

The Role of Legal Aid Institutions in Supporting Access to Justice for Underprivileged Communities

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ABSTRACT

One of the factors that should be considered in the legal protection of the poor is the equal position of citizens before the law. In a just society, there should be no gap between the people and those who have money and positions that afford them the same status as citizens in accordance with the legal system. It is imperative that legal aid be made available to impoverished individuals and communities in a criminal justice system that has yet to achieve comprehensive integration. The objective of this research is to ascertain the role of consultation and legal aid institutions in providing legal assistance and community empowerment for economically disadvantaged individuals. This research employs an empirical juridical approach to examine the activities of the Consultation and Legal Aid in fulfilling its role. The findings indicate that the Institute for Consultation and Legal Aid is obliged to provide assistance to legal aid providers free of charge. However, information regarding the provision of free or low-cost legal aid has not been widely disseminated, resulting in a significant number of defendants or suspects who are dealing with the law and do not receive assistance from legal aid providers. This lack of access to legal aid services leaves individuals without the means to effectively navigate accusations, suspicions, or charges from the state, thereby exacerbating their vulnerability.

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1. INTRODUCTION

The 1945 Constitution of the Republic of Indonesia establishes the country as a state governed by the rule of law. Article 1 of the Constitution states, "The State of Indonesia is a State of Law." The inclusion of this provision in the 1945 Constitution demonstrates the strength of the legal basis and the state mandate that the Indonesian state is and must be a state of law. This implies that all forms of issues

concerning affairs between citizens and citizens or citizens and the state (government) must be based on the laws and regulations in force in Indonesia. Consequently, every citizen is also entitled to the same legal protection without exception. (Partogi Sihombing et al., 2024)

One of the factors that necessitates the provision of legal protection to the impoverished is the imperative of equality before the law. There must be no distinction between the populace and those who possess wealth and influence, as both are citizens within the framework of the legal system. Poverty is a multifaceted issue that extends beyond mere economic concerns. It is also associated with challenges in other domains. It is imperative that the government implement policies to address poverty-related issues in other domains, particularly in the legal sector. The lack of adequate financial resources, information, knowledge, and formal education, coupled with the absence of comprehensive legal aid, makes it challenging for the poor to fulfill their rights. To empower themselves, the poor encounter increasing difficulties in obtaining their rights to food, clothing, health services, education services, employment and business, and/or housing. The fulfillment of these rights is a prerequisite for their empowerment and the transformation into prosperity. In such cases, the provision of legal aid for the impoverished represents an effort to elucidate and advocate for their rights, thereby ensuring that their subsidy requirements are met by the government. Legal aid for the impoverished encompasses at least three distinct areas: (Ahyyar, 2020)

1. The scope of social welfare encompasses the fulfillment of the rights of the community, particularly the poor, to essential needs that are the responsibility of the government, including access to health, education, water, land, and housing.
2. The scope of community-based justice system reform, particularly in relation to the rights of the poor and those in opposition to the government.
3. Freedom of information and public services.

Furthermore, there is a notable lack of public awareness and understanding of the law. This may manifest as public ignorance of the applicable legislation or due to a lack of awareness of the legal aid available to the economically disadvantaged, which is provided free of charge (*pro bono publico*). This ensures that all individuals have access to legal services, regardless of their financial status. While the wealthy can hire a lawyer, those who cannot afford one can still receive legal aid as a means of ensuring equal rights before the law. (Andhini, 2021)

The implementation of legal aid for legal aid recipients represents an effort to actualize constitutional rights. Concurrently, it signifies the implementation of a rule of law that recognizes, protects, and guarantees citizens' rights to access justice and equality before the law. Furthermore, legal aid is a legal service that aims to provide legal protection and defense of the constitutional rights of suspects/defendants from the time of detention until the issuance of a final court decision. (Nasril, 2023)

In accordance with Article 34, paragraph (1) of the Indonesian Constitution, it is incumbent upon the State to provide for the welfare of disadvantaged and abandoned children. In accordance with the 1945 Constitution of the Republic of Indonesia, the government and local governments provide social rehabilitation, social security, social empowerment, and social protection for poor and abandoned children. This is a manifestation of the state's obligation to ensure the fulfillment of the basic needs of poor and disadvantaged citizens.

