

## Model Paralegal Arrangement Based on Customary Law Community in the Perspective of Legal Certainty and Justice

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### ABSTRACT

Paralegals, especially those in the Indigenous Law Community, are at the forefront to help resolving problems outside the courts. However, it is necessary to examine further whether the regulation of Paralegals based on the Indigenous Law Community has legal certainty and justice? This study focuses on paralegal regulation in Indonesia and aims to analyse whether the regulation have given legal certainty and justice to Paralegals based on the Indigenous Law Community to realize legal certainty and justice. It will also discuss some ideas to strengthen the paralegal arrangement based on Customary law Community. Using both empirical and normative legal methods, this study finds that there is still lack of legal certainty and justice in the regulation of Paralegals based on customary law communities. Paralegal regulation in Indonesia is still limited to paralegals affiliated with Accredited Legal Aid Organizations in the context of the implementation of Law Number 16 of 2011 concerning Legal Aid. However, there are some efforts made to strengthen the role of Paralegals based on customary law communities for example by providing assistance in substantive and administrative training and recognizing the Customary Law Communities existence and their laws.

## **INTRODUCTION**

One of the purpose of law according to its function is to protect human interests, the law has targets that it wants to achieve.(Said Sampara, 2011: 40).Gustav Radbruch stated that law is a complex of rules for living together aiming to provide benefits, justice and legal certainty (Leawoods, Heather, 2000: 489). Law is anything that is beneficial to people, and it also has character that is willing to provide justice and treat everyone equally.

In the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945) Article 18B paragraph (2) stipulates that the State recognizes and respects customary law community units and their traditional rights as long as they are still alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia, which are regulated by law. Strengthening the above mention provision, Article 28D paragraph (1) states that everyone has the right to recognition, guarantees, protection and certainty of fair law and equal treatment before the law.

In Indonesia, the term Customary Law Community is translated from the Dutch term: *rechtsgemeenschappen*. This term was first mentioned by B. Ter Haar Bzn in his book entitled "Beginselen en Stelsel van Het Adat Recht" (Mr B. Ter Haar Bzn, 1987: 6). Then by referring to the Constitutional Court (MK) Decision No. Number 31/PUU-V/2007 in the Case of the Application for Judicial Review of Law Number 31 of 2007 concerning the Establishment of Tual City in Maluku Province. Based on the opinions of experts and the Constitutional Court Decision, there are at least five elements, regarding what is called customary law communities, namely, community, government, property, customary law and territory. Article 67 paragraph (2) of Law No. 41 of 1999 concerning Forestry states: "Confirmation of the existence and elimination of customary law communities as referred to in paragraph (1) are stipulated by Regional Regulations". The explanation of Article 67 paragraph (1), provides an illustration that the existence of customary law communities is recognized, if in reality it fulfills the following elements:

- a. there are institutions in the form of customary rulers;
  - b. there is a clear customary legal area;
  - c. there are legal institutions and instruments, especially customary courts, which are still adhered to;
  - d. still collecting forest products in the surrounding forest areas to meet daily living needs"
- (Lalu Sabardi, 2013: 177).

Attention to non-formal institutions in efforts to realize justice in society has been seen in government policies outlined in the Long-Term Development Plan (RPJPN 2005-2025, and RPJPN 2025-2045), as well as the Medium-Term Development Plan (RPJMN 2020-2024 and RPJMN 2025-2029) in the context of consolidating democracy, implementing restorative justice, and realizing just law. One of the non-formal institutions that needs attention in this effort is the Paralegal community of indigenous legal communities.

Paralegals are expected to provide wider access to justice, which is a fundamental principle of the rule of law. Access to justice allows people to

voice their thoughts and ideas, challenge discrimination, exercise their rights, or built accountability of the decision-maker. Access to justice therefore is described as condition where individuals and businesses are able to seek and obtain resolution of their legal problems through a range of legal and justice services. These services cover legal information, consultation and representation both in formal (e.g. court) and alternative dispute resolution, and law enforcement mechanisms. An important part of access to justice is legal empowerment which enables people to participate in the justice system and build their capacity to understand and use the law for themselves meaningfully. The concept of access to justice relate closely to the rule of law since it requires impartial and non-discriminatory justice. Without equal access, it's impossible to realize rule of law since there will be big part of the population that may be left behind.

