

NATIONAL STRATEGY ON ACCESS TO JUSTICE

Legal Empowerment and Assistance for the Disadvantaged Project (LEAD)



Background

In the last ten years Indonesia has made significant progress towards greater democracy and protection for human rights. However, due to the size of the country and its highly dispersed population there remain many justice-related problems for poor and disadvantaged people; particularly for women and children, as the most vulnerable group.

To date, most initiatives supporting justice sector reform have focused on state institutions such as the courts, police and prosecution service. However, in poor communities and areas far from central government, informal justice mechanisms that combine elements of negotiation, mediation and arbitration are the primary means of resolving problems within the community, particularly civil disputes. Clearly, justice still remains out of reach for many people, and so addressing this requires adopting a more inclusive approach. People's ability to access better justice systems should be strengthened alongside efforts to improve the quality and performance of government institutions in order that they become more responsive and transparent.



In late 2004 to mid 2006, Indonesia's National Development Planning Agency (BAPPENAS) and the United Nations Development Programme (UNDP) conducted extensive assessments of access to justice for the most disadvantaged populations in the post-conflict provinces of West Kalimantan, Maluku, North Maluku, Central Sulawesi and Southeast Sulawesi, as well as in Nangroe Aceh Darussalam. The assessment concluded that most people's problems relate mainly to the economic dimension of justice, a clear reflection of priorities in Indonesian communities where daily life often revolves around maintaining an adequate livelihood. This shows that the principles of equality, consistency and non-discrimination in the distribution of government services and assistance are essential to improve justice in future years.

The Concept of Access to Justice

Access to justice in the Indonesian context refers to a condition and process whereby the State guarantees the fulfilment of citizens' basic rights afforded by the 1945 Indonesian Constitution as well as the 1948 Universal Declaration of Human Rights, and guarantees that each citizen (claim holder) is able to acquire the

necessary knowledge, understanding, awareness and ability to exercise those rights through formal as well as informal institutions, supported by accessible and responsive public complaints mechanisms, so as to obtain optimal benefits in order to improve their livelihoods.

This definition emphasises that access to justice aims at supporting and strengthening the prevention and alleviation of poverty, the prevention of corruption and the upholding, protecting and fulfilling of human rights through legal empowerment of the people.

The National Strategy on Access to Justice

The National Strategy on Access to Justice aims to create a framework for policies and regulations that are inclusive of poor and marginalised people and afford them access to justice so that they can utilise their resources to overcome poverty. It covers eight sectors, including: (1) legal and judicial reform; (2) legal aid; (3) local governance; (4) land and natural resources; (5) women; (6) children; (7) labour; and (8) poor and disadvantaged groups.

The National Strategy emphasises that reform must encompass all sectors, not only the police, prosecutors, courts and legal aid, but also ombudsmen, legal education and government departments providing public services, as well as civil society and community-based organisations with a role in community empowerment. It also aims to produce a paradigm shift in Indonesia, and positions Indonesia at the forefront of promoting human rights, justice and legal empowerment of the poor in the Asia region.

Why is the National Strategy on Access to Justice important?

Indonesia's National Strategy is a pioneering approach within the Asia Pacific region, and is remarkable for several main features:

First, it recognises access to justice for the poor as a critical means of eradicating poverty and explicitly acknowledges the human rights dimensions of poverty.

Second, it focuses on society's most disadvantaged people and marginalised groups, and directly supports government policies across all sectors, explicitly aiming to reach Indonesia's most vulnerable persons and communities and bring them within the law's protection.

Third, its recommendations will be integrated into Indonesia's Mid-Term Development Plan for 2010-2014, and its concrete action plans will both support line ministries and justice institutions in carrying out their tasks and functions, and improve the results of ongoing community development initiatives, such as the PNPM.

Fourth, it draws directly on community level experiences in strengthening access to justice, representing the culmination of almost two years of consultations with local government and civil society actors throughout Indonesia, and with ministries and government bodies across all relevant sectors.

And fifth, it is a concrete example of implementing good governance and coordination on international aid in the spirit of the Paris Declaration and the Jakarta Commitment, putting the priorities of the Government of Indonesia at the centre of comprehensive reform in the legal and justice sector.

How was the National Strategy developed?

