



CIVIL SOCIETY CONSORTIUM FOR ACCESS
TO JUSTICE INDEX IN INDONESIA

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2019

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Authors

Dio Ashar Wicaksana
Erwin Natosmal Oemar
Siti Rakhma Mary Herwati

Choky Risda Ramadhan
Nanda Oktaviani
Arsa Ilmi Budiarti
Siska Trisia
Muhammad Rizaldi Warneri

Muhammad Indra Lesmana
M. Rizky Yudha Prawira
Yanose Syahni

Era Purnama Sari
Tommy Albert Tobing
Niccolo Attar
Jane Aileen Tedjaseputra

Alfindra Primaldhi

Editor

Hasril Hertanto

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List of Abbreviations

ABA RoI	American Bar Association Rule of Law Initiative	OECD	The Organisation for Economic Co-operation and Development
Bappenas	National Development Planning Agency	PBHKP	Legal Aid, Justice and Peace Association
BPHN	National Law Developing Agency	Perda	Regional Regulation
BPS	National Bureau of Statistics	Permenkumham	Regulation of the Minister of Law and Human Rights
CSO	Civil Society Organization	PP	Government Regulation
DPR	People's Representative Body	RANHAM	National Action Plan for Human Rights
FGD	Focus Group Discussion	RKP	Government Work Plan
HAM	Human Rights	RPJMN	Medium Term National Development Plan
HDI	Human Development Index	SDGs	Sustainable Development Goals
HiIL	The Hague Institute for Innovation of Law	SIM	Driving License
IDLO	International Development Law Organization	SNAK	National Strategy for Access to Justice
IJRS	Indonesia Judicial Research Society	SOMASI NTB	People's Solidarity for Transparency West Nusa Tenggara
ILR	Indonesian Legal Roundtable	UNDP	United Nations Development Programme
KTP	Resident Identity Card	UU	Law
KUHAP	Criminal Law Procedural Code	UUD	Constitutional Law
Lapas	Correctional Facility	WJP	World Justice Project
LBH	Legal Aid Institution	YLBHI	Legal Aid Institution Foundation of Indonesia
NGO	Non-Governmental Organization		
OBH	Legal Aid Organization		

Foreword

Dr. Diani Sadiawati, S.H., LL.M

Expert Staff of the Minister of National Development Planning Institutional Relationship Development

Social issues such as the access to justice, as it is equal to the disparity between regions to obtain access to social services and legal aid, is a challenge in achieving the purposes of development of Indonesia. Meanwhile, through its constitution, Indonesia has put warrant, that all people shall have the same chances and rights before the law, as stipulated under the Indonesian Constitutional Law ('UUD').

Then as a form of commitment in manifesting law enforcement and awareness, Indonesian Government has enacted several national policies and regulations such as the National Strategy of the Access to Justice ('SNAK') of 2016-2019 as the renewal of the 2009 SNAK. Besides, Human Rights ('HAM') agenda has becoming mainstream issue in Indonesia, this is proven with the stipulation of HR related policies in the National Action Plan of the Human Rights of Indonesia ('RANHAM'), Medium Term

Government Plan ('RPJMN'), which determined through the Government Work Plan ('RKPP') each year.

In the global context, this strategic approach is in line with the Sustainable Development Goals (SDGs), particularly in the Goal 16, with its principle of justice for all, it promotes peaceful and inclusive society for the sustainable development, by providing the access to justice for all and by developing effective, accountable and inclusive bodies in all levels.

It is important to create a breakthrough to ensure the success rate of the access to justice in Indonesia in general. The Indonesian Government has made a partnership through Bappenas with the Civil Society Consortium (YLBHI, IJRS, dan ILR) as supported by the International Development Law Organization ('IDLO') to arrange the first Index of Access to Justice in Indonesia. The arrangement

process is supervised under the Bappenas and National Bureau of Statistics ('BPS'), the team has arranged both measurement and in-depth discussion with the experts, either in national or international level.

On that note, the author has high hopes that this Report of the Index of Access to Justice may be used as evidence based guidelines by the government as well as the civil society to encourage and ensure that the policies related to the access to justice, thus the upcoming policies shall be made subjected to the target and according to the need of Indonesian people.

In this opportunity, the author is delivering gratitude to all parties that has been supporting the completion of this report, either the Arrangement Team, Ministries/Institutions, Academicians, Experts/Masters, and the Civil Society Organization which have been actively participating and giving important contribution in the arrangement of this report.

Executive Summary

As the commitment to the Sustainable Development Goals 16.3 aims to achieve the access to justice for all, the index of access to justice is expected to be able to comprehensively describe the condition of the access to justice in Indonesia. The measurement of the index is resulting into the measurement tools capable of seeing and evaluating the condition of the access to justice in Indonesia from time to time. At the policy level, this index of access to justice may ease the warrant against the legal framework and other policies on the access to justice in Indonesia in more effective manner. The government may use this index to review the existing policies and to arrange new policies in the field of law, rules and regulations, social and economy. Further, this index shall become the first index of the access to justice in Asia with comprehensive measurement tools in order to be resulted into informative figures related to the access to justice in Indonesia.

In developing the index of access to justice, the research team tried to define the access to justice according to the

literary study and necessity in Indonesia. The definition of the access to justice referred here is “the pathway for people to defend and restore their rights, as well as settle their legal problems, either through formal or informal mechanism—including people’s capability—in accordance with the human rights standard.” This formulated definition represents two approaches used in the index measurement of the access to justice. The two approaches are the approach to justice as Human Rights and related to the capability/ability. Based on the said definition, there are seven formulated aspects with regards to the necessary measurement namely the prevalence of the legal problems, the legal framework aspect, the legal problems resolution mechanism aspect, legal assistance aspect, quality of legal problems resolution process aspect, result if the legal problems resolution aspect and people’s capability aspect. In collecting this data index, the research team has accumulated data by using three collection method, which was through the public survey, interview with the expert and administrative data collect-

ion in national scope.

The end result score of the index of access to justice in Indonesia in 2019 was 69.6. Scoring in this category means that Indonesia has already have available access to justice, however it cannot fulfill people's need of achieving accessible justice for all, yet. The index results also show that the most common legal problems occurred among the people are criminality, family & children and land & environment. Other findings show that there are still many members of the society who did nothing at the face of legal problems, due to fear of upcoming complexity. Besides, the state has not maximized their role in providing the access to justice necessary for the people, since most of the people is using the informal mechanism (outside of the state institutions) in order to solve their legal problems. The score is resulted from the contribution of six aspects in the access to justice.

First, the legal framework aspect has the index score of 57.7, it is categorized as adequate. The index score shows that in general, the legal framework has already been available, it is even over-regulated for several types of problems or legal issues. This means that the condition of

ACCESS TO



national regulation is basically fulfilling people's need as the prerequisite to provide the legal basis for fair legal problems settlement faced by the people. Nonetheless, this achievement is not followed with good quality of contents in the regulation, hence, it raised problems in the implementation. Minimum supervision and evaluation against the national regulation condition resulting into dis-

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-harmony between the existing regulations. In the end, this is resulted into the low contribution of the legal framework against access for the people to get justice.

Second, the legal problems resolution mechanism aspect has the index score of 66, it is categorized as adequate. According to the experts, the informal

mechanism has higher score in terms of funding sources (60.4 percent) compared to the formal mechanism (51 percent). According to the finding of the index, the majority of the respondent, namely 60.5 percent of the people were choosing the informal mechanism, such as family and local apparatus to settle their legal problems. In terms of the distance of the mechanism, the result of the index shows that 92 percent of the people do not experience any impediments on their way to the mechanism and 89 percent of them were only needing less than 1 hour to get to the legal problems resolution mechanism.

Third, the legal assistance aspect has the index score of 61.2 and categorized as adequate. Ideally, the state would have had data on the figures of people's necessity for the legal assistance, it aims to understand on how much people that will experience legal problems and shall not able to settle them independently. The problem is, not all legal aid institutions have the appropriate resources to the qualification of the legal assistance faced by the people. The result of the index shows that there are 64 percent of members of the society who did not use any legal aid despite the availability of abundant legal aid in Indonesia that basic-

-ally increasing each year. During 2016-2018, the National Law Developing Agency (Badan Pembangunan Hukum Nasional/BPHN) of the Ministry of Law and Human Rights recorded that there were 405 verified and accredited Legal Aid Organization (OBH). Such number is increasing within the next period (2019-2021) up to 524 OBH. The data has not yet represented the amount of OBH in field, since in this regard, BPHN is determining certain standard to create verification and accreditation. Consequently, there are OBH that has not yet obtained any funding from the government. Most of the people refraining from using legal aid were women, they based their reasoning on their concern that the process through the legal aid institutions shall be more complicated.

Fourth, the quality of legal problems resolution process aspect has the index score of 76.7, it is categorized as adequate. The findings of the index show that 85 percent of the people who used both formal or informal mechanism while simultaneously used legal aid, has better independence in communicating or consulting with the legal assistant. On the other hand, 18 percent of the people who used the informal mechanism could not exercise their rights of the presumption of innocence, since they did not get the

chance to hand over the evidence that might clarify their status. There were still found delay during the settlement process, incurable fees outside of procedures, physical violence and verbal as well as psychological threats during the legal problems' resolution mechanism.

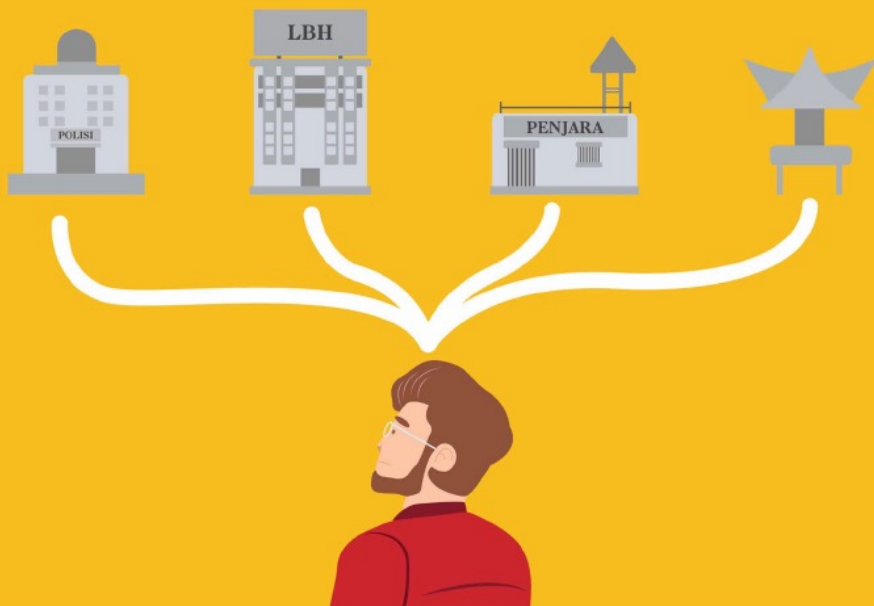
Fifth, the result of the legal problems resolution aspect has the index score of 71.9 and categorized as adequate. The findings show that most of the people who has their problems settled through either the informal or formal mechanism has already obtained the end-result from each relevant process. Meanwhile, majority of those people has had performed the end-result either through formal (95 percent) or informal (96 percent) mechanism. Besides, 76 percent of the people either the ones used the formal mechanism or informal mechanism in settling their problem, were performing the end-result voluntarily. That aside, there were still 10 percent of the people with formal mechanism who did the end-result by force. In terms of the informal mechanism, 7 percent of the people who were implementing the end-result due to the suppression from informal institutions/figures. During the legal problems' resolution process, there were also people who received negative impact of wasting their time for the purpose of enduring the

process.

Lastly, the people's capability aspect has the index score of 78.3 and categorized as adequate. The index result shows that 86 percent of the people have actually already understood of their rights and obligations as citizens. In understanding the legal services and legal process, the index shows that majority of the people can only understand a part of the legal terms which generally mentioned when they experienced a legal problem. Other findings show that they mostly do not know where to go (87 percent) and who can help them to settle their legal problems (84 percent). However, there were still 53 percent of people who do not even know that there is free legal aid and 24 percent of the people who do not know the legal problems resolution mechanism/procedure. There are also people who were afraid of settling their problem if it is in contrary with the norm/value applicable in the society (32 percent). Besides, 42 percent of the people are still afraid to settle their problem and 18 percent of them did not have the confidence that they will obtain result from the settlement effort according to their expectation. This shows the existence of negative assumption among the people towards the legal process in

Indonesia, the procedure up to the process of achieving the end-result still rising inconvenience to the people.

Hence, the government need to make various improvement to the entire aspects of the access to justice. One of which, is through the long-term legislation planning to produce qualified legal framework. Besides, it is also necessary to recognize and develop the informal mechanism in further study, to create a clear and complete technical framework. The legal aid also need development with regards to the mapping of necessity and socialization throughout all circles of the society. Other important refinement is in terms of the bureaucracy flow and eradication of bribery, for the purpose of creating mechanism with less negative assumption and distrust from the people who unable to access justice.



See also:

Consortium of Access to Justice produced video to introduce the basic concept of access to justice. Scan the QR code or the link:



bit.ly/videoA2J



CHAPTER 1

UNDERSTANDING THE INDEX OF ACCESS TO JUSTICE



Introduction

The third amendment of the Indonesian constitution stated that Indonesia is a State governed by the rule of law.¹ Through its constitution, Indonesia also guarantee that all people has the same opportunity and the right before the law, whereas the Article 28D paragraph 1 of the UUD stipulates that each person has the right over recognition, guarantee, legal protection and fair legal certainty before the law.² This provision of the Indonesian Constitution is in line with the global agenda stipulated in the Sustainable Development Goals (SDGs), particularly the Goal 16, it is to promote peaceful and inclusive society for the purpose of sustainable development by providing access to justice for all and to build effective, accountable and inclusive institutions in all level.³ Moreover, the Goal 16 affects other goals in the SDGs,

such as the ones related to the education, health, economic development, climate change and gender equality.⁴ In depth, SDGs Goal 16.3 is delivering its specific purpose to promote the supremacy of law in the national and international level, in order to guarantee equal access to justice for all. The measurement towards the SDGs 16.3 will strengthen the data related to the vulnerable group, which leads to the integration of problems resolution, both through formal and informal judiciary system to achieve justice for all. Goals 16.3 is showing relevance to other components in the SDGs, for example, in the goals 16.2, which aims to stop violence, exploitation, trafficking and all form of violence and torture against children.⁶ In general, the SDGs commitment is ensuring that no-one

1. Indonesia, "The 1945 Constitution of the Republic of Indonesia in One Script", accessed in <https://www.bappenas.go.id/files/pendanaan/regulasi/uud-1945perubahan-iiiiv.pdf>, on 3 June 2019

2. Indonesia, "Second Amendment of the 1945 Constitution of the Republic of Indonesia" accessed in <http://ditjenpp.kemenkumham.go.id/arsip/ln/1945/UUD1945PerubahanKedua.pdf>, on 3 June 2019

3. Sustainable Development Goals Knowledge Platform <https://sustainabledevelopment.un.org/sdg16>, accessed on 3 June 2019

4. Global Alliance, "Global Alliance, Enabling the Implementation of the 2030 Agenda Through SDG 16+: Anchoring Peace, Justice and Inclusion", (New York: United Nations, 2019), p. 20

5. *Ibid*

6. *Ibid*

shall left behind through its global indicator, to have beneficial implementation for all people, without exception to the vulnerable group.

As the effort to jointly achieve the purpose of the point 16.3 from SDGs, the Indonesian government has tried to create the framework and tools to measure the access to justice through the National Strategy of the Access to Justice (Strategi Nasional Akses Terhadap Keadilan/SNAK) which is firstly issued in 2009. During the first period of SNAK 2009⁷, the Government along with the People's Representative Body has made a reformation of law and regulation. One of which is by producing the Law No. 16 of 2011 concerning Legal Aid (UU Bantuan Hukum), and the Law No. 11 of 2012 concerning the Criminal Judiciary System for Children (UU Sistem Peradilan Pidana Anak/SPPA), in order

to protect the children involved in legal problems, as well as the Government Regulation No. 75 of 2015 concerning the National Action Plan of the Human Rights of 2015-2019 (Rencana Aksi Nasional Hak Asasi Manusia/RANHAM) as legal basis.

In relation to the effort to give equality before the law for all people, the government has tried to elaborate its objectives to emphasize strategic approach in more specific manner, in order to ensure that the access to justice in Indonesia may run without notable impediments. It is made through the Medium-Term National Development Plan (Rancangan Pembangunan Jangka Menengah Nasional/RPJMN) 2015-2019 and SNAK 2016-2019⁸. In 2016, Indonesian government renewed the National Strategy of the Access to justice, it defined the access as:

-
7. *There was a paper about SNAK in 2009 which is the first version that launched in 2009 but now the only available paper is for SNAK 2016-2019, further information could be accessed in <https://www.bappenas.go.id/id/berita-dan-siaran-pers/features/peluncuran-strategi-nasional-akses-terhadap-keadilan/>*
 8. *Bappenas Launched the National Strategy of the Access to Justice 2016-2019*, May 2016, <http://www.id.undp.org/content/indonesia/en/home/presscenter/pressreleases/2016/05/10/bappenas-luncurkan-strategi-nasional-akses-terhadap-keadilan-2016-2019.html>, accessed at 3 June 2019

“... condition and process where a state is ensuring the fulfilment of basic rights based on the 1945 Constitution and the universal principle of human rights, and ensuring access for all citizens to be able to know, understand, aware and use the said basic rights either through formal or informal institutions.”⁹

Nonetheless, the definition of the access to justice in SNAK must be reviewed, whether it has already capable of capturing problems in the access to justice existing in the society. With the accurate definition of the access to justice, it is possible to create a framework and tools to measure it. The government will have it easier in ensuring whether the existing policies are effective or not for Indonesian people.

The government and the civil society organizations (CSOs) have made various efforts to measure the elements related to the access to

justice in the last several years. This effort includes the issuance of: (1) Index of Anti-Corruption Behavior (Indeks Perilaku Anti Korupsi/IPAK) developed by National Development Planning Agency (Badan Perencanaan dan Pembangunan Nasional/Bappenas) and National Statistic Agency (Badan Pusat Statistik/BPS)¹⁰, (2) Rule of Law Index (Indeks Negara Hukum) by the Indonesian Legal Roundtable (ILR)¹¹, (3) Index of Corruption Perception (Indeks Persepsi Korupsi) by the Transparency Indonesia (TI)¹², (4) Index of Human Rights Performance (Indeks Kinerja HAM) by the Setara Institute¹³, and (5) Indonesia Governance Index (Indeks Tata Kelola Pemerintah/IGI) by Kemitraan. However, those researches have not yet been able to describe the access to justice as a big picture in Indonesia. Meanwhile, some researches have succeeded in giving additional perspective on the access to justice, among others, as have been made by the United Nation of Development

9. Bappenas, “National Strategy of the Access to Justice 2016 – 2019” (Jakarta: Bappenas RI, 2016)

10. BPS, “Indeks Perilaku Anti-Korupsi 2020” (Jakarta: BPS, 2020) accessed in <https://www.bps.go.id/publication/2020/08/31/e0720d00c6c0f130af1dca61/indeks-perilaku-anti-korupsi-2020.html>

11. Indonesia Legal Round Table (ILR), “Indeks Negara Hukum 2018”, (Jakarta: ILR, 2018)

12. Transparency International, “Indeks Persepsi Korupsi 2020” (Jakarta: TI, 2020) accessed in <https://ti.or.id/indeks-persepsi-korupsi-2020-korupsi-respons-covid-19-dan-kemunduran-demokrasi/>

13. Setara Institute, “Indeks Kinerja HAM 2020” (Jakarta: Setara Institute, 2020) accessed in <https://setara-institute.org/indeks-kinerja-ham-2020/>

Program (UNDP) in 2006, which explained that the access to justice is people's ability to seek and obtain justice through formal or informal institutions and relevant with the human rights standard.¹⁴ Meanwhile, in 2012, the American Bar Association Rule of Law Initiatives (ABA RoLI) explained that access to justice considered as fulfilled if the people can use the legal enforcement institution and judiciary bodies to obtain solution for their problems.¹⁵ To achieve the access to justice, legal enforcement institutions and judiciary bodies must have functioned effectively in providing fair solution over people's problem. In 2011, Adriaan Bedner & Ward Berenschot said that access to justice is the access for the people, particularly the poor group to obtain fair, effective and accountable mechanism to protect their rights, prevent abuse of power and settle conflict.¹⁶ This includes people's capability to have and obtain settlement through formal and informal mechanism in legal system, as well as

ability to be involved in the process of making, implementing and institutionalizing the law. In 2014, The Hague Institute for Innovation of Law (HiIL) findings show that most of individuals chose to do nothing to settle their legal problems and chose to accept the loss and harm from the relevant problems.¹⁷

There were some problems faced by justice seekers to achieve access to justice. One of the problems especially in Indonesia is the person who have experience to obtain access of justice still have "unfair trial" process.¹⁸ This is due to several matters, among others, many legal enforcement apparatus still exercise violence to the perpetrator during examination/investigation just to make him testify. This condition may be worsened by the low quality of the legal aid given by the state through its appointed legal advisor, which eventually makes the fulfillment of perpetrator rights to only stop at administrative/ procedural nature.¹⁹

14. UNDP, "Justice for All: An Assessment of Access to Justice in Five Provinces of Indonesia" (UNDP, 2006), p. 4

15. ABA RoLI, "Access To Justice Assessment Tool: A guide to analyzing access to justice for civil society organizations" (Washington: American Bar Association, 2012), p.1

16. Adriaan Bedner & Ward Berenschot, *Akses Terhadap Keadilan: An Introduction to Indonesia's Struggle to Make The Law Work For Everyone* (Jakarta: KITLV, HuMa, VVI Leiden University, Epistema Institute, 2011), p. 9

17. HiIL, "Justice Needs in Indonesia 2014: Problems, Processes and Fairness" (Jakarta: HiIL, 2014), p. 8

18. Miko Susanto Ginting, "Indonesia Fair Trial Report 2018" (Jakarta: ICJR, 2018), accessed in <https://icjr.or.id/indonesia-fair-trial-report-2018/> on 3 June 2019

19. *Ibid*, p.17

Such conditions show that in order to access justice in the legal enforcement institution and judiciary bodies in Indonesia, the legal problems resolution process is still far from the Human Rights standard/principle, despite that procedurally, the process has already complied to the determined steps. Negligence to the human rights should not have happened, since the principle covers respect, protection, and fulfillment regulated under the constitution and other legal instruments, the state has no reason to refrain from fulfilling them.²⁰ Therefore, the measurement of access to justice is needed to see to what extent that unfairness could happen to justice seekers who need to access the justice they need.

