





Toward Equal Access to Justice: Can Regulating Attorney Fees Ensure Fairness and Broaden Legal Access in Indonesia?

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Abstract

In Indonesia, the role of attorneys in resolving legal issues is indispensable, yet the absence of standardized attorney fee regulations has led to significant barriers in accessing legal services. Despite attorneys' rights to receive fees for their services, the lack of clear guidelines has resulted in public perception that hiring legal representation is a luxury, with many unable to afford it. This study explores the urgent need for state regulation of attorney fees to ensure fairness and broaden access to justice for all segments of society. The findings indicate that the lack of fee standardization contributes to inequities in the legal system, creating



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barriers for lower-income individuals to access legal assistance. Furthermore, it reveals that establishing a clear regulatory framework would provide legal certainty, protect consumers, and promote a more equitable system for all citizens. The novelty of this research lies in its exploration of attorney fees as a critical element in improving access to justice in Indonesia, framing the issue beyond economics and highlighting its social justice implications. By addressing the urgency of regulating attorney fees, the study contributes to the ongoing legal reform discourse, providing policy recommendations for creating a fee structure that balances fairness with professional responsibility. The research emphasizes that deliberative processes, considering factors such as case complexity, impact, and operational costs, should guide the determination of fees. Ultimately, the study presents a compelling argument for rethinking how attorney fees are regulated to ensure that justice is accessible to all, not just the wealthy.

KEYWORDS *Attorneys, Fee, Access to Justice, Regulation*

I. Introduction

Every individual is entitled to recognition, guarantees, protection, and equitable legal certainty, as well as equal treatment under the law, as stated in Article 28D, paragraph (1) of the Indonesian Constitution (UUD 1945). Furthermore, Article 28H, paragraph (2) stipulates that every person is entitled to receive assistance and special treatment to ensure equal opportunities and benefits in the pursuit of equality and justice. In light of these constitutional provisions, the state is obligated to ensure that citizens' rights to justice are upheld. Access to justice, as one of the fundamental rights of all individuals within a nation, must be guaranteed

by the state.¹ Access to Justice not only means protecting the rights of individuals but also ensuring that government agencies perform their duties fairly and in accordance with the law.²

One of the efforts to get access to justice is the presence of an attorney or legal aid institution. Attorney described as "*a person trained and qualified according to national law to plead and act on behalf of its clients to engage in the practice of law, to appear before courts or advise and represent clients on legal issues.*"³ In social and state life, the role and function of an attorney as a free, independent, and responsible professional is essential in court proceedings and other law enforcement agencies such as the police and prosecutors. In this present time, suspects and victims in criminal cases are becoming dependent with the involvement of attorney because they may accompany a party throughout a litigation or court proceeding to resolve a dispute⁴ At this point, the mindset above emerges, namely, paying for the services of an attorney is still a luxury item. Attorneys are expensive to hire. Defenders whom the courts try naturally hope that the defense by attorneys is worth the money⁵. The attorney fee structure is unprecedented and seriously imperils our legal culture's notions of fair

¹ Anbesie Fura Gurmessa, "The Role of University-Based Legal Aid Centers in Ensuring Access to Justice in Ethiopia." *Beijing Law Review* 09, no. 03 (2018): 357–80.

² Steven H. Hobbs, "Shout from Taller Rooftops: A Response to Deborah L. Rhode's Access to Justice." *Fordham Law Review* 73, no. 3 (2004): 935–54.

³ Bogdan D. Dumitrescu, "The Principles and the Legal Responsibility of the Lawyer, Guarantees of National Security." *Procedia Economics and Finance* 32 (2015): 884–90.

⁴ David McQuoid-Mason, "Access to Justice and the Need for a Holistic Approach to the Delivery of Legal Aid Services in Developing Countries: Lessons from South Africa." *Jindal Global Law Review*, 2020

⁵ Dietrich Earnhart, and Sandra Rousseau. "Are Lawyers Worth the Cost? Legal Counsel in Environmental Criminal Court Cases." *International Review of Law and Economics* 60 (December 1, 2019). <https://doi.org/10.1016/j.irl.2019.105857>

play, access to the courts, and legitimate contention of contentious matters.⁶

The existence of the Law on Attorneys resulted from a long struggle since the Dutch colonial period. Previously, an attorney's position legally needed a more precise function in the legal and judicial system.⁷ Article 5, paragraph (1) of Law Number 18 of 2003 of the Attorneys, explains: "Attorneys have the status of law enforcers, free and independent guaranteed by law and statutory regulations." Thus, it is clear that, *de jure*, an Attorney is part of a sub-system in the existing Criminal Justice System. Although *de facto*, an Attorney more often stands in the client's interest position.

Attorney is a noble and honorable profession, often termed (*officium nobile*), and is responsible for upholding justice. Article 18, paragraph (1) of Law Number 18 of 2003 of the Attorneys states that "*Attorneys in carrying out their professional duties are prohibited from differentiating treatment of Clients based on gender, religion, politics, descent, race or social and cultural background*". Based on these provisions, Attorneys must be able to provide legal assistance to the public or clients who experience legal problems without discriminating against their background.