One of the issues related to legal process reform is the use of foreign (modern) models that are disconnected from their cultural context. Consequently, a more sociologically informed approach is needed to reform legal procedures. Thus, it is important to analyze the function and legitimacy of dispute resolution institutions, as well as the expectations and needs of citizens regarding dispute resolution in various societies.(Gregory, 2001: 5–8). The Asia Foundation survey displays the perception of Indonesian society towards the legal and justice sector in Indonesia where the existence of customary courts is still very strong(The Asia Foundation, 2001)

Improving access to justice needs to be done because there is still a gap in the fulfillment of legal aid in urban and rural areas, especially those in border areas. The Law No. 16 of 2011 concerning Legal Aid accommodates the possibility of legal aid through non-litigation mechanisms. Non-litigation dispute resolution is a dispute resolution institution outside formal courts or by setting aside litigation resolution and prioritizing the mediation function through customary institutions in local indigenous communities. In article (1) number (10) of Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, it is stated that the community is allowed to use other alternatives in resolving disputes. These alternatives can be carried out through consultation, negotiation, mediation, conciliation, or expert assessment and also with open interpretation, customary court mechanisms can be added.. One of the actors who can be encouraged to carry out this role is the paralegal who has so far also been held by traditional leaders.

In general, the term paralegal is found based on the similarity of the term in the medical world, namely paramedic. This term is interpreted as someone who is not a doctor, but knows about the medical world. The term paralegal was first known in the United States in 1968, which interpreted Paralegal as a Legal Assistant whose job is to help a legal person, namely a lawyer or notary in providing legal advice to the community and is directly responsible to the lawyer. While in Indonesia, the Paralegal that was developed was not in the sense of a legal Assistant as in the United States, but rather refers to the third world experience, namely working in and for the interests of his community, thus being responsible to his community.Definition of Paralegal in Andik

Hardiyanto's writing which defines paralegal as: "A person who is not a law graduate but has basic knowledge and understanding of law and human rights, has adequate skills, and has the ability and willingness to utilize his/her knowledge to facilitate efforts to realize the human rights of the poor/his/her community"((Tandiono Bawor Purbaya, 2010: 199).

In this study, Paralegal is defined as someone who specifically helps the community, who has special skills and (basic) legal knowledge and is able to provide services, legal education, and guidance to the community. Strengthening the role of paralegals needs to be done because paralegals, - especially those in the indigenous legal community - are at the forefront in providing legal awareness to the community and helping to resolve problems outside the courts. In this context, paralegals are expected to be a bridge for increasing access to justice for indigenous legal communities in hard-to-reach areas.

There are several reasons why it is necessary to increase access to justice through the non-litigation dispute resolution process of customary courts.

First, In Indonesia, the procedure for resolving disputes peacefully has long been and is commonly used by Indonesian society (Muhammad Koesno, 1971: 551). This can be seen from customary law which places the customary chief as a mediator and makes customary decisions for disputes between residents.((Arfan Faiz Muhlizi, 2019:131). Various ethnic groups in Indonesia have a culture of resolving disputes peacefully, for example the Javanese people.(Noor M Aziz, 2011: 45), Bali(Daniel S. Lev, 1990:158), South Sulawesi(HMG Ohorela and H. Aminuddin Salle, 1995: 105-119), Papua((Hilman Hadikusuma, 1992: 177-205), and the Toraja people(TO Ihromi, 1984:17), and East Nusa Tenggara.

According to Sinclair Dinnen, this mechanism still applies in remote areas in many countries in the world. This happens for several reasons, including:

Access to the existing formal legal system is still limited;

- a. In isolated area, traditional community usually still have strong legal traditions in solving legal problems. It's still happening in many regions in Indonesia where tradition or "custom" still being applied effectively. This condition makes the collision between changes in society and the traditional law inevitable. It's a reality that in Indonesia, there are areas which are "sterile" in the application of the formal legal system.
- b. The type of problem solving offered by the formal legal system sometimes receives different views and is considered inadequate and does not fulfill the sense of justice of communities that still adhere to their own legal traditions;
- c. The inadequate infrastructure and resources of the formal legal system result in a lack of adaptability in absorbing the needs of the local community for a sense of justice.(Eva Achjani Zulfa, 2010: 182 - 203)

Second, Indonesian society mostly prefer to resolve disputes peacefully. In Traditional community, this method is recognized to be very effective in disputes or conflicts resolution. At the same time, it is able to eliminate feelings

of resentment.(Arfan Faiz Muhlizi, 2013: 71). Based on research by several experts, basically the culture of conciliation or deliberation is a widespread social value in Indonesia.

Third, amidst the condition where state is not yet capable to provide formal legal resolutions for remote villages, the existence of customary courts is becoming increasingly important. In addition, the capacity of formal justice in Indonesia is limited due to the accumulation of very serious cases. Data from the Indonesian Legal Institute Foundation (YLBHI) displays this clearly that "every year there are 13 thousand cases that enter the Supreme Court. That number must be resolved by 54 Supreme Court Justices who always leave 8 thousand cases at the end of each year". In the official news of the Supreme Court released on Tuesday, February 20, 2024, it was stated that the caseload in 2023 was 2,845,784 cases, consisting of 2,786,073 incoming cases, plus the remaining cases in 2022 of 59,711 cases. Of this number, 2,724,345 cases were decided by the Court of First Instance, and 57,507 cases were dismissed, so that the remaining cases in 2023 will be 63,932 cases.(Syarifuddin, 2023).

