



Should Indonesia Adopt Legal Representation in Civil Cases?

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ABSTRACT

Despite the recognised benefits of legal counsel and its increasing use in practice, the Indonesian legal framework does not sufficiently encourage legal representation in civil proceedings. This research examines the validity of Indonesia adopting and adapting mandatory legal representation. It encompasses a normative legal approach by examining and analysing qualitatively the Indonesian self-representation legal system and its secondary data of practices, the Netherland's legal-representation framework comparatively, the theory of access to justice, as well as Posner's law and economic analysis. This study shows that theoretically and practically, it is viable for Indonesia to adopt mandatory legal representation model in civil proceedings by establishing a compulsory legal framework to make it works effectively and promotes greater access to justice. However, based on a comparison to the Netherland's framework, Indonesia needs to adapt it to the Indonesian context to overcome attorney fees challenge. First, by requiring legal representation only for complex civil cases. Second, by regulating legal fee agreements based on reasonableness, fairness, and transparency, and imposing strict legal sanctions on lawyers who refuse to provide pro bono legal assistance to litigants who cannot afford attorney fees. Third, strengthen the legal aid system by establishing a Legal Aids Board and providing adequate and sustainable funding. This research demonstrates that legal representation provides greater access to justice compared to self-litigation, in terms of ensuring fair, reasoned, and expedited judicial proceedings. In contrast, self-litigation primarily facilitates access to more affordable justice, as it eliminates the need to pay attorney fees.



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1. Introduction

Access to justice is a fundamental principle of the rule of law, a prevailing problem experienced by many countries in the enforcement of numerous areas of law. Article 10 of the Declaration of Human Rights 1948 includes it as a part of human rights. Litigants seeking justice in court often face legal procedures, intricate trial procedures, and emotionally unpredictable opponents. These conditions create challenges for individuals making it difficult to navigate without

professional assistance.¹ The presence of a lawyer can prevent the parties from arbitrary actions by the opposing party or judge.

Litigants who represent themselves before the court create difficulties for both other parties and the judicial system.² For example, judges must explain how to answer the lawsuit, what written evidence can be submitted, how to submit it, how to present witnesses, and how to question both one's witnesses and opposing witnesses. This situation takes additional time, results in inefficiency, and undermines the principle of speedy justice. Furthermore, it contradicts the requirement for a speedy trial as stipulated under Article 2(4) of Law No.48 of 2009 on Judicial Power.

Seeking redress through the courts, represented by a lawyer, provides many benefits. For instance, lawyers assist the parties in demonstrating the law as the basis for seeking redress, elucidating the procedures being carried out, sharpening arguments, and improving defences.³ Ultimately, especially for vulnerable groups, such as low-income individuals, persons with disabilities, or those with low legal literacy, legal representation is not merely a procedural convenience but a substantive necessity to prevent miscarriages of justice. By requiring litigants to be represented by qualified legal professionals, the Indonesian justice system ensures that parties engage in judicial proceedings with adequate legal understanding, procedural competence, and substantive advocacy. This is particularly vital in jurisdictions where legal processes are complex and where the risk of procedural error materially affects the outcome of a case.

Although having an attorney would enhance access to justice, Indonesia does not require mandatory legal representation. The civil procedure law has recognised the concept of self-represented litigation. Article 123 Paragraph (1) of *Het Herziene Indonesisch Reglement* (HIR, S.1941 No.44) allows both parties in civil disputes to be represented by an attorney, enabling individuals to represent themselves without legal counsel.

While the Indonesian law still permits self-representation, it has become less common, with individuals opting for legal representation instead. In 2019, approximately 60% of justice seekers in Indonesia were still unrepresented by

OHCHR, 'Universal Declaration of Human Rights - English', 2025 <https://www.ohchr.org/en/human-rights/universal-declaration/translations/english> [accessed 22 May 2025]. Maansi Gupta and Nomesh B Bolia, 'Factors Affecting Efficient Discharge of Judicial Functions: Insights from Indian Courts', *Socio-Economic Planning Sciences*, 91 (2024), 101755 <https://doi.org/https://doi.org/10.1016/j.seps.2023.101755>

² James Goh, 'The Self-Represented Litigants' Challenge: A Case Study', *Alternative Law Journal*, 43.1 (2018), 48-50 <https://doi.org/10.1177/1037969X17748376>

³ Min Bai and others, 'Does Legal Justice Promote Stakeholder Justice? Evidence from a Judicial Reform in The Netherland', *International Review of Financial Analysis*, 94 (2024), 103326 <https://doi.org/https://doi.org/10.1016/j.irfa.2024.103326>

lawyers.⁴ However, in Sleman Regency, a non-urban area with a modest economic income, there is a significant reliance on legal representation, as highlighted in Table 1.

Table 1

The use of legal-represented and self-represented litigation at Sleman District Court in 2023-2024

Year	Number of civil cases	Using legal-represented litigation	Using self-represented litigation
2023	288	180 (62,6%)	108 (37,5%)
2024	280	185(66%)	95 (34%)

Source: Data processed from Sleman District Court' case management information system, accessed at https://sipp.pn-sleman.go.id/list_perkara , 2 February 2025.

Table 1 shows how urban and non-urban area affect the percentage of individuals using attorney service. Legal representation is more common in complex cases and high-value claims, such as property cases, banking issues, monetary claim, business matters, and divorces by rich litigants. In contrast, simpler and lower monetary cases, including divorce by low-income litigants, are more often pursued without the assistance of a lawyer. Based on data in Table 1, amidst the benefit of legal counsel and the trend of using it, other parties in litigation still implement self-represented litigation. The practices of using self-represented litigation influenced by two main factors. First, Indonesia's civil procedure law promotes self-representation, discouraging individuals from hiring lawyers. Second, economically disadvantaged litigants struggle to afford high attorney fees.⁵

Legal representation is related to the access to justice theory, which refers to the ability of individuals to seek and obtain remedies through legal processes effectively, affordably, and equitably.⁶ It is a multidimensional construct which often distinguishes between procedural access and substantive access. Effective and affordable legal processes uphold procedural justice, while equitable practices address substantial justice concerns.⁷ Legal-represented litigation is instrumental in safeguarding that legal procedures are conducted transparently, fairly, and in accordance with procedural law. It reinforces the substantial aspect of access to

⁴ Dio Ashar Wicaksana and others, *Index of Access to Justice in Indonesia in 2019* (Jakarta, 2020) <https://ijrs.or.id/wp-content/uploads/2020/04/A2J-2019-Book-English.pdf>

⁵ Dhea Kinanty, Pramestia Putri and Fauziah Lubis, 'Peranan Advokat Dalam Pemberian Bantuan Hukum Kepada Orang Yang Tidak Mampu Berdasarkan UU No 16 Tahun 2011 Tentang Bantuan Hukum', *As-Syar'i: Jurnal Bimbingan & Konseling Keluarga*, 5 (2023), 451–61 <https://doi.org/10.47467/as.v5i2.2695>

⁶ Eloisa Torlig, Adalmir Gomes and Fabrício Lunardi, 'Access to Justice: An Epistemological Guide for Future Research', *Lex Humana*, 15 (2023), 205–24. <https://seer.ucp.br/seer/index.php/LexHumana/article/view/2497>

⁷ Sharayu Shejale and others, 'Participation as a Pathway to Procedural Justice: A Review of Energy Initiatives across Eight European Countries', *Energy Research & Social Science*, 122 (2025), 103982 <https://doi.org/10.1016/J.ERSS.2025.103982> [accessed 8 August 2025].

justice, such as being presented clearly, demonstrating the law as the basis of seeking redress, sharpening arguments, improving defences, resolving efficiently, reducing the burden on courts, and ensuring that decisions are based on well-articulated legal arguments. Conversely, self-represented litigation merely contributes to facilitating procedural access to justice, in the form of supporting cost-efficient access to legal proceedings without the financial burden of engaging an attorney.

