

Activist lawyering in a fragile democracy: the Indonesian Legal Aid Foundation (YLBHI)

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MAAF PERJALANAN ANDA TERGANGGU
**SEDANG ADA
PERBAIKAN REFORMASI**
ALIANSI MASYARAKAT SIPIL UNTUK KEADILAN DAN DEMOKRASI

RAINBOW
THE TRUSTED NAME IN OUTDOOR





Introduction to YLBHI-LBH

Established in 1970 by
Adnan Buyung Nasution

Legal aid as part of a
movement for the rule of law

17 regional offices (LBH) with
YLBHI as central umbrella
body

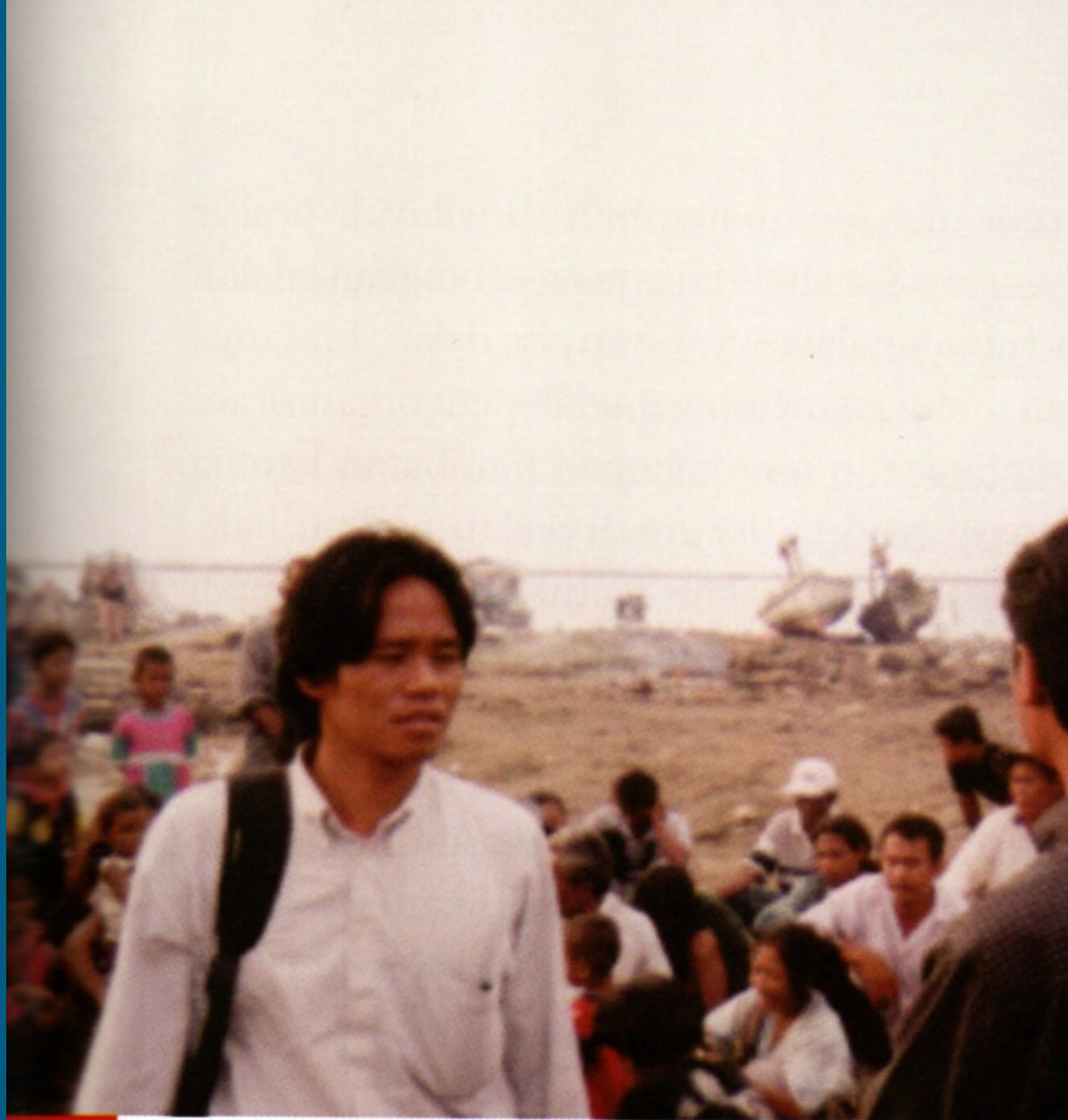


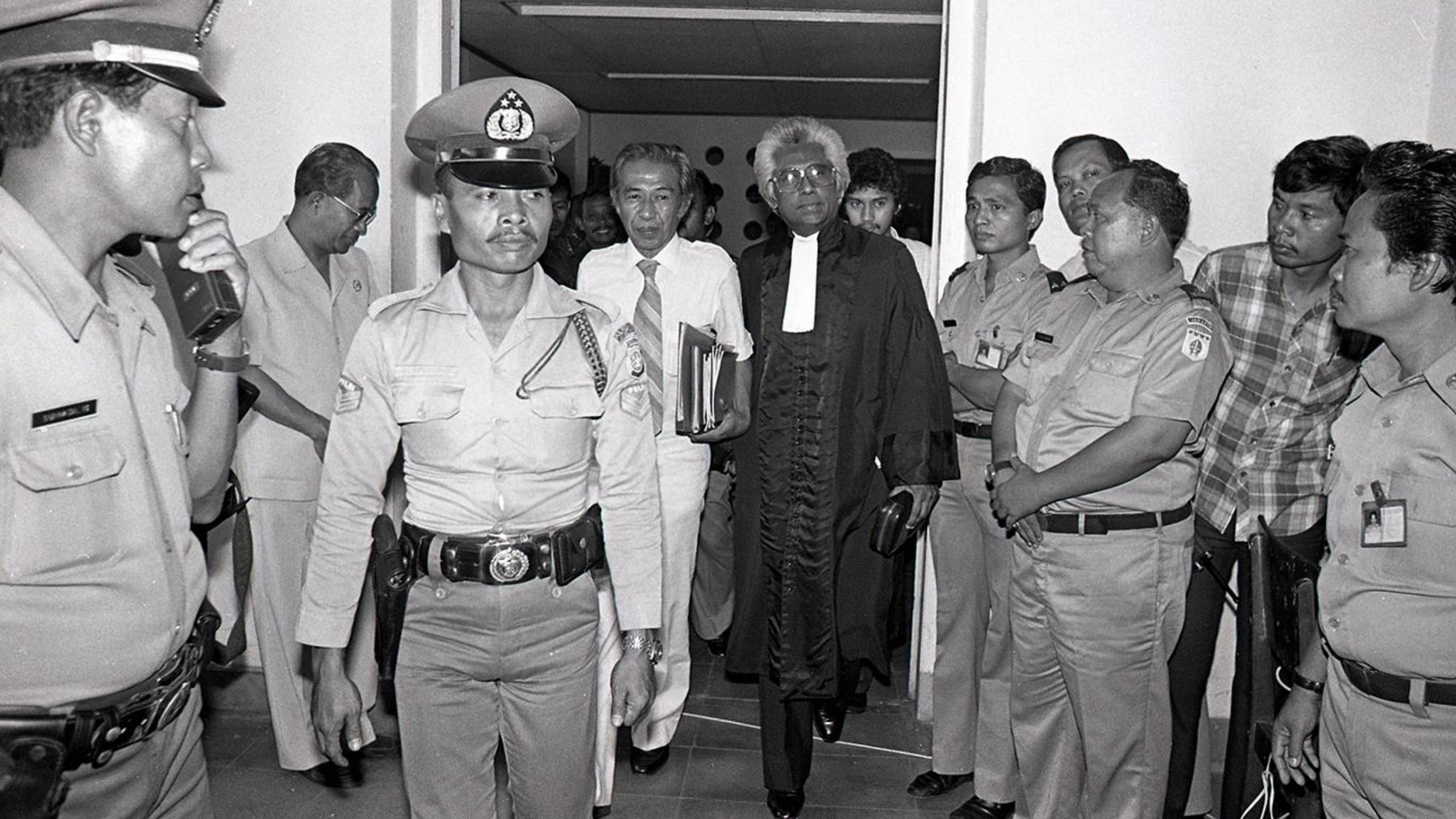
Structural legal aid

Legal aid should address
structural causes of inequality

Individuals → communities

Litigation combined with
community legal education,
community organising,
demonstrations, research,
media campaigns





‘Locomotive of democracy’

Increasingly political

‘Hub’ of civil society resistance

Established ICW, KontraS, KRHN

Civil society ‘eroded the ideological foundations of authoritarian rule’
(Aspinall 2004, 82)



My research

How did post-Soeharto democratic change affect LBH and the strategies it uses to promote social change?

Qualitative, case study approach, involving 60+ interviews, participant observation, analysis of documents

Fieldwork June-Dec 2019



Cause lawyering

Austin Sarat and Stuart Scheingold (1998, 2001, 2004, 2005, 2006, 2008)

Beyond client service, moral and political commitment

‘Natural affinity’ between cause lawyering and democratisation (Sarat and Scheingold 2001, 14)?

