts." All of this is within a framework of supporting the functions of village leaders and the Puskummas, which are government organs. We can thus assist the courts from two sides, governmental and private. The method used would be traditional conflict resolution according to local *adat* law. The LBH posts would also try to employ "reconciliation," and encourage people to settle their disputes familially.

### V. The Barangai System: The Philippine Model

The President of the Philippines, Ferdinand Marcos, issued Decree No. 1508 on 11 June 1978. This is known as the Barangai Justice Law (Katarungang Pambarang Law).<sup>33</sup> In principle, it intends that disputes, especially at the village (barangai) level, shall be settled consensually and amicably. Basically, this process of settling disputes takes the form of conciliation, but a "compulsory conciliation." Nevertheless, "compulsory conciliation" is not something absolute but a voluntary undertaking by those engaged in a dispute to seek an amicable resolution. The courts will usually ask every party to a case whether there has already been a settlement at the Barangai level.

There are several rationales for the "compulsory conciliation" of the Barangai model:

- 1) A recognition of the importance of the tradition of conflict resolution in the village, which in fact constitutes a reflection of local culture.

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32. This proposal was an imitation of the undertaking in medicine, in which every doctor and dentist, upon graduation, was required to work for two to three years in Community Health Centers.

33. Cecilio L. Pe, "Alternative Forum for the Settlement of Disputes for the Common Man," (paper presented at the ASEAN Law Association General Assembly of 1982, Kuala Lumpur, 25-29 Oct. 1982).

2) Without a system of case selection, the courts are increasingly unable to handle all of the cases which come to them. This has the effect of reducing the quality of judicial decisions.

3) To ease the heavy burden on the courts, it is necessary to speed up the settlement of disputes. This will also improve the quality of judicial decisions.

These three justifications — the re-institutionalization of tradition, rendering the administration of justice more effective, selection of cases, and the creation of alternative models — are not altogether new. We can find similar interests in Thailand,<sup>34</sup> Malaysia,<sup>35</sup> and Indonesia,<sup>36</sup> but these are limited to proposals and seminar discussions. Thus the decree of the President of the Philippines concerning the Barangai Justice Law can be called a courageous effort, and one moreover that is a milestone in legal history, particularly in the field of administration of justice.<sup>37</sup> We can of course ask to what extent a President, as executive, has authority to issue a decree dealing with very important problems in the judicial branch. "Compulsory conciliation" is not formally connected with the structure of the judiciary, but we cannot close our eyes to the fact that judicial structure would be very much affected by the existence of this "compulsory conciliation."

These issues apart, it would be very useful to examine the organization of the Barangai system, which in the Philippines includes 4,200 villages.<sup>38</sup> According to Presidential Decree No. 1508, in every Barangai will be established a conciliation body called the "Lupong Tagapayapa," headed by the Barangai Captain (village head). This conciliation body usually consists of ten to twenty members, all of them appointed by the village head for a period of two years. The members of the conciliation body are village residents whom the village head thinks are appropriate. From the conciliation body a panel is formed, the *Pangkat ng Tagapagkasundo*, whose function it is to settle those disputes which the village head has not succeeded in resolving. The procedure, then, is for all disputes to go first to the village head; only if he fails is a panel selected from the board. One anomaly is that the members of the Conciliation Board are all made civil servants, who receive no additional compensation for their work as conciliators. The Conciliation Board may not be very effective;

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34. Suradit Hutasingh, *supra* note 34.

35. Kadir Kasim, *supra* note 34.

36. Mahadi, *supra* note 34.

37. Cecilio L. Pe, *supra* note 34.

38. *Id.*

it would certainly be half-hearted and might abuse its authority. This is altogether possible in states that are not yet well established—"soft states"<sup>39</sup>—where such corruption has become culturally ingrained.<sup>40</sup> The quality of the Conciliation Board's work is likely to be quite low, which will not help the courts or those who seek justice, and might indeed give rise to new injustices.

How extensive is the jurisdiction of these Conciliation Boards? Under Presidential Decree No. 1508, the cases over which the Conciliation Boards have jurisdiction are civil, criminal, administrative, labor, agrarian and other matters which can be resolved amicably. But there are several conditions of which we should be aware:

1) The disputes are between individuals. Cases involving "legal bodies" do not fall under the jurisdiction of the Conciliation Boards.

2) The cases involve individuals who are all domiciled in one *barangai*. As an exception to this rule, if a dispute arises between individuals from neighboring villages, the Conciliation Board may also resolve it.