The 'economic analysis of law' by Posner influences access to legal representation in court. Based on the Posner framework,⁸ individuals make rational decisions based on cost-benefit calculation, which includes the decision on hiring or not hiring legal counsel. Relating to the Posner framework on law and economics, where individuals make rational decisions based on cost-benefit calculation, in high-value cases, hiring legal counsel, the expected gains (the professional counsel optimises outcome) exceed lawyer fees. While in low-value cases, where there is often no counsel, the cost of legal services outweighs expected recovery, and presents economic inefficiency.

Countries around the world, such as the United States,⁹ Asia Countries¹⁰ and the European Union, as well, implement a variety of legal-represented litigation regimes. The Netherlands stands out among European Union Countries for its effective legal representation framework. It has implemented policies for mandatory legal representation in civil proceedings, upholds that qualified legal professionals support good legal services, and maintains a fair and transparent legal cost structure. The country also offers various litigation funding schemes and addresses challenges in legal representation strategically.¹¹

Previous studies generally focus on the benefits of legal assistance and the weaknesses of using self-represented litigation, particularly regarding high legal costs,¹² and the challenges faced by low-income individuals seeking legal aid.¹³

⁸ Richard A Posner, *Economics Analysis of Law*, 9th edn (Cambridge: Walters Kluwer Law & Business, 2014).

⁹ The Committee on The Judiciary House of Representative, *Federal Rules of Civil Procedures* (United States of America, 2024) <https://www.uscourts.gov/file/78323/download>

¹⁰ Yasmirah Mandasari Saragih, 'An Independence of Judicial Power Under the System of Justice: Study Case In Indonesia, Malaysia and Brunei Darussalam', *International Conference of ASEAN Prespective and Policy (ICAP)*, 1.1 (2018), 53–62 <https://journal.pancabudi.ac.id/index.php/ICAP/article/view/268>

¹¹ Hui Zhou and others, 'Conditional Justice: Evaluating the Judicial Centralization Reform in The Netherland', *Journal of Contemporary The Netherland*, 30.129 (2021), 434–50 <https://doi.org/10.1080/10670564.2020.1827355>

¹² Nurul Etika, 'Posisi Yuridis Honorarium Advokat Terdakwa Korupsi' (Universitas Negeri Syarif Hidayatullah, 2015) https://repository.uinjkt.ac.id/dspace/bitstream/123456789/39505/1/NURUL_ETIKA-SPS.pdf

¹³ Josua Satria Collins, Siska Trisia, and Nanda Oktaviani, *Kebijakan Bantuan Hukum di Indonesia dalam Kerangka Demokrasi: Analisis Berdasarkan Konsep Pemenuhan Hak Dan Partisipasi Masyarakat*

Fa'amatuainu¹⁴ offers an alternative perspective by examining experiences of those using self-represented litigation, emphasising cultural and systemic biases in diverse communities. While Olling found¹⁵ that hiring lawyers can also put a burden on justice seekers, especially those with limited income due to high lawyer fees. No previous studies, especially in Indonesia, have explored the possibility of shifting from self-represented litigation to legal-represented litigation to promote access to justice. This change could significantly benefit seekers who cannot access legal assistance due to their inability to afford attorney fees.

Legal representation enhances both procedural and substantive access to justice, while self-represented litigants often struggle with complex legal procedures, leading to inefficiencies in the justice system. Additionally, procedural error can affect case outcomes. Therefore, Indonesia should consider adopting a mandatory legal representation model. This approach could ensure equal access to justice for all Indonesians. By studying the legal representation framework and best practices in the Netherlands, Indonesia can identify effective strategies for adapting to its specific conditions. This research has two main objectives: first, to compare self-represented litigation in Indonesia with the legal representation framework in the Netherlands and examine the challenges of adopting legal representation; second, to analyse the feasibility of implementing these practices in Indonesia.

2. Research Method

This research conducts a normative legal analysis¹⁶ to examine the benefits and challenges of using legal-representation litigation, as well as the attitudes of different countries toward this issue through a comparative legal policy perspective. It studies secondary data related to pertinent civil procedures law, including HIR, S.1941 No.44, Law No.18 of 2003 on Advocate Profession, Law No.16 of 2011 on Legal Aids in Indonesia, the Indonesian Advocate Code of Ethics 2002, its operational regulations, and the legal representation framework in the Netherlands. Furthermore, it incorporates theories of access to justice and Posner's 'Law and Economics' framework, along with secondary data regarding their practical applications. Data collection applies the documentary study technique. The

(2021) <https://mappifhui.org/wp-content/uploads/2022/11/KEBIJAKAN-BANTUAN-HUKUM-DI-INDONESIA-DALAM-KERANGKA-DEMOKRASI.pdf>

¹⁴ Bridget Fa'amatuainu, 'Self-Represented Litigation and Meaningful Access to Justice in Aotearoa and Samoa', *AlterNative: An International Journal of Indigenous Peoples*, 19.1 (2023), 13–22 <https://doi.org/10.1177/11771801221145843>

¹⁵ Jackie Olling, 'How Much Should You Pay a Lawyer in Australia: A Guide', *Https://Lawpath.Com.Au/Blog/How-Much-Should-i-Pay-for-a-Lawyer*, 2025, pp. 1–1. <https://lawpath.com.au/blog/how-much-should-i-pay-for-a-lawyer> [accessed 8 August 2025].

¹⁶ P Ishwara Bhat, 'Doctrinal Legal Research as a Means of Synthesizing Facts, Thoughts, and Legal Principles', ed. by P Ishwara Bhat, *Idea and Methods of Legal Research* (Oxford University Press, 2020), p. 0 <https://doi.org/10.1093/oso/9780199493098.003.0005>

research analyses data qualitatively,¹⁷ employing interpretation and analogy methods to discuss whether Indonesia should adopt stricter principles of legal representation. This study evaluates the weaknesses of Indonesia's legal framework by comparing it to the Netherlands' legal representative system, applying the theory of justice and Posner's perspective. Conclusions are drawn through deductive reasoning.

3. Results and Discussion

Self-Representation, Legal Representation, and Access to Justice

The concept of self-representation, or self-represented litigation (SRL), encompasses the rights and challenges faced by individuals who choose to represent themselves in legal proceedings. Indonesia's legal system, influenced by its colonial past, allows self-representation in civil courts under Article 123 of the *Herzien Inlandsch Reglement* (HIR). In the colonial era, legal representation was often inaccessible or unaffordable for the common people,¹⁸ making SRL a practical necessity. Article 123 of the HIR states that the use of legal counsel largely depends on the financial capacity of the parties involved. This trend highlights the significant role attorneys play in navigating complex legal systems. However, as the legal profession has evolved and become more regulated, SRL has become less common, particularly in more complex cases, as shown by the previous research in Indonesia¹⁹ and the data in Table 1.