Attorneys has the capacity to offer legal services encompassing civil, criminal, and administrative affairs via both litigious and non-litigious means. In providing legal services Attorneys are eligible to obtain a fee. According to Article 1, Section 7 of Law Number 18 of 2003 pertaining to attorneys, the term "*fee*" refers to remuneration for legal services rendered by an attorney, as stipulated in a mutually agreed upon arrangement with the client. The term "*client*," as defined by the legal

⁶ Rebecca Aviel, and Wiley Kersh. "The Weaponization of Attorney's Fees in an Age of Constitutional Warfare." *Yale Law Journal*, 2023

⁷ Imam Ghozali, and Fahrizi Mahfud. "Transformasi Organisasi Advokat Indonesia Dari Single Bar Menjadi Multi Bar (Implikasi Putusan Mahkamah Konstitusi No. 101/PPU -VII/2009 Dan Surat Ketua Mahkamah Agung No. 73/KMA/HK.01/IX/2015).," *Jurnal Ilmu Hukum* 8, no. 1 (2018): 72–82.

framework governing attorneys, encompasses individuals, legal entities, or other institutions who avail themselves of legal services provided by an attorney.

The presence of an attorney may be independent of the court decision being studied. These lawyers have a role in influencing their clients and the legal process more generally.⁸ Thus, the differences in identified outcomes may be more than just due to the presence of legal counsel due to the influence of unobserved factors on hiring lawyers and court decisions.⁹ But despite this, there is a positive impact from hiring an attorney, in that attorneys improve legal outcomes because of their superior knowledge of statutes, professional acumen to interpret legal texts, and experience with court proceedings.¹⁰

The phenomenon that often occurs in the community is that many people still do not dare to use the services of professional attorneys related to the fees that are considered expensive. Article 21 of the Law on Attorneys states that an Attorney has the right to receive a Fee for Legal Services given to the Client. The amount of Fee for Legal Services is determined relatively based on the agreement of both parties. The lack of clarity and further regulation regarding attorney fees often creates many problems. The agreement made between an attorney and his client has no limitations by law or an attorney's code of ethics, which often causes problems. Many attorneys charge enormous fees and only certain circles

⁸ Krystia Reed, "The Experience of a Legal Career: Attorneys' Impact on the System and the System's Impact on Attorneys." *Annual Review of Law and Social Science*, 2020. <https://doi.org/10.1146/annurev-lawsocsci-051120-014122>.

⁹ Mark D. Verhagen, and Julius Yam. "The Law of Attraction: How Similarity between Judges and Lawyers Helps Win Cases in the Hong Kong Court of Final Appeal." *International Review of Law and Economics* 65 (March 1, 2021). <https://doi.org/10.1016/j.irle.2020.105944>.

¹⁰ Jane Goodman-Delahunty, Pär Anders Granhag, Maria Hartwig, and Elizabeth F. Loftus. "Insightful or Wishful: Lawyers' Ability to Predict Case Outcomes." *Psychology, Public Policy, and Law* 16, no. 2 (May 2010): 133–57. <https://doi.org/10.1037/a0019060>.

can use their services in the same case. There seems to be a connection between the risk-taking conduct of attorneys in securing honoraria, how much of the honorarium effects the services obtained, and how much of the honorarium influences efficiency in the case assistance process.¹¹

Attorneys are expected to work well as the spearhead of legal aid services; putting aside profit and loss and having a passion to serve, especially for the poor. Justice depends on the strength of the attorney-client relationship.¹²

Some studies related to attorneys that have been conducted by Patricko Octoviano Untajana focused on attorney's fees that could be categorized as money laundering crimes¹³ M Yodi Endratama's research focuses on arrangements and practices regarding client responsibilities related to the obligation to pay attorney's fees and settle disputes between attorneys and clients regarding fee¹⁴ Furthermore, research by Gusti Ketut Sanjaya and I Nyoman Remaja focused on the position of the attorney profession as a basis for determining fee.¹⁵ Meanwhile, this article will examine the urgency of setting a reasonable amount of attorney honorarium to strengthen access to justice for the community in obtaining

¹¹ Lucy Welsh, "The Effects of Changes to Legal Aid on Lawyers' Professional Identity and Behaviour in Summary Criminal Cases: A Case Study." *Journal of Law and Society*, 2017. <https://doi.org/10.1111/jols.12058>.

¹² Bethany A'Court, and Raymond Arthur. "The Role of Lawyers in Supporting Young People in the Criminal Justice System: Balancing Economic Survival and Children's Rights." *Journal of Social Welfare and Family Law*, 2020. <https://doi.org/10.1080/09649069.2020.1837517>.

¹³ Patricko Octoviano Untajana, "Honorarium Advokat Yang Dapat Dikategorikan Sebagai Tindak Pidana Pencucian Uang." *Thesis*. (Yogyakarta: Universitas Atmajaya, 2016)

¹⁴ M Yodi Endratama, "Pengaturan Dan Praktek Mengenai Tanggung Jawab Klien Terkait Kewajiban Pembayaran Tarif Advokat", *Thesis* (Yogyakarta: Universitas Gadjah Mada, 2021).

¹⁵ Gusti Ketut Sanjaya and I Nyoman Gede Remaja, 'Kedudukan Profesi Advokat Dalam Rangka Memberikan Pelayanan Kepada Masyarakat Di Bidang Hukum Berdasarkan Undang-Undang Nomor 18 Tahun 2003 Tentang Advokat', *Kertha Widya Jurnal Hukum*, 7, no. 1 (2019): 13–33.

legal aid and legal aid services. In this paper, we want to find and analyses the urgency of determining the amount of attorney's honorarium by the state and the model for determining a reasonable attorney honorarium to strengthen access to justice.

With precise arrangements regarding attorney's fees, it will undoubtedly serve as a guideline for attorneys in providing legal services to clients. This condition will make easier for clients to consider the services of an attorney's law; it will also minimize discriminatory treatment of users of legal services from the upper, middle, and lower classes.

