

Legal Aid for the Poor

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Abstract : *The definition of a state is a territory with a sovereign government, governed by law, and having a permanent population. Every resident living within a state is obligated to obey the laws established in that state. This is especially true in Indonesia as a state based on the rule of law, as asserted in the 1945 Constitution (UUD 1945) Article 1 paragraph (3): "The State of Indonesia is a state based on law." However, even though Indonesia is a state of law, in reality, law enforcement in the country remains very weak. This is exacerbated by numerous public perceptions and negative assumptions resulting from failed legal implementation, such as the widespread belief that "the law is sharp downward but blunt upward." In society and state life, the law should be the commander in every aspect of life, aiming to create justice, maintain order, and protect individual rights. But what does justice truly mean in Indonesia? Is justice as simple as $1+1 = 2$ or $2+2 = 4$? If justice is defined that way, then the lower class should feel the same fairness as the upper class, particularly when it comes to legal matters. The term "lower class" here refers to marginalized groups who face various forms of injustice, including limited access to the judiciary, poverty, legal illiteracy, and many others. In light of this, this paper will discuss the problems and the concept of legal aid as a right and obligation that must be guaranteed for the poor. The fact remains that currently, poor communities still struggle to access legal aid due to their difficult economic conditions, which often remain unaccommodated*

Keywords : *Legal aid, Legal aid for the poor, legal justice*

Abstrak : Definisi negara adalah wilayah yang berdaulat, diatur oleh hukum, dan memiliki penduduk yang tetap. Setiap penduduk yang tinggal di dalam suatu negara wajib menaati hukum yang ditetapkan di negara tersebut. Hal ini terutama berlaku di Indonesia sebagai negara hukum, sebagaimana ditegaskan dalam Undang-Undang Dasar 1945 (UUD 1945) Pasal 1 ayat (3): "Negara Indonesia adalah negara hukum." Namun, meskipun Indonesia adalah negara hukum, pada kenyataannya, penegakan hukum di negara ini masih sangat lemah. Hal ini diperparah oleh berbagai persepsi publik dan asumsi negatif yang dihasilkan dari implementasi hukum yang gagal, seperti kepercayaan yang meluas bahwa "hukum itu tajam ke bawah tetapi tumpul ke atas." Dalam kehidupan bermasyarakat dan bernegara, hukum harus menjadi komandan dalam setiap aspek kehidupan, yang bertujuan untuk menciptakan keadilan, menjaga ketertiban, dan melindungi hak-hak individu. Tetapi apa sebenarnya arti keadilan di Indonesia? Apakah keadilan sesederhana $1+1 = 2$ atau $2+2 = 4$? Jika keadilan didefinisikan seperti itu, maka masyarakat kelas bawah seharusnya merasakan keadilan yang sama dengan masyarakat kelas atas, terutama dalam hal hukum. Istilah "kelas bawah" di sini merujuk pada kelompok-kelompok terpinggirkan yang menghadapi berbagai bentuk ketidakadilan, termasuk keterbatasan akses terhadap peradilan, kemiskinan, buta hukum, dan banyak lagi. Berdasarkan hal tersebut, tulisan ini akan membahas



permasalahan dan konsep bantuan hukum sebagai hak dan kewajiban yang harus dijamin bagi masyarakat miskin. Faktanya, saat ini masyarakat miskin masih kesulitan mengakses bantuan hukum karena kondisi ekonomi mereka yang sulit, yang seringkali tidak terakomodir.

Kata kunci : Bantuan hukum, Bantuan hukum untuk masyarakat miskin, keadilan hukum

I. INTRODUCTION

The State of Indonesia has established various principles and regulations related to legal aid, one of which is stipulated in Indonesia's positive criminal procedural law, namely Law Number 8 of 1981 concerning the Criminal Procedure Code (KUHAP). In the General Elucidation, Section 1, Point (3), Letter (e), the principle of legal aid is emphasized as follows: 'Every person involved in a legal case must be given the opportunity to obtain legal aid, which is solely provided to serve the interests of their own defense. The principle of legal aid as stated in the Criminal Procedure Code serves to provide protection for every individual, both morally and materially-terms that are often more commonly associated with dignity or human rights. All members of society, from the underprivileged to the affluent, possess their own rights, including the right to life, the right to education, the right to personal protection, the right to be free from torture, and the right to live in physical and mental well-being. Each person has their own rights in living within a social environment, and everyone is also obligated to respect the human rights of others in order to create a harmonious and orderly society.

