# BUILDING PRO BONO CULTURE IN THAILAND'S LEGAL BUSINESS AS A CONTRIBUTION TO SUSTAINABLE DEVELOPMENT*

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## ABSTRACT

Law-related matters and the justice system are complicated. It consists of complex details, rules, and procedures. Not to mention the costs that the users have to pay. To understand and implement the rights in law-related matters and through the justice system, one needs to have the knowledge and a good understanding of the laws, rules, and procedures required. If they do not, they would need to have the resources up to the certain level to afford a legal representative of their own. For many people that do not have either the knowledge or the resources required, their chances to access to justice are almost as good as none.

The justice gap and the problem of unequal access to justice are still in evidence in many countries around the world, including Thailand. While there are many attempts and efforts in tackling such problem; either by the public or the civil society sectors in Thailand, the problem still exists. These problems affect not only the poor people but a wide range of individuals and organizations that cannot afford a legal representative or unable to obtain the help they need due to various factors.

Pro bono has been recognized on an international stage as an effective mean to provide legal services and develop equal access to justice for all. Pro bono is a service that requires specific skills of professionals to provide services to those who are unable to afford them. Although the term 'pro bono' may be used by different professionals that involve the offering of free services, it is usually referred to the provision of legal services.

There is no distinctive explanation why there is a low number of pro bono activities in Thailand. However, the author strongly believes that in taking a greater role in supporting and encouraging pro bono culture by the Thai government, the

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pro bono culture in Thailand's legal business would grow stronger than ever. Whereas, it would provide the public with a greater chance to implement and protect their right of access to justice. At the same time, lawyers would have their opportunities to fulfill the professional and ethical obligations that they owed to the society while gaining various benefits in business aspects. The State would have the support from the lawyers in providing and enhancing access to justice in Thailand. Also, building pro bono culture in Thailand will further result as a contribution to sustainable development under the 2030 Agenda for Sustainable Development of the United Nations; particularly the Sustainable Development Goal 16.

This article will focus on the limitations of the current legal aid system in Thailand, and the study of pro bono practices and approaches in foreign countries as a model for the development of pro bono culture in Thailand's legal business.

**Keywords**: pro bono, legal aid, access to justice, sustainable development

**บทคัดย่อ**

กระบวนการยุติธรรมและประเด็นต่าง ๆ ที่มีความเกี่ยวข้องกับกฎหมายถือได้ว่าเป็นสิ่งที่ยุ่งยากและซับซ้อน ด้วยสิ่งเหล่านี้ประกอบไปด้วยรายละเอียด กฎระเบียบและแนวทางการดำเนินงานที่ซับซ้อนและเข้าใจได้ยาก รวมไปถึงค่าใช้จ่ายต่าง ๆ ที่ผู้ใช้บริการต้องชำระเพื่อจะได้เข้าถึงการบริการ การจะบังคับใช้สิทธิในประเด็นต่าง ๆ ที่มีความเกี่ยวข้องกับกฎหมายหรือการจะบังคับใช้สิทธิผ่านกระบวนการยุติธรรมได้นั้น จะต้องอาศัยความรู้และความเข้าใจในกฎหมาย กฎระเบียบและกระบวนการที่เกี่ยวข้องอย่างแท้จริง หากบุคคลไม่ทราบในสิ่งดังกล่าวก็จำเป็นที่จะต้องจ้างที่ปรึกษาทางกฎหมายหรือทนายความเพื่อมาให้บริการในส่วนนี้ ซึ่งการจะจ้างที่ปรึกษากฎหมายหรือทนายความได้นั้นก็ต้องอาศัยทรัพย์สินจำนวนมากพอสมควร เช่นนี้แล้ว หากบุคคลไม่มีทั้งความรู้และทรัพย์สิน โอกาสที่เขาเหล่านั้นจะเข้าถึงความยุติธรรมได้ก็แทบจะไม่มี