The research method used in the study is normative juridical research with statutory, conceptual and comparative approaches. This research examines legal materials conducted in depth on laws and regulations relating to advocates, legal aid, constitutions of foreign countries, legal concepts and legal theories relevant to the research problem. The specification used is descriptive. The data used is secondary data which includes legal materials used are primary, secondary, and tertiary legal materials. Legal materials are presented in the form of narrative text by dialoguing between legal theories, legal norms, research results and researcher analysis which are connected between one another in accordance with the subject matter so that it becomes a comprehensive, all-inclusive and systematic unit. The analysis is carried out by deductively interpreting and discussing the research material based on legal principles, legal theories, legal definitions, legal norms, and concepts related to the subject matter and carried out.

The Imperative Need for State-Defined Attorney Fee Amount

Attorney's fee is the reward attorneys receive for their professional services to clients. Neither in Law No. 18 of 2003 on Attorneys nor the code of ethics for attorneys is a provision stating the amount of fee an attorney can receive. The provisions related to the attorney's fee are regulated in Article 21 Law No. 18 of 2003, which states that attorneys

are entitled to receive a fee for legal services provided to their clients, and the amount of fee for legal services is determined relatively based on the agreement of both parties. Determination of the word fair in the provisions of the Attorney Law implies taking into account the client's risk, time, ability and interests. Lawyers must have a concept management in managing the office the law in order to provide legal services. Therefore, a lawyer is protected in carrying out obligations and responsibilities within protecting the interests of its clients by the Code of Ethics and Law on attorneys, which are both limited.¹⁶

Attorneys are not civil servants or private employees in contrast to other law enforcers such as judges, police, and prosecutors who get a salary from the government, while attorneys get a salary in the form of a fee from their clients. The urgency of regulating the determination of the amount of fee for attorneys is none other than to provide certainty and justice for the community.

Many parties are reluctant to help others because there is no economic benefit to be gained. This is the problem for the poor or lower middle class who want to use the services of a lawyer or attorney for access to justice.¹⁷ Even though the government has facilitated the provision of legal aid to the poor by issuing Law Number 16 of 2011 concerning Legal Aid, this has also created problems among them with the limited number of accredited legal aid providers, the uneven distribution of legal aid providers, the limited amount of budget, some attorneys who are members of legal aid providers provide legal services not according to the standards

¹⁶ Risdalina Siregar, 'Hubungan Antara Advokat Dengan Klien Dalam Penegakan Hukum Perdata', *Jurnal Ilmiah Advokasi*, 7, no. 1 (2019): 9–20 <https://doi.org/10.36987/jiad.v7i1.241>.

¹⁷ Agus Raharjo, Angkasa Angkasa, and Hibnu Nugroho, 'Pengawasan Kinerja Advokat Dalam Pemberian Bantuan Dan Pelayanan Jasa Hukum (Studi Di Jawa Tengah)', *Jurnal Dinamika Hukum*, 14, no. 2 (2014) <https://doi.org/10.20884/1.jdh.2014.14.2.295>.

set by the Ministry of Law and Human Rights.¹⁸ Violations of legal aid service standards according to the minister of law and human rights regulation number 4 of 2021 include attorneys providing indirect assistance, conducting examinations without the presence of an attorneys, or involving unaccredited attorneys are some examples of non-compliance with this regulation.¹⁹ So, it is common for the public to be charged a fee even if they use the services of an attorney who is not affiliated with a Legal Aid Organization, they are still subject to fees which are quite expensive and burdensome. Apart from this, actually, in Article 22 of Law Number 18 of 2003, there is an obligation for attorneys to provide legal assistance free of charge to the poor.

It is hoped that the existence of arrangements regarding fees that are not burdensome to the parties will further strengthen people's access to justice, especially in obtaining legal aid services. Access to justice means being treated fairly under the law, and if not treated fairly, a person will not get proper redress. The concept of access to justice does not only mean access to attorneys or courts but also means access to an ombudsman and other justice institutions.²⁰ Access to justice is access or convenience for the community in obtaining justice before the law. Even though there is already a law on legal aid, if you are going to get access to legal aid provided by the government, you need various requirements for both legal aid providers and legal aid recipients so that it is not uncommon for the community, besides that being part of a legal aid organization it is often

¹⁸ Nurani Ajeng, Tri Utami, et al. "Legal Aid Organization Problem In Providing Legal Aid To Impoverished Community In Indonesia." *Proceeding ICMA-SURE* 3, no. 1 (2024): 123-132.

¹⁹ Tri Utami, Nurani Ajeng, Dwiki Oktobrian, Enny Dwi Cahyani, Gebi Emada Turnip, and Fadia Rahma Safitri. "The Effectiveness of Legal Aid Standards for Suspects in the Indonesian Criminal Justice System in Achieving Access to Justice." *Fiat Justisia: Jurnal Ilmu Hukum* 18, no. 2 (2024): 95–108. <https://doi.org/10.25041/fiatjustisia.v18no2.3249>.

²⁰ Adrian W. Bedner, *Kajian Sosio Legal; Seri Penyusun Unsur-Unsur Bangunan Negara Hukum*. (Bali: Pustaka Larasan, 2012).

slow to handle it. This makes people prefer the services of attorneys even though they have to pay a fee.

