

## Rethinking and Repositioning Community Paralegal as The Frontline of Access to Justice in The Pandemic

Josua Satria Collins<sup>1</sup>

<sup>1</sup>Division of Access to Justice, Indonesia Judicial Research Society, E-mail: josuasatriaemail@gmail.com

ARTICLE INFO	ABSTRACT
<b>Keywords:</b> <i>Community, empowerment, paralegal</i>	<i>The COVID-19 pandemic gives the full impact on legal services. Not only lawyers but the community paralegal also encountered obstacles at this time. Community paralegals are different from conventional paralegals—their primary role is not to assist lawyers but rather to work directly with the communities they serve. Through the empirical juridical method, the author will analyze the pandemic impacts on community paralegal duties and the forms of government policies that can be taken. There are three issues affecting community paralegal services, namely the digital gap, lack of understanding of cases, and loss of income. This condition requires the government to pay more attention to community paralegal. Through the National Law Development Agency of Indonesia (BPHN), the government can allocate a budget to increase the capacity and welfare of community paralegals.</i> <i>Copyright ©2017 VELREV. All rights reserved.</i>

### 1. Introduction

Billions of people have difficulty accessing justice. In communities throughout the world, people struggle with legal issues related to housing, family, debt, crime, property, and other matters that affect their well-being. Those who are poor, geographically isolated, or otherwise vulnerable often cannot obtain assistance in solving their justice problems. They may suffer under discriminatory laws or lack the legal means to enforce norms that should protect them.

Community-based paralegal programs can help communities that lack access to the legal system resolve their justice issues. Particularly in post-conflict or developing countries, lawyers—who are typically concentrated in population centers and commercial hubs—often cannot meet the demand for justice services. Community paralegals represent a paradigmatic shift in the delivery of legal services, similar to the proliferation of rural public health workers in response to the formal medical profession’s inability to meet community health needs.<sup>1</sup>

Community paralegals are grassroots advocates who use their knowledge of the law to seek concrete solutions to instances of injustice. Based on the needs of a given case, they may employ such tools as mediation, community organizing, education, and

<sup>1</sup> The Open Society Justice Initiative, (2010), *Community-based Paralegals: A Practitioner’s Guide*, Budapest: Open Society Justice Initiative, pp. 11-12.

advocacy before formal or customary authorities. These schemes build citizen power by helping communities develop the knowledge and capacity they need to speak up for themselves.<sup>2</sup>

Since at least the 1950s, when community paralegals in South Africa began helping people to navigate and resist apartheid, community paralegals have played a vital role in empowering communities around the world. Nowadays, community paralegal programs have evolved to be quite diverse. Some provide holistic services, while others focus on specific issues such as land or the rights of prisoners. Some paralegals are paid while others are volunteers. Some work with nongovernmental organizations—including legal NGOs, community-based organizations, and membership associations such as farmers’ groups—while others are a part of government legal aid programs.<sup>3</sup>

Currently, Indonesia is in the midst of a Covid-19 pandemic. The pandemic that has been going on since mid-March 2020 has made many big changes in society. Changes that occur in various fields, namely economic, social, communication, interaction between communities, to law enforcement matters. In the aspect of law enforcement, there are some adjustment to the situation of the Covid-19 pandemic. In this paper, the author will analyse the pandemic impacts on community paralegal duties and the forms of government policies that can be taken.

## 2. Materials and Methods

The approach used in this paper is an empirical juridical approach. The juridical approach that is meant is law seen as a norm. Because in discussing the problems in this study using legal materials (both written law and unwritten law or both primary, secondary and tertiary legal materials. is to see law as a social, cultural or *das sein* reality because in this study the data used are primary data obtained directly from the research location. So, the empirical juridical approach meant in this study is that in analysing the problems that have been formulated, it is done by combining legal materials, both primary, secondary and tertiary (which are secondary data) with primary data obtained in the field, namely about the implementation of legal service by community paralegals.