In accordance with Article 17 of Law Number 39 of 1999 concerning Human Rights, every individual is entitled to seek justice through the submission of applications, complaints, and lawsuits in criminal, civil, and administrative cases. Furthermore, the law stipulates that all individuals are entitled to a fair and impartial judicial process, conducted in accordance with legal procedures that guarantee an objective examination by an impartial and fair judge, with the aim of obtaining a just and accurate decision.

In the preamble of Law Number 16 of 2011 concerning legal aid, the state is responsible for providing legal aid for the poor, thereby ensuring access to legal aid and, by extension, justice.

The scope of legal aid encompasses civil, criminal, and state administrative law matters, encompassing both litigation and non-litigation. It includes the exercise of power of attorney, as well

as the provision of representation, defense, and other legal assistance for the benefit of legal aid recipients. The implementation of legal aid is designed to:

- a. To guarantee and fulfill the right of legal aid recipients to obtain access to justice.
- b. To actualize the constitutional rights of all citizens in accordance with the principle of equality before the law.
- c. guarantee the equitable distribution of legal aid throughout the territory of the Republic of Indonesia.
- d. The objective is to establish an effective, efficient, and accountable judiciary.

In light of the aforementioned issues, this study aims to examine the role of consultation and legal aid institutions in providing legal assistance and community empowerment for economically disadvantaged individuals.

2. METHODS

Empirical legal research is a method of legal research that employs the use of empirical facts derived from human behavior, encompassing both verbal behavior obtained from interviews and real behavior carried out through direct observation. Additionally, empirical research is utilized to examine the consequences of human behavior in the form of physical artifacts and archives. (Permana, 2024)

In this literature study, data are collected and analyzed through a comprehensive examination of relevant literature, legislation, online sources, and other pertinent documents.

Once the data has been collated, a system is devised to organise it, after which an evaluation is conducted on the systemised data set and conclusions are drawn from the evaluation and the data set. Legal research, in essence, is about seeking legal truth. Legal truth can be defined as that which conforms to the law.

Qualitative truth can be understood as a measure of conformity with quality requirements that must be met in order for a claim to be considered true. This understanding of qualitative truth is largely informed by its relationship to positive legal provisions, which often determine the truth of claims based on the fulfillment of quality requirements. (Prasetyorini et al., 2024)

3. FINDINGS AND DISCUSSION

3.1 *The role of legal counseling and assistance agencies*

The origins of legal aid in Indonesia can be traced back to a period of significant transformation in the Netherlands, which saw the emergence of new legal frameworks. In accordance with the principle of concordance, the King's Regulation of May 16, 1848 No. 1 was also applied in Indonesia, including the Judicial Organization and Court Discretion (Reglement op de Rechterlijke Organisatie en het beleid der Justitie) or RO. In Chapter VI, which addresses the role of advocates and lawyers, it is noted that at the time, advocates provided their services exclusively in civil and criminal proceedings. The Legal Aid Regulation, as outlined in Article 190 of the RO, stipulates that when appointed by a court, advocates and procurers are obliged to provide legal aid free of charge or at half the applicable fee rate. (Putri, 2022)

The provision of legal aid by legal aid institutions plays a pivotal role in ensuring that their clients are not subjected to arbitrary treatment by the authorities. Additionally, these institutions are responsible for defending their clients' interests in a manner that is expected to result in a decision that is in accordance with the principles of justice. In terms of the allocation of funding for Legal Aid Institutions, this is charged to the State Budget (APBN). (Hapsari, 2021). The distribution of APBN funds for the implementation of legal aid represents a form of government obligation, with the funds being channelled through the budget of the Ministry of Law and Human Rights of the Republic of Indonesia, which is responsible for the organisation of legal aid. It is possible to obtain sources of legal aid funding other than from the APBN. The legal aid law repositioned the role of campus legal aid institutions as part of the academic community, enabling them to perform community service in the field of law based on their knowledge and expertise. (Sanjaya, 2020)