The presence of lawyers is essential to facilitating access to justice, particularly in complex cases, as demonstrated in the findings of Woo,²⁰ Maqueda,²¹ and Cassidy.²² However, economically disadvantaged parties often refrain from seeking legal representation due to financial constraints. This is not only evident in Indonesia,²³ but also in many other countries.²⁴ On one hand, the principle of

¹⁷ Sandra M Fortier and others, 'Values Work With Adolescents: A Qualitative Component Analysis Using an Integrative Model of Values and Behavior', *Cognitive and Behavioral Practice*, 2024 <https://doi.org/https://doi.org/10.1016/j.cbpra.2024.08.001>

¹⁸ Natasya Putri and others, 'Bridging the Gap by Exploring Inequalities in Access to Land and Disparities in Agrarian Law in Indonesia', *Jurnal Ilmu Kenotariatan*, 5 (2024), 1 <https://doi.org/10.19184/jik.v5i1.47416>

¹⁹ Eman Suparman, 'Verplichte Procureurstelling Untuk Peradilan Yang Sederhana. Cepat, Dan Biaya Ringan', *Veritas et Justitia*, 5 (2019), 80–104 <https://doi.org/10.25123/vej.3288>

²⁰ Margaret Y K Woo, Connor Cox and Sarah Rosen, 'Access to Civil Justice', *The American Journal of Comparative Law*, 70.Supplement_1 (2022), i89–117 <https://doi.org/10.1093/ajcl/avac020>

²¹ Manuel Ramos-Maqueda and Daniel L Chen, 'The Data Revolution in Justice', *World Development*, 186 (2025), 106834 <https://doi.org/https://doi.org/10.1016/j.worlddev.2024.106834>

²² Mike Cassidy and Janet Currie, 'The Effects of Legal Representation on Tenant Outcomes in Housing Court: Evidence from New York City's Universal Access Program', *Journal of Public Economics*, 222 (2023), 104844 <https://doi.org/https://doi.org/10.1016/j.jpubeco.2023.104844>

²³ Elisa Elisa and Febri Handayani, 'Efektifitas Bantuan Hukum Dalam Menjamin Akses Keadilan Bagi Masyarakat Miskin', *Jurnal Cahaya Hukum Nusantara*, 1.1 (2025), 38–45 <https://jurnal.cahayapublikasi.com/index.php/jchn/article/view/88>

self-representation, as promulgated in Article 123 of the HIR, provides an avenue for litigants who cannot afford legal counsel to pursue their claims independently. On the other hand, the absence of legal counsel, especially for economically marginalised individuals, significantly impairs their right to access to justice, given the essential benefits that lawyers provide in navigating the legal process.

SRL becomes necessary in various situations, including financial constraints, personal choices, lawyers' matching problems, and systemic challenges within the legal framework, as also noted by Aköz.²⁵ SRL is beneficial because it alleviates the financial burden on litigants, especially those who cannot afford legal counsel. In cases involving low-value claims, such as workers' compensation lawsuits, as noted by Yuan et. al.,²⁶ as well as in family claims and personal injury cases, as studied by Gates,²⁷ hiring a professional attorney can be unaffordable. This is often true for the plaintiff who is indigent, or the economic value of the case is disproportionate to the attorney fees required.

SRL in legal proceedings often requires adequate guidance to be effective. Research by Yassine, Esghir and Ibrihich²⁸ shows that complex cases present significant challenges for individuals navigating the legal system without professional assistance. This highlights limitations of self-representation in achieving fair legal outcomes, particularly in cases involving nuanced legal or evidentiary issues. In modern legal systems, where laws are increasingly complex, SRL often face disadvantages.²⁹ The complexities of legal procedures can lead to error and unfavourable outcomes, emphasising the need for professional legal representation. Financial constraints are less significant in contexts where economic well-being has improved, as demonstrated by the current situation in Indonesia. Empirical findings, as shown in Table 1, indicate that the percentage of litigations represented by lawyers in civil cases now exceeds those that proceed without legal representation.

²⁴ Matthieu Chemin, Paul Kimalu and Simon Newman-Bachand, 'Courts, Crime and Economic Performance: Evidence from a Judicial Reform in Kenya', *Journal of Public Economics*, 231 (2024), 105035 <https://doi.org/https://doi.org/10.1016/j.jpubeco.2023.105035>

²⁵ Kemal Kıvanç Aköz and others, 'Stability as Right to Counsel of Choice: A Lawyers' Matching Problem', *Games and Economic Behavior*, 152 (2025), 1–22 <https://doi.org/https://doi.org/10.1016/j.geb.2025.03.009>

²⁶ He Yuan, Leïla Choukroune and Pierre Failler, 'Centring Justice for Labour in the New Blue Economy: Principles for Applying Emerging Evidence and Theoretical Critiques to Policy and Practice', *Marine Policy*, 168 (2024), 106327 <https://doi.org/https://doi.org/10.1016/j.marpol.2024.106327>

²⁷ Edward Gates, 'The Role of Self-Representation in Today's Legal Landscape', *American Judicial System*, 2024 <https://www.ajs.org/the-role-of-self-representation-in-todays-legal-landscape/>

²⁸ S Yassine, M Esghir and O Ibrihich, 'Using Artificial Intelligence Tools in the Judicial Domain and the Evaluation of Their Impact on the Prediction of Judgments', *Procedia Computer Science*, 220 (2023), 1021–26 <https://doi.org/https://doi.org/10.1016/j.procs.2023.03.142>

²⁹ Jona Goldschmidt, *Self-Representation: Law, Ethics, And Policy* (Rowman & Littlefield, 2022).

To understand the strengths and limitations of litigation, it is essential to compare self-represented and legally represented cases. Legal representation offers several advantages, including enhanced legal certainty,³⁰ improved quality of legal arguments,³¹ reduced procedural mistakes,³² greater efficiency in court proceedings,³³ and a lower likelihood of errors.³⁴ Research by Engler shows that individuals seeking orders to protect their rights achieve an 83% success rate with legal representation, compared to just 32% for those who represent themselves.³⁵ These advantages play a crucial role in facilitating access to justice and provide compelling reasons for adopting legally represented litigation in Indonesia. Moreover, making legal representation the standard would also align Indonesia's civil procedure law with international best practices,³⁶ fostering greater consistency in the legal application.

Practically, the greater usage of legal counsel in Indonesian's civil proceedings, as shown in Table 1, indicates a strong reliance on lawyers for navigating the legal system. The trend supports the shift in concept from unrepresented litigants to legal-represented litigants. Empirical evidence is crucial because if Indonesia adopts the concept of legal representative litigation, it should be grounded in a strong sociological basis to ensure that justice seekers accept it. This view is supported by Bruggink,³⁷ who states that the law has three validities: philosophically, juridically and sociologically.

To examine whether Indonesia should transition fully to legal-represented litigation, it is useful to compare the legal framework with that of European Union

³⁰ Ninda Rejekinah and Encep Rojak, 'Implementasi Perma Nomor 1 Tahun 2015 Tentang Pelayanan Terpadu Sidang Keliling Dalam Sidang Isbat Nikah Terpadu Tahun 2021', *Bandung Conference Series: Islamic Family Law*, 2 (2022) <https://doi.org/10.29313/bcsifl.v2i2.2664>

³¹ António Osório and Barbara Luppi, 'Argumentation Quantity and Quality: A Litigation Success Function', *International Review of Law and Economics*, 59 (2019), 21–30 <https://doi.org/https://doi.org/10.1016/j.irle.2019.05.001>

³² Evandro Antonio Sbalcheiro Mariot, Stela Barbas and Rui Nunes, 'Enforcing the Right to Health in Private Health Systems through Judicialization What Can We Learn from the Scoping Review of the Cross-National Perspective?', *Health Policy*, 145 (2024), 105096 <https://doi.org/https://doi.org/10.1016/j.healthpol.2024.105096>

³³ Ben Michael, 'Success Rate of Representing Yourself in Court: Understanding the Odds', *Michael & Associates*, 2024 <https://zealousadvocate.com/resources/law/representing-yourself-in-court/>

³⁴ Miguel Alves Pereira and others, 'An Integrative Approach to Reviewing the Literature on Judicial Efficiency in Europe', *Socio-Economic Planning Sciences*, 98 (2025), 102137 <https://doi.org/https://doi.org/10.1016/j.seps.2024.102137>

³⁵ Russell Engler, 'Shaping a Context-Based Civil Gideon from the Dynamics of Social Change', *Litigation & Procedure EJournal*, 2007. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=972304

³⁶ Colin Crawford and Daniel Bonilla Maldonado, 'Access to Justice: Theory and Practice from a Comparative Perspective', *Publications*, 2020 <https://digitalcommons.law.ggu.edu/pubs/906> [accessed 8 August 2025].