## 3. Results and Discussion

### A. The Role of Communities Paralegal

“Community paralegals,” also known as “grassroots legal advocate,” “barefoot lawyer,” “community legal worker,” or a host of other titles, provide a bridge between the law and real life. These paralegals are trained in basic law and in skills like mediation, organizing, education, and advocacy. They form a dynamic, creative frontline that can engage formal and traditional institutions alike.<sup>4</sup>

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<sup>2</sup> Emily Polack, (2014), *Citizen power: Sustaining paralegal programmes to put knowledge back into communities' hands*, retrieved November 12, 2020, from <https://www.iied.org/citizen-power-sustaining-paralegal-programmes-put-knowledge-back-communities-hands>

<sup>3</sup> Namati, (n.d.), *How to Develop a Community Paralegal Program*, retrieved November 12, 2020, from <https://namati.org/resources/developing-a-community-paralegal-program/>

<sup>4</sup> Namati, (n.d.), *What is a Community Paralegal?* retrieved November 12, 2020, from <https://namati.org/wp-content/uploads/2015/02/What-is-a-Community-Paralegal-1.pdf>

The term ‘paralegal’ may be somewhat misleading insofar as it suggests an assistant who performs ministerial legal tasks. Community paralegals in many developing country programmes are better thought of as community activists who not only have a substantial training in legal principles, but also familiarity with local community norms and practices and an ability to offer advice and advocacy services that go beyond narrow legal advice.<sup>5</sup>

Community paralegals and their clients typically address three kinds of problems: disputes among people, grievances by people against state institutions, and disputes between people and private firms. Sometimes these cases involve individuals seeking justice; often they involve groups or entire communities. Their aim to help people achieve practical remedies: a group of workers wins unpaid back wages from their employer; a fishing community secures environmental enforcement against a factory releasing illegal effluents into the sea; a mother receives support for her children from a derelict father.

Like community health workers – who have an established place in health care delivery systems around the world – community paralegals are close to the communities in which they work and deploy a flexible set of tools. Also, like community health workers, paralegals work in tandem with a strong, typically well-organized profession. While community health workers refer difficult cases to doctors and the formal medical system, community paralegals are typically connected to lawyers who can engage in litigation or high-level advocacy if the paralegals’ frontline methods fail.<sup>6</sup>

It is important to bear in mind that a paralegal is not a lawyer. A paralegal cannot assist people in court and other tribunals until he or she acquires the relevant qualification and accreditation. However, paralegals also offer skills that lawyers rarely possess, and can extend the knowledge and expertise of the lawyers with whom they work. Paralegals can add complementary skills that are finely tuned to local contexts, such as speaking local languages, knowledge of local forms of justice, and community acceptance.<sup>7</sup>

Common activities of community-based paralegal programs include:<sup>8</sup>

1. Legal and general advice. Advise people on how to handle legal or administrative problems. Refer people to organizations that provide social and health services. The program will have a network of contacts with other paralegals, resources, and organizations that can help the community. Depending upon the local context, the paralegal might work with both formal and customary law institutions.
2. Counselling and mediation. Help community members solve problems through techniques that encourage resolution without going to court. Informal legal mechanisms can include personal counselling, alternative dispute resolution (negotiation and mediation), and arbitration.

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<sup>5</sup> The Commission on Legal Empowerment of the Poor and United Nations Development Programme, (2008), *Making the Law Work for Everyone*, New York: The Commission on Legal Empowerment of the Poor and United Nations Development Programme, p. 92.

<sup>6</sup> V. Maru & V. Gauri, (2018), *Community Paralegals and the Pursuit of Justice*, New York: Cambridge University Press, p. 3.

<sup>7</sup> *Ibid.*, p. 18.

<sup>8</sup> The Open Society Justice Initiative, (2010), *Community-based Paralegals: A Practitioner’s Guide*, Budapest: Open Society Justice Initiative, p. 17.