ปัญหาเรื่องช่องว่างและการเข้าถึงความยุติธรรมยังคงมีอยู่ในหลายประเทศทั่วโลก รวมถึงประเทศไทย แม้ว่าจะมีความพยายามจำนวนมาก ทั้งจากภาครัฐและภาคประชาสังคม ในการแก้ไขปัญหาดังกล่าวในประเทศไทย แต่ก็ยังไม่สัมฤทธิ์ผล ซึ่งปัญหาเหล่านี้มิได้ส่งผลกระทบเพียงแค่กลุ่มผู้มีรายได้น้อย แต่ส่งผลกระทบต่อผู้คนในวงกว้าง รวมถึงกลุ่มองค์กรต่าง ๆ ที่ไม่มีทรัพย์สินเพียงพอในการจ้างที่ปรึกษากฎหมายหรือทนายความ หรือไม่สามารถเข้าถึงการบริการดังกล่าวได้ด้วยเหตุผลอีกหลากหลายประการ

Pro bono หรือการให้ความช่วยเหลือทางกฎหมายโดยไม่คิดค่าใช้จ่ายของนักกฎหมาย เป็นมาตรการหนึ่งที่ได้รับการยอมรับในระดับนานาชาติว่าช่วยส่งเสริมให้เกิดการเข้าถึงความยุติธรรมอย่างเท่าเทียมกันของทุกคนได้ pro bono เป็นการให้บริการที่ต้องอาศัยความเชี่ยวชาญเฉพาะด้านหรือวิชาชีพเฉพาะ ให้แก่บุคคลที่ต้องการความช่วยเหลือด้านดังกล่าว แม้คำว่า pro bono จะสามารถใช้ในการให้ความช่วยเหลือทางวิชาชีพด้านอื่นได้ แต่ส่วนมากมักใช้อ้างถึงการให้ความช่วยเหลือทางกฎหมายโดยไม่คิดค่าใช้จ่าย

แม้ว่าจะไม่มีคำอธิบายที่ชัดเจนถึงอัตราการให้บริการ pro bono ในประเทศไทยที่ค่อนข้างต่ำ แต่ผู้เขียนเชื่อว่าหากรัฐบาลให้การสนับสนุนและส่งเสริม pro bono อย่างจริงจังแล้ว วัฒนธรรม pro bono จะสามารถเติบโตในธุรกิจกฎหมายไทยได้อย่างมั่นคงและยาวนาน ซึ่ง pro bono จะช่วยเพิ่มช่องทางให้สังคมและประชาชนในการบังคับใช้และปกป้องสิทธิของตนได้มากขึ้น โดยเฉพาะสิทธิในการเข้าถึงความยุติธรรม นักกฎหมายเองก็ได้รับโอกาสที่จะบรรลุตามหน้าที่ทางจริยธรรมและวิชาชีพที่ตนมีต่อสังคม ขณะที่ได้รับประโยชน์ในทางธุรกิจอย่างควบคู่กันไป รัฐบาลเองก็ได้รับการสนับสนุนจากเหล่านักกฎหมายและภาคเอกชนในการยกระดับการเข้าถึงความยุติธรรมอย่างเท่าเทียมกันของทุกคน ขณะเดียวกัน การสนับสนุนวัฒนธรรม pro bono ดังกล่าว ยังถือเป็นการเสริมสร้างให้เกิดการพัฒนาที่ยั่งยืนภายใต้กรอบการพัฒนาที่ยั่งยืนปี 2030 ของสหประชาชาติ (2030 Agenda for Sustainable Development of the United Nations) โดยเฉพาะเป้าหมายการพัฒนาที่ยั่งยืนที่ 16 (Sustainable Development Goal 16)

บทความนี้จะวิเคราะห์ถึงข้อจำกัดของระบบการให้ความช่วยเหลือทางกฎหมายของประเทศไทยในปัจจุบัน พร้อมศึกษาแนวทางการพัฒนาและส่งเสริม pro bono ในต่างประเทศ ซึ่งจะนำมาวิเคราะห์และปรับใช้ในฐานะต้นแบบเพื่อการพัฒนาวัฒนธรรม pro bono ในธุรกิจกฎหมายของประเทศไทยต่อไป

คำสำคัญ: pro bono, การให้ความช่วยเหลือทางกฎหมายโดยไม่คิดค่าใช้จ่าย, การเข้าถึงความยุติธรรม, การพัฒนาที่ยั่งยืน