A noteworthy aspect of the enactment of Law Number 16 of 2011 concerning Legal Aid is the direct provision of legal aid services by the government and other legal sources to legal aid providers. This stipulation is enshrined in the implementing rules of Law Number 16 of 2011 concerning Legal Aid, namely Government Regulation Number 42 of 2013 concerning Terms and Procedures for Providing Legal Aid and Distributing Legal Aid Funds. The state acknowledges the existence of economic, social, cultural, civil, and political rights for those with limited financial resources. Consequently, the Constitution guarantees that these individuals have the right to be represented and defended both within and outside the courtroom (access to legal counsel). The 1945 Constitution, Article 34, paragraph (1), addresses the issue of legal aid for the poor. Consequently, legal aid is a right of the indigent that may be obtained without cost (*pro bono publico*), as an elaboration of equal rights before the law. Article 34, paragraphs (2) and (4) of the 1945 Constitution stipulates that the state develops a social security system for all citizens and empowers the vulnerable and incapacitated in accordance with human dignity, as regulated in the UUBH. (Putri, 2022)

The Legal Aid Law serves to exemplify the state's role as a legal entity, wherein the state is vested with the authority to determine the means by which legal aid is provided to the indigent or specific demographic groups. These aspects encompass the formulation of the rule of law, the supervision of the legal aid delivery mechanism, and the aspect of public education, with the objective of ensuring that the established legal norms are upheld. (Krennerich, 2024)

In accordance with the stipulations set forth in Law Number 16 of 2011 concerning Legal Aid and Government Regulation No. 42 of 2013 concerning Terms and Procedures for Providing Legal Aid and Distributing Legal Aid Funds, legal aid can be defined as a legal service provided by legal aid providers free of charge to legal aid recipients. In organizing legal aid, Law Number 16 of 2011 concerning Legal Aid has the following objectives, as stated in Article 3 of Law Number 16 of 2011 concerning Legal Aid:

- a. Ensure that legal aid recipients are able to access justice.
- b. The realization of constitutional rights for all citizens in accordance with the principle of equality before the law.
- c. Ensure the uniform implementation of legal aid throughout the territory of the Republic of Indonesia and realize an effective, efficient, and accountable judiciary. (Wibowo & Bangun, 2021)

3.2 Legal Aid

As defined by M. Yahya Harahap, legal aid is characterized by a range of terms, including the provision of services in the field of law to individuals involved in legal proceedings.

- a. The provision of legal aid services is conducted without financial remuneration.
- b. Legal aid services are more specialized for the economically disadvantaged.

In essence, the primary objective of legal aid is to ensure the enforcement of the law by safeguarding the interests and human rights of individuals who are economically disadvantaged and lack the capacity to navigate the legal system effectively. Legal assistance encompasses a broader scope than legal aid, encompassing not only the provision of legal aid services but also the broader understanding of the advocate profession, which entails providing assistance.

- a. To those who are able to pay for such services.
- b. The provision of assistance to indigent individuals at no cost.

In light of the aforementioned understanding, the provision of free legal aid is frequently designated as "legal aid." This term denotes a legal service that is specifically offered to impoverished individuals who require cost-free representation in both criminal and civil proceedings, as well as in state administration matters. The objective is to ensure that those who are unable to afford legal counsel have access to an advocate who possesses a comprehensive understanding of legal defense, legal principles, and human rights. (Kurniawan et al., 2024)

The formal acknowledgment of the necessity for legal aid is, in itself, sufficient. The KUHAP has operationalized the legal aid articles contained in Law 14/1970 for a considerable length of time (11

years). This fact signifies that the respect and protection of human rights in criminal justice is no longer mere rhetoric, particularly after these legal aid provisions can be technically implemented. Nevertheless, it is pertinent to inquire whether this signifies that the issue of legal aid has entirely vanished.

