

# Optimizing the Role of the Legal Aid Post of the Consultation and Legal Aid Institute of the Faculty of Sharia, Antasari State Islamic University in Providing Legal Services For the Community (Study on Several Religious Courts in South and Central Kalimantan)

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Submitted 21-07-2022 | Revised 13-09-2022 | Accepted 19-12-2022

## Abstract

*This study evaluates the role of Posbakum (Legal Aid Post) at the Faculty of Sharia UIN Antasari in legal services at the Religious Courts in South and Central Kalimantan. Findings indicate that the Posbakum's role is not yet optimal, prompting the LKBH management to propose measures such as enhancing the quality of staff, adjusting the number of staff and salaries, and improving collaboration with relevant stakeholders. Financial constraints and stagnation in collaboration were identified as obstacles, limiting the effectiveness of Posbakum staff. Optimization efforts require additional funding, accreditation, and active collaboration with other organizations. Partnerships are considered a solution for accelerating accreditation and expanding services, emphasizing the importance of financial support, enhanced collaboration, and increased resources to enable Posbakum to play an optimal role in providing legal services to the community.*

**Keywords:** *Legal Aid Post, Faculty of Sharia, UIN Antasari*

## Abstrak

Penelitian ini mengevaluasi peran Posbakum (Pos Bantuan Hukum) Fakultas Syariah UIN Antasari dalam pelayanan hukum di Pengadilan Agama di Kalimantan Selatan dan Kalimantan Tengah. Temuan menunjukkan bahwa peran Posbakum belum optimal, sehingga mendorong manajemen LKBH untuk mengusulkan langkah-langkah seperti peningkatan kualitas staf, penyesuaian jumlah staf dan gaji, dan peningkatan kolaborasi dengan pemangku kepentingan terkait. Kendala keuangan dan stagnasi kolaborasi diidentifikasi sebagai hambatan yang membatasi efektivitas staf Posbakum. Upaya optimalisasi membutuhkan tambahan dana, akreditasi, dan kolaborasi aktif dengan organisasi lain. Kemitraan dianggap sebagai solusi untuk mempercepat akreditasi dan memperluas layanan, dengan menekankan pentingnya dukungan keuangan, kolaborasi yang lebih baik, dan peningkatan sumber daya untuk memungkinkan Posbakum memainkan peran yang optimal dalam memberikan layanan hukum kepada masyarakat.

**Kata kunci:** Pos Bantuan Hukum, Fakultas Syariah, UIN Antasari



## Introduction

The 1945 Constitution of the Republic of Indonesia (hereinafter abbreviated as UUD RI 1945) Article 1 Paragraph (3) affirms that "The State of Indonesia is a state of law". As a state of law, it has the consequence that Indonesia must fulfill the three main principles of the rule of law, namely: *first*, the principle of the rule of law or legality, both the authorities and all citizens must submit and obey the law; *second*, the principle of recognizing and protecting human rights and fair and civilized humanity; *third*, the availability of *an independent judiciary* that has the power to uphold the rule of law and human rights in the event of a violation or legal dispute in society.

It is within this framework of law enforcement that Article 24 Paragraphs (1 & 2) of the 1945 Constitution of the Republic of Indonesia provides a guarantee of independence for its implementation. This means that judicial power is an independent power to administer justice in order to uphold law and justice. The perpetrators of judicial power are a Supreme Court (hereinafter abbreviated as MA) and the judicial bodies under it within the General Court, Religious Courts, State Administrative Courts, Military Courts, and by a Constitutional Court.

On this basis, the state considers the presence and existence of judicial institutions as actors of judicial power to be reliable. It is urgent in this context to put forward Yahya Harahap's explanation that the place and position of the judiciary in a state of law and a democratic society is still believed to be : "*pressure valve*" and "*the last resort*".

Become a *pressure valve* for all types of law violations. Become the last bastion of truth and justice, as a form of trust in the courts that function to uphold legal truth and justice.

This means that there is so much trust in its position and existence as a *pressure valve* and *the last resort*, the judiciary is still recognized as holding the role, function and authority as "*in guarding the freedom of society*", "*are regarding as custodian of society*" and "*judiciary as the upholders of the rule of law*"

The role, function and authority of the judiciary is not only as the guardian of public freedom, but also as the guardian of society and the executor of law enforcement. In tandem with these roles, functions and authorities, the place and position of the judiciary is still respected as "*servicing a very special function*", namely as a body or institution that has a special function.