## BACKGROUND ON PRO BONO AND ITS LINK TO SUSTAINABLE DEVELOPMENT

'Pro bono' is short for a Latin term *pro bono publico*, meaning 'for the public good.' Some may simply refer the term as 'law for free,' which believed to inspire an interest in the provision of free legal services by lawyers employed in the for-profit sector in many countries.[1] While there is no definite definition of pro bono, some definitions have been developed, along with the working schemes and models to support pro bono. Most definitions of pro bono have the same similar factors that are the provision of legal assistance by a lawyer for those in need but unable to afford it or cannot access such services at all. Pro bono clients can either be an individual or an organization of public character (such as charitable and community organizations.) Such provision of legal assistance and legal services shall be free-of-charge or provided with no expectation of fee. However, some definitions of certain organizations may go further as allowing pro bono services to be provided with reduction of fee.[2]

Pro bono works cover a wide range of legal services. For example provision of legal advice, legal representation in all matters, participation in free legal education, assist with the drafting of legislation, provision of legal training and support through mentoring, project management and exchanging information resources, and so forth. In addition to the satisfaction of helping others, pro bono also provides other benefits in the business aspect. Some examples of such benefits are recruiting of new lawyers; retention of productive employees; marketing/reputation and business development; training and professional development/experience; and networking opportunities.[3]

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[1] In order to find a suitable and simplify English translation for pro bono, Lord Chief Justice Woolf ran a competition in England with the winning term being 'law for free'.

[2] For example: the Law Council of Australia, the Law and Justice Foundation of New South Wales, the American Bar Association, and so forth.

[3] Esther F Lardent, *Making the Business Cases for Pro Bono 1* (1st edn, The Pro Bono Institute 2000); Esther F Lardent, 'Pro Bono Work is Good for Business' [2001] The National Law Journal; Jason M Thiemann, 'The Past, The Present, And The Future Of Pro Bono: Pro Bono As A Tax Incentive For Lawyers, Not A Tax On The Practice Of Law' (2005) 26 Hamline Journal of Public Law & Policy; Ellyn H Josef, 'Is Bigger Better? The Large Law Firm Model of Meeting the Pro Bono Obligation' (2010) 15 South Texas Law Review; April Faith-Slaker, 'What We Know And Need To Know About Pro Bono Service Delivery' (2016) 67 South Carolina Law Review; Lapp, Kevin and Alexa Shabecoff. *Pro Bono Guide: An Introduction to Pro Bono Opportunities in the Law Firm Setting* (2nd edn Cambridge, MA: Harvard Law School, nd).

Pro bono has been recognized on an international stage as an effective mean to provide legal services and develop equal access to justice for all. Having the strong foundation of pro bono culture can also result as a contribution to sustainable development under the 2030 Agenda for Sustainable Development of the United Nations; particularly the Sustainable Development Goal 16.

The United Nations has set out several areas that they think need to be achieved to eradicate poverty, and provide equality and good life to the people of the world; that are access to justice, the rule of law, property rights, and right to make a living.[4] While access to justice is considered as one of the many factors of the rule of law, access to justice itself also has an importance of its own. It is considered to be one of the important factors in democratic society and is the issue that countries across the world have put their attention to it. By providing equal access to justice to the society, many believe it would also contribute to enhancing and strengthening the level of the rule of law.

When the 2030 Agenda for Sustainable Development was adopted by the United Nations General Assembly on 25th September 2015, the rule of law and access to justice was also mentioned as one of the goals to achieve sustainable development. Goal 16, to '[p]romote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all level',[5], appears to address rule of law broadly with a focus on peace and security, social justice, access to justice, and strong governance. In this regard, Goal 16.3 provides more focus on the rule of law as to '[p]romote the rule of law at the national and international levels and ensure equal access to justice for all.'

