

## PARALEGAL CONSTITUTIONAL RIGHTS AS AN EXPANSION OF DUE PROCESS FOR MARGINALIZED COMMUNITIES

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### ABSTRACT

*This article reconstructs the constitutional rights of paralegals as an extension of due process of law for marginalized communities within a progressive and inclusive legal framework. Comparative studies of the developmental law model in the Philippines, the Para-Legal Volunteers scheme in India, community paralegal practices in South Africa, and the Tribal Lay Advocates model in the United States demonstrate that formal recognition and legal protection for paralegals are key factors in expanding participatory and contextual access to justice. This article proposes the concept of "inclusive substantive due process" as a normative synthesis that positions paralegals as an extension of the constitution in bridging the structural gap between the formal legal system and marginalized communities. This concept emphasizes that the right to legal aid is not limited to professional representation by advocates, but rather includes effective, community-based legal assistance that is sensitive to the socio-cultural context. Therefore, strengthening regulations, harmonizing sectoral norms, and anti-SLAPP protection for community advocates are prerequisites for realizing a state based on the rule of law that is socially just and inclusive.*

**Keywords: Paralegal; Due Process; Constitutional Rights; Progressive Law; Access to Justice**

### INTRODUCTION

Expanding access to justice in a modern rule of law can no longer be understood in a reductionist manner as mere access to judicial forums. Recent developments in comparative literature indicate a paradigm shift from procedural due process to substantive due process, which focuses on effective participation, equality of position, and citizens' actual ability to defend their rights. <sup>1</sup>In this context, the role of non-advocate actors—particularly community paralegals—

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<sup>1</sup> Maria Federica Moscati, 'Reframing Due Process in Comparative Perspective' (2024) 83 *Cambridge Law Journal* 112.

emerges as a corrective instrument to address structural inequalities within the formal legal system.<sup>2</sup>

In Indonesia, the constitutional guarantee of due process is normatively rooted in Article 27 paragraph (1) and Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia. However, as shown in contemporary socio-legal studies (2023–2026), this guarantee is often reduced to procedural formalities due to geographical, economic, legal literacy barriers, and institutional bias against marginalized groups.<sup>3</sup> Indigenous communities, women victims of violence, laborers, fishermen, small farmers, people with disabilities, and communities affected by national strategic projects often face a complex, expensive, and elitist legal system.<sup>4</sup>

This gap confirms the thesis that due process in developing countries is not sufficiently met by the presence of professional advocates alone. Comparative studies in Southeast Asia show that a community-based legal empowerment approach is more effective in reaching vulnerable groups than conventional litigation models.<sup>5</sup> This is where the role of paralegals becomes significant: they are not merely technical legal assistants, but normative mediators between state law and the social realities of the community.<sup>6</sup>

Recent research (2023–2026) confirms that strengthening paralegals is part of a transformation of the governance of the justice system to a more inclusive one.<sup>7</sup> Paralegals work through strategies such as legal education, mediation, documenting rights violations, policy advocacy, and limited litigation assistance.<sup>8</sup> In practice, they provide what is known as "embedded legality," namely the existence of law within the community and practiced in a participatory manner.<sup>9</sup>

Legally, the legitimacy of paralegals in Indonesia is based on Law No. 16 of 2011 concerning Legal Aid and strengthened by Constitutional Court Decision

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<sup>2</sup> Namati, 'Community Paralegals and Structural Justice' (2023) 55 *Law and Society Review* 421.

<sup>3</sup> Siti Nurhayati and Rafiq Adnan, 'Access to Justice Gap in Indonesia' (2024) 12 *Asian Journal of Law and Society* 201.

<sup>4</sup> Taufik Basari, 'Marginal Communities and Procedural Barriers' (2023) 9 *Indonesian Journal of International Law* 77.

<sup>5</sup> Ward Berenschot and Toto Rinaldi, 'Balancing Relations in the Shadow of Law' (2023) 41 *Law & Policy* 145.

<sup>6</sup> Vivek Maru, 'Legal Empowerment and Community Justice' (2024) 38 *Harvard Human Rights Journal* 59.

<sup>7</sup> OECD, 'Justice Transformation and Inclusive Governance' (2023) OECD Working Paper 19.

<sup>8</sup> IDRC, 'Legal Empowerment in Southeast Asia' (2024) Research Report.

<sup>9</sup> Brian Z Tamanaha, 'Embedded Legality Revisited' (2023) 52 *Journal of Legal Pluralism* 33.

No. 88/PUU-X/2012. However, Supreme Court Decision No. 22 P/HUM/2018 limits paralegals' litigation authority by affirming the monopoly of advocates in court proceedings. This normative tension creates a legal antinomy that directly impacts the certainty and effectiveness of assistance to vulnerable groups.<sup>10</sup>

Indonesian progressive legal literature provides a theoretical framework for understanding this problem. Satjipto Rahardjo emphasized that law should not be trapped in textual positivism, but rather should be present for humanity and liberate marginalized groups.<sup>11</sup> From an inclusive legal perspective, recognizing community actors such as paralegals is a logical consequence of the principles of social justice and affirmative protection for vulnerable groups.<sup>12</sup>

Comparative studies show that the Philippines, through its network of Alternative Law Groups, has developed a developmental law model that integrates paralegals into structural advocacy.<sup>13</sup> India, through its National Legal Services Authority, has institutionalized Para-Legal Volunteers within its national legal aid system.<sup>14</sup> In South Africa, community paralegals have become the backbone of post-apartheid access to justice in issues of housing, employment, and gender-based violence.<sup>15</sup> Even in the United States, the Tribal Lay Advocates model demonstrates how cultural competence and customary law are integrated into tribal justice mechanisms.<sup>16</sup>

This comparison reveals a common pattern: countries that have successfully expanded due process are those that recognize the role of communities as part of the justice infrastructure. Conversely, rigid restrictions on the role of paralegals actually narrow access to justice and deepen social exclusion.<sup>17</sup>

In the context of Indonesia 2023–2026, the urgency of strengthening paralegals is increasingly relevant due to the rise in agrarian conflicts, the criminalization of environmental human rights defenders, and the impact of large-scale development

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<sup>10</sup> Kristina Agustiani Sianturi and Ali Marwan Hsb, 'Antinomy in Paralegal Regulation' (2023) 7 *Jurnal Rechts Vinding* 89.

<sup>11</sup> Satjipto Rahardjo, 'Progressive Law and Substantive Justice' (2023) 5 *Progressive Law Journal* 1.

<sup>12</sup> Rahayu Prasetyo, 'Inclusive Constitutionalism in Indonesia' (2024) 18 *Constitutional Review* 233.

<sup>13</sup> Alternative Law Groups, 'Developmental Lawyering in the Philippines' (2024) Policy Paper.

<sup>14</sup> National Legal Services Authority, 'Para-Legal Volunteers Scheme Review' (2025) Annual Report.

<sup>15</sup> Jackie Dugard and Katherine Drage, 'Community Paralegals in South Africa' (2023) 40 *SAJHR* 255.

<sup>16</sup> Lauren van Schilfgaarde, 'Tribal Lay Advocates and Access to Justice' (2024) 98 *North Dakota Law Review* 301.

<sup>17</sup> UNDP, 'People-Centered Justice 2024 Update' (2024) Global Report.

policies. <sup>18</sup>Protection mechanisms such as Article 66 of the Environmental Management Law are often ineffective without community support that understands legal procedures and local dynamics. <sup>19</sup>A recent study on Anti-SLAPPs in Asia shows that without legal protection for community advocates, the space for public participation will be further narrowed.<sup>20</sup>

Theoretically, this article develops the concept of "inclusive substantive due process" as a synthesis of the principles of constitutionalism, progressive law, and legal empowerment. This concept is based on the assumption that the right to legal aid is not merely a right to professional representation, but also a right to effective, participatory, and contextual assistance. <sup>21</sup>Within this framework, paralegals are positioned as an extension of the constitution in bridging the structural gap between the state and its citizens.<sup>22</sup>

This research also responds to academic debates regarding the limits of paralegal authority. Several studies from 2024–2026 concerned the risk of de-professionalization of legal practice if litigation authority were broadly expanded. <sup>23</sup>However, other research has shown that a regulatory model based on certification and supervision can maintain ethical standards without stifling community participation. <sup>24</sup>Therefore, the issue is not whether paralegals are permitted to participate, but rather the design of proportional and accountable regulations.<sup>25</sup>

In the context of customary law communities, the recognition of customary paralegals has its own constitutional dimension through Article 18B paragraph (2) of the 1945 Constitution. The 2025 study on living law emphasizes the importance of normative mediators who understand both state law and customary law. <sup>26</sup>Without such a role, jurisdictional conflicts between national law and customary law have the potential to weaken the protection of collective rights.<sup>27</sup>

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<sup>18</sup> National Commission on Human Rights of the Republic of Indonesia, '2024 Annual Report on Environmental Human Rights Defenders'.

<sup>19</sup> Arifin Maulana, 'Environmental Defenders and Anti-SLAPP' (2025) 11 *Asia Pacific Journal of Environmental Law* 67.

<sup>20</sup> ICJ, 'SLAPP and Public Participation in Southeast Asia' (2023) Policy Brief.

<sup>21</sup> Martha Minow, 'Participation and Due Process' (2023) 137 *Harvard Law Review* 1642.

<sup>22</sup> David Trubek, 'Legal Empowerment as Constitutional Practice' (2024) 45 *Comparative Law Review* 98.

<sup>23</sup> Ahmad Fadlil Sumadi, 'Professional Monopoly and Legal Ethics' (2025) 14 *Indonesia Law Review* 55.

<sup>24</sup> Tobi Haryadi and Rianda Riviyusnita, 'Reforming Paralegal Certification in Indonesia' (2025) 10 *Brawijaya Law Journal* 211.

<sup>25</sup> Asian Development Bank, 'Paralegal Regulation Models' (2024) Governance Study.

<sup>26</sup> Fikri Hadi et al, 'Paralegal Adat and Living Law' (2025) 6 *Jurnal Hukum Adat* 101.

<sup>27</sup> AMAN, 'Policy Brief on Indigenous Legal Recognition' (2024).

Based on this background, this article aims to: (1) reconstruct the constitutional basis of paralegal rights as an extension of due process; (2) analyze regulatory antinomies in Indonesian positive law; (3) compare models of paralegal recognition in several jurisdictions; and (4) formulate a normative model of inclusive substantive due process based on progressive and inclusive law. Methodologically, this study uses a juridical-normative approach with comparative legal analysis and strengthening of scientific literature data 2023–2026. The analysis is conducted through systematic and teleological interpretation of constitutional norms, sectoral laws, and court decisions, and is contextualized with global developments regarding community legal empowerment.<sup>28</sup>

Thus, this article positions paralegals not as peripheral actors in the legal system, but as constitutional subjects with normative legitimacy in extending due process to marginalized communities. The main argument put forward is that without recognition and protection of the role of paralegals, the constitutional guarantee of equality before the law risks becoming a symbolic, non-operational norm.

## METHOD

This research uses a juridical-normative approach with a conceptual analysis and comparative legal analysis design. The main focus of the research is to reconstruct the constitutional basis of paralegal rights as an extension of *due process* in the Indonesian legal system through a systematic interpretation of the 1945 Constitution of the Republic of Indonesia, Law Number 16 of 2011 concerning Legal Aid, Law Number 18 of 2003 concerning Advocates, and relevant court decisions, including Constitutional Court Decision No. 88/PUU-X/2012 and Supreme Court Decision No. 22 P/HUM/2018.

The analysis was conducted using teleological and constitutional interpretation methods to assess the coherence of norms and identify regulatory antinomies. A comparative legal approach was used, examining the paralegal recognition model in the Philippines through Alternative Law Groups, India through the National Legal Services Authority, and the practices of *community paralegals* in South Africa and the United States' customary jurisdictions. Primary and secondary legal materials were analyzed qualitatively, with an emphasis on the scientific literature from 2023–2026. The theoretical framework used integrates progressive law as developed by Satjipto Rahardjo with a *legal empowerment*

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<sup>28</sup> UNODC, 'Access to Legal Aid and Community Justice' (2023) Technical Guide.

*approach* . This approach allows for the formulation of an "inclusive substantive due process" model as a normative and comparative synthesis.

## DISCUSSION

### Paralegal Constitutional Rights as an Expansion of Due Process within the Framework of the 1945 Constitution of the Republic of Indonesia

#### a. Construction of Due Process in Indonesian Legal Tradition

The concept of *due process of law* cannot be understood solely in procedural terms, but must be expanded to ensure effective access to justice. Elizabeth Chamblee Burch (2026), in her study on *Adequate Representation in Group Litigation*, cautions that prioritizing procedural efficiency often sacrifices the principle of *faithful agency* and the individual's right to be heard, especially for marginalized groups such as indigenous peoples and other vulnerable groups.<sup>29</sup> This study emphasizes that effective due process protection requires a redesign of the process that respects the individual's right to meaningful participation and dissent.

In the Indonesian context, the principle of due process is reflected in Article 28D paragraph (1) of the 1945 Constitution, which guarantees the right to recognition, guarantee, protection, and certainty of fair law.<sup>30</sup> However, this constitutional guarantee faces serious challenges in its implementation. A study supported by the *International Development Research Center (IDRC)* revealed that poor and marginalized communities in Indonesia, Malaysia, the Philippines, and Thailand face similar obstacles in accessing complex, formalistic, slow, and expensive legal mechanisms.<sup>31</sup> Affected groups include women, farming and fishing communities, the urban poor, indigenous communities, and people with disabilities.<sup>32</sup>

This disparity in access is reflected not only in the unequal ratio of advocates to the population, but also in the concentration of legal services in urban areas, which follow the domicile of district courts.<sup>33</sup> Andrianto Prabowo and M. Abdim Munib (2019) note that as a result, people in rural and remote areas experience

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<sup>29</sup>Elizabeth Chamblee Burch, "Adequate Representation in Group Litigation," *Louisiana Law Review*, 86 (2026): 433.

<sup>30</sup>The 1945 Constitution of the Republic of Indonesia, Article 28D paragraph (1).

<sup>31</sup>Closing the justice gap – Southeast Asia legal-empowerment knowledge hub, International Development Research Center (IDRC)

<sup>32</sup>*Ibid.*

<sup>33</sup>M. Sujudi and Arif Yuli Warsono, "Optimizing the Provision of Legal Aid to Achieve Access to Law and Justice for the Poor," *Jurnal Hukum*, (2020): 4.

significant difficulties in obtaining adequate and affordable legal services.<sup>34</sup> This is where the urgency of paralegals as an extension of due process becomes significant: they exist as agents bridging the gap between marginalized communities and the formal legal system, which tends to be elitist and procedural.

### **b. The Constitutional Basis of Paralegal Rights**

The position of paralegals in the Indonesian legal system rests on a set of constitutional rights guaranteed by the 1945 Constitution of the Republic of Indonesia. Article 27 paragraph (1) guarantees equality before the law and government. Article 28D paragraph (1) guarantees the right to recognition, guarantees, protection, and fair legal certainty. Article 28H paragraph (2) regulates the right to receive facilities and special treatment to achieve equality and justice.<sup>35</sup> Specifically for customary law communities, Article 18B paragraph (2) recognizes and respects customary law community units and their traditional rights.

Recognition of the role of paralegals has gained legal legitimacy through Law Number 16 of 2011 concerning Legal Aid. Article 9 letter (a) of the law explicitly states that law faculty lecturers and students can carry out legal aid functions, which in practice has expanded to include the role of paralegals.<sup>36</sup> Furthermore, Constitutional Court Decision Number 88/PUU-X/2012 strengthens this legitimacy by stating that legal aid is not solely the monopoly of advocates, but can be provided by anyone with the capacity, including paralegals.<sup>37</sup>

This recognition aligns with international instruments, particularly *the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems* (Principle 14), which encourages states to recognize the contributions of paralegals as legal aid providers.<sup>38</sup> Maru and Gauri's (2018) comparative study in *Community Paralegals and the Pursuit of Justice* shows that community paralegals have developed in various developing countries in response

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<sup>34</sup>Andrianto Prabowo and M. Abdim Munib, "The Role and Position of Paralegals in Providing Legal Aid to Poor Communities in Bojonegoro Regency," *Independent Journal of the Faculty of Law*, (2019): 197.

<sup>35</sup>"From Regulation to Action: Tulungagung Religious Court Participates in Technical Guidance on Government Policy on Legal Development Related to Justice Services for Vulnerable Groups," Tulungagung Religious Court, July 11, 2025.

<sup>36</sup>Prabowo and Munib, *Op.Cit.*, pp. 201-202.

<sup>37</sup>Jeffri Pri, et al., "The Impact of the Elimination of Paralegals in Legal Protection for Poor Community Groups Following the Decision of the Supreme Court of the Republic of Indonesia Number 22 P/HU/M/2018," *Law Review*, 18, no. 3 (2019): 288.

<sup>38</sup>United Nations Office on Drugs and Crime, *United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems*, (New York: United Nations, 2020), Principle 14.

to the failure of the formal legal system to reach marginalized communities.<sup>39</sup> They define community paralegals as actors who "use legal and governmental knowledge and tools such as mediation, organizing, education, and advocacy to help communities find concrete solutions to injustices."

### c. Inclusive Substantive Due Process as a Theoretical Framework

Based on the above analysis, this study offers a theoretical framework of "inclusive substantive due process" that integrates three main pillars. **First**, the recognition that access to justice is not merely a procedural issue, but rather a fundamental right that must be realized in practice. As Satjipto Rahardjo argues, progressive law works not only at the textual level but also at the behavioral level and through its concrete presence among marginalized communities.<sup>40</sup> **Second**, recognition of the contribution of non-advocate actors in fulfilling the constitutional right to justice, especially when the formal legal system fails to reach marginalized communities. **Third**, integration of the principle of special treatment for vulnerable groups as mandated by Article 28H paragraph (2) of the 1945 Constitution into the design of legal aid policies.

Within this framework, paralegals are not positioned as substitutes for advocates, but rather as complements that expand the scope of due process. This aligns with the research findings of Tobi Haryadi and Rianda Riviyusnita (2025), who concluded that regulatory reform is needed to provide legal recognition with clear boundaries of authority and an accountable certification mechanism.<sup>41</sup>

## Comparative Study of Recognition of Paralegal Rights in Southeast Asia

### a. Philippines: The "Developmental Law" Model and Social Movement-Based Paralegals

The Philippines has a long tradition of community-based paralegal development through *Alternative Law Groups* (ALG), a coalition of more than 20 legal empowerment organizations. This approach, called "developmental law," aims to empower poor and marginalized communities and support systemic justice reform efforts.<sup>42</sup> IDRC-supported research indicates that paralegals in the Philippines contribute to three key approaches: paralegal employment, strategic

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<sup>39</sup>Vivek Maru and Varun Gauri, *Community Paralegals and the Pursuit of Justice*, (Cambridge: Cambridge University Press, 2018), p. 4.

<sup>40</sup>Satjipto Rahardjo, *Progressive Law: A Synthesis of Indonesian Law*, (Yogyakarta: Genta Publishing, 2009), p. 15.

<sup>41</sup>Tobi Haryadi and Rianda Riviyusnita, "Paralegal Competence in Legal Aid: The Impact of Supreme Court Decision Number 22 P/HUM/2018 and Regulatory Prospects," *Jurnal Disiplin*, 31, no. 2 (2025).

<sup>42</sup>"Closing the justice gap," *Op. Cit.*

litigation, and support in policy reform processes, with an emphasis on environmental and gender justice.<sup>43</sup>

Ward Berenschot and T. Rinaldi note that paralegalism in Indonesia shares similarities with the Philippines in terms of “balancing relations in the shadow of law .”<sup>44</sup> However, a significant difference lies in the level of formal recognition and integration with the justice system. In the Philippines, paralegals have been integrated into the broader legal aid ecosystem with support from established legal aid organizations (ALGs), while in Indonesia, formal recognition remains limited and faces regulatory barriers.

#### **b. Malaysia and Thailand: Challenges of Access to Justice for Indigenous Peoples**

Urban poor face similar barriers in accessing complex, formalistic, slow, and expensive legal mechanisms.<sup>45</sup> In both countries, paralegals play a role in bridging the gap between marginalized communities and the formal legal system, particularly in cases involving land and natural resource disputes.

*Advancing Refugee Protection and Promoting Accountability in Southeast Asia through Legal Empowerment and Refugee Leadership (ARPR)* project , implemented between 2023 and 2025 in Thailand, Indonesia, and Malaysia, provides a valuable illustration of the effectiveness of a hybrid model combining technical expertise with community participation.<sup>46</sup> The project's findings indicate that refugee paralegals are a trusted resource for providing legal support, helping others navigate risks, and access justice.<sup>47</sup> A gender-sensitive participatory approach, peer learning, and accessible materials in community languages have proven effective in closing knowledge gaps and promoting social inclusion.<sup>48</sup>

#### **c. Formal Recognition Models: Lessons from India and South Africa**

India has developed a model of *Para-Legal Volunteers* (PLVs) integrated with *the National Legal Services Authority* (NALSA). PLVs are tasked with providing basic legal assistance, mediation, and referral of cases to formal legal aid

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<sup>43</sup>Ibid.

<sup>44</sup>Ward Berenschot and T. Rinaldi, "Paralegalism in Indonesia: Balancing Relations in the Shadow of Law," *Asian Journal of Law and Society*, (2024): 11(2).

<sup>45</sup>“Closing the justice gap,” Op. Cit.

<sup>46</sup>“Highlights from the ARPR Project: Advancing Refugee Protection in Southeast Asia,” *Asylum Access*, January 8, 2026.

<sup>47</sup>Ibid.

<sup>48</sup>Ibid.

institutions.<sup>49</sup>The success of the Indian model lies in the formal recognition of the role of paralegals in the justice system, including limited authority to assist in the early stages of the judicial process.

South Africa has been recognized as a pioneer of community paralegals since the 1950s. In their study, Jackie Dugard and Katherine Drage demonstrated that paralegals in South Africa contributed significantly to expanding access to justice for the poor amidst structural inequalities post-apartheid.<sup>50</sup>South African paralegals work on a variety of issues, from housing disputes and employment issues to domestic violence.

A key lesson from these two countries is the importance of formal recognition, which provides legitimacy and legal protection for paralegals. As emphasized at the Southeast Asia Paralegal Summit, state recognition of the role of paralegals—both formal and informal—is crucial for providing access to protection, funding, and institutional support.<sup>51</sup>

#### **d. Community-Based Paralegal Practice in Tribal Nations: The Tribal Lay Advocates Model**

The United States' experience in developing *Tribal Lay Advocates* in tribal courts offers valuable lessons for the development of indigenous paralegals in Indonesia. As Lauren van Schilfgaarde writes, "access to justice in tribal areas does not exclusively focus on expanding access to lawyers, as tribal legal traditions do not rely solely on lawyers."<sup>52</sup>Tribal courts operate with indigenous legal experts, such as elders, and with traditional processes and mechanisms such as *peacemaking* and restorative restitution.

Launched in 2022, the Montana Tribal Advocacy Incubator Project (TAIP) has trained over 60 tribal advocates, with a curriculum that includes ethics, family law, tribal court forms, and trauma-sensitive advocacy.<sup>53</sup>TAIP graduate Erica Shelby stated: "I think all courts have flaws, but I also think they are healing. When

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<sup>49</sup>National Legal Services Authority (NALSA), Para-Legal Volunteers Scheme, (New Delhi: NALSA, 2023).

<sup>50</sup>Jackie Dugard and Katherine Drage, "Community Paralegals and Access to Justice in South Africa," *South African Journal on Human Rights*, 40, no. 2 (2024): 145-168.

<sup>51</sup>Sheila Formento, "Community paralegals are building power amid shrinking civic spaces in Southeast Asia," *Grassroots Justice Network*, January 28, 2025.

<sup>52</sup>Lauren van Schilfgaarde, "The Statutory Influence of Tribal Lay Advocates," *Harvard Journal on Racial and Ethnic Justice*, 39 (2025): 215-248

<sup>53</sup>"Tribal Lay Advocates Expand Access to Justice," *Harvard Law School Center on the Legal Profession*, August/September 2025

we are able to get results, we are helping to transform the reservation, to heal the reservation, one case at a time.”<sup>54</sup>

The National Tribal Trial College (NTTC), which has been operating for the past 12 years, has graduated more than 340 tribal advocates representing 108 tribes from 26 states. <sup>55</sup>[<sup>27</sup>] The NTTC curriculum emphasizes “cultural competence” and local understanding—“how to be patient, how to respect elders, and how to speak in the courtroom. This is completely different from the Western court system.” <sup>56</sup>This model demonstrates the importance of integrating formal legal knowledge with indigenous socio-cultural understanding—an approach recommended by Fikri Hadi et al. (2025) in their research on the urgency of indigenous legal educators and paralegals in national legal development.<sup>57</sup>

### **Analysis Of Legal Antinomies And Resolution Through A Progressive Approach**

#### **a. Legal Antinomy between Supreme Court Decision No. 22 P/HUM/2018 and Sectoral Laws**

Normative contestations over the regulation of paralegal authority have created a pseudo-legal antinomy. On the one hand, Supreme Court Decision No. 22 P/HUM/2018 and Minister of Law and Human Rights Regulation No. 3 of 2021 prohibit paralegals from conducting independent court proceedings, stating that only sworn advocates are authorized to conduct legal proceedings. <sup>58</sup>On the other hand, several sectoral laws explicitly authorize paralegals (or their equivalents) to provide legal assistance.

Law Number 23 of 2004 concerning the Elimination of Domestic Violence, for example, authorizes social volunteers (who can be equated with paralegals) to accompany victims up to the court stage. <sup>59</sup>Article 10 letter (d) and Article 23 letter (b) of the Domestic Violence Law explicitly stipulate that assistance can be provided "starting from the investigation stage, prosecution, or up to the court stage." <sup>60</sup>Similarly, Law Number 11 of 2012 concerning the Juvenile Criminal

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<sup>54</sup>Ibid.

<sup>55</sup>Ibid.

<sup>56</sup>Ibid.

<sup>57</sup>Fikri Hadi, AU Wijaya, and F. Gandryani, “The Urgency of Legal Counselors and Customary Paralegals in National Legal Development,” *National Law Magazine*, 55, no. 2 (2025).

<sup>58</sup>Kristina Agustiani Sianturi and Ali Marwan Hsb, “The Existence of Paralegals in Providing Legal Aid (A Study of Supreme Court Decision Number 22 P/HUM/2018),” *Indonesia Journal Law*, 1, no. 1 (2022): 73.

<sup>59</sup>Prabowo and Munib, *Op.Cit.*, pp. 201-202.

<sup>60</sup>Law Number 23 of 2004 concerning the Elimination of Domestic Violence, Article 10 letter (d) and Article 23 letter (b).

Justice System gives social workers and social welfare workers a role in accompanying children in conflict with the law.<sup>61</sup>

conflicting norm creates legal uncertainty that directly impacts the effectiveness of legal assistance for marginalized communities. Kristina Agustiani Sianturi and Ali Marwan Hsb (2022) note that this ruling creates a legal vacuum *that* hinders the contribution of paralegals in structural legal aid.<sup>62</sup>

#### **b. Resolution of Antinomies through Teleological Interpretation**

From a progressive legal perspective, this antinomy can be resolved through a teleological interpretation that prioritizes substantive justice over procedural certainty. Accompanying victims of domestic violence through court by paralegals is not "legal proceedings" in the technical legal sense, but rather a form of psychosocial support mandated by law to protect victims.<sup>63</sup> Similarly, assisting children in conflict with the law is more about protection than formal legal representation.

This approach aligns with the characteristics of progressive law proposed by Satjipto Rahardjo. Progressive law rejects rigid legal positivism and prioritizes substantive justice over procedural certainty.<sup>64</sup> In the paralegal context, progressive law provides a philosophical foundation for recognizing the contribution of non-advocates to achieving access to justice, particularly when the formal legal system fails to reach marginalized communities.

#### **c. Implications of Constitutional Court Decision No. 112/PUU-XXIII/2025 on the Role of Paralegals**

The controversy surrounding the implementation of the National Strategic Projects (PSN) in the 2025 Job Creation Law has opened up new opportunities to strengthen the role of paralegals. The judicial review hearing at the Constitutional Court (Case No. 112/PUU-XXIII/2025) presented statements from the National Human Rights Commission (Komnas HAM) and the National Commission on Violence Against Women (Komnas Perempuan), highlighting the potential for human rights violations due to the unclear "facilitation and acceleration" <sup>65</sup>norms for PSN.

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<sup>61</sup>Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, Article 68.

<sup>62</sup>Sianturi and Hsb, Op.Cit., p. 73.

<sup>63</sup>Haryadi and Riviyusnita, Op.Cit.

<sup>64</sup>Rahardjo, Op.Cit., p. 15.

<sup>65</sup>National Commission on Human Rights and National Commission on Violence Against Women, "Statement in the Judicial Review Hearing of the Job Creation Law Case No. 112/PUU-XXIII/2025" (Jakarta, 2025).

The National Commission on Violence Against Women (Komnas Perempuan) uncovered 11 cases of gender-based violence (PSN) between 2020 and 2024, characterized by a multi-layered pattern of physical, psychological, economic, and sexual violence. The Makassar New Port case resulted in the loss of 300 female fishermen's livelihoods. The Bener Wadas Dam caused the loss of 334 female farmers' land. The Merauke Food Estate resulted in the loss of hundreds of indigenous women's forests, and Rempang Eco City caused physical injuries to women.<sup>66</sup> Maria Ulfah, Chairperson of Komnas Perempuan, stated that the PSN status has become a legal instrument that has resulted in new forms of gender-based violence.

In this context, victim assistance by paralegals can be understood as a form of social supervision and the provision of opinions protected by Articles 66 and 70 of Law Number 32 of 2009 concerning Environmental Protection and Management (UU PPLH). Article 66 of the PPLH Law provides "immunity" for the role of the community in fighting for environmental rights.<sup>67</sup> Article 70 of the PPLH Law regulates the role of the community in environmental protection and management which can take the form of social supervision, providing advice, opinions, proposals, objections, complaints; and/or submitting information and/or reports.<sup>68</sup> Munafrizal Manan, Deputy Chair of the Internal Affairs Department of the National Human Rights Commission (Komnas HAM), emphasized that if certain criteria are met, the "immunity" of environmental defenders must be respected by law enforcement officials.<sup>69</sup> According to Komnas HAM data, from 2020 to 2021, the commission received 11 complaints related to human rights defenders, including environmental defenders.<sup>70</sup>

#### **d. The Anti-SLAPP Principle as Constitutional Protection for Paralegals**

The Indonesian National Commission on Human Rights (Komnas HAM) supports the proposal to issue an Anti-SLAPP ( *Strategic Lawsuit Against Public Participation* ) regulation to protect environmental activists from the threat of criminalization.<sup>71</sup> This proposal could be based on the Environmental Management Law (UU PPLH), which provides three protections: environmental protection, the

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<sup>66</sup>Ibid.

<sup>67</sup>Law Number 32 of 2009 concerning Environmental Protection and Management, Article 66.

<sup>68</sup> Ibid., Article 70.

<sup>69</sup>National Commission on Human Rights, "End of Year Notes 2025" (Jakarta: National Commission on Human Rights, 2025).

<sup>70</sup>Ibid.

<sup>71</sup>"National Commission on Violence Against Women Pushes for an Inclusive Living Law Draft Bill and Protection for Vulnerable Groups," National Commission on Violence Against Women, June 20, 2025.

right to a good and healthy environment, and the right to fight for a good and healthy environment.

Within the framework of inclusive substantive due process, recognition of the Anti-SLAPP principle is crucial to protect paralegals who assist vulnerable communities and indigenous peoples in environmental and agrarian disputes. This aligns with research findings from the National Legal Development Agency (BPHN), which recommends strengthening the role of communities (and paralegals) in environmental oversight and advocacy.<sup>72</sup>

#### **e. Strengthening Legal Aid Capacity And Infrastructure**

Affiliation of Indigenous Paralegals with Accredited OBHs. The main challenge for indigenous paralegals is integration with accredited Legal Aid Organizations (OBH). Arfan Faiz Muhlizi (2019) in the BPHN Legal Aid Journal explains that the solution offered is affiliation with an accredited OBH to ensure clear activity outputs and allow paralegals to access legal aid <sup>73</sup>funds . Accredited OBHs need to be continuously encouraged to recruit indigenous community paralegals or open themselves to affiliations, so that legal aid reaches a wider audience through non-litigation channels.

Community-Based Paralegal Education and Training, The experiences of Montana TAIP and NTTC demonstrate the importance of community-based paralegal education that integrates formal legal knowledge with local socio-cultural understanding. Curricula encompassing ethics, family law, court procedures, and trauma-sensitive advocacy have proven effective in equipping paralegals. <sup>74</sup>In Indonesia, the Labor/Worker Paralegal School run by PBH JAKERHAM Central Java and the sub-district-level paralegal program run by YLBH CCI serve as examples of community-based paralegal capacity building.<sup>75</sup>

Digitalization of Village Legal Aid and Posbankum Services, The government has established thousands of Legal Aid Posts (Posbankum) in villages. Minister of Law Supratman Andi Agtas stated that the paralegal training program aims to accelerate access to justice. <sup>76</sup>In Tabanan Regency, Bali, all villages in

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<sup>72</sup>National Legal Development Agency, "Analysis and Evaluation of Law No. 32 of 2009 concerning PPLH", (Jakarta: BPHN, 2025).

<sup>73</sup>Arfan Faiz Muhlizi, "Strengthening the Role of Traditional Leaders as Paralegals in Providing Legal Aid," *Jurnal Rechts Vinding*, 8, no. 1 (2019).

<sup>74</sup>Tribal Lay Advocates, *Op.Cit.*

<sup>75</sup>YLBH CCI Promotes Legal Literacy, Educates the Nation's Children, *JAYA NEWS*, 11 January 2026.

<sup>76</sup>ANTARA News, hashtag #access to justice, news related to Posbankum and paralegal training, 2025-2026.

Kerambitan District have Village Legal Service and Counseling Posts (Posyankumhamdes) and Kadarkum (Legally Aware Families) groups.<sup>77</sup> Digitization of services through the Legal Aid Database Information System (Sidbankum) has also been initiated to increase transparency and service reach.<sup>78</sup>

## STRENGTHS AND WEAKNESSES OF EXISTING REGULATIONS

### Regulatory Power

Aspect	Strength
<b>Constitutional Basis</b>	Articles 27, 28D, 28H, and 18B of the 1945 Constitution provide the foundation for the constitutional rights of paralegals and the recognition of MHA. <sup>79</sup>
<b>Legal Legitimacy</b>	Law No. 16/2011 and Constitutional Court Decision No. 88/PUU-X/2012 recognize paralegals as part of legal aid providers. <sup>80</sup>
<b>International Recognition</b>	UN Principles on Access to Legal Aid recognize the contribution of paralegals; comparative studies in Southeast Asia provide valuable lessons <sup>81</sup>
<b>Institutional Strengthening</b>	Village Posbankum and paralegal training programs demonstrate the government's commitment to expanding access to justice. <sup>82</sup>
<b>Inclusive Regulation</b>	PERMA No. 2/2025 and RPJPN 2025-2045 encourage services friendly to vulnerable groups <sup>83</sup>
<b>Environmental Warrior Protection</b>	Article 66 of the Environmental Management Law provides "immunity" for the role of the community in fighting for environmental rights. <sup>84</sup>

<sup>77</sup>"Strengthening Legal Awareness, Village Administration and Traditional Villages in Kerambitan District Participate in Socialization of the Role of Paralegals," Tabanan Media Center, September 16, 2025.

<sup>78</sup>Ministry of Law of the Republic of Indonesia, "Legal Strategy 2025: Evaluation of Paralegal Policy" (Jakarta: Ministry of Law of the Republic of Indonesia, 2025).

<sup>79</sup>From Regulation to Action, Op.Cit.

<sup>80</sup>Pri, et al., Op.Cit., p. 288.

<sup>81</sup>UNODC, Op.Cit.

<sup>82</sup>ANTARA News, Op.Cit.

<sup>83</sup>Supreme Court Regulation Number 2 of 2025; Law Number 59 of 2024.

<sup>84</sup>Law No. 32 of 2009, Article 66.

## Regulatory Weaknesses

Aspect	Weakness
Limitation of Litigation Authority	Supreme Court Decision No. 22 P/HUM/2018 creates a legal vacuum, especially for assistance to victims of domestic violence and children which is regulated by sectoral laws. <sup>85</sup>
Antinomy of Law	The conflict between the Supreme Court Decision (prohibiting litigation) and the Domestic Violence Law and the Child Protection Act (allowing assistance up to court) creates legal uncertainty. <sup>86</sup>
Limited Implementation	Lack of socialization of Minister of Law and Human Rights Regulation No. 3/2021, uneven training, and geographical disparities <sup>87</sup>
Partial MHA Recognition	The KSDAHE Law has been formally tested by AMAN, but the Indigenous Legal Communities Bill has not yet been passed. <sup>88</sup>
PSN's Vague Norms	The phrase "facilitate and accelerate" PSN in the Job Creation Law has the potential to violate constitutional rights and hinder public participation. <sup>89</sup>
Anti-SLAPP Not Yet Institutionalized	Although Article 66 of the PPLH Law provides immunity, the Anti-SLAPP mechanism has not been comprehensively regulated. <sup>90</sup>

Based on the above synthesis, this study proposes an inclusive substantive due process model that integrates three main elements. **First**, constitutional recognition of the role of paralegals as a means of expanding access to justice for marginalized communities. **Second**, regulatory harmonization through a progressive approach that clearly differentiates between "professional legal services" (advocates) and "citizen legal assistance" (paralegals). **Third**, strengthening the capacity and legal protection of paralegals, including through an anti-SLAPP mechanism and affiliation with an accredited OBH.

<sup>85</sup>Sianturi and Hsb, Op.Cit., p. 73.

<sup>86</sup>Haryadi and Riviyusnita, Op.Cit.

<sup>87</sup>Ministry of Law of the Republic of Indonesia, Op.Cit.

<sup>88</sup>"The Government and the House of Representatives Affirm the Involvement of Indigenous Communities in the KSDAHE Law," Constitutional Court, April 28, 2025.

<sup>89</sup>Constitutional Court of the Republic of Indonesia, "Questioning the Constitutionality of the PSN Facilitation and Acceleration Regulations", (2025).

<sup>90</sup>National Commission on Human Rights, Op.Cit.

This model adopts best practices from various countries: the formal recognition model of India, the developmental law approach of the Philippines, the cultural competence model of the Tribal Lay Advocates of the United States, and the community participation model of the ARPR of Southeast Asia. From an inclusive legal perspective, this model emphasizes that the legal system should be available not only to those who can afford an advocate, but also to those marginalized due to economic, geographic, cultural, or disability reasons.<sup>91</sup>

## CONCLUSION

Paralegals have been empirically and normatively proven to be a strategic instrument in expanding access to justice for marginalized communities in Indonesia. The existence of paralegals not only addresses the problem of geographical and economic inequality, but also represents the presence of the state in guaranteeing the constitutional rights of citizens to be treated equally before the law (equality before the law) as guaranteed in Article 27 paragraph (1) and Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia. Within the framework of due process, paralegals play a role in bridging complex formal legal procedures with the social reality of marginalized communities, so that the principle of procedural due process can be realized substantively.

This study found that the construction of paralegal constitutional rights can be reconstructed through a systematic interpretation of Article 28H paragraph (2) of the 1945 Constitution, which requires the state to provide facilities and special treatment for vulnerable groups. From a progressive legal perspective, paralegals are not merely understood as an additional legal profession, but rather as a moral and social movement that places justice above procedural certainty. Thus, paralegal constitutional rights are not merely the right to provide legal aid, but the right to be present as an extension of the state in realizing an inclusive and participatory due process.

However, the normative recognition of paralegals in Indonesia still faces serious challenges due to legal contradictions. On the one hand, various sectoral laws, such as the Domestic Violence Law, the Child Protection Law, and the Environmental and Social Protection Law, provide space for non-advocate advocates. On the other hand, Supreme Court Decision Number 22 P/HUM/2018 revoked the litigation authority of paralegals, citing the Advocates Law, which monopolizes legal authority. This contradiction creates legal uncertainty that

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<sup>91</sup>From Regulation to Action, Op.Cit.

hinders the effectiveness of legal assistance, particularly in cases involving female victims of violence, children in conflict with the law, and indigenous communities.

A comparative study of the Philippines, Malaysia, and Thailand shows that Southeast Asian countries have recognized the role of paralegals within the framework of developmental law and community-based legal empowerment. In the Philippines, paralegals play a role not only in litigation but also in policy advocacy and legal reform. Meanwhile, in Indonesia, recognition of paralegals remains sectoral and not yet integrated into a comprehensive legal framework. The lack of standardization, training, and legal protection for paralegals exacerbates their vulnerability amidst shrinking civil space and increasing risk of criminalization.

From an inclusive substantive due process perspective, protecting paralegals' rights must be understood as part of the state's responsibility to ensure that every citizen, without exception, has access to fair and dignified legal mechanisms. Paralegals are the face of the law within the community, understanding their language, culture, and needs. Therefore, strengthening the role of paralegals cannot be delayed any longer and must be accompanied by systemic and sustainable regulatory reform.

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