3. Community education. Hold workshops to raise public awareness and build the capacity of individuals and groups, including civil society organizations, civil servants, government officials, and community councils. Distribute educational pamphlets, booklets, and other resources. Community-based paralegal programming initially involves the training of paralegals and these same paralegals in turn can become involved in community education programming.
4. Litigation activities. Investigate cases, sometimes involving legal research and writing that are then passed on to lawyers, or work as a link between a community and lawyers. Paralegals can help with taking statements, interpreting, and following up on cases. In some jurisdictions, paralegals can appear in lower-level courts in relation to certain civil cases. If the paralegal organization has lawyers on staff, paralegals can help represent individuals or groups in cases before courts or administrative agencies on issues affecting the public interest. Paralegal organizations will often take a strategic approach to litigation, taking cases that affect not only the individual involved but also larger legal and social issues within a community or country.
5. Community organizing and advocacy. Help resolve widespread problems in a community and problems with authorities through negotiation and mediation. Assist in making contact with the press and publicizing events and problems. Some organizations take up cases that challenge existing laws while others draft and advocate for new legislation. Organizations may also provide analysis or opinions on legal instructions being considered.

Community paralegals are dedicated to legal empowerment: they help people to understand, use, and shape the law. Because these community paralegals help people to understand and use the law themselves, their work is often referred to as “legal empowerment.” Paralegals can help empower members of their community to not only know their rights, but also to take action to enforce their rights.

Research has shown the value of community paralegals in the Philippines. A survey found, by comparing different provinces in the Philippines with and without paralegals, that communities with paralegals are able to act when their rights are violated and have the ability to translate knowledge into action.<sup>9</sup> A research project in Tanzania and Mozambique found that women were more likely to pursue legal claims after legal education on land rights, but that this alone was not sufficient to achieve change in agency. Women in villages where paralegals were connected to lawyers were most effective in bringing their case to court and in translating the claim into a remedy.<sup>10</sup>

Carl Cesar “Cocoi” Rebuta, a consultant of the Legal Rights and Natural Resources Centre (LRC) in the Philippines, explained how LRC built community paralegal teams that successfully challenged concessions granted to a mining company. In this case, LRC not only filed a legal case on behalf of their community – but also mobilised the local community to write thousands of letters rejecting the mining project, including many from children. Soon after this petition action, the mining company pulled out.<sup>11</sup>

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<sup>9</sup> Jacinta Maloney, (2014), *I feel empowered, I know my rights*, Australia: The Victoria Law Foundation, p. 36.

<sup>10</sup> *Ibid*.

<sup>11</sup> Emily Polack, (2014), *Citizen power: Sustaining paralegal programmes to put knowledge back into communities' hands*, retrieved November 12, 2020, from <https://www.iied.org/citizen-power-sustaining-paralegal-programmes-put-knowledge-back-communities-hands>

Similarly, in Mozambique, local paralegals supported by Centro Terra Viva (CTV) tackled a natural gas project that was failing to comply with licencing procedures. The project's licensing process was delayed until the proper procedure was followed. CTV is now building a far-reaching paralegal programme to strengthen local capacities and reach communities in investment hotspots across Mozambique.<sup>12</sup>

The role of paralegals is also seen in Indonesia. For many months, the 98 families living in a low-income housing block in Bogor, Indonesia, had not received electricity. The state electricity company, PLN, stopped providing electricity after finding out the wires had been illegally connected. The company demanded the residents pay a fine of several thousand dollars in order to reconnect the lines. The residents, however, claimed the developer of the housing block was the party at fault. The developer was also unwilling to pay the fine.<sup>13</sup>

The residents approached a group of paralegals with their case. The paralegals assisted the community in staging rallies, writing letters to government agencies, and obtaining newspaper coverage of the issue. The paralegals also approached members of a local parliamentary commission and asked them to conduct two hearings on the case. The commission members accepted.<sup>14</sup>

During the hearings, the commission asked all parties—the electricity company, the developer, and the residents—to share their side of the story. Many community members attended the meetings and had the chance to speak publicly about their challenges. Following the second meeting, the commission issued a nonbinding statement in which they asked the developer to pay the fine. The electricity company initially still pressed the local residents for the money. After the paralegals threatened to take the case to court, the developer paid half of the fine and the company restored the electricity connection.<sup>15</sup>