According to the discussion with experts²¹, it can be argued that the access to justice is speaking about two matters. First is about the mechanism and institution. of the legal problems

resolution. Second is about the ability/capability of the individuals in obtaining justice, which is inseparable from the human rights standard. This second aspect has not yet become the component which supposedly measured in the SNAK to review the access to justice in Indonesia. This condition encourages the consortium to review the access to justice from two point of problems, namely individual's capability and fulfillment of the human rights standard in the legal problems resolution mechanism. These two problems are used as the reference for evaluation, in order to obtain description on the achievement of the access to justice in Indonesia.

From the explanation above, the consortium is formulating the following main questions in measuring the index of access to justice: How is the description of the condition of the access to justice in Indonesia?

20. *Ibid*, p.6

21. *Experts are before the measurement of access to justice index to define the meaning of access to justice index itself. The exinvitedperts are from various ministry/agency such as Bappenas, Komnas HAM, Komnas Perempuan, Academician etc.*

22. *ABA RoLI, loc.cit.*

This question is then generated into the following questions:

1. What legal problems often experienced by the people in Indonesia?
2. What is the formal and informal mechanism taken by the people at the time of the legal problem's resolution according to the Human Rights standard?
3. How is people's capability in Indonesia during the formal and informal mechanism in the effort to settle the legal problems (including defending the rights and restituting the rights) according to the Human Rights standard?
4. How is the result of the legal problems resolution of the relevant people (including defending the rights and restituting the rights) according to the Human Rights standard?

The result of this index is expected to give description on the access to justice

in Indonesia. While the measurement is expected to produce usable tools to review and assess the condition of the access to justice in Indonesia from time to time. The index of access to justice at policy level, may ease the guarantee process of a more effective legal framework and policies. The government may use this index to review the existing policy and restructure other policies in the field of law, rules and regulations, social, and economy. For example, the government may use the result of this index as an input to evaluate the legal aid program which has been routinely operated each year. The government may also use the index data to determine the policy related to the process of the judiciary system, the fulfillment of the fair judiciary principle, along with the effort to retribute and protect the victim during the judiciary process.

Besides, the government may use the data in this index to arrange people's empowerment policies, particularly from people's capability aspect, in order to obtain the access to justice. It also helps people to see correlation between the fulfillment of the access

to justice with other sectors such as people's social-economy aspect, hence, the government may focus on arranging more program for accurate target. The government may also use this index to evaluate the regulation in Indonesia, notably related to the fulfillment of the access to justice. The indicator of assessment arranged here

is expected to be used as reference for the government at the time of legislation drafting as well as for the fulfillment of the access to justice. This index shall become the first in Asia that is using framework and measurement tools to provide information related to the access to justice in Indonesia.

Conceptual Framework of The Access to Justice

Several researches on the access to justice have been made by the previous researches. Those previous studies were using one approach in researching the access to justice, here is the complete elaboration:

1. Human Rights Approach and People's Capability Approach for the Access to Justice

ABA RoLI defines access to justice as a condition where a citizen may use the judiciary institution to obtain solution over the legal issue he faced.²² In order to achieve the access to justice, judiciary institution must be effectively functioned to give fair solution for the problems settlement of the citizen. From this definition, it is seen that ABA RoLI is more emphasizing on the rights of the citizens to be able to use the judiciary institution.

Likewise, the SNAK elaborates the access to justice as a condition and process where the state is giving guarantee for the fulfillment of the

basic rights based on the 1945 Constitution and the universal principles of human rights.²³ This Human Rights approach is actually referring to the values elaborated in the Indonesian constitution. Meanwhile, the human rights standard is referring to the guarantee and recognition set forth in the 1945 Constitution, it is elaborated in the articles of national instruments related to the human rights, which covers mandatory respect, protection and fulfillment of the rights by the State.²⁴ It is further elaborated that Human Rights standard includes universal & inseparable values of non-discrimination and equality, as well as

22. ABA RoLI, loc cit

23. Bappenas, "National Strategy of the Access to Justice 2016-2019, loc.cit

24. Indonesia, Law of the RI No. 39 of 1999 concerning Human Rights (UU HAM), accessed in <https://www.komasham.go.id/files/1475231474-uu-nomor-39-tahun-1999-tentang-H9FVDS.pdf>, accessed on 3 June 2019

undivided and independence.²⁵

Moreover, the SNAK was also mentioning the access to justice as a condition and process where a state guarantee access for each citizen to know, understand, realize and use the basic rights through the formal and non-formal institutions.²⁶ The said reference is only viewing the access to justice from the perspective of the state, without due regard to the people's capability to access them. On the other hand, as mentioned above, UNDP defines the access to justice as people's capability to seek and obtain judiciary through formal and informal institutions according to the human rights standard. People's capability approach is becoming important since this concept is assuming the existence of freedom and chance²⁷ for all people to defend, retribute rights and settle legal problems. The concept of capability may be seen through the

aspects in the capability approach as proposed by Amartya Sen, Martha Nussbaum and also Pascoe Pleasence. Amartya Sen is focusing on the capability as independence,²⁸ Nussbaum is focusing on the human dignity²⁹ and Pascoe Pleasence is focusing on the legal capability.³⁰ In relation to the access to justice, as referring to Amartya Sen, the approach shall be focusing on "what people are effectively able to do and to be" or what an individual can do and wish to do to his life with his capability.³¹ In the context of capability, Amartya Sen argues that this aspect must be focusing on what an individual can do and wish to do in order to achieve the desired quality of life and to avoid difficulties in their life, hence they will have more independence to attain well-being and valuable life according to their point of view.³²

25. "What are Human Rights" accessed in <https://www.ohchr.org/EN/Issues/Pages/WhatareHumanRights.aspx> on 3 June 2019

26. Bappenas, *loc.cit*

27. Amartya Sen, "The Idea of Justice" (Penguin Books Limited: 2010), p.10

28. *Ibid*

29. Martha Nussbaum, "Nussbaum, Kant, and the Capabilities Approach to Dignity" dari *Ethical Theory and Moral Practice Journal* Vol. 17, No. 5 (November 2014), p. 875-892, accessed in <https://www.jstor.org/stable/24478719?seq=1> on 12 September 2018

30. Pascoe Pleasance, "Reshaping legal assistance services: building on the evidence base: A discussion paper", (Australia: Law and Justice Foundation of New South Wales, 2014) p.130

31. Amartya Sen, *op.cit.*, p. 232

32. *Ibid*

2. The Target Goes Beyond the Vulnerable Group

Previous study on the access to justice is giving more attention to the vulnerable group or minority. SNAK 2016-2019 is more emphasizing on the arrangement of indicator for the vulnerable group such as to the poor people, women, and disabled. Besides, there has been no recommendation made from the previous study result in Indonesia. The UNDP has only made study in five provinces in 2006. Meanwhile, HiiL was conducted study in five cities in Indonesia.

Current index measurement to the access to justice is focusing more than just only for the vulnerable group or minority, it also covers the people as a whole. Therefore, the focus measurement is referring back to the SDG's 16.3 goal, it is to ensure access to justice for all. Moreover, this measurement was also made in national scale.

3. Taking into Consideration the Two Mechanisms of Problems Resolution, which are the Formal and Informal Mechanism

This index measurement of the access to justice is combining all previous studies on the access to justice. There was no balanced portion of study towards the use of formal and informal mechanism in the previous studies. Therefore, the current index measurement of the access to justice is trying to put the formal and informal settlement mechanism in balance as complementor, not as addition to one another.

According to the existing studies such as SNAK (2019), UNDP (2006), Sen (2010), and Nussbaum (2014) on the access to justice, it may be concluded that the commonly used definition of the access to justice is:

"A pathway for the people to defend and retribute their rights as well as settle legal problems either through formal or informal mechanism—including people's capability—according to the human rights standard."

This formulated definition is representing two approaches used in the index measurement of the access to justice, namely the approach of access to justice as Human Rights and as capability/capacity. As elaborated, these two approaches are used since the access to justice has stopped from only discussing about rights of the people or guarantee given by the state, it also viewed people's capability to extend their hands to obtain their rights. In other words, there is a shift

where the access to justice is viewed from two perspectives, one is from the perspective of the state or other institutions with the obligation to guarantee the access to justice and the other is from perspective of the people who fight for getting the access to justice. The two are important to support the success of achieving access to justice in Indonesia.

7 Index Aspect

Based on the definition stated, there are 7 (seven) formulated aspects in measuring the index of the access to justice. It is expected that these seven aspects may depict nowadays condition of the access to justice among the society, either from the Human Rights or people's capability perspective. In order to understand the 7 (seven) aspects chosen for the access to justice, it is necessary to review the three main aspects elaborated in the definition, whereas one aspect was explained through several aspects or vice versa, one aspect may give explanation to several aspects.



1. Prevalence of Legal Problems Aspect

First, the prevalence of legal problems. Prevalence means general or common matters.³³ Legal problems or in other word "dispute" in the Black's Law Dictionary may be defined as:

"A conflict or controversy; a conflict of claims or rights; an assertion of right, claim, or demand on one side, met by contrary claims or allegations on the other."³⁴

The definition made with respect to the legal problems as elaborated above is only limited to the civil problems between individuals. While the adopted

definition of the access to justice should have included broader dimension such as conflict instead of limiting the coverage to the civil dimension. Adriaan Bedner et.al explained that the access to justice is an access created particularly for the poor to obtain fair, effective and accountable mechanism to protect rights, avoid abuse of power and to settle conflict.³⁵ Legal problems may arise when a regulation is violated or when certain rights of individual or group are violated. Individual are accessing justice with the purpose of existing justice. Problem arises when

33. "Prevalensi" definition from Kamus Besar Bahasa Indonesia (KBBI) accessed in <https://kbbi.kemdikbud.go.id>

34. "Dispute" definition from Black Law's Dictionary accessed in <https://thelawdictionary.org/dispute/>

35. Adriaan Bedner et. al, "Sebuah Kerangka Analisis untuk Penelitian Empiris dalam Bidang Akses terhadap Keadilan" dalam Sulistyowati Irianto, et.al., "Kajian Sosio Legal: Seri Unsur-unsur Penyusun Bangunan Negara Hukum" (Denpasar: Pustaka Larasan, 2012), p. 27

individual rights are untenable, violated or there is legal problem. One is considered as succeeded in exiting injustice if he can maintain and reconstitute his rights as well as settling legal problems. Organization for Economic Cooperation and Development (OECD) is describing the term of legal problem as justiciable problem, it is a problem related to the regulation of law (including the customary law).³⁶ People experiencing justiciable problem probably aware or not at all of their

condition. They can also take an action by will to settle the problems. So, the prevalence of legal problems may be defined as the legal problems which cause loss or unfulfillment of individual rights. It may also be defined as “maintaining and restituting rights as well as settle the problem.” Since an individual will only maintain and reconstitute their rights as well as settle their problems in case of deprivation, loss or unfulfilled rights which lead to problems for the individual.



2. Legal Framework Aspect

The legal framework consists of rights and obligations of the society as well as providing mechanism for the people to solve injustice.³⁷ In this regard, legal framework may be made in written or unwritten form, it refers to the Law No. 12 of 2011 concerning the Formation of Rules and Regulation (UU Pembentukan Peraturan Perundang-undangan).³⁸ The

aspects of legal framework are elaborated in the definition by consortium as, “maintaining and restituting rights as well as settling problems” and “through formal or informal mechanism.” As the second aspect, legal framework reflects the former definition, since it is discussing about the rights normatively owned by

36. OECD and Opens Society Justice Initiatives, “Legal Needs Surveys and Access to Justice” (OECD, 2019), p. 15

37. ABA RoLI, *op.cit.*, p.

38. Indonesia, Law No. 12 of 2011 concerning the Formation of Rules and Regulation accessed in <https://bphn.go.id/data/documents/11uu012.pdf>

the citizens. By this definition, legal framework could also define as legal substance which capable of discussing

the method or steps in settling problems experienced by the people.



3. Legal Problems Resolution Mechanism Aspect

The aspect of legal problems resolution mechanism is elaborated in the definition by consortium as “through formal or informal mechanism.” This means that all people must went through the whole process of the legal problems resolution. The mechanism is used to obtain justice, either in maintaining or restituting rights or in settling legal problems.

Formal mechanism or formal justice system explained as the formal state judiciary institution such as the Police, Prosecutor, Court and Attorney, which in exercising its function shall be in compliance with the formal procedures or shall be through informal manner.³⁹ According to the mentioned definition, the formal justice system emphasized its limitation to the existence of state institution which is mainly functioned as

the legal enforcement. Formal and informal categorization emphasized to the actors involved. Formal mechanism emphasizes state institutions as the actors of the mechanism. While the informal mechanism is applying the same concept, but to the non-state actor.⁴⁰

Meanwhile, informal mechanism or informal justice system is explained as problems resolution procedure outside of formal adjudication made by the court in a state.⁴¹ The mentioned definition has clarified that informal justice system is not limited to the application of customary law and mediation or arbitration by the village chief, religious figures or other public figures. However, there might be problems resolution from other party, which is not mentioned in the definition,

39. UNDP, “Justice for All: An Assessment of Access to Justice in Five Provinces of Indonesia” (UNDP, 2006), p. 6

40. Mechanism like KKR (Commission for the Truth and Reconciliation/Komisi Kebenaran dan Rekonsiliasi) does not included in the informal mechanism since it has legal basis and using scheme from the state. For example is the execution of KKR in Aceh for the previous Human Rights violation cases.

41. UNDP, *op.cit.*, p. 7

for example from a friend who tries to handle or act as mediator in the problem's resolution process. This informal mechanism is using the regulations produced from the entire elements of value in the life of society. In practice, the existence of these informal actors may obtain recognition from the state. If this happens, then it still has to be placed as informal mechanism as long as the recognition is declarative.

Then, problems resolution mechanism can be explained and applicable in the access to justice institutions.⁴² To see whether a justice institution either formal or informal is considered as affordable, accessible and the process is according to the pre-determined steps.⁴³ The "affordability" part may be seen from the fees or cost incurred by the mechanism user. The "accessible" part may be seen from the amount and distribution of judiciary institution, transportation infrastructure, security and restriction on travelling. In general,

this aspect is assessing the easiness of access for people to go to the location of justice institution.

The "process undergone timely" part is seen through the number of cases from each institution and how is the procedure of the case regulation must be settled. One of the examples to measure this by using the availability of mechanism as a dimension of the access to justice, with better known term as availability of formal/informal institutions of justice.⁴⁴ In order to see this dimension, there are four group of sub-dimensions forming it.

- 1 First sub-dimension is seen from the amount of the institution itself. The measured terms in this sub-dimension shall be the number of judicial institutions and other institutions, affordability of the institution and the amount of funding received by the institution.

42. ABA RoLI, *op.cit.*, p. 2

43. ABA RoLI, *op.cit.*, p. 2

44. OECD and Opens Society Justice Initiatives, *op.cit.*, p. 136

2 Second sub-dimension is seen from the physical access. The measured terms in this sub-dimension is geographical access and access for the disabled.

3 Third dimension is seen from the socio-economy access. The measured terms in this sub-dimension is the actual expenses to access the institution, the accessibility of the institution and language.

4 Fourth sub-dimension is seen from the use of institution. The measured terms in this sub-dimension is the case load of the institution.

The practice in Indonesia shows that the formal mechanism may use informal method (such as mediation and negotiation) and informal mechanism may use formal method in maintaining and restituting rights or in settling legal problems. In case of those conditions, then the formal mechanism which use the informal method shall still be placed as formal mechanism and the informal

Since this index is more highlighting on the actor instead of the method used in maintaining and restituting rights or in settling legal problems. In other words, formal mechanism is the problems settlement method through formal pathways provided by the state.



4. Legal Assistance Aspect

The aspect of legal assistance is elaborated in the definition as “through formal or informal mechanism.” It explains about all process of the legal problems resolution that people must go through to the access justice. The mechanism is used to obtain justice,

either in maintaining or restituting rights or in settling legal problems.

Legal assistance explained as advice and representation, in order to discuss the legal assistance in the access to justice.⁴⁵ This aspect aims to overview

45. ABA RoLI, *op.cit.*, p. 16

on which people that will need assistance (aid) and what kind of assistance (aid) necessary to settle the injustice they experienced. Legal aid also seen in the access to justice through the availability of legal aid and quality/appropriateness of legal aid.⁴⁶ The first dimension, the availability of legal aid is seen from the amount, physical access & socio-economy as well as its actual use. Meanwhile for the quality of the legal assistance, United Nations Office on Drugs and Crime (UNODC) mentioned that the existence of standard on the quality of clear

guidance or guidelines will ease legal assistant to obtain description on the settlement of the case in each step of the judiciary process.⁴⁷ In Indonesia itself, there is the Law No. 16 of 2011 concerning Legal Assistance which regulates the standard of Legal Aid Organizations (Organisasi Bantuan Hukum/OBH), the Law No. 18 of 2003 concerning Advocate which regulates the rights & obligations of advocate, Regulation of the Minister of Law and Human Rights No. 1 of 2008 concerning Paralegal in giving legal aid.



5. Quality of Legal Problems Resolution Process Aspect

The aspect of quality of legal problems resolution process is elaborated in the definition as “through formal or informal mechanism.” The mechanism is used to obtain justice, either in maintaining or restituting rights or in settling legal problems.

To understand access to justice and legal need, one needs to know more

than just the processes utilized and manner of conclusion. One must understand the quality of resolution process and outcome.⁴⁸ The fact that the legal problems has been settled by judiciary institution does not necessarily mean that it has exercised the principles of justice. Various surveys were made to seek for the quality of different legal problems resolution

46. OECD and Opens Society Justice Initiatives, *op.cit*, p. 137

47. UNODC, “Handbook on Ensuring Quality of Legal Aid Services in Criminal Justice Processes Practical Guidance and Promising Practices” (United Nations, 2019), p. 89

48. OECD and Opens Society Justice Initiatives, *op.cit*, p. 75

process according to the experience of individual member of the society. It is mentioned specifically that procedure with good quality (1) is a session with clear procedure, (2) does not use confusing legal terms, (3) has a court authority to help to make sure that the necessary witnesses appear before and willing to testify at the court, (4) emphasize impartiality in the process of sessions.⁴⁹ Moreover, aside from the procedure, it is necessary to also see how the service provider acts⁵⁰ as in based to the regulation in the Law No. 25 of 2009 concerning the Public Service (UU Pelayanan Publik). Besides, it is also necessary to see how information is provided during the legal

problem resolution process. Pleasence does not specifically explain the necessary information to be given to the public, however it is explained that this information must be able to explain the procedure used.⁵¹ This is in line with the Decision Letter of the Chairman of The Supreme Court Number 1-114/KMA/SK/I/2011 concerning the information that must be given to the justice seeker in the Court and also the Law on the Disclosure of Public Information, the Law No. 14 of 2008 (UU Keterbukaan Informasi Publik) Article 9 elaborates on the information mandatorily published at the public services.