If examined from a philosophical aspect, it is crucial to regulate the determination of guidelines for the attorney's fee by the state; in this case, the government is a form of government responsibility and legal protection for citizens for recognition, guarantees, protection, and legal certainty that is fair and equal treatment before the law. The presence of an attorney as a free, independent, and responsible professional that can provide legal services is important. Through the legal services provided, Attorneys carry out their professional duties for the sake of upholding justice based on the law for the benefit of justice seekers, including efforts to empower the community for their fundamental rights before the law. Based on this, the state should provide more precise arrangements related to the attorney profession, especially concerning the fee. The current fee setting in the attorney law does not clearly state the benchmark so this often creates problems between attorneys and clients or justice seekers who will use the services of attorneys.

In the sociological aspect, the regulation regarding the determination of an attorney's fee is crucial because most of the peoples consider the attorney's fee expensive. Sometimes the object of dispute or legal issue is not worth the fee paid when using the services of an attorney. Besides this, it will also limit the public's access to justice, because usually, attorneys who already have high credibility or well-known attorneys, charge very high rates so that it can only be used by people with a high economy or upper class. So many people from the middle class who cannot be categorized as recipients of legal aid because they are not categorized as poor but hiring the services of an attorney also finds it difficult. If they use the services of a new attorney with a fee that is not too high, they are worried that they will lose or that the results in court will not meet their expectations. Because it may happen that different attorneys handle the

same case, the results will be different. Especially if they don't have an attorney with them.

Juridically, regulating the attorney's fee by the state is important because it is to provide legal certainty and justice for justice seekers. Juridically, the arrangements regarding attorneys have been regulated in various laws and regulations, for example in the Law on Attorneys, in the Law on Legal Aid, and various implementing regulations, but of these various regulations, even in the code of ethics, there is not a single provision that explains or regulate the amount or guidelines for an attorney's fee. The Attorney Law only mentions arrangements regarding fee according to the agreement of the parties and pays attention to the aspect of fairness. So, it is this provision that gives rise to many interpretations which are sometimes detrimental to justice seekers or clients.

Based on the above, the state needs to regulate or make guidelines related to determining the attorney's fee as a form of state responsibility to its citizens in accessing justice based on the principle of equality before the law and as a form of certainty, justice and the benefit of society in accessing the legal services of an attorney.

II. The Model of Providing Equitable Attorney's Fee to Strengthen Access to Justice

A fee is a service fee that is obtained by an attorney for services provided to clients. Based on the provisions of Article 21 of Law Number 18 of 2003 and the explanation of that article, in essence, attorneys are entitled to receive fee by clients fairly by taking into account the risks, time, abilities, and interests of the client based on the agreement of both parties. Attorneys should not misinterpret the word "*reasonable*" here. It becomes their business field to make professional services a profitable commodity by abandoning the philosophical aspects of professional legal services.

Regarding the provision of "*consent of both parties*", this must be based on the civil law provisions regarding the agreement. Therefore, the making of this agreement must be based on the agreement of the parties referring to Article 1313 BW concerning Agreements which states that "*agreement*" is an act by which one person or more binds himself to one or more other people. Agreements made by Attorneys and clients in advocacy agreements include reciprocal agreements; the client prioritizes rights and is obliged to provide obligations. Attorneys also prioritize rights and realize their obligations.

The awarding of an attorney's fee from a client is based on an agreement that must fulfill the legal requirements of the agreement, based on Article 1320 of the Civil Code, i.e.:

1) There is an agreement between both parties

The agreement is a statement of the agreement between two parties, in this case, between the attorney and the client. When an agreement has been reached, both parties have bound themselves to each other. Agreements can be in the form of oral or written. However, in order to provide more significant guarantees of legal certainty, the agreement between the attorney and the client should be stated in written form so that if there are problems or disputes related to the contents of the agreement, it can be used as perfect evidence.

2) There is Proficiency for those who make agreements

Proficiency is the ability of a person to perform legal actions which will result in legal consequences for the person making them. A person who is going to carry out a legal action, in this case, an agreement, must meet the requirements of being competent. According to Article 1330 of the Indonesian Civil Code, an incompetent person is:

a) An immature person, i.e., a person who is not yet 21 years old and has not been married

As regulated in Article 330 of the Indonesian Civil Code which states that "*Immature persons are those who have not even reached*

the age of twenty-one years and have not been married beforehand'. Based on the provisions of this article, if interpreted as *a contrarious*, then those who are entitled to make an agreement are those who are twenty-one years old or have been married. When applied to an agreement between a client and an attorney, both the client and the attorney must fulfill these requirements.

b) People who are placed under guardianship

People under guardianship cannot take legal action. These people, for example, children, people who are mentally unwell or have mental disorders, or people or legal entities that are bankrupt or under a curator. Therefore, in such conditions, it must be represented by a parent or a guardian.

All parties who, according to the law in force, are incompetent or limited in their ability to enter into agreements. For example, the wife making agreements for certain transactions must obtain the husband's approval. Based on the provisions, an attorney must first assess the legal capacity of their client before drafting an agreement. If the client is deemed legally incompetent, the agreement will be considered invalid and may be subject to annulment.

c) A certain thing

The agreement that will be made contains the orientation of the goals to be achieved together. In other words, there is a common goal to be achieved together through the advocacy agreement.

d) Halal cause

The objective orientation of the advocacy agreement is halal. Halal here can be interpreted that an agreement that may not conflict with laws and regulations, customary norms, public order, or decency. For example, a client uses advocacy services with the aim that all of his debts at the bank can be "whitewashed". The

agreement is not valid according to law, because there is something that is unlawful.

Based on the above, if in an agreement the determination of fee violates the terms of the agreement and competence or commonly called subjective conditions, the agreement can be annulled. In contrast, if it violates the conditions regarding some issues and lawful causes or is called objective conditions, the agreement is null and void by law.