BAPPENAS convened a Working Group of experts from each of the eight thematic sectors to draft the Strategy. The Working Group consists of representatives from government, academia and civil society organisations (CSOs), and was facilitated by UN agencies (through LEAD Project) and The World Bank. Their work was informed by the findings of the 2005-2006 assessments on access to justice, along with inputs from extensive consultations held with over 600 stakeholders at national and provincial levels facilitated by LEAD Project.



A first draft of the National Strategy was developed by the Working Group in January 2008, and the consultation process started the following February in Jakarta, involving more than 100 experts from across Indonesia. Their inputs and recommendations were used to develop a second, significantly revised, draft paper which was then presented at three regional consultations held between April and August 2008 in Bali, Medan and Makassar. Through these consultation workshops experts from govern-

ment and civil society covering all eight themes of the National Strategy from all 33 Indonesian provinces provided their insights and recommendations, resulting in a substantially enriched draft policy paper.

Further refinements were made by the Working Group following individual interviews with senior officials in justice institutions and line ministries and a high level consultation meeting held in February 2009. Several UN agencies contributed to the National Strategy, including UNICEF, ILO, UNOHCHR, UNFPA and UNIFEM. LEAD Project has also facilitated a number of events aimed at socialising the National Strategy prior to its launch, including two talk shows (on radio and TV), the launch of the Access to Justice Journalism Awards, and a panel discussion on the 60th anniversary of the UN Declaration on Human Rights, held at BAPPENAS.

How will the National Strategy be implemented?

By incorporating the National Strategy into the Government's Mid-Term Development Plan for 2010-2014 and agreeing detailed Action Plans with relevant line ministries and justice sector institutions as well as CSOs, the National Strategy will be implemented not as another free-standing policy, but rather as an approach incorporated into the Government's existing body of policies. Additionally, implementation of the National Strategy will be in line with Indonesia's commitments to international human rights conventions.

Through integrating an access to justice perspective into existing policies and programmes within the Mid-Term Development Plan for 2010-2014 the Government commits to support the recommended initiatives with budget resources. Complementing this initiative, LEAD Project will work with BAPPENAS to establish a Coordination Secretariat to promote better coordination and harmonisation of donor assistance across the legal and justice sector at both national and local levels in the implementation of the National Strategy. The Secretariat will also assist the coordination and harmonisation of aid from donors in support of the implementation of the National Strategy.

Contents of the National Strategy

Individual Sector Strategies

Sector	Key Policy Recommendations
Legal and Judicial Reform	<ul style="list-style-type: none"> • Elaborate the meaning of the rule of law in the Indonesian context, grounded in the Pancasila and the Constitution. • Develop legal education with social justice perspectives to foster greater integrity and pro-poor sensitivity in the legal profession, and encourage educational institutions to become more active in community education and monitoring of justice institutions. • Increase transparency, community participation and monitoring in law-making and implementation, and improve harmonisation of laws. • Strengthen the reform agenda for justice institutions, including supervisory commissions, to improve professionalism and ethics in the police, public prosecutors and courts.
Legal Aid	<ul style="list-style-type: none"> • Formulate a comprehensive legal aid system: (i) legislation guaranteeing legal aid and legal services for the poor; (ii) institutional capacity and legal resources development; (iii) funding to promote access to legal aid; (iv) paralegalism initiatives as part of community empowerment efforts; (v) legal education that supports the implementation of legal aid; and (vi) incentives to motivate and attract the involvement of a new generation of legal aid activists. • Guarantee the constitutional right of poor people to defend and fight for their legal rights without discrimination. • Make legal services affordable and equally available for all.