Paralegal initiatives can make governments more responsive to local needs and more likely to respect and protect the rights of local communities. In reality, many government bodies, especially at local level, do not have access to legal advice themselves. For example, in Mozambique, CTV trained government officials, as well as community paralegals, in aspects of the law. A supportive response from government relies on trusting relationships, and these are not always present. In Mozambique, the government can be suspicious of NGOs despite their potential to offer support and advice.<sup>16</sup>

Local insights and local actions that gather analyses and build momentum for effective advocacy are crucial for legal reforms. Linking local to national, is the primacy of community paralegals that become the key to wider systemic change. One organisation in Mali helped identify gaps in the mining code through dialogue with villagers during a

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<sup>12</sup> *Ibid.*

<sup>13</sup> Namati, (n.d.), *What is a Community Paralegal?* retrieved November 12, 2020, from <https://namati.org/wp-content/uploads/2015/02/What-is-a-Community-Paralegal-1.pdf>

<sup>14</sup> *Ibid.*

<sup>15</sup> *Ibid.*

<sup>16</sup> Emily Polack, (2014), *Citizen power: Sustaining paralegal programmes to put knowledge back into communities' hands*, retrieved November 12, 2020, from <https://www.iied.org/citizen-power-sustaining-paralegal-programmes-put-knowledge-back-communities-hands>

series of legal 'caravans'. Sharing this analysis with the Malian government resulted in a revised national mining code. In Liberia, action-research testing how paralegals could help communities protect land in turn helped develop and implement a new community land rights policy.<sup>17</sup>

Furthermore, community paralegals do not only focus on case handling and advocacy, but also focus on community development and empowerment through useful activities. Many people keep away from getting involved in legal matters. Sometimes lack of information and threats given by the accused compel them to leave the case before completion and their exploitation continues. So, it is necessary to convince the victim and extend complete support to fight injustice. Lawyers speak in legal language and are concerned only about the case not about the condition of the victim.<sup>18</sup> Therefore, the presence of community paralegal is needed for this context.

In Sukowilangun Village, there is a group of paralegals called “Singkong Jaya”. The existence of this paralegal group not only provides protection to women, but is also able to empower women who are there. This community paralegal has several activities, one of which is the production of “tepung mocaf” made from cassava which is sold in several bakeries. Then, it processed into processed products in the form of brownies which are very useful and can be consumed by autistic children.<sup>19</sup>

## **B. The pandemic impacts on community paralegal duties**

Community paralegal efforts cost money. Paralegals who work full time require a salary; those who serve their own village or their own membership association as volunteers require support from lawyers or more senior paralegals who earn a salary. There are also costs associated with training, office space, materials, transportation to reach clients and government offices, and litigation for a small percentage of cases

Despite relatively modest costs, paralegal groups in every country identified unstable funding as a key constraint. This is consistent with data from the Global Legal Empowerment Network. When asked “How sustainable is your funding situation for the coming year?” in a 2017 members survey, 63 percent of respondents said either “we have to make cuts but we will survive” or “we may not be able to operate next year due to lack of funds.”<sup>20</sup>

The cost problem for community paralegals is exacerbated by the pandemic. LBH Yogyakarta conducted a survey on the impact of Covid-19 on 11 community paralegal organizations. In general, 11 paralegal communities experienced a decrease in economic income. Of course, this also makes the agenda and programs carried out by 12 paralegals

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<sup>17</sup> *Ibid.*

<sup>18</sup> Centre for Social Justice, (2012), *We Can*, Ahmedabad: Centre for Social Justice, p. 6.