Pancasila, which is the foundation of the Indonesian state and the ideology of the entire Indonesian nation, states in its fifth principle: 'Social justice for all the people of Indonesia.' However, in reality, injustice frequently occurs in this country. One form of injustice that often draws public attention is legal injustice, which is commonly experienced by underprivileged communities. This principle, in fact, should serve as the state's philosophy and become a reference for all legal norms beneath it. Therefore, the existence of Pancasila must function as a pre-positive source for the regulations in Indonesia. For underprivileged communities, the lack of education and understanding regarding injustice has become the responsibility of the state itself. As stated in Article 34, Paragraph (1) of the 1945 Constitution of the Republic of Indonesia: 'The poor and neglected children shall be cared for by the state.' This means that the state has the responsibility to fulfill the basic needs of the poor and neglected children, as well as to provide them with protection and care. Related to justice for all Indonesian citizens must be realized in every aspect of life, particularly justice in the form of guaranteed legal protection and equality before the law. Many impoverished individuals, when involved in legal proceedings, often become victims of injustice within the judicial system itself. Moreover, many of them choose to avoid legal processes altogether, believing that bringing a case or problem into the legal domain will result in high costs and only further complicate their situation. In fact, it is their constitutional right to receive legal aid in order to obtain guarantees of legal protection and equality before the law, as a means of recognizing and upholding human rights.

Obtaining legal aid for every individual is a manifestation of access to justice, as an implementation of the guarantee of legal protection and equality before the law. This

is based on the concept of legal aid, which aims to achieve the nation's ideals of social welfare. Legal aid is also one of the most important instruments in the criminal justice system, especially for the poor, as it is part of the protection of human rights for every individual, including the right to legal assistance. The right to legal aid is one of the most essential rights that every citizen can possess. In any legal process-particularly in criminal cases-it is often impossible for defendants to defend themselves without assistance. For underprivileged communities, the government has provided free legal aid. However, many poor individuals are still unaware of this right, which causes them to feel unsupported by the government.

According to the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945), Article 28D Paragraph (1) states: 'Every person shall have the right to recognition, guarantees, protection, and fair legal certainty, as well as equal treatment before the law.' This article affirms recognition, guarantees, protection, and fair legal certainty for all individuals without discrimination based on ethnicity, religion, or social status-including the underprivileged-so they may gain access to justice and have their rights to protection, recognition, guarantees, and fair legal certainty, as well as equal treatment before the law, properly realized. Therefore, greater attention must be given to educating the public about legal aid, so that underprivileged communities are aware of and understand their right to receive legal assistance. It is the state's obligation to provide legal aid to those who are less fortunate. An important test of any theory of justice is how well it introduces order and structure into the moral judgment of society.

This journal will discuss the concept of legal aid as established and regulated by the State of Indonesia. It is expected that this journal can help the public better understand the legal process in Indonesia, as well as the justice it aims to uphold. In a just society, the freedom of citizens is considered well-established; rights guaranteed by justice are not subject to political negotiation or the calculation of social interests, but are instead treated equally before the law.

II. PROBLEM FORMULATION

The issues to be discussed in this journal, based on the background above, are as follows:

- 1) What are the common problems related to legal aid for underprivileged communities ?
- 2) What should the ideal concept of legal aid look like for those who are less fortunate ?

III. RESEARCH METHODOLOGY

This journal uses an **empirical juridical** research method. The author applies a legal research approach that combines the study of legislation and regulations (juridical) with field research to observe how the law is implemented and its impact on society (empirical). Data collection is conducted through case studies of past incidents, and the data is analyzed accordingly. Secondary data analysis involves reviewing relevant laws and regulations, literature, legal documents, and other indirectly obtained data related to the research topic.

IV. DISCUSSION

1. What are the frequent problems related to legal aid for the underprivileged ?

Poverty remains a major problem in Indonesia, not only economically but also in terms of justice. Poor communities often face limitations in meeting basic needs and encounter challenges in obtaining their legal rights. “Poverty is not just about being unable to meet needs for clothing, food, and shelter, but also limited access to justice,” said human rights activist Haris Azhar, S.H., M.A.,¹ because in reality, the poor are often trapped in situations that render them powerless—dependent on those who hold power to distribute resources, including access to knowledge and personal protection.

According to the Kompas periodic survey, law enforcement in Indonesia remains very weak, with public satisfaction in government performance in the field of law enforcement dropping from 58.3% in December 2023 to 57.4% in June 2024. This indicates that the government has failed in implementing the law.² Among various cases, many are resolved unjustly, with a system biased toward protecting perpetrators based on vested interests. One example occurred in Karawang, West Java: Valencya, a housewife, was named a suspect in early 2021 after her husband reported her to the police for alleged domestic violence (psychological abuse) against him during their divorce. She admonished him for excessive drinking and six months of absence from home. Eventually, the prosecutor dropped the charges out of conscience and justice, leading the judge to acquit Valencya due to lack of sufficient evidence.³

The case above illustrates how regulations can fail to uphold justice itself, whereas the constitution mandates that every person has the right to recognition, guarantees, protection, and fair legal certainty and equal treatment before the law as human rights protection, and the right of every person to seek equality in justice as stated in Article 28 H(2) of the 1945 Constitution: “Every person has the right to convenience and special treatment in order to obtain the same opportunity and benefits to achieve equality and justice.” Therefore, the government is responsible for providing legal aid to poor individuals or groups as a realization of access to justice. Furthermore, Article 34 (1) of the 1945 Constitution states that “the poor and neglected children shall be cared for by the state,” indicating that substantively, legal aid for the poor is also necessary as a guarantee of access to justice.