Law is the basis for an attorney's work application, but empathy for an ordinary and absolute attorney is used, the attorney can "*dive*" into the client's situation. Because there are no definite guidelines regarding the nominal amount of the advocacy fee, an attorney can make adjustments in the nominal amount of the fee. Because attorneys in their advocacy are guided by "*all people are equal in law*", everyone has the right to get advocacy assistance, in this case, from an attorney. An attorney in his work application must refrain from mixing up personal problems in it because it is not the objectivity of advocacy that will be obtained but subjectivity.

The state gives an attorney the right to receive a fee, an attorney in carrying out his profession is always based on the rule of law, but in his work practice, not only legal factors are the basis of his profession, economic, social, cultural and psychological factors really need to be possessed by an attorney. If in practice, the work of an attorney only adheres to the applicable legal rules, it will undoubtedly feel very rigid in all his actions. If the orientation of the work is more on the economic side, then the attorney may collect a fairly large fee, while the legal side is set aside. In practice, attorneys must be balanced in realizing what refers to these factors to get the desired results. In theory, all attorneys participate in the pro bono system that is mandated by law; an attorney may only decline to take on a case if he or she demonstrates a lack of specialization in the area in question.²¹ An attorney must also use empathy in dealing

²¹ Edita Gruodytė, and Stefan Kirchner. "Legal Aid for Intervenors in Proceedings before the European Court of Human Rights." *International Comparative*

with users of his services. Not necessarily all people who use his services must be withdrawn from payment, and the attorney must be able to sort out which services need to be withdrawn as a fee or not.

In the end, a person's reputation as a lawyer depends on how well the case's conclusion was predicted. A lawyer won't have clients for very long if he counsels his clients to pursue litigation in the absence of a favorable result. A lawyer who is truthful and realistic when describing potential outcomes of the case will also leave clients feeling the most satisfied. In the end, it is the attorney's precise forecasts that enable the court system to operate without being burdened by cases that are not thoroughly assessed by the attorney.²²

Attorneys in determining the fee for professional services must pay attention to the human aspect as reflected in the second principle of Pancasila which can be interpreted as follows:

- a) An attorney in providing professional attorney service assistance to clients must treat them according to their dignity as a creature of the God Almighty.
- b) Recognizing the equality, rights, and obligations of every human being, without discriminating against ethnicity, ancestry, religion, beliefs, gender, social position, skin color, and so on, the second precept is a just and civilized humanity. Determining the amount of an attorney's fee may not discriminate between clients based on heredity, religion, ethnicity, gender, and others which will lead to discrimination. Discrimination should also not be treated against clients by looking at the amount of fee.
- c) Develop a non-arbitrary attitude towards others.

Jurisprudence 2, no. 1 (September 2016): 36–44.
<https://doi.org/10.1016/j.icj.2016.04.001>.

²² Goodman-Delahunty et al., "Insightful or Wishful: Lawyers' Ability to Predict Case Outcomes."

Even though in this case the client's position is as a person who requires assistance for the professional services of an attorney, the attorney must act professionally, not take advantage of the problems the client is facing, or take advantage of the client's lack of understanding of the problems being faced.

d) Uphold human values

Human values can be interpreted as values that are in accordance with the prevailing values of faith and morals which are carried out with full awareness in upholding respect for human rights. In determining the fee an attorney must uphold human values. An attorney must look at the client's condition, respect the client's rights, and provide an explanation to the client regarding the use of fee.

Determination of the fee made by clients and attorneys apart from having to comply with Articles 1320 and 1330 of the Indonesian Civil Code must also prioritize the principle of deliberation for consensus as reflected in the 5th principle of Pancasila. Determination of an attorney's fee should be based on the following matters:

a) There should be no coercion or in the sense that it is prohibited to impose one's will on others

In making a fee agreement between the lawyer and the client there must be no coercion, and the client must not be under pressure, coercion, or threats. Everything is done consciously and voluntarily.

b) There is deliberation to achieve common interests.

Deliberation is needed in reaching an agreement. With deliberation, there will be two-way communication between the attorney and the client so that a mutual agreement will be reached for the common good. This can also be applied in determining the attorney's fee.

c) There is an attitude of respecting and upholding every decision reached as a result of deliberations and implementing it in good faith and full of responsibility.

- d) Deliberations are conducted with common sense and in accordance with a noble conscience.

The importance of prioritizing conscience and common sense in deliberation. In determining an attorney's fee, it must also be based on common sense and a noble conscience so that it can be accepted and does not burden all parties. Decisions taken must be morally accountable to the God Almighty, uphold human dignity and values, and the values of truth and justice prioritize unity and integrity for the common good.

Many countries have regulated the attorney's fee, as namely Malaysia Singapore and Australia. In Malaysia, arrangements regarding Attorney's fee are regulated in the Law on the Legal Profession No. 166 of 1976. Attorney's Fee in Malaysia is classified as a cost. This section contains costs, including fee, payments, expenses, travel expenses, and income. The parties entitled to determine the Attorney's Fee are a committee called the Attorney Rate Commission.²³ Whereas in Singapore, components of an Attorney's fee rate include length of time for consultation or representation, Hourly rate Fixed price (this is usually based on the Attorney's experience) A mixture of both, Successful claims. The attorney's fee is determined by a committee consisting of the Chief Justice of the Supreme Court, the Attorney General, the Chairperson of the Association of Attorneys, and two attorneys nominated by the Council.²⁴

In Australia, the rates are usually determined by the law firm or attorney's office according to the type of case. the institution is usually a law firm. There are fees and costs. Costs include case fees and court costs. Case costs include the costs of registration, mediation, trial, and other costs for the purposes of handling cases in court. Case costs are a combination

²³ Binoto Nadapdap, *Menjajaki Seluk Beluk Honorarium Advokat*. (Jakarta: Jala Permata, 2008).