³⁷ J.J Bruggink and B. Arief Sidharta, *Refleksi Tentang Hukum: Pengertian-Pengertian Dasar Dalam Teori Hukum* (Bandung: Citra Aditya Bakti, 2015) https://scholar.google.com/scholar?cluster=1075369535426981952&hl=en&as_sdt=2005&sciodt=0,5

countries that encourage legal representation, particularly in complex civil cases.³⁸ Shepard's research in 2000 found 85% of cases involved legally represented litigants.³⁹ The Netherlands exemplifies this model, having a strong legal basis and established best practices in legal representation. The policies and practices of the Netherlands offer valuable insights for Indonesia as it considers implementing legal representation.

Legal Representation Framework in The Netherlands

The Netherlands has a comprehensive legal framework governing mandatory legal representation in civil proceedings. This framework addresses the legal profession, cost structure, state-funded legal aid, transparency in lawyer fees, and challenges in implementing legal-represented litigation. According to Article 79 (2) of the Dutch Code of Civil Procedures (*Wetboek van Burgerlijke Rechts Voerderung, RV*), parties must be represented by legal counsel (*advocaat*) in most civil cases. The only exception is small claims in subdistrict or *kantonrechter* proceedings, where the claim amount does not exceed €25000. In Appellate cases, as stated in Article 353 (1) *RV*, and at the cassation level per Article 225 *RV*, representation by an *advocaat* is also required. The mandatory representation contrasts with Indonesian Civil Procedural law, which, as regulated in Article 123 of *Herziene Indonesisch Reglement (HIR)*, allows parties to appear in person or be represented by an attorney in all civil cases.

To ensure high-quality legal services by attorneys (*advocaten*) in the Netherlands, a comprehensive regulatory framework governs the legal profession. The primary legislation is the Act on Advocates (*Advocatenwet*), which took effect on 1 October 1952, and was amended in 2019.⁴⁰ Article 17 mandates that all practicing attorneys be members of the Dutch Bar Association (*Nederlandsche Orde van Advocaten - NOvA*). Article 2 of The Act establishes requirements for legal education, and Article 9c addresses professional training. Continuing legal courses are required under Article 4.4 of The Regulation of The Legal Profession 2025 (*Verordening op de Advocatuur*).⁴¹ Compared to Indonesia, the educational and training requirements to become an attorney in the Netherlands are more rigorous, extending beyond the undergraduate level.

To become an *advocaat* in the Netherlands, a candidate must earn a Bachelor of Law (LL. B) and a Master of Laws (LL.M) from a Dutch university, including

³⁸ Pereira and others; Rabeea Assy and Tomer Carmel, 'The Impact of Legal Representation in Israeli Traffic Courts: Addressing Selection Bias and Generalizability Problems', *Journal of Empirical Legal Studies*, 21 (2024), 532–76 <https://doi.org/10.1111/jels.12392>

³⁹ Randall Shepard, 'The Self-Represented Litigant: Implications for The Bench and BAR', *Family Court Review*, 48 (2010), 607–18 <https://doi.org/10.1111/j.1744-1617.2010.01336.x>

⁴⁰ Overheid of Netherlands, *Advocatenwet* (The Netherlands: Overheid.nl, 2019) <https://wetten.overheid.nl/BWBR0002093/2019-01-01>

⁴¹ Nederlandse Orde van Advocaten (NOvA), *Verordening Op de Advocatuur* (The Netherlands: Overheid.nl, 2025) <https://wetten.overheid.nl/BWBR0035981/2025-01-01/>

courses in Dutch civil, criminal, administrative, constitutional, and EU law, as required by the *Advocatenwet* (Article 2 of Act on Advocates). Article 3.6 to 3.15 of *Verordening op de Advocatuur (Voda)* states that candidates undertake the Professional Education Programme for Advocates (*Beroepsopleiding Advocaten*), which spans a minimum of three years. During this time, they work as trainee lawyers (*advocaat-stagiairs*) under the supervision of a senior attorney (*patroon*). The programme consists of six examinations, practical skills training, and ethics courses. Upon successfully completing the programme and a formal swearing oath before a district court, candidates are entered into the national bar register (*tableau*) and receive their official licence to practice (*advocatenpas*).⁴²

The Netherlands conducts disciplinary proceedings for advocates who violate the Dutch Bar's Code of Conduct through an external and independent institution known as Dean (*Deken*) within the Disciplinary Council (*Raad van Diciplines*), chaired by a senior judge rather than a representative from the bar association. The chairperson is appointed by the President of the Court of Appeal, ensuring impartiality, while the council includes experienced senior advocates. All disciplinary decisions are published on the official website of the Dutch Bar Association (*NOvA*) and the *Kenniscentrum Tucht recht*, as well as in the *Tucht recht* Updates Newsletters, making them accessible to the public. As an example, in ECLI:NL:TADRSHE:2025:67 (case number 24-921/DB/OB/D) the Disciplinary Board's -Hertogenbosch confirms that the advocate violated Article 18 (2) of the Dutch Bar's Code of Conduct and was permanently disbarred (*schrapping*) for serious financial misconduct and false declarations.⁴³ The sanction enforcement system for lawyers in the Netherlands reinforces the integrity, accountability, and transparency, thereby enhancing public trust. This system promotes greater effectiveness than the closed and internally managed discipline.

An important issue in the implementation of legal representation is attorney fees, which, along with court fees, are collectively referred to as legal costs. Litigants who hire an attorney must cover these fees. According to Felső et al⁴⁴ and Faure and Mot,⁴⁵ the Netherlands has various funding mechanisms for attorney fees, including personal payment, legal aid, legal expenses insurance (*rechtsbijstandverzekering*, LEI), and third-party funding (TPF). In this regard, the

⁴² Nederlandsche Orde van Advocaten, *Beroepsopleiding Advocaten* (The Netherlands, 2025) <https://www.advocatenorde.nl/beroepsopleiding>

⁴³ Nederlandse orde van Advocaten and Kenniscentrum Tucht recht, 'Updates: Disciplinary Board 's-Hertogenbosch, 28 April 2025 ECLI:NL:TADRSHE:2025:67', 2025 <https://www.tucht-recht-updates.nl/samenvatting/tr-2025-0400>

⁴⁴ Flóra Felső, Sander Onderstal and Jo Seldeslachts, 'The Pricing Structure of Legal Services: Do Lawyers Offer What Clients Want?', *Review of Industrial Organization*, 61.2 (2022), 123–48 <https://doi.org/10.1007/s11151-022-09868-9>

⁴⁵ J. Faure, M. G., & de Mot, 'Comparing Third-Party Financing of Litigation and Legal Expenses Insurance.', *Journal of Law, Economics & Policy*, 8.3 (2011), 587–612 <https://doi.org/http://dx.doi.org/10.1111/j.1740-1461.2011.01221.x>

Netherlands offers a broader range of alternatives to address the burden of legal costs compared to Indonesia, which relies solely on the egalitarian aid scheme as its primary mechanism. The variation promotes access to justice by enabling litigants to assert their rights in court with the assistance of legal counsel.