The implementation of legal aid is not solely the domain of individuals with expertise in the field of law and experience in their profession. It can also be provided by legal entities that meet certain criteria. In this context, legal aid is provided by a legal aid provider, typically an advocate, who is oriented towards noble values, namely the humanitarian aspect of fighting for human rights in order to live in prosperity and justice, particularly within judicial institutions. (Pangaribuan, 2017)

Legal aid represents a means by which individuals and groups at all levels of society can assert their rights to treatment in accordance with applicable legal principles. The legal aid provided by an advocate to legal aid recipients must fulfill the conditions specified in the legislation. The advocate must accompany and defend the suspect or defendant from the time of the incident, arrest, or detention until the examination of the case in court. This is to avoid arbitrary treatment from irresponsible officers. The organization and provision of free legal aid for the indigent can be achieved in two ways:

- a. Implementation of legal aid through the District Court
- b. Implementation of legal aid through the Legal Aid Institute (LBH)

Discussing legal aid inevitably entails consideration of the Legal Aid Institute. The history and development of legal aid in Indonesia are inextricably linked to the role of this institution. It is regrettable that, despite the existence of a dedicated legal aid law, the precise definition of a legal aid institution remains elusive. The Government Regulation of the Republic of Indonesia Number 83 of 2008 concerning Requirements and Procedures for Providing Legal Aid offers a description of this institution, as outlined in Article 1, point 6, which defines a legal aid institution as an entity that provides legal assistance to individuals seeking justice without receiving honorarium payments. (Amin, 2021)

The Legal Aid Institute (LBH) was established with the initial concept of protecting the public from legal oppression, which is a common occurrence. This concept was then outlined in LBH's Articles of Association, which state that LBH's objectives are as follows:

- a. To provide legal services to indigent individuals.
- b. To cultivate and enhance the legal awareness of the general public, particularly with regard to their rights as legal subjects.
- c. Advocating for amendments to the legislation to address the evolving needs of a developing society. (Solikin & Rohmatullah, 2022)

Applying for legal aid is a relatively straightforward process. The only requisite is to attach a certificate of incapacity, which can be obtained from the RT, RW to the sub-district level. This certificate of incapacity serves as indisputable proof of the person's status as a low-income individual.

In practice, the general public is unaware that legal aid is only provided for litigation cases. There is a lack of awareness among the general public that they are entitled to legal aid in non-litigation areas. This is due to a combination of factors, including a lack of knowledge of their rights and a lack of socialization of their rights.

In the implementation of legal aid, central and regional supervisory committees were constituted. The central supervisory committee is comprised of representatives from BPHN, the Inspectorate General Ministry of Law and Human Rights, and the State.

The State Treasury, in conjunction with the Planning Bureau of the Secretariat General of the Ministry of Law and Human Rights, plays a pivotal role in this process. In contrast, the Regional Supervisory Committee is comprised of the Head of the Regional Office, the Head of the Legal Services Division, the Head of the Division and Sub-Division of Legal Services and Assistance, the Head of Detention Center and Regional Government Legal Bureau. The committee exercises both direct and indirect supervision, the latter of which occurs through the submission of public reports. Its direct

supervision pertains to standards for the provision of legal aid and the Advocate Code of Ethics, whereas its indirect supervision encompasses the condition of legal aid providers.

The Consultation and Legal Aid plays a role in various activities both for the underprivileged and funded by the Ministry of Law and Human Rights, along with litigation activities that are funded by the Ministry of Law and Human Rights. These activities also constitute a component of the tri dharma of higher education, specifically in terms of assistance and community service.

4. CONCLUSION

The legal aid model provided by the Consultation and Legal Aid Institute for low-income individuals filing lawsuits is provided free of charge, enabling those in need to seek justice. The legal assistance extends beyond litigation aid and encompasses a range of services. The development of a model for providing legal assistance to impoverished individuals who file lawsuits through the Consultation and Legal Aid Institute (CLAI) has encountered several challenges. One significant obstacle is the lack of awareness and understanding within the community about the CLAI's role and resources. The existence of the Consultation and Legal Aid Institute and the resources available to advocates, as well as the community's perception of advocates as synonymous with money, has led to a lack of understanding of the Institute's role in assisting the community in obtaining justice.