Sector	Key Policy Recommendations
Local Governance	<ul style="list-style-type: none"> • Increase efficiency and professionalism within the bureaucracy. • Harmonise and improve the quality of local policies based on transparency, participation and accountability. • Develop policies to promote optimal use of national and local budgets. • Improve decision-making about the proliferation of political districts.
Land and Natural Resources	<ul style="list-style-type: none"> • Develop an integrated and comprehensive legal and policy framework based on social and environmental justice, and widen space for participation of poor and adat (customary) users of land and other natural resources in law-making. • Recognise and protect rights, and harmonise spatial planning and permitting, to ensure poor and adat communities can safeguard their rights to land and natural resources. • Create dispute resolution mechanisms for land and natural resource disputes that can protect the rights of poor and disadvantaged groups, and transform conflicts into schemes of partnership among stakeholders. • Implement coordinated and comprehensive agrarian reform. • Improve the quality of public services and complaint mechanisms. • Restore the physical and social environment upon which people's livelihoods depend.
Women	<ul style="list-style-type: none"> • Review local regulations that are biased against women. • Include women's needs and experiences in law-making and budgeting processes. • Increase support for coordination among justice institutions, relevant government agencies and civil society organisations in handling cases of violence against women. • Increase the awareness of justice officials on issues of access to justice for women. • Make legal education curricula gender-responsive.
Children	<ul style="list-style-type: none"> • Integrate and improve rules and programmes on children's rights protection. • Shift the justice paradigm towards a principle of restorative justice in order to prioritise the best interests of the child. • Shift from a focus on strengthening legislation to improving monitoring and evaluation. • Strengthen judicial capacity and child welfare systems to ensure the protection of children's rights.
Labour	<ul style="list-style-type: none"> • Amend laws and regulations to increase protection of child labourers and migrant workers. • Improve the quality of protective and complaint handling mechanisms for workers. • Accelerate the process of obtaining remedies for victims of labour abuse and violence. • Increase access for migrant workers to means of remitting money home. • Develop a strategy to raise legal awareness among workers.
Poor and Disadvantaged Groups	<ul style="list-style-type: none"> • Change the paradigm of legal education from legal formalism to social justice, noting the challenges and experiences of disadvantaged people in obtaining justice. • Strengthen efforts to develop and promote paralegalism across Indonesia. • Integrate government and nongovernmental initiatives to strengthen access to justice in the provision of government services such as health, education, roads and clean water, as well as in economic and community empowerment programmes, e.g. PNPM Mandiri (National Poverty Reduction Programme).

Contents of the National Strategy

Cross-Cutting Strategies

Cross-Cutting Strategy	Objectives
Change the paradigm of legal development and legal education	<ul style="list-style-type: none"> • Define and describe rule of law in the Indonesian context, grounded in Article 1 Part 3 of the 1945 Constitution that “Indonesia is a rule of law state” (negara hukum), to provide direction and vision for national legal development. • Strengthen the socio-legal perspective in law school curricula. • Develop community-based critical legal awareness.
State support for legal aid and paralegalism	<ul style="list-style-type: none"> • Develop a solid legal foundation for pro-poor legal aid by advocacy of a constitutional right to legal aid and passage of a special law on legal aid. • Promote social responsibility of private legal practitioners (pro bono publico). • Promote paralegalism in Indonesia (establish institutional focal points, training curricula, and a code of ethics). • Develop policy in the Ministry of Home Affairs to oblige governors to make allocations in provincial budgets for legal aid for the poor. • Promote a legal aid endowment fund (like the Biodiversity Endowment Fund).
Improve the politics of legislation and budgeting	<ul style="list-style-type: none"> • Support revision of Law No. 10/2004 with enabling provisions on public participation in law-making, legal harmonisation and regulatory impact assessment, and develop related guidelines for implementation. • Strengthen the role of the Constitutional Court in performing constitutional review as constitutional guardian. • Budget allocation in regional/local state budgets for legal empowerment of the marginalised, including legal aid for the poor.
Develop and implement standards for public service delivery	<ul style="list-style-type: none"> • Develop minimum standards of government service for the public to monitor government performance in delivery of public services, and support their promulgation into the Law on Public Services. • Review all public service-related legislation to develop proposed amendments. • Support the promulgation of the General Administrative Law Act establishing the principles of “proper administration”, which will encompass due care, transparency and accountability in the decision-making process, proper consideration of all relevant facts and interests before taking a decision, and reasoned decision-making.
Develop public complaints mechanisms	<ul style="list-style-type: none"> • Strengthen the role of the new Ombudsman (based on Law No. 37/2008) in processing public complaints concerning government administration. • Promote the establishment of provincial/local Ombudsmen.
Strengthen community-based justice systems	<ul style="list-style-type: none"> • Promote informal justice systems, in particular informal dispute resolution mechanisms that are based on human rights principles.

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