The specialty of the function he carries out is inseparable from his position as *in guarding the freedom of society*, *are regarding as custodian of society* and *upholders of the rule of law*. It is not surprising then that judges are considered as one of the apparatus of state power, which has a "*separate class*" from other government officials. experts give their recognition through the expression "*judges a class apart from governmental officers*".

Citing his opinion JR. Spencer further explained Yahya Harahap regarding the special position held by the court with the term "*The judgment was that of god*", namely the decision handed down by the court is likened to "God's Decision".

The paradigm as expressed above illustrates the prestige of the judiciary with its impressive, honorable, dignified and prestigious nature. However, these ideals are not always in line with the practice in the field. When disputes arise in the community and are connected to the world of justice, a pile of problems will arise, one of which is related to the program. Litigating before the court is not as easy as one might think. This is because the judicial system that is built is formalistic and technical in nature. Procedure before the court has a number of rules, starting from the entry of the case with a number of documents, the mediation process, the trial process until the birth of a decision and several efforts against the decision. Everything has specific rules. Deviating from this results in the lawsuit being declared inadmissible or NO (*Niet Ontvankelijke verklaard*), even

experiencing rejection. Another issue that also arises is the high cost of litigation. Especially if it is associated with the length of the process of resolving a case. This condition then gave birth to the hope that there would be legal assistance provided.

The issue of legal aid is not explicitly mentioned in the 1945 Constitution, but as mentioned at the beginning, Indonesia is a state of law. In the context of a state of law, it recognizes and protects human rights for all individuals, including the right to legal aid.

Based on a joint agreement between the House of Representatives of the Republic of Indonesia and the Government, Law of the Republic of Indonesia (hereinafter abbreviated as UURI) Number 16 Year 2011 on Legal Aid was enacted. It was passed on October 31, 2011 and promulgated on November 2, 2011. The consideration section of this law explains that the birth of the law is a state guarantee of the constitutional rights of every person to obtain recognition, guarantees, protection and legal certainty with justice and equal treatment before the law, as a means of protecting human rights. The provision of legal aid is carried out as a form of state responsibility for the poor as access to justice. The mandate bearer for the implementation of legal aid from Law No. 16/2011 on Legal Aid is the Ministry of Law and Human Rights.

In addition to the Ministry of Law and Human Rights, the Supreme Court and the judicial bodies under it, also implement legal aid for the poor. The legal aid is regulated in the Regulation of the Supreme Court of the Republic of Indonesia (hereinafter PERMA RI) Number 1 of 2014 concerning Guidelines for Providing Legal Services for the Poor in Court.

The issuance of this PERMA RI is a form of manifestation of a series of laws and regulations related to judicial bodies under the Supreme Court, which emphasizes that:

1. It is the right of every litigant to receive legal aid.
2. The state is responsible for bearing the costs of special cases for poor justice seekers.
3. Establishment of Legal Aid Post (hereinafter abbreviated as Posbakum) at each District Court, Religious Court and State Administrative Court specifically for poor justice seekers.

The rationale for the issuance of this PERMA RI is also due to the necessity for the Supreme Court and the judicial bodies under it to open wide access to justice seekers to obtain justice, including the poor.

Article 1 Paragraph (1) provides limitations on the form of legal services for the poor, namely *first*, case fee waiver services. *Second*, the conduct of out-of-court hearings. *Third*, the Posbakum service. Of the three forms of service referred to, only Posbakum services have a connection with professional institutions or organizations, or Legal Consultation and Assistance Institutions (hereinafter abbreviated as LKBH) in Higher Education as understood in Article 26 Paragraph (1).

LKBH as one of the variants of social institutions, by Soerjono Soekanto is termed a community institution. The assumption is that the notion of institution refers more to a form or norms and some rules, which become the identity of the institution in question. LKBH as a social institution has a role to play in increasing community productivity. On this basis, the development and management of social institutions cannot be separated from the factors that affect productivity. Therefore, the orientation of development is carried out based on the basics of systematic material, based on methods and stages that are in accordance with the objectives to be achieved.