## PRO BONO PRACTICES AND APPROACHES IN FOREIGN COUNTRIES

Both the United States (US) and Singapore are identified as having innovative pro bono approaches. The US is arguably seen as a leader in the provision of pro bono services. Many pro bono initiatives were started by the US,

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[4] Chonticha Kiattisuk, 'People Access to Justice in Court Procedure: Study Case on the Provision of Legal Aid by the Government' (Masters' Degree, Thammasat University 2011), Introduction (ชลธิชา เกียรติสุข, "การเข้าถึงกระบวนการยุติธรรมของประชาชนในการดำเนินคดีทางศาล: ศึกษากรณีการให้ความช่วยเหลือทางด้านทนายความในคดีแพ่งโดยรัฐ," (วิทยานิพนธ์ ปริญญามหาบัณฑิต, คณะนิติศาสตร์ มหาวิทยาลัยธรรมศาสตร์, 2554), บทนำ).

[5] The United Nations, 'Transforming our world: the 2030 Agenda for Sustainable Development' (A/RES/70/1), adopted by the General Assembly Resolution on 25 September 2015 <http://www.un.org/ga/search/view_doc.asp?symbol=A/69/L.85&Lang=E> accessed 9 January 2017.

such as the aspirational or mandatory pro bono targets and the inclusion of financial contributions as a compromised form of pro bono services. Singapore, while not a global leader like the US, has done several admirable initiatives and was considered as one of the leading countries in Asia in the provision of pro bono. It could be said that Singapore is the most advanced and strongest supporter among Southeast Asia countries in the provision of pro bono services.

While the US and Singapore may have different pro bono practices and approaches in detail, certain practices and approaches are well adopted in both countries. Such practices and approaches are:

**1) Adoption of Pro Bono Targets**

For the US, there is no yearly mandatory pro bono targets imposed by state bars. However, the American Bar Association (ABA) has provided in its famous Model Rule 6.1: the 50 hours aspirational pro bono target that recommends lawyers to follow.[6] Although the ABA Model Rules does not have any enforcement; not mandatory or binding, several state bars have adopted the Model Rule or similar variations. The states that have adopted the Model Rule are Colorado, Idaho, Montana, North Carolina, Nebraska, Nevada, New Hampshire, Tennessee, Utah, Vermont, Washington and Wyoming. Other states are either have same hours of aspirational pro bono target with modification in the details, fewer hours with the minimum of 20 hours, totally different pro bono policies, or no aspirational pro bono targets at all.[7]

For Singapore, there is currently no mandatory pro bono target in Singapore. However, there were attempts in trying to increase pro bono activities in Singapore through the introduction of pro bono targets. In 2006, the Law Society of Singapore had made a recommendation that every Singapore qualified lawyers should commit to at least 25 hours of pro bono work per year. Many law firms have joined in the challenge; entering into agreements with the Pro Bono Services office of the Law Society of Singapore.[8] The Law Society of Singapore is also done an

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[6] 'Model Rules Of Professional Conduct: Table of Contents' (*Americanbar.org*) <http://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/model_rules_of_professional_conduct_table_of_contents.html> accessed 9 January 2017.

[7] 'State-By-State Pro Bono Services Rules' (*Americanbar.org*, 2010) <http://www.americanbar.org/groups/probono_public_service/policy/state_ethics_rules.html> accessed 9 January 2017.

[8] *Law firm to support pro bono work for underprivileged*, STRAITS TIMES (21 March 2012). For more information, please go to <http://probono.lawsociety.org.sg/Pages/About-Us.aspx> accessed 10 July 2017.

Annual Pro Bono Hour Survey of Practicing Lawyers every year since 2009. According to the Law Society of Singapore Annual Report 2015, it indicates that the total number of pro bono hours declared by Singapore qualified lawyers has increased every year from 2009 to 2014; from 35,634 hours in 2009 to 68,256 hours in 2014.[9] The aspiration pro bono target in Singapore stayed the same as at least 25 hours per year since its introduction until now.

### 2) Reporting of Pro Bono Activites

Pro bono reporting system has its purpose in getting lawyers' attention to their profession and ethical obligation concerning the provision of pro bono services. The information gained from the report would enable the relevant agencies in determining the current status of pro bono activities in the states, challenges occurred, and accomplishments done. It is also valuable for any research in relation to pro bono and provision of legal assistance. The availability of these information also enables lawyers who dedicate themselves to pro bono works to receive accreditation and admiration for their effort. Last but not least, it will also uphold lawyers' image in the eyes of the public.[10] There are two kinds of pro bono reporting systems. One is the mandatory pro bono reporting model, and another is the voluntary pro bono reporting model.

