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# WHEN LAW IS USED AS A TOOL TO VIOLATE HUMAN RIGHTS



LBH JAKARTA

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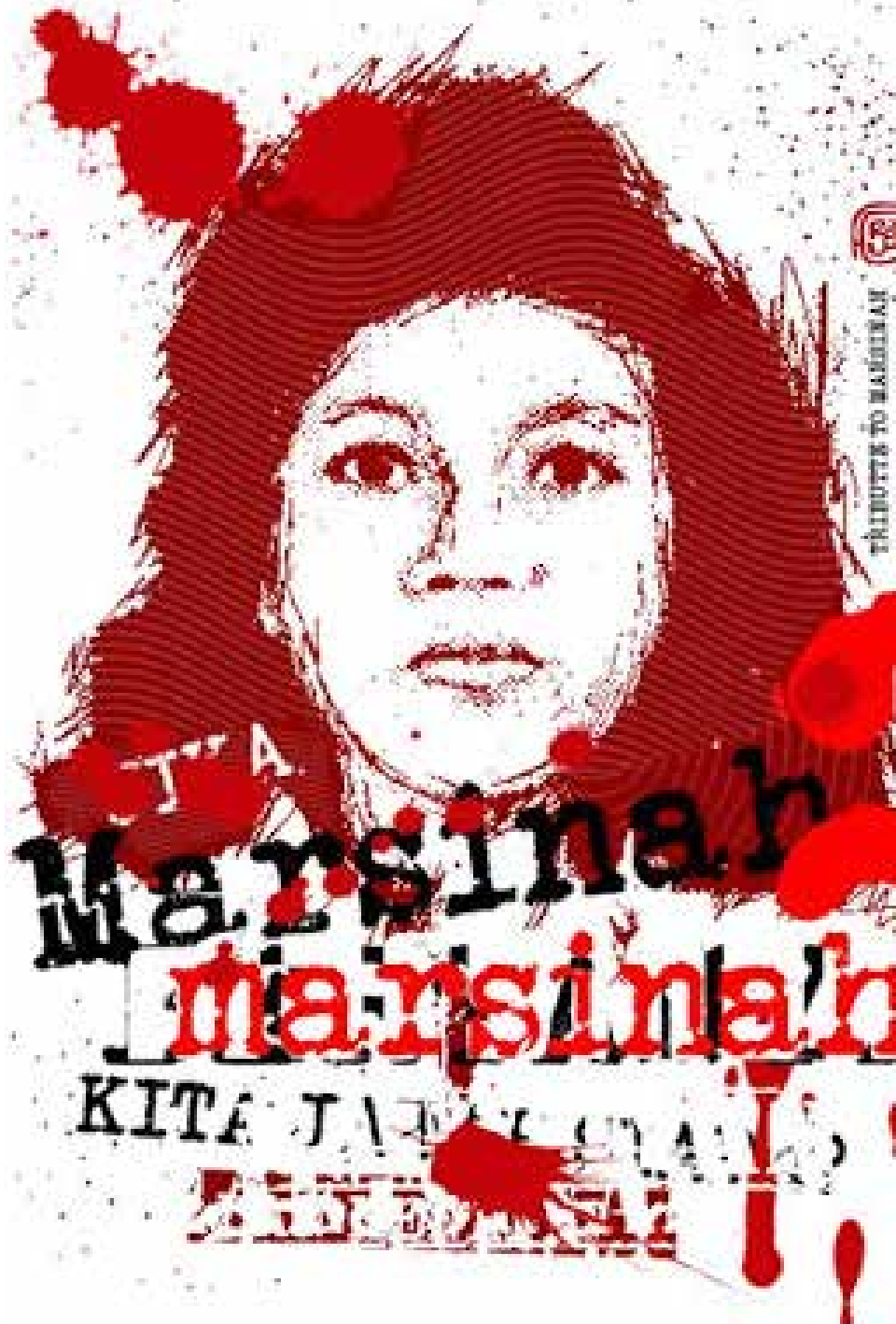
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# RIGHTS VIOLATION LEGITIMIZED

(Febi Yonesta, Director of the Jakarta Legal Aid Institute)

**T**hroughout 2013, LBH Jakarta has been doing legal aid work in response to a variety of legal issues and human rights in Indonesia, especially in Jakarta and its surrounding areas. Noted, as many as 1001 cases were handled by LBH Jakarta, ranging from giving legal advice to full legal representation. Rights violations were found in the accepted cases. Violations of these rights include the rights of work, right of housing, the right to freedom of religion, the rights to a fair trial court, the rights to be free from torture, children's rights, and other rights.

Of handling a variety of cases of infringement of such rights, LBH Jakarta find a legitimacy for violation of rights occurred. Neither the legitimacy of the law and policies, the behavior of government officials and law enforcement, court decisions, and that seems to get legitimacy by the (public).

## Legitimacy of Law and Policy

Rights violations legitimized by laws and policies can be found in the case of rights to have places of worship. Although it has received guarantees of the Constitution and laws of human rights, Ahmadiyya Bekasi forcedly lost their rights to worship in their mosque. Through its letter, the Mayor of Bekasi ordered to ban Ahmadiyya mosque, then it could not be used for worship and other religious activities. The Letter has been legitimized by the Decree of the Governor, the Joint Decree of three ministers, and the Law Number 1/PNPS/1965 on the Prevention of violation/ blasphemy on Religion.

Article 27 paragraph (3) of Law No. 11 of 2008 on Information and Electronic Transactions (ITE) also provide legal legitimacy of expression rights violations not only because these provisions decide as criminal act to expression assessed defamation but also because the provision does not clearly formulated (ambiguous) and could potentially be a "rubber articles". As case of Benny Handoko aka @benhan, showed that the provisions of the ITE Act intended to entrap his perception of Misbakhun involvement in Bank Century scandal, which he expressed through his Twitter account.

The practice of torture committed during the process of investigation/inquiry to the suspect of a criminal act got legitimation from the Criminal Procedure Code (KUHP). In the case of "Homicide of Cipulir", even though the defendant had revoked his statement



in the investigation report (BAP) because the information given under duress and torture, the judges of the South Jakarta District Court remains convicted the defendant guilty who still was averagely underage. This is because the Criminal Procedure Code has not regulated the status of evidence obtained unlawfully, including through torture.

To fulfill the inquiry of qualified education and accessible at all levels of education for all Indonesian people is the mandate of Article 28C and Article 31 of the 1945 Constitution, that every person has the right to education. In terms of higher education policy, the State took off his responsibility by making the Law No. 12 Year 2012 on Higher Education. Using this Higher Education Act, the state is trying to divert the obligations and responsibilities in the fulfillment of the right to education to other parties, such as the student/parents of students (Article 85), which one of them through a soft loan to educational institutions and management autonomy to open a tap of business in environment of higher education institutions (privatization of higher education) that provided for in Article 65 paragraph 3. Almost all regulation contained in the Higher Education Act is talking about the management of higher education institutions and not on higher education itself.

In the case of cooperative policy, the state also violated Law No. 17 about Cooperation. Cooperation policy failure is characterized by the inclusion of capital from outside members of which will be used as an instrument by the government and or the owners of large capital who entry in Cooperation. In general, this new Cooperation Act undermine the autonomy and also interfere with the progress of Cooperation democracy which is the identity of the Indonesian cooperation association as an organization of people (people-based association) and not of capital (capital-based association)

Similarly, in cases of Refugees Law No. 6 In 2011 On Immigration gives legitimacy to ignore the human rights of asylum seekers and refugees who transit in Indonesia to seek the protection of the persecution experienced in their State. Rohingya Refugees, who forcedly left Burma due to the genocide there, will still be regarded as illegal immigrants under the Immigration Act, and may be detained in immigration detention center for up to 10 years, without any legal process.

### **The legitimization through government officials Behavior**

Violations of human rights seemed to be legitimized by the behavior of government officials, including the police. The government legitimacy clearly can be seen in the case of wage Suspension against various companies conducted by Jakarta Provincial Government, through a Decree of the Governor. Without field verification procedures and communication with workers, Jakarta Governor had issued Suspension wage to companies that actually do not qualify to get wage suspension although in the end, the United Workers could cancel the erroneous policies.



Another visible legitimacy can be found in the case of eviction traders train station in the Jabodetabek. PT. KAI or PT. KAI Commuter Jabodetabek did eviction to traders stalls at 16 stations Jabodetabek and resulted in as many as 6,532 people have lost their main quest. Violation of the rights of these merchants is legitimized by police officers and soldiers who do security against forced evictions. There is no compensation for the traders who had been dependent on selling at the station.

The practice of torture in criminal proceedings often occurs and becomes a tradition that seems common in police efforts to unravel the crime. Homicide Cipulir case prove that the practice of torture remained a primary way to force confessions from the suspects, although the suspect was not the real culprit.

Discriminatory practices and intolerance still occurred against minority religious groups, including Ahmadiyya. Case of locking mosque as experienced by Ahmadiyya in Jatibening, Bekasi, showed the legitimacy of Bekasi City Government practising discrimination and intolerance based on religion. Despite that the Constitution and legislation has guaranteed freedom of religion, including the rights on a worship place, Bekasi City Government continues to ignore the collateral and prefers to support the practice of discrimination and intolerance increasingly widespread in the community Bekasi.

### **Legitimacy of Tribunal Decision**

Tribunal Decision of South Jakarta Court that penalized four accused persons under the age was giving legitimacy of the practice of torture, arbitrary detention and unfair trials against those children. This decision even leaving aside the fact that the defendant is not the actual perpetrator.

Similary happens in the case of locking the Ahmadiyya mosque in Bekasi Jatibening. Decision of the State Administrative Court in Bandung has given legitimacy to the Bekasi mayor for violating the rights on freedom of religion, belief, and worship towards Ahmadiyya people in Bekasi.

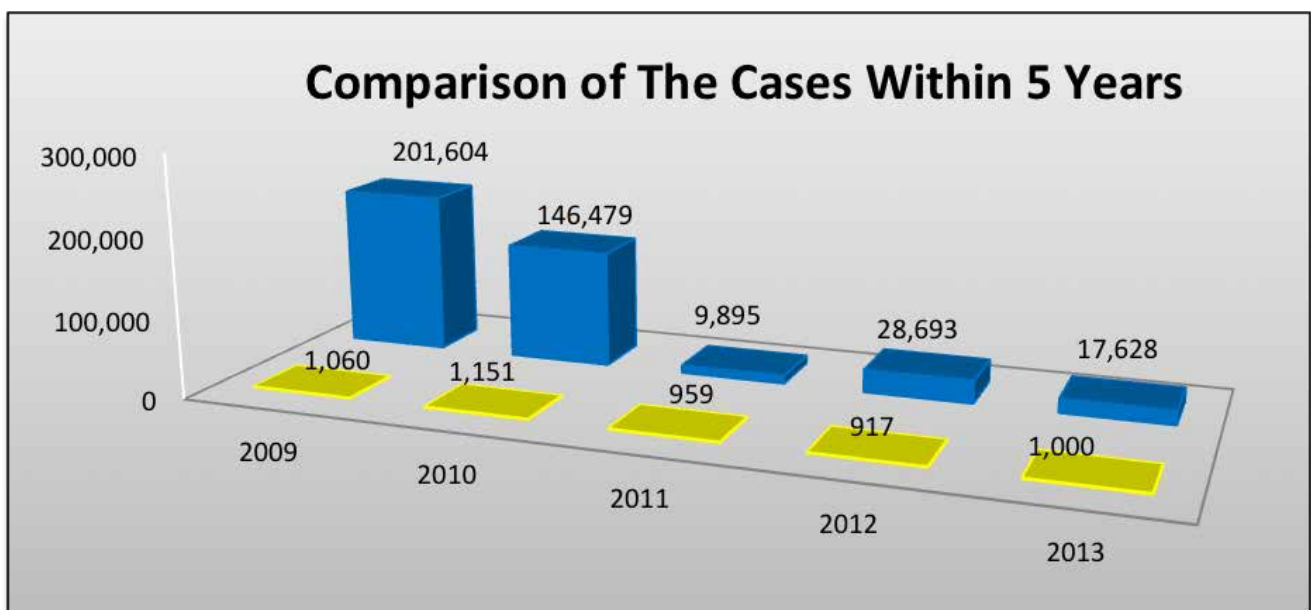
### **Public legitimacy**

One factor continuously causes violation of human rights, is the lack of public support for the victims. The perpetrators, as continues to gain legitimacy for such violations. The lack understanding of human rights, plus wrong information related to violations, encouraging public antipathy and stigma against the victims.

In a discussion entitled “Teachers, Diversity, and The Field of Religious Education” held by the cooperation between the LBH Jakarta, Master of Light Foundation (YCG), and the Indonesian Conference on Religion and Peace (ICRP) in Calcutta, it appeared that teachers of religion in State schools still have the opinion that the causes of violations of religious events and worship is the difference, or in other words is a form of mistakes made by the victim himself.

# OVERVIEW COMPLAINT TO LBH JAKARTA

## A. NUMBER OF AND JUSTICE SEEKER PROFILE

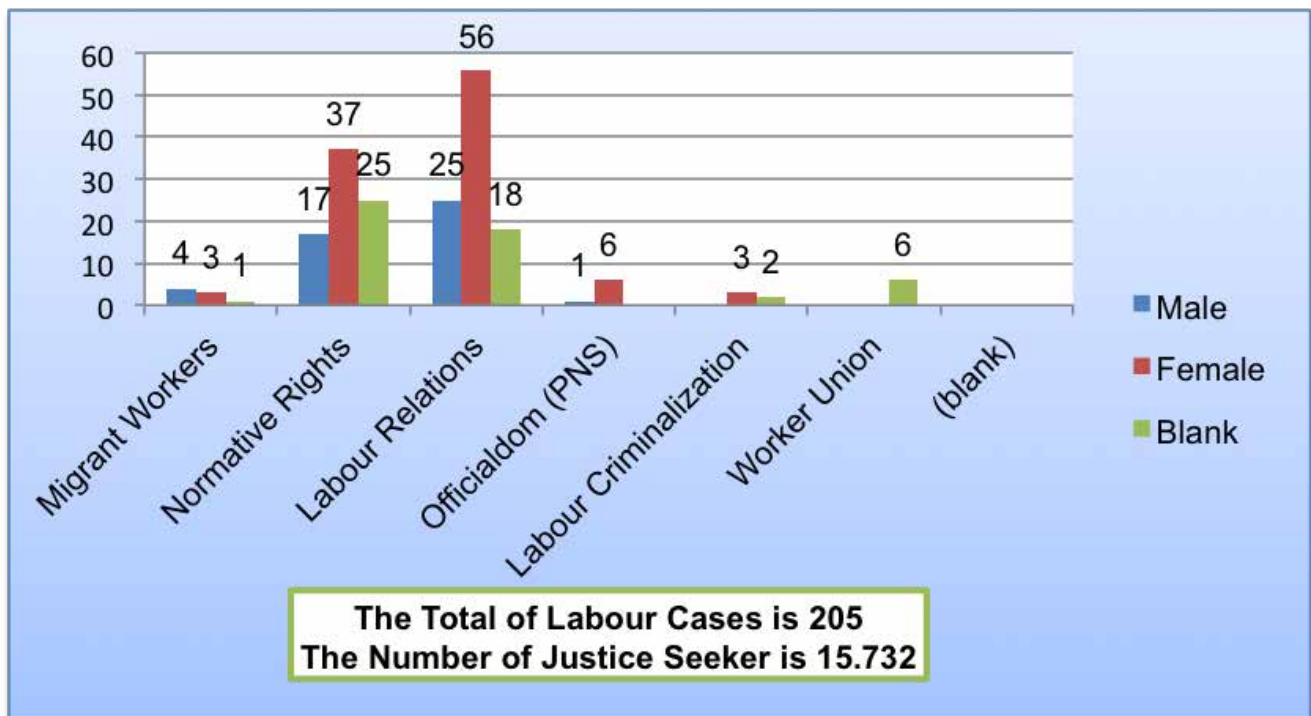


The above data shows the number of public complaints to the LBH Jakarta over the past five years. In total, from 2009 to 2013 LBH Jakarta received 5,088 complaints. The highest complaints received in 2010, with 1,151 complaints. While the year 2012 to the lowest, with 959 complaints. For 2013, the LBH Jakarta received 1,001 complaints with seeking justice 28,528, compared to the previous year which the number of complaints increased by 84 complaints. If averaged, over the past five years, complaints received by LBH Jakarta were 1,018 complaints.

## B. COMPLAINED CASES

In classifying the data of complaints, LBH Jakarta are clustering cases in some classifications, namely Labour, Urban and Urban Society (PMU), Freedom of Religion and Belief (KBB), Women and Children, Families, and Non-Structural Case. Detailed descriptions of the following cases exist in the explanation below:

## 1. Labour Cases



Labour cases received by LBH Jakarta, complained of issues are including the question of migrant workers as many as eight (8) complaints, basic rights as much as 80 (eighty) complaints, the employment relationship by 99 (ninety-nine) complaints, staffing by 7 (seven), criminalization of workers by five (5) complaints, and the union by 6 (six) complaints. From all incoming complaints, for sub-classification of basic rights, labor relations, staffing, and the criminalization of workers, mostly of justice seekers are female.

Labour cases are reported to the LBH Jakarta, originating from the region of Bekasi, Bogor, Depok, West Java, West Jakarta, Central Jakarta, South Jakarta, East Jakarta, North Jakarta, Central Java and Yogyakarta Special Region, East Java, Sumatra, Tangerang and Banten, etc. and not filled. Highest numbers complaints come from workers who live in Bekasi, 20 (twenty) complaint, then Central Jakarta by 22 (twenty two) complaints, South Jakarta, as many as 26 (twenty six) complaints, and East Jakarta 42 (four twenty-two) complaints.