6. Result of the Legal Problems Resolution Aspect

The aspect of result of the legal problems resolution is elaborated in the definition as “maintaining and restituting rights as well as settling problems.” Since this aspect is seen from the restitution of the rights of the

rights of the person resulting from the legal problems he faced. In order to know whether it is possible to execute the end result or not, it is necessary to overview the following matters (1) availability of end result, and (2) quality

49. ABA RoLI, *op.cit.*, p. 30

50. OECD and Opens Society Justice Initiatives. *Op.cit.*, p. 76

51. *Ibid*

of the end result.⁵² Besides, trust becomes an important variable in accessing justice.⁵³ It is seen from people's trust to the institutions and legal aid—which in this regard is attorney. Other important variable is the effect/cost occurred from the said

legal problems.⁵⁴ Further, it is stipulated that the measurement on the effect/cost is important for the policy maker in order to know the detail of 'liability' indicator for the society to be triggered to solve their legal problems.⁵⁵



7. People's Capability Aspect

The aspect of people's capability is elaborated in the definition as the capability of the people. In the index measurement of the access to justice, this refers to the capacity in the field of law, or, as borrowing definition from Pleasence, it is a legal capability. The legal capability referred here is individual capability to effectively respond and settle legal problems he faced.⁵⁶ People's capability is also covering individual capacity to realize the legal issues measured through individual knowledge on the rights and obligations as citizens and it is also important to have. The ability to understand the legal service and legal process. Such ability does not only

focus on how individual follow-up their problems, it also detects individual understanding to differ legal issues and common issues. Pleasence added that individual confidence becomes important in facing legal problems, in order to obtain fair result of the process in line with expectation.⁵⁷ Therefore, all of those aspects were operationalized into several variables and indicators that also based on some literature such as, Access to Justice appropriate data sources in OECD publication⁵⁸, ABA RoLI variables and indicators of Access to Justice, Pleasence's Legal Capability concept⁵⁹, and also Indonesian law as explained in the table below:

52. *Ibid*

53. ABA ROLI, *op.cit.*, p. 14

54. OECD and Opens Society Justice Initiatives, *op.cit.*, p. 77

55. *Ibid*, p. 378

56. *Ibid*, p. 79

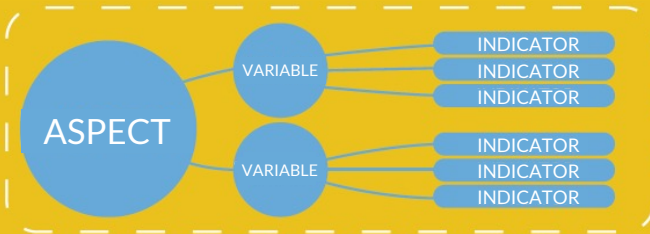
57. *Ibid*, p. 33

58. OECD and Opens Society Justice Initiatives, *op.cit.*, p. 136

59. Pascoe Pleasence, "Reshaping legal assistance services: building on the evidence base" (Australia: Law and Justice Foundation of New South Wales, 2014), p. 130

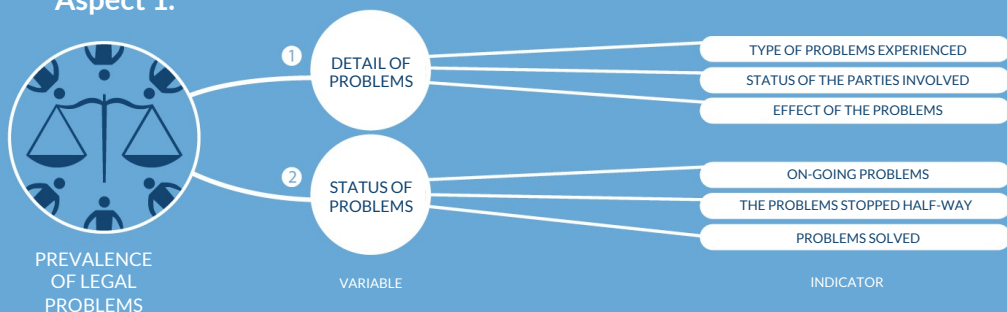
Variable Aspect

In index measurement, each aspect is measured based on the variables that are assessed to represent the assessment, where each variable will be measured based on certain indicators.



Aspects are represented by variables, which are measured by indicator observations.

Aspect 1.



VARIABLE EXPLANATION

Access to justice considered as the access for the people to protect rights, avoid abuse of power and to settle conflict.⁶⁰ It is also explained that such prevalence might be seen through facing experience of legal problems.⁶¹ This aspect both contributes to the index figures and also gives information on the legal problems experienced by the people and it may connect one aspect with another. Referring to such matters, then the prevalence of legal problems may be seen from:

Detail of Problems

It gives description on the type of problems experienced by the people, the status of problems parties to gain knowledge of the deprived rights; and the effect to the society due to the legal problems. Legal problem is categorized as 15 (fifteen) topics based on the previous literatures⁶² such as family and children; Gender Based Violence (GBV) and discrimination; housing; land and environment (natural resources); health; education; security/social support; criminality; citizenship and population administration; consumer and trade; business; manpower; public services; law and politics; cyber/online/

60. Adriaan Bedner & Ward Berenschot. *Akses Terhadap Keadilan: An Introduction to Indonesia's Struggle to Make The Law Work For Everyone* (Jakarta: KITLV, HuMa, VVI Leiden University, Epistema Institute, 2011), p. 3

61. OECD and Opens Society Justice Initiatives, *op.cit.*, p. 28

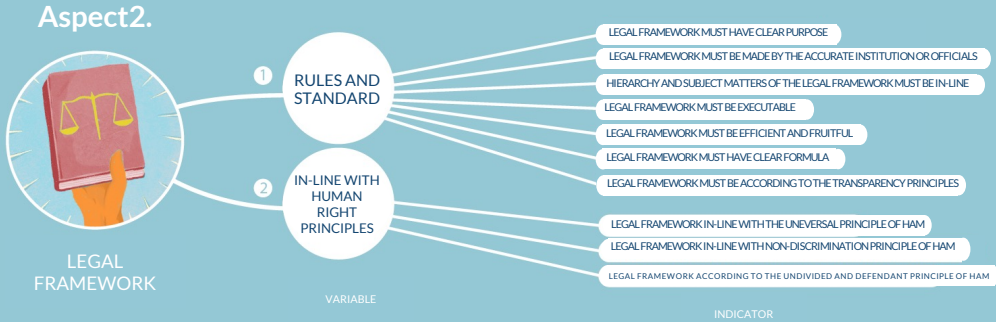
62. Based on mapping on various research such as OECD and Opens Society Justice Initiatives (2019), *World Justice Project (2018)*, *Canadian Forum on Civil Justice (2012)* and also annual reports of *Criminal Statistics by National Agency of Statistics (2018)*, *Criminal Statistic by High Attorney (2007)*, *National Human Rights Agency, Woman Protection National Commission, Ombudsman, Child Protection National Commission, and Wahana Lingkungan Hidup Indonesia (WALHI)*

digital based; as well as order and security. **This variable does not contribute to the index figure,** however, might resulted into information on the legal problems experienced by the people.

either still ongoing, stopped half-way or has been settled. **This variable does contribute to the index figure,** however, might resulted into information on the tendency of development of the problems.

Status of the Problems

It gives description on the status of the problems experienced by the people,



VARIABLE EXPLANATION

It is necessary to pay attention to two factors to see whether the legal framework is good or not.⁶³ The factors are: (1) clear rules and standard, and (2) indiscriminative legal framework.⁶⁴ Referring to such matters, the legal framework in terms of the access to justice may be seen through:

Legal Framework with Clear Rules and Standard

The measurement of the quality of legal framework from the standard of creating regulation must be made according to the Law No. 12 of 2011 . This measurement is made to know how the constitution was first made/drafted. Absence of rules with clear standard

will raise abuse of power, multi-interpretation, and discriminative to the officials posted to settle the problems.

Legal Framework In-line with the Human Right Principles

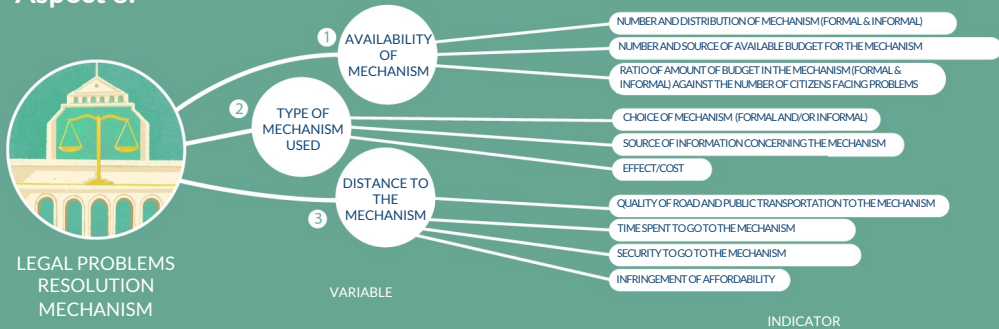
The measurement of the legal framework quality from three Human Rights principles, such as universal and inseparable, non-discriminative and equality as well as undivided and dependent to each other.⁶⁵ The measurement of quality of the legal framework from Human Rights point of view was made to understand how far the provision of the constitution shall be in favor of fulfillment of basic rights of the society.

63. ABA RoLI, *op.cit.*, p. 4

64. *Ibid*

65. "What are Human Rights" accessed in <https://www.ohchr.org/en/issues/pages/whatarehumanrights.aspx>

Aspect 3.



VARIABLE EXPLANATION

Problem resolution mechanism divided into formal and informal mechanisms.⁶⁶ The two mechanisms are emphasizing on the actors and the functions, instead of the methods or way of settlement.⁶⁷ Furthermore, it is explained that there are some necessary points to be considered in understanding access to justice mechanism, which are⁶⁸:

Availability of Mechanism

Valuating the availability of legal problems resolution mechanism. The variable of availability was measured in order to understand the existing mechanism, has it been sufficient and evenly distributed or not, hence, it will give information on individuals' journey in seeking justice.

Type of Mechanism Used

Measuring type of mechanism used by the people to understand tendency of behavior among the people in settling the problems they experienced. This variable is used to see whether the people is doing something or not against their problems, what mechanism do they use, as well as what effect they will get when they decide to do nothing against their problems.

Distance to the Mechanism

Measuring the distance that people must travel to access mechanism. This distance comprised of condition of road, public transportation, access for the disabled, time spent to go to the place of problems resolution mechanism,

66. UNDP, *op.cit.*, p. 6-8

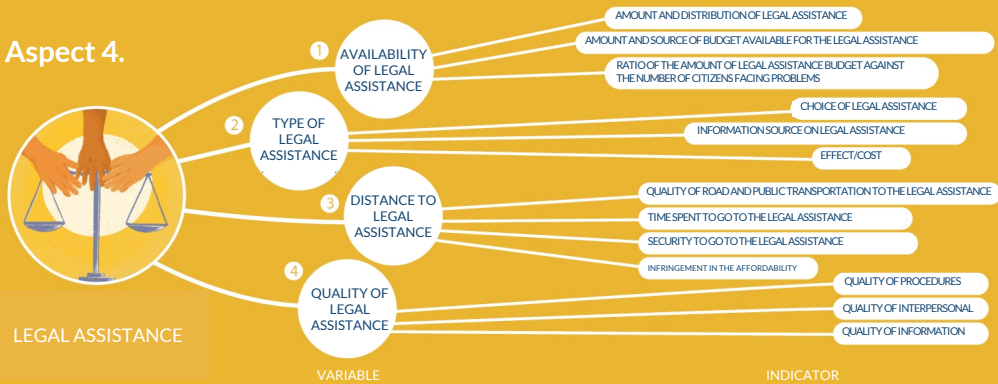
67. *Ibid*

68. Mentioned in ABA RoLI (2012), p. 20-29 and OECD & Opens Society Justice Initiatives (2019), p. 64-75 and 130

security to go to the mechanism and infringement to affordability according to the people. This variable is measured

to give information on the geographical accessibility for the people seeking justice.

Aspect 4.



VARIABLE EXPLANATION

Legal aid explained as a term of legal framework of the access to justice through various dimensions in order to obtain description on the available legal aid and people's necessity on the legal aid itself. This is then detailed through⁶⁹:

Availability of Legal Assistance

Valuating the availability of legal aid may help people to settle their legal problems. This variable is measured to understand the existing legal assistance, whether it has been sufficient and evenly distributed or not, hence it may give information on the spread of legal aid for the people in seeking justice.

Type of Legal Assistance Used

Valuating the type of legal assistance used by the people to know the tendency of behavior of the people in choosing legal assistance in settling the problems they experienced. This variable will see whether the people is using legal assistance or not in settling their problems, and what type of legal assistance do they use, what effect do they get when the people were deciding to not to use any legal assistance in settling their problems.

Distance to Legal Assistance

Measuring the distance necessary to be taken by the people in accessing legal

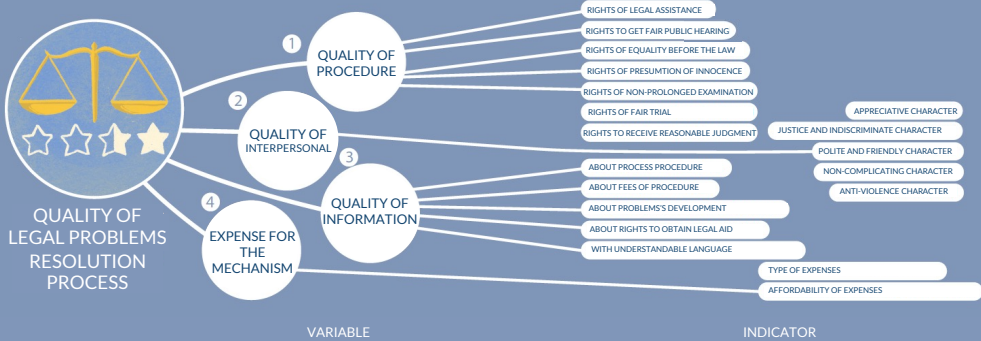
69. Mentioned in ABA RoLI (2012), p. 11-16 and OECD & Opens Society Justice Initiatives (2019), p. 64-75 and 130

assistance. This distance comprised of the condition of road, public transportation, access for the disabled, time spent to go to the legal assistance, and infringement to affordability according to the people. This variable is measured to give information on the geographical accessibility for the people seeking justice.

Quality of Legal Assistance

Valuating the quality of the legal aid from the point of view of legal assistance procedures, interpersonal of the legal assistant, and also available information in the legal assistance. This variable is valued to give information on how the practice of legal assistance was given to the people.

Aspek 5.



VARIABLE EXPLANATION

In order to understand the access to justice, it is necessary to have information on the quality of legal problems resolution process. The fact that legal problems is settled in a judiciary institution, does not mean that it has exercised the principles of justice. Various of surveys were questioning the quality of the process to obtain description on individual experience during different legal problems resolution process. These aspects elaborated that there are four important matters to see the quality of the process⁷⁰:

Quality of Procedure

The procedural quality is evaluating the fulfilment of rights in the legal problems

resolution process such as the rights over legal aid, rights to get fair public hearing, rights of equality before the law, rights over presumption of innocence, rights to be examined without delay, rights over fair trial, up to the rights of reasonable decision. This variable is measured to give information on the appropriateness of legal problems resolution practice with the basic rights in resolution problems.

Quality of Interpersonal

Interpersonal quality valuates the behavior and attitude of the legal assistant in processing legal problems resolution, such as being respectful, fair and indiscriminative, polite and friendly, refrain from complicating matters,

70. OECD and Opens Society Justice Initiatives, *op.cit.*, p. 75

refrain from disclosing information or documents that must be kept confidential, opened, refrain from misusing information, position, and/or authority, up to the anti-violence behavior. This variable is measured to give information on the practice of legal problems resolution assistant by the authorized officers/officials.

Quality of Information

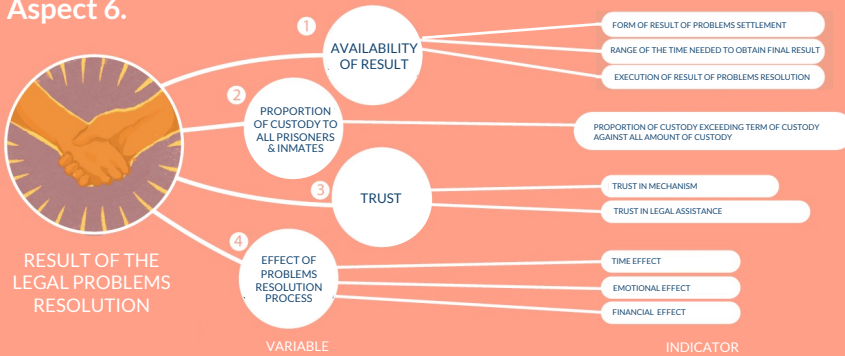
Quality of information measure the information received by the people which clearly and completely support their legal problems resolution process. Examples of important information and must be clearly and completely delivered are information on the procedures or steps of the procedures,

fees of the procedures, development of problems, rights to obtain legal aid (jointly), to the matters related to the documents issued/given.

Expenses of Mechanism

Measuring the fees incurred by the people in settling their legal problems in terms of amount and affordability of the fee incurable to the people. This variable is measured by giving information on the affordability in terms of fees/economy for the people seeking justice. This fee includes operational, procedure, legal aid, fees outside of procedures and fees to collect evidence.

Aspect 6.



VARIABLE EXPLANATION

Trust becomes an important variable in the access to justice.⁷¹ This belief can be seen from the trust against the institution and legal aid, in this regard is advocate. There is other important necessary variable on the effect/cost resulted from the problems.⁷² The measurement on the effect/cost is important for the policy maker to know the detailed 'liability' necessary for the people to settle legal problems.⁷³ Referring to such matter, this aspect shall be measured through:

Availability of the Result of the Legal Problems Resolution

Availability of result is valued through the form of result occurring as the end-result of the legal problems resolution

process. Besides, it may also be measured through the exercise/execution of the result, whether it has already according to the content of the available end-result or not. This variable is measured to give description on the existence of and the quality of the execution of the available end-result as the completeness of the legal problems resolution process.

Proportion of Custody Against All Prisoners and Inmates

This variable is the indicator point 16.3.2 of the SDGs, which sees the appropriateness of proportion of custody with the whole amount of all inhabitants in the available correction facility. This variable is calculating the

71. ABA RoLI, *op.cit.*, p. 14

72. OECD and Opens Society Justice Initiatives, *op.cit.*, p. 76

73. OECD and Opens Society Justice Initiatives, *op.cit.*, p. 76-77

amount of custody exceeding its term. Hence, it may give description on the condition of custody or correction facilities in Indonesia as the part of the access to justice according to the SDGs.

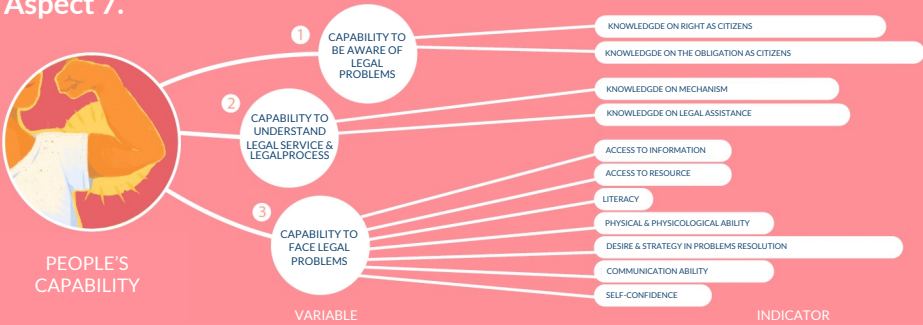
Trust

Trust may be seen from people's trust to the mechanism and against the available legal aid. The valuation of this variable may give information on people's point of view on the problems resolution mechanism they faced and also legal aid assisting them to settle their problems.

Effect of Legal Problems Resolution Process

The effect of the legal problem's resolution process is valued from the effect experienced by the people in terms of time, emotion and financial. The valuation on the effect of the legal problems resolution process may give full description on the truly necessary end-result of the legal problems and must be prepared to settle a legal problem.

Aspect 7.



VARIABLE EXPLANATION

People's capability in measuring the index of access to justice is referring to the legal capability. It is individual capacity to effectively respond to the legal problems experienced and other supporting matters necessary for individual to settle his problems.⁷⁴ By summarizing various surveys, the indicator of component in the legal capability are among others⁷⁵:

Capability to be Aware of Legal Problems

Capability to be aware of legal problems is valued through individual knowledge on the rights and obligations as citizens, referring to the Article 27 – Article 34 of the 1945 Constitution. Such problems is chosen due to appro-

-priateness to the issue of the access to justice. This variable may give description on the individual behavior in settling his problems and give information on what exactly necessary for the individual in the next step.

Capability to Understand Legal Service & Legal Process

Capability to Understand Legal Service is evaluated by individual's awareness on the existence of formal and informal mechanism, as well as people's knowledge on the said legal assistance procedure and how to find the mechanism. This variable may describe people's knowledge on the resources of support and methods around to settle legal problems. It is explained that

74. Pascoe Pleasance, *op.cit.*, p. 130

75. Pascoe Pleasance, *op.cit.*, p. 136

ability to comprehend legal service and legal process goes beyond how individual follow-up his problems, it can also detect individual's comprehension in differing legal issues.⁷⁶ Including their ability to detect which problems that must be reported to the legal service.

Capability to Face Legal Problems

Capability to face legal problems is valuated on whether or not an individual has the access to resources,

access to information, literacy, physical & psychological capability, strategy & desire to settle problems, communication ability, and good confident in facing legal problems. This variable may explain how individual internal capacity may work in facing legal problems.

76. OECD and Opens Society Justice Initiatives, *op.cit.*, p. 79



CHAPTER 2

RESEARCH METHOD





Data Collection Technique

	PUBLIC SURVEY	INTERVIEW WITH EXPERTS	ADMINISTRATIVE DATA
PREVALENCE OF LEGAL PROBLEMS	✓	✗	✓
LEGAL FRAMEWORK	✗	✓	✗
LEGAL PROBLEMS RESOLUTION MECHANISM	✓	✓	✓
LEGAL ASSISTANCE	✓	✓	✓
QUALITY OF LEGAL PROBLEMS RESOLUTION PROCESS	✓	✗	✗
RESULT OF THE LEGAL PROBLEMS RESOLUTION	✓	✓	✓
PEOPLE'S CAPABILITY	✓	✗	✗

table
2.1

Data Collection Technique for Each Aspect

Index of the access to justice is measured through three method of data collection, namely:

1. PUBLIC SURVEY

Survey method is chosen to obtain more real description on the perspective and people's experience in accessing justice. There are around 60 indicators that shall be measured with the survey method using questionnaire as its measurement tools.

Choice of Respondent

Respondents for the survey are the people with legal problems whereas achieving or seeking justice shall be the

purpose of the people who have their rights deprived, violated and/or have legal problems. Since there is no data from the people who experienced legal problems for the last 3 (three) years, then at the chosen location from stratification, there was data entry on the people who have ever had legal problems. Choice was made through rapid-listing survey⁷⁷ to 4,196 people to get incidence analysis data. Such data shall become the basis of population

77. Initial or preliminary survey that was done to identify the amount of the population before the real survey conducted

estimation, the research then obtained 2522 people to perform rapid sampling, by keeping margin of error (assuming that it is simple random sampling) at 2 percent. The total respondents are as much as 2,040 respondents evenly distributed in 34 provinces, while the amount of respondent in each province are 60 respondents.