For the US, Florida is the first state that adopted mandatory pro bono reporting model in 1993. Other states are Maryland, Hawai, Illinois, Mississippi, Nevada, New Mexico, New York and Indiana. Other states are either adopted the voluntary pro bono reporting model or do not require lawyers in the state to make any report at all.[11]

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[9] Law Society of Singapore, 'Annual Report 2015' (Law Society of Singapore 2015) <http://www.lawsociety.org.sg/Portals/0/AboutUs/AnnualReport/2015/The%20Law%20Society%20of%20Singapore%20Annual%20Report%202015.pdf> 56 accessed 9 January 2017. Others annual reports are available at <http://www.lawsociety.org.sg/AboutUs/AnnualReport.aspx> accessed 10 July 2017.

[10] Jason M Thiemann, 'The Past, The Present, And the Future of Pro Bono: Pro Bono as a Tax Incentive for Lawyers, Not a Tax on the Practice of Law' (2005) 26 Hamline Journal of Public Law & Policy; The American Bar Association, 'State Pro Bono Reporting: A Guide For Bar Leaders And Other Considering Strategies For Expanding Pro Bono.' (The American Bar Association) <http://www.americanbar.org/groups/probono_public_service/policy/guide_for_bar_leaders_and_others.html> accessed 9 January 2017.

[11] For more information, please go to <http://www.americanbar.org/groups/probono_public_service/ts/pbreporting.html> accessed 10 July 2017.

For Singapore, the new practice rules for mandatory reporting of specified pro bono services were introduced to the society on 1st March 2015.[12] The Rule requires lawyers with practice certificate to report their conduct of any pro bono activities as specified in Clause 2 of the Rule.

### 3) Creation of New Pro Bono Institutions

The US has the American Bar Association Standing Committee on Pro Bono and Public Service (hereinafter referred to as 'the Standing Committee') that was established with the mission of expanding and enhancing the provision of legal assistance, including pro bono, in order to ensure access to justice. Among many of their pro bono enhancement and support projects, the Standing Committee operates a huge data collections and surveys, which made great contribution to the monitoring of pro bono activities across the US, the finding of challenges and accomplishments in providing pro bono, and also for further research.

There are other pro bono institutions that work as a matchmaker between the legal service providers and those in need, or so called 'clearing house'. They connect law firms and legal teams around the world with high-impact NGOs and social enterprises working to create social and environmental change through their online platform.[13]

For Singapore, the Law Society of Singapore has established its Pro Bono Services Office on 10th September 2007. The Pro Bono Services Office provides a wide range of programme and activities that enhance and support the provision of legal assistance in Singapore, including Pro Bono. It also acts as a clearinghouse that matches the right law firms/individual lawyers to those in need, which is considered a vital part in providing effective pro bono services.[14]

### 4) Achievement Awards Honoring Pro Bono Services

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[12] 'Singapore Statutes Online - Legal Profession (Mandatory Reporting of Specified Pro Bono Services) Rules 2015' (*Statutes.agc.gov.sg*) <http://statutes.agc.gov.sg/aol/search/display/view.w3p;page=0;query=CompId%3A31cd008f-f2c5-4d38-ad2d-d6967e120856;rec=0> accessed 9 January 2017.

[13] The service is highly valuable, since there are many legal providers that do not know where to find pro bono clients and many of those in need who do not know where to find legal assistance. In having a clearinghouse, the provision of pro bono would be a lot more effective as they are able to match the perfect couple on both demand and supply side, while cooperating between those two.

[14] For more information, please go to <http://probono.lawsociety.org.sg/Pages/About-Us.aspx> accessed 10 July 2017.

Usually, when we were young if we did something good, we would get a compliment and sometimes a recognition. The delegation of achievement awards honoring pro bono service is also built on the same idea. It may be considered as a standard incentive.[15] By giving out the awards, lawyers who dedicated themselves to pro bono cases would get the compliment, accreditation, and recognition that they deserve.