Hendra Winarta stated that the poor, often unaware of their rights as defendants, are treated unfairly or obstructed from being accompanied by a lawyer.⁴ These cases greatly harm poor communities or those undergoing legal proceedings in court. To avoid such cases, legal institutions or organizations—such as Legal Aid Institutes (LBH)—are

¹ <https://ugm.ac.id/id/berita/haris-azhar-warga-miskin-masih-sulit-mendapat-akses-keadilan-huku/>

² Amelia Angekina Dina Tanius, “hukum yang tumpul di atas kertas: realita penegak hukum Indonesia”, *jurnal penelitian hukum*, 14 April 2025

³ [Tribunnews.com](https://tribunnews.com), [Kompas.com](https://kompas.com), (2025)

⁴ Frans Hendra Winarta, 2000, *Bantuan Hukum Suatu Hak Asasi Manusia Bukan Belas Kasihan*, Elex Media Komputindo, Jakarta, hlm. 96.

needed to advocate for justice and law enforcement by accompanying clients whose rights are disadvantaged, provided the clients are economically disadvantaged.

For the poor, legal proceedings are not their only life challenge—they also face obstacles to their own welfare. Imbalances in access to knowledge and employment often force them to depend on authorities. This dependency creates fear and discourages resistance, leaving them in an unequal position. It is crucial to build broader awareness of justice in society to foster understanding and independence—to not always depend on the state, but to build justice structures from within the community. With societal awareness of justice, the state will gradually become better organized and restructured.

Awareness of a prosperous environment can be built when every member of society cares about and understands justice. Economic factors often drive and cause people to be unaware of their concern for justice. According to the scope of social welfare, the absence of sufficient financial resources, the lack of access to information, the lack of knowledge and formal education, coupled with the lack of adequate legal aid support to fulfill the rights of the poor, often makes it even more difficult for them to empower themselves. For example, poor communities increasingly find it difficult to obtain their rights to food, clothing, healthcare services, education, employment and entrepreneurship, and/or housing, whereas the fulfillment of these rights serves as the foundation to empower themselves to become prosperous.

Let us now suppose a society is well-organized not only when it is designed to improve individual welfare but also when it is effectively governed by a public conception of justice. Enforcing justice in social life is not an easy task, because in the societal conception of justice, there are various perspectives, especially those that tend to favor self-interest. Thus, society has not yet been neatly arranged according to the conception of justice. Justice and injustice are always subjects of debate. However, those who believe in different concepts of justice can still agree that institutions are just when there is no arbitrary discrimination among individuals in granting rights and obligations, and when the rules determine a proper balance between conflicting claims for the benefit of social life.⁵

Justice in the provision of legal aid for the poor is an effort to clarify and fight for the rights of the poor so that their subsidized needs can be fulfilled by the government. Legal aid for the poor should cover at least three scopes :

1. **Social welfare scope**, which includes the fulfillment of the rights of society—especially the poor—regarding basic needs that are the responsibility of the government, such as health, education, water, land, and housing.
2. **Scope of judicial rights fulfillment for poor communities**, particularly those in opposition to the government or state apparatus.
3. **Freedom to access information and public services.**⁶

⁵ John Rawls, Teori Keadilan ‘dasar-dasar filsafat politik untuk mewujudkan kesejahteraan sosial’, (badan penerbit Pustaka Pelajar) cetakan 1 2011.

⁶ Ahyar Ari Gayo, Makalah Optimalisasi Pelayanan Bantuan Hukum Bagi Masyarakat Miskin, (Badan Penelitian dan Pengembangan Hukum dan HAM Kementrian Hukum dan HAMRI, Jakarta 2020)

2. What is the ideal concept of Legal Aid that should be received by the underprivileged?

Legal aid is one of the rights owned by all human beings without exception. However, legal aid also has its own regulations and characteristics, both conceptually and procedurally, for its recipients. According to Law No. 16 of 2011 Article 1 Paragraph (1), “Legal Aid is legal services provided by legal aid providers free of charge to legal aid recipients.” Therefore, when underprivileged communities are involved in a legal process and require assistance or legal support, they should not worry about the costs incurred, as the law regulates that legal aid shall be provided without any charge. This is further clarified in Article 20 of Law No. 16 of 2011: “Legal aid providers are prohibited from receiving