Of all cases of labor that goes into LBH Jakarta, as many as 84 (eighty-four) a complaint made by the complainant from senior high school (SMA). Then from Diploma educated workers is 14 (fourteen) complaints, S1 30 (thirty) complaints, S2 nine (9) complaints, Elementary School (SD) of 11 (eleven) complaints, others as many as 29 (twenty nine) complaints, not stuffed as many as 17 (seventeen) complaint, and not school is not as much as one complaint.

A total of 162 complaints of labor performed by the complainant aged adults (18-50 years), 33 (thirty-three) complaints made by the elderly (> 50 years), and 9 (nine) the complainant did not mention his age.

LBH Jakarta also classifies the magnitude of the complainant in the case of labor income. There are 41 (Forty-one) workers complaint made by those who earn 2,020,000-3,500,000,-IDR. Furthermore, complaints were made by 24 (twenty four) workers who earn 1,010,000-2,000,000,- IDR; and 18 (eighteen) complaints made by those who earn 3,510,000-5,000,000,-IDR. Then, ten (10) complaints were made by workers who earn 5,500,000-10,000,000,-IDR. The next eight (8) complaints were made by workers who earn upwards of 10,000,000,-IDR. Six (6) complaints were made by those who earn 501,000-1,000,000,-IDR. There was one (1) complainants who fill “unclear income” in the questioner; three (3) persons fill “not fixed”, and 90 (ninety) complainants did not fill stuffing of income.

## 2. Cases of Civil and Political Rights

SUB CLASSIFICATION	NUMBER OF CASES	NUMBER OF JUSTICE SEEKERS
Rights Freedom from Torture & Inhuman Treatment	5	5
Honestly Rights Court	35	37
Right to Protection From Criminal Law Abuses	3	3
Recognition of the rights equal before the law	2	401
Right to Freedom of Opinion and Expression	1	8
Right to freedom of thought, conscience and Religion	2	101
Hak Atas Kebebasan untuk berpendapat & Berekspresi	2	11
Right to Gather and Organize		
The Ownership Rights Should Not Foreclosed arbitrarily By Anyone	1	1
Freedom Rights For foreigners	5	30
Rights to gather	1	3000
Similarity General Upfront Without Discrimination	2	2
<b>TOTAL</b>	<b>59</b>	<b>3599</b>

LBH Jakarta received 59 (fifty nine) complaints with 3,599 complainants seeking justice for the case of Civil and Political Rights. Political Civil and Political Rights were divided into several categories, including Rights of Fair Trial; Rights of Privacy (Privacy); Rights of Freedom of Opinion and Expression; Rights of Freedom of Thought Belief and Religion; Rights of Ownership Should Not Taken Over Arbitrary by anyone, Rights of minorities, Right of Freedom from Torture and Inhuman treatment, Freedom Rights for foreigners, the Rights of Assembly and Association, Rights to marry and have families, etc.

Of the 59 (fifty nine) cases reported to the LBH Jakarta, 38 (thirty-eight) of complaints made by the complainant were female, 12 (twelve) complaints made by men, and 6 (six) the complaint did not fill sex. Fair Trial is a subclassification of Civil and Political Rights,

LBH Jakarta reported to as many as 35 (thirty five) cases, 24 (twenty four), of which the complaint by a female complainant, 10 complaints made by men, and 1 (one ) people did not fill their sex information.

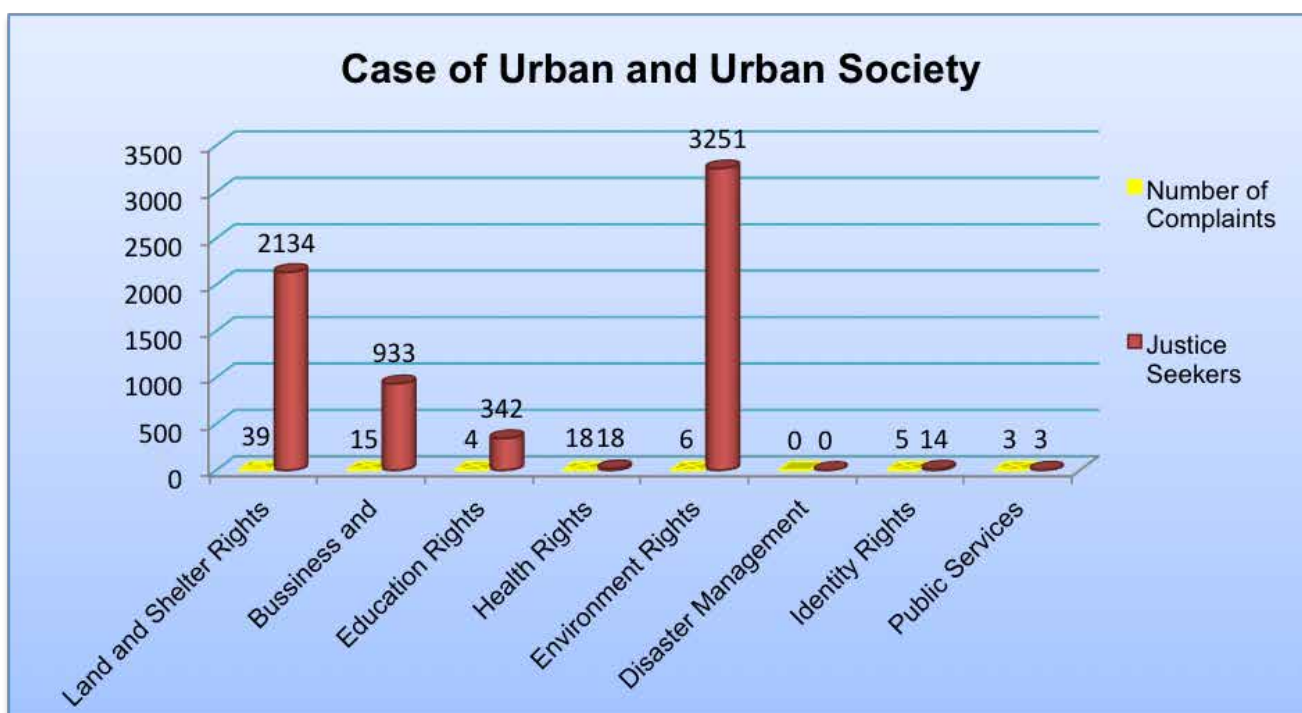
Distribution of the client area were in Bekasi, Bogor, Depok, West Java, West Jakarta, Central Jakarta, South Jakarta, East Jakarta, North Jakarta, Central Java and Yogyakarta, East Java, Sumatra, and Tangerang and Banten.

Educational profile of the complainant, as many as 21 (twenty one) the complainant were high school, 5 (five) were S1, 2 (two) complainant did not write down the information field of education, 9 (nine) complainant were elementary school education, and two (2) complainant were junior high school education, 8 (eight) were Diploma, and 9 (nine) complainant wrote others in information field of education.

Then for the data of age, there were 24 (twenty four) complainant aged adults (18-50 years), 14 complainants aged children (<18 years), three (3 ) aged elderly (> 50 years), and one complainant did not provide the information of age.

Of income data, as many as 1 (one) 1,000-100,000 ,- IDR income complainant; seven (7) complainants who earned income 501,000-1,000,000,-IDR; then 2 (two) earn 1,010,000-2,000,000,-IDR; 4 (four) complainants earned 2,020,000-3,500,000,-IDR; 6 (six) earn 3,510,000-5,000,000,-IDR; 1 (one) complainants earned 5,500,00-10,000,000,-IDR; 1 (one) was not clear how much he/she earned income and 34 (thirty-four) complainants did not write amount of income they earned.

### 3. Cases of Urban and Urban Society



Cases of Urban and Urban Society received LBH Jakarta in 2013 as many as 90 (Ninety) complaints with as many as 6,695 people seeking justice. PMU category consists of Land and Housing, Business and Economic Rights, Right to Education, Health Rights, Environmental Rights, Disaster Management Rights, Identity Rights, and the Right to Public Service.

Complainants coming to LBH Jakarta were from various regions, such as 7 (seven) complaints were from Bekasi; five (5) complaints were from Bogor; 5 (five) complaints were from Depok; 1 (one) complaint was from West Java; 14 (fourteen) complaints were West Jakarta; 12 (twelve) complaints were from Central Jakarta; 11 (eleven) complaints were from South Jakarta; 13 (thirteen) complaints were from East Jakarta; 7 (seven) complaints were from North Jakarta; 1 (one) complaint was from Central Java and Yogyakarta; 1 (one) complaint was from Sumatra; 11 (eleven) complaints were from Tangerang and Banten; and 2 (two) complainants did not fill its location information.

Of 90 (Ninety) complaints that came to LBH Jakarta, 34 (thirty-four) complainant were female, 19 (nineteen) complainant were men, and as many as 37 (thirty seven) people did not fill information what their sex are.

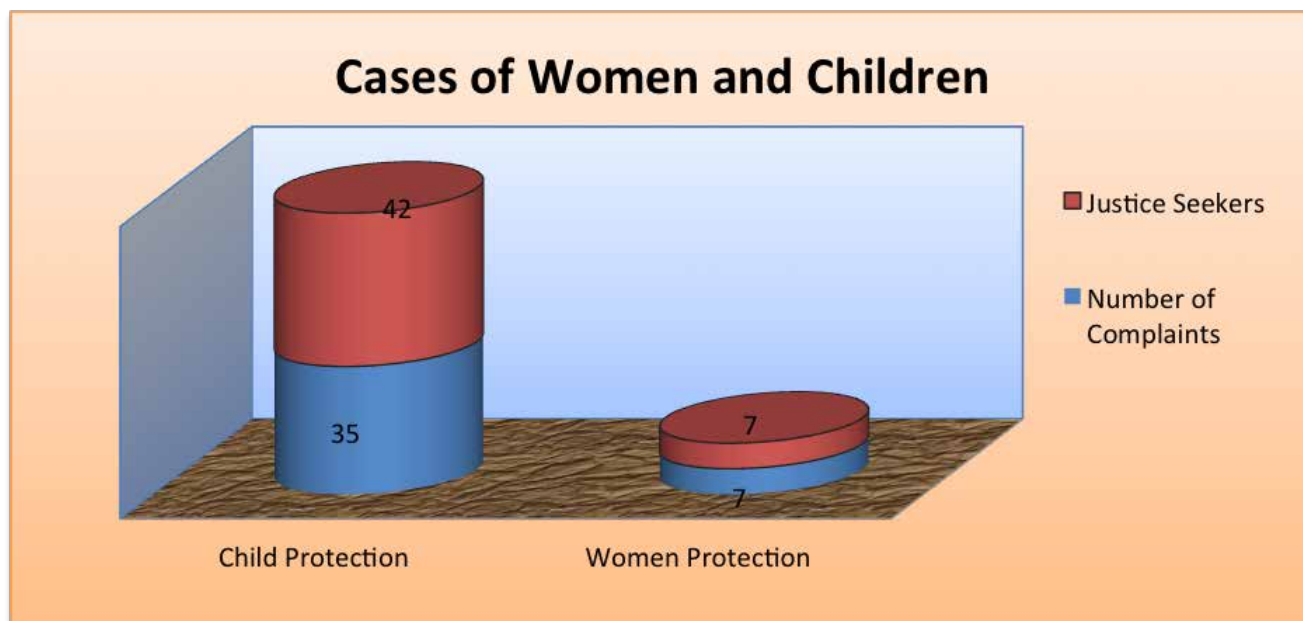
Rights on Land and Housing which is part of the PMU was complained of at least 39 (thirty nine) times; the Right on Health by 18 (eighteen) complainants; Rights on Business / Economics by 15 (fifteen) complainants; Environmental Rights by six (6) the complainant; Rights on Identity by 5 (five) the complainants; the Right to Education by 4 (four) complainants; and Rights on the Public Service by 3 (three) complainants.

Complainants' education of PMU recorded by LBH Jakarta were 31 (thirty one) of SMA complainants; 13 (thirteen) complainants of S1; 1 (one) of S2 complainants; 12 (twelve) of others; 9 (Nine) of SD complainant, 8 (eight) of junior the complainant; 5 (five) of Diploma claimants, and 11 (eleven) complainant did not fill the field type of education provided in the form.

Based on the age of the complainant, the complaint came to LBH Jakarta for PMU cases were adult (18-50 years) of 44 (forty four) complaints; the elderly (> 50 years) of 36 complaints, children (under 18 years) of three (3) people, and as many as seven (7) people did not fill the field of age provided in the form.

From income data, there were 2 (two) complainants earn about 1000-100,000,-IDR; 1 (one) earns 101,000-500,000,-IDR; 7 (seven) 501,000-1,000,000,-IDR; 9 (nine) earn 1,010,000-2,000,000,-IDR; 7 (seven) earn 2,020,000-3,500,000,-IDR; 4 (four) earn 3,510,000-5,000,000,-IDR 2 (two) earn 5,500,000-10,000,000,-IDR; 1 (one) person 10,000,000,-IDR; one (1) the complainant did not have stable income and 56 (fifty six) did not fill the field of income.

#### 4. Cases of Women and Children



Cases of Women and Children handled by LBH Jakarta had 42 (forty-two) complaints with 49 (forty nine) seeking justice. There were 35 (thirty five) complaints of child protection, including 16 (sixteen) complaints made by women, 17 (seventeen) of complaints made by men, and 2 (two) the complaint did not mention their sex. For the case of the protection for women, four (4) complaints made by women and the 3 (three) complaints made by men.

There were 5 complainants for this classification of the case coming from Bekasi; three (3) complaints from Depok; four (4) complaints from West Jakarta; 2 (two) complaints from Central Jakarta; 6 (six) complaints from South Jakarta; 9 (Nine) complaints from East Jakarta; 6 (six) complaints North Jakarta; 1 (one) complaint from East Java; 1 (one) complaint from Sumatra; 4 (four) complaints from Tangerang and Banten, and 1 (one) complainant did not fill in a complaint form of field region.

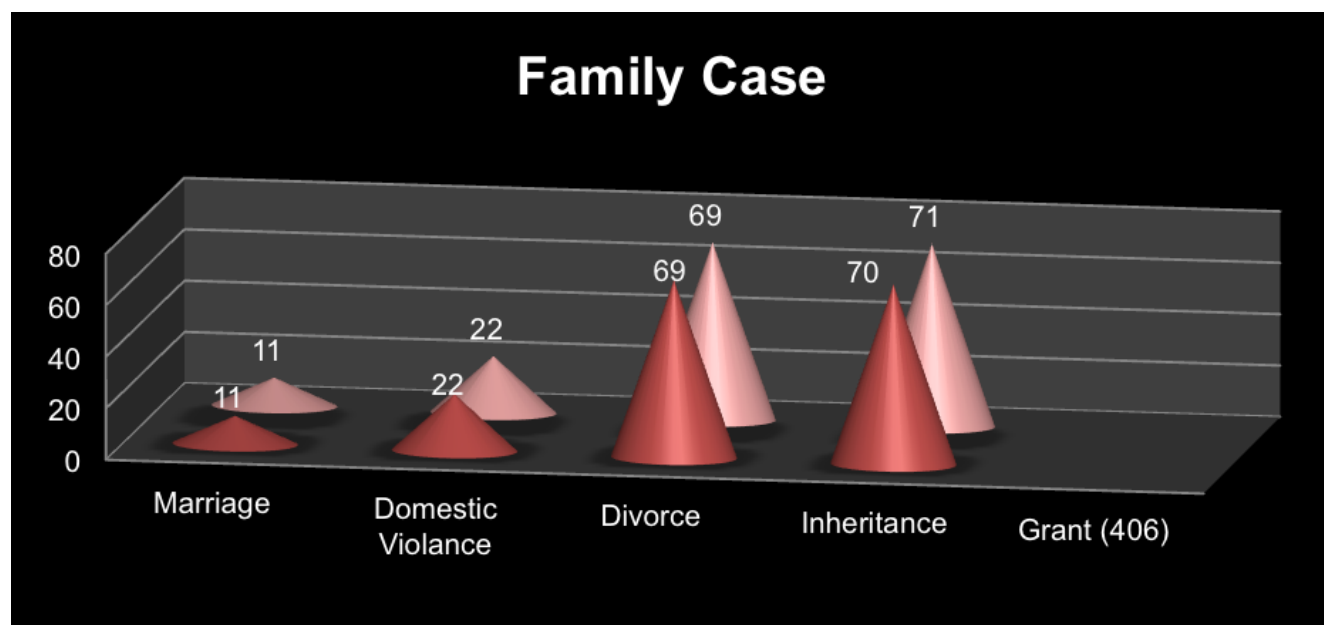
Education of complainants came from as many as 3 complaints from S1; three (3) complaints from S2; (five) complaints from SD 5; 17 (seventeen) complaints from high school; 6 (six) complaints from SMP; 2 (two) the complainants did not fill, and 1 (one) the complainant did not fill the school field in the provided form.

Age of Women and Children claimants case is divided into three (3) categories, namely the 14 (fourteen) aged children (<18 years), 24 (twenty-four) complainants aged adults (18-50 years), and the last was three (3) complainants aged elderly (> 50 years).