²⁴ Binoto Nadapdap, *Panduan Umum Bagi Konsumen Menakar Besaran Honorarium Advokat*. (Jakarta: Jala Permata, 2010).

of expenditures for case costs and expenditures for other costs for litigation purposes. While fees are fees given to attorney's for services provided to clients.

This is in contrast to the United States where the judicial system has a conditional fee system for attorney fees. The conditional fee means that if the case is won, a payment will be made and if it is lost, nothing. In Europe, the agreement is 'no win - no fee'. However, this was later challenged by the European Bar Association. Although there are still some who apply this system.²⁵ In reality, the regulation of attorneys' legal fees and the allocation of trial costs will affect the process of assistance carried out by lawyers in case settlement, especially in litigation. Therefore, the provision of legal services is returned to the client or the agreement between the client and the attorney.

In Indonesia, the determination of attorney rates has been based on the agreement and freedom between the lawyer and the client without any written restrictions. Usually, rates are determined based on the risk, time, ability, and interest of the client as well as the experience and popularity of the attorney. In addition to court fees and attorney services, there are sometimes costs beyond that which are very large and seem unreasonable and burdensome to the client.

There are similarities between the four comparisons in that the issue of litigation costs has been expressly regulated in the legislation and is part of the commitment to the implementation of legal aid in a professional manner, so that there is a fulfilment of rights and obligations in litigation.

From some of these countries, it can be seen that in Malaysia and Singapore there are parties authorized to set attorney fees where the components are already in their regulations. This arrangement certainly provides more certainty and justice and prevents fraud committed by attorneys. This can be adopted by Indonesia with various adjustments to

²⁵ Gabuthy, Peterle, and Tisserand, "Legal Fees, Cost-Shifting Rules and Litigation: Experimental Evidence."

the conditions in Indonesia. The regulation of attorneys honorarium should exist and be written in a regulation, especially regarding the components of the fee, of course with the provision of adjustments to the client's condition. In addition, an authorised party must also be appointed to determine this matter. However, this is certainly not easy, especially the attorney system in Indonesia which is a multi-bar system where there are several recognized attorney professional organizations. So that in determining this fee there must also be a common perception among these attorney organizations. In addition, it is also necessary to create a complaint for clients who later do not receive the fee as determined and there must be strict sanctions for the attorney.

The American Bar Association's Code of Professional Responsibility does not make any limitative restrictions regarding how Attorneys determine a reasonable fee. The code of ethics mentions 8 (eight) factors. The eight factors in question are as follows:

- a) The time and effort required, novelty and difficulties associated with handling cases, and the skills required to provide legal services appropriately to clients;
- b) General rates in one location for the same legal services;
- c) The amount issued and the results obtained;
- d) Similarly, if it happens to the client that acceptance from a particular job will make the Attorney unable to do other work;
- e) Time limitations caused by clients or circumstances;
- f) The nature and duration of the professional relationship with the client;
- g) Experience, reputation, and ability of Attorneys in providing their services;
- h) Is the fee permanent or contingent ²⁶
- i) As a result of the moral responsibility attached to their professional status, Attorneys have five dimensions of ideal struggle, namely:

²⁶ Nadapdap, *Menjajaki Seluk Beluk Honorarium Advokat*.

- 1) Human dimension; which means that even though Attorneys receive legal fees in carrying out their work, basically Attorneys must still be guided by and respect human values, especially in defending justice seekers;
- 2) The dimension of moral responsibility means that when advocating for his client, he must always see and consider two main things, namely the existence of legal provisions which form the basis for making a defense and the existence of a moral and ethical basis;
- 3) Dimensions of freedom, independence, and independence of the profession. This means that attorneys are challenged to always fight for the upholding of an independent profession, free from the intervention of any power in defending their clients. Therefore, to support the third dimension, a strong Attorney Organization that has a code of ethics is needed, including having the capability to foster and maintain the discipline of members of the profession;
- 4) The dimension of the development of a rule of law, which is defined as the Attorney Profession, can be implemented ideally if the law enforcement process has also been running ideally;
- 5) The dimension of democratic development, which means that democracy can only be upheld if it is supported by a state based on the rule of law²⁷

The plenary session of the European Bar Council held on November 28, 1998, December 6, 2002, and May 19, 2006, set the principles of professional principles, where attorneys must demonstrate moral integrity, honesty, and professionalism, and, in relation to their clients, they must guarantee security and privacy, as he is the custodian of his clients' secrets and also the recipient of confidential communications. Another principle

²⁷ Yahman Yahman and Nurtin Tarigan. *Peran Advokat Dalam Sistem Hukum Nasional*. (Jakarta: Prenada Media, 2019).

of the legal profession refers to how lawyers can practice in a professional form.²⁸

The presence of an attorney is not only needed to handle cases that have entered the realm of court or litigation but more than that. With the development of people's lives now, the influx of globalization, and in 4.0 digital era the presence of attorneys is increasingly important. Attorneys can provide consulting services, negotiations, drafting agreement letters, and making business contracts. Attorney is a profession that is not just for profit or economy but must have high social value in helping justice seekers.²⁹

Alkaotsar argued that the integrity of the attorney's performance and the technical skills of the profession determine the image of an attorney as a noble profession.³⁰ Therefore, with this noble profession, attorneys become attorneys who have a spirit of humanity and justice, assist and find solutions to legal problems faced by clients by not discriminating in the treatment of clients, especially in relation to receiving a fee from clients. Determining the existence of a fee limit is important because many attorneys sometimes take advantage of this provision for their interests. Making it appear as if the client is a commodity that can give a certain amount of money, not being seen as someone who needs help. Therefore, in determining the attorney's fee it must be based on the principle of equality before the law and carried out by deliberation between the parties by prioritizing the values of justice and humanity as contained in Pancasila as the philosophy of the Indonesian nation.