LKBH as a social institution is also understood as a form of organization. LKBH development can be based on the development of an organization. Gibson et al concretize organizational development is done by efforts to improve the effectiveness and productivity of

the organization as a whole, in accordance with the role and vision of the organization. This can be done through several stages with the organizational development management model, namely the proper identification of the driving factors of change both internal and external. Next, focus on identifying the problems faced, choosing the right method, so as to anticipate obstacles that could occur. Finally, evaluate the method, to determine whether the development efforts that are being carried out are optimal or not.

The development of LKBH as a modern organization is very appropriate if analyzed from modern organizational theory by Ludwig von Bertalanffy and Kenneth Boulding which is familiarly called *General System Theory*. This theory uses systems in building its understanding of organizational facts and not only understands how the organization functions, but also how the organization relates to the environment. The optimal role played by the organizational institution will be greatly influenced by the environment in which the organization was born and interacts.

Considering LKBH as a modern organization, the concept of legal aid that is contemporary, becomes something urgent to use. According to Adnan Buyung Nasution et al, the appropriate concept is the concept of structural legal aid, namely the orientation of legal aid is aimed at creating the realization of laws that can renew unjust structures and reorganize existing inequality towards a more equitable structure.

Besides the concept of structural legal aid, the concept of responsive legal aid is also suitable for modern organizations because of its comprehensive nature.

There are at least three interrelated aspects according to Buyung Nasution in optimizing the provision of legal aid, namely *First*, the aspect of formulating the content of legal regulations. *Second*, the aspect of supervision that can keep the regulations made can be obeyed. *Third*, the aspect of public education which is directed at increasing public awareness of their rights and obligations.

One of the providers of Posbakum services is the LKBH of the Faculty of Sharia of UIN Antasari Banjarmasin. The provision of this service is based on cooperation between the Religious Courts under the Supreme Court and the Faculty of Sharia UIN Antasari Banjarmasin, which oversees LKBH, through a *Memorandum of Understanding (MoU)* Letter of Agreement for Services in Posbakum. From 2011 to 2020 LKBH Faculty of Sharia has collaborated with four Religious Courts. The pioneer Posbakum was at the Banjarmasin Religious Court, followed by Posbakum at the Pelaihari, Barabai and Kapuas Religious Courts.

Referring to Article 25 of PERMA RI No. 1 of 2014 the types of services provided by Posbakum in the Religious Courts are in the form of providing information, consultation, or legal advice. Providing assistance in the form of making legal documents related to the case and providing information related to the list of Legal Aid Organizations that can provide free legal assistance.

As stated in the MoU Letter of Service Agreement at Posbakum LKBH Faculty of Sharia, the following duties are described: *First*, providing legal aid services to applicants for legal aid. *Second*, providing legal aid services in the form of providing information, advice, consultation, making a lawsuit or application as a whole and ready to be submitted to table one.

The following is a description of case data that has received services from the Posbakum LKBH Faculty of Sharia which is located in several courts. Posbakum of Banjarmasin Religious Court in 2018 as many as 2,379 (two thousand three hundred seventy nine) cases. January-July 2019 as many as 1,380 cases. Posbakum of Pelaihari Religious Court in 2018 was 1,174 (one thousand one hundred seventy four) cases. January-July 2019 875 (eight hundred seventy five)

cases. Posbakum of Barabai Religious Court in 2018 was 446 (four hundred forty-six) cases. In 2019 January-July there were 491 (four hundred and ninety-one) cases. Posbakum of Kapuas Religious Court in 2018 amounted to 339 (three hundred thirty nine) cases. In 2019 March-July there were 145 (one hundred forty-five) cases. Based on the report data, it shows that the services provided by Posbakum in each Court have increased in terms of the number of litigants with various types of services provided. This means that LKBH Faculty of Sharia through Posbakum has taken a role in providing legal services for the community, especially the poor.

Based on the researcher's initial observations, the facts in the field show a number of interesting problems to be studied, namely that the implementation of the tasks of Posbakum LKBH Faculty of Sharia has not been fully optimized. This is related to the lack of work facilities owned. It is inversely proportional to the number of cases served, which tends to increase every year. Until now, there has been no special fund budgeted for the management of LKBH. The unavailability of facilities and infrastructure for LKBH operations in carrying out their duties. The lack of effective legal services that are active and responsive, as well as structural through legal counseling methods. Some of these problems are currently faced by Posbakum under LKBH Faculty of Sharia UIN Antasari Banjarmasin.