Case of Women and Children were complained of by 2 (two) complainants who earn 1,000-100,000,-IDR; (1) complainant earned 101,000-500,000,-IDR; 4 (four) complainants earned income 505,000-1,000,000,-IDR; 5 (five) complainants earned income 1,010,000-2,000,000,- IDR; 4 (four) complainants earned income 2,020,000-3,500,000,- IDR; 7 (seven) complainants earned income

3,510,000-5,000,000,-IDR; 1 (one) complainant did not have fixed-income, and 18 (eighteen) complainants did not fill the field of income provided in the form.

## 5. Family Case



LBH Jakarta handled Family cases numbered 172 to 173 complaints seeking justice. Of the 172 complaint cases, domestic violence cases were divided into as many as 22 (twenty two) complaints, divorce was 69 (sixty-nine) complaints, marriage was 11 (eleven) complaints, and inheritance was 70 (seventy) complaints. Of domestic violence cases, 19 (Nineteen) were lodged by women and the 3 (three) by men. Divorce cases were complained by 44 (forty-four) men; and 25 (twenty five) by women. Marriage cases were lodged by 5 (five) men and 6 (six) women. Meanwhile, the inheritance cases were lodged by 33 (thirty three) men and 37 (thirty seven) by women.

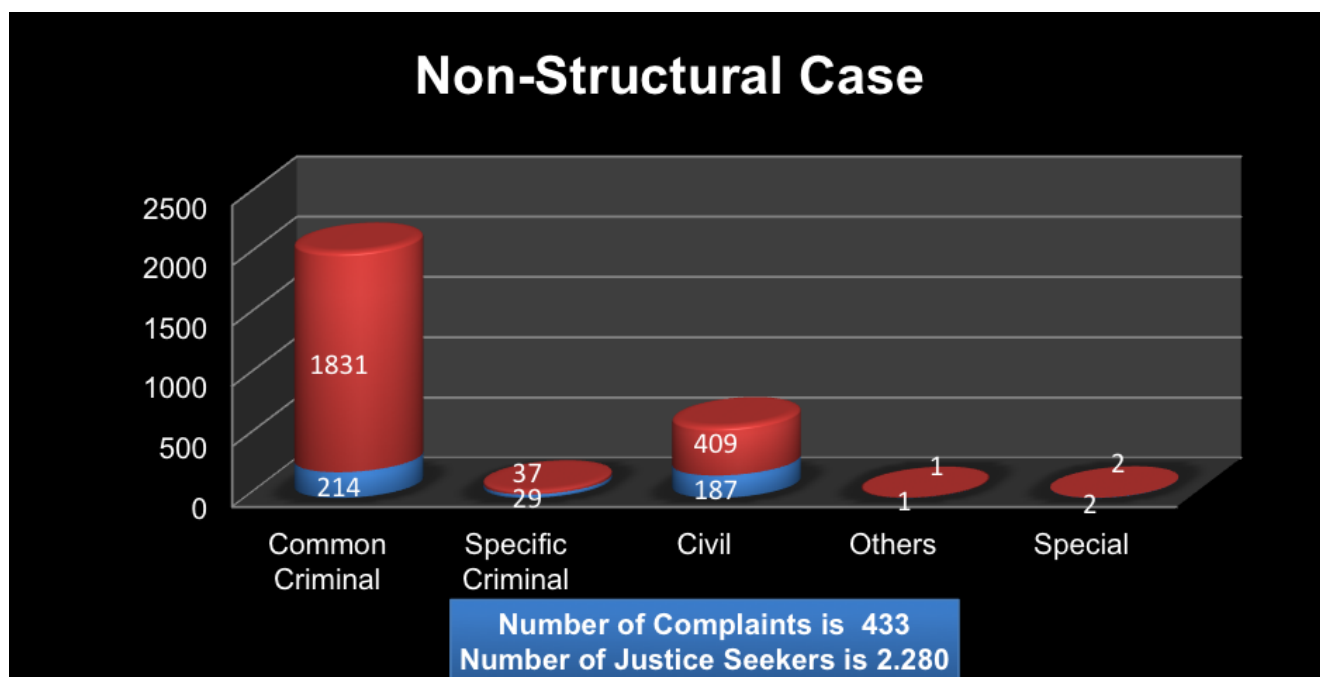
Complainants of this classification case were from Bekasi 15 (fifteen) complaints; Bogor five (5) complaints; Depok 7 (seven) complaints; West Jakarta 8 (eight) complaints, West Jakarta 19 (nineteen) complaints; Central Jakarta 28 (twenty-eight) complaints; South Jakarta 28 (twenty eight) complaints; East Jakarta 24 (twenty four) complaint; North Jakarta 8 (eight) complaints; East Java 5 (five) complaints, Sumatra 1 (one) complaint, Tangerang and Banten 22 (twenty-two) complaints; one (1) complainants fill other; and 1 (one) complainant did not fill in a complaint form field region.

Education complainants were 30 (thirty) from S1, three (3) complaints from S2, 8 (eight) complainants from SD, 36 (thirty-six) complainants from SMA, 14 (forteen) complainants from SMP, 9 (nine) complainants did not fill the form, 15 (fifteen) complainants from Diploma, and 17 (seventeen) complainants filled "other" in the appropriate fields of education.

Age of complainants of Family cases were divided into three (3) categories, namely the first were 1 (one) complaint aged children (<18 years), second were 118 (one hundred and eighteen) complainants aged adults (18-50 years); the third were 47 (forty seven) complainant aged elderly (> 50 years), and the last were 6 (six) the complainant did not mention age.

Case of Women and Children were complained by the 1 (one) complainant earned income 1000-100,000,- IDR; five (5) complainants earned 101,000-500,000,-IDR, 13 (thirteen) complaints earned 501,000-1,000,000,-IDR; 33 (thirty three) complainants 1,010,000-2,000,000,- IDR, 36 (thirty six) complaints earned 2,020,000-3,500,000,- IDR; thirteen (13) complaints earned 3,510,000-5,000,000,-IDR; 6 (six) the complainants 5,500,000-10,000,000,-IDR; seven (7) complainants earned 10 million income, 1 (one) complainant did not has class of income, 3 (three) complainants were not fixed-income, and 54 (fifty four) the complainants did not fill the field of income provided.

## 6. Non-structural Case



In addition to addressing structural issues, LBH Jakarta also received a public consultation by the public complained. The problems are categorized under specific category / non-structural. Non-structural case received LBH Jakarta is divided into subclassification General Crime, Special Criminal, Civil, Other / Non, and Special.

For sub-classification of General Crime, the number of complainants were 214 with 1831 people seeking justice; complaints of Special Crimes were 29 (twenty nine) with 37 (thirty seven) people seeking justice, complaints of Civil were 187 with 409 (four hundred and nine) people seeking justice; complaint of other / Non-

Structural were number 1 (one) with 1 (one) people seeking justice, and complaints of Special classification were two (2) with 2 (two) persons seeking justice.

Of the total non-structural cases reported to LBH Jakarta, 261 complaints were lodged by women, 159 complaints made by men, and 13 (thirteen) the complainant does not fill her gender information. Complainants in the case of non-structural were much more women than the male complainant, the complainant women in civil cases totaled 117 (one hundred and seventeen) and the male complainant amounted to 67 (sixty-seven). Particularly, the criminal case were 19 female complainants (nineteen) and 9 (nine) male complainants; common in criminal cases, the number of women complainants amounted to 123 and the number of male amounted 82 (eighty-two) claimants.

Complainants for the case of non-structural classification were 43 (forty three) complaints from Bekasi, 16 (sixteen) complaints from Bogor, 22 (twenty two) complaints from Depok, 9 (nine) complaints from West Java, 47 (forty-seven) complaints from West Jakarta, 47 (forty seven) complaints from West Jakarta, 72 (seventy-two) complaints from Central Jakarta, 59 (fifty nine) complaints from South Jakarta, 80 (eighty) complaints from East Jakarta, 23 (twenty three) complaints from North Jakarta, 4 (four) complaints from Central Java and Yogyakarta, two (2) complaints from Sumatra, 49 (forty nine) complaints from Tangerang and Banten and 6 (six) complainants did not fill in a complaint form field region.

Education complainants were by 70 (seventy) complaints from S1, 13 (thirteen) complaints from S2, 27 complaints from elementary, 181 complaints from high school, 36 complaints from SMP, 16 (sixteen) complainants did not fill up, 44 (forty-four) complainants filled Diploma, 43 (forty-three) complainants filled others in the field of education, and 3 (three) complainants were not in school.

Complainants' age of Non-structural case is divided into three (3) categories, namely the first were 5 (five) complainants aged children (<18 years), second were 278 complainants aged adults (18-50 years), third were 137 complainants aged elderly (> 50 years), and last as much as 13 complainants did not mention how old.

Non-structural case were lodged by three (3) complainants earning income as 1,000-100,000,-IDR; 15 (fifteen) complainants earning 101,000-500,000,-IDR; 33 (thirty three) complainants earning 501,000-1,000,000,-IDR; 76 (seventy-six) complainants earning 1,010,000-2,000,000,-IDR; 62 (sixty-two) complainants earning 2,020,000-3,500,000,-IDR, 40 (forty) complainants earning 3,510,000-5,000,000,-IDR; 22 (twenty two) complainants earning 5,500,000-10,000,000,-IDR; 12 (twelve) complainants earning more than 10 million Rupiahs; 1 (one) complainant did not have clear income, 9 (nine) had not fixed-income, and 160 (one hundred and sixty ) complainant did not fill the field of income provided.

# ADVOCACY CASE OF LBH JAKARTA

## 1. LABOUR CASE

### 1.1. Labour Rights Violations Continue Recurring

LBH Jakarta in 2013 received complaints of violations of the right to work as many as 23 (twenty-three) complaints, and a running case as many as 15 (fifteen) incoming complaints before 2013. Repeated violations of labor rights repeatedly happened than in previous years and it ranged in violation of freedom of association, violations of basic rights in labor relations and illegally laid off. Specifically in 2013, cases of labor that occur are as follows:

- Termination of employment due to the strike, the reason of loss, layoffs without the determination of the court as much as 21 (twenty one) case, which occurred in the PT. Mega Indotex Raya, PT. Panarub, PT. Surya Pasifik Sejahtera, and PT. Hotel Indonesia Notour (HIN).
- Payment of wages below the minimum wage as many as 8 (eight) cases that occurred in the PT. Hansoll Indonesia, PT. Kaho Indah Citra Garmen, PT. Misung Indonesia, PT. Myungsung Indonesia, PT. Kyungseung Trading Indonesia, PT. Star Camtex, PT. Good Guys Indonesia, and PT. Yeon Heung Mega Sari.
- Violation of the rights of pension benefits as many as three (3) cases in Perum Damri and Peruri, and Sultan Hotel.
- The Company did not implement court decisions (disobedience) that have permanent legal force as many as two (2) cases were performed by Perum Perumanas, Pull Taxi Prestasi.
- Fraud on occupational information as much as two (2) cases that occurred in the PT. Srikandi;
- Implementation of outsourcing work systems that violate the provisions as many as 2 (two) cases that occurred in the PT. Pertamina and PT. Kalbe Farma;
- The transfer of workers because unions set up two (2) cases that occurred in the PT. ASDP, and Metro TV
- The criminalization of labor by entrepreneurs that lead to layoffs as much as one (1) case of PT HSJ.



## 1.2. Research-Based Advocacy

In the making process of Law Number 2 of 2004 on Industrial Relations Dispute Settlement, LBH Jakarta delivered a number of criticisms of mechanisms. Some of these criticisms specifically directed towards provision of the settlement period that did not correspond to the real conditions, the process of filing a stiff and very formal, canalization into disputes over rights violations, and so forth. The criticism was later shown in some cases that dealt with LBH Jakarta in previous years through the efforts PPHI the violation period and the decision cannot be implemented. However, the ineffectiveness of the new PPHI required deeper study and analysis to generate useful recommendations for policy change. Therefore, LBH Jakarta in 2013 doing research decisions that industrial relations were at the stage of the Supreme Court (appeal or judicial review). The flow of this research done by indexing over the Supreme Court decision was on appeal and judicial review. In conducting the research decision PPHI, LBH Jakarta was in collaboration with the Judicial Monitoring Society (MAPPI FHUI). Time of this report, the research was still running in the indexation phase Supreme Court decision which amounts to approximately 3,066 decisions.

The purpose of the research execution of the decision of the PHI is First to provide reference materials in the form of decision analysis that can be used by lawyers or legal aid agencies in carrying out advocacy advocacy. Second is to analyze and take the essence of the key cases in order to get the learning that can support the advocacy work in the improvements of Indonesian justice system. Third is to continue advocacy of research findings to stakeholders who can influence the improvement of the justice system in Indonesia.

The expected impacts of the Decision Research Program Industrial Dispute are: first, increasing relevance of advocacy through the availability of quality research data that form the basis of advocacy activities; the second one is to strengthen of ties of cooperation between Civil Society advocacies with academics; the third one is the process of discussion and dialogue between researchers and relevant stakeholders, about the things that need to be fixed in the justice system in Indonesia. Particularly is regardly to strategic issues that are the focus of legal aid work.

## 1.3. Litigation Strategies against Low Wage

Minimum wage increased in 2013 in the province of Jakarta and its surroundings is quite significant, exceeding the 40 % rate hike. Regional Head decision to raise the minimum wage to be addressed by a number of companies to apply suspension of the minimum wage, but the request was tricky regarding eligibility of suspension. Efforts to propose the suspension of the company, countered by LBH Jakarta with Trade Unions as members of the Indonesian Workers' Assembly ( MPBI ); FBLP; and SPN, was by creating Advocacy Team for a decent wage ( TABUL ). The effort was in order to sue full suspension of wage tricky through administrative courts by sue 3



(three) the governors, i.e. Governor of West Java, Banten Governor, and Governor of DKI Jakarta Governor. They were asked to annul the decision of the Suspension Agreement Implementation of Minimum Wage in 2013. The lawsuits were filed by the workers through legal counsel in TABUL where two lawsuits filed by the union in the province of West Java and Jakarta granted and filed a lawsuit could not be accepted by the Administrative Court in Banten Province.

#### **1.4. Consolidation and Strengthening of Labor Unions**

Motivated by a number of non-infringement of law enforcement experienced by the workers who work in the state-owned company, the Jakarta Legal Aid Institute for the workers formed an alliance called Gerakan Bersama BUMN (BUMN Geber) on March 4th, 2013, seeking the elimination of the implementation of outsourcing in BUMN. Establishment of Geber BUMN was part of the consolidation of the union. Throughout the year 2013, Geber BUMN expansion and consolidation continued in various parts of Indonesia. Recognizing the importance of the role of the media to support the labor movement, Geber SOE also conducted campaigns, including press conferences, seminars and workshops on employment issues in the state. Geber BUMN also successfully urged the House of Representatives Commission IX, Manpower and the Ministry of BUMN to form the Committee Outsourcing and Employment Settlement Commission came after a series of activities and approaches to IX in the House of Representatives Commission IX member. Outsourcing Committee finally issued a recommendation that essentially asked state-owned company and the Minister of State Enterprises lift all workers to be appointed as permanent employees in state-owned enterprises; hire back laid-off workers in state-owned companies. Currently Geber BUMN continuous expansion and consolidation in all provinces in Indonesia and ensured that all state-owned companies implement the recommendations of the Outsourcing Committee.

In addition to forming alliances of LBH Jakarta also conducted education and training in the law as a form of legal empowerment of workers, such as by appointing and inducting workers as paralegals held on September 7, 2013. Paralegal education for these workers was expected to help the work of LBH Jakarta in advocating labor cases. In addition, LBH also encouraged the development capacity of knowledge workers with the education of law on labor union base, which was held on:

- a. Dated August 24th, 2013, Education Law Labor Federation of Indonesian Pulp and Paper (FSP2KI);
- b. Dated October 5th, 2013, Education Labour Law II Federation of Indonesian Pulp and Paper (FSP2KI);
- c. 14-16 June 2013, Paralegal Training for Workers Attack NES.

#### **1.5. Encouraging Labour Unit at the Criminal Police**

A variety of legislation in Indonesia are set to a number of





provisions for the protection of workers. Even some of the acts that constitute infringement threaten with criminal sanctions for violators. These rules include the Law No. 13 of 2003 on Labor, Law No.. 3 of 1992 on Social Security, Law no. 21 Year 2000 on Workers Union / Labor Law No.. 2 of 2004 on Industrial Relations Dispute Settlement (PPHI), Law No. 1 1970 on Occupational Safety and Law No. 7 of 1981 on the Company's Report Obligatory in the number 46 (forty-six) chapters to a penalty.

Although there have been 46 (forty six) chapters to a penalty, since 2003 only one case in which the employer was liable for violating the rights of workers, i.e. in the case of PT. King Jim in Pasuruan, East Java. A number of other labor criminal cases were not followed up by the police even though the stage was a crucial stage for the next process in the criminal justice system.

LBH Jakarta received 26 (twenty-six) labor criminal cases during the year 2012-2013. From these reports, there is no cases that progressed to trial, it means that there was no employer really tried for violating workers' rights let alone imposed criminal sanctions. Uneffectively enforcement by police investigators understanding caused by the labor law so that workers' rights violations resolved by way of mediation or diverted to the proposed mechanism.

Therefore, it was important to set up Desk/ Labour Unit in the Criminal Division of the National Police. With the existence of this unit, there was expected to special education for the police regarding criminal labor and to the front there was the police who are the focus of a criminal case in a professional labor. If the labor law enforcement running the company, violated labor rights deterrent.