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REFERENCES

- Ahyar, A. (2020). Optimalisasi Pelayanan Bantuan Hukum Bagi Masyarakat Miskin. *Jurnal Penelitian Hukum De Jure*, 20(3), 409. <https://doi.org/10.30641/dejure.2020.V20.409-434>
- Amin, C. (2021). Implementation of Legal Aid for the Poor as a Form of Practicing Pancasila Values. *The Indonesian Journal of International Clinical Legal Education*, 3(2), 235–244. <https://doi.org/10.15294/ijicle.v3i2.46172>
- Andhini, A. S. D. (2021). Juridical Analysis of Legal Aid Implementation for Underprivileged Communities: Problems and Challenges. *The Indonesian Journal of International Clinical Legal Education*, 3(4), 481–498. <https://doi.org/10.15294/ijicle.v3i4.48272>
- Hapsari, J. P. (2021). The Poor and Justice: Implementation of Legal Aid for the Poor in Indonesia (Problems and Solutions). *The Indonesian Journal of International Clinical Legal Education*, 3(4), 553–568. <https://doi.org/10.15294/ijicle.v3i4.48274>
- Krennerich, M. (2024). Human Rights and Human Rights Politics (pp. 1–13). https://doi.org/10.1007/978-3-031-57026-1_1
- Kurniawan, F. N. W. (2020). Optimalisasi Bantuan Hukum Demi Terwujudnya Keadilan bagi Rakyat Miskin (Studi Kasus Hak Terdakwa Yang Tidak Mampu dari Segi Ekonomi untuk Memperoleh Bantuan Hukum Terhadap Kejahatan yang Dilakukannya dalam Proses Peradilan Pidana). *The Digest: Journal of Jurisprudence and Legisprudence*, 1(2), 105–132. <https://doi.org/10.15294/digest.v1i2.48624>
- Nasril, S. (2023). PEMENUHAN HAK MASYARAKAT MISKIN DALAM MEMPEROLEH BANTUAN HUKUM CUMA-CUMA. *Lex LATA*, 4(3). <https://doi.org/10.28946/lexl.v4i3.1817>
- Pangaribuan, L. M. (2017). BANTUAN HUKUM DALAM PROSES PERADILAN PIDANA. *Jurnal Hukum & Pembangunan*, 17(1), 21. <https://doi.org/10.21143/jhp.vol17.no1.1223>
- Partogi Sihombing, J. S., Saraswati, R., Yunanto, Y., & Turymsbayeva, A. (2024). The Regulation of Legal Protection for Poor Communities Toward Justice in Indonesia and the Netherlands. *Journal of Human Rights, Culture and Legal System*, 4(2), 331–353. <https://doi.org/10.53955/jhcls.v4i2.274>

- Permana, E. S. (2024). Defending the Defenders: Unveiling the Struggles of Legal Aid for Journalists in Indonesia. *Indonesia Media Law Review*, 3(1). <https://doi.org/10.15294/imrev.v3i1.78898>
- Prasetyorini, S. A., Lisdiyono, E., Mulyani, S., & Savira, A. G. (2024). Reimagining Legal AID Institution Regulation to Enhance Legal Certainty. *Revista de Gestão Social e Ambiental*, 18(9), e06015. <https://doi.org/10.24857/rgsa.v18n9-021>
- Putri, H. R. (2022). Implementation of Free Legal Aid (Pro Bono) for the Poor in Indonesia. *The Digest: Journal of Jurisprudence and Legisprudence*, 3(2), 173–202. <https://doi.org/10.15294/digest.v3i2.66012>
- Sanjaya, F. D. (2020). Legal Aid in Indonesia: A Study of Legal Aid with a Transcendental Dimension. *Journal of Transcendental Law*, 2(2), 83–99. <https://doi.org/10.23917/jtl.v2i2.11854>
- Solikin, N., & Rohmatullah, A. (2022). The Regulatory Reform of Advocate Organizations in Proposing Oath of Prospective Advocates in Indonesia. *Jurnal Kajian Pembaruan Hukum*, 2(2), 133. <https://doi.org/10.19184/jkph.v2i2.23400>
- Wibowo, A., & Bangun, M. H. (2021). Legal Aid by the State as a Constitutional Right of the Poor: Problems and Challenges in Indonesia. *The Indonesian Journal of International Clinical Legal Education*, 3(2), 185–196. <https://doi.org/10.15294/ijicle.v3i2.46176>