The commitment of the Netherlands Government to the legal aid system is institutionalised through the establishment of the Legal Aids Board (*Raad voor Rechtsbijstand*, LAB), a governing independent body, which operates under the supervision of the Ministry of Justice and Security. One of the LAB's aims is to provide sustainable solutions for those seeking justice and to improve compensation for professionals.⁴⁶ The creation of the institutional framework reflects the Dutch government's strong commitment to realising access to justice, a principle that is enshrined in the Dutch Constitution, especially Article 18(2).⁴⁷ It mandates state responsibility to ensure legal aid for those lacking sufficient means.

The legal aid system in the Netherlands faces significant challenges, particularly the increasing financial burden on the state, which correlates with a rising demand for financial support within the legal aid scheme.⁴⁸ To address these issues, the Netherlands has implemented strategies such as legal expense insurance (LEI) and third-party funding (TPF) Schemes. LEI provides financial coverage for legal costs incurred in disputes, helping to overcome the cost barriers to accessing justice.⁴⁹ Additionally, the Mass Damage Settlement in Collective Action Act (*Wet Afwikkeling Massaschade in Collectieve Actie*, WAMCA) 2020 allows a third party, those not directly involved in the dispute, to fund litigation for the claimant organisation in exchange for a share of the proceeds if successful.⁵⁰ This approach reduces the financial burden on claimants and helps transform access to justice from a theoretical right into a practical reality.

Mandatory legal representation in the Netherlands implies that attorney fees can be claimed for compensation from the losing party, as outlined in Article 239 of

⁴⁶ Raad voor Rechtsbijstand, 'Subsidized Legal Aid System', *Raad Voor Rechtsbijstand*, 2025 <https://www.raadvoorrechtsbijstand.org/stelsel-gesubsidieerde-rechtsbijstand/> [accessed 31 July 2025].

⁴⁷ Government of the Netherlands, *The Constitution of the Kingdom of the Netherlands 2008 (Consolidated Text with Amendments up to 2023)*. (The Netherlands, 2023) <https://www.government.nl/documents/regulations/2012/10/18/the-constitution-of-the-kingdom-of-the-netherlands-2008>

⁴⁸ Esther M Verboon and others, 'Focus on Client Needs – A Study on Frontline Legal Aid in the Netherlands', *European Journal of Social Work*, 26.1 (2023), 134–47 <https://doi.org/10.1080/13691457.2021.1954889>

⁴⁹ J. David Cummins and María Rubio-Misas, 'Country Factor Behavior for Integration Improvement of European Life Insurance Markets', *Economic Analysis and Policy*, 72 (2021), 186–202 <https://doi.org/10.1016/J.EAP.2021.08.004> [accessed 9 August 2025].

⁵⁰ Xandra Kramer, 'The Quest for Funding Under the Dutch WAMCA: Third Party Funding and the Viability of a Procedural Fund', *Emory International Law Review*, 38.4 (2024) <https://scholarlycommons.law.emory.edu/eilr/vol38/iss4/4> [accessed 8 August 2025].

the RV. However, these costs are typically reimbursed based on a standardised schedule known as the *liquidatietarief*,⁵¹ which the court uses to estimate reasonable attorney fees, rather than covering full fees charged. This approach is deemed fair as it protects the prevailing party, generally the rightful party, compensating them for the attorney fees incurred in asserting their rights. Consequently, it alleviates the financial burden of high attorney fees for the prevailing party. Such a legal cost arrangement could encourage other countries, like Indonesia, to adopt a similar system since it has proven effective. Furthermore, the *liquidatietarief* policy also protects the losing party from excessive or unreasonable attorney fees,⁵² serving as a deterrent against arbitrary fee-charging by attorneys. Overall, this system supports access to justice for both parties. Hence, it serves as a compelling argument for adoption in Indonesia, which also upholds access to justice as a human right.

The challenges in Adopting a Compulsory Legal Representative in Indonesia

The reliance on legal counsel in civil litigation is significant; it raises concerns about accessibility, particularly for low-income individuals seeking legal representation, as in Indonesia. Several challenges arise when adopting compulsory legal representation in the country. The parties are confronted with the obligation to pay legal counsel fees. Wealthy individuals often face issues related to the lack of clarity regarding the components and amount of attorney fees, which can become exceedingly high and unreasonable. On the other hand, low-income communities primarily struggle with the inability to afford the cost of legal representation.

Article 21 (2) of Law No. 18 of 2003 on Advocates, known as the Advocates Law, only stipulates that the amount of fees for legal services is determined reasonably based on the agreement of both parties. Therefore, the only limit is reasonableness. According to the Explanation of Article 21 paragraph (2) of the Advocates Law, “reasonably” is determined by considering the risk, time, ability, and interests of the client. Such reasonableness, Article 4 letter d and e of the Indonesian Advocate Code of Ethics 2002, is based on due regard to the client's financial capacity by not imposing unnecessary costs. Practically, the average fees of Indonesian lawyers vary significantly based on their specialisation, experience, and the complexity of cases handled. Data from a law firm in Jakarta, an urban city, indicates that attorney consultation fees range from IDR 500,000 to IDR 2,000,000, while the costs of handling civil cases at the court of first instance range from IDR 15,000,000 to

⁵¹ Raad voor de Rechtspraak, *Liquidatietarief Rechtbanken En Gerechtshoven per 1 Februari 2024* (The Netherlands: Raad voor de Rechtspraak, 2024) <https://www.rechtspraak.nl/Voor-advocaten-en-juristen/Reglementen-procedures-en-formulieren/Civiel/tarieven-kosten-vergoedingen/Paginas/Liquidatietarief-2024.aspx>

⁵² David Cuenca Pinkert, ‘A Comparative Study of the Reimbursement of Extrajudicial Attorneys’ Fees’, *Cuadernos de Derecho Transnacional*, 15.1 (2023), 297–312 <https://doi.org/10.20318/CDT.2023.7542>

IDR 150,000,000.⁵³ These fees tend to be lower for Yunion lawyers or for lawyers practising in rural areas. Putri found that the average pay for Indonesian lawyers is IDR 30,000,000 per month.⁵⁴ For comparison, the average salary for a lawyer in the Netherlands starts from €40,000/year (equal to IDR 60,000,000/month) to €200,000 (equal to IDR 300,000,000/month) or more.⁵⁵ The parties are free to choose an attorney who meets their expectations, with fees agreed upon in advance.

Article 6:2 and Article 6:248 of The Dutch Civil Code (DCC) provide important guidelines for addressing excessive and unreasonable attorney fees. These Articles require lawyers to offer legal services that are reasonable and fair. They also state that contract terms, including legal fees arrangements, cannot be enforced to be reimbursed by the losing party if they would be unacceptable by the standards of reasonableness and fairness. Additionally, NOvA's *Legal Profession Bye-Law*,⁵⁶ particularly Rule 17 of Code of Conduct (*Gedrageregels advocatuur*) emphasises the obligation of advocates to communicate transparently with clients. This includes disclosing the basis and calculation of professional fees. Therefore, litigants negotiating legal fees should refer to these provisions and ask for clarification on the purpose and amount of each fee charged. This fee aligns with the principle of access to justice⁵⁷ and Posner's law and economic theory,⁵⁸ where fees are based on reasonableness and the expected value of the legal services provided. Under Article 239 of RV, the burden of covering litigation costs, including attorney fees, falls on the losing party in just manner. The defeated defendant is only required to compensate the prevailing party according to the *liquidatietarief* a fixed scale that estimates reasonable attorney costs, rather than reimbursing the full amount charged by legal counsel. The Netherlands' transparency provision on attorney fees serves as a model for Indonesia, providing clear information on legal costs and promoting fairness in the justice system.