### **Efforts to Optimize the Role of Posbakum LKBH Faculty of Sharia UIN Antasari in Providing Legal Services for the Community at Several Religious Courts in South and Central Kalimantan**

Before the author enters the discussion of optimization efforts, it is better to first explore the results of research regarding the role of Posbakum LKBH Faculty of Sharia. Based on the narrative of informants consisting of the Pelaihari, Banjarmasin, Barabai and Kuala Kapuas Religious Courts as many as 5 (five) people, Posbakum Officers 10 (ten) people, LKBH administrators 4 (four) people and elements of the leadership of the Faculty of Sharia and UIN Antasari Banjarmasin 2 (two) people, several issues have emerged in the role of Posbakum LKBH Faculty of Sharia in several Religious Courts in South and Central Kalimantan.

Based on the data obtained, the author can inventory and categorize in several problems. In the presentation of this paper will be coupled with the efforts made following the author's analysis, namely:

a. **Issue: Posbakum Officer (Human Resources)**

Based on the results of interviews with the Religious Courts, one of the reasons for the establishment of cooperation between several Religious Courts with LKBH Faculty of Sharia as a provider of legal aid in Posbakum is the alumni factor. It is evident that so far most of its alumni have been absorbed throughout the Religious Courts of South Kalimantan Province. On this basis, confidence in the availability of qualified, professional and responsible Posbakum officers is a necessity. This is certainly a source of strength for LKBH Faculty to further develop Posbakum into a bigger organization.

All informants in the Religious Courts assessed that the Posbakum Officers personally have the ability to provide services and communicate well, have a commendable personality, are disciplined, honest, professional and responsible, and immediately provide

assistance if requested. Although in certain matters concerning performance there is still a need for assistance.

On this basis, the recruitment of Posbakum Officers is fully entrusted to the LKBH of the Faculty of Sharia. However, LKBH has also set some requirements in the recruitment of prospective Posbakum Officers who are considered capable of carrying out the role of Posbakum Officer.

One of the problems assessed by the Religious Courts is the insufficient availability of human resources from Posbakum Officer candidates in each region, for example in the Kuala Kapuas area. There are frequent changes of officers because they are not in the same domicile. Meanwhile, the Banjarmasin Religious Court assessed that the regeneration of Posbakum Officers has been slow, so that if a replacement occurs, the Officer does not have sufficient knowledge related to experience.

According to them, there should be alumni or student interns in Posbakum, so that if an officer resigns, they can be replaced with an officer who already has experience. This is certainly something that LKBH administrators need to find a solution for, so that the human resources available in each region are sufficient. Given the alumni of the Faculty of Sharia spread throughout the province of South Kalimantan. This means that in terms of the distribution of human resources in each region is not a problem.

The results of interviews with the Deputy Head of LKBH and 10 (ten) Posbakum Officers, all officers are alumni of the Faculty of Sharia. With details of S1 as many as 8 (eight) people and S2 as many as 2 (two) people. Data on their length of work varies, the longest is 7 (seven) years located at PA Banjarmasin and the most recent from PA Pelaihari and Kapuas, 5 (five) months from the time this research was conducted.

In terms of experience in attending training and others, it is indeed very minimal, especially training related to procedural law. This was also suggested by the Pelaihari Religious Court, that in the future Posbakum Officers should not only have a Bachelor of Laws degree, but also a certificate regarding legal services. Other Religious Courts suggested that Posbakum Officers be intensively provided with training in both material and formal law as well as the ability to use legal language properly.

If we look closely, 2 (two) of the 8 (eight) Officers already have training certificates related to Special Education for Advocates (PKPA). LKBH must see this potential in order to recruit both of them as official advocates for LKBH.

The Religious Courts of Banjarmasin, Pelaihari, Kuala Kapuas and Barabai explained that during the establishment of cooperation with the LKBH regarding Posbakum services, no serious problems have been encountered. However, what can be underlined here is the impression that appears in the community if there is an error related to the performance of the Posbakum Officer, which tends to be blamed on the Religious Court as conveyed by the Pelaihari and Barabai Religious Courts. This is in line with the researcher's observation that the Posbakum Officers do not yet have official identity, identification or LKBH membership cards. The Posbakum Officers should not be known only as alumni but official officers of LKBH.