Attorney are expected to have integrity in their performance and technical skills. They are also expected to have a spirit of humanity and

²⁸ Dumitrescu, "The Principles and the Legal Responsibility of the Lawyer, Guarantees of National Security."

²⁹ Andika Wijaya, and Wida Peace Ananta. *Update Paling Lengkap Ujian Profesi Advokat*. (Jakarta: PT Grasindo, 2017)

³⁰ Artidjo Alkotsar, *Peran Dan Tantangan Advokat Dalam Era Globalisasi*. (Yogyakarta: FH UII Press, 2010).

justice, as well as find solutions to clients' legal problems without discrimination, especially in terms of receiving fees from clients. The determination of the limit of lawyer fees is considered important and should be based on the principle of equality before the law and carried out through deliberation between the parties involved, by prioritizing the values of justice and humanity contained in Pancasila as the philosophy of the Indonesian nation.

Access to legal services for the poor is one of the challenges that need attention. Legal aid is a manifestation of access to justice and legal protection for the poor.³¹ In an effort to improve access to legal aid for the poor, it is necessary to improve the quality of services and public understanding in accessing legal aid.³² Some of the problems faced in providing legal aid to the poor include inequality of access to justice, negative views of the community about the implementation of legal aid, and concerns in using legal aid. The government must ensure equal access and guarantee the human rights of citizens by providing litigation and non-litigation legal assistance to the poor.

Legal aid programs for the poor have a significant impact in providing access to justice and legal protection. Through this program, poor people who previously could not afford legal assistance, can now get legal assistance for free.³³ This allows them to obtain the same legal protection as the rest of society, so as not to be marginalized in legal

³¹ Adyan Lubis, and Muhamad Abas. "Kepastian Hukum Implementasi Peraturan Verifikasi Dan Akreditasi Pemberi Bantuan Hukum Dalam Undang-Undang Nomor 16 Tahun 2011 Tentang Bantuan Hukum." *Jurnal Justisi Hukum* 7, no. 1 (March 2022).

³² Khoirum Lutfiyah, "Equality before the Law Principle and the Legal Aid for the Poor: An Indonesian Insight." *The Indonesian Journal of International Clinical Legal Education*, 2021. <https://doi.org/10.15294/ijicle.v3i4.48292>.

³³ Heriyanto Heriyanto. "Comparison of Law in the System of Applying Legal Aid to the Poor in Indonesia (Before and After the Enacting of Legal Aid Law)." *International Journal of Multicultural and Multireligious Understanding*, 2022. <https://doi.org/10.18415/ijmmu.v9i2.3354>.

proceedings. In addition, legal aid programs can also help in overcoming inequalities in access to justice between the poor and underprivileged.³⁴ However, there are still several factors that hinder the implementation of legal aid programs for the poor, such as negative public views about the implementation of legal aid and concerns about using legal aid. Therefore, efforts are needed to improve the quality of services and public understanding in accessing legal aid. But it is not enough to provide attorney to those in need of legal assistance. To secure equal justice, those lawyers must have the skill, time, and resources to provide competent representation.³⁵

The practical implementation of the proposed attorney fee regulation requires a clear framework for the implementation of this regulation in the Indonesian legal system.³⁶ The process of implementing attorney fee regulations includes procedures for implementing, supervising, and enforcing rules related to attorney fee regulations.³⁷ In addition, deep thinking is needed about potential challenges or obstacles that may arise in implementing this regulation, such as resistance from related parties, cultural changes among lawyers, and legal obstacles that may arise. In this case, the government's role in making recommended regulations refers to efforts to regulate honorarium standards for lawyers by the state to provide a sense of fairness, certainty, and benefit to the community.³⁸ This

³⁴ Judith Prima Hapsari, "The Poor and Justice: Implementation of Legal Aid for the Poor in Indonesia (Problems and Solutions)." *The Indonesian Journal of International Clinical Legal Education*, 2021. <https://doi.org/10.15294/ijicle.v3i4.48274>.

³⁵ Bruce A. Green, "Deborah L. Rhode's Access to Justice: Foreword." *Fordham Law Review* 73, no. 3 (2004): 841.

³⁶ Saru Arifin, "Commitment of Local Government in Providing Legal Aid for the Poor Society." *Jurnal Dinamika Hukum* 16, no. 1 (2016): 8-16.

³⁷ Agus Sardjono, "Beberapa Problematika Penegakan Hukum Dalam Praktek Peradilan." *Jurnal Hukum & Pembangunan*, 2017. <https://doi.org/10.21143/jhp.vol24.no5.1054>.

³⁸ Agus Raharjo, Angkasa Angkasa, and Rahadi Wasi Bintoro. "Akses Keadilan Bagi Rakyat Miskin (Dilema Dalam Pemberian Bantuan Hukum Oleh Advokat) (The

regulation aims to ensure that lawyer fees are determined regardless of stratum of society and through deliberation based on a sense of justice and humanity among the parties concerned. Thus, this regulation is expected to increase public access to justice, as well as minimize games in determining costs that can harm the community or clients.