#### **1.6. Allowance Rights Violations: Repeated violations without Law Enforcement**

Infringement holiday allowance (THR) labor happens each year. In the last five years, LBH Jakarta opened a post complaints and always received complaints of violations in the form of late payment and non-payment of workers' rights by the company THR. Unfortunately, every year Kemenakertrans just issued a circular calling on the company to pay THR but without enforcement and strict action against the perpetrators of the offense.

LBH Jakarta with Trade Unions opened post of THR on July 24, 2013 and closed on August 15, 2013. Where 1,795 (one thousand seven hundred and ninety-five) of labor were threaten not getting THR. Incoming complaints followed up by LBH Jakarta were to urge company to pay THR workers / laborers by telephone and letter. The effort paid off as much as 1,261 workers get their rights, but there were 524 (five hundred twenty four) workers of 15 (fifteen) the company did not go giving THR for workers. LBH Jakarta with its 15 unions complained to the Supervisory Kemenakertrans. However, until this report made there was no response to complaints of Kemenakertrans about the THR.

### 1.7. Recommendation.

From the description above, we recommend several things, i.e. (1) it needs to immediately establish a Police Special Unit Labour to focus on criminal acts dismantle labor; (2) the government needs to enforce against employers who laid off before any decision of the court of industrial relations, during the entire legal process including workers and employers should exercise the rights and obligations of each; (3) Government should undertake enforcement action against the company with violating basic rights committed by the company; (4) The Government should establish complaint mechanisms over public dissatisfaction and discontent over the performance of the Department of labor Transmigration and take action against the civil servants labor obligations properly.

## 2. CASE OF URBAN AND URBAN COMMUNITIES

### 2.1. Increased Complaints Eviction Case

During the year 2013, LBH Jakarta received 90 (Ninety) complaints related cases of Cases Urban and Urban Society (PMU) with seeking justice as much as 6,695. PMU's case this year increased compared to the year 2012 was only 74 complaints. As for the types of cases, PMU was more reticent concerning violations of the right to housing and the right to economic enterprises because of forced eviction. In more detail, it can be seen from the following table.

**Tabel PMU Case 2013**

Cases	Number of Complaints	Number of Justice Seekers
Land and Shelter Rights	39	2134
Bussiness and Economic Rights	15	933
Education Rights	4	342
Health Rights	18	18
Environment Rights	6	3251
Identity Rights	5	14
Public Services	3	3
<b>TOTAL</b>	<b>90</b>	<b>6695</b>

There were 39 cases of complaints of land rights and shelter, as well as 15 complaints related to business and economic rights. Two cases ranked first and third complaints entered into LBH Jakarta. In addition, the rights of health was a problem occurred, ranks at second of PMU cases that go to LBH Jakarta at about 18 complaints, followed by other cases each six (6) cases for environmental rights, 5 (five) cases for the right to identity, 4 (four) cases of education and three (3) case for the right to public services.

Eviction land and community residences did with the reason for the public interest and for the purpose of business investment. The trend was shown in several cases including the case of residents of Tanah Merah, HBR's case and Mrs. K, and Uga Swamp Cork Citizens and Residents Jasinga Bogor. A similar case also occurred in 2012 in the case of Carpentry and Teak Base Case Citizens against Government of Depok.

In case of violation of the right to land and living place Government and Company (Corporation), become actors. Pattern of violations, people who have long inhabited the land or government land forcibly evicted displaced by reasons of their land property rights necessary for the construction of public facilities government as toll. Another reason the eviction is also related to the status of land rights, where the company had a concession over the land occupied by residents. When the land was to be used, then the residents were evicted without any consideration of the fact that people have occupied the land and take care of in a long time.

Cases of Tanah Merah and Land of Free is an example of a case which illustrates that forced evictions impact directly on violation of Land and Housing in 2013. In Case of Tanah Merah, residents had been occupying the land by farming and building houses for 25 (twenty five) years on State land abandoned. But in 2013, evicted because the land is claimed as leasehold land (HGU) PT. Astra Honda Motor (PT. AHM) which will expire in 2016. To displace residents, PT. AHM use means against the law by deploying approximately three hundred thugs to dismantle dozens of residential buildings residents. Forced eviction of residents even involves municipal police officers, District Military Command and the Police. The evicted residents who lost their homes immediately and there is no solution of Bekasi Mayor linked their housing rights. Whereas in the case of land dispute are still being processed and BPN also has recommended to the government not to renew the concession of PT. AHM.

Meanwhile, the Land of the Free Citizens consisting of ± 40 (forty) Head of the Family in 2011 lost their living place because their owned land affected by the construction of the Tanjung Priok toll road. With public interest grounds, the residents were forced to accept the eviction of residence. Citizens should be entitled to money Compensation (UGK) of North Jakarta City Government but UGK could not be given because of the lawsuit to the court from other parties who claim the land were not owned by residents.

## **2.2. Train Station Traders Eviction in the Greater Jakarta**

The business and economic rights violations occurred in eviction cases that occurred throughout 2013. Eviction cases occurred against street vendors in several areas in Jakarta and forced eviction of the traders along the train station kiosks of Jakarta, Bogor, Depok, Tangerang, and Bekasi (the Greater Jakarta) by Indonesian Railways, Ltd. (PT KAI).

Forced evictions by PT. KAI of the traders along the train station

kiosks of the entire Jabodetabek was conducted on the basis of the construction of station facilities to improve passenger service. Train station sterilization from trading activities and area expansion is one form of development. Unfortunately, that construction was done by forced evictions against merchant stalls without regarding legal procedure and respect for human rights. Before the eviction was done, there was no notification and appropriate talks with the traders on the reasons of eviction. No compensation was given although traders gained their kiosks by hiring and buying them from PT. KAI as the manager of the station. As a result, the traders in the various areas put up resistance towards the eviction. The resistance was then stopped when the Special Railway Police and the Army were also deployed to support the forced eviction of the traders. When evictions were carried out, the police came silently witnessing and securing eviction, even PT.KAI also involved thugs in the eviction process.

At the time of writing this report, stations in the Greater Jakarta were sterilized from the traders. Surprisingly, Indomaret outlets, Alfamart, and well-known fast food & beverage outlets can still continue to reap the benefits from the passengers. Based on the record from Legal Aid Assistant (LBH) Jakarta, due to the eviction of 16 (sixteen) stations in the Greater Jakarta there were as many as 6,532 people who lost their economic rights.

Contrasting to the eviction conducted by PT. KAI, case of street vendors in Kota Tua area shows how the practice of eviction of street vendors conducted with humanity approach. Jakarta Provincial Government under the leadership of Jokowi-Ahok was trying to take control of street vendors in different areas in Jakarta with communication and structuring solutions. This step ought to be appreciated, but the implementation was still improper. In the case of street vendor arrangement in Kota Tua, the practice in the field brought issues. The implementation was not in accordance to the policies. The lack of participation and transparency in data collection made the street vendor arrangement problem go on and on.

### **2.3. Poor Health Services and Malpractice Threats**

Violation of the citizens' rights keeps happening, which is reflected in poor health services (poverty-stricken society) and the rampant cases of malpractice. This year, LBH Jakarta received 19 (nineteen) complaints related to the Right to Health. From those 19 (nineteen) complaints, 5 (five) cases were related to malpractice, and 14 (fourteen) were associated to rights to health service. There were three cases from the complaints of alleged malpractice, one case was caused by misdiagnosis experienced by MA and two cases were perioperative mortality of Mr. W and lifelong disability suffered by Mrs. W due to medical negligence of leaving gauze inside her stomach during cesarean procedure.

Health service programs for poverty-stricken society are still not optimal. For example, although FD includes as impoverished people



who joins Jakarta Health Card (KJS), FD was surprised because he got ill in 2007 and could not afford the billed medical expenses.

Hospitals and medical personnel (doctors) became important actors in this case. Hospital health service for profit arouses discrimination against poverty-stricken society and they no longer give the best service to the public. There are no standards and clear health service procedure to ensure the right to health of patients. In the case of Mr W, the patient died during the operation, but the family was not given informed consent that they believe the doctor did malpractice. However, the accusation was difficult to prove because the family has no ability to prove it. Medical world is still a closed, non-transparent and unaccountable thing. As a result, a number of malpractice cases ended with impunity against perpetrators.

#### **2.4. Privatization and Militarization in the case of the Urban and Urban Society**

PMU cases throughout 2013 were dominated by State actors. House of Representatives and the government issued the policies that actually harm people. Profit orientation of the public services such as PT. KAI and hospitals leads to the negligence of service to the community. State officials such as Police and The Indonesian National Armed Forces become offenders in the field and the community becomes direct victims. The characteristic of PMU cases is the community is treated as an object and subordinated in any state policy. It indicates unequal relations between the community and superstructure elements of the State politics and its apparatus.

The trends of PMU cases handled by LBH have similar modus. Investment or capital interests take precedence over the interests of the public welfare. That modus is done with the same pattern. In the violation cases of Land and Housing Rights and Business and Economics Rights, the same action is also carried out, displacing public interest for investment. In the case of eviction, State disregards this situation and even supports the fight against its own people through the apparatus. In the case of the Right to Health, orientation profit leads hospitals and doctors to lose the soul of service. As a result, service quality is not maintained based on standard procedures and transparent and accountable services.

The State no longer becomes an organization that protects the public but it becomes organization that assists corporations' power to foster the interests of capital and profits. State is managed like companies. In cases handled by LBH Jakarta, the State's attitude is much more controlled for profit business and it does not protect the interests and welfare of the citizens. Public services such as transport, health, and education become a commodity to be traded to the people themselves. As a result people are always dealing with a powerful actor named capital without the protection of the State and its agents. People who have the sufficient economic capacity has the potential to survive in the new State-run market, but not for the poverty-stricken society.



## 2.5. Mentoring Process: from Mass Action until Lawsuit to Court

In advocating the PMU cases, various efforts were taken by LBH Jakarta either by law litigation and non-litigation and non-legal efforts. Structural Legal Aid acts as a guide in conducting advocacy cases faced by the society. Community strengthening through advocating, organizing and empowering citizens to independently advocate for the problems becomes the chosen movements of LBH Jakarta. This step was taken in various communities such as; traders on train station kiosks in Greater Jakarta, the train customer community, residents of Petukangan and residents of Budidarma. This step was taken due to because the structural legal aid focuses on efforts to create the power of the community to solve its own problems. Moreover, while mentoring LBH Jakarta also went through the efforts of court settlement such as mediation or negotiation to resolve legal cases. This approach was done because a number of litigation in the courts in other cases take a long time with the process of formal verification, which in the case of PMU can actually weaken the defense. Non-litigation steps and efforts to support the non-legal efforts were done as well, such as hearings and complaints directed towards other authorities such as the National Human Rights Commission and local governments, and mobilizing public support through the deployment of petitions, mass action, mass media campaigns and social media were also carried out. Even in cases where the defense is physically necessary, LBH Jakarta supported the people to defend their rights using their physical strength such as railway station blockade action by the traders and customers as a reaction towards the abolition of economy class trains.

Litigation is a last resort if the non-litigation steps fail to resolve the problem. However, if it is necessary, both steps run together synergistically. The litigation step is oriented towards policy changes and on a case-by-case settlement. At the time of writing this report, LBH Jakarta together with a Network called Society Coalition Refusal on Jakarta Water Privatisation (KMMSAJ) used the mechanism of Citizen Law Suit to sue Jakarta water privatization policies that resulted in violations of the right to water for poverty-stricken people. In addition, members of the LBH Jakarta who become Anti Land Deprivation Advocacy Team filed a petition for judicial review with the Constitutional Court against the Law 2 Year 2012 on Land Acquisition for Public Interest. This step was taken to test the basic policy of eviction on behalf of the public interest. In advocating the case of both litigation and non-litigation, defense substance was prepared using International standards for Human Rights such as human rights standards for the handling forced eviction cases or the International Covenant On Economics, Social and Cultural Rights.

## 2.6. Community-Based Case Handling: Lesson from the Residents of Budi Dharma and Pertukangan

Petukangan case is the case of residents eviction affected by the



toll project which was handled by LBH in the last three (3) years with the settlement that was gained this 2013. Petukangan case provides lessons regarding the ability of citizens to negotiate with the State in defending their rights. This capability can be obtained after the process of strengthening the legal capacity of the citizens through legal education in the community. In Petukangan case, LBH Jakarta along with residents were able to push the government to provide appropriate compensation to the people affected by the eviction of land for public purposes.

Meanwhile, in the case of the forced eviction of the residents Budi Dharma, it is evident that the efforts of the court action can be done independently by the residents. Court lawsuit was filed and processed without direct assistance by legal counsel and it obtained success with the Court's decision that ruled in favor of the citizens. Even in its decision, the judges ordered the local government to provide compensation to people with consideration of Second Principle of Pancasila, Just and Civilized Humanity. Budi Dharma Case is also an example of how international human rights standards related to forced eviction can be used as a basis for legal residents in a court lawsuit.

## 2.7. Recommendation

Government Bureaucracy from the top to the bottom of the structure is supposed to comprehend and implement the human rights guaranteed in the various laws and regulations in Indonesia. It is crucial that policies and actions do not conflict with human rights which can pose violations to the society. In particular, the government also needs to make regulations on the prohibition of forced evictions and set a participative and clear housing and vendors structuring models by adopting international standards related to evictions. It is necessary to be done in the anticipation of the changing of regional leadership so that forced evictions that result in human rights violations will not happen again.

The paradigm shift of development and local budgets are also needed. Currently the city budget of Jakarta has a large enough budget item intended for Eviction and Control. The budget should be used to solve problems of land tenure among the poverty-stricken urban society and the lack of infrastructure in the city.

At a more macro policy, the government should stop the liberalization of the health sector and is responsible for guaranteeing the right to health of the community through the allocation of adequate health budget both through Regional Budget and National Budget. While for health care providers, such as hospitals, ought to formulate operational standards for medical action as well as transparency and accountability in health care. The government and medical professional organizations also need to be more assertive in enforcing the code of ethics and law enforcement in cases of violations of the right to health of patients because of malpractice actions by medical personnels.



### 3. FREEDOM OF BELIEF AND RELIGION INFRINGEMENT CASE

Indonesia has a strong legal basis as the basis for recognition, protection, respect and improvement of human rights, including the right of freedom of belief and religion.<sup>1</sup> However, the violation of the rights of freedom of religion and belief continues to occur. Documentation on assistance and legal aid works undertaken by LBH Jakarta showed that cases of violation of the right to freedom of religion and belief continue to increase both in the number and intensity of the offense in recent years.

#### 3.1. Discrimination and threats against Ahmadiyya

Portrait of a quite dominating case of Freedom of Religion or Belief supervised by LBH Jakarta is the case of violence and discrimination against Ahmadiyya. Mentoring by LBH Jakarta towards Indonesian Ahmadiyya Congregation has been performed continuously since 2005. Violence note spans in so many events ranging from The Closure of Mubarak Campus in Parung; assault and destruction of mosques and village in Cisalada and Ciaruten, Bogor; assault, destruction and closure of mosques in Depok, Jakarta, and Sukabumi; until the raid and killing of the members of the Ahmadiyya Congregation in Cikeusik Banten.

In 2013, there were at least two (2) areas where intimidation, threats of violence, and discrimination occurred against the Ahmadiyya congregation which were the locking and closure of Masjid Al-Misbah in Jatibening Bekasi that happened in March 2013, as well as intimidation and threats to the Ahmadiyya Congregation in Bukit Duri, South Jakarta.

Masjid Al - Misbah, Jatibening which has been used since 1993 and has a valid building permit is also in the lock by the Government of Bekasi at the urging of a small group of people on behalf of Muslims using FPI cloaks. The locking was performed by the Bekasi municipal police without strong legal basis. It was clearly against the juridical basis used by Indonesia as described in the introduction. Furthermore, the involvement of the military in handling JAI activities clearly violated the Act 34 of 2004 about TNI (The Indonesian National Armed Forces). The locking and zinc fencing was done without proper deliberation first. The locking and zinc fencing were even conducted with the presence of congregation residing inside the mosque, at least for 2 months 14 members of the congregation chose to stay there with no way out. Based on the condition, Ahmadiyya with LBH Jakarta, YLBHI and LBH Bandung filed a lawsuit to the Bandung State Administrative Court. In their decision, the judges of Bandung State Administrative Court made different decisions from each other.

In its decision, for zinc fencing dispute in Masjid Al-Misbah through Task Order Number: 800/60-Kesbangpolinmas/IV/2013 signed by Acting. Regional Secretary of Bekasi, the judges were

<sup>1</sup> See Constitution of the Republic of Indonesia, Article 29 (2) and Article 28E confirm the recognition of freedom of every person to profess religion and to worship according to the religion or belief. Constitution incorporates the right to freedom of religion or belief as human rights which cannot be reduced under any circumstances (non-derogable rights). In addition, the Act No. 39 Year 1999 on Human Rights in Article 4, Article 22, and Article 55. Law no. 12 Year 2005 on Ratification of the International Covenant on Civil and Political Rights also describe the rights that belong to every person in the Freedom of Religion or Belief, and clearly stated the obligations done by the State, especially the Government.

entirely in favor of the Plaintiff, Abdul Basit as representative for Indonesian Ahmadiyya Congregation. The decision referred to the fact that the Acting Regional Secretary of Bekasi which is Assistant of Bekasi Government has no authority to issue Task Order No.: 800/60-Kesbangpolinmas/IV/2013 about the locking of Masjid Al-Misbah Ahmadiyya Indonesia Bekasi Jatibening so that in the verdict, the judges stated that the Task Order issued by Acting. Regional Secretary Bekasi was invalid.