<sup>19</sup> Satukanal, (2020), *Tak Hanya Memberikan Perlindungan, Keberadaan Komunitas Paralegal Mampu Memberdayakan Perempuan*, retrieved November 12, 2020, from <https://www.satukanal.com/tak-hanya-memberikan-perindungan-keberadaan-komunitas-paralegal-mampu-memberdayakan-perempuan/>

<sup>20</sup> V. Maru & V. Gauri, (2018), *Community Paralegals and the Pursuit of Justice*, New York: Cambridge University Press, p. 24.

in terms of expanding access to justice in the context of fighting for human rights to encounter significant obstacles.<sup>21</sup>

One of those affected is the Jonggrang Community located in Kalasan District. Members of this community are female sex workers. Community members are active to carry out advocacy activities, especially for friends who are arrested while working and also ensure the safety of community members from service users. The Jonggrang community has regular activities such as gathering 2 times a month. They meet each other to give an update and also serve as a means for education related to personal health and safety. The community also implements a security system with daily fees to be used as a holding fund if a member is caught.<sup>22</sup>

All respondents from the Jonggrang Community stated that they were severely affected by the pandemic. Almost all respondents experienced a decline in income as a result of the economic slowdown during the pandemic. The high risk of contracting Covid-19 through their work is also a fear in itself. This condition is exacerbated by an increase in the price of basic commodities in the area where they live. Not only that, Jonggrang community members are basically migrants who break contracts around the area. Most of them do not get assistance from the government because they are considered not to be local people. Even so, community members persist in these jobs while looking for alternative side jobs to meet their needs. One alternative to his job is selling food such as “angkringan” or street snacks.<sup>23</sup>

Community paralegals also face problems related to the use of technology. The implementation of online activities (be it legal consultations or public discussions) can only be attended by tech-literate participants. There are some groups in society (especially the lower middle economic class) who cannot be involved in participating in these activities, because they are neither technology literate nor have the technological infrastructure itself.

The electronic trial mechanism also brings challenges in the technicality of trial administration. For example, when the trial started, the parties did not know which application to use. When using the zoom application, because they don't use a premium account, it can only be used for about 30 minutes. After that, they have to use the creation of a new virtual meeting room in the zoom. In addition, the panel of judges and public prosecutors are not familiar with online trials and the use of technology-based applications. As a result, the trial takes a long time and is only technical.<sup>24</sup>

Technology gap also seen when legal aid seekers who will consult with community paralegals. Lembaga Bantuan Hukum Masyarakat (LBHM) said that delivery via the WhatsApp business account is highly dependent on the internet network and devices owned by legal aid seekers. During a pandemic, the need for quotas will become large and

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<sup>21</sup> A.M. Akdom, A. Widhantara, & D.K. Awami, (2020), *Mandiri Di Tengah Pandemi: Laporan Survey Dampak Covid-19 Terhadap 11 Organisasi Paralegal Komunitas*, Yogyakarta: LBH Yogyakarta, p. 48.

<sup>22</sup> *Ibid*, pp. 41-42.

<sup>23</sup> *Ibid*.

<sup>24</sup> W. Afriandy, S. Mazumah, L. Yuliana, D. Christian, M.R. Ridha, & A. Wahyudin, (2020), *Panduan Bantuan Hukum Selama Pandemi Covid-19*, Jakarta: Lembaga Bantuan Hukum Masyarakat, p. 22

burdensome legal aid seekers economically. Legal aid seekers who live in areas with minimal internet access are the most disadvantaged and affected.<sup>25</sup>

LBH Apik also experienced a similar story. Many women victims of domestic violence do not have smartphones so they cannot access services. Community paralegals ultimately have to provide direct legal assistance by implementing health protocols. They are equipped with personal protective equipment when providing legal assistance.<sup>26</sup>

Apart from the financial and technological aspects, community paralegals have also encountered various new cases. During the pandemic, two new cases that emerged were misappropriation of social assistance and lack of access to health. Many community paralegals do not have sufficient skills to assist in handling this case. Many aspects are involved in these two types of cases and it is not easy for community paralegals to receive training in handling these cases.<sup>27</sup>