Factors considered supportive of cause lawyering:

- constitutional and other legal guarantees of rights
- constitutional courts
- judicial independence
- political openness
- strong civil society and free media

'Types' of cause lawyering

PROCEDURALIST

Legal system viewed as essentially fair and just

Emphasis on procedural justice

Representation as a key goal

Clients as individuals

ELITE/VANGUARD

Belief that law reform can deliver social change

Directed up, towards elites

Legal outcome is the goal

Strategic impact litigation, law reform

GRASSROOTS

Legal system considered 'corrupt, unjust or unfair'

Political outcome is the goal

Close collaboration with grassroots social movements

Community organising, community legal empowerment, demonstrations, media

Why didn't LBH thrive after 1998?

Identity crisis

Loss of donor support

Opening up of civil society

Leadership turmoil and management weaknesses



New legal opportunities

Constitutional litigation

- 2010 Book banning case (Decision No. 6-13-20/PUU-VIII/2010)
- 2009-2010 Blasphemy Law case (Decision No. 140/PUU-VII/2009)

Administrative Courts

- 2019 Papua internet shutdown (Decision No. 230/G/TF/2019/PTUN-JKT)

Citizen lawsuits

- 2019 Jakarta air pollution case (Decision No. 374/Pdt.G/LH/2019/PN Jkt.Pst)

Typical of elite/vanguard approaches to cause lawyering

NO HARI/TGL	AGENDA	KASUS	ADV PUBLIK
1 Juli 2019	Revisi Timbangan	LDIET	Eesty Pohan
2 Agustus 2019	Investigasi	Pengadilan Negeri	Ahmad Agus Purno
3 Agustus 2019	Studi Penelitian JKT	Pengkajian	Ahmad Agus Purno

Legislative/administrative strategies

2011 Legal Aid Law

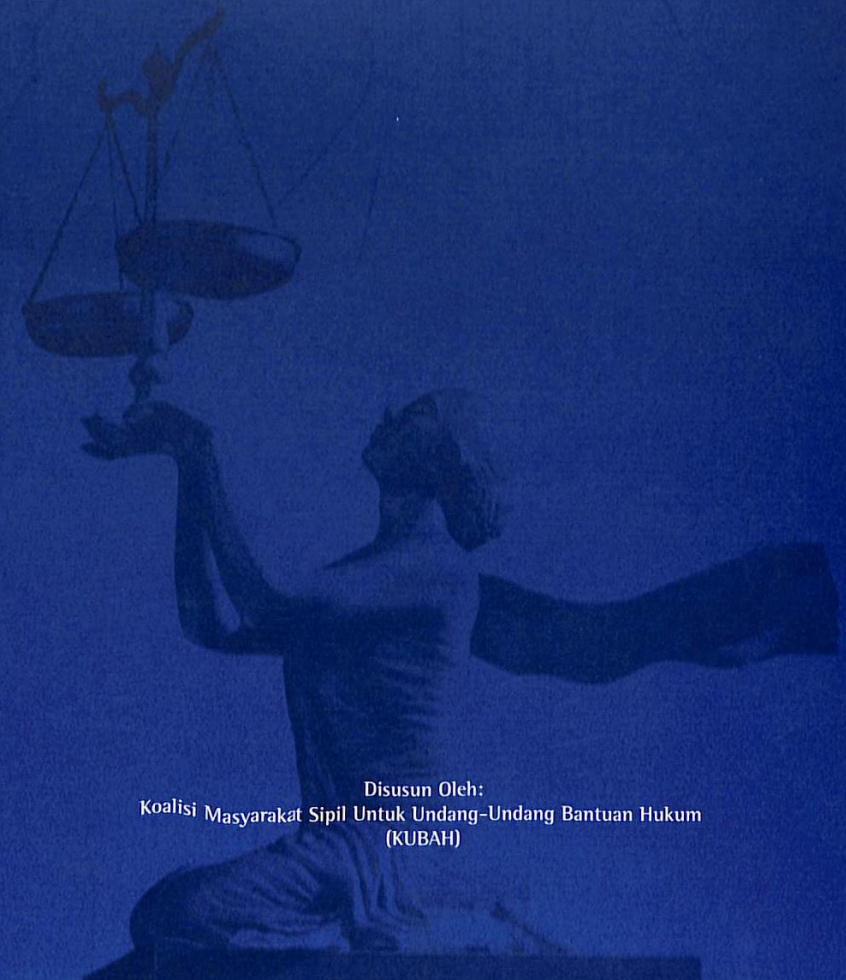
- YLBHI continues to have a good working relationship with the National Legal Development Agency (BPHN)

Engagement with the police

- Police chief circular on managing hate speech
- 'Mainstreaming human rights' among anti-terror police (Densus 88)

BANTUAN HUKUM
DAN
PEMBENTUKAN UNDANG-UNDANG BANTUAN HUKUM

PERTANYAAN DAN JAWABAN



Disusun Oleh:
Koalisi Masyarakat Sipil Untuk Undang-Undang Bantuan Hukum
(KUBAH)

UBAT
#RUUKPK
#RKHUP

DPR
- VS -
EVERYBODY

Pucuk
Rasa Toh Terbaik ada di Pucuknya!