## LIMITATIONS OF THE CURRENT SYSTEM

The justice gap and the problem of unequal access to justice are still in evidence in many countries around the world, including Thailand. While there are many attempts and efforts in tackling such problem; either by the public or the civil society sectors in Thailand, the problem still exists. This analytical study will emphasize on the limitations of Thailand's current systems in providing equal access to justice and the shortcomings of the current legal aid services in Thailand.

### Limitations arise from the Clients Conditions: the Financial Eligibility to Receive Legal Aid Services

As many of the legal aid services stated that a person who applies for their services must be an indigent person or must be considered poor enough, this would create a justice gap for many people who are not considered as 'poor' but also do not have enough resources to hire a legal representative of their own (such as many people in the middle-class range.)

This justice gap could be solved (maybe not all, but at least some part of it) by the provision of pro bono services. Pro bono, while set to render their services to those in need, which usually refers to the poor, do not have such specific requirement. There is no requirement that pro bono clients must be an indigent person or 'poor.' Pro bono lawyers are the one who would decide whether to do the case. Such considerations are usually on an ad-hoc basis where the clients would be considered case by case, and that there are many factors involve more than just the financial eligibility of the clients (such as the matching field of expertise of the lawyers and the pro bono matters, or whether or not such pro bono matters are a public matter).

### Limitations arise from the Clients Conditions: the Legal Status of the Clients

[15] Jason M Thiemann, 'The Past, The Present, and The Future of Pro Bono: Pro Bono as a Tax Incentive for Lawyers, Not a Tax on the Practice of Law' (2005) 26 Hamline Journal of Public Law & Policy.

Many legal aid providers provide their services to an individual only. This would leave a justice gap for many organizations and institutions that need legal assistance and services. Many organizations and institutions of public characters; such as charitable, religious, civic, community, governmental and educational organizations, do not have much funding. Many of them do not have enough resources to afford a legal counsel or a legal representative of their own. Therefore, with the current system that most legal aid services cover only the individuals, these organizations and institutions would struggle to find free legal assistance and services, or a reduced-fee one.

This justice gap could be covered by the provision of pro bono. As many definitions of pro bono works also cover the provision of legal assistance to charitable, religious, civic, community, governmental or educational organizations. Mostly in the matters designed to address the needs of persons of limited means.

**Limitations of the State-Assigned Counsel and the Lawyer Council of Thailand Volunteer-Lawyer Schemes**

The limitation of existing legal aid services mentioned in this clause will focus on the state-assigned counsel and the volunteer-lawyer of the Lawyer Council of Thailand. As the legal aid services provided by law schools are mostly limited to the dissemination of legal knowledge and the provision of basic legal advice, which in reality would not meet the level of unmet legal need of legal assistance.

One limitation of the state-assigned counsel schemes is that it does not cover civil and commercial matters. The use of the state-assigned counsel schemes in leveraging between normal citizens and the State in criminal case proceeding is encouraging because the State usually is the party in a case with more resources, more power, and more bargaining power. By giving an accused or a defendant their right to counsel is like providing them with a tool and resources to equalize between the parties and to be able to stand for their rights more effectively. However, it could be said that giving the right to counsel in a criminal proceeding only is not comprehensive enough. The reason for that is because the difference in power, resources and bargaining power exist not only in criminal proceedings, but also in civil and commercial proceedings.

**Practical Limitations**

On 13 June B.E. 2559 (2016), the National Reform Steering Assembly Commission on Law and Justice System has submitted their report on the Reform of Volunteer-Lawyer, Assigned Counsel, and Child or Juvenile Legal Counsel (hereinafter referred to as 'the Report') to the National Reform Steering Assembly for their consideration. The Report described the concerned limitations of the state-

assigned counsel and volunteer-lawyer schemes, which are lack of human resources; low compensation; lack of experienced lawyers; and lack of sufficient training.

**Limitations arise from the Unawareness of the Society**

Equal access to justice cannot be achieved by the initiative and conduct of the State only. It also requires awareness from the people of their rights and their obligations in protecting their rights. However, in reality, there are still many people in the society that are not aware of their rights and, therefore, cannot fully implement or protect their rights, including the right of access to justice.