**Efforts made: improving the quality of Posbakum Officer Resources through training, workshops, seminars.**

Supporting this effort, LKBH has included it in its work program, which is to provide professional Posbakum and Advocate staff and conduct seminars, training and workshops for Posbakum officers. According to the Head of LKBH, if this program can be done regularly, it will certainly provide added value to the strengthening of Posbakum human resources.

According to the Vice Chairman of LKBH, the availability of Posbakum services is more based on the empowerment of alumni of the Faculty of Sharia, as well as as a forum for legal service of academics in the form of direct legal services to the community.

Coaching of alumni has been carried out since they were in college, after graduating they were allowed to take part in the Posbakum Officer selection with the criteria of GPA, communicative, capable of providing services, mastering technology and of course personally having a good personality. The aim of all this is to obtain a professional and responsible Posbakum Officer.

LKBH emphasized that so far the Posbakum officers have tried their best to carry out their role in accordance with the MoU, Work Contract and guidelines for providing legal services. However, it has not been fully optimized, due to several constraints.

Efforts to strengthen Posbakum human resources are inevitable. Throughout the entire service process at the Religious Court, the existence of the Posbakum Officer is the spearhead. He is at the forefront of the flow of a service. If we consider the role of the Posbakum Officer, it is as an informant, a provider of information. As a consultant or legal advisor, where people consult early on the legal issues they are facing. And as a document maker such as a lawsuit/application letter etc. All of these tasks are at the beginning of all stages of the legal process in the Religious Court. Whether or not a petition/plaint is accepted or rejected will be greatly influenced by whether or not it is wrong, whether or not it is good, whether or not a complete petition/plaint is made and submitted to the court. This condition requires Posbakum to have capable, professional and qualified human resources.

However, the Posbakum Officer is not a judge who is entitled to ask questions and answers from the parties under oath, so that the truth of the information provided can be used as evidence in court. Conversely, the Posbakum Officer when extracting information from the party requesting a petition/plaint to be made will depend on the honesty of the parties seeking justice. If there is something that is hidden, it will greatly affect the decision or determination issued by the Religious Court. Realizing this, of course, the lack of coordination, mutual blame between judges and Posbakum officers will not occur. Perhaps equipping with advice and sharing experiences between judges, court officers and Posbakum officers would be something wiser and more useful.

Referring to Article 58 Paragraph (2) of Law No. 7 of 1989 concerning Religious Courts states that in order to assist justice seekers, the Religious Courts will make every effort to overcome all obstacles and obstacles, for the implementation of simple, fast and light judicial principles.

At present the Religious Courts no longer directly provide assistance to justice seekers related to the provision of information, consultation or advice and the issue of making requests / complaints, but have been mandated to Posbakum to carry it out, so there is no longer the term oranges eat oranges. However, overcoming all obstacles in order to achieve the principles of simple, straightforward and low cost justice must still be prioritized by the Religious Courts. Helping Posbakum is the same as providing assistance to justice



seekers, because the task of Posbakum is to provide services only to justice seekers. Working hand in hand to strengthen the quality of Posbakum human resources is a *conditio sine qua non* that is simultaneously carried out.

Analyzing the findings related to training, workshops and seminars that have been attended, not all Posbakum Officers have participated in these activities. This means that these activities are not carried out regularly, but only occasionally. What has not been reflected and done by LKBH is to set the implementation time of each program, including the issue of training, workshops, seminars and others.

In relation to this issue, it is interesting what Mochtar Kusumaatmadja said that four years of study time for students is unlikely to make them ready for use. What must be done is that they are matured first, so that they are ready to use. Likewise, a Bachelor of Laws will be ready to use if it is matured by the place where they will carry out their work. This means that newly graduated alumni should indeed be matured first with various theoretical and practical scientific content in order to have provisions in carrying out their role in Posbakum.

According to Gibson et al, in the development of an organization has shown how important the position of human resources as a resource of an organization. The ability of qualified human resources can be seen in the form of increased organizational effectiveness, in this case the provision of legal aid services by Posbakum LKBH Faculty of Sharia: productivity, efficiency and satisfaction of justice seekers in the medium term, the ability to survive in the long term. Therefore, evaluating the program to be implemented is an urgent matter. Evaluation can be done if the targets have not been set prior to implementation. This is based on the fact that a program is implemented to make the organization a better place to work or to develop quality and professional officers. These two things are collected in the problem diagnosis phase and will be accompanied when the program will be implemented, this is where there is a basis for program evaluation.