Choice of Location

The survey made in 34 provinces since the index of the access to justice shall elaborate condition in national level. Each province is represented by 60 respondents with even comparison in

the capital of the province (as the representatives for the cities) and one regency (as the representatives for non-cities). This may be conducted in each location in Indonesia except for Maluku and North Maluku, which, during the data collection process were in earthquake. The determination of respondent was not made based on inhabitants' proportion, since it may lead to bias due to sole representation of data from Java and Sumatera. All analysis was made in national level; hence it is legal to make generalization to the representatives of the condition as a whole in national level.

2. INTERVIEW WITH THE EXPERTS

Interview with the experts were made to answer the condition of the access to justice based on their expertise. There are four measurable indicators through the guidelines⁷⁸, which covers the instruction of scoring by each expert in each indicator. This aims to obtain qualitative result from the qualitative condition explained by the experts.

Choice of expert

The experts⁷⁹ were chosen based on 15 legal problems which mentioned in Chapter 1. Hence, there are 15 person of experts, 1 expert for legal assistance and 1 expert of restitution indicator, with the total amount of 17 person of experts. The experts were chosen based on their expertise to elaborate

78. See Table 2.1, the four indicators by collecting data from interview with the experts are legal framework, legal problems resolution mechanism, legal assistance and result of the legal problems resolutions.

79. Experts are chosen based on the needs of their expertise in each legal problems and decided by consortium based on each consortium member experience with all of these experts. Consortium can not include the names of experts in this report because of research ethic, the experts did not allow consortium to publish their names.

the condition of the access to justice in national level, through the following criteria:

Academicians/Researchers

- ▶ Minimum degree of S3 in the field of law/social/politics
- ▶ Experienced in teaching for minimum period of 15 years in one of related field and/or do research
- ▶ Has made minimum of three researches in the relevant field
- ▶ Has national publication and/or international in the relevant field
- ▶ Is not incumbent in structural and functional position in the government

Practitioners/Professionals

- ▶ Experienced in performing his profession according to one of the relevant fields for minimum of 15 years
- ▶ Is not incumbent in structural and functional position in the government
- ▶ Has the license from professional institution/organization, unless for retirement of legal enforcement apparatus/civil apparatus of the state

Social Activists

- ▶ Experienced in performing his profession according to one of the relevant fields for minimum of 12 years
- ▶ Is not incumbent in structural and functional position in the government
- ▶ Prioritizing incumbent leaders of the association/community/organization of social activists

3. ADMINISTRATIVE DATA

Administrative data collection is made to answer the condition of the access to justice through the collected data from legal problems resolution institutions.

The administrative data is necessary to elaborate the type of problems, status of problems, amount and distribution of legal problems resolution. mechanism,

and availability of the legal aid. However, the indicator of contributor to the index score are only the amount and distribution of the legal problems resolution mechanism and legal assistance.

Choice of Data Provider

From 15 legal problems and desk review, there are 33 institutions capable of settling problems, which were taken as the administrative data provider⁸⁰. However, in the process, not

all of the 33 institutions may finish the data within the duration given. Hence, the consortium determined 5 priority institutions, considered as the main institution, that can cover the whole 15 legal problems and becomes the canal for all case reports in various sectors. Those chosen institutions are the Police department of the Republic of Indonesia, Supreme Court, Ombudsman, Attorney General's Office, and National Commission of Human Rights.

80. See Annex 5 for the list of the institutions that was asked for administrative data collection

Index Calculation Technique

The index of the access to justice is measured through three data collection technique previously mentioned. Further, based on the result of such data collection, the process and calculation of index score were made. Steps necessary to calculate this index are different in each data collection technique⁸¹.

81. See Annex 4 to get the full picture of coding score and calculation result in each aspect, dimension, indicators and questions



1. DETERMINING WEIGHT OF THE INDEX

This index is only calculated through 6 aspects by excluding the prevalence aspects of legal problems. This is because access to justice is something that needs to be achieved by those who experience injustices. Thus, this prevalence aspect becomes the prefix or an opening to get information about the injustices experienced by people. This aspect also becomes a bridging to get information on other aspects to make it easier for people to answer other aspects by giving them context so they can referring to the problem being experienced by themselves So, this index contributed by other 6 aspects

which are 1) Legal framework, 2) Legal problems resolution mechanism, 3) Legal assistance, 4) Quality of the legal problems resolution process, 5) Result of the legal problems resolution, 6) People's capability.

However, the first step was to (1) weighting all 6 aspects of the access to justice to know which one of the higher contribution to the end-result of the index, (2) determine the contribution of each data collection technique to know the proportion of each part of the data in the end-result of the index. Weight of each aspect shall be as follow:

LEGAL FRAMEWORK	10%	LEGAL PROBLEMS RESOLUTION MECHANISM	20%	LEGAL ASSISTANCE	15%
QUALITY OF LEGAL PROBLEMS RESOLUTION PROCESS	20%	RESULT OF THE LEGAL PROBLEMS RESOLUTION	20%	PEOPLE'S CAPABILITY	15%

table 2.2 *Weight of Each Aspect*

Weighting every aspect is essential because the contribution of every aspect is different in fulfilling access to justice. The definition of Indonesian Access to Justice that Consortium develops is "the pathway for people to defend and restore their rights, as well

as settle their legal problems, either through formal or informal mechanism—including people's capability—in accordance with the human rights standard." Based on this definition, the experts consider that the process for resolving the legal problems

is the 'first and minimum' thing of fulfillment access to justice in Indonesia. Therefore, the experts determines that legal problems resolution mechanism, quality of legal problems resolution process, and result of the resolution of legal problems as the three highest weight of the access to justice index' aspect.

Whereas the experts determines that legal assistance and the people's capability do not significantly weight. The experts mentioned that the legal assistance aspect is the complementing of the quality of the process. If the score of legal assistance is good, it positively impacts the quality of mechanism. Moreover, the experts also considers that not all legal problems will require the legal assistance if the people have good capacity and knowledge to solve their problem. Then, for the aspect of the people's capability, despite considers it as a new perspective in providing access to justice in Indonesia. However, the experts consider it will have no significant contribution when others aspects are totally well-served to the people who have legal problems.

Aspect 1: Legal Framework (10%)

Legal framework has weight of as much as 10 percent taking into account that this aspect is the standard or the basis for the operation of all legal process. Legal framework is functioning as the government product that may secure the fulfillment of rights, as well as regulating the obligation of each citizen. However, good legal framework must be followed by implementation in the mechanism aspect. Hence, legal framework has an important role in putting the basic for the people to obtain access to justice, which must be followed by other pillars.

Aspect 2: Legal Problems Resolution Mechanism (20%)

Legal problems resolution mechanism weight of as much as 20 percent. Since this aspect is both tracing the legal problems resolution process in the formal judiciary system, and also give attention to the problems resolution mechanism in informal manner (such as in the scope of Rukun Tetangga (RT), family, custom, and others). Besides, this aspect is the first gate to measure the journey of the access to justice. Without problems resolution mecha-

-nism, either formal or informal, the access to justice shall be hard to measure.

Aspect 3: Legal Assistance (15%)

Legal assistance weight of as much as 15 percent, taking into account that in the SNAK, legal assistance access is one of the strategies formulated to ensure that the state is providing a service accessible for all people in need. Despite that this aspect is considered as important, the figure of this aspect placed second after the mechanism, quality and result, that each has weight of as much as 20 percent. Despite that right over legal assistance has already guaranteed, however the implementation shall be depending on the type of the case⁸² and the willingness of the parties to be assisted. In the Indonesia criminal procedural law (KUHP), the type of criminal case that must obtain legal aid is the ones punishable by criminal imprisonment of no less than five years whereas the defendant is unable to bring legal attorney himself.⁸³ Hence, in the

measurement of the index of access to justice, the amount of weight is considered as sufficiently representative.

Aspect 4: Quality of Legal Problems Resolution Process (20%)

Quality of legal problems resolution process weight of as much as 20 percent, since such aspect is substantive. The quality of a process is the reflection of the seriousness and compliance of the apparatus in performing its main task and function. Logically, qualified problems resolution process shall lead to a good result as well. However, it does not close the possibility that good quality of process may generate bad result due to various influencing factors. Thus, the quality of the process and result must be relevant one another, consequently it has the same weight of index.

Aspect 5: Result of the Legal Problem Resolution (20%)

Result of the legal problems resolution weight of as much as 20 percent, taking

82. *In the Indonesia criminal procedural law (KUHP), the type of criminal case that must obtain legal aid is the ones punishable by criminal imprisonment of no less than five years whereas the defendant is unable to bring legal attorney himself.*

83. *In the private procedural law (HIR), one of the principles applied is the absence of obligation to represent (article 123 HIR, 147 RBg).*

into account that this aspect does not only value the end-result of a process of an individual to obtain justice, yet it also views the process post or after went through the process. Hence, the process of the access to justice can be considered as good or bad by taking this aspect into consideration.

Aspect 6: People's Capability (15%)

People's capability weight of as much as 15 percent, taking into account that this aspect is quite important to be considered in measuring the access to

justice in Indonesia. Since there are still many injustices in the existing legal problems resolution process. The high rate of torture by the legal enforcement apparatus to the perpetrator at the time of examination, and bad quality of legal companion or legal advisor provided by the state, consequently made the fulfillment of the perpetrator rights served administrative function only.⁸⁴ Such condition does not have to be happened if the individual has good legal capability.

2. DETERMINING DATA SOURCES CONTRIBUTION

After determining weight of each aspect, the next step shall be determining the contribution in each

data collection technique, in this regard, there are three data collection technique, as follow:

ASPECT	DATA COLLECTION TECHNIQUE		
	PUBLIC SURVEY	INTERVIEW WITH EXPERTS	ADMINISTRATIVE DATA
LEGAL FRAMEWORK		100%	
LEGAL PROBLEMS RESOLUTION MECHANISM	69%	29%	2%
LEGAL ASSISTANCE	79%	19%	2%
QUALITY OF LEGAL PROBLEMS RESOLUTION PROCESS	100%		
RESULT OF THE LEGAL PROBLEMS RESOLUTION	86.4%	13.6%	
PEOPLE'S CAPABILITY	100%		

table
2.3

Contribution of Data Collection Technique in Each Aspect

84. Miko Susanto Ginting, *op.cit.*, hal. 20

The contribution of each data collection technique is seen from the contribution of the method to the aspects of the access to justice. The assessment of the score of legal framework aspect was 100 percent taken from the results of interview with experts. The assessment score for legal problems resolution mechanism were 69 percent taken from the public survey and 29 percent taken from interview with the expert, whereas the 2 percent was taken from administrative data. In order to value the score of legal assistance aspect, 79 percent was taken from the result of public survey and 19 percent was taken from the interview with the expert, whereas the 2 percent were from administrative data. In order to value the score of the quality legal problems settlement process, 100 percent was taken from the result of public survey. In order to value the score of the result of the legal problems resolution aspect, 86.4 percent was taken from the result of public survey and 13.6 percent was taken from the expert interview. Lastly, to value the score of the people's capability aspect, 100

percent was taken from the result of public survey.

These contributions were determined based on the experts' judgment because access to justice by definition emphasized on how people reach the path to defend and restore their rights with their capabilities. Thus, the realization of access to justice is obtained based on the experience of the people itself in accessing justice. It is mentioned that "meaningful understanding of access to justice is crucial for the development of effective civil justice policies, models and financing."⁸⁵

A legal need survey offers some benefits in assessing the progress of access to justice. First, it provides "an empirical basis for understanding how peoples' justice issues arise, are experienced and affect a broad range of development priorities."⁸⁶ It is done by "investigating] the experience of justiciable problems from those who face them (a 'bottom-up' perspective)".⁸⁷ Furthermore, it is mentioned that "access to civil

85. OECD and Opens Society Justice Initiatives, *op.cit.*, p. 11

86. *Ibid*

87. *Ibid*

indicators built from legal needs surveys can increase the visibility of civil justice barriers and highlight the experiences of particular populations”.⁸⁸

Based on the above considerations, the consortium concludes that measuring access to justice should emphasize on people’s own experience. This model of survey should have been included in government administrative data such as legal services report, public satisfaction level on legal services, etc. However, because the data was not available in most relevant institutions.⁸⁹ Even more, according to The Task Force on Justice “a lack of data has obscured the scale of world’s failure to provide justice for all” is still a problem recently.⁹⁰ Administrative data problems also occur because: “administrative data tell us little about people’s experience of justice”.⁹¹

Accordingly, the public survey on this report has been given greater weight

than expert interviews and administrative data. With this proportion, the index result can provide more illustration on how the situation of access to justice through the lens of the people experiencing legal problems and undergoing the legal process by themselves.

From the table 2.2 above, it may be seen that 5 of 6 aspects were using public survey and the contribution were emphasized on the public survey, since compared to the other two methods, the index of access to justice is more emphasizing on the public experience in achieving justice. It is made with the aim to obtain more real description on the condition of the access to justice in Indonesia. Meanwhile, the contribution for interview with experts determined on the basis of justification that the experts may describe a condition of the access to justice in the society, however only through perspective about the field of expertise mastered by the experts. Data administrative analysis

88. OECD dan Open Society Justice Initiatives, *op.cit.*, p.13

89. Based on the results of this study, both in the preliminary research stage and in the process of data administrative collection, administrative data in Indonesia is still not available.

90. The Task Force on Justice, “Justice for All – Final Report. (New York: Centre on International Cooperation, 2019). Available at <https://www.justice.sdg16.plus/>. Pg. 32

91. *ibid*

has the least contribution since it is only assessing one variable only and has constraint on the availability as well as the quality of the data. There is too minimum amount of available administrative data and it cannot explain or describe the condition of the access to justice as a whole.

3. DETERMINING INDEX SCORE

A. Public Survey Data

Steps to calculate the index in the public survey data is:

- ▶ **Determining scoring in each choice of answers** from 252 questions of surveys inserted as contributor in the index. The score is determined through justification of consortium team on the basis of theoretical and empirical analysis or comparison to the ideal condition⁹². Other consideration is the proportionality of each aspect in each data collection technique, to make the weight in each aspect to have the same balance;
- ▶ After determining the weight of each aspect and contribution of each data collection technique, then the **determination of weight of all contributing questions in each aspect comes next**. It is made to obtain the index score of each aspect. In order to determine the score of each question, the steps shall be:
 - a. **Calculate New Coding Score**
Shifting needed to transform index score in positive range starts from 0⁹³. This could be done by added the current minimum and maximum

92. Determination of the score for coding the answer is based on the judgment of the consortium as an expert (expert judgment). This judgment is based on the experience and knowledge of the consortium who have expertise for several years in the field of law both in theory and practice in the field (see profile of the consortium in Annex 6). The variance of scores given is (+), 0, (-). If the coding score is positive (+) then it describes the best or ideal conditions. Whereas if the coding score is 0, then it describes sufficient and necessary conditions which can be improved. For negative (-) coding scores, describe bad conditions or not ideal. But after processing the data the score variance is changed to 0 and (+) (more in this in Citation YY). If the coding score is 0, then it describes bad conditions or not ideal. As for positive (+) coding, the greater the score the better/ideal conditions are shown. This variance of scores can vary between questions because the grading of the choice of answers also varies in each question. Furthermore explanation, See Annex 4

93. Shifting negative score value to positive was done because initially the coding score determined through the consortium of judgment as an expert has a negative value (-). After processing the data, turns out this negative (-) value have an impact on the overall index value which then starts from the negative range (-) as well. Beside, the consortium wants to show an index score from the positive (+) range of 0-100 (where 0 is bad 100 is good). So the shifting is done by shift the negative score to 0 score value and the positive score also follows. In other words, the range of coding scores will remain the same even though the variance of the score is changed. For instance, the coding score for question X is -2 to 2 (range: 4). Then changed to 0 to 4 (range: 4). So, form this shifting, then it can be obtained cumulatively an index score in the positive (+) range where 0 score defined as bad/not ideal and the higher score defined as the better condition.

coding score to its minimum coding score value (not range because it can happen in negative range). For example, the coding score is max: 2 and min: -3, therefore the shifting should be done with max: $2+(3)$ and min: $-3+(3)$. So, the new shifting score is max: 6

and min: 0. The new coding score calculation have to be done for maximum coding score only because the minimum would always be shifted to 0 but maximum score could vary in each question.

$$SS = SC + SA$$

SS: New maximum coding score shifted
SC: Maximum coding score before shifted
SA: Shifting amount (from minimum coding score value)

b. Calculate the new score of each question

This is also needed to be made to obtain positive range in the last index score. First of all, we needed to calculate the average score given by respondent who answered the question. After that, the same, as before,

those average score of each question shifted by the amount of minimum coding score value (not range). For example: the average score is 0,50 a minimum coding score is -3 (before shifted). So the new score is $0,50+(3)=3,50$

$$SN = \left[\frac{\sum SR}{N} \right] + [-Smin]$$

SN: New score of each question adjusted after shifting
SR: Score given by respondent who answered in each question
N: Total respondent who answered
Smin: Minimum coding score of each question (before shifting)

C. Determining the total score of aspect

After coding score and average score of each question placed into positive

range, we could then calculate the total score of each aspect by dividing the average score with the maximum score.

$$ST = \frac{\sum SN}{\sum SS} \times 100$$

ST: Total aspect score
SN: New score of each question adjusted after shifting
SS: New maximum coding score shifted

- **Calculate the contribution of aspect score to total score of index.** Because the index consists of some aspect with different data collection techniques, each aspect and data collection techniques were weighted (See table 2.2 and 2.3). So, after we managed to calculate total aspect score, we have to see the contribution

score of each data collection technique first by multiplying the total aspect score with weight of data collection techniques. For example, total score is 50, the aspect is 'Legal Assistance', so for the contribution score in public survey techniques is 50×79 percent = 39,5 percent.

$$SI = ST \times WD$$

SI: Aspect contribution score of each index
ST: Total aspect score
WD: Weight of data collection technique (See table 2.3)

B. Expert Interview Data

Steps to calculate index in the data from the interview with the expert:

- **Determining the average score given in each question.** Expert coding score ranging from 0 -100. So, if the questions were for instance 9 questions, the total coding score is 900. The score given by all expert accumulated and divided by total expert answered the question.

$$EA = \frac{\Sigma EQ}{N}$$

*EA: (Expert) average score
EQ: Score given in each question and each expert (coding score)
N: Total expert who answered the question*

- **Determining the total score of aspect collected with expert interview.** This calculation of total score of each aspect is done by dividing the average score with the total maximum coding score.

$$ET = \frac{\Sigma EA}{\Sigma S_{max}} \times 100$$

*ET: (Expert) total aspect score
EA: Average score
Smax: Maximum score obtained from expert answered*

- **Calculate the contribution of aspect score to total score of index.** Because the index consists of some aspect with different data collection techniques, each aspect and data collection techniques were weighted (See table 2.2 and 2.3). So, after we managed to calculate total aspect score, we have to see the contribution score of each data collection technique first by multiplying the total aspect score with aspect data collection techniques. For example, total score is 50, the aspect is 'Result', so for the contribution score in expert interview techniques is $50 \times 13,6$ percent = 6,8

$$EI = ET \times WD$$

EI: (Expert) aspect contribution score of each index
ET: (Expert) total aspect score
WD: Weight of data collection technique (See table 2.3)

C. Administrative Document Data

The steps to calculate the index in the data of the interview with the experts are:

- ▶ **Coding the answer of the administrative data in each question** into the score and recapitulate the score given;
- ▶ **Determining the average score given.** Administrative data coding score range could vary on each question. The score given the accumulated and divided by total question answered by administrative data;

$$AS = \frac{\sum AQ}{N}$$

ES (Administrative) average score
AQ: Score given in each question (coding score)
N: Total question asked

- ▶ **Calculate new coding score.** Shifting needed to transform index score in positive range start from 0. Just like the explanation above;

$$AM = AC + SA$$

AM: (Administrative) new coding score shifted
AC: (Administrative) maximum coding score before shifted
SA: Shifting amount (from minimum coding score value)

- ▶ **Calculate the new score of each question.** This is also needed to be made to obtain positive range in the last index score. The same as before, those average score of each question shifted by the amount of minimum coding score value (not range). For example: the average score is 0,50 an minimum coding score is -3 (before shifted). So the new score is $0,50+(3)=3,50$;

$$AN = AS + [-Smin]$$

AN: (Administrative) new score of each question adjusted after shifting
AS: (Administrative) average score
Smin: Minimum coding score of each question (before shifting)

- ▶ **Determining the total score of aspect.** After coding score and average score of each question placed into positive range, we could then calculate the total score of each aspect by dividing the average score with the maximum score.

$$AT = \frac{\sum AN}{\sum AM} \times 100$$

AT: (Administrative) total aspect score
AN: (Administrative) new score of each question adjusted after shifting
AM: New maximum coding score shifted

- ▶ **Calculate the contribution of aspect score to total score of index.** Because the index consists of some aspect with different data collection techniques, each aspect and data collection techniques were weighted (See table 2.1 and 2.2). So, after we managed to calculate total aspect score, we have to see the contribution score of each data collection technique first by multiplying the total aspect score with the weight of aspect data collection techniques. For example, total score is 50, for the 'Legal Assistance' aspect, and the contribution score in public survey techniques for this aspect is 19 then $50 \times 19 \text{ percent} = 9.5$

$$AI = AT \times CD$$

AI: (Administrative) aspect contribution score of each index

AT: (Administrative) total aspect score

CD: Weight of each data collection technique (see table 2.3)

Based on the whole method above, **the total score and contribution score of each aspect was obtained.** It is important to understand that this score has not yet describe the total index score since it still comprised of several same aspects in each data collection technique and it needs other next step

before finalizing. The result of contribution score calculated per aspect in each data collection technique (see above: SI, EI, AI) should be accumulated in each aspect so then can be obtained the index score per aspect. It shall be as follows:

	SCORE IN PUBLIC SURVEY	SCORE IN INTERVIEW EXPERTS	SCORE IN DATA ADMINISTRATIVE	INDEKS SCORE OF EACH ASPECT
LEGAL FRAMEWORK		57.7		57.7
LEGAL PROBLEMS RESOLUTION MECHANISM	50.0	14.8	1.2	66.0
LEGAL ASSISTANCE	51.7	7.9	1.5	61.2
QUALITY OF LEGAL PROBLEMS RESOLUTION PROCESS	76.7			76.7
RESULT OF THE LEGAL PROBLEMS RESOLUTION	65.6	6.1		71.7
PEOPLE'S CAPABILITY	78.3			78.3

table
2.4

Contribution of Score per Aspect from Each Data Collection

In the last step, in order to determine the index score of the access to justice then it must be multiplied with the weight per aspect in the Table 2.2 From the result of the multiplication, then it was accumulated so the index score of the access to justice shall be obtained as follow:

SKOR ASPEK X BOBOT	
LEGAL FRAMEWORK	5.8
LEGAL PROBLEMS RESOLUTION MECHANISM	13.2
LEGAL ASSISTANCE	9.2
QUALITY OF LEGAL PROBLEMS RESOLUTION PROCESS	15.3
RESULT OF THE LEGAL PROBLEMS RESOLUTION	14.3
PEOPLE'S CAPABILITY	11.7
INDEKS SCORE	Σ 69.6

Table 2.5 Score per Aspect with Weight⁹⁴

94. All numbers here are the results of processing from Microsoft Excel software. For the purpose of conveniency we rounded the numbers automatically from the software into 1 digit behind the comma.