## CONCLUSION

The term 'access to justice' can be defined in many different ways, broad or narrow. However, most generally, access to justice is usually referred to as means or mechanism to assure that the person in need will get the help they need to protect their legal rights, solve their law-related problems, and have access to the justice system.

It is the duty of the State to assure equal access to justice for all people, including foreigners within their territory. However, the problems of unequal access to justice and the justice gaps are overcoming barriers to accessing the justice system and involves many causes. Limitations of the current system in ensuring and enhancing equal access to justice for all may arise from many factors. It may arise from the laws which certified and provided approaches to enhance access to justice itself that is not comprehensive enough. For example: the provision of a State-Assigned Counsel under Thai Criminal Procedure Code that focused only on the right to counsel of an accused or a defendant, but not the victims. It may also arise from other factors; such as the financial eligibility required by the legal aid providers that the clients need to meet to receive their services; or the condition on the legal status of the clients that they need to be an individual only not an organization. Also, there are other practical limitations such as lack of human resources, lack of sufficient funding, lack of experienced lawyers, and lack of sufficient training. With all these limitations and shortcomings, only the commitment from the public and the civil society sectors are not enough to close the justice gaps or solve all the problems. We also need the commitments from the private sector and individual lawyers in doing so.

Pro bono is usually referred to the professional work undertaken voluntarily and without payment. Unlike traditional volunteerism, it is a service that requires specific skills of professionals to provide services to those who are unable to afford them. Although the term 'pro bono' may be used by different professionals that

involve the offering of free services, such as accountant or architect, it is usually referred to the provision of free legal services.

Pro bono culture can be driven by the firm itself, by a policy given by the head office to its branches requiring the work on pro bono, or by the promotion of a government. However, while the legal profession and the legal business in Thailand are quite flourished, the number of pro bono activity in Thailand is rather low. However, the author strongly believes that in taking a greater role in supporting and encouraging pro bono culture by the Thai government, the pro bono culture in Thailand's legal business would grow stronger than ever. It would also gives the public more options and channels to implement and protect their right of access to justice. At the same time, lawyers would have their opportunities to fulfill the professional and ethical obligations to the society, while gaining various benefits in business aspects. The State would have the support from the lawyers in providing and enhancing access to justice in Thailand, which would further result in the contribution to sustainable development under the 2030 Agenda for Sustainable Development of the United Nations with its 17 Sustainable Development Goals; in particular Goal 16.

Both the United States (US) and Singapore are identified as having innovative pro bono practices and approaches. While the US and Singapore may have different pro bono practices and approaches in detail, certain practices and approaches are well adopted in both countries that are (1) the adoption of pro bono targets; (2) the reporting of pro bono activity; (3) the creation of new pro bono institution; and (4) the granting of achievement awards honoring pro bono services. The author used these pro bono practices and approaches as a model and recommendations for the development of pro bono culture in Thailand's legal business, with several attentions and remarks that need to be taken into consideration as provided in Clause 4.5 of this Thesis. The author fully hopes that the recommendations proposed by the author, which will be applied solely to the licensed lawyers in Thailand, would only be the beginning of a broader and stronger pro bono culture in Thailand's legal business.

## RECOMMENDATIONS

### 1) Adoption of Voluntary Pro Bono Targets

The introduction of mandatory pro bono targets would be too dramatic of a change for Thailand's legal business. Nevertheless, if no pro bono targets were set at all, the lawyers in Thailand may not feel the pressure or the need to render pro bono services and eventually nothing might change. Therefore, the adoption of voluntary pro bono targets for licensed lawyers seems like the best option available. It would raise awareness of the licensed lawyers of their professional and ethical

obligations to the society. The definition and scope of pro bono services may be similar to those introduced by Rule 6.1 of the American Bar Association.

However, further study needs to be conducted to see how many pro bono hours are appropriate to be set as a target, whether the online provision of legal assistance and services could be and should be counted as pro bono works, and so forth.