In general, designing a program is not easy, it will be intertwined with existing needs both in terms of costs and results. This means that the success or failure of a program will greatly affect the other supporting facilities of an organization such as LKBH for example. However, evaluating a program is not impossible to do, because it also departs from the needs.

Furthermore, Gibson et al explained that the evaluation model will adhere to six steps of evaluation research, namely: outlining program objectives, explaining the activities carried out to achieve the objectives, measuring program effectiveness, determining progress as a basis for comparison, using group control to control irrelevant factors. The final evaluation model is to discover unanticipated consequences. Implementing all six stages is not always possible. However, the difficulties of evaluation do not minimize the effort to evaluate.

So the program evaluation regarding the implementation of training, workshops, seminars, etc. needs to be emphasized on the strategic target of organizing training, workshops, seminars specifically for Posbakum Officers in the scope of material and formal law. The main performance indicators are carried out 2 (two) times a year, with a target achievement of 100 (one hundred) percent. The clarity of this program will be seen from the final results in the form of a report, whether according to the target or not in one year. So that it makes it easier in the form of program evaluation.

The LKBH program also needs to be evaluated by clarifying the actions related to providing professional Posbakum and Advocate personnel, by adding strategic objectives, indicators and targets for achievement. The action that needs to be taken is to regenerate candidates for Posbakum Officers and advocates, through the internship method at Posbakum and LBH offices and existing advocate offices. It is not as it is now that new alumni are allowed to work in Posbakum, LKBH and advocate offices. The Main Performance Indicator is the availability of professional and experienced Posbakum and Advocate personnel for 4 (four) Posbakum, with a target achievement of 100 (one hundred) percent.

This is in line with the vision and mission of the Faculty of Sharia, which is to produce law graduates who are superior, have integrity and morality. LKBH must be a place to train students to be proficient in the field of law and Islamic law. It is also the hope of the leadership of the Faculty of Sharia that the LKBH and Posbakum Office will be a place for student internships and can directly practice serving the community and making court administration.

### **Conclusion**

Based on the findings on the role of Posbakum in providing legal services for the community, it is felt that it is still not running optimally in several ways. In order to optimize the role of Posbakum, the LKBH board took several measures. *First*, improving the quality of Posbakum officer resources through training, workshops and seminars. *Second*, conducting *stracer* studies on alumni of the Faculty of Sharia in various regions. *Third*, conducting legal counseling to the public regarding the existence of Posbakum LKBH Faculty of Sharia. *Fourth*, adding and or reducing Posbakum officers and providing salary increases tailored to the available budget of each Posbakum. *Fifth*, strive for the role of assistance to the trial as a type of legal aid service can be provided by Posbakum LKBH. *Sixth*, Open a legal consultation room at LKBH Faculty of Sharia for parties who request legal aid services through Posbakum. *Seventh*, establish communication and coordination between LKBH, Religious Courts and Posbakum officers, related to the findings and some problems in the field. *Eighth*, providing the necessary facilities and infrastructure in accordance with the ability and financial management available, in each Posbakum. *Ninth*, efforts to maximize guidance and mentoring of Posbakum Officers. *Tenth*, monitoring and evaluating the performance of Posbakum to each Posbakum in the Religious Courts. *Eleventh*, seeking to improve the status of LKBH to be accredited through the implementation of several activity programs to complete accreditation data. *Twelfth*, establish and expand cooperation with various related parties in order to strengthen Posbakum and LKBH institutions.

The efforts that have been and are being made by LKBH administrators ranging from strengthening the resources of Posbakum Officers to accreditation efforts in order to strengthen the LKBH organization, are *conditio sine qua non*. Moreover, the role carried out by Posbakum is the spearhead and frontline of the entire series of service processes in the Religious Courts. However, the efforts outlined in the LKBH program have not been equipped with measurable Key Performance Indicators, with a target achievement of 100 (one hundred) percent. The clarity of the program will be seen from the end result in the form of a report, whether it meets the target or not in one year, making it easier to evaluate efforts that are less than optimal.

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