New York
MASSACHUSETTS



Crystallisation of an oppositional approach

Democratic regression has led to extreme scepticism about engagement with the state

“This is the worst government in Indonesia since *reformasi*... Reports from Freedom House confirm this... from 2018, and especially in 2019, deterioration has been incredibly rapid. It is now almost exactly like living under the New Order.” (Asfinawati, director of YLBHI, 2017-2022)

“I think you would be naïve if you engaged with or collaborated with the government now. LBH Jakarta’s position is that it is impossible to work with the government. Because the government does not have a vision of democracy, a vision of human rights. How could we possibly work with people whose values, principles, and vision are different to us? And if you still think Jokowi offers hope, that is stupidity. With all the facts that are available. Not only naïve, but stupid.”
(Arif Maulana, director of LBH Jakarta)

Crystallisation of an oppositional approach

Reversion to a highly oppositional version of cause lawyering that keeps the state at a distance

“Evaluating the history of civil society engagement with the government, has working from the inside been significant? To our friends who have worked with the police on reform, what do you say about the police now? We realise that they are facing powerful interests.”
(Muhamad Isnur, director of YLBHI 2022-2026)

LBH has decided that being able to stand on the side of justice seekers is more important than securing incremental legal reforms

Declining faith in legal strategies, revival of structural legal aid

Growing scepticism about the capacity of legal reforms to lead to substantive change

Renewed focus on 'structural legal aid'

“Now that the political situation is returning to what we faced under the New Order, structural legal aid will naturally return to its previous function... After the New Order fell, people had their own definitions of structural legal aid and [the relative importance of] litigation versus non-litigation approaches. There were many changes, wins in the courts. I won a few times at the Constitutional Court, for example in the book banning case. But it is now clear that *reformasi* has been derailed, or even failed. We were never able to dramatically change the political structure. This gave the old powers the opportunity to reconsolidate. There was a time when they were afraid but now they have created a fortress of impunity. We have no choice but to try to destroy this structure again.”

(Nurkholis Hidayat, director of LBH Jakarta 2009-2012)

Declining
faith in legal
strategies,
revival of
structural
legal aid

Growing scepticism about the capacity of legal reforms to lead to substantive change

“The consolidation of elites or oligarchs in their efforts to forget about democracy and human rights has been extraordinary. Legal efforts create a stage, create a moment. They are useful as an accelerator only but should not be the end goal because legal efforts will not resolve the problem... In the past, if legal efforts were effective and provisions were changed, then we would say that structural legal aid was successful. But it turns out that was not the case. The regime ignored the law.” (Alghiffari Aqsa, director of LBH Jakarta 2015-2018)

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legal aid

Shift from an elite/vanguard model of cause lawyering to a grassroots approach

“When the legal infrastructure of the state is no longer the most appropriate arena, when it can no longer be used fairly by civil society in the struggle for justice, then, want to or not, almost instinctively, organising the community and involving social and marginalised groups, becomes more important”

(Robertus Robet, former senior YLBHI staff)

Litigation has not been abandoned but is valued more for its ability to provide opportunities for community organising, community legal empowerment

Convening/coalition building role

Revitalised by democratic regression

The 'axis of social movements'?

Hub for civil society during #ReformasiDikorupsi

- The term #ReformasiDikorupsi was coined at a late-night meeting at LBH



Convening/ coalition building role

“We should not be leading the movement, but we should be a hub. In the movement there are labour groups, the urban poor, farmers, LGBTIQ+ groups, women, environmental groups. We must become a hub for them. Ultimately, the leaders of the protest movement are the students, but we need create opportunities for these groups to meet, to connect ideas.”

(Arip Yogiawan, director of networking and campaigns, YLBHI 2017-2022)

Legacy as a ‘locomotive of democracy’ under the New Order has allowed it to play this role

Conclusions

Clear relationship between the type of cause lawyering practiced and the quality of democracy – but not what one might expect

Introduction of democratic institutions was not sufficient for cause lawyering to thrive

Democratic regression has encouraged the development of a highly oppositional, political version of cause lawyering, with greater emphasis on mobilisation of communities at the grassroots

LBH still demands that the state uphold the rule of law but believes that pressure must come from below