Index Arrangement Steps

The arrangement of the index of the access to justice is made through several steps, namely:



1 Literature Review

Consortium created comparison and made an analysis from the previous research or literature related to the access to justice. The result of this analysis is used to arrange definition, framework, and measurement tools of the access to justice in Indonesia.

2 Focus Group Discussion (FGD)

Other than literature review, the consortium was also conducted FGD with various national and international experts such as Prof. Pascoe Pleasance from England, Geoff Mulherin from Australia, and Martin Gramatikov from the Netherlands. Besides with the experts, the FGD was also made with the governments such as Bappenas, BPHN, BPS and various Ministry/Institution.

3. *Formulation of Definition, Framework, and Measurement Tools*

Based on the result of literature review and FGD with various experts as well as the government, a definition of the access to justice was made. The frame-

-work and measurement tools for the index of access to justice were also made based on those definition with the three methods of data collection.

4. *Trial for the Measurement Tools*

In order to ensure that the measurement tools arranged are capable of obtaining the needed data, then a trial were made in 5 (five) provinces along with the local partners, which are Somasi NTB in the West Nusa Tenggara (NTB), Bantaya Association in Palu, Central Sulawesi, Legal Aid Association for Justice and Peace (PBHKP) in West Papua in

Sorong, West Papua, and Legal Aid Institution Pekanbaru in Pekanbaru, Riau. The trial was made in the West Nusa Tenggara province, West Papua, Jakarta Special Capital Region, Central Sulawesi, and Riau and the chosen locations were based on the representation of cases of legal dispute and the Human Development Index (HDI).

5. *Data Collection*

The data collections which are survey, interview with experts, and collection of administrative data were made in parallel. The survey was conducted by

survey vendor, while the interview with experts and collection of administrative data were done by the consortium team.

6. *Data Processing and Index Score Calculation*

After collecting data, the data was managed and processed by the consortium team in order to produce the figure of. the. index of access to

justice in nation level. The figure of the index was obtained from the accumulation result of each aspect comprised in the access to justice.

7. *Arrangement of Report*

The final report on the index of access to justice was arranged from the data processing result either in the form of index number and narration of analysis.

The report will also cover the recommendation from the consortium to other stakeholder based on the access to justice index result.

Research Limitation

The consortium faced limitation of research in terms of the measurement of the access to justice, as follows:

1.

Public survey was made with minimum sample in each province, hence the index result can only be made through generalization in the national level but not on provincial level;

2.

Interview with expert was only done by one person in each issue/expertise divided into 15 legal problems in the index of the access to justice;

3.

Collection of administrative data was only used for one variable in the index measurement of the access to justice;

4.

The index result of the access to justice was obtained only from the people who do something to their legal problems. The consortium consider that it is necessary to make separate research further for the people who did nothing to their legal problems;

5.

For the rights of the disabled indicators related to the availability of facilities is not included in the questions for public survey, since during the tools trial process, it was difficult get the information regarding those issue;

6.

For the rights of victim's restoration indicator, the initial plan was to obtain data through public survey. However, the consortium team was not able to include this question to the questionnaire for the public survey, then the data was collected through the interview with the expert.



CHAPTER 3

ACCESS TO JUSTICE INDEX FINDINGS





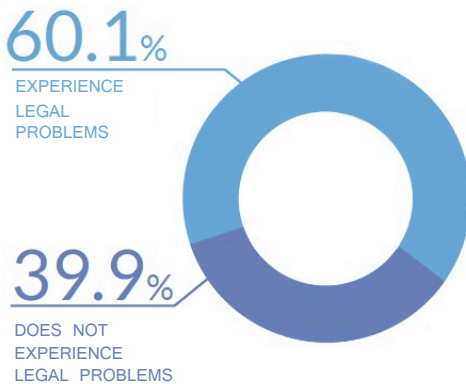
Initial Findings of the Measurement

In the access to justice index, the first matter that shall be measured (but not weighted in the index) is the prevalence of legal problems experienced by people. The result shows that this pre-

valence is quite high, around 60.1 percent of people (from 4,196 respondents that came from initial rapid-listing⁹⁵) were facing legal problems within the last three years.

3.1.1 PREVALENCE OF LEGAL DISPUTE

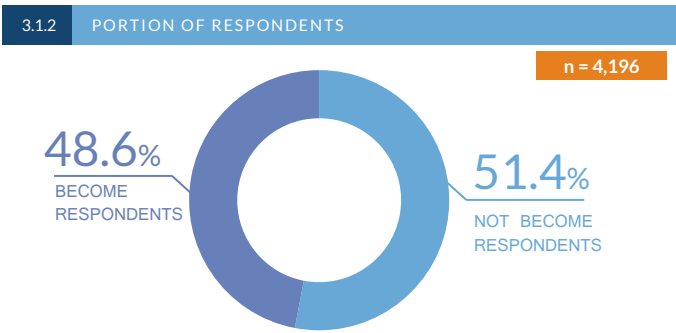
n = 4,196



95. Explanation regarding rapid-listing is explained in Chapter 2

This finding indicates a significant difference from the previous research conducted by HiIL in 2014⁹⁶ and World Justice Project in 2018⁹⁷. In 2014, there was mentioned that 16 percent of people experience legal problems⁹⁸ and there were 26 percent of people experienced legal problems in the 2018 survey⁹⁹. Although, this index of access to justice does have a greater number of samples and a broader field of research. This index of access to justice has the number of initial samples of 4,196 persons from rapid-listing, which

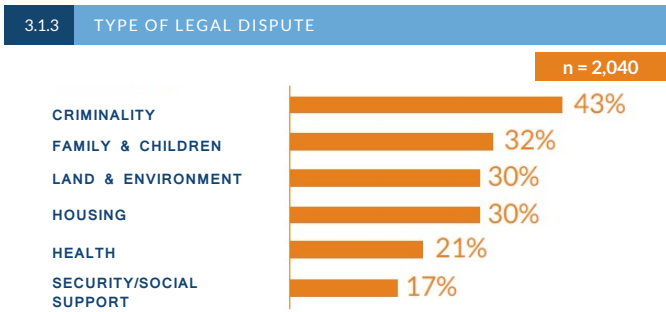
covers research areas across Indonesia (in all provinces). This was made since the index is intended for a national scale to get an overall description of all territories without focusing on certain areas only. Meanwhile, HiIL's research only has the amount sample of 2,400 persons covering research areas of Jakarta, West Kalimantan, South Sulawesi, Yogyakarta, and Bali. And World Justice Project's research has a number of samples of 1,004 persons covering research areas of Jakarta, Surabaya, and Bandung.



96. The Hague Institute for Innovation of Law (HiIL), *Justice Needs in Indonesia 2014: Problems, Processes, and Fairness*, p. 1
 97. World Justice Project (WJP), *Global Insights on Access to Justice*, (Washington: WJP, 2018), p. 28
 98. The Hague Institute for Innovation of Law (HiIL), *op.cit.*, p. 24
 99. World Justice Project (WJP), *loc.cit.*

Then, from the number of all people with legal problems from rapid-listing, about 47 percent or 2,040 people became respondents for further measurement. All of the 2,040 respondents were questioned through

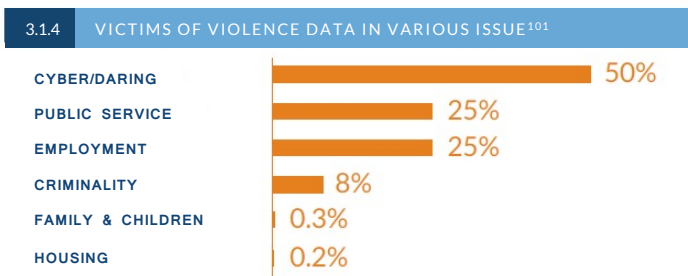
a questionnaire survey to measure their experiences in dealing with legal problems.



Based on the graphic above, there are 6 (six) top legal problems that occurred in society. Most legal problems faced by people are related to criminality (43 percent), family & children (32 percent), land & environment (30 percent), housing (30 percent), health (21 percent) and security/social support (17 percent). Another necessary finding is that this data can also somehow contribute to the global indicator of the Sustainable Develop-

ment Goals (SDGs) 16.3.1 which is about the proportion of victims of violence in the past 12 months who made a report to the officials or authorities through the recognized conflict resolution mechanism¹⁰⁰. This finding can show the number of people who experienced violence in various issues—but whether they report the problem or not, for the last 3 years. The data is as follows:

100. Sustainable Development Goals by United Nation accessed in <https://unstats.un.org/sdgs/metadata/?Text=&Goal=16&Target=16.3>

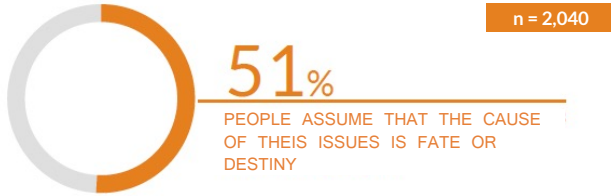


The people may experience violence in the form of physical, verbal, or psychological form, either from their opponents, law enforcement apparatus, or other parties. Indonesian government may use this data to reflect about the achievement of the SDGs 16.3.1 and to follow-up the targeted issues which still show some prevalence of violence. Based on the findings, it shows that 8 percent of the respondents who faced criminality problems, experienced certain acts of violence. And 25 percent of respondents who faced employment issues, also experienced forms of violence.

If the government let the condition persists, then it would have lowered the level of trust in the process of law enforcement, whereas the victims of violence would be reluctant to report their cases. Another bad impact that is more worrisome is that it is still harder for the victims to obtain justice since their cases will be left out as it is without clear accountability from the state.

101. The percentage in this graph is obtained and processed from respondents who stated that they experienced violence on each issue

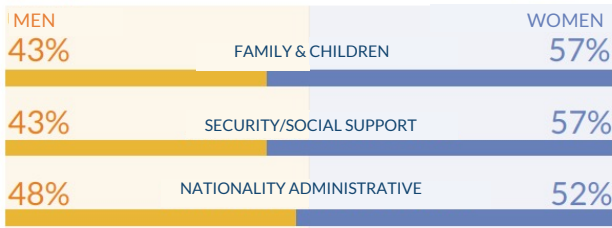
3.1.5 CAUSE OF LEGAL DISPUTE



Another interesting finding shows that the majority of the people (51 percent) assume that their legal problems were caused by fate or destiny. This data shows the lack of information and

knowledge by people regarding basic rights or the duty of the state to ensure its citizen’s well-being and basic needs—including access to justice.

3.1.6 GENDER PARITY IN PROBLEM TYPES



Other findings show that most legal problems experienced by women are regarding family and children (57%) such as divorce. There are also security/social support problems experienced by women (57%), of which 37 percent of them were facing difficulties in disbursing old-age allow-

-ance. Likewise, 52 percent of the people who experienced nationality administrative issues were women, which 39 percent of them are experiencing difficulties in obtaining identities such as Resident Identity Cards, Driving Licenses, and Passports. In other word, women are one of the

groups that are vulnerable to legal problems. So there needs to be a policy that ensures access to justice and is non-discriminatory towards women when dealing with the law. However, it seems that it still requires a lot of effort to achieve those goals. From 2000-2016, the National Commission of Anti-Violence Towards Women (Komnas Perempuan) found that there are 421 policies/regulations that are still discriminative toward women¹⁰². However, this also becomes a concern in the National Long-term Development Plan 2005 - 2025

(RPJPN)¹⁰³ which states that the development of women's and children's empowerment is focusing on improving the quality of life and role of women, welfare, and child protection in various development fields; reducing the number of acts of violence, exploitation, and discrimination against women and children; as well as strengthening institutions and networks for mainstreaming gender and children at the national and regional levels, including the availability of gender data and statistics.

102. Komnas Perempuan, *Laporan Independen Lembaga Nasional Hak Asasi Manusia Tentang 25 Tahun Pelaksanaan Kesepakatan Global Beijing Platform for Action (BPfA+25) di Indonesia* (Jakarta: 2019), p. 79

103. Kementerian PPN/BAPPENAS, *Visi dan Arah Pembangunan Jangka Panjang Tahun 2005-2025*, p. 48



Access to Justice is:
“A pathway for the people to defend and restitute their rights as well as settle legal problems either through formal or informal mechanism—including people’s capability—according to the human rights standard.”

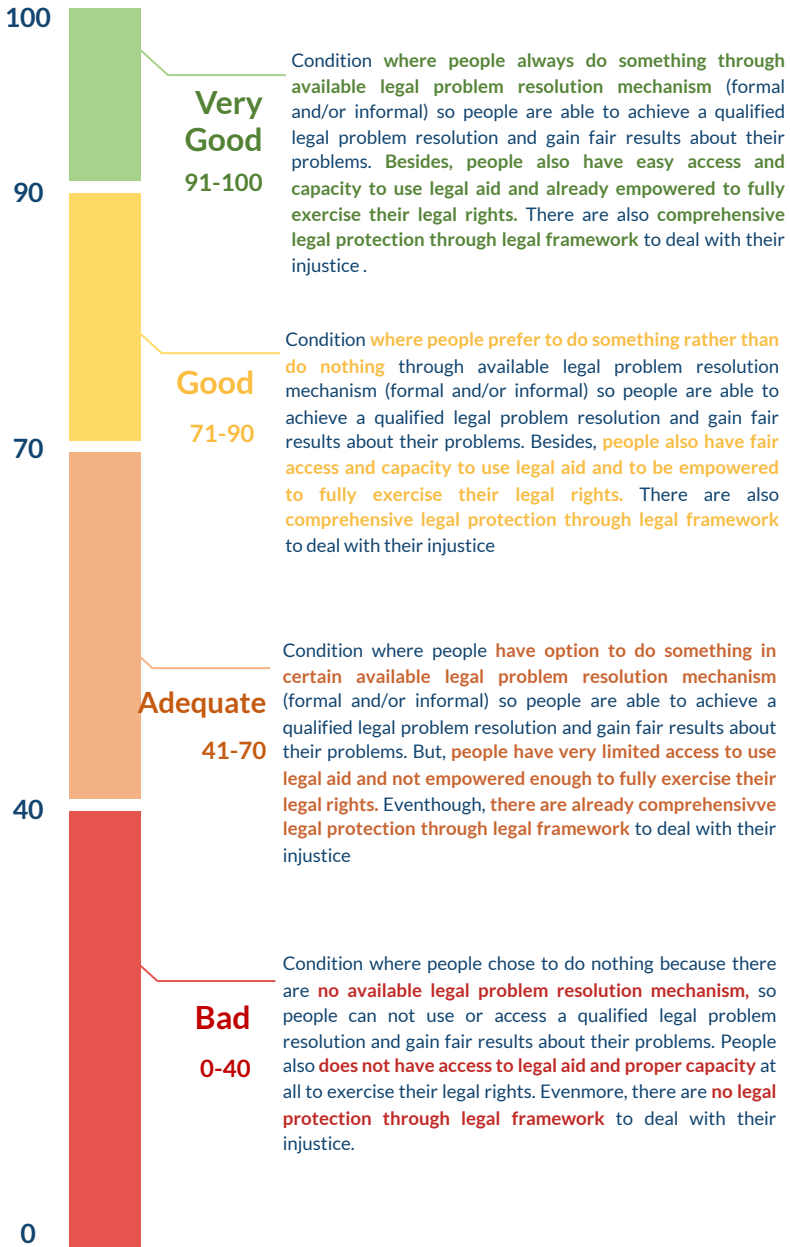
General Description of Index Result

Besides those initial findings, this index focuses its findings on 6 (six) main aspects that build the index of access to justice in Indonesia in 2019. From those aspects, then obtained the score of access to justice index which in between scale 0 – 100, whereas 0 describing the worst condition of the access to justice and 100 describing the best condition of access to justice. This

scale is then divided into 4 (four) categories which are 0-40 represents the bad condition of access to justice, 41-70 represents the adequate condition of access to justice, 71-90 represents the good condition of access to justice, and 91-100 represents the very good condition of access to justice.¹⁰⁴

104. Consortium chose to not divide the category evenly because 1) we use Indeks Demokrasi Indonesia (IDI) published by the National Agency of Statistics as our references, while in IDI there is 3 (three) main category of scores which <60: bad, 60-80: adequate; >80: good (where the scales are not evenly spaced); 2) Based on our methodology expert from Lembaga Demografi (LD) Faculty of Economy and Business, Universitas Indonesia, categories of the scale could be divided based on consortium (as the expert) judgment. Where consortium believed that the "Good" category/condition of access to justice should be categorized in high standard, as access to justice itself is not an easy thing to achieve without the presence of a very good condition of access to justice aspects. So, we broaden the scale category for the "Adequate" category condition. 3) We use the "criterion-based assessment" approach which is a process of evaluating (and grading) that is often used in the learning evaluation of students against a set of pre-specified and pre-determined qualities or criteria, without reference to the achievement of others. So, the criteria were defined earlier by the consortium's judgment, and then the score was categorized based on those criteria afterward. (Further Reference: Brown, S. (1998). Criterion-referenced assessment: What role for research. In H. Black & W. Dockerell (Eds.), *New developments in educational assessment. British Journal of Educational Psychology, Monograph Series No. 3*, p.1-14)

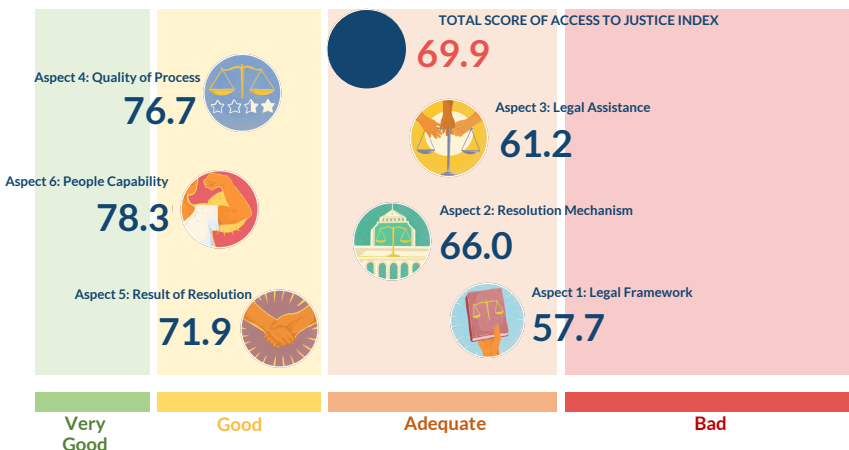
3.2.1 RANGE OF SCORE AND INDEX SCORE CATEGORY



The index result of the access to justice in Indonesia in 2019 is 69.6, and it is considered Adequate. This adequate score category means that Indonesia already has available access to justice, however, it cannot fulfill people's need of achieving accessible justice for all yet. The index result shows that there are still many people who chose to do nothing to solve their legal problems since they are afraid that their problems would become complicated (see page 98). Besides, the state has not yet maximized its role in providing the access to justice necessary for the people, since most of

They are using informal mechanism (outside of state institution) to settle their legal problems (see page 100). Further explanation on the condition of the access to justice in Indonesia may be seen through the 6 (six) aspects which contribute to the index's scores. In order to have full access to justice, the state must have and give equal access to the legal framework, legal problems resolution mechanisms, legal assistance, and also ensure the quality of legal problems resolution process, the result of legal problems resolution, and people capability.

3.2.2 TOTAL SCORE AND ASPECT IN INDEX





Main Findings of Index on Each Aspect



LEGAL FRAMEWORK

57.7

(ADEQUATE)

The legal framework aspect has an index score of 57.7 which is considered Adequate. These scores contributed by 2 (two) main variables such as the quality of legal framework based on Indonesia Law and quality of legal framework based on the human rights issue. This aspect was measured through interviews with 15 (fifteen) experts. Adequate condition of the legal framework aspect indicates that the legal framework is generally available—even for some types of problems and legal issues, it has been considered as over-regulated. This means that the national regulation condition has basically fulfilled the prerequisites of providing a legal basis for a fair legal problems resolution faced by the people. However, according to the experts, such achievement does not follow by good quality of regulation, which then creates problems in its implementation.