Indonesia has tackled the challenge faced by economically disadvantaged individuals seeking justice who struggle to afford legal counsel fees through its legal aid scheme, as outlined in Law No.16 of 2011 on Legal Aids. In fact, 34% of justice seekers in Sleman District Court did not use a lawyer, potentially due to the high lawyer fees

⁵³ Muh.Aidil Akbar, 'Biaya Sewa Jasa Pengacara Terbaru 2025: Rincian Lengkap', *Www.ilslawfirm.Co.Id*, 2025 https://www.ilslawfirm.co.id/biaya-sewa-jasa-pengacara-terbaru/?utm_source=chatgpt.com

⁵⁴ Shifa Nurhaliza Putri, 'Rp30 Juta per Bulan, Intip Rata-Rata Gaji Pengacara Di Indonesia', *IDX Channel*, 22 November 2024 <https://www.idxchannel.com/economics/rp30-juta-per-bulan-intip-rata-rata-gaji-pengacara-di-indonesia>

⁵⁵ Bryan Mixon, 'Highest Paid Lawyers In Netherlands', *AmazeLaw*, 2025 https://amazelaw.com/highest-paid-lawyers-in-netherlands/?utm_source=chatgpt.com [accessed 31 July 2025].

⁵⁶ Nederlandse Orde van Advocaten, *Code of Conduct 2018* (The Netherlands, 2018) <https://www.advocatenorde.nl/de-advocaat/gedrageregels-1>

⁵⁷ Yannick Gabuthy and Pierre-Henri Morand, 'Lawyer Fee Arrangements and Litigation Outcomes: An Auction-Theoretic Perspective', 2019, 255 <https://doi.org/10.34894/VQ1DJA> [accessed 9 August 2025].

⁵⁸ Eric A. Posner, 'The Boundaries of Normative Law and Economics', *Yale Journal on Regulation*, 38 (2021) <https://heinonline.org/HOL/Page?handle=hein.journals/yjor38&id=657&div=&collection=> [accessed 9 August 2025].

associated with legal representation. According to Article 22(1) of Law No.18 of 2003 and Article 4(1) of Government Regulation No.83 of 2008, litigants who are unable to afford attorney fees may apply for free legal assistance by submitting a written application to the court. The court then forwards the request to a lawyer affiliated with a law firm or legal aid institution. These lawyers provide legal services free at no cost, supported by operational funding from the government. This approach ensures that the vulnerable clients still receive legal representation without the burden of attorney fees, even including case fees.

The Indonesian government allocates IDR 5,000,000 (equivalent to \$299 USD) for lawyers assisting in district courts, as outlined in the Minister of Law and Human Rights Number M.HH-01.HN.03.03 of 2021. This amount is minimal compared to typical lawyer fees. Monica found that out approximately 15,000 members of the Indonesian Advocates Association (PERADI), only 100 provide legal aid to the low-income individuals.⁵⁹ Limited funding is a key reason why professional lawyers show little interest in *pro bono* legal aid. Instead, only young lawyers seeking to establish their presence tend to take on cases, meaning clients may be represented by less experienced attorneys.

According to Article 12(1) of Government Regulation No. 42 of 2013, which outlines the Requirements and Procedures for Legal Aids, Indonesian lawyers are prohibited from refusing to provide *pro bono* litigation services when such assistance is necessary. Additionally, Article 11 of PERADI Regulation No. 1 of 2010 on the Advocate's Code of Ethics encourages each advocate member of PERADI to offer at least 50 hours of *pro bono* legal services to low-income individuals each year. This provision aims to ensure that the *pro bono* obligation policy is effectively implemented. Unfortunately, there are no strict sanctions for those who violate this requirement. In practice, the Honorary Council of the Advocate Organisation commonly imposes "soft sanctions" on violators.⁶⁰ According to *les spirit de corps*, Advocate Professional Organisations tend to defend their corps. As a result, the enforcement of *pro bono* obligation is not effective.

Low-value claims generally follow a straightforward process, making legal representation unnecessary. This is largely because legal fees often exceed the value of small claims. Many Asia countries, including the Netherlands, have implemented simplified procedures for small claims, allowing for quicker

⁵⁹ Monika Suharyati, 'Pemberian Bantuan Hukum Cuma-Cuma Oleh Advokat Berdasarkan Undang-Undang No.18 Tahun 2003 Tentang Advokat', *Negara Hukum*, 3.2 (2012), 227-48 <https://jurnal.dpr.go.id/index.php/hukum/article/view/232>

⁶⁰ Cruzaero Wisyae and others, 'Penerapan Sanksi Terhadap Pelanggaran Kode Etik Advokat Menurut Undang-Undang Nomor 18 Tahun 2003', *Das Sollen: Jurnal Kajian Kontemporer Hukum Dan Masyarakat*, 3.1 (2025), 1-15. <https://journal.forikami.com/index.php/dassollen/article/view/802>

resolutions without the need for legal counsel.⁶¹ According to Article 79 (2), Article 225, and Article 253 (1) of RV, the Netherlands requires parties to be represented by legal counsel in the district court, appellate courts, and at the cassation level, except for small claims disputes handled by the subdistrict court or *kantonrechter*. Similarly, Indonesia has established a non-mandatory legal representation for small claims, as stipulated under the Supreme Court Regulation Number 2 of 2015, as amended in 2019.

According to the regulation of the Supreme Court of Indonesia, a small claim procedure can only be pursued if the parties are individual (non-collective), are domiciled within the same territorial jurisdiction of the district court, and the claim amount does not exceed IDR 500 million. This procedure is simplified compared to complex litigation. It includes an attempt at amicable settlement, joint reading of the statement of claim and defendant's response, followed by the evidentiary phase, and then the issuance of a judgement. The entire process is completed within 25 working days. This procedural structure differs significantly from that of complex litigation, which, based on HIR, typically involves multiple stages: an attempt at an amicable settlement, the reading of the statement of claim, the response, reply (*replik*), rejoinder (*duplik*), an evidentiary hearing, the submission of closing arguments, and finally, issuing of judgement. The duration for such proceedings usually ranges from two to three months.

Indonesia's Validity in Adopting Mandatory Legal Representation

Legal reform involves various elements aimed at improving existing legal frameworks through intentional changes, often enacted through legislation. Its purpose is to address gaps between current laws and societal needs. Legal reform typically takes an incremental approach⁶² and heavily relies on public awareness and engagement from civil society, which plays a significant role in shaping reform initiatives. In Indonesia, legal reform has often been inspired by adopting from other countries. For instance, Indonesia has reformed its civil procedures by incorporating citizen lawsuits, granting legal standing to non-governmental organisations, and recognising class action lawsuits.⁶³ This discussion will explore the possibility of adopting legal representation through a comparison with the Netherlands regime, which has been introduced previously.