However, the judges in the same court ruled contradictory verdict to the locking case, precisely in its Decision rejecting Plaintiff's claim on the basis that the issue of Task Order Number: 800/422-Kesbangpolinmas/III/2013 about the locking of Masjid Al-Misbah Jatibening Bekasi by the Defendant, Mayor of Bekasi, was in accordance with the procedure set out in legislation. However, the judges did not consider whether the issued decision violated AUPB (General Principles of Good Governance) or not. They also did not consider the expert testimony presented by Plaintiff's experts both from Human Rights and Social Conflict Management department.

Intimidation was also experienced by Ahmadiyya congregation in Bukit Duri, South Jakarta. A mob urged Ahmadiyya congregation to cease all activities and expelled them from Bukit Duri. LBH Jakarta sought to assist mediation conducted by the local municipality, but the Village actually legitimized the intimidation and expulsion.

### **3.2. Prohibition case of Church HKBP Taman Sari, Setu Subdistrict, Bekasi District**

After going through a long process of getting permit for constructing house of worship, Church HKBP Taman Sari, Setu Subdistrict, Bekasi District on March 21, 2013 was demolished by the Bekasi District Civil Service Police escorted by police and military, with the excuse of the absence of building permit and rejection from the society. Protests were filed by Legal Aid Assistant (LBH) Jakarta together with other elements of society were ignored, until finally the church was dismantled, accompanied by hysterical cries from the church congregation. At first the congregation decided to take legal action with LBH Jakarta, however, in the course of advocacy, they cancelled their intention.

### **3.3. The Assistance to the Congregations of Church of St. Stanislaus Kostka, Kranggan, GKI Taman Yasmin Bogor, and HKBP of Philadelphia Congregations**

Having passed through a long time in gaining support and consent of the construction of the church, as well as getting rejection and pressure from FPI and FUI Jatisampurna, the construction of the Church of St. Stanislaus Kostka-Kranggan finally gained the License of the Building Construction or Surat Ijin Pelaksanaan Mendirikan Bangunan (SIPMB) from the Mayor of Bekasi on December 17, 2012. However, the SIPMB had been conflicted by some residents who rejected the construction of the church. 13 (thirteen) people,

that four (4) of them have ever signed to support the construction of the church, by giving authority to the institutions of the Indonesian Moslem Legal Aid or Lembaga Bantuan Hukum Muslim Indonesia (LBHMI) filed a lawsuit to the Mayor of Bekasi. Representatives of the church, the Pastor's head and Chairman of the DP/PGDP St. Servatius Kampung Sawah Mr. Yakobus Rudiyanto, S.J., responded this lawsuit by giving authority to the LBH of Jakarta, along with YLBHI and LBH of Bandung to become Defendants II Intervention. When this report is created, the lawsuit is still in the process of verification.

Meanwhile, the Assistance to the congregation of GKI Yasmin and HKBP of Philadelphia who were banned to do worship in their worship place has not been overcome yet. Local government in this case the Mayor of Bogor and Bekasi Regents have not yet complied the court ruling. In addition to the efforts of law, both litigation and non-litigation were conducted. It reached the use of International mechanisms, and gained the notes and recommendations from the United Nations Human Rights Committee. The congregations consistently continued to maintain its right to do worship by doing acts of worship in front of the State Palace once every two weeks.

An assault case occurred in Philadelphia HKBP in the Christmas Eve December 24, 2012. The assault was committed against the priest Phalti Panjaitan and HKBP of Philadelphia congregations. About 500 people led by the intolerant masses Abdul Azis did it. The attack was carried out when the pastor and the congregations walked to the site of worship by throwing rotten eggs, dung, water soaked in jengkol, stones, the soil, watering drainage ditch towards the congregations. The police officers who were at the site of the attack let the attacks happened. Against this action, the police allowed the violence occurred. The pastor Phalti who was still existing at that time did a self-defense. To this action, however, the priest Phalti became the suspect at a police report number: LP/1395/K/XII/2012/SPK/Restra Bekasi, on December 24, 2012 on behalf of Abdul Azis as the reporter, on charges of criminal acts of persecution and an unpleasant deed (article 349 of the Criminal Code 335 Jo.)

When the priest Phalti Panjaitan, Investigators of the Bekasi Polres designated STh as a suspect, Polres Bekasi City Investigators assigned the priest of Phalti Panjaitan's file to Kejaksaan Negeri of Cikarang and already entered the stage of the Fulfillment of public prosecutor Instructions (JPU) or known as the P-19. Several times the Kejaksaan returned the priest Phalti Panjaitan's file to the Polres of Bekasi City Investigators. Till finally on July 26, 2013 the prosecution files was assigned to the Bekasi District Court in order to be processed as light criminal offence through fast investigation agenda as set in article 205 – article 210 of Criminal Code. Until this article was created, the council had not been able to proceed it since the priest Phalti suffered health problems as a result of psychological pressure. While the trial proceedings of case number: 642/PID/B2013/PN.BKS was carried out to the perpetrators of the attack in Bekasi District Court, district

of Bekasi, West Java.

#### **3.4. The Settlement of the Church of Damai Kristus, ‘according to Jokowi’**

In the advocacy of Church of Damai Kristus of Paroki of Kampong Duri –West Jakarta, LBH of Jakarta is actively monitoring and providing support to the congregations. In this case, the Governor of DKI Jakarta, Joko Widodo, directly controlled, conducted conflict resolution and deliberations with both parties. After this quick attempt, an intimidation and threats publicly become lessen. In fact, the provincial Government of DKI Jakarta issued a Letter of Worship Principle Consent. This case proves that the active Government action for religious freedom issues impacts to the direct protection against the congregations as a minority group. The provincial Government of DKI Jakarta’s action is a form of the implementation of the state obligations to respect and protect the right of religion and worship freedom.

#### **3.5. The Violation Pattern: Hate Speech, Intolerant Mass Mobilization and Violation Legitimacy by Government**

The equality of religion and belief freedom violation, both in terms of events, actors as well as in terms of the government’s response form a pattern of certain offences. Violation of religious freedom beginning with the pre condition such as an issue of Christianization, fatwa of perverted worship, the prohibition of activities by government, falsification of signatures of support from houses of worship, and so on. This happened in the case of Ahmadiyya congregations in Bekasi, where padlocking and roofing were preceded by the fatwa of perverted worship by MUI and the ban on Ahmadiyya’s activities through the West Java Governor’s Regulation No. 12, Dated March 4, 2011 about the ban on activities of Ahmadiyya Congregations In West Java, Indonesia; West Java Governor’s circular letter No. 188.3/15-Kesbangpol, dated March 14, 2011, to all Mayors/Regents of West Java, about the Follow-up of West Java Governor’s Rule No. 12 in 2011; as well as the Mayor of Bekasi Regulation No. 40 of the year 2011, About a ban on Ahmadiyya’s activities in the town of Bekasi, dated October 13, 2011.

In addition, the offense also used a way of hate speech<sup>2</sup> (statement of hatred) by means of socialization of the prohibition, issues or a fatwa against the minority congregations in a provocative way to the community through lectures, leaflets, and others with invitation or incitement to close houses of worship or the dissolution of community activity.

After the deployment of issues and hatred had been committed, perpetrators conducted mass mobilizations to urge local governments to carry out the closure or prohibition. It was also accompanied by intimidation and threats to the victim to stop worship activities. This occurs in all cases, where the pressure mobile towards the local government and intimidation or threats against the victim were the

<sup>2</sup> Statement of hatred towards other groups, whether its religion, belief, ethnicity, race and so on by groups or individuals.

same pattern. The sound of mass then had been become the basis for the local government to make a policy of the activities banning or the closure of worship places, as happened in the case of padlocking of Al Misbah Mosque, and the dismantling of the HKBP of Taman Sari.

In some occurrence of the violence, local police seem less anticipate the occurrence of the violence and do not give protection. Police instead engaged in an attempt of Intimidation and the Criminalization to the Victims, as happened in the event of attacks on The HKBP of Philadelphia Church Congregations on December 24, 2012. In addition, the Legal Apparatus did less serious actions against the perpetrators of the violence. The judicial process was only done against the field perpetrators without searching for the main actors who govern the attack.

There is a similarity perpetrators profile of violence or discrimination against minority groups. Usually the abuser is a figure or head of a religious group, or a paramilitary organization on behalf of religion by involving common people who are provoked. In their action, the perpetrators' action is supported by the discriminatory attitude of the bureaucracy and legal apparatus. In the case of the Church of Saint Stanislaus Kostka, Kranggan Bekasi, the church leader thus did discrimination through reporting to police in Polres of Bekasi City. Various motives which influenced the violence is not entirely related to the ideological or religiosity. Violent acts are more influenced by a combination of economic, power, and politics motives at the local and national levels.

From the pattern of the offences, it is illustrated that attack does not occur suddenly, but through a process of acceleration of hatred that is not immediately dealt with by the state. Starting from the statements of hate, then increased to mass mobilization and legalization through policies to eventually culminate in a physically assaults against minorities. Such situations occur because of the passive attitude of the state and even tend to facilitate the occurrence of the violence.

Hate speech is a criminal action under Article 156 of the Criminal Code and included in the category of crimes against public order. However, the law enforcement officers do not firm the provision of article.

In some cases of religion and belief freedom violation, the authorities in this case Minister of Religious Affairs Suryadharma Ali issued a statement thus legitimize violent behavior against the minority group in the country, and it is contrary to the Constitution. For example, in his statement during a talk at the boarding schools Daarut Tawheed Sampang, Wednesday July 24, 2013, Suryadharma Ali invited ulama of Madura to keep being patient embracing and inviting Da'wah of repentance to the Shia Sampang followers. Besides, in a dialogue among believers in Central Java on last 11 November 2011, Suryadharma Ali issued an unconstitutional statement, saying that harmony between people of religion in Indonesia is often stained by the presence of other religions that resemble religions established



in Indonesia.

According to him, to realize harmony between believers in Indonesia, things can be done are by the Ahmadiyya Congregations combat or the Declaration of the Ahmadiyya as a new religion. Even on May 20, 2013, at the Grand Mosque in Tasikmalaya Regency, Suryadharma Ali witnessed the pledge out of the Ahmadiyya by Ahmadiyya congregations through the process of reading two sentences of creed and signing the oath of the promise of the Ahmadiyya congregations originally from Sub-district of Salawu, Tasikmalaya Regency. The presence of Suryadharma Ali showed his serious intent to ask the Admadiyya congregations to move or change their beliefs that endanger and threaten the nation's disintegration. Actions and remarks made by Suryadharma Ali as Minister (State officials) were actions of coercion. Moreover, they were done in a structured, systematic and widespread. Then, the impact would be very dangerous to the harmony and guarantee of the protection to the Freedom of Religion or Belief.

### **3.6. Advocacy to fight the religious freedom: Mentoring to the victim, Paralegal education, policy changes and case documentation**

Since the year 2012 to 2013, LBH of Jakarta has a program promoting pluralism and the freedom of religion and belief in Indonesia through the submission of a bill on Religious Freedom and Paralegal Development as well as the expansion of community support. The program has four (4) agendas. First, advocating a bill of religious freedom version of civil society. Previously Draft of Law of Religious Harmony circulated; we got it from the House. Nevertheless, it it precisely such draft was substantially harmful to religious harmony because it obviously potentially segregates and groups and the more religious groups. Second, expanding the network's advocacy of religious freedom and Belief and community-based organizations, religious community in Jabodetabek, by holding trainings – paralegals which has knowledge, advocacy skills and the principle of religious freedom. Third, mentoring the victims in cases of religion and belief freedom violations, whether they come directly to the LBH Jakarta, or otherwise, the Jakarta LBH comes to the victims along with other civil society Network. Fourth, do creative campaigns with freedom of religion themes and belief among the young people. The Program is implemented through the t-shirt creation competition that is campaigning religious freedom and belief and conduct the stage of religious freedom that involves the communities and people who care about the right to religion and belief freedom.



#### 4. FAIR AND HONEST TRIAL

Throughout the year 2013 LBH of Jakarta received 40 complaints concerning to the right to a fair and honest trial. From the 40 cases, eight cases were dealt with directly and nine cases have been continuing since the previous year up to 2013. Violations of the right to fair trial still range from cases of torture, arbitrary arrest and detention and violations of the right to legal assistance. In the case that dealt with LBH of Jakarta, perpetrators of violations of fair trial are law enforcement officers at every stage in the judicial process. Sequentially, the perpetrators of such offences are police (six cases), the public prosecutor (three cases), and judges (one case). Earlier in the justice and human rights report, LBH of Jakarta, police ranks by 2012 as a first offender that violates the right to clean, fair and honest judicial.

##### 4.1. The repeated and Institution Torture

The pattern of violations of the right to fair and honest judiciary in 2013 is in line with research conducted by LBH of Jakarta which reveal that torture was still very high mortality experienced by the suspects, including alleged child. In 2008, it was revealed that 76% of the suspects suffered torture during the interrogation process carried out by police and took place in police institutions in Jakarta (LBH of Jakarta, 2008: P37). It still happened in 2011 where it was revealed most 65% of suspects tortured during interrogation at Jakarta area, it was also even experienced by the suspect in Surabaya 97%, Makassar 67%, Lhoksumawe 86% and Banda Aceh 81.2%. Arbitrary torture and detention also occurred against the suspects.

In the 2012 study, it was uncover from the respondent of 100 people i.e. children who undergo the legal process in the period of January 2010-January 2012 who were arrested in Tangerang, Male Child Lapas Tangerang women's Prison and Pondok Bambu. The respondents admitted Police did the most torture for five areas of Jakarta when the arrest of torture 82%, torture at a time when the process of BAP 84%, and torture during detention 48%.

The victims' experience is a major consideration to determine whether torture occurred or not. Therefore, in this study, it is very important to write down the experience of the troubadours who are accused of murder in Cipulir area.

In the case of the Cipulir murder, the victim was a troubadour. This event is already covered in the capital medial and make the police very interested to catch the perpetrators quickly. Those who are most readily associated with this event were friends of victims who are mostly also as troubadours. Status as street children put the troubadours, who are identical with street children with behavior that is naughty and distorted, as an easy target as 'scapegoat' of the murders. There are six suspects and four of them were children. The suspects have been experiencing tortured since the arrests. During the process in the police station, the defendant was hit, kicked, even stung by the police for the sake of getting the suspect's confession.



The troubadours were suspected, were arrested, and were detained without enough evidences. The police thus made the troubadours confession as the primary evidence. The troubadours were forced to plead because they could not bear the torture carried out by the police. The recognition was the main evidence to process the case and it brings the troubadours to the court. One of the troubadours associate to LBH of Jakarta complained the events. At the time LBH of Jakarta assisted, the process of investigation was already underway and revealed that in the process of BAP the suspects were not assisted by legal advisor. Parents or the Bapas officer even did not assist the suspect's children.

In the process of investigation, the LBH Jakarta Team managed to find the real perpetrator who was willing to admit what he had done to the investigators. Nevertheless, investigators of the Polres of West Jakarta rejected to investigate without any apparent reason.

Unfortunately, the judge in the trial used the confession obtained by means of torture. Even when the suspects had deprived his confession in the hearing, judges still rested on the BAP made by police, used the witnesses of the testimonium de auditu (not the witness), and verbalize witnesses (investigators).

The good news in the trial occurred in the case of HB handled by LBH Jakarta since 2012 till this year, the Central Jakarta District Court ruling to the Tribunal Judge of Cassation in MA stated the lawsuit to HB is not proven and HB is released. In the process of defense, LBH of Jakarta team stated to the tribunal judges concerning torture made by investigators to HB. These facts were then also become the considerations of the Tribunal judges. In addition to because during the trial, there is no sufficient evidence to convince the judge that HB is the culprit.

Torture occurs when there is not sufficient evidence. In those situations, the role of judges is very important to assess the truth of a means of proof and the offender's fault. A similar case also happened in the case of ADW, who were accused of the crime of fraud for not paying a debt. ADW also suffered torture during the interrogation process in Polres Tangerang city and so was forced to admit fraud charges. The judge of Tangerang PN then decided that ADW was guilty with imprisonment for two years. However, in the appeal process, the Tribunal Judge frees ADW.

Whereas in the case of a suspect which is handled since 2012 and still lasted till this year AT, et al (four people) were accused of a violation and were forced to confess by the investigators. In the process of BAP, parents, legal counsel or Bapas officers did not assist the suspect children. New parents even then were called to sign the BAP made by the police force.

A similar pattern also occurs in the case of Sry, et al (5) youngster suspects who were accused of a brawl. The suspects were tortured in the BAP process in order to make them confess it. During the process of BAP, parents, legal counsel or Bapas officers do not assist the suspect children. After the LBH Jakarta admitted as legal counsel,



police refused to give a copy of BAP requested by LBH Jakarta team.

From those five cases, there are similarities that perpetrators of torture were police, occurred in the process of interrogation, and conducted to obtain confessions from suspects. In all four cases, torture was also accompanied by violations of the suspect's right, including the right to be assisted by legal counsel and the right to get a copy of the docket since the beginning to prepare the defense. In case of suspected children, violation rights also include violations of the right for education during the legal process.

#### **4.2. Arbitrary detention in Criminalization Cases**

Arbitrary arrest and detention occur in cases of victim criminalization with inadequate evidence (case of cikini residents vs. Cikini Gold centre developer, Chairman of the Laborer Union vs. Management of PT. Afix Kogyo Sukabumi, Pensioner of Angkasa Pura vs PT Angkasa Pura, and Chairman of the Progressive Labor Union Sultoni).