3) Criminal matters over which the Conciliation Boards have jurisdiction include only those misdemeanors subject to sentences of no more than thirty days in jail or fines of no more than 200 pesos.<sup>41</sup>

Conciliation Boards do not have jurisdiction over cases in which one party is the government or a government department nor if one of the parties is an official or formal group acting in the line of official responsibility. Also excluded from their jurisdiction are cases in which there are no private injured parties, as in gambling or prostitution. One may question the legality of gambling or prostitution, but no one is directly injured by the existence of gambling or prostitution. The objection is mainly ethical or moral; those involved are legally in the category of "no private offended party."

In addition, it should be made clear that the Conciliation Boards do not have jurisdiction over cases of a collective character, or over those that involve private rights of ownership located outside the village. It is interesting to consider the procedures of the Conciliation Boards here:

a) The site of conciliation is where the parties live. If the disputants are from neighboring villages, the conciliation effort takes place in the village where the "defendant" lives. If there are more than two villages

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39. An interesting analysis of this problem can be found in GUNNAR MYRDAL, *ASIAN DRAMA; AN INQUIRY INTO THE POVERTY OF NATIONS* (1968).

40. SYED HUSSEIN ALATAS, *SOSIOLOGI KORUPSI: SEBUAH PENJELAJAHAN DENGAN DATA KONTEMPORER* (The Sociology of Corruption. . .) (Jakarta, LP3ES, 1981).

41. 200 pesos equals rupiah 5000 (about US\$4.60).

involved, the conciliation must proceed in one of the villages where the "defendants" live.

b) The complaint is brought by the complainant to the village head in either oral or written form.

c) One day after receiving this complaint, the village head must summon the other party to determine a time for the conciliation effort. The person complained against is at the same time requested to prepare his evidence and to bring witnesses, if any.

d) The village head must bring the parties together two days later, and the conciliation process begins. The conciliation must be completed within fifteen days; the time limit cannot be extended.

e) If the village head does not succeed in conciliating the parties within fifteen days, the case is given over to the Conciliation Board that selects a panel of three conciliators to resolve the dispute. The time allowed is fifteen days, which can be extended another fifteen days if necessary.

We thus see that, in the Barangai System, a case can be settled in two months or less. This is very fast, much faster than in a court.

Along with speed, there is another advantage to the Barangai System: it offers a procedure which is simple, inexpensive, direct ("de-lawyerized") and more informal ("de-judicialized"). If formal judicial procedures are lengthy, involved, complex, and expensive, the Barangai System stands as a truly attractive alternative.

The conciliation worked out by the village head or Conciliation Board must be regarded as final and binding. Presidential Decree No. 1508 states that, if there is no repudiation of the conciliation within ten days, the settlement can be implemented, with the assistance of the local court if necessary. But if during the period of ten days one of the parties opposes the conciliation result, on grounds of pressure, duress, coercion, or the like, the settlement decision can be postponed. In such a situation, the complaining party must prove his allegations; if he cannot, he can be charged with perjury and violation of his oath. All parties to a conciliation must take an oath. Such matters must be taken to criminal court, of course.

As the Barangai System relies on conciliation, and conciliation is chosen voluntarily, the decision of the village head or Conciliation Board must therefore be based on the agreement of the parties. If there is no such agreement, a conciliation decision is impossible; the Barangai System does not provide for adjudication. This means that the parties must go to court to resolve their dispute. This function of the Barangai System, a means of filtering cases for the courts, has evidently been very effective.

From data available for 1980-1981, 106,187 cases reached the Barangai System and 91,852 or 86.5% were resolved.<sup>42</sup> Anyone will agree that this represents a very important reduction of the courts' case-load.

The Philippine model of the Barangai System can generally be called a success. But we still have to examine further the effectiveness of the system, and, no less important, we have to consider the social-political environment that makes for the system's apparent success. For it is not impossible that the "success" of the system is illusory and only on paper. Even so, we still need to study it as a system and deepen our understanding of it, and, if we wish, ask further how far this system can be applied in Indonesia.