The large number of cases has given a real burden to formal justice institutions in providing access to justice for the community. Not to mention the relatively large costs incurred by the community to undergo the formal justice process because it requires transportation costs to the court location and pay for the services of legal counsel who accompany the parties to the case. This heavy burden can certainly be reduced by giving a larger portion to the customary dispute resolution mechanism..

## **THEORETICAL REVIEW**

### ***Theory of Regulation***

Paralegals need ideal arrangements in laws and regulations so that they can be implemented with greater certainty and justice. The arrangements in these laws and regulations will greatly determine how the role and function of legal norms will be stated. Purnadi Purbacaraka and Soerjono Soekanto argue that the reasons why legal norms are needed are:

- a. Not all interests or regulations have been protected or regulated by norms of decency and internal norms in the form of religious norms and moral norms;
- b. Sanctions for violations of internal norms are psychological and very abstract, whereas sanctions for violations of legal norms are physical and real (concrete);
- c. Its coercive nature is very clear and can be enforced by state apparatus (government), whereas ethical norms cannot be enforced by the government because their implementation is based on the drive from within the human individual.(Purnadi Purbacaraka and Soerjono Soekanto, 1978: 10)

Then Bagir Manan also stated that the role of legislation become bigger from day to day, especially in Indonesia because of several reasons:

- a. Legislation is easy to recognize (identify), revisit, and trace. As a written legal rule, it has a specific, clear, and common form. So is its maker.

- b. Legislation provides legal certainty.
- c. The structure of the statutory regulations are clear, making it possible to re-examine and test both the formal aspects and the content of the regulations.
- d. The formation and development of legislation can be planned. This character suits the need of developing countries in building a new legal system that matches the needs and development of the society. (Bagir Manan, 1992: 8)

A Hamid S Attamimi also provides a definition of legal regulations as all legal rules formed by all levels of institutions in a certain form, with certain procedures, usually accompanied by sanctions and generally applicable and binding on the people (A Hamid S. Attamimi, 1990: 61). TJ Buys defines legislation as regulations that are generally binding (algemeen bindende voorschriften). Then, JHA Logemann added the definition with the term *naar buiten werkende voorschriften*, so that the definition becomes regulations that are generally binding and have external force. (Amiroeddin Syarief, 1987: 32-33). Being externally applicable means that the regulation is aimed at the public (general) and not at the person who created it (internally).

T Koopmans stated that the formation of laws today no longer seeks to codify but rather to modify. (T. Koopmans, 1972: 223). A Hamid S. Attamimi also expressed a similar opinion. According to him, to face the changes and developments in the needs of society that are increasingly rapid, it is no longer the time to direct the formation of law through the preparation of codification. Because thinking about codification will only cause the law to always run behind and it is not impossible that it will always be out of date (A. Hamid S. Attamimi, 1988: 12). Modification is the formation of legal norms by the authorities, which will produce new norms with the aim of changing existing conditions in society. Modifications that tend to be visionary and dynamic will direct society towards the desired development.

Furthermore, the most recent theory of regulation keeps expanding the operating sphere of a regulation to the family, reproduction, government bureaucrats, and many more (Julia Black, 2002: 11). It is evident that regulation becomes more and more significant to achieve the goal of the state.

### ***Theory of Justice***

Paralegals are expected to work and move to be able to provide more justice to society and their communities. Henry Campbell Black asserted that justice is a constant and continuous distribution to provide the rights of every person. (Henry Campbell Black, 1982: 1002). Noah Webster give more emphasize on fairness, he sees justice as a general principle of fairness and the use of power with the purpose to uphold what is right, just or according to law. (Noah Webster, 1979: 618, 993). Schopenhauer therefore argued that the most important thing in the essence of justice is the principle of *neminem laedere*, which means avoiding actions that cause suffering, loss and pain to others. (Edgar Bodenheimer, 1970: 10). It is then understandable when Plato stated that justice is the highest policy value. (Roscoe Pound, 1952: 3). According

to legal expert HLA Hart, the most legal of virtues or, borrowing Cicero's term, justice is *habitus animi*, which is a personal attribute. (Judith N Shklar, 1986: 113).