In the case of Cikini residents vs Cikini Gold Centre Developer (PT MagnaTerra) arrests and detentions were carried out because the citizens were considered to do damage while sliding the building fence that blocks public access road to the citizens' settlement. Although the citizens showed the cooperative attitude to meet the calls of investigators and the fence construction remain continued, but Menteng Polsek remained detaining the citizens based on the report of PT Terra Magna filed the previous year. The citizens later were released after a series of press conferences conducted by LBH of Jakarta and Menteng Polsek reported to Propam and Komnas HAM on the criminalization acts. Until this article is written, things are unfinished and do not continue without apparent reason.

Arbitrary arrest and detention occurred against cases with inadequate evidence and weak legal basis to ensnare people. Therefore in the process of law enforcement, there is a debate about the punishment aspect in the suspect actions, such as in the case of the placement of the rumah dinas of PT Angkasa Pura by its pensioners. The weak evidence and legal basis to imprison the retirees, clearly seen in the trial proceedings, therefore the Tribunal Judges said that the defendants were free because the legal basis used by the public prosecutor is a law that is no longer valid.

It looks clear that the legal process in such cases was implemented. Whereas in the case of cikini citizens, after being arrested for 10 (ten) days, then freed and the case was unfinished at Polsek Menteng without continuation. Arbitrary arrest and detention occurs in a way no warrant of arrest, detention without requisite fulfillment, as well as violations of the rights of suspects during the period of detention, such as the right to be visited, ask the suspension within a certain period and rights to ask the witnesses that relieves.

Whereas in the case of Stn, Chairman of SP Progresip, reported by the company to the Polres of Bekasi city with unpleasant deed for leading workers' strike action. To this day, Stn remains a suspect but

there is no clarity regarding the continuation of the case. While the problem of the workers' rights violation that supported the strike is not resolved.

From the arbitrary arrest and detention cases, there is a common pattern in which the reporter is the company party that its importance is compromised, the legal basis used and intended to stop the protest actions of the suspect who is the key person in the community or the Laborer Union.

#### **4.3. Justice Delayed, Justice Denied: Undue Delay against the Victim Reports**

While on the other hand, victims who assisted by LBH of Jakarta is facing the problem of undue delay (unauthorized delay) when reporting the case. Even most cases are not followed up without any apparent reason. In the case of SR, who was accused of stealing based on witness perjury, complained the witness acts of perjury to the Polres of Depok after a court ruling that declared SR is not proven guilty and acquitted. However, up to a year since that report, there is no progress of any related reports of SR. For the remedy process, SR then sued Polek of Bojong to Depok PN and Cibinong Kejari over the torture acts and unauthorized detention, but The Judge rejected the SR lawsuit.

Likewise in the case of RY and ZS who reported a persecution against them, conducted by Lippo Supermall Security to Polek of Karawaci Tangerang. The reports were not followed up. The situation is different with the report by the company of workers or citizens assisted by LBH that led to the arrest and trial of the matter.

In cases where citizens' report was followed up, in the case of a traffic collision caused the victim's death (see Purwari case), families of the victims feel dissatisfied because their report was followed up without transparency which eventually led to the indictment and the light verdict against the doer i.e. in the form of imprisonment for 1 (one) year. Although the victim's family is not satisfied with the verdict, but victims do not have access to appeal against the ruling of the judge because the prosecution accepted the ruling of the verdict.

#### **4.4. Integrated Criminal Justice Advocacy: From Research, Public Education, Policy Changes and a Judgment Lawsuit**

LBH of Jakarta Research throughout 2005-2011 consistently indicated that high numbers of torture occurred when legal counsel did not assist suspects during the process of BAP and the detention. In 2006, LBH of Jakarta together the network Citizen Law Suit ever filed a lawsuit against the Government of Indonesia for failing to prevent the occurrence of torture. However, the lawsuit was declared inadmissible by the Country Courts since the non-governmental instance is considered has no legal standing as a plaintiff.

Addressing the absence of good faith of the government to remove torture, LBH of Jakarta decided to immediately conduct a step urged to reduce the torture that is by mentoring directly the suspects from

the beginning of the investigation. Although the scope of people who were assisted very limited, at least it can prevent torture occurred against the assisted suspects.

By 2013, LBH of Jakarta was supported by AIPJ and then designed the suspect assistance programs in criminal cases with structural no dimensional to reduce the numbers of torture. LBH of Jakarta recruited four criminal lawyers and six assistants of criminal attorneys specifically to assist the suspects-the defendant in legal proceedings. The assistance of BH case who is accused of libel in social media is a great entry point to encourage freedom of opinion and expression. Defense strategy is not only focus on the fulfillment of the right to legal assistance as a suspect but also encourages the removal of criminalization to community the right to freedom of assembly.

Assistance was done against the Jakarta LBH to the suspects or victims of criminal acts, not only in the form of legal assistance in a formal legal process. LBH of Jakarta is also active in campaigns to encourage the public to monitor the process of law enforcement. Monitoring the public is expected to be stabilizer in anticipate the arbitrariness of the law enforcement apparatus. Even the LBH of Jakarta also consolidated trial unfair victims as well as campaign through social media.

While the legal measures which were undertaken; conducted a series of investigations, to assist witnesses, pushed the LPSK to provide protection to witnesses who will unload cases of wrongful arrest and engineering cases, did the defense in the trial, reported the law enforcement officers who are not professional, and do the abusive power with a internal and external supervision. No wonder the handling of a criminal case in the LBH Jakarta a huge energy drain because it should also control the process monitoring, strengthening victims advocacy and in the same time.

In the approach of Structural Legal Aid, case handling is the gateway for policy changes. In cases of unfair trial, a number of facts are retrieved as a basis for encouraging the change of Criminal Code. LBH of Jakarta along with network of criminal code is actively encouraged a Criminal Code Draft of Law which limits the police authority to detain a person and the Criminal Code Draft of Law governs the Tribunal judges not to accept evidence obtained from the torture.

But this is precisely crucial issue, police showed their resistance and the discussion in the DPR is likely to be tough with the arrangement of DIM (Inventory List Problem) per fraction which is slowly. Passion to limit the police authority in the Criminal Code Draft of Law start to be seen by setting the preliminary examiner judges as authorized institutions permit detentions after the proceedings examination. In other parts of the Criminal Code Draft of Law however, this weakens the position of the suspects by providing settings about the release of suspects' right to obtain legal aid and filed for damages over forced unauthorized attempts.

#### 4.5. Recommendations

Based on the explanation regarding the enforcement of the right to honest and clean courts above, then a number of recommendations as follows are needed.

- Encourage advocates to undertake pro bono obligations to assist the suspects who could not afford it.
- The DPR (House of Representatives) needs to accelerate the discussion process of the Criminal Code Draft of Law in particular to reduce the police authority to detain a person without permission of the Court.
- The Government of the Republic of Indonesia soon to ratify the optional protocol of anti torture convention;
- MA (Supreme Court) needs to issue a regulation to the judge not to use evidence gained from a torture
- Kapolri (Indonesian Republic Police Chief) soon make rules related to internal mechanisms for resolving allegations of torture carried out by its members, including legal proceedings against members of the Police who commit the torture
- Prosecution Commission and Judicial Commission gave strict sanctions against the Prosecutors and Judges who violate the code of ethics;
- The young Attorney of Investigation field and the supervision field of MA (Supreme Court) clearly provide sanctions against Prosecutors and judges who broke the suspects' rights and banned the use of documents obtained from the torture.

#### 5. ENCOURAGE AND ESCORT LEGAL AID POLICY

Entitlement to legal aid becomes an important indicator in the fulfillment of the right to get a fair trial and justice for every citizen. The right to legal aid in Indonesia is not expressly stated in the constitution. However, that Indonesia is a country of law and holds the principle of equality of the law, making the legal aid entitlement as a constitutional right. To encourage the countries meet the responsibility of fulfilling the right to legal assistance since 2006 LBH of Jakarta along with a network of civil society pushed the government to publish the law on legal aid.

The government has responded communities' initiatives which was five years precisely on 2 November 2011; Act No. 16 of 2011 about legal aid was passed into a law protection for the various legal aid policies. The publication of a law 'quo quite give news that is blissful for the people especially the poor economically. Through the legal aid Law, the State made themselves to guarantee the obligation of the right fulfillment to legal aid for its citizens. Appreciation is worth to deliver, however, LBH of Jakarta also provides critical note against the publication and implementation of the legal aid Law contains various weaknesses. To correct these deficiencies, some advocacy done by LBH of Jakarta in order that legal aid law can provide extensive benefits for the community.

### **5.1. Follow the verification and accreditation: LBH Jakarta is accredited A**

Although it has been valid since 2011, a new legal aid law effectively implemented in 2013. The legislation instructs the process of Verification and Accreditation of legal aid Organizations as a requirement for the legal aid Organization to be able to be the provider of legal aid Services. As the initiator of policy, LBH of Jakarta is committed to follow the process verification and accreditation of a legal aid Organization. Jakarta institutions itself hopes to be able to be role models of legal aid organizations in Indonesia.

LBH of Jakarta has followed the verification and accreditation process carried out by the Ministry of Law and Human Rights (Kemenkumham). Based on Decision of Menkumham. No M.HH-02.HN. 0303 2013, LBH of Jakarta with nine other OBH escaped with other accreditation A. The result indicator refers to the number of cases dealt with at least one year for sixty cases, the amount of non-litigation legal aid programs at least seven programs and the number of advocates of at least ten people and a paralegal who owned at least ten people.

While following and observing the organization verification and accreditation process, legal aid, LBH of Jakarta argued that the process executed by government is problematic. Those problems were related to the following matters (1). The provisions of verification and accreditation were equalized for the legal aid Organization or a legal aid Organization in the campus as well as in the entire territory of Indonesia, (3). The implementation of Verification and Accreditation is carried out suddenly and not systematically; (4) does not provide a mechanism for complaints from the participants. Problems that arise are identified due to the implementation of the verification implemented by no participatory and responsive to the real situation in the field.

### **5.2. FGD of Legal Aid Law Advocacy**

To map the legal aid policy issues and encourage the widespread of advocacy in various parts of Indonesia, the Jakarta LBH with LBH of Papua, LBH of Makassar, LBH of Surabaya, LBH of Padang with legal aid advocacy Network (FOCUS), which concentrated on legal aid issues such as ILRC, PBHI, LKBH conducted FGD activities. These activities generate some mapping problems concerning legal aid policy and its implementation, including: (1) there is no harmonization of budget-related legislation, the procedures for providing legal aid, (2) Although there is a legal aid Law, the policy in area that responsively govern the extent of poor definition is still needed (legal aid Regional Rule), the improvement of verification and accreditation arrangements for expanding OBH that can provide legal aid services, and funding from APBD; (3) The need for monitoring and evaluation of the legal aid Law implementation through external scrutiny and control of the community; (4) The need for critical socialization

of legal aid Law to the community to encourage participation; (5) Judicial reform (abolishing pungli, transparency and accountability of matters cost in court, trim the duration of legal proceedings, an effective complaint mechanism) (6) The SPM (minimum service standard) and improving the quality and quantity of granting legal aid organizations and also the expansion (7) Required the autonomy and the consolidation of the legal aid organization to publish the Organization code of ethics granting legal aid (8) Required Paralegal accountability(8). Required strengthening of the perspective of human rights for law enforcement officials to foster the effectiveness and quality of legal aid services.

The FGD generate understanding that these problems should be resolved collectively to foster effective and qualified legal aid for the poor in Indonesia. Advocacy steps in national scope are stacked to answer the problem.

### **5.3. Research schemes and Channeling of Legal Aid Funds (Legal Aid Costing)**

Act No. 16 of 2011 about legal aid brings new hope for the enforcement of human rights in Indonesia, in particular open access to justice for the poor. LBH of Jakarta highly appreciates and welcomes the commitment of the state through the legal aid system. However, this system is not without its weakness. The allocation of the budget that is less responsive to the needs of the factual legal aid is a form of this system weakness. This weakness is identified as a result of a less participatory policy formulation and the lack of field research base.

Therefore, LBH of Jakarta seeks to supplement weaknesses of this system by doing research on the budgeting scheme and the mechanism of legal aid funding channeling in five areas in Indonesia, including Padang, Jakarta, Surabaya, Makassar and Jayapura. The research is conducted in cooperation with the LBH of Jakarta, Padang, Surabaya, Makassar, and Papua.

From May to September 2013 Team of LBH conducted a research on the schemes of legal aid funding implementation associated with the factual conditions that occurred. Research results are then written in 210 pages book entitled “Neraca Timpang Bagi si Miskin, Penelitian Skema dan Penyaluran Dana Bantuan Hukum di Lima Wilayah di Indonesia,” published on October 10, 2013.

From this research, we found variation in the amount of expenses required in the provision of legal aid, which some of them were influenced by the time and the geographical conditions of the area in the handling of a matter. Variation of the finance amount cannot be treated the same as governed in the legislation on legal aid.

The improperly use of legal aid funds in various government agencies became a part of the researcher’s findings that attracts the scrutiny and carefully controlled. Legal aid funds are ideally allocated for the public who are not capable; in fact, they are enjoyed and used for the defense of government officials or for safeguarding assets.

At the end of the book, the research team gave six recommendations to policy makers, including; (1) It unites legal aid in accordance with the legal aid Act so that legal aid program is integrated in accordance with the legal aid Act, including in terms of budget and allocation program that is only for the poor. (2) It considers that legal aid is also a public service then there needs to be a minimum service standard the granting of legal aid to improve the quality of legal aid services, (3). It includes the code of ethics for workers of legal aid. However, it can be effective if OBH across Indonesia increases its capacity so that the determination of the standard service really have an impact on improving services rather than just weaken the OBH and impede public access to justice. (4) It establishes a mechanism of the supervisory of the budget and the implementation of legal aid. Therefore, in the future legal aid held accountable. (5). Given the legal aid policy is still in the process of development, hence the authors must be responsive to accommodate situations in the field as presented in this research or based on research on other aspects. (6) Initiatives in areas in Indonesia should be developed as well to make local legal assistance applicable to complement national policies and expand the resources distribution to support the provision of legal aid.

#### **5.4. Expanding Information Access through a pocket book and news of LBH of Jakarta**

One of the legal aid policy issues is the lack of socialization. To erode the barriers of information access regarding legal aid policies to the wide community, LBH of Jakarta strives for disseminating the program of legal aid to the poor through legal aid pocket book publishing and news of LBH August-November 2013 that brings the Themes of legal aid for the poor. The expectation through the two of these publications, the public can find out important information regarding legal aid policy that is valid from this year.

The Pocket Book of Jakarta LBH presents a lot of information regarding requirements and procedures for obtaining free legal aid, the budget quantity allocated per case, anyone who is entitled to access the legal aid funding, any institution that can help, other important information such as the amount of the allocated State budget, information about the OBH who has passed the verification process and later can access legal aid funding in the DKI Jakarta region. Meanwhile, at the News of Jakarta LBH legal aid policy issues are peeled in depth for the poor from various viewpoints. With the information obtained, it is expected that the community can understand better the policy on legal aid gain the legal aid access easily.

#### **5.5. Advocacy of legal Aid Regional Rule in DKI Jakarta**

Legal aid from the government this time is specifically regulated in Act No. 16 of 2011 about legal aid. Philosophically, the form of this legal aid is given as the realization of the responsibilities and

obligations of states in the fulfillment of respect and protection of human rights and the constitutional rights of its citizens in particular rights at the same position within the law (equality before the law) which is set out in article 27 paragraph (1) of the Constitution.

The position equation in the law requires equality of access to justice for the whole community, hence for those who cannot afford or poor, the state provides legal aid services free of charge. This entirety is listed in the part considering Act No. 16 of 2011 about legal aid. Thus, it becomes clear there is a difference between legal aid provided by the State (legal aid) with the legal aid that becomes a logical consequence of the advocate's profession (*pro bono publico*).

To complement and support the conduct of legal aid organized by the government Article 19 paragraph (2) of the Legal Aid Law provides space in each region to establish Local Regulations (Perda).

- (1) *The area can allocate the budget for Legal Aid in APBD (Revenue Budget Expenditure Area).*
- (2) *Further provisions regarding the conduct of Legal Aid as referred to in subsection (1) is governed by local regulations.*

Construction of the provisions of article 19 above arises uncertainty for Local Governments. Whether the Legal Aid Law mandates Local Government to form local Regulations that govern the extent of "legal aid budget allocation in the APBD (Revenue Budget Expenditure Area)" or local governments may establish local regulations governing "conduct of Legal Aid" broadly in accordance with the uniqueness of each area's condition?

If it only govern things related to Legal Aid budget in APBD (Revenue Budget Expenditure Area), it is truly unfortunate. Legal aid in legal aid Act is still very limited in scope; by limiting local regulations govern only limited budget will cover opportunities for expanding the scope of legal aid access itself. It is Very possible that there is a setting in the form of local regulations that the contents ideally complement the arrangements related to the legal aid implementation in the legal aid Law and not even contradictory. Local regulations that govern the conduct of legal aid is widely can sharpen regulations contained in the legal aid Law mainly to expand the fulfillment of the state responsibilities in granting legal aid access to many more Indonesian citizens.

LBH Jakarta is currently encouraging local Government of DKI Jakarta to establish legal aid local regulation immediately in order that community access to legal aid in the region of DKI Jakarta increasingly wide open. Of course Jakarta LBH encourages that DKI Jakarta local government does not only establish a local regulation governing related to budget allocations but also governs the related expansion of legal aid from the legal aid law.