## VI. The LBH in the Villages

The Community Law Centers (Puskummas) which the Indonesian Government intends to establish during the fourth Five Year Development period could approximate the Barangai System, if Puskummas are also given the function of conciliation and are not restricted to legal information and advice.<sup>43</sup> However, as in the Philippines, the Puskummas can turn out to be very bureaucratic in their procedures, which can of course render them ineffective, or, even more, counter-productive. All the more so in the context of current social and political condition - all civil servants are members of a political force, the Golongan Karya.<sup>44</sup> Moreover, the very strong mechanisms of control from the top down have shorn civil servants of their autonomy, a very important attribute in the work of conciliation. This may be a general symptom in Third World states, where it is assumed that civil servants must be the retainers of their superiors—not yet fully the servants of society. The result is that, very often, civil servants feel that they must give priority to the interests of their superiors. This is echoed by the comment of Minister of Justice Ismail Saleh, some time after he was appointed: Judges should not forget that, in addition to being judges, they are also civil servants (that is, servants of the state). The Minister of Justice was right. Administratively, judges belong to the Department of Justice, even though, as judges, they serve under the supervision of the Supreme Court.<sup>45</sup> But the Minister of Justice's emphasis

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42. Cecilio L. Pe, *supra* note 34.

43. See the Minister of Justice Decision no. M-11-PR.07.08, 1983, *supra* note 32.

44. We refer here to the requirement that every civil servant join the KORPRI (national organization of civil servants), one of the most important constituent elements of the GOLKAR.

45. This situation is often described by interested observers as one in which judges have two homes, the Department of Justice and the Supreme Court, which makes judges watch their steps very carefully.

may well make judges less independent and anxious, while, as judges, they require a sense of independence and freedom. It should suffice to say that judges are servants of the law and of justice; in fulfilling their responsibilities, they will inevitably heed the interests of private persons, society, and the state.

If organized like the Barangai System, the Puskummas will also experience the same malady—lack of independence, as bureaucrats—that will make people reluctant to come to the Puskummas. We would be wise not to hope for too much from the establishment of Puskummas under present conditions. This does not mean that we do not support the Puskummas proposal, but it would be far better if the Puskummas are assisted by a program like that of “LBH in the village.”<sup>46</sup> The people refer coming to the LBH, which is not regarded as an extension of the bureaucracy.<sup>47</sup>

The problem is, what goes into this program of the LBH in the villages? First, the LBH must begin to do the work of conciliation among people with disputes. (A dispute is taken to mean a civil conflict which occurs in the village involved.) Second, this conciliation need not be based only on written legal provisions. It can follow local *adat* law, so long as this is felt to be just by the people concerned. Third, the role of informal leaders (*adat* leaders and religious leaders) in the “LBH in the villages” program is critical; it is these informal leaders whom the people regard as the proper place to bring their complaints. Fourth, and if possible, the LBH should have authority to handle petty crimes, such as minor issues of maltreatment, immoral acts, and the like.

If these four items can be secured, the LBH will of course be able to work in tandem with the Puskummas, and those in need of help will acquire more avenues to justice. At the very least, the presence of both the Puskummas and the LBH in the villages will raise the people’s consciousness of law.

For the LBH itself, the program “LBH in the villages” will render the legal aid movement less urban and elitist. It has already begun to take on a popularly-oriented character. It is necessary, however, to clarify further the “LBH in the villages” program, to the end that the program

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46. Many recently have been “going down” to the villages: e.g., the press in the villages, prosecutors in the villages, the armed forces in the villages. Thus, in order to promote legal awareness among the people the program of “LBH in the villages” is a very positive one.

47. This view is based on the experience of LBH offices in large cities, but will it also be true in the villages? Are people sufficiently aware of the difference between the LBH and the Puskummas? It may be that the people will feel well served simply by the presence of a legal group in their village, whether Puskummas or LBH.



can be effective and free from abuse.<sup>48</sup> Of course, it should be added that this further “condensation” will not transform the LBH into a new office-ridden bureaucracy. For if the LBH becomes bureaucratic or tied to offices, it will lose its elan as a movement. The “LBH in the villages” program thus confronts a challenge within itself: on the one hand, it must begin to expand its operational reach, and, on the other, retain the dynamism of a movement. Our question must be: Is the LBH ready for so great a challenge?

## VII. Conclusion

It is very difficult to answer this question. The point of the “LBH in the villages” is not to increase the number of LBH offices, but, more fundamentally, to bring law and justice closer to the people, to translate the ideals of “social justice for all the people of Indonesia” into a living reality. And this means giving form to our objectives as a nation, a state, and a society.<sup>49</sup>

The answer therefore rests not with the LBH alone, but with everyone in society. We are all charged with creating social conditions conducive to the realization of social justice; the LBH is only a part of this “We.”

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48. One form of abuse of legal aid groups is their commercialization. And this may well happen if there is no clear layout of functions, all the more so for lack of institutionalized mechanisms of control.

49. Lubis, *Pembangunan Hukum dan Pembangunan Politik (Legal Development and Political Development)*, *Kompas* (Jakarta daily), Sept. 19, 1984.