For Plato, justice is displayed through the emancipation and participation of citizens of the polis/state in providing ideas about goodness for the state. This activity become the source of the philosophical consideration for a law. Aristotle further explains about justice. He interprets it as a balance. Aristotle proposes to way to measure of balance: numerical equality and proportional equality. In numerical equality, every human being is equal to one unit. For example, everyone is equal before the law. However, in proportional equality, balance is not measured like that. Proportional equality is reached when everyone is given their right, according to their abilities and achievements. Furthermore, Aristotle divided justice into distributive and corrective justice. Distributive applies in the realm of public law, for example in the distribution of wealth and other goods obtained by society. Corrective justice, on the other side, applies to correct or justify something that is wrong, such as providing compensation for the injured party or giving appropriate punishment to the perpetrator of the crime. (Hyronimus Rheti, 2011: 240-241). In the practical sphere, realizing justice take many forms. One of them is by guaranting access to justice. The right of access to justice seeks to enable citizens to exercise their autonomy to choose, modify, and realize their life projects. It allows individuals to turn to an impartial third party to resolve conflicts. (Colin Crawford & Daniel Bonilla Maldonado, 2020: 1-14).

### *Theory of Utilization*

John Stuart Mill stated that the utilitarian school directs the paradigm towards utility or the principle of greatest happiness. (Lindebaum, Dirk, and Effi Raftopoulou, 2017: 813-822) For example, this criterion can be measured from a certain action which is considered right if it can increase happiness and is considered wrong if it tends to reduce the level of happiness. (Karen Lebacqz, 1986: 14). The standard of justice is based on its utility. This justice should be derived from the human instinct to reject and avenge the damage suffered. Therefore, the sense of justice will rebel against damage, suffering, not only on the basis of individual interests but more broadly than that. ((Satjipto Rahardjo, 2000,: 271).

Thus, utility is the basis for finding justice. Justice is measured from the utility itself, the measure of fairness or unfairness towards actions is based on the principle of utility. The utilitarian paradigm states that to determine the criteria of right or wrong or fairness of a regulation and action depends on the direct consequences of the regulation or action taken (Andre Ata Ujan, 2001: 2 1). As long as the rule has good consequences, then the rule or action is in itself good and just. Conversely, if it has bad consequences, then the rule or action is not good and not just ((Khairul Fahmi, 2016: 175)

### ***Theory of Legal Certainty***

Paralegals need legal certainty in order to protect them in working to provide services to the community and society. This is in line with the purpose of law and its function as a means of protecting human interests, because the law has targets to be achieved. (Said Sampara et al., 2011: 40). Gustav Radbruch stated that law is a complex of rules for living together with the aim of providing benefits, justice and legal certainty. (Leawoods, Heather, 2000: 489). Law is everything that is beneficial to people, but the character of law also means the willingness to provide justice and treat everyone equally. No less important, law must be a rule that is obeyed and applies to all people to guarantee legal certainty. (Radbruch, Gustav, 2006: 13-15).

True legal certainty has a great juridical dimension according to Jan Michiel Otto. Further, Otto defines legal certainty as the possibility that in certain situations, namely:

- a. Rules are clear, consistent and accessible, and accessible/available.
- b. These legal regulations are implemented consistently and obeyed by the governing bodies.
- c. There is compliance where citizens in principle adapt their behavior to these rules.
- d. Legal rules are applied consistently in resolving legal disputes by Independent and impartial judges (courts). Judicial decisions then are concretely implemented. (Lambertus Johannes Van Apeldoorn, 2006: 82-83)

Consistent enforcement by law enforcement agencies also build the "legal certainty". Law enforcement is done for the sake of upholding order and justice in the life of society. Without a consistent law enforcement, there will be legal uncertainty that cause chaos in people's lives. People may act as they please or even do violence. Situations like this put life in an atmosphere of social chaos (social disorganization).

Frans Magnis Suseno can explain the meaning of legal certainty, namely as clarity of norms, so that they can be used as a guideline for society. Which subject to the regulation. The definition of certainty can be interpreted to mean that there is clarity and firmness regarding the application of law in society. Certainty can also mean: first, there is clarity; second, it does not cause multiple interpretations or doubts; third, it does not cause contradictions; fourth, it can be implemented. Law can be separated for the character of certainty, especially for written legal norms. Without certainty, law will lose its meaning because it can no longer serve its purpose as a guideline for behavior for everyone (Franz Magnis Suseno, 1991: 79).

According to the arguments above, the principle of legal certainty is needed lawmaking process. According to M. Kordela "The legal certainty as the superior principle of the system of formal principles of the rule of law justifies the legal validity of a defined group of values" ("Legal certainty as a superior principle of the system of formal principles of the rule of law justifies the legal validity of a defined group of values"). Maxeiner explains that law has two functions, namely guiding society to obey the law and protecting society

against arbitrary government actions that can use their power to create and enforce legal regulations.(Samudra Putra Indratanto, Nurainun, and Kristoforus Laga Kleden, 2020: 88).