### C. Strategic Solution for Community Paralegal

Paralegal programs should seek to diversify funding sources and secure long-term commitments. Many existing paralegal programs raise the majority of their funds through international organizations, but there are a variety of viable models. Government justice institutions may finance legal aid efforts where paralegals are recognized, while other organizations raise funds through microfinance and social enterprises.<sup>28</sup>

Although many paralegal programs are based within an NGO, they may also be directly affiliated with government agencies or supported entirely by public funds. This can happen when the state recognizes that paralegals are helping them to provide promised legal aid services to citizens. It is important that any paralegal program set up under the auspices of the government have an independent oversight committee with a majority of members coming from civil society in order to ensure procedures of accountability and supervision of the paralegal work.

In Mongolia, a paralegal program was introduced within an existing governmental institution, the Ministry of Justice and Home Affairs, which employed 30 legal advisors in local governors' offices in the country's 21 provinces and the capital city of Ulaan Baatar. A report prepared by the Open Society Forum–Mongolia confirmed that rural populations had a high need for legal services and law-related education to address community problems. At the suggestion of the Open Society Forum–Mongolia, and with the support of the Open Society Justice Initiative, the Ministry of Justice agreed to pilot a new paralegal program through its own institutional structures in 10 pilot sites in 2006.<sup>29</sup>

The ministry changed the responsibilities of the legal advisors so that they would continue to spend half of their time advising government officials but the other half

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<sup>25</sup> *Ibid.*

<sup>26</sup> *Ibid.*, hlm. 13

<sup>27</sup> Interview with Andi Komara, Public Defender at LBH Jakarta, 12<sup>th</sup> November 2020.

<sup>28</sup> Namati, (n.d.), *How to Develop a Community Paralegal Program*, retrieved November 12, 2020, from <https://namati.org/resources/developing-a-community-paralegal-program/>

<sup>29</sup> The Open Society Justice Initiative, (2010), *Community-based Paralegals: A Practitioner's Guide*, Budapest: Open Society Justice Initiative, pp. 24.



serving community members directly. The legal advisors now act as paralegals and their work is managed by newly established legal aid centers.

Despite the Mongolian example, it is unusual to have paralegals directly employed by the government. It is more common for paralegals to receive support from governments through in-kind contributions; in South Africa, some paralegals are based in government offices located near the tribal chiefs’ courts. This arrangement not only reduces operational expenses but also gives paralegals greater access to clients who come into the building. In Hungary, the second phase of the Roma paralegal training program received support through a European Union structural fund. In some countries, it is possible that government funds earmarked for legal services could be used to support paralegal work.<sup>30</sup>

The Bar Association can also play a role in providing solutions for community paralegal. In America, the American Bar Association providing support specific to the needs of paralegals and paralegal students during the COVID-19 pandemic. As the need for remote legal services is likely to continue beyond the immediate crisis, these organizations are well-positioned to continue to support the evolving needs of the paralegal profession.<sup>31</sup>

#### 4. Conclusion

From the explanation above, we can conclude that Community Paralegals are non-lawyers who use their knowledge of the law to provide legal advice and assistance to the community in which they live. A scarcity of lawyers willing to assist the poor and vulnerable has resulted in community paralegals emerging to bridge the gap. Community paralegals not only work directly with their communities to raise awareness of legal rights, they are translating knowledge into action, assessing and acting on legal problems. Community paralegals are vital links between their community, lawyers, and legal services.

There are three issues affecting community paralegal services, namely the digital gap, lack of understanding of cases, and loss of income. This condition requires the government to pay more attention to community paralegal. In the end, skilled and capable paralegals could succeed in helping people deal with an inaccessible and distrusted justice system and how, in the process, they could contribute to address social inequality in Indonesia.

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<sup>30</sup> *Ibid.*

<sup>31</sup> S. Dahlquist & A. L. Shelton, (2020), *The Effects of the COVID-19 Pandemic on Paralegal Employment and Education*, retrieved November 12, 2020, from <https://www.americanbar.org/groups/paralegals/blog/blog/5/>

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