After encouraging the establishment of legal aid local regulation, then the Government of DKI Jakarta invites LBH of Jakarta to be a part of the Team Preparing the Draft of Legal Aid Local Regulation. The team is composed of various elements, such as the provincial

Government of DKI Jakarta law firm, law firm of five (5) areas of the city in Jakarta, Kemenkumham, and others.

But unfortunately since the beginning of the meeting, the draft created by the regional law firm expert staff had been circulated. LBH of Jakarta gives a note that the arrangement of the legal aid local regulation draft must not be perfunctory. It means that it must comply with the existing procedure, as provided for in the regulation of the Minister of Internal Affairs of Republic Indonesia Number 40 of the year 2011 on the establishment of Regional Legal Regulatory Products and DKI Jakarta Provincial Government Regulation No. 112 in 2012, specifically requires the presence of an Academic Paper. Thus, it can guarantee that these local regulations were formed in accordance by having: (a) background and purpose of the arrangement; (b) objectives to be realized; (c) the subject matter, scope, or object to be governed; and (d) range and direction setting. In addition, this academic paper will provide clarity regarding the study of theoretical and empirical practice and philosophical grounding, sociological and juridical of a local regulation.

In addition, the establishment of a good local regulation should also be based on the principle of legislation rule contained in the provisions of article 5 of Act No. 12 year 2011 about the Legislation Rule Establishment – in this case Local Regulation are as follows:

- a. **The clarity of purpose**, i.e. that each establishment of the legislation rule must have the clear objective to achieve.
- b. **Proper institutional or organization-establisher**, i.e. any kind of legislation must be made by the institutions/officials establishing legislation that authorize and may be cancelled or annulled by law when made by unauthorized agencies/officials.
- c. **The conformity between the type and material of the content**, i.e. the establishment of legislation should really pay attention to the proper content material with the type of legislation.
- d. **Can be implemented**, i.e. that any legislation establishment should pay attention to the effectiveness of such legislation within the community, whether philosophical, juridical and sociological.
- e. **The capacity and the outcome**, i.e. any legislation is made because it is truly necessary and beneficial in regulating the life of socialization, a nation and a country.
- f. **The clarity of formulation**, i.e. any legislation must meet the technical requirements of drafting, systematic and the choice of words or terminology, as well as the language of the law is clear and easy to understand so it will not rise various interpretations in practice.
- g. **The openness**, which is in the process of legislation establishing starting from the planning, preparation, drafting and discussion, is transparent and open.

Without the fulfillment of the principle of the local regulations and procedural rules establishment of the establishment process as

described above will have an impact on the unbeneficial of local regulation itself in the end. The establishment of Perda is just going to be the business of local governance, since it would spend the local budget that in fact is the people's money for something vain and unbeneficial to Jakarta community. LBH of Jakarta clearly rejects the establishment of a legal aid local regulation that flawed of the procedural such this.

LBH of Jakarta encourages that Academic Paper exists in advance and should also pass the public consultation test. The involvement of the whole and the existence of the stakeholders in Jakarta city as officers/officials of the special area work at legal aid at the provinces level, Legal Aid Organizations, Civil Society Organizations, academics, and others are also important to be guaranteed in the process of the establishment of Legal Aid Local Regulation of DKI Jakarta provincial.

Compliance and adherence to establishment of Legal Aid Local Regulation of DKI Jakarta Provincial in procedures that have been determined by legislation, is the first step for the fulfillment of the Jakarta city residents' rights which substantially that is the access to legal aid.



# INSTITUTIONAL REPORTS

## 1. REGENERATION OF LEGAL AID OFFICIAL

2012-2013 services of Public Interest Lawyer Assistants ended on June 2013. According to the succession system of LBH Jakarta, the period assistant of 2012-2013 that is a year of apprenticeship and serve as public interest lawyers assistant will then be replaced by public interest lawyers assistants of 2013-2014 who were elected in recruitment. Here are the names of the Public Attorney Assistant (APP) LBH of Jakarta in the period of 2013-2014: Agung Sugiarto, M Adzkar Arifian Nugroho (Univ. of 11 Maret), Akhmad Zaenuddin (Univ. Bung Karno), Arsa Mufti, Hardiono Iskandar Setiawan, Ichsan Zikry (Univ. Indonesia), Azrina Darwis (Univ. Hasanudin Makasar), Eka Saputra (Univ. of Trisakti), Jane Aileen Tedjaseputra (Univ. Atmajaya, Jakarta), Rambo Cronika Tampubolon (Tamajagakarsa Univ.), Revan Timbul H Tambunan (Lampung State Univ.), Verawati BR Tompul (Univ. Krisnadwipayana), Veronika Koman (Univ. Pelita Harapan), Wirdan Fauzi (Univ. Of Pancasila).

In addition to the releasing of public lawyer assistants who have served for a period of one year and receive new public interest lawyer assistants, on June 26, 2013, LBH Jakarta appointed four new public interest lawyers namely Atika Yuanita Paraswaty, S.H., M.H., Eny Rofiatul, S.H., Johanes Gea, S.H., and Tigor Gempita Hutapea, S.H. Later on 11 July 2013 also inducted Rahmawati Putri, S.H. and Nelson Nikodemus Simamora, S.H. as public interest lawyers of LBH Jakarta. They are all former Public Interest Lawyer Assistants that pass the selection of public interest lawyer recruitment of Jakarta LBH by 2013. The six new public interest lawyers increased the number of lawyers of LBH Jakarta became 17 people. The expectation with the increasing of public interest lawyer is that the quality and performance of the legal aid service of the LBH Jakarta to the community will increase. The following is the public interest lawyer Profile (PP):

1. Atika Yuanita Paraswaty, S.H. , M.H. is an alumnus of 2010 and APP Kalabahu 2010-2011. He earned his law degree from Trisakti University, then she went on graduate study at the University of Indonesia in the field of Criminal Law. Atika is currently strengthening the Field of Case Handling.
2. Eny Rofiatul, S.H. is an alumnus of 2012 and APP Kalabahu 2012-2013. Eny finished her under graduate study in the Faculty of Law, University of Indonesia and is currently serving in the field of Research and Development.
3. Johanes Gea, S.H. joined Kalabahu in 2011, and became APP

2012-2013. He is a graduate of the Faculty of Law, University of Indonesia. He is currently working in the field of Case Management.

4. Tigor Gempita Hutapea, S.H. joining as a Public Defender after joining Kalabahu 2012 and became APP in 2012-2013. Tigor is a graduate of the Faculty of Law, University of Indonesia Christian. Tigor currently working in the field of Community Legal Resource Development (PSDHM).
5. Rachmawati Putri, S.H. is a graduate of the Faculty of Law, University of Indonesia who joined Kalabahu in 2012, and became APP 2012-2013. Currently Rahma is strengthening the field of Case Management LBH Jakarta.
6. Nelson Nicodemus Simamora, S.H. into APP in 2012-2013 after joining Kalabahu 2012. Nelson completed his under graduate study at the Faculty of Law, University of North Sumatra. Nelson is currently working in the field of Case Management .

In addition to introducing the attorney assistant and new public lawyers above, LBH of Jakarta is also releasing some public lawyers public of Jakarta LBH. By the end of August, two Public Lawyers, Tommy Albert Tobing, S.H. and Yunita Purnama, S.H., will temporarily leave their service in LBH of Jakarta. Tommy Albert Tobing should take the process of internship in Patani, Thailand for one year within the framework of Fredskorpset Norway (FK) program. Meanwhile, Yunita Purnama continued her study to United States to deepen Clinical Legal Education at Washington University. Both will be back after 1 year with new science and experience to strengthen the advocacy of Human Rights struggles back performed by LBH of Jakarta. Besides releasing two public lawyers temporarily, LBH of Jakarta should also release Sidik, S.H.I, and Sudiyanti, S.H., who resigned. LBH of Jakarta hoped that the Human Rights perspective, knowledge and experience they get during in the LBH of Jakarta could remain be a guiding principle in the continuation of their career in the future. (Jane Aileen)

## **2. CAPACITY BUILDING**

### **2.1. Public Interest Lawyer**

#### **a. Eny Rofiatul Ngazizah**

LBH Jakarta Public Defender who joined since August 2013 has been followed several capacity building activities throughout the year 2013, including :

1. Training on International Refugee Law and UNHCR 's Mandate for Civil Society Organization in Indonesia on 13-14 September 2013. Training aims to improve understanding of the issues of asylum seekers and refugees, as well as principles of international protection to CSOs so that they have a contribution in advocating the case of refugees held by UNHCR, LBH Jakarta and HRWG;

2. Special Education Profession Advocate ( PKPA ) held on 16 to 27 September 2013;
3. National Workshop on “Freedom of Religion and Belief Networks” held on 11 September 2013;
4. Jakarta Conference on “Regional Cooperation on International Migration”, Mobility and Best Practices on Migration and Development in South East Asia which, held on August 29, 2013;
5. Documentary Video Production Training for Advocacy Campaigns held on 30,31 August and 2 September 2013 at the Library of Daniel S. Lev .

#### **b. Ahmad Biky**

During the year 2013 following the one-time capacity-building activity, SAKTI (Schools Against Corruption) organized by ICW(Indonesia Corruption Watch ) on the date of June 24 to July 4, 2013. SAKTI intended that the participants know the instrument of anti-corruption and corrupt practices in various sectors, able using the anti-corruption instruments and specialized expertise in conducting eradication of corruption, and able to investigate and advocate the eradication of corruption. In short, the participants of SAKTI were prepared to be the new agents of anti-corruption.

#### **c. Arif Maulana**

LBH Jakarta Public Interest Lawyer who joined since February 2012 has been followed several capacity building activities throughout the year 2013 , including :

1. Case Summary Training : Develop Case Analysis and Summary of Cases of Human Rights Advocacy in the Inner and Outer Court . Training held by LBH Jakarta with ABA support Roli, held at Wisma PGI on 30th October - 1 November 2013;
2. Training of International Refugees and UNHCR Mandate for Community Civil Society in Indonesia, held on 13-14 September 2013 and at Grand Cypress Menteng, Central Jakarta, organized by LBH Jakarta and HRWG in cooperation with UNHCR . This training aims to provide the basic knowledge and understanding of the members of the community / civil society human rights activists on the protection of refugees and refugee protection mechanisms in the latest in Indonesia;
3. Attended Mekong Legal Networking (MLN) Meeting, Chiang Mai, Thailand, 8-10 November 2013. It was the regular meeting of lawyers in the region of the Mekong river which flowed along Thailand, Myanmar, Laos, Cambodia, Vietnam, and China, which joined in a network of Mekong Legal networking lawyers. The event, which was held in Chiang Mai Thailand on 8-10 November 2013 with the support of Eart Right International (ERI). ERI was designed as a network of lawyers meeting of the Mekong, as a means for experience sharing and knowledge handling in environmental cases, particularly

the cases of transnational environmental pollution related to the Mekong river. LBH Jakarta was invited as a guest speaker to share experiences on advocacy on ASEAN human rights mechanism and opportunities for the use of such mechanisms for human rights advocacy in the ASEAN region.

**d. Atika Yuanita Paraswaty**

Public Interest Lawyer who joined LBH Jakarta in early 2013, in the development process she has joined some capacity trainings: Capacity Building Workshop: ATD Projects and Case Management Systems on August 29 to 30, 2013, organized by The International Detention Coalition (IDC) and the Asian Pacific Refugee Rights Network (APRRN). It discussed the need for alternatives to immigration detention centers for asylum seekers put and /or refugees, provided an overview of the state of detention in several countries, such as Australia, Indonesia, Malaysia, and Submission of the lawyer's role in handling refugees.

**2.2. General staff**

**Wulan Purnama Sari and T Sri Haryanti**

Wulan and Yanti joined Management Training "Course Archive Event / Project" for NGOs organized by Ruang Pustaka in cooperation with the Department of Information Management and Documentation of Vocational UI. This training is devoted to Governmental Organization (NGO) whose activities are based on the program. Recorded and documented archive is used as a collective memory and history of the organization.

**2.3. Assistant of Public Interest Lawyer**

**a. Revan T. Hamonangan Tambunan**

During his time as an assistant public defender in LBH Jakarta, Revan joined a training on International Refugee Law and UNHCR's Mandate for Civil Society Organization in Indonesia organized by the UNHCR, in collaboration with LBH Jakarta and HRWG.

**b. Hardiono Iskandar Setiawan**

Capacity development programs that have been undertaken by Hardi for becoming an assistant public defender in LBH Jakarta, were:

1. Education and Labour Law Advocacy Federation of Indonesian Pulp and Paper (FSP2KI) on August 24, 2013. This training aims to increase the understanding of the workers of their rights;
2. Human Rights and Conflict Resolution Training Detachment 88 on 27-29 August 2013. Training aims to improve the understanding of the members of the Special Detachment 88 on human rights in order not to violate human rights in their duties.

**c. Wirdan Fauzi**

As long as becoming the Assistant of Public Interest Lawyer, Wirdan was opportunate to join the Special Education Profession Advocate (PKPA) PERADI - YLBHI - AIPJ on October 1 to 11, 2013.

#### **d. Rambo Cronika Tampubolon**

As long as becoming the Assistant Public Defender, Rambo had the opportunity to join two capacity building activities including:

1. Training on International Refugee Law and UNHCR 's Mandate for Civil Society Organization in Indonesia on 13-14 September 2013. The training was a collaboration of UNHCR, LBH Jakarta and HRWG ;
2. Discussion of Participatory Development Action Research ( PAR ) on October 7, 2013 .

#### **e. Veronica Koman**

During her time as an assistant public defender in LBH Jakarta, Vero joined two capacity building activities, including :

1. Training on International Refugee Law and UNHCR's Mandate for Civil Society Organization in Indonesia organized by the UNHCR, in collaboration with LBH Jakarta and HRWG;
2. Special Education Profession Advocate ( PKPA ) that was held on 16 to 27 September 2013.

#### **f. Jane Aileen Tedjaseputra**

During her time as an assistant public defender in LBH Jakarta , Jane joined two capacity building activities, including :

1. Southeast Asian Legal Advocacy Training on 15-17 July 2013. Training is to discuss the ASEAN human rights system, and international human rights aims to encourage participants actively engaged in ASEAN human rights advocacy and also established a network of lawyers in Southeast Asia;
2. Special Education Profession Advocate (PKPA) PBHI - PERADI organized by the Association of Legal Aid and Human Rights of Indonesia (PBHI) and PERADI .
3. LEGAL AID DOCUMENTATION CENTRE OF LBH OF JAKARTA: Rescue the Collective Memory, Strengthens the Legal Aid Movement

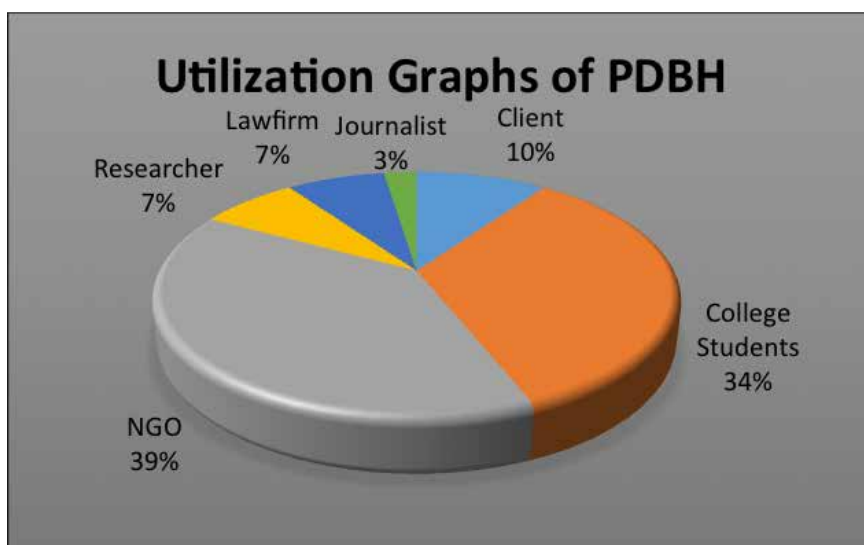
### **3.1. Legal Aid Documentation Center**

Documentation center of legal aid (PDBH) of Jakarta LBH initially named the Jakarta legal aid Institute Library that functions as a supporting system of internal organization in providing legal aid services to the community, particularly in the area of Jabodetabek.

Along with its development, documentation center of legal aid (PDBH) LBH of Jakarta then open access to the public in order to make use of other sources of available information, especially about legal aid. This is due to the increasing public demand for legal cases documents handled by LBH of Jakarta some of which later became

the referral source for the development of law in Indonesia, both by other institutions, legal practitioners, researchers, academics, students, and the general public.

Documentation center of legal aid (PDBH) LBH of Jakarta is currently more focusing on data that raise the institution priority issues such as, legal assistance, labor, Urban Communities, and violations of civil and political rights.



### 3.2. Library as Learning Resources

A library becomes an integral part that supports the legal aid service activities. The existence of libraries that inherent its parent organizations becomes a learning resource for the public attorney, public attorney assistant and the entire staff of the Jakarta LBH in particular and society in general.

When we visit the library, the reading interest cultural will rise. Thus, visitors either internal staff of Jakarta LBH nor the public have been able to make use of the library as a source of information, a place to learn to have more insight and knowledge, get to know the history and variety of information for the benefit of advocacy, research, advocacy interest even the education interests.