## **METHODOLOGY**

Based on the problems and research objectives above, this research was conducted using an empirical legal approach as well as a normative legal approach.(Soerjono Soekanto and Sri Mamudji, 2001: 15.). Empirical legal approach, namely the approach used to see social symptoms related to law in society. The empirical legal approach examines how normative provisions are actually realized in society. This model of research is a study of the external aspects of norms that are needed to reveal norms that cannot be effectively applied in society.(I Made Pasek Dianta, Ni Ketut Supasti, and I Gede Artha, 2018: 5).

This type is used because it will see how Paralegals who grow up in indigenous communities interact and play a role in promoting order in society. This study also uses a normative legal approach because it uses secondary data as additional sources, in the form of various laws and regulations and other document references related to strengthening the role of paralegals based on customary law communities to improve access to justice.(Peter Mahmud Marzuki.2007: 35). This normative legal research produces legal arguments or reasoning or the validity of norms, interpretation of norms, and the creation of new norms (*ius constituendum*). This type of research is used to examine how Paralegals who grow up in indigenous communities receive recognition from the state and become part of the legal development system and national development in general

## **RESULTS**

Paralegal arrangements based on customary law communities still have uncertain legal and justice. Efforts made to strengthen the role of Paralegals based on customary law communities include providing assistance in substantive and administrative training as well as providing recognition of the existence of Customary Law Communities and the laws that live in customary law communities.

The current paralegal regulation model is still limited to being "mentioned" in Law Number 16 of 2011 concerning Legal Aid without any clear regulations. Furthermore, this mention was followed up by the Regulation of the Minister of Law and Human Rights Number 3 of 2021 concerning Paralegals in the Provision of Legal Aid. However, this regulation is still limited to regulations for paralegals affiliated with Accredited Legal Aid Organizations, so it cannot guarantee the certainty of the existence of Paralegals based on Indigenous Law Communities and is less fair.

## DISCUSSION

The term paralegal in Indonesia is stated in Law No. 11 of 2016 concerning Legal Aid. Article 9 letter a of the law stipulates that Legal Aid Providers have the right to recruit advocates, paralegals, lecturers, and law faculty students. It is also mentioned in Article 10 letter c which regulates about Legal Aid education and training for advocates, paralegals, lecturers, and law faculty students that are recruited by the Legal Aid Providers. However, Law No. 11 of 2016 concerning

### *Legal Aid doesn't define the word Paralegal*

The definition of Paralegal can then be found in the Regulation of the Minister of Law and Human Rights Number 3 of 2021 concerning Paralegals in the Provision of Legal Aid. Article 1 number 5 of the regulation states that a Paralegal is any person who comes from a community, society, or Legal Aid Provider, who has undergone paralegal training, does not work as an advocate, and does not independently accompany Legal Aid Recipients in Court. In this understanding, it can be seen that paralegals are still interpreted as part of the Legal Aid Provider Institution so that their space and scope are limited.

This regulation then regulate about the right of the Paralegal. Article 3 paragraph (1) stipulates that in providing Legal Aid, Paralegals have the right to: a. receive increased capacity related to the provision of Legal Aid; and b. receive guarantees of legal protection, security and safety in carrying out the provision of Legal Aid. In providing Legal Aid, the Ministerial Regulation obliges Paralegals to carry out Legal Aid and legal services based on assignments from Legal Aid Providers. The service should be done in accordance with the provisions of laws and regulations and legal aid service standards.

The duties of a Paralegal are also laid down in the Ministerial Regulation. Article 10 of the Ministerial regulates that legal aid providers can assign paralegals who have the competence to provide legal services in several forms:

- a. Advocacy of regional apparatus policies at village/sub-district level up to provincial level;
- b. Assistance for programs or activities managed by ministries, non-ministerial government institutions, provincial governments, district/city governments or village governments; and/or
- c. Collaborate with legal counselors to form and/or foster legally aware family groups.

In those provisions, there's no specific mention about paralegas based on customary law communities. Strengthening the role of paralegals based on customary law communities is very important to support the mission carried out by Law Number 16 of 2011 concerning Legal Aid. Currently, the distribution of Accredited Legal Aid Organizations (OBH) are still not proportional, if compared to Indonesia population and geographical condition. Therefore, Paralegal can be the first reference for the community when dealing with the law. Paralegal existence will also open up access to legal information which is needed to resolve community legal problems based on deliberation and mediation. This can also reduce the burden of the court. Paralegal holds an important role in strengthening the access to justice in reality.