**2) Mandatory Yearly Reporting of Pro Bono Activity**

By enforcing in parallel with the adoption of voluntary pro bono targets, the adoption of mandatory yearly reporting of pro bono activity would give licensed lawyers a subtle pressure to provide pro bono services. The mandatory yearly reporting would require licensed lawyers to look back throughout the year of what they have done to fulfill their professional and ethical obligations in term of the provision of pro bono services. Some lawyers may feel the pressure to render such pro bono services if they realize how far back they have fallen behind their professional and ethical obligations owed to the society.

The adoption of mandatory reporting of pro bono activity would also provide us with the information that can use to determine the current status of pro bono activities in Thailand. It is also valuable for any research about pro bono. The availability of this information also enables lawyers who dedicate themselves to pro bono works to receive accreditation and admiration for their effort. It will also uphold lawyers' image in the eyes of the public.

However, there need to be further studies on how the reporting system should be, how to monitor the reporting system efficiently and effectively, how to ensure that such licensed lawyers provide the pro bono services as reported, and so forth.

**3) Creation of New Pro Bono Institution**

The new pro bono institution would dedicate their work solely on the management, supervising, promoting and raising awareness about pro bono services that would be a great kick start in encountering the problem of unequal access to justice and the justice gaps.

By providing the services of a referral organization, or a clearinghouse, this new pro bono institution would actively refer and match those in need of legal assistance and services, both an individual and an organization/institution, to the pro bono service providers that have the field of expertise required for the case. The new pro bono institution would help raise awareness for both the people in need of help and the pro bono service providers that there is someone who is ready to provide and accept such help. The new pro bono institution would also dedicate itself to the promotion of pro bono services to the legal profession and the broader community,

which would help in encountering the limitations arise from the unawareness of the society as mentioned earlier.

The agency who will be responsible for this new pro bono institution may be the Lawyer Council of Thailand, as it is already the responsible agency in governing the conduct of licensed lawyers, including the registration and issuance of the lawyer license. The Lawyer Council of Thailand could establish this new pro bono institution as a new department or a new organization under them. However, the Lawyer Council of Thailand is currently experiencing a lack of funding. Therefore, they would need more funding from the government or other organizations/institutions if they will be responsible for the new pro bono institution.

The establishment of the new pro bono institution as an independent organization is also a considerable choice. As the provision of pro bono services could and should have a wider range than the provision by licensed lawyers only, it could cover the provision of pro bono services by law firms, in-house legal departments, and lawyers that do not hold a licensed lawyer. However, various issues still need to be taken into consideration; such as the sources where this new pro bono institution would receive their funding from; how their organizational structure should be; how they could build/have enough credibility and reliability that lawyers and other organizations would join them; and so forth.

**4) Achievement Awards Honoring Pro Bono Services**

By giving out the awards, lawyers who dedicated themselves to pro bono cases would get the compliment, accreditation, and recognition that they deserve. It would also contribute to raising awareness of the society about the provision of pro bono services, which would tackle the limitations arise from the unawareness of the society as mentioned earlier.

**5) Amendment of Relevant Legislation**

In connection with the author's recommendation on the adoption of voluntary pro bono targets and the mandatory reporting of pro bono activity, there should be an amendment to the Lawyers Act B.E. 2528 (AD 1985). The voluntary pro bono targets should be put as another Section in the Act as the professional obligation that the licensed lawyers are expected to meet. The mandatory yearly reporting of pro bono activity should be put as another Section in the Act as the professional obligation that the licensed lawyers are required to do every year. Also, the definition of pro bono in Thailand context shall be added into Section 4 of the Lawyers Act, which provides definitions of various terms used in the Lawyers Act.

Another proposed amendment of the relevant legislations is on the Lawyer Council's Regulation on Lawyers Ethic B.E. 2529 (AD 1986), in particular, Clause

17. As mentioned earlier, many people are still unaware of their rights and the channels to implement or protect their rights. Therefore, there should be more advertisement, campaigns, and schemes in raising awareness of the people of their rights and the channels available for them. However, Clause 17 of the Lawyer Council's Regulation on Lawyers Ethics forbids the licensed lawyers from announcing or advertising that they are providing pro bono services. Therefore, Clause 17 of the Lawyer Council's Regulation on Lawyers Ethics should be amended to allow licensed lawyers to announce or advertise if they are providing their legal assistance and services for free so that the public would be aware of such services existed to help them.

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