Monitoring and evaluation towards the national regulation condition are still minimum, and it has created an unharmonious relationship between one regulation and another. In the end, it causes the low contribution of the legal framework to the access to justice for the people.

Regardless of the different necessity and availability of legal frameworks, each type of legal problem basically needs a good quality of the legal framework. Regarding this matter, the Indonesia Law No. 12 of 2011 concerning The Formulation of National Regulations has become the basis to define a good legal framework. Overall, according to the expert, the national legal framework has its idealism but it has not in line with the real implementation in the field yet. So, this variable contributes to low scores or considerably below average,

especially regarding the usability and usefulness of the legal framework indicators.

Although generally considered as over-regulated, experts' assessment on the availability of the legal framework must be distinguished based on the necessity in each sector. Different types of legal problems will surely require a different type of legal framework. In this case, significant differences can be seen between the sector of national security & order and also the business sector. The high availability of legal framework in the sector of national security and order received a positive assessment from the experts. However, such condition is assessed otherwise—as in underperformed—in the sector of business. The finding shows that the state's actions in providing a legal basis in the sector of national security & order are already in accordance with the needs of legal enforcement. But, on the other hand, businessmen are difficult to obtain justice since the available legal framework complicates problems resolution, the process was prolonged and even expensive.

According to the expert, in other sector

such as in the sector of land & environment has a unique condition. Further said that when a formal legal framework is unavailable, the public can still obtain a legal problem resolution through an informal legal framework. For example, when someone cannot prove the right of their land ownership based on the formal regulation. In several regions, there were practices that recognized traditional (Adat) law to serve and handle land-regarding issues in the community. After the informal resolution, the traditional actors could use their rule as the basis for the formal institution to create a decision. This shows that the availability of a formal legal framework is not always becoming a prerequisite in fulfilling access to justice.

According to the interview with the experts, the gap between the purpose and implementation of our national legal framework may be caused by several matters. First, is the unreadiness of the State to provide a legal structure necessary to implement the regulation. Commitment and capability of the officers to implement all of the detailed matters in the legal

framework are mostly not in line with the regulation or legal framework itself. The lack of commitment could be referred to as the absence of sufficient funding and poor organization management. For example, in the consumer sector, the responsibility of the implementation concerning consumer protection is under the authority of the Ministry of Trade despite the fact that the scope of the consumer problems is very broad and related to the authority of other ministries as well. This shows incompatibility between responsibility owed by the institution and the commitment of the state to provide structure and support needed in its implementation.

Secondly, the formulation of the articles in national regulation is hard to understand or has multi-interpretation. This condition is mentioned by the expert, due to illogical interpretations from the officers. The existing formal legal framework tends to be interpreted and adjusted as the condition that occurred. Meanwhile, a logical interpretation is also necessary to settle a problem with the same standard to all citizens which is access

to justice. In practice, the state as the policymaker often does not have any apparatus that understand the practice in the field. Therefore, their way of thinking tends to take sides as authoritative bureaucrats to regulate, not to serve. This frequently causes problems in the interpretation of the regulation, thus hampering its maximum implementation. For example, one of the experts in the Criminal sector gives an example of the regulation in the Law concerning Narcotics which fails to draw a clear line in defining terminologies contained within the law. In the implementation of those Narcotics Law, the misuser, controller, and distributor of illegal substances are impossible to differentiate. This uncertainty creates a problem of inconsistency in imposing sanctions on those three acts.

Thirdly, the disharmonious content of regulation between one another. This condition is frequently found when a legal dispute has relevance with several regulations in more than one sector. For example, in several cases where a company is declared as insolvent by the court, then more often than not, there will be questions on the settlement of

its properties among three preferences, namely the creditor, the labor, or the state. According to private law, the independent creditor should have a special right for the settlement of the debtor's properties. However, this contradicts with the provision in the Law concerning Labor which regulates the special right for labor wages and the Law concerning Taxation which regulates the tax obligations. The dispute was finally settled through material examination in the Constitutional Court. Nonetheless, such matter has the case by case nature and basically does not represent general dispute settlement. This is due to the character of problem settlement through the Constitutional Court that has a passive character or relies on the existence of a party who submits an application for material examination.

Besides the overlapping issue between horizontal regulations or harmonization issues is also found on the hierarchy of the legal framework. For example, the experts assess that there is still uncertainty on the difference of position between the formal and informal legal framework. In

this regard, the formal legal framework tends to limit the traditional authorities or the informal legal framework. Unfortunately, this matter is still very problematic due to sectoral ego. On one side, formal authority presence gives the impression that government or state has the desire to perpetuate its authority instead of settling the problem. This is frequently conducted by discrediting traditional institutions that have been long established. Meanwhile, in other sectors, the State acknowledges traditional law institutions as a legal framework that has the same standing as other formal legal frameworks. Another example may also be found in the Employment sector, there is still contradiction between the regulation on minimum wages allowed under the Government Regulation No. 78 of 2015 concerning Remuneration (PP Pengupahan). This shows that a good monitoring and evaluation mechanism towards the national legal framework is not yet available, therefore an overlap of regulations can still be found.

Fourth, in some situations, the legal framework is almost impossible to

implement. Although it seems like an effect, this condition is basically one of the causes of the gap between the purpose and implementation of a regulation. This part raises problems in relation to the lack of enforcing powers, either in the form of regulation without sanction or general regulation that has no implementing regulation. The example of the first type can be seen in the execution or enforcement of the court decision in civil litigation cases that are often problematic due to conflict with a group of citizens living around the problematic object. This phenomenon often happens despite the court having firmly decided that there shall be execution to the disputed object. An example related to the regulation with no implementing regulation yet can be seen in the education sector. According to the statement from one of the experts in access to justice in the education sector, the legal framework has already had a clear purpose, however, the people and teaching staff have difficulties in understanding the substance. The expert advised creating a more detailed implementing regulation that can be understood by the teaching staff.

In the end, the problems stated above are resulting in the implementation of the existing legal framework which has lost its maximum function to fulfill access to justice. Nonetheless, in terms of effectiveness and usability, it was found that there are differences in the sector of general security and order against the criminal sector. The problem is, the two sectors have the opposite assessment. Ideally, high versatility score of the legal framework in the national security & order sector should have been followed by the same result in the criminal sector. However, the experts gave different scores in each sector. The availability of the existing legal framework is considered as having no impact in reducing the number of criminality. This proves that the state in general is still passive in handling criminal cases in Indonesia. The high assessment made to the usability of the legal framework in the sector of general security & order is still generally dominated by the perspective of law enforcement which prioritizes prosecution, while mitigation effort does not yet have obtained much attention. This means that the State will only take action when a problem appears by taking

repressive measures to protect the general security & order. Despite that many studies have proven that the cost borne by the state shall be higher when

it focuses on legal enforcement rather than investing in the long-term prevention effort against criminality.¹⁰⁵

105. Jessica A. Heerde, et al., *Prevent Crime and Save Money: Return-on-Investment Models in Australia* (Australia: Australian Institute of Criminology, April 2018)



LEGAL PROBLEMS RESOLUTION MECHANISM

66.0

(ADEQUATE)

The legal problems resolution mechanism aspect has an index score of 66.0 and is considered Adequate.

This category has a valuable contribution from three variables that are the availability of mechanism, the type of mechanism used, and the geographical access of mechanism. Adequate condition of the legal problems resolution mechanism aspect indicated that some mechanisms to solve legal problems already provided by the state and also a non-state actor and quite accessible geographically by people. But, still, many of the people chose to not do anything or not go into a certain mechanism to solve their legal problems. Based on the interview, their reasons include that they fear the complicated process, and they did not even know about how to access such a

mechanism. This score practically indicates that despite the availability of mechanisms to resolve legal problems, some people who experience legal problems still choose to ignore a settlement of their legal problems.

This aspect was measured by a public survey and expert interviews. In this aspect, formal and informal mechanisms were seen in the same hierarchy to emphasize that legal problems resolution can be processed through formal and/or informal mechanism which does not mean that one mechanism is better than the other, but rather on which mechanism can actually be accessed, relevant and chosen by the public to solve their legal problems.

3.3.1

FOLLOW UP ACTION OF THE PEOPLE TOWARDS THEIR LEGAL PROBLEMS

n = 2,040



From the result of a public survey, the majority of people chose to do something, for example telling their problems to relatives or reporting it when they faced legal problems. But there is also 38 percent of people who chose to not do anything regarding their legal problems. If we get back to the research conducted by HiiL¹⁰⁶ and World Justice Project¹⁰⁷, both research shows that the majority of people did nothing to the legal problems they faced. However, the finding in this index measurement shows the different results, which many members

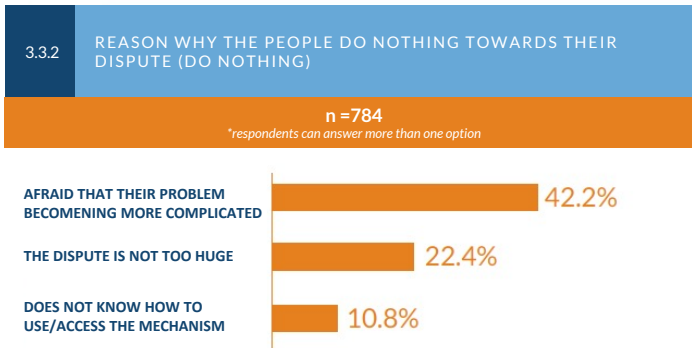
of the society are starting to act to settle their problems. Other findings also measure the geographical distance to the mechanism which is assessed from the length of time needed to physically go to the mechanism, security of the road, availability of public transportation as well as obstacle experienced in reaching the mechanism. The result shows that from all people who chose to do something towards their problems, 92 percent of them do not experience any obstacles in reaching the mechanism and 89 percent of them only need less than 1

106. The Hague Institute for Innovation of Law (HiiL), *op.cit.*, p. 40

107. World Justice Project (WJP), *loc.cit.*

hour to reach the legal problem resolution mechanism. This shows that most people have very easy access

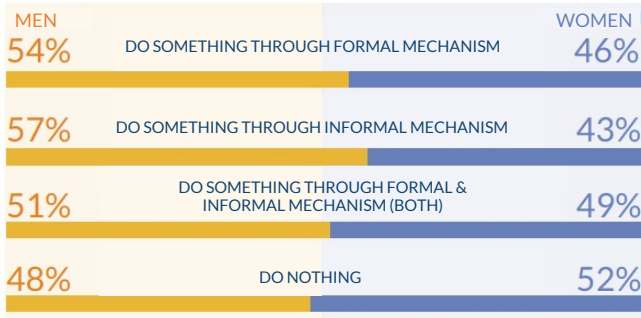
geographically to legal problem resolution mechanisms.



Even though people do not have certain difficulties accessing the mechanism geographically, some people still chose to not do anything regarding their legal problems. It was mostly because they were afraid that their problem will become more complicated if they use or report to a certain mechanism (42.2 percent). According to the findings above, there are people who also still have no idea how to use or access certain mechanisms (10.8 percent). These matters show that such a condition is far from ideal for access to justice since people still have stigma and ignorance in handling their legal problems.

Other interesting result shows that 46 percent of people who experienced discrimination & gender-based violence, and 34 percent of people who experienced criminality problems, decided to do nothing to their problems. Similar findings were also found in 48 percent of people who experienced cyber/online disputes and 51 percent of people who experienced employment problems—which chose to not do anything regarding their legal problems.

3.3.3 COMPARISON OF PEOPLE'S ACT IN SOLVING THEIR DISPUTE BY GENDER



Based on the findings above, it shows interesting finding that there is the tendency of pattern in the act of the people based on gender. The people who do nothing to their disputes are mostly women which are 52 percent, whereas 34 percent of them are housewives. It was mentioned by 38 percent of these women claimed that

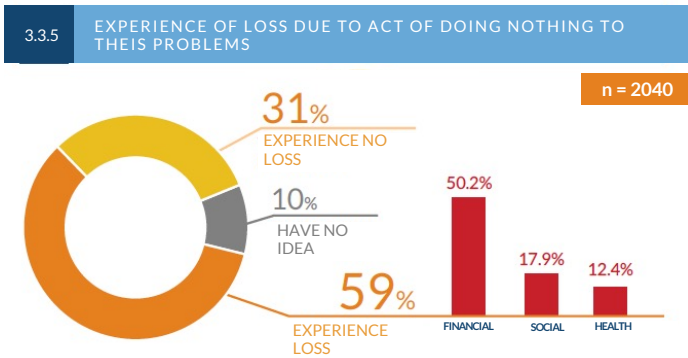
they are afraid in using the mechanism, that it will complicate the problems they had. Most people who do something to their legal problems either through formal, informal, or both mechanisms are men. It is clear that the majority of men tend to choose to act with regards to their disputes.

3.3.4 CHOSEN MECHANISM BY THE PEOPLE WHO DO AN ACT TO THEIR LEGAL PROBLEMS



On the other hand, there is a finding that shows people who do something to their legal problems mostly use informal rather than formal resolution mechanisms. In other words, there are more people using mechanisms outside of the State institutions. According to the findings above, the majority of the respondents chose informal

mechanisms (60.5 percent) such as family members and local authorities to solve their problems. There is also 6 percent of people who use both mechanisms, either informal or formal to solve their legal problems. The other 34 percent use formal mechanisms such as Police institutions, the Prosecutor, and the Court.



Meanwhile, the public survey also found that people who do nothing to their disputes have or received certain negative impacts or losses. According to the findings above, there is 59 percent of people who do nothing to their legal problems, experience negative effects or loss due to their decision. Therefore, the act of doing nothing is considered awful in the access to justi-

ce and it can cause negative effects. The effects are varied in this regard, 50.2 percent of the people lose their money, 17.9 percent lose social relations, and 12.4 percent had a degrading physical condition.

The indicator of the availability of legal problem resolution mechanisms can be seen from the experts related to the distribution and source of funding for

the formal and informal mechanisms. In general, the experts give a higher score to the informal mechanism rather than the formal mechanism which basically does not apply the same for each type of legal problem. For example, in the sector of national administrative issues, the expert evaluates that it is irrelevant to use informal mechanisms. According to the experts, the logic used in this sector is the official registration by the State. The problem is, sometimes the formal problem resolution mechanism is not the proper tool or unsuitable for the needs. This often hinders citizens to obtain a resolution of their problem. For example, in the general security sector & order and the criminal sector, the experts evaluate that even though the police institution has already available in every region, however, the ratio between the number of police personnel and the number of citizens is irrational and imbalanced.

On the other hand, there is a tendency from the public to use the informal mechanism which actually is not problem-free. The experts realized that not everything can be settled through the informal mechanism. For example,

in the sector of general security & order, the expert evaluates that living law or unwritten law may only be operated effectively in rural communities. Meanwhile, the urban communities already have loose social cohesion and it is not as close as the one in rural societies, hence, it is impossible to use the informal mechanism. This means, even though the informal mechanism is available and tends to be preferred by the public, however it may not be executed if the national legal framework demands a resolution through a formal mechanism.

Regardless of the complexity found, according to the experts, the two types of legal problems resolution mechanisms are both having an issue related to the source of funding. In the formal mechanism, the experts generally evaluate that the funding provided by the State is still insufficient. This is mainly found in some ministries whose main duties and functions are not related to the resolution of cases. The resolution of cases is considered as an act that spends money or creates an expense,

meanwhile, the Ministry of Finance encourages the ministries to increase revenue and find solutions or to transform disputes in order to avoid problems that may occur in the future. On the other hand, several institutions with the main task and function to resolve the cases, have not yet implemented a sufficient budgeting system to answer the need to handle cases. One of the experts on access to justice in the criminal sector gives an example of the case handling in the Prosecutor Office where the funds had run out despite that the fiscal year is still 4-5 months left. Such practice shows that the problem resolution institutions are susceptible to practice illegal fee giving or payment for handling cases when their case is being handled by the prosecutor.

Similar matters in relation to the support and budgeting from the State can also be found in the informal mechanism. In this regard, the State even tends to ignore the informal mechanism even though it is more favorable to the public. One of the experts in access to justice in the

criminal sector suggests that the existing and living informal mechanism such as diversion in criminal cases involving children does not receive enough attention and it is often not considered as the responsibility of the State. While in fact, if the informal mechanism receives support from the State, it shall be able to answer many problems relating to access to justice. An example comes from the cyber sector of which the majority of the problems are not settled since they are considered as small problems. For example, in an online transaction between a consumer and a seller on the internet with a small value, the party at loss usually being defenseless or reluctant to report the case to the police. Several states have already have developed an informal resolution mechanism for such problems through Online Dispute Resolution. The parties are bound to settle their dispute through the said mechanism from the beginning of the transaction. For example, international e-commerce companies such as eBay and Amazon show that a quick dispute settlement may be generated through the Online

Dispute Resolution mechanism that has an automatic decision-making feature.¹⁰⁸ Like other alternative dispute settlement institutions, the State does not have to fund the process, yet it has to facilitate them through policy, financial, or taxation instruments to help the growth of informal mechanisms as an alternative option in the dispute settlement.

The complexity found in both types of mechanisms indirectly affects the valuation of the next indicator which is the type of mechanism used by people. The experts evaluate that the availability and distribution of formal mechanisms have not been coordinated yet, therefore, the public

tends to get back to the use of the informal mechanism taking into account the more acceptable and effective social relations. On the contrary, despite being popular among the public, the informal mechanism is limited in terms of its scope and funding system. Not every dispute may be settled through an informal method. Even if it is possible, the continuity is prone to gradual setbacks due to the absence of sufficient funding or facilities from the State. In the end, those obstacles have become a consideration for the people to be passive and take no effort to solve their legal problems.

108. Amy J Schmitz, *Expanding Access to Remedies through E-Court Initiatives*, *Buffalo Law Review* 67, No. 1 (January 2019), p. 91.



LEGAL ASSISTANCE

61.2

(ADEQUATE)

The legal assistance aspect has an index score of 61.2 and it is considered as Adequate. This category receives contribution of value from various aspects such as the availability of legal assistance, the types of legal assistance used, the geographical access of legal assistance, and the quality of legal assistance. This aspect was measured by public survey towards respondents and an expert through expert interview. Adequate score of legal assistance aspect indicates that there are several option available for people experiencing legal problems to ask or get legal support from legal aid organizations, lawyers, or other non-lawyer parties. The Indonesia law even provide legal basis for a free legal aid for poor people who needed legal protection through Legal Aid Organizations (Organisasi Bantuan Hukum/OBH). However, most people

who experienced legal problems chose not to ask for help for various reasons, such as being afraid that process would be more complicated and not sure if they will get satisfying results.

The availability of legal assistance may be seen from the explanation of the expert related to specifically the amount of legal aid and distribution of legal aid. Ideally, the state will have the data on the number of people's needs over legal aid. This data must have been collected with the intention to know the number of people that experience legal problems and cannot afford to settle them independently. Besides, the data will also be able to identity the type of legal assistance necessary for the people. The problem is, according to the expert, not all legal aid institution has the resources relevant with the classification of legal problems

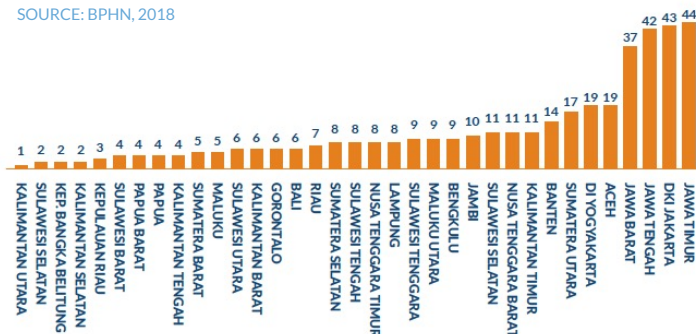
faced by the people. Moreover, the expert also states that several types of legal problems such as agrarian conflict and problem among the migrant still have no sufficient assistance in practice.

According to expert on Legal Aid issue, the government does not yet have clear planning on optimum funding with regards to the legal assistance. This condition give implication in limiting the amount of OBH¹⁰⁹ and justice seekers that receive funding from the State. Moreover, stated by expert that that in the local level, there is a problem found where there are several regions

that have already adopted Local Regulation on Legal Assistance but still showing difficulty to allocate budget for legal assistance. Expert added other concerning issue regarding several regions that still do not have Local Regulation on Legal Assistance yet, one of which is the Special Capital Region of Jakarta. When allocated, it is considered that the amount of budget provided by the government is insufficient for the basic necessity of the legal assistance . The evaluation shows that this budget is far from sufficient, especially for the need of investigation in the first phase.

3.3.6 DISTRIBUTION OF ACCREDITED OBH IN 2016-2018 PERIOD PER PROVINCE

SOURCE: BPHN, 2018



109. Verified institutions or social organizations under National Law Development Agency (Badan Pembinaan Hukum Nasional/BPHN) that provide legal aid services based on Law Number 16 of 2011 concerning Legal Aid which can be accessed in <https://www.bphn.go.id/data/documents/11uu016.pdf>

Nevertheless, there has been an increase in the quantity or the availability of legal assistance in Indonesia each year. During 2016-2018 period, the National Law Development Agency of the Ministry of Law and Human Rights (Badan Pembinaan Hukum Nasional/BPHN) registered 405 verified and accredited OBH.¹¹⁰ The number continue to grow during the next period (2019-2021) into 524 OBH¹¹¹. The data is basically does not yet have represented the amount of OBH in practice, since BPHN in this regard is applying certain standard in determining the verification and accreditation. As the implication, there are some OBH that still have not received funding support from the government yet. This issue can actually be resolved if each region has OBH that can independently fund its activities even without support from the government. Unfortunately, according to the expert, several regions still have no operating OBH at all to

assist the justice seekers. Therefore, the Government is basically still need to consider the availability of legal assistance besides applying the standard to the verification and accreditation. This may be conducted without funding the OBH. For instance, by facilitating people with the place to meet with advocates or non-lawyer assistants in the governmental building in each region. One of the expert also gives an example on the practice of legal assistance in Boston-United States of America which opens a place to fill-in complaints at the regional libraries.