### *The Need to Strengthen Paralegal Arrangement Based on Customary Law*

As a country with great population and diversity, customary community that still observe customary law still exists in many regions in Indonesia. The state has also pledged its support to the existence of the customary law communities legally.

A strong commitment is first seen in the guarantee of respect and protection for the diversity of ethnic, religious and cultural identities as stated in the 1945 Constitution of the Republic of Indonesia. Respect for special regional government units and customary law communities and their traditional rights, for example, has been expressly stated in Article 18B paragraphs (1) and (2). The guarantee of social justice is also clearly outlined in Article 28D paragraphs (1), (2) and (3).

Likewise, the guarantee of diversity of religious identities and beliefs in Indonesia is evident in Article 28E paragraph (2) of the 1945 Constitution, which states that everyone has the right to freedom of belief, to express thoughts and attitudes, in accordance with their conscience. (Yohanes Usfunan, 2013: 27). Article 29 paragraph (2) of the 1945 Constitution confirms the state's guarantee of the freedom of every citizen to embrace their respective religions and to worship according to their religion and beliefs. Article 28I letter (2) then very clearly states that everyone has the right to be free from discriminatory treatment on any basis and has the right to receive protection against such discriminatory treatment.

This is in line with the concept of a state of law that provides guarantees for the upholding of the supremacy of law, in this context there must be no arbitrariness. Especially regarding the rights of disadvantaged groups in society. The state must guarantee that everyone has the same standing before the law (equality before the law), as mandated by Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia, which states that "Everyone has the right to recognition, guarantee, protection and certainty of fair law and equal treatment before the law", including for customary law communities.

Given this context, the existence of Paralegal becomes really relevant to give greater access to justice to the customary law communities. However, as stated above, this has not been accommodated in the current law.

Efforts to strengthen the role of Paralegals need to refer to Sinclair's idea that offers a collaborative approach model or hybrid justice system that still provides a note that the mechanism for resolving cases through customary mechanisms still requires a guarantee of legal certainty guaranteed by law for every decision made through this informal channel, so it is also necessary to improve and renew the administration and management of customary justice so that the coordination mechanism with formal institutions in order to provide this guarantee of legal certainty can run more smoothly.

Reform of judicial administration needs to be done because if it remains in traditional conditions, the potential for deviations such as those that occur in formal courts will recur in informal courts. One of the factors that causes the weakness of judicial reform efforts in formal courts is the ineffectiveness of court management or judicial administration.

The improvement of customary justice administration can be used as a means or method to reorganize the administration of justice to be more effective, efficient, transparent, accessible and responsible with the aim of reducing and preventing various possibilities of judicial corruption practices. However, in addition, the improvement of customary justice administration can also be used as an effort to provide a foothold for the emergence of customary judges who have dedication, integrity, and good achievements so that they are able to produce honest, fair, impartial and quality decisions.

No less important in the judicial process is the need to establish a clear time sheet or time frame, accompanied by a clear and firm reward and punishment mechanism so that the course of the judicial process from beginning to end becomes transparent and measurable. This is also a form of commitment of customary justice to the community, especially justice seekers, related to the implementation of the principles of simple, fast and low-cost justice.

Some technical matters that need to be carried out by customary courts in order to improve their administration and management are:

- a. Documentation of customary court decisions;
- b. Documenting customary values while aligning them with universal human rights and justice values;
- c. Regeneration of customary justice stakeholders;
- d. Education and training of indigenous communities tasked with assisting in the implementation of customary justice.

Paralegals definitely can help in the improvement of the technical matters described above proportionally but this will need some renewal of the current laws in Indonesia.

### ***Paralegal Arrangement Model in The Wold***

To add perspective about future arrangement on Paralegals based on customary law communities, this study will also investigate other countries arrangement. This study chooses 4 countries: United States, South Africa, the Philippines, South Korea and Japans since Paralegals have grown quite rapidly in those countries. Briefly, the regulatory model in several countries is as follows:

#### *United States of America*

In the United States, the paralegal perform substantive legal work and they work under the direct supervision of an attorney. However, there are differences regarding the Paralegal profession in the states in the United States. In terms of regulation, only one state directly regulates paralegals, namely the state of California. In this regulation, educational/experience qualification requirements are set for someone to become a paralegal or legal assistant. In several other countries, qualifications regarding a paralegal emerge/are initiated by the Judicial institution as can be seen in the table below:

Table 1. Paralegal Regulation References Some States of the United States

No.	Country	Settings Reference	Year of Regulation and Governing Institution (Government/Court)