For example, clients who are common to the law visit the LBH of Jakarta library seeking information, both the law as well as other references related to a case that is being faced with, then the client has made use of the library as a learning resource, an information source and increasing knowledge about a problem. If this awareness emerges in any society, of course the ideals of society as a society of learning (learning society) can be formed.

#### a. rocessing of Collections

Since the year 2012, the library focuses more on the issue of legal aid regarding the work scope of Jakarta LBH in the legal aid services for the poor, law illiterate and downtrodden.

The collection owned by the library currently is listed in the catalogs for 4420 collections that have been processed. This data has been undergoing reduction, since the previous year the number of collection of over 5000 copies. This reduction occurred because of the weeding/shrinkage of the no longer up to date collection to be

used and stored.

The types of collection available in the library are two categories, namely book collection and non-book collections.

1. Book Collection

It consists of books, research reports, papers, academic papers, and published series. It includes reference collections or also usually called reference materials, and public collections.

2. Non-Book Collection

It includes clippings, photographs and audio-visual that most of which documented from the activities result undertaken by LBH of Jakarta.

In terms of library collection procurement, the library conducts addition with the purchase, requests and donations from other institutions. Book purchases this year focused on the science of law books and legal assistance, in accordance with the work plan year of 2012. There is only 1 (one) publication procurement series 2013, that is “Tempo” magazine subscribed per year. While “Time” magazine subscribed the previous year is stopped because it refers to the information need of Jakarta LBH in local and national level.

#### **b. Utilization of Technology**

The library collections processing becomes easier with the development of information technology. Starting early in 2008 the Jakarta LBH library database system switch to use the Senayan Library Information Management system (SliMS), a library management system software open source.

This application supports the library processing both the label manufacture and barcode automatically. Service of collection recall becomes easier since it is supported by the membership system and borrowing service automatically accompanied by the remainder that is connected to email.

Online Public Access Catalog (OPAC) in addition to local network can also be opened through online media with the address <http://perpustakaan.bantuanhukum.or.id/>. Thus the services utilization of some of the library’s collections, in particular the issue of LBH of Jakarta is already in control of the media in the form of an electronic file is able to do remotely. While the collection of documents for the processing of photos, clippings, audio visual, and letters, some other Office documents using the software database as Alfresco. Alfresco is used as a Document Management System (DMS), which allows the institution to have a centralized internal data, can be accessed offline using the user-level with minimal cost. As with any SliMS, Alfresco’s open source is currently in use (open source).

### **3.3. Revitalizing Archive: Saving the Organization’s Collective Memory**

In addition to the information contained in the library, LBH of Jakarta as the oldest institution that provides legal aid and the first in

Indonesia has been conducting the work of the legal aid advocacy to the society with ±1000 cases per-year.

Some cases handled LBH of Jakarta are often sticking out into a historic and important case used as a reference by other parties. This is a proof that the LBH of Jakarta play an important role in providing sources of legal aid information, e.g. Eviction of Taman Mini, pedicab, the case of the PRD, the events of 27 July 1997, the national exam, etc.

In addition to the document that contains the history value in the development of Jakarta city, the documentation center of legal aid also stores lawsuit document citizen law suits (CLS) Nunukan, first conducted by LBH of Jakarta. The lawsuit went on to become a law breakthrough considering the mechanism of citizen lawsuit does not yet exist in the rule of law in Indonesia, so it becomes a milestone of the received CLS lawsuit mechanism. Realizing the importance of case documentation owned by LBH of Jakarta, then the legal aid documentation center is trying to participate in spreading the structural legal aid movement by conducting the revamping of its case documentation.

2013 is the best moment for the legal aid documentation center in doing revitalization of legal aid case owned since the 1970s. Considering the physical archive of cases began to fall for the ages, hence the legal aid documentation center began doing some activities to save the information and history contained in it. Such activities include re-organization of the document, shift of the media or the digitalization and build Integrated Case Information Systems.

#### **a. Re-organizing Documents**

The increasing number of complaints received by LBH of Jakarta every year result in getting a large number of cases documentation that go to the legal aid document. This has not been balanced with the management system, space and adequate storage facilities, which lead to the difficulty of the document recalling, the incompleteness of document, damaged due to age or eaten by termites.

With these problems then starting from August 2013 LBH of Jakarta started to make policies about the record management system (RMS) it is the system of management record keeping, particularly for the case documents. The system then became a guide in conducting re-organization of the case documents.

Re-organization of the document includes the cases/inventory logging process, historic case selection and reordering files. Document re-organization conducted by grouping the case files based on the year the file created, the case subject, and the clients' and case's name.

The case document logging conducted in the database of case information system built and integrated with the admission of complaint, law consulting and handling. The process of document re-organization is still in progress currently, it is expected on the third month by 2014 these activities have been completed. This activity is conducted due to the cooperation of LBH of Jakarta with AIPJ (the Australia Indonesia Partnership for Justice) and TAF (The Asia

Foundation).

### **b. Media Switching/Digitization**

The storage space that is increasingly full causes case documents continue to pile up, whereas the document physical condition above the 30-year-old getting more fragile and some had been eaten by termites. It becomes a quite serious problems for the LBH of Jakarta to quickly save the information contained in the case documents, especially the high historical value.

The media switching activities are carried out by inviting the second party because of the consideration that the numbers of human resources are minimal in the legal aid document center. Media switching is done by prioritizing the type of cases, and cases that have been documented completely. The policy of media switching capture uses the national archives standard, i.e. 300 dpi (dot per inch). While the results of the capture it is now still being stored as a file name, such as a lawsuit, replik, duplik, verdict, appeal, and others contained in the folder name of the case.

In the early stages of this media switching, legal aid documentation center has had 143 thousand sheets of case documents in digital form that established in 1437 folders. 247 folders contain documents that still have to be kept, and 1190 folders are documents entered a period of retention in accordance with the Archive Retention Schedule of the law document is 30 years old. The results of the media switching will be included in the storage database contained in Case information system. The next step of media switching will be done by the documentation center of legal aid on its self.

### **c. Integrated Case Information System (SIK)**

In line with the re-organization and digitization of documents, no less important when in a case document management it needs a database that is able to integrate in any activities. This intended integrated document management as a continuous process (continuum model) which includes the creation of dynamic archives (records) to be static archival (archives).

The Model views the need to manage documents from the perspective of the recorded activities. Continuous models (continuum) view the document management as a question type, what document that need to be retrieved to show evidence of an activity, what systems and regulations are needed to acquire and organize documents, how long documents should be maintained to assist the activities of the organization and other purposes, how to keep it, and who is entitled to access it.

Based on the above purposes, LBH of Jakarta as organization that generate thousands of case documents each year will need to build a database corresponding to those needs. Formerly LBH of Jakarta has a database of cases, but due to the technical constraints, the database cannot be used again. It is need to consider the risk management matter to minimize the incident earlier.

The Case Information System application development is integrated in the acceptance activities of the complaint/registration i.e. from the completion of a complaint form that may be made by the receptionist of the Jakarta LBH or done by the client of the complainant his/herself. The results of the form completing that has been approved by the complainant will get a registration number by the registration desk officer. After the lawyer on duty receives the form, then the distribution is done to the lawyer and attorney assistant to be learnt and then the process of consultation is conducted.

In the consultation, the attorney can directly open the identity and the problems faced by the complainant in the consulting room that has been provided a computer at every desk. Lawyers can directly write down suggestions and actions recommended to the complainant. The result of the registration acceptance and the consultation activities directly stored in the database of Case Information System located in legal aid documentation center, to be completed later with supporting documents in the media switching/digital files.

With the establishment of an integrated system as above, the expectation by 2014 is that LBH of Jakarta can already use the Case Information System in the operational activities of the case handling. Similarly, the system will respond to the needs of the legal aid documentation center in conducting the case document management and more optimally used by the public to support the expanding legal aid movement.



# CONCLUSIONS AND RECOMMENDATIONS

## CONCLUSION

In 2013, cases, which were dealt with by LBH tended to increase, compared to the year 2012. In 2012, LBH of Jakarta received 917 complaints directly with the number of justice seekers for 28.693 people while this year, LBH of Jakarta received 1.001 complaints with 28.528 justice seekers. The magnitude of the numbers seeking shows that the right violations in one case have an impact on the large number of casualties.

Cases that sued in 2013, were dominated by employment cases followed by a case of urban and Urban Communities and cases of sipol rights relating to the judiciary that is honest and fair. In addition to the cases above, LBH of Jakarta received complaints of women and children cases, the family case is also a public consultation that complained by the community related to General Criminal, Special Criminal, Civil, other/Non, and Special.

Advocacy cases handled by LBH of Jakarta during 2013 show an illustration of the worsening situation of the law enforcement and human rights in Indonesia. The law and human rights has not yet enforced because of the excuse and failing of the state role to be active in the improvement, protection and fulfillment of Human Rights. It is increasingly resulting in violation of the law and human rights remain to be repeated. It gets worse, even in the case trend by 2013, the country through their apparatus play an active role in strengthening human rights violations through policy and court rulings. This is clearly reflected in various violations of rights that occur in cases handled by LBH of Jakarta.

Labor rights violations remain repeating as in previous years, namely range in freedom violation of of association, normative rights violations in the working relationship and illegal layoff, infringing big day subsidy (Tunjangan Hari Raya) as well as a prominent case in the year that is the wage suspension case that against the law and successfully resisted by labor. The offence without law enforcement resulted in employers to have such impunity and continue to repeat the offense.

While in the case of urban and Urban Communities dominated by cases of land rights and the housing rights, businesses and the economy as well as cases related to violations of the right of health. Eviction cases on behalf of the public interest and the importance of the investment as well as the bad public services especially transport and health became cases of PMU that stuck out. The strengthening

of privatization and militarism regime marks the above case rising.

The cases of religion and belief freedom violations were marked by continued violations with a recurring violation pattern trend. Intimidation, assault, statement of hatred (hate speech), banning the worship, legalization of minority religion and beliefs discrimination is still coloring the various situation in Indonesia. This situation shows that in case of religion and belief freedom rights violation, the state did not only fail to provide protection and fulfillment of Human Rights for religious minority in Indonesia but is also actively involved in the violation of the citizens' rights.

On the other hand, in the case of Fair Trial complained to the LBH also shows to the fact situation bad repetition systematic violation of rights and challenges. Violations of the right for a fair and honest trial still ranges from cases of arbitrary arrest torture, arbitrary arrest and detention, Undue Delay against the victim, as well as reports of legal aid right violations.

Entitlement to legal aid even though it has acquired protection through legal aid law still leaves the question. Weaknesses of the policy and the implementation that less participative become barriers to satisfy the right for legal aid to vulnerable communities in Indonesia. The above facts show recurrent and increasing quality of human rights violations over the years, this is indicated by a pattern of individual rights violations that get more systematic and gain the legitimacy of law.

However, behind the strange situation above, there is a number of learning that can be taken. Education and organizing civil society shows the positive impact to encourage the community to change the policy, aware of and fight for her rights. This is reflected in the case of workers' lawsuit against the suspension of wages, the eviction of the station vendors, economy train passenger, and in the case of eviction experienced by residents of Petukangan and Budidarma. Public service improvement expectations born from a leader of the pro people, the emergence of eviction that uses humanity approach with communication and solution based become the alternative to the eviction policy practice that has the perspective of human rights. In an infringement of religion and belief freedom, the provincial Government of DKI Jakarta gives one interesting example of how the country should be the main actor that active in the religion and belief freedom violation cases settlement in Indonesia. In such cases, the Governor of DKI Jakarta, Joko Widodo, directly resolved, conducted conflict resolution and conducted deliberations with the warring parties related to the Church of Damai Kristus Paroki Kampung Duri – West Jakarta. After this quick attempt, intimidation and threats to the Church openly diminished.

## **RECOMMENDATIONS**

Based on the situation of law and human rights violations in 2013, LBH Jakarta recommended the need for a systematic change in the level of policy and its implementation which is structured around the

following cases approach:

#### **Labour case**

1. Formed the Police Special Unit Labour to focus labor dismantle criminal offense, soon ;
2. Government ( Law Enforcement Officers ) should be enforcing the law against employers who laid off before any decision of the labor court . During the legal process all parties including workers and employers should exercise the rights and obligations of each;
3. Government ( Law Enforcement Officers ) have to do with law enforcement on companies who violate the basic rights undertaken by the company;
4. The Local Government should establish complaint mechanisms over public dissatisfaction and discontent over the performance of the Department of Manpower and Transmigration and take action against employees who do not perform their duties properly

#### **Case of Urban and Urban Society**

1. The top to bottom Apparatus of government bureaucracy need to understand and implement the human rights guaranteed in the Constitution and various laws and regulations in Indonesia . This is needed so that policies and actions do not conflict with the principles of human rights that resulted in people sacrificed;
2. Central and regional governments in particular should make regulations on the prohibition of forced evictions and settlement structuring models or vendors by adopting the international standards set forth in the General Comment of the Convention on Economic Social and Cultural related evictions which is participatory and solutive . This is to anticipate that although regional leaders change , forced evictions that result in human rights violations will not happen again;
3. Regional government must change the paradigm of development and local budgets . Currently there is a large enough city budget items intended for eviction and Control . Budget should be used to solve problems of land tenure among the urban poor and the lack of infrastructure in the city;
4. Within the macro policy level, the government should stop the liberalization of the health sector and is responsible for guaranteeing the right to health of the community through the allocation of adequate health budget either through the regional and national budget;
5. Those health care providers, such as hospitals, need to formulate medical actions operational standards and build a culture of transparency and accountability in health services;
6. Health professions Organizations should be more stringent in enforcing the code of ethics;
7. Law enforcement officials need to be firm in enforcing the law

infringement cases because of patient health malpractice action.

### **Freedom of Belief and Religion Infringement Case**

1. Urge Government to actively carry out their legal obligations under the right of freedom of religion and belief to encourage the settlement of cases of violations of religious freedom not just be the offender the right to freedom of religion and belief;
2. Urge President to dismiss public officials such as the Minister of Religious Affairs Suryadharma Ali who actually commit acts of coercion to ask Ahmadiyah to move or change the beliefs that jeopardize the guarantee of the right of freedom of religion and belief as well as threatening the disintegration of the nation;
3. Urge local governments to respect the law and the constitution , in particular the Mayor of Bogor and Bekasi regent to stop the defiance of the court's decision and further respect and obey the court decision;
4. Asking the police to provide protection to the victims of intolerance and stop any attempt to criminalize the victims of intolerance or the actors who exercised the right to freedom of religion and belief legally and constitutionally;
5. Law enforcement must be firm and have the courage to take action against perpetrators of violence in the name of religion and hate campaigns ( Hate speech ) which is an offense under Article 156 of the Criminal Code and is included in the category of crimes against public order that had been left and hatred which later resulted in acceleration increased to legalization through mass mobilization and policy until eventually led to physical attacks against minorities;
6. Asking the Commission to conduct an investigation into the allegations of persecution of the Ahmadiyya Muslim Indonesia alleged meet the elements of gross human rights violations such as crimes against humanity;
7. Urge the Minister of the domestic to review and cancel local regulations that are discriminatory and unconstitutional;
8. Asking the Minister of Law and Human Rights ( together with the Parliament in terms of the Act ) to harmonize existing regulations by adopting the principles of human rights and the Constitution . Renewed legislation which still violate human rights (Among them is the Law. 1 PNPS/1965 including Article 156 of the Criminal Code);

### **Fair and Honest Trial**

1. Encouraging advocate for pro bono obligations to assist indigent defendants;
2. Council of Representatives ( DPR ) needs to speed up the drafting process in the Criminal Procedure Code particularly reducing the police authority to detain a person without court permission ;
3. Indonesian government immediately ratify the optional

protocol convention against torture ;

4. The Supreme Court ( MA ) should issue regulations to the Judge not to use evidence obtained from torture;
5. Chief of Police immediately make internal rules related to the mechanism of settlement of alleged torture by members including legal proceedings against members of the police who commit torture;
6. Prosecutor and the Judicial Commissions give strict sanctions against the prosecutors and judges who violate the code of ethics;
7. General Deputy Attorney for Supervision and Supervisory Board expressly MA sanctions against prosecutors and judges who violate the rights of suspects and ban the use of documents obtained from torture.

### **Right to Legal Aid**

1. The Government should undertake legal aid policy harmonization in various laws and regulations to conform with the Legal Aid Act , so that the integrated legal aid programs in accordance with the legal aid legislation , including the budget and designation program is only for the poor;
2. Organization of Legal Aid should develop and implement minimum standards of legal assistance services to improve the quality of legal aid services , legal aid is also given the public service ;
3. Independently, legal aid organizations should formulate a code of conduct for legal aid workers and paralegals ;
4. The Government to provide support to the Legal Aid Organization in Indonesia to increase capacity and quality of service so that the standard setting is really an impact on improving service not weaken the OBH and inhibit people's access to justice ;
5. Encouraging communities to establish mechanisms to control the budget and the implementation of legal aid . So the future of legal aid was held in a transparent and accountable ;
6. Encourage the government to continue to fix the weakness of legal aid policy that is still in the process of development , which responsively accommodating public input and factual situation;
7. Encourage each Local Government in various regions in Indonesia for legal aid, initiating local regulations that complement national policies and expand the distribution of resources to support the provision of legal aid ;
8. Strengthening the human rights perspective in particular the right to legal assistance to law enforcement authorities and judicial system reform ( Eliminating extortion , transparency and accountability of court fees , cut the period of the legal process , and effective complaint mechanisms ) to enhance the effectiveness and quality of service support law to the public, which is necessary.

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