Based on the provisions of Article 21 of Law No. 18 Year 2003 related to the granting of Attorney fee, it can be interpreted that the granting of honorarium or attorney fees should pay attention to the following provisions:

- a. The amount of income of the client/user of legal aid services.

Related to the client's income, an assessment must be made of the client's average income per month and the type of work of the client. The client's income capacity can be assessed based on the cost of living of the community per month in an area. This is certainly related to the fairness and sense of justice of both parties. This factor is very decisive for obtaining attorney services professionally or through pro bono or government legal aid. As long as the client cannot show a certificate of incapacity he will be charged a tariff or fee by the attorney according to the agreement.

- b. Type of case:

The complexity of the type of case greatly affects the fee or honorarium of the Attorney. Usually, the more difficult the case handled will require a long time in the litigation process (litigation or non-litigation), thus affecting the amount of costs. Therefore, the determination of attorney fees must consider the type of case (criminal or civil) so that the assistance provided by attorneys can run optimally and have measurable achievements.

Access of Justice for Poor People: Advocates' Dilemma in Providing Legal Help)." *Mimbar Hukum*, 2016.

c. Impact

this means the impact of the handling of the case, whether the case or cases handled have a broad impact or not on the community and justice seekers. This can increase the popularity of the attorney. Cases or cases that have special attention to the public are actually many attorney who voluntarily provide assistance without fees, especially if they are not from the upper middle class because they also need public recognition of their capabilities.

d. Operational costs in litigation

Operational costs must be distinguished from litigation fees. Operational costs include transport and accommodation costs during litigation. Meanwhile, litigation costs are costs incurred for registration, mediation, trial, and other costs.

The toward of fair attorney fees in Indonesia must take into account the conditions of both parties and the agreement of both parties by considering the elements of ability, type of case, impact and burden of operational costs and case costs. The fee in civil cases can be determined as a percentage of the value or object of the dispute. Outside of these elements, the fee does not reflect a sense of justice. There will be a possibility of abuse in order to take advantage of the litigants. Therefore, it is hoped that there will be a strict regulation in relation to the components in determining attorney fees so that Article 21 of the Attorney Constitution does not become an article that freely determines attorney fees on the grounds of 'agreement'. Attorneys fee must also consider the client's condition with due regard to the values of justice and humanity as a form of professional responsibility of the attorney.

However, there are challenges and obstacles in implementing the proposed attorney fee regulation. Some of the challenges that may arise include resistance from related parties, cultural changes among lawyers, and legal obstacles that may arise. In addition, the lack of regulation regarding the amount and standard of lawyer fees in the code of ethics or

legal regulations causes people to consider that using the services of lawyers is still considered a luxury item because of its high cost.³⁹ This can hinder people's access to justice. Therefore, efforts need to be made to overcome these challenges and obstacles, such as by holding discussions and consultations with various relevant parties, as well as conducting socialization campaigns to increase public awareness about the importance of regulating lawyer fees and their benefits for access to justice.⁴⁰

The solution of the challenge of legal aid for the poor involves several steps taken by the government and related organizations. First, the government must ensure equal access and guarantee the human rights of citizens by providing litigation and non-litigation legal assistance to the poor.⁴¹ This can be done through the implementation of budgets from local governments to support legal aid organizations in the State Budget.⁴² Second, the government must improve the quality of legal services and public understanding in accessing legal aid. This includes improving the quality of administrative services and work culture, as well as ensuring transparency and effectiveness in providing legal aid. And third the attorney themselves need to increase the capacity and integrity of their attorneys. In terms of acceptance or recruitment of attorneys in both attorney organizations and legal aid organizations, for example, in terms of recruitment, there needs to be a good test to produce good attorneys. There should be regular evaluations from attorney organizations and the application of strict sanctions for violations of cases committed by advocates in handling cases.

³⁹ Raharjo, Angkasa, and Bintoro.

⁴⁰ Anis Mashdurohatun, and M. Negara. "Factors Affecting Legal Aid for the Poor People in Indonesia." *Journal of Law, Policy, and Globalization* 128 (2023): 29.

⁴¹ Suyogi Imam Fauzi, and Inge Puspita Ningtyas. "Optimalisasi Pemberian Bantuan Hukum Demi Terwujudnya Access to Law and Justice Bagi Rakyat Miskin." *Jurnal Konstitusi*, 2018. <https://doi.org/10.31078/jk1513>.

⁴² Arifin, "Commitment Of Local Government In Providing Legal Aid For The Poor Society."

III. Conclusion

The importance of setting guidelines for the amount of an attorney's fee by the state is in the context of realizing the principle of equality before the law, and the responsibility of the state towards its citizens for the guarantees of equal treatment before the law, as well as a form of justice and legal certainty and minimizing the existence of games in determining fee by person who harms society or clients. The toward of fair attorney fees in Indonesia must take into account the conditions of both parties and the agreement of both parties by considering the elements of ability, type of case, impact and burden of operational costs and case costs. Outside of these elements, the fee does not reflect a sense of justice. There will be a possibility of abuse in order to take advantage of the litigants The fee received by attorneys must not contradict the statutory provisions and must prioritize the values of justice and humanity as in accordance with one of the values contained in Pancasila as the basis of the state.

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“Injustice anywhere is a threat to justice everywhere. We are caught in an inescapable network of mutuality, tied in a single garment of destiny. Whatever affects one directly, affects all indirectly.”

**Martin Luther King, Jr.,
“Letter from Birmingham Jail”**

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