1.	California	California Business and Professions Code, Sections 6450 through 6456.	2000
2.	Washington	Rule 28 of the Admission and Practice Rules, and Rules of Professional Conduct	2012 (Washington State Supreme Court order)
3.	Utah	Rules 14-802 of the Rules Governing the Utah State Bar, and Rules Governing Licensed Paralegal Practitioner 15-703.	2018 (Utah State Supreme Court)

In terms of certification, the paralegal certification exam is currently not mandatory. However, the issue of certification has long been the focus of debate among paralegal associations, bar associations, and legislative discussions. Although not mandatory, there are currently several institutions that hold certification exams for paralegals, as follows:

Table 2. Paralegal Certification Institutions in the United States

No.	Name of Institution	Location	Year of Establishment	Certification Programs Offered	Link
1.	The National Association of Legal Assistants, Inc. (NALA - the Paralegal Association)	Tulsa, Oklahoma	1975	Certificate Paralegal (CP®) and Advanced Specialty exams (APC)	<a href="https://nala.org/">https://nala.org/</a>
2.	The National Federation of Paralegal Associations, Inc. (NFPA™)	Minneapolis	1974	Paralegal Advanced Competency Examination (PACE®) to become a Registered Paralegal (RP™) and the Paralegal CORE Competency Exam (PCCE™)	<a href="https://www.paralegals.org/">https://www.paralegals.org/</a>
3.	National Association for Legal Support Professionals (NALS)	Indianapolis	1929	Accredited Legal Professional (ALP), Certified Legal Professional (CLP) or Professional Paralegal (PP)	<a href="https://www.nals.org/">https://www.nals.org/</a>
4.	The American Alliance of Paralegals, Inc.	Delaware		American Alliance Certified Paralegal (ACCP)	<a href="https://aapipara.org/">https://aapipara.org/</a>

Currently, the American Bar Association (ABA) identifies more than 1,000 institutions across the United States that offer paralegal education programs. Paralegal education can be formal, with degrees and certifications. Institutions that offer these programs include community colleges (two years), colleges and universities (four years), business and proprietary schools. Some institutions are even established specifically to provide this training. The programs offered vary widely in duration and training content. However, taking a paralegal education does not make a person equal to law graduates. Graduates of paralegal programs are not eligible to sit for the bar exam, and academic credits from paralegal education can't be transferred to legal education.

### *South Africa*

The South African Constitution contains provisions that guarantee the right of a person to choose and consult his or her own counsel and the right to legal aid. The provision of legal aid is funded by the state budget. This task is carried out by Legal Aid South Africa (LASA), an independent state-funded agency responsible for providing legal aid. LASA houses paralegals who are often the first responders to those seeking legal assistance, whether in civil or criminal cases. These paralegals are empowered to provide general legal advice on cases seeking legal aid, resolve non-litigation matters, and refer litigation matters to lawyers and candidates at LASA.

In South Africa, there are paralegal trainings provided by several institutions and universities. However, this formal paralegal training is actually intended for paralegals who work in companies or law firms and not specifically for community paralegals.

In addition to paralegals at LASA, there are also community paralegals and Community Advice Offices (CAOs) who also provide legal information and legal advice to poor and marginalized communities in rural communities. Most of the cases they handle are civil cases, but there is currently room for them to also handle criminal cases.

It is the community paralegals in South Africa who have taken many initiatives to self-regulate. The National Community Based Paralegal Association (NCBPA) was formed in 1996 to advocate for this idea and to realize the recognition of standardized training and practice. However, it turned out to be not easy to unite strengths and interests to realize what was expected together. The journey of community paralegals in South Africa has undergone re-organization many times and until now has not succeeded in realizing the expected national standards.

Meanwhile, the idea of drafting a special legislation related to paralegals also started in 1990 but also failed to succeed. In the Legal Practice Act passed in 2014, there is no formal recognition or legal framework for Paralegals.

In current practice, Paralegals in South Africa can perform the following tasks:

Accompanying clients from the company where they work to resolve legal problems;

- a. Conduct legal research;
- b. Preparing cases for trial;
- c. Can be involved in criminal law matters, civil litigation, wills and estates, dispute resolution, legal advice, property law, law firm practice management and debt collection, and counseling.

Although there is currently no specific regulation governing paralegals, The South African Legal Practice Council has been tasked with conducting a review and providing recommendations regarding formal recognition of paralegals. However, it is not yet known what the follow-up to this review process will be, which should have been completed in 2016.

### *Philippines*

In the Philippines, there are currently no specific regulations that formally regulate paralegals. This means that there is no specific licensing or certification

required to practice as a paralegal. However, as in other jurisdictions, there are several institutions that offer paralegal training programs, one of the most popular being the UP Law Center Paralegal Training Program, which provides basic knowledge and skills for those who want to work as a paralegal.