From a sociological perspective, the trend of using lawyers in civil litigation has been steadily increasing. However, this trend is primarily concentrated in urban

⁶¹ Elisabetta Silvestri, 'Small Claims and Procedural Simplification: Evidence from Selected EU Legal Systems', *Access to Justice in Eastern Europe*, 2018 <https://api.semanticscholar.org/CorpusID:211325700>

⁶² Ngoc Bui, 'Theorizing Legal Reform', 2024, pp. 11–26 <https://doi.org/10.1093/9780191948053.003.0002>

⁶³ Elisabeth Sundari, 'The Indonesian Model of the Citizen Lawsuit: Learning How to Adopt and How to Adapt', *International of Trade and Business Law Review*, 21 (2018), 323–33 <https://s37430.pcdn.co/businesslaw/wp-content/uploads/sites/5/2024/07/ITBLR-Volume-XXI.pdf>

areas, as shown in Table 1. Nationwide, an estimated 60 per cent of justice seekers, mainly from low-income communities, continue to lack access to legal representation or legal aid.⁶⁴ This sociological depiction reveals a persistent gap in obtaining attorney assistance, an element that would enhance both procedural and substantive access to justice, between urban communities, which are generally more affluent, and rural populations, which predominantly have lower incomes. As highlighted in the previous analysis, introducing mandatory legal representation, particularly in complex cases, along with concerted efforts to address existing barriers, could significantly enhance equal access to legal services for both the wealthy and the low-income individuals. However, moving from a system of self-representation to one of mandatory legal representation presents challenges for Indonesia. To address these challenges, the adoption of the Dutch legal representation model is being considered, provided it is adapted to meet the specific needs and contextual realities of Indonesia.

Theoretically, it is debatable whether Indonesia should adopt a mandatory legal representation model based on the Netherlands' framework. Several prerequisites must be met for this model to be effective. A non-mandatory legal representation system allows litigants to access justice, as they can choose to represent themselves if they feel capable of doing so. However, when individuals avoid hiring an attorney solely due to their inability to afford fees, a non-mandatory framework can undermine their access to justice. In this context, mandatory legal representation offers stronger support for achieving access to justice compared to the non-mandatory system. The remaining problem, then, lies in how to address the challenges associated with the implementation of mandatory legal representation.

The first prerequisite, according to Baharad et. al.,⁶⁵ is that the mandate for legal representation should not be misused as an adversarial system, like that of the Netherlands, where the process often becomes a contest between lawyers, undermining the pursuit of truth in law enforcement and justice. Indonesia does not implement such a policy. In accordance with the principles of Indonesian civil procedure, outlined in Article 119 of HIR, the non-adversarial system where the judges actively prevent merely a contest between lawyers aligns with the principle of justice. Judges play a proactive role by directing the course of the proceedings rather than allowing counsel to engage in aimless competition, asking questions, requesting clarifications, and ordering the submission of evidence in the interest of truth-finding. They can also issue warnings or reprimands to counsel employing

⁶⁴ Kukuh Santiadi, 'Expanding Access To Justice Through E-Court In Indonesia', *Prophetic Law Review*, 1.1 (2019), 75–89 <https://doi.org/10.20885/PLR.VOL1.ISS1.ART5>

⁶⁵ Roy Baharad, Chen Cohen and Shmuel Nitzan, 'Litigation with Adversarial Efforts', *International Review of Law and Economics*, 69 (2022), 106042 <https://doi.org/https://doi.org/10.1016/j.irl.2021.106042>

dilatory tactics, engaging in character assassination, and rejecting manipulative evidence or arguments.

The second prerequisite states that the mandatory legal representation is excepted for litigants involved in low-value claims that generally proceed in a simple process. The legal fees in such cases often exceed the amount of the claims themselves, making legal representation. Under the Supreme Court Regulation Number 2 of 2015, as amended in 2019, Indonesian lawmakers have adopted a non-mandatory legal representation system for small claims, eliminating the need to adopt a similar model from the Netherlands. According to Posner's theory of economic analysis of law,⁶⁶ Indonesian policymakers who do not require litigants to be represented for small claims cases are making rational decisions based on a cost-benefit calculation. From an economic efficiency perspective, it is irrational to impose high attorney fees on parties with relatively low-value claims. Mandating professional legal representation in these cases undermines access to justice⁶⁷ by disproportionately increasing litigation costs, which outweigh the potential benefits of having formal legal advocacy.

The third prerequisite is reforming the educational requirements for the legal profession in Indonesia, drawing inspiration from the Dutch model while adapting it to the local context. In contrast with the Netherlands model, the specialised professional education curriculum for advocates in Indonesia typically takes about one month to complete. This curriculum covers the Indonesian legal system, law enforcement, and ethics, followed by a one-year legal apprenticeship at a law office.⁶⁸ The Netherlands offers a more specialised professional education programme for advocates that significantly supports professional competence and ethical standards. This framework ensures high professional standards, promotes access to justice, and preserves the integrity of legal services.

Nev Gradual adjustments are necessary due to the differing socio-economic conditions between the Netherlands and Indonesia. For instance, the minimum academic requirement to become a lawyer is a Bachelor of Laws (undergraduate program of law) degree, without necessarily requiring a Master of Laws (LL.M). However, this degree should be accompanied by a mandatory professional legal training program that is equivalent in depth and structure to a master's program. This professional program should comprise approximately 46 credit points and be

⁶⁶ Amir Khenari Nezhad, Nasrin Tabatabaee Hesari and Mohsen Sadeghi, 'Analysis of the Legal Relationship and Behavior of Actors in the Legal System of Initial Land Registration Based on Game Theory and Posner Criteria in Economic Efficiency', *Islamic Law*, 20.78 (2023), 57–82 https://hoquq.iict.ac.ir/article_706921_en.html

⁶⁷ Seno Adhi Wibowo and Massulthan Rafi Wijaya, 'Implementation of the Small Claims Court in Dispute Case Settlement in Indonesia', *Lex Scientia Law Review*, 5.1 (2021), 165–78 <https://doi.org/10.15294/LESREV.V5I1.42859>

⁶⁸ Indonesian Advocates Association (PERADI), *Kurikulum Pendidikan Khusus Profesi Advokat (PKPA)* (Indonesia: PERADI, 2025) <https://peradi.id/kurikulum-pkpa/>

completed over 1,5 years, focusing on courtroom advocacy skills and professional ethics. By implementing stricter and more comprehensive professional requirements, the legal profession aims to produce more competent and ethical lawyers. Such lawyers will be better equipped to provide high-quality and integrity-driven legal services, thereby enhancing access to justice.

The fourth prerequisite for adopting legal representation concerns attorney fee issues. To address excessive and unreasonable charges, lawyers should provide legal services and establish fees with clients that reflect reasonableness and fairness. Drawing on best practices from the Netherlands,⁶⁹ lawyers should calculate the fees based on a written agreement. If necessary, a lawyer should explain the specific purpose and amount of each fee to be charged. Litigation costs include attorney fees that are ultimately charged to the losing party through the *liquidatietarief* model, which is a fixed scale used by the court to estimate only reasonable attorney costs eligible for compensation. This mechanism promotes fairness for all parties involved.

For individuals who cannot afford attorney fees, the Indonesian government should establish a Legal Aid Board. This independent body would operate under the Supreme Court's system, enhancing its independence from government agencies, such as the Ministry of Justice and Security. The legal aid board aims to provide a sustainable solution for those seeking justice and improve compensation for professionals. Creating this board is a strategic policy reform to enhance the effectiveness of Indonesia's legal aid system. The legal foundation already exists and is recognised as an integral component of access to justice for the low-income. Furthermore, access to justice is a fundamental human right, guaranteed by Article 28D (1) of the Indonesian Constitution, with the state responsible for its realisation, as stipulated in Article 28I (4).

Support to Kinanthi and Lubis ⁷⁰highlights the obligation of Indonesian lawyers to provide *pro bono* legal assistance to indigent clients, enhancing access to justice without financial burden. This assistance is funded by the government through the Legal Aid scheme, which depends on the state's budgetary capacity and commitment to low-income support. The financial capabilities vary between countries, and Indonesia's capacity differs from that of the Netherlands. When the state faces excessive financial burdens for legal aid, public participation may be required. Considering the litigation funding support scheme in the Netherlands, it is advisable to implement additional strategies, such as Legal Expense Insurance

⁶⁹ Diana Dankers-Hagenaars, 'The Criteria of Reasonableness and Fairness in Dutch Law: Origins and Implications', *Revue Juridique Themis*, 57 (2023) <https://heinonline.org/HOL/Page?handle=hein.journals/revjurns57&id=223&div=&collection=> [accessed 9 August 2025].