The limitation of OBH availability in Indonesia has basically being anticipated in the Law No. 18 of 2003 concerning Advocates (UU Advokat)¹¹² that regulates the obligation of giving free legal assistance (pro bono) as one of the duties owed by the advocates. Unfortunately, the pro bono practice itself is still problematic. Conceptually,

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110. Indonesian Minister of Law and Human Rights Decision Letter (SK) Number M.HH-01.HN.03.03 Tahun 2016 Tentang Lembaga/Organisasi Bantuan Hukum Yang Lulus Verifikasi dan Akreditasi Sebagai Pemberi Bantuan Hukum Periode Tahun 2016 s.d. 2018 (and the attachment) can be accessed in <https://sidbankum.bphn.go.id> or https://drive.google.com/file/d/0BzekKuzjrYh_7Sk1yRnZ1bmpGVIE/view
111. Indonesian Minister of Law and Human Rights Decision Letter (SK) Number M.HH-01.HH.07.02 Tahun 2018 Tentang Lembaga/Organisasi Bantuan Hukum Yang Lulus Verifikasi dan Akreditasi Sebagai Pemberi Bantuan Hukum Periode Tahun 2019 s.d. 2021 (and the attachment) can be accessed in <https://sidbankum.bphn.go.id> or <https://drive.google.com/open?id=1nLNiiiMpH99IzH6MSbS89Gj3KFWOQJl>
112. Indonesian Law No. 18 of 2003 concerning Advocates accessed in <https://peraturan.bpk.go.id/Home/Details/43018/uu-no-18-tahun-2003>

the implementation of both Legal Assistance under the Law No. 16 of 2011¹¹³ concerning Legal Aid and the Advocates Law have the same purpose to ensure the fulfillment of access to justice for the people in needs. It is just that both implementations differed by the scope. The Legal Aid Law regulates the grant of legal assistance by OBH or social organizations, while the Advocates Law regulates that legal assistance provided by the Advocates without due regard to their respective institutions. Hence, people's need of legal assistance should have been resolved if the said obligation on legal assistance from the OBH and legal assistance from the Advocates (pro bono) are fully executed. Furthermore, the expert assessed that there are many advocates who are still in the dark and have misinterpreted the definition of pro bono and call their service as free while also require clients to pay a certain amount of fees. For example, some Power of Attorneys are still equipped with revocation

clause in case the clients are incapable of paying the service fees for the advocates, yet such services are still claimed as pro bono. Other example is when an advocate does not incur any fees for the legal assistance to the client, yet he explicitly requests for success fee if they win the case. This shows that advocates still have some misconceptions regarding the implementation of the pro bono obligation.

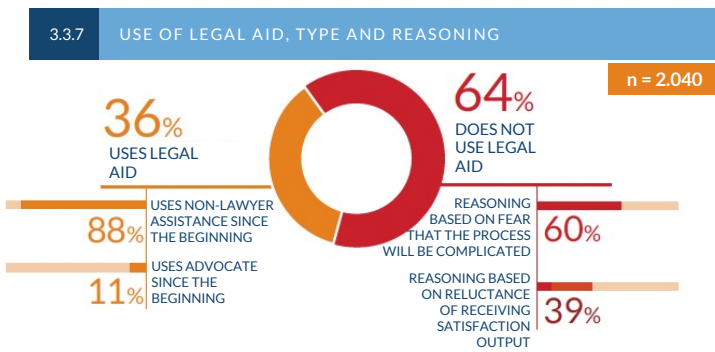
The government actually has attempted to overcome the problem in terms of the limited coverage of the OBH and the lack of pro bono from Advocates by issuing the Regulation of the Minister of Law and Human Rights Number 1 of 2018 concerning Paralegal in Providing Legal Assistance¹¹⁴. However, after a few months, the Supreme Court annulled two important articles concerning the role of paralegal such as its duties and authorities in providing free legal assistance either through litigation or

113. Indonesian Law Number 16 of 2011 concerning Legal Aid accessed in <https://www.bphn.go.id/data/documents/11uu016.pdf>

114. Indonesian Regulation of the Minister of Law and Human Rights Number 1 of 2018 concerning Paralegal in Providing Legal Assistance accessed in <https://peraturan.bpk.go.id/Home/Details/133144/permenkumham-no-1-tahun-2018>

nonlitigation.¹¹⁵ The assistance provided by the non-lawyer (psychiatrist, etc.) has similar problem with the above mentioned. Even though the experts contend that non-lawyer assistance needed very much by the suspect/defendant in the middle of legal process examination, either prior

to or during the trial. In the end, the said problems are resulting into the minimum contribution of the Legal Assistance Aspect to the index of access to justice. Generally, the Legal Assistance score is placed as the second worst or just one place higher than the Legal Framework score.



Aside of the problem in the availability of legal assistance, the index also found problems in the way people seek assistance in order to solve their legal problems. The result of the index shows that the majority of people, that is as much as 64 percent, do not use legal assistance to help them to settle their legal disputes, whereas 60 percent of them are women. The

reason of this action is due to fear of complicated process (60 percent) and distrust that they will receive satisfaction output by using legal aid to settle their legal disputes (39 percent). As for those who use legal assistance, 88 percent used non-lawyer assistant since the beginning, such as family members and local authorities. Only 11 percent of them who seek OBH since

115. HukumOnline, MA Tegaskan Paralegal Tak Boleh Tangani Perkara di Pengadilan, 2018, accessed in <https://www.hukumonline.com/berita/baca/1t5b3cad32048e2/ma-tegaskan-paralegal-tak-boleh-tangani-perkara-di-pengadilan/>

beginning and the remaining 7 percent seek Advocate services. Further, about 56 percent of the people who seek legal assistance explain that their reason for using legal assistance is because they feel comfortable with the legal assistance providers. Generally, this shows that there are still many people who went through legal dispute settlement without receiving legal aid, whether from OBH, advocates or from non-lawyer assistants. Despite that the government has already have legal assistance program for the poor, however it still has limited range taking into account the distribution, its relevance to the needs based on the legal dispute, and the availability of budget. Furthermore, Indonesia does not yet have clear code of conduct in terms of the implementation of Legal Assistance by advocates through pro bono. It is expected that the said problems shall be able to be prevented through policies based on data and evidence. For example, the Government needs to routinely conduct research related to the coverage of the Legal Assistance, in

order to identify the necessity of the justice seekers (Legal Need Survey). Such data shall help the government and other related parties very much in designing the accurate policy concerning the Legal Assistance.

This index also found that for the distance reached to access the legal assistance, it is analyzed using three variables, which are the time needed to go to the place that provide legal assistance, the security of the road, the availability of the public transportation, as well as the obstacles to reach the legal assistant. The majority of the people who chose to use legal assistance, which is 85 percent of them, only need less than 1 hour to reach their chosen place that provide legal assistance. People who use legal assistance also do not experience any obstacle in accessing or reaching the location that provide legal assistance (90 percent). This shows that in fact, people actually can access legal aid (including the ones given by non-lawyer assistants) quickly and almost without obstacles.

3.3.8 LEGAL AID PREFERENCES



Other finding shows that 96 percent of the people who use the informal mechanism also decide to use non lawyer assistant. Non-lawyer assistant is considered as a party who give sense of comfort to the people with legal dispute, to help them to settle their dispute especially through informal mechanism. Therefore it is necessary to consider to enhance the role of non-lawyer assistant as an accessible and acceptable party trusted by the people.

This role enhancement may be in the form of recognition where their roles and duties are being legalized under the national law and also in the form of education to the potential candidate of the legal assistants. Other finding shows that there are 70 percent of people who experience criminal cases such as fraud, theft, etc. and still choose not to use any legal assistance to resolve their problems.

3.3.9 THE QUALITY AND AFFORDABILITY OF LEGAL AID



As for the Quality of Legal Assistance, it is analyzed using two variables, which are role and the quality of service provided by the legal assistant. In terms of the quality of service, the result of the index shows that the majority of people have been served and received the chance of legal consultation/legal advice within quite short range of time, namely in less than 30 minutes as of the report to the legal assistant. However, it is found that there are 8 percent of the people who can only obtain the chance of consultation after submitting their report for more than 12 hours. The majority of the people (85 percent) received good treatment from the legal assistant, however there are still some legal assistants who are unwilling (13 percent) and incapable (14 percent) of executing their duty as assistant up to the end. This finding needs further study on the reason or background of the unwillingness and incapability of the legal assistants to help the disputed party to the end. There are also found legal assistants who still conduct acts of discrimination either in physical, verbal, or psychological manner to the people (11 percent).

Further, in terms of the role/duty of the legal assistant, 74 percent of which received helped during the process of the dispute settlement in this index, such as being representative on each phase of the process up to the settlement of dispute and also giving information on the development process of the dispute settlement. However, there are still 52 percent of people who receive no help by their legal aid in creating legal documents, and 40 percent who receive no help in collecting evidence. On the other hand, 58 percent of the people still find the legal assistants are very helpful during the legal dispute settlement process. This data shows that the State can still do many more things in order to improve the quality of service provided by the legal assistant or OBH. Aside of guaranteeing the right to legal assistance for people in need on every criminal/civil litigation, the government can also open/widen the scope of legal assistance provider to non-lawyers. Moreover, when there is specific standard given to the legal assistant in this regard, the paralegal and non-lawyer assistant to give legal advice and

assistance correctly to the justice seekers.

Meanwhile, as for quality of legal assistance specifically regarding the interpersonal quality, the analysis assessed people's perception on the treatment that they receive from the legal assistant in both formal and informal mechanism. The variables of

treatments referred here are respect, fair and non-discrimination, polite and friendly, non-complicating and non-violent. The index results show that the majority of the people have actually received good treatment from legal assistant during the legal dispute process of, both in formal and informal mechanism.



QUALITY OF LEGAL PROBLEMS RESOLUTION PROCESS

76.7

(GOOD)

The aspect of the quality of the legal problems resolution process has an index score of 76,7 and it is considered as Good. This aspect receives contribution of value from variables, namely 1) the procedural quality, 2) the interpersonal quality, and 3) the information quality. Good condition of quality of legal problems resolution process indicates that people who involved in legal problems resolution process get fairly good treatment and fulfilment of their legal rights from officer or person in charge in the legal mechanism. Even though, there are still

found some foul practices happened in the legal problems resolution mechanism.

Regarding the procedural quality, it can be seen from the fulfillment of people's rights and the cost incurred during the legal problem resolution process. Such rights are among others, the right to legal aid, "the right to a fair and public hearing, the right to equality before the law, the right to be presumed innocent, the right to be examined without delay, the right to a fair trial and the right to reasonable judgment.

3.3.10

QUALITY OF PROCEDURE IN MECHANISM

85%

FREE TO COMMUNICATE OR CONSULT WITH THE
LEGAL ASSISTANT

n = 234

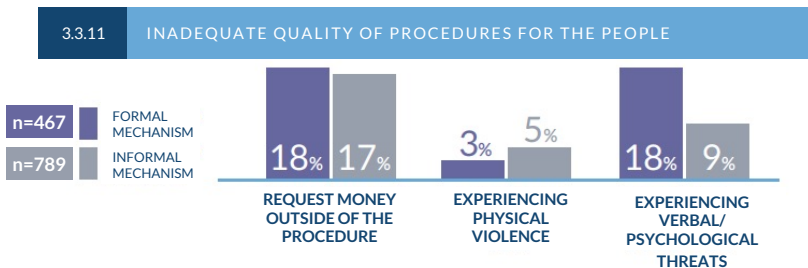
18%

DOES NOT RECEIVE THE OPPORTUNITY TO SUBMIT
EVIDENCE

n = 505

The index result indicates that the majority of the respondents were given their rights during the legal problem resolution process through formal or informal mechanisms. For those who used legal assistance, 85 percent of them were given the freedom to communicate or consult with their legal assistant (see graphic 3.3.10). In addition, more than 60 percent of the people who do some-

-thing regarding their legal problems are assisted by the legal assistant during the legal problem resolution process. This shows quite good fulfillment of the right to the legal aid. However, 18 percent of the people who use informal mechanism claimed that their right to be presumed innocent were not fulfilled due to inability or not given chance to provide evidence to clarify their status.

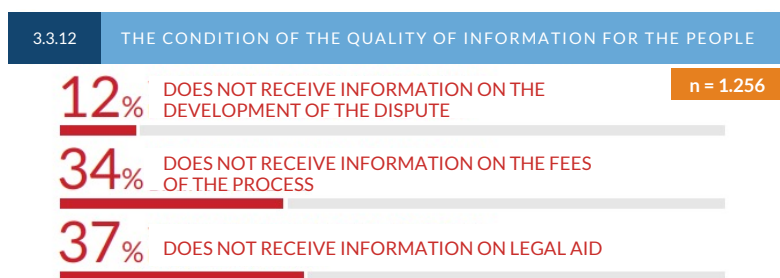


Meanwhile, for the interpersonal quality shows how the community receives good treatment from legal service providers in formal and informal mechanisms which could be seen are respectful behavior, fair and non-discriminatory behavior, polite and friendly behavior, non-complicated practice and non-violent behavior. The index results show that the majority of people have actually received good

treatment from legal service providers during the process of resolving legal problems, both in formal and informal mechanisms. The interesting finding about the interpersonal quality is that 18 percent of people who use formal mechanism experienced an obstacle where they were asked to pay a certain amount of money outside of the fee required as the standard procedure by the officers. Moreover, there are

people who still got physical violence (3 percent) and people who received verbal/psychological threats from the officers (18 percent) in formal mechanism. In the informal mechanisms, there are also obstacles where people were asked to pay a

certain amount of money outside the procedure (17 percent), experienced physical violence (5 percent) and received verbal/psychological threats (9 percent) during the legal problems resolution process.



Another variable is regarding the quality of information. It gives an overview on the extent of information given to the justice seekers. Ideally, people should be given a full information about the procedures/steps of the process, fees of the procedure, development of the legal problems, and legal aid information in understandable language. Such information is required in order to help the people to access the necessary justice. The index result shows that the majority of the people have obtained the information during

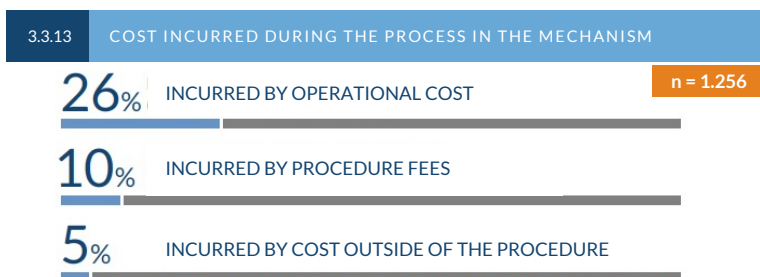
the legal problems resolution process.

However, the result of this index also shows that 34 percent of people who use informal and formal mechanism did not receive information about the cost incurred to pursue the dispute settlement process. Also, there are 12 percent of people who still did not received information about their dispute settlement progress, either in the formal or informal mechanism. Lastly, there are 37 percent of people who still did not receive information about the right to legal

assistance that can be utilized by the justice seekers to settle their legal dispute.

Another matter that is analyzed in terms of the quality of process is the Expense for the legal problem resolution process. This variable receives contribution of value from

indicators, namely the affordability of the expenses that consists of procedure fees, operational costs, legal aid costs, cost for collecting evidence, and the absence of costs outside of the procedure. The result of this index indicates that the majority of the people did not incur any costs during the legal problems resolution process.



For some people, the expense that was incurred during the resolution process is mostly used for operational cost (26 percent) such as transportation, phone balance, and others. About 10 percent of the people also pay for the procedural fees such as service fee for the court, copies of documents, and others. On the other hand, 5 percent of the people still pay for services that are

outside of the procedure or made a payment without official proof/receipt to help the dispute settlement. These findings can then be associated with the SDGs particularly the Goal 16.5 concerning "substantially reduce corruption and bribery in all their forms" or effort to reduce corruption and bribery in various forms.¹¹⁶ The indicator for Goal 16.5.1 is focusing on

116. In the Sustainable Development Goals Knowledge Platform <https://sustainabledevelopment.un.org/sdg16>, accessed on 8 January 2020

data about the proportion of persons who had at least one contact with a public official and who paid a bribe to a public official, or were asked for a bribe by those public officials, during the previous 12 months. From the above findings, it is found that there are people who were still asked to pay a certain amount of for money for services that are outside of the procedure, both in formal and informal mechanism (cf. Graphic 3.3.11) and it is also found that there are people who actually fulfill the request and pay the fees to the officials (cf. Graphic 3.3.13) during the past 3 years. This finding provides information that the implementation of Goal 16.5 of the SDGs has not yet been maximized in

Indonesia since people are still paying fees out of procedure to the officers/service providers during the legal problems resolution process whether being requested or not. Hence, the quality of the legal problem resolution process obtained a good score since the majority of the people have their rights fulfilled indeed, received good treatment and received clear & complete information during the dispute settlement process. However, there are still some indicators which indicate delays in the settlement process, request of money outside of the procedure, physical violence, and verbal and psychological threats.



RESULT OF THE LEGAL PROBLEM RESOLUTION

71.9

(GOOD)

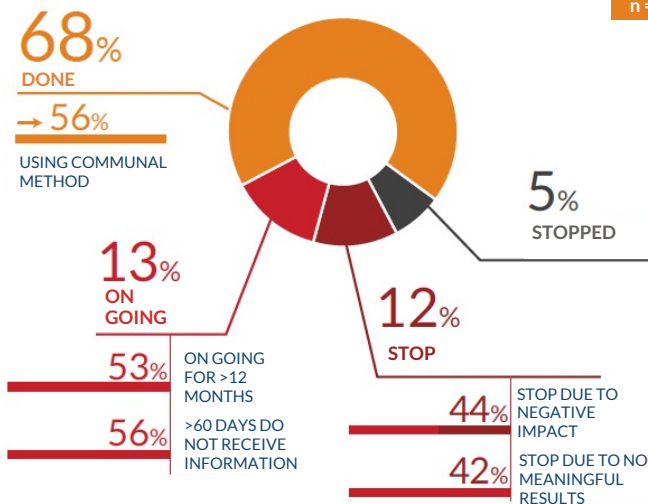
The aspect of the results from the resolution process of legal problems has an index score at 71,9 and it is considered as Good. This score is obtained based from the assessment of some variables, namely the availability of final result of the legal problems resolution process, the trust of the public, and the effect of legal

problems resolution process. Good condition of this aspect indicates that most of the people got their result of the resolution process whether it is through informal or formal mechanisms even though in the end, some people experienced the negative impact of the legal process as their final result.

3.3.14

STATUS OF LEGAL PROBLEMS RESOLUTION PROCESS

n = 1,256

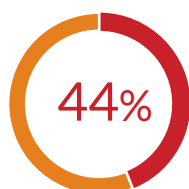


Firstly, this aspect needs to identify how further people's legal process to understand whether they should have their legal problems resolution result or not. Most of them (68 percent) have finished the resolution process and obtained the final result through communal method or through an agreement with consent between the parties (56 percent). Further, there are people who are still in the on-going process of the problem resolution (13 percent) and they had been in the

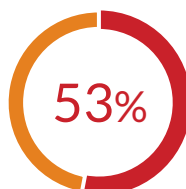
had been in the process for more than 12 months (53 percent) with the last received information of more than 60 days ago (56 percent). Other finding shows that there are 12 percent of the people who decided to stop the resolution process, based on the reasoning that the process has given negative impact to them (44 percent) and it does not produce any meaningful development (42 percent).

3.3.15

DETAILS OF THE FINISHED RESOLUTION PROCESS



RECEIVE FINAL RESULT THROUGH
INFORMAL MECHANISM WITHIN
>14 - 90 DAYS



FINISHED RESULT THROUGH
INFORMAL MECHANISMS IN ORAL
FORM

n = 859

Regarding the availability of the final result, it can be seen from the range of time needed to obtain the final result and the execution of the final result. The majority of people, whose problems had been resolved through informal or formal mechanism, obtained the result from such pretty

long process. Under the formal mechanism, 44 percent of the people get the final result/decision within the range of 14 - 90 days and 36 percent within 14 days. As for the informal mechanism, 97 percent of the people has obtained the final result which 53 percent of them have it in the oral form,

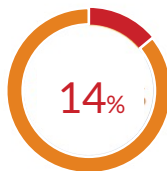
whereas only 16 percent of the people obtained the final result in written form while 28 percent other get both written and oral form of result. Regarding the quality of the result can be viewed from the range of the time needed to obtain the final result and execution of the final result. Majority of the people who use formal (95 percent) or informal (96 percent) mechanism have already executed the final result. If combined, 76 percent of the people executed or have the final results executed voluntarily. However, 10 percent of the people still have to go through formal mechanism to enforce the final results of the legal problems resolution. Lastly, in the informal mechanism, 7 percent of the people executed the final result through oppression helped by the local figures or head of the informal mechanism.

Regarding the variable of trust, it can be seen from the public trust to the legal mechanism and to the legal assistant during the legal problem resolution. It gives an overview on how far the people trust the available mechanism. The survey result shows that majority of the people (72 percent) trust the police. However, that trust is mainly (40 percent) based of geographical reason, because most of them live closer to the police office where they can go to have their legal problems resolved. Meanwhile, the majority of people also have confidence in the OBH (48 percent) and Lawyers/ Advocates (41 percent) to help them to settle their disputes. In this case, the main factor is subjectivity of the respondent because most of them admit that they have already trust OBH and Lawyers even before the legal problems occurred.

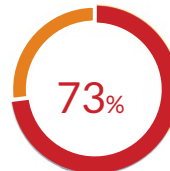
3.3.16

NEGATIVE IMPACT DURING THE LEGAL DISPUTE RESOLUTION PROCESS

n = 228



EXPERIENCE NEGATIVE IMPACTS
DURING THE LEGAL PROCEEDINGS



FEEL THEIR TIMES IS WASTED
DURING THE LEGAL PROCEEDINGS

Regarding the variable of impacts arising from the process of legal problems resolution process, it can be seen from the existence and type of the negative impacts experienced by the people which categorized into time cost, emotional cost, and financial cost. The result of this index indicates that majority of the people did not experience negative impacts during the legal problem resolution process (74 percent). However, it is necessary to see that 14 percent of the people who experienced negative impacts during the legal problem resolution process. 73 percent of them feel that they wasted their time, whereas 37 percent of them experienced psychological effect, such as depression. Another interesting finding is that 46 percent of the people who experienced negative impacts during the resolution process are women. Another finding shows 78 percent of people who use informal mechanism did not experience any negative impact, while in the formal mechanism there are 67 percent of people who experienced negative impact.

Hence, the final result of the legal

dispute settlement received good score since the majority of them have already received the final result and have already made the execution or have the final result enforced. Besides, people also have confidence to the available mechanism and legal aid, in addition to the majority of people who did not experience negative impacts during the resolution process. However, on the other hand, there are some indicators that still show delays in the process which made people feel that the process itself is a waste of time and contributed to the lack of follow-up for the people who still have on going proceedings.

Lastly, another matter that can be considered in this aspect despite not having contribution to the index is the global indicator in the SDGs point 16.3.2. Indicator 16.3.2 measure the proportion of prisoners against the total number of prisoners and inmates in certain period of time. This data is analyzed in the access to justice framework with the aim to provide information about the condition of each state's correctional facilities as an institution that has a significant role in executing the final result of the legal

problems resolution process.

Table 3.3 DATA OF PRISONERS, INMATES AND CAPACITY OF THE CORRELATION FACILITIES PER DECEMBER 2019

REGIONAL	NUMBER OF PRISONERS	OVERSTAYING PRISONERS	NUMBER OF INMATES	TOTAL INHABITANTS	PROPORTION (%)	CAPACITY	OVER CAPACITY (%)
ACEH	1623	3	6685	8308	20	4090	103
BALI	827	-	2688	3515	24	1518	132
BANGKA BELITUNG	385	-	1940	2325	17	1348	72
BANTEN	2256	34	8943	11199	20	5197	115
BENGKULU	617	-	2122	2739	23	1632	68
D.I. YOGYAKARTA	452	1	1157	1609	28	2010	-
D.K.I. JAKARTA	7110	-	10935	18045	39	5791	212
GORONTALO	173	-	817	990	17	888	11
JAMBI	854	16	3570	4424	19	2090	112
JAWA BARAT	4508	53	18718	23226	19	15808	47
JAWA TENGAH	2983	7	11042	14025	21	8893	58
JAWA TIMUR	7801	10	20976	28777	27	12757	126
KALIMANTAN BARAT	1225	-	4271	5496	22	2529	117
KALIMANTAN SELATAN	1870	4	7589	9459	20	3447	174
KALIMANTAN TENGAH	763	1	3593	4356	18	2344	86
KALIMANTAN TIMUR	2354	-	10153	12507	19	2386	249
KEPULAUAN RIAU	808	4	3799	4607	18	2505	84
LAMPUNG	2454	5	6749	9203	27	5348	72
MALUKU	415	1	1051	1466	28	1315	11
MALUKU UTARA	269	17	947	1216	22	1477	-
NUSA TENGGARA BARAT	656	-	2257	2913	23	1269	130
NUSA TENGGARA TIMUR	585	-	1674	3312	18	2856	16
PAPUA	411	42	808	2085	20	2267	-
PAPUA BARAT	286	-	9829	1094	26	1004	9
RIAU	2565	-	665	12394	21	4203	195
SULAWESI BARAT	175	11	7756	840	21	1022	-
SULAWESI SELATAN	3481	109	2632	11237	31	5798	94
SULAWESI TENGAH	785	12	2632	3417	23	1609	112
SULAWESI TENGGARA	821	-	1961	2782	30	1966	42
SULAWESI UTARA	686	3	1959	2645	26	2153	23
SUMATERA BARAT	1415	5	4425	5840	24	3209	82
SUMATERA SELATAN	2642	-	11611	14253	19	6605	116
SUMATERA UTARA	9674	172	25149	34823	28	12065	189

SOURCE: CORRECTION FACILITY DATABASE SYSTEM, 2019

This global indicator 16.3.2 of the SDGs is measured by seeing the comparison between the number of prisoners held in detention who have not been

sentenced and the total the proportion of prisoners who have not received a sentenced and are detained in LAPAS to await trial or next process is 23

percent.¹¹⁷ The data of this proportion of prisoners may be used as initial data to see the extent of effectiveness of the detention and its correlation to the law enforcement in Indonesia. Under the criminal procedural law of Indonesia, investigators can hold a person in detention based on 2 (two) conditions, namely the objective and subjective requirements of the detention. Based on Article 21 paragraph (4) of the Code of Criminal Procedural Law, the objective requirement is a condition where a person is being investigated for committing a criminal act which has maximum penalty of 5 years or more of imprisonment. It can be also applied to a person who is under investigation for attempting to commit a criminal act or for providing assistance to the actual perpetrator. Meanwhile the subjective requirements are conditions where it can be decided based on the subjectivity of the investigator, namely the condition concerning the risk of the suspect/defendant on whether or not they can escape, the condition concern-

-ing whether or not there is a risk of damaged/hidden evidence by the suspect, and the condition concerning the risk of recidivism by the suspect. These subjective requirements are problematic because they can be used to mask violation of human rights by the investigators. It is also complicated due to the system is designed to be closed from public and it has no control mechanism. Moreover, based on the findings of this index, there are some people who experienced threats in the form of physical or verbal violence from officials in the law enforcement process. Hence, with the detention system without any control mechanism, the system will still remain vulnerable to the violation of human rights of the suspect/defendant. According to Luhut M. Pangaribuan, Indonesia need revision on its system of procedural law, especially related to the cross-control institution in the judiciary subsystem with regard to the examination of the "concerned circumstances" provision

117. *Obtained from the average of the (%) of the prisoners/inmate proportion*

provision that gives immunity or power to the investigators.¹¹⁸ Unfortunately, the mechanism of procedural law for pre-trial in Indonesia does not regulate such mechanism to control this discretionary authority. This will give the law enforcement officials with too much authority to coerce people in the

criminal justice system which tend to the violate the human rights. Therefore, it is important to reform Indonesian criminal procedural law in order to ensure that any kind of coercive measure taken by the authority is in line with the goals and principles of access to justice.

118. Luhut M. Pangaribuan, "Preliminary Examining Judge in the Design of the Criminal Justice System in Indonesia", 2014, *Binocular Journal* Volume 1 - August 2014, p. 2-5



PEOPLE'S CAPABILITY

78.3

(GOOD)

The aspect of people's capability has an index score of 78.3 and it is considered as Good. This category receives contribution from some variables, namely the ability to understand legal problems, the ability to understand legal services & resolution process, and the ability to face legal problem resolution processes. Good condition of this aspect indicates that most of the people actually already has basic legal knowledge of their rights as a citizen, but at the same time the majority of the people does not understand their rights of free legal aid and some of them does not understand the procedure of legal dispute resolution—which are essential knowledge for people who experience legal problems.

Regarding the ability to understand legal problems, it can be seen from people's awareness to their respective rights and obligations as citizens. The index result shows that the majority of the people (86 percent) understand their rights and obligations as citizens, with 94 percent of them also know that they have the rights to receive education and get decent work, and 95 percent of them know their rights to embrace their respective religions/beliefs. Moreover, 98 percent also know their obligations to pay taxes.

3.3.17

PEOPLE'S KNOWLEDGE ON LEGAL SERVICES



Regarding the ability to understand legal services and resolution process, it can be assessed from the people's ability to identify injustices they experienced in detail and the knowledge on the mechanism and legal assistance available. The index result shows that the majority of the people only understand partially the legal terms when facing legal problems. Besides, the majority of the people also understand partially the injustice they experienced to be identified as a legal problem. On the other hand, another finding shows that the majority of the people already know where to go (87 percent) and who to help them to resolve their legal problems (84 percent). However, there are 53 percent of the people who are still not aware of the free legal aid services that are available for them and 24 percent of the people who do not know how to resolve their legal problems.

Regarding the ability to face the legal problems resolution process, it can be seen from some indicators, namely the people's ability to communicate and to believe in themselves, to have literacy, to desire, and to create strategies in resolving the legal problems, to access information, and to access the resources. The index result shows that the majority of people have good ability to face legal process. It is shown by the desire of the majority of the people to resolve their legal problems (96 percent), the capability to raise objections if something goes not according to standard procedure during the legal problems resolution process (92 percent) and the ability to defend their opinions throughout the on going legal problems resolution process (89 percent).

3.3.18

PSYCHOLOGICAL ABILITY OF THE PEOPLE IN FACING LEGAL PROBLEMS

42% FEAR OF SOLVING LEGAL DISPUTE

n = 2,040

18% UNSURE OF SATISFACTION RESULT

However, there are people who choose not to find a resolution for their legal problems because they find that the issue is in contrary with the norms/values that live in the society (32 percent). Around 42 percent of the people are afraid of resolving their legal problems and 18 percent of them are unsure whether they will get satisfaction result according to their expectation. These findings show that there are negative perceptions among the society to the legal problem resolution process in Indonesia. Such negative perception contributes to the lack of trust/confidence in our people

towards, not only the process but also, the final results as well as the execution of that final results. On the other hand, the index result shows that the majority of the people or more than 95 percent of them can read, write, and have good physical health to face the legal process. However, there are people who still could not get access to information (7 percent), such as to the television, the internet, newspapers, radio and others. It is also found that 12 percent of the people are incapable of using the internet to find information about the legal problems that they have.

3.3.19

PEOPLE'S ACCESS TO INFORMATION IN FACING LEGAL PROCEEDINGS

17% NOT HELPED BY THE EXISTING INFORMATION

7% DO NOT HAVE THE ACCESS TO INFORMATION

12% UNCAPABLE OF USING THE INTERNET TO SEARCH INFORMATION

n = 2,040

Other findings in this index are from the people who have access to the information. As much as 17 percent of the people did not feel helped by the information provided by the information provider media. This research also assess how accessible is it for the people to access social resources such as government officials, such as police, prosecutors, judges, and other government officials playing role in creating policies and to access social actors such as NGOs, activists, mass media, and other role model outside of the government. The result shows that 68 percent of the people has relation to the government officials and 75 percent other have relations to the social actors. It is interesting that 51 percent of people tend to use these relations to facilitate them to “smoothen” their legal problems

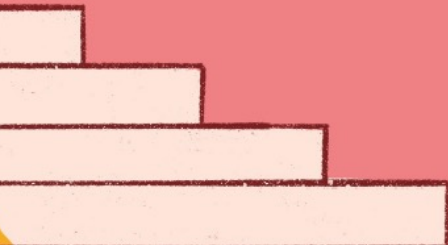
resolution process. This shows that there are tendency in the society to use 'fast track' mechanism that comes from having connections/relations with government officials to help them get the desired outcome.

Hence, the aspect of people's ability obtained a good score since the majority of the people has already understood of their rights and obligations, understand where and how to solve problems, and moreover they are physically & psychologically capable to face the legal process. This shows that the community is actually capable and have the ability to resolve the legal problems that they have or in case of injustice. However further study is necessary to discuss about the high number of people who decide to do nothing when faced with injustice.



CHAPTER 4

CONCLUSION OF ACCESS TO JUSTICE INDEX



Conclusion



1.

The proportion of the Indonesian people who experienced legal dispute in the last three years (<2019) is as much as 60.1 percent from the total number of society. From the group of people who experienced problems in this research, 61 percent of which tend to use informal mechanism such as through local government officials and public figures (religious, customary). While there are 34 percent of group of

people who use formal mechanism such as the prosecutor, the police, and the court. There are also 6 percent of group of people who use both mechanisms to settle their disputes. In addition, this index shows that Indonesian people are more lenient to the informal mechanism as the form of contribution from the citizens to settle their legal dispute independently.

2.

The type of legal issues most commonly experienced by the society is criminal cases (43 percent), family & children (32 percent), land and environment (30 percent) which equivalent to the case of housing (30 percent). This is quite in line with the HiiL report in 2014 in Indonesia which shows that the most often case occurred in Indonesia and

faced by the people are in the field of criminality, land and administrative violations. The findings in this index measurement may be stated as an update to the data on the prevalence of legal dispute, of which issues on the families and children becomes the second most experienced by the people.

3.

The availability of legal aid can be seen from the explanation of the experts with regards to the minimum data concerning people's need particularly for the legal aid and identification of the type of legal aid. However, it is impeded by the fact that not all legal aid institutions have the resources according to the qualification of legal dispute faced by the people. In this case, the indicator of Legal Aid Distribution based on the Variation in the Number of Cases/Legal Problems Faced by the People scored pretty low in the assessment. Such score still considered as low in comparison to the

assessment of other indicators in the aspect of Legal Assistance. In the end, the said problems are resulting into the minimum contribution of the Legal Assistance Aspect to the index of Access to Justice. Overall, the Legal Assistance Aspect (61.2) placed as the second worst before the Legal Framework Aspect (57.7). This is affected by the large number of people who do not use legal assistance at all (64 percent). The data of respondents using legal assistance even shows that 89 percent chose non-lawyer assistant instead, such as family members. The main reason reason of this behavior is

the respondent feels comfortable to request for help to the related person. Besides, according to the respondents who do not use assistance from any legal assistant, there was a concern

that the ongoing process may complicate the dispute and they were unsure as to whether it will give good impact to the final result of the dispute.

4.

Respondents claimed not to have made any action to resolve the problem they were experiencing (38 percent). The most reasons claimed to surrender to their fate (51 percent) and were afraid that the problem would be more complicated if through the mechanism

of problem-solving (42 percent). In addition, the majority of respondents who did not take legal action were women (52 percent), with 34 percent working as housewives. The data shows that public confidence is still low in the mechanism of solving legal problems.

5.

The majority of respondents who made no legal action were women (52 percent), of which 34 percent is working as housewives. Meanwhile 38 percent of these women argued that

the underlying reason is their fear of complication to their disputes. This data also show that women tend to do nothing at the face of legal dispute in Indonesia, especially for housewives.

6.

There are 60 percent of women who do not use legal assistance when experiencing legal problems. Around 61 percent of respondents based their

reason on the concern of complication to their problems if they use legal assistance and 41 percent of the said respondents are housewives. However,

it is interesting to note that (40 percent) of women who use legal assistance, prefer to use non-lawyer assistants (44 percent), majority claim that they are more comfortable with the non-lawyer assistants. Hence, there

is a tendency that female respondents, particularly housewives, to assume that the legal dispute procedure in Indonesia shall be very complicated, especially at the service of legal assistant.

7.

Legal framework aspect has the index score of as much as 57.7, it is considered as Sufficient. The categories receive a contribution of value from the legal framework aspect with the variable from the availability and the quality of the legal framework. The index score shows that in general, the legal framework is already available, it is even over regulated for some types of problems or legal issues. The condition of this national regulation basically has fulfilled the prerequisite necessity to provide legal basis to hold fair settlement for legal dispute experienced by the people. However, this achievement is not followed by a good content of regulation, hence, it causes problems in its implementation. The lack of monitoring and evaluation to the condition of the national regulation has created disharmony between one

regulation and another. The high valuation to the usability of the legal framework in the sector of general security and public order, is in general still dominated by the perspective from the law enforcement which prioritize the effort of enforcement. While the effort of prevention still have not received sufficient attention from the government. This means that the State will only take action when dispute occurs by taking repressive measures to maintain public order and security. Even though many studies have proven that the costs incurred by the state shall be larger when it focused on the law enforcement rather than investing on the effort to prevent long-term criminality. In the end, this affect to the low contribution of the legal framework to the access to justice of the people.

8.

The people's capability aspect is considered to already be good, however such aspect is not relevant when the people face the available legal mechanism. Based on the index data, there are many members of the society who still do nothing due to their

skeptical point of view to the formal mechanism. Besides, the people's capability needs accompany from the enhancement of quality of the rules and regulations and the fulfillment of the legal aid.

9.

The quality of legal problems resolution mechanism is basically quite good. However, there are still problematic variable found, in terms of funding or incurable fees outside of the procedure. Based on the survey result, 18 percent of the people who were

requested for fees outside of procedure are the ones who went through formal mechanisms. Besides, there are still many cases stopped unilaterally due to insufficient evidence, particularly to the cases in the field of land and environment.

10.

In the process of data collection for the index of the access to justice, the research team found that there are still low availability of administrative data and in case available, it is difficult to

access. This condition affects the arrangement of indicators, the method of research data collection, and the final index value.



Recommendatio

1.

It is necessary to improve the flow of bureaucracy and transparency of legal dispute settlement process, particularly in terms of formal mechanism such as the mechanism in the Police Office, Prosecutor Office, and the Court in order to build trust among the society that the legal dispute settlement mechanism is the correct place to resolve injustice.

2.

The State, in this case, Bappenas, the Ministry of Law and Human Rights, as well as the Supreme Court need to guarantee and provide space to the people to develop the informal mechanism including to give recognition to such mechanisms. However, the government also need to conduct a deeper study to adjust the available informal mechanism to the principles in the access to justice.

**3.**

The Ministry of Law and Human Rights through the National Law Development Agency (BPHN) needs to increase the availability of legal aid or assistance. One of the doable ways for the government is by conducting periodic measurement and mapping of the legal aid as the guide in arranging accurate policies and budgeting for the legal aid.

4.

The Ministry of Law and Human Rights through BPHN, together with the Supreme Court and the Ministry of Domestic Affairs, need to conduct socialization and empowerment of law related to the legal aid and the access to justice to the society, including women, poor people, and other marginalized group before the face of law. Based on the data found, women who are housewives tend to do nothing and refrain from requesting accompany from legal assistance. In this regard, it is necessary to change the perspective of

the education delivered by the law enforcement officials on the rights to the parties and the victims, whereas legal assistants shall not complicate the settlement process, instead it will help them to fulfill their rights related to the principle of a fair trial. This is important to have both the law enforcement officials and the victims get the same understanding on the legal dispute settlement process.

5.

The government needs to improve the mechanism of the creation of the rules and regulations which is open and participative to clarify the direction, goals, and needs of the society with regards to the legal framework. Besides, the Government along with the People's Representative Body (DPR) must evaluate the existing legislation, to avoid overlapping and disharmony between regulations. In addition, the government needs to make long-term legislation planning to prevent impression from the public as if the government is reactive to certain occurring issues. For this reason, it is necessary to conduct research related to the necessity of creating the regulation in the prioritized issues or sectors in the legislation planning.

6.

The Government through Bappenas, the Ministry of Law and Human Rights, the Supreme Court, the Prosecutor Office, the Police, and the National Bureau of Statistics (BPS) need to improve the availability, sustainability, and quality of the administrative data related to the access to justice. It should have been conducted with the intention of easier and more effective calculation of the index of the access to justice in the future in terms of data collection as well as to improve the index scores.

7.

Eradication of practice of fee collection outside of the procedure must be made through the following steps:

- Institutional approach through:
 - Implementation of reward and punishment systems towards the officer who consistently refrain from charging additional fees outside of the official procedure or officers proven to have collected the additional fees.
 - Transferring the payment of procedure fee from cash to non-cash.
 - Disseminating the amount of procedure fee regularly and continuously
- Strengthening internal and external supervision in the institution fulfilling the accountable, accessible and fast principles, to produce executorial decisions on reports/complaints regarding the additional fees outside of the procedure.
- Creation of reinforcement to the legal frameworks for either internal or external part of the institution that can support arrangement of services which are clean and free from corruption, collusion and nepotism.

CHAPTER 5

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Other Annexes

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Indonesia Judicial Research Society (IJRS) adalah badan hukum yang berbentuk perkumpulan dan terdaftar di Kementerian Hukum dan Hak Asasi Manusia Republik Indonesia. IJRS bersifat independen dan profesional yang bergerak dalam bidang penelitian dan advokasi hukum. IJRS didirikan berdasarkan Keputusan Menteri Hukum dan Hak Asasi Manusia Nomor AHU-0014462.AH.01.07.Tahun 2008 pada tanggal 23 November 2018. IJRS memiliki visi tercapainya peradilan dan kebijakan hukum yang adil dan rasional untuk umat manusia.



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Indonesian Legal Roundtable (ILR) adalah lembaga nirlaba independen yang fokus pada pembaruan hukum di Indonesia. Lembaga ini lahir dari keprihatinan terhadap kondisi hukum di Indonesia dimana perubahan hukum hingga saat ini belum membuahkan hasil yang memuaskan dan berpengaruh secara signifikan bagi rasa keadilan masyarakat. ILR memiliki visi tercapainya negara hukum yang demokratis, berkeadilan yang berlandaskan hak asasi manusia.



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