In 2023, there was a Bill to formally regulate the paralegal profession. This bill was proposed by Senator Juan Miguel F. Zubiri. In the explanation section, it was stated that the reason for submitting this bill was to ensure that the paralegal profession, like other legal professions, is free from the risk of unauthorized practice of law.

The draft bill contains several materials, namely: the scope of Paralegal practice, the establishment of the Professional Regulatory Board for Paralegals and its structure and authority, licensing and registration examinations, paralegal qualifications, paralegal practice (and prohibited activities), and criminal provisions.

#### *South Korea and Japan*

Unlike the countries above, in South Korea and Japan, the profession of Judicial Scrivener (literal translation in Indonesian: judicial writing expert) is known, which has similarities to Paralegal. This profession is regulated in formal Laws and Regulations. In Japan, JS is called shiho shoshi and has the task of assisting clients in real estate and trade registration procedures, as well as preparing documents in litigation cases. In Korea, this profession is called beommusa. Beomussa are not allowed to represent clients in litigation courts at all.

In South Korea, this profession is regulated in the Certified Judicial Schriveners Act (Act No. 17266, Jun.9, 2020). This Act regulates several materials, namely: registration of Certified Judicial Schriveners (CJS), rights and obligations of CJS, CJS companies, local CJS associations, and criminal provisions.

According to the comparative studies above, it seems like there's a similar trend around the world (Except the United States) to regulate Paralegal in a stronger regulation. However, all countries also show that regulating Paralegal is quite complicated and need a careful approach to make sure that its existence can coexist with other legal professionals and mechanisms that exist.

## **CONCLUSIONS AND RECOMMENDATIONS**

The regulation of Paralegals based on customary law communities still lacks legal certainty and justice. Efforts made to strengthen the role of Paralegals based on customary law communities include providing assistance in substantive and administrative training as well as providing recognition of the existence of Customary Law Communities and the laws that live in customary law communities. The current model for regulating paralegals is still limited to being "mentioned" in Law Number 16 of 2011 concerning Legal Aid without any clear regulations. Furthermore, this mention is followed up by the Regulation of the Minister of Law and Human Rights Number 3 of 2021 concerning Paralegals in the Provision of Legal Aid. However, this regulation is still limited to regulations for paralegals affiliated with Accredited Legal Aid Organizations, so it cannot

guarantee the certainty of the existence of Paralegals based on Customary Law Communities and is less fair.

It is recommended that the administration and management of customary justice be renewed and improved. By still referring to Sinclair's idea that offers a collaborative approach model or hybrid justice system that still provides a note that the mechanism for resolving cases through the courts still requires a guarantee of legal certainty guaranteed by law for every decision made through this informal channel, it is also necessary to improve and renew the administration and management of customary justice so that the coordination mechanism with formal institutions in order to provide this guarantee of legal certainty can run more smoothly. However, the effort to strengthen Paralegal especially based on customary law communities still need to be carried out carefully to make sure that its arrangement fits with the other legal professions and legal mechanisms that already exist.

### **FURTHER STUDY**

Strengthening the role of Paralegals based on Customary Law Communities needs to be followed by: Harmonization of Customary Values with Human Rights. This is because there are still values in customary law that are still gender biased. In some customary communities, there are still values and sanctions that place women unequal in rights to men (gender bias). For example, in the implementation of inheritance distribution that occurs in several regions, violations of women's rights to receive a share of the inheritance are often found, this is not solely due to customary law factors that do not accommodate women's rights, but also because of the treatment of male heirs who pay little attention to women's rights.

This gender-biased customary practice also occurs in the implementation of customary deliberations. Men always act as leaders, while women are only participants. Women do not have the right to be leaders in leading meetings or structural and functional positions in society. The large role of men as heads of households has an impact on the greater acquisition of men's rights in inheritance compared to women.

This condition that still requires alignment and renewal has been responded to by several indigenous communities in several regions so that there have been efforts to align customary values to be in line with human rights. In Aceh, for example, because it is considered to be in conflict with human rights (HAM), Islamic law, and national law and demeans human dignity, several sanctions or punishments have been determined that are no longer valid and are outlined through the preparation of customary justice guidelines (guidelines). These sanctions and punishments include: being bathed in dirty water, being drowned in a river, being ganged up on/abused, and being beaten. Meanwhile, the sanctions or punishments that still apply in Acehese customary law are: advice, warnings, apologizing in public, compensation, being expelled from the village, revocation of customary titles, being ostracized in social circles, and being boycotted. With the existence of the Legal Aid Law which adheres to the principles of justice and equality before the

law, the same steps in the context of aligning customary values and sanctions with human rights can also be implemented by other regions

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