⁷⁰ Kinanty, Putri and Lubis; Aulia Nisma and Fauziah Lubis, 'Peran Advokat Sebagai Pendamping Hukum Dalam Memberikan Bantuan Hukum Terhadap Masyarakat Yang Tidak Mampu Secara Sukarela', *As-Syar'i: Jurnal Bimbingan & Konseling Keluarga*, 5 (2023), 330–40 <https://doi.org/10.47467/as.v5i2.2676>

(LEI)⁷¹ and Third-Party Funding (TPF), to address attorney fees challenges effectively.

One critical consideration in adopting LEI in Indonesia is the relatively high level of public distrust in insurance services.⁷² It is essential to implement special regulatory oversight to monitor LEI providers and prevent agreements that may disadvantage users seeking justice. Inspired by the WAMCA in the Netherlands, which prioritises TPF for mass litigation,⁷³ Indonesia considers adopting TPF and adapting it to local conditions to enhance access to justice for individuals. However, LEI and TPF are a completely novel concept in Indonesia, requiring significant time and effort to integrate them into the Indonesian legal system and society.

The fifth prerequisite is for Indonesia to adopt a strict and transparent system for imposing sanctions on advocates who violate the Advocates' Code of Conduct, following the best practices expressed in the Netherlands. Ardiansyah et al also⁷⁴ found that Indonesia has not yet established a legal enforcement system for violation of the Advocates' Code of Conduct that is as rigorous and transparent as needed. One form of violating this code is the refusal to provide mandatory *pro bono* legal assistance as required by law. To adapt the Netherlands' model to Indonesia's circumstances, disciplinary proceedings and sanctions against lawyers who breach the Advocates' Code of Conduct should be conducted by an independent board. This board would comprise senior judges as the chief, senior advocates, and representatives from senior civil society, serving as a counterbalance. The government, as the guardian of public interests, should take charge by establishing regulations for the implementation of the obligation to provide legal aid, along with strict sanctions for violators, such as license revocation for lawyers.

When advocates behave unethically, such as by refusing to provide mandatory *pro bono* services, misleading clients, or lacking professional competence, they create direct barriers to justice, particularly for vulnerable and marginalised

⁷¹ Arthur van den Hurk, 'Transparency in Dutch Insurance Regulation and Financial Supervision', *AIDA Europe Research Series on Insurance Law and Regulation*, 4 (2021), 291–308 https://doi.org/10.1007/978-3-030-63621-0_13

⁷² Nuramalia Hasanah and others, 'Challenges and Opportunities in the Development of the Insurance Industry in Indonesia: A Comprehensive Analysis', in *Proceedings of the 4th International Conference on Social Sciences and Law (ICSSL 2024)* (Surabaya, Indonesia: Atlantis Press, 2024), pp. 747–61 https://doi.org/10.2991/978-2-38476-303-0_71

⁷³ Ianika N. Tzankova and Xandra E. Kramer, 'From Injunction and Settlement to Action: Collective Redress and Funding in the Netherlands', *Ius Gentium*, 89 (2021), 97–130 https://doi.org/10.1007/978-3-030-73036-9_5

⁷⁴ Novandi Ardiansyah and others, 'Sanksi Kode Etik Advokat Sebagai Sarana Penegakan Integritas', *Das Sollen: Jurnal Kajian Kontemporer Hukum Dan Masyarakat*, 1.2 (2023), 1–25 https://journal.forikami.com/index.php/dassollen/article/download/397/197/2758?utm_source=chatgpt.com

populations. This issue is especially relevant in countries such as Indonesia, where a large segment of the population cannot afford commercial legal representation.⁷⁵ Implementation of strict sanctions for violations of mandatory *pro bono* obligations ensures that advocates fulfil their role in broadening access to legal services. According to Posner's theory,⁷⁶ one of the leading figures in the Law and Economics movement, the primary purpose of legal rules, including sanctions, is to promote economic efficiency. This is achieved by influencing behaviour through rational incentives and deterrence mechanisms. In the context of the Indonesian advocate code of conduct's enforcement, the mild sanctions imposed on advocates,⁷⁷ along with their inconsistent application,⁷⁸ and non-transparent,⁷⁹ fail to generate sufficient deterrence.

4. Conclusion

The study concludes that it is both theoretically and practically feasible for Indonesia to adopt a mandatory legal representation model in civil proceedings. This can be accomplished by creating a legal framework that ensures effective implementation and promotes access to justice. However, Indonesia needs to adapt this model to its specific context, drawing comparison to the Netherlands. First, except for small claims, Indonesia should preserve a non-adversarial system and reform the educational requirements for the legal profession. Second, regulating legal fee agreements should be regulated for reasonableness, fairness, and transparency. Strict penalties should be imposed on lawyers who refuse to provide *pro bono* legal assistance to litigants unable to afford attorney fees. Third, the legal aid system should be strengthened by establishing a Legal Aids Board with adequate and sustainable funding, and by introducing legal expenses insurance and third-party litigation funding as an alternative to address attorney fees challenges.

To ensure the effective implementation of the mandatory legal representation model while promoting equitable access to justice, the following recommendations are proposed: (i) Amending civil procedural law to shift from a non-mandatory to a mandatory legal representation, allowing for attorney fees to be included as

⁷⁵ Widya Naseva Tuslian, 'Assessing Development of Access to Justice in Indonesia Through Capability Approach', 2020, 226–30 <https://doi.org/10.2991/AEBMR.K.200321.030>

⁷⁶ A. A. Vasilev and Yu. V. Pechatnova, 'THE CONCEPT OF ECONOMIC ANALYSIS OF LAW BY RICHARD POSNER', *Вестник Пермского Университета. Юридические Науки*, 2024, 528–40 <https://doi.org/10.17072/1995-4190-2024-66-528-540>

⁷⁷ Warmiyana Zairi Absi and others, 'Sanksi Terhadap Advokat Yang Mengabaikan Kepentingan Kliennya', *Disiplin: Majalah Civitas Akademika Sekolah Tinggi Ilmu Hukum Sumpah Pemuda*, 29.1 (2023), 1–10 <https://doi.org/10.5281/zenodo.7721037>

⁷⁸ Nabila Annisa and others, 'Persoalan Pelanggaran Kode Etik Dan Tanggung Jawab Profesional Dalam Profesi Advokat', *Das Sollen: Jurnal Kajian Kontemporer Hukum Dan Masyarakat*, 3.01 (2025), 1–1 <https://doi.org/10.11111/nusantara.xxxxxx>

⁷⁹ Raden Ajeng Ferennata Aryaningrat Agistu and Kadek Julia Mahadewi, 'Analisis Kode Etik Pengacara Implikasi Terhadap Kepercayaan Publik Terhadap Profesi Hukum', *Jurnal Panorama Hukum*, 9.2 (2024), 206–18 <https://ejournal.unikama.ac.id/index.php/jph/article/view/11401/4750>

litigation costs compensable by the losing party based on the principle of reasonableness. (ii) Revise the Legal Aid Law to strengthen the legal aid system, ensuring broader access, higher quality services, and sustainable institutional support. (iii) Amend the Advocates law to require reasonable, transparent, and accountable attorney fee arrangements. Impose strict penalties on advocates who refuse to *pro bono* service or violate the Code of Conduct, with an independent oversight body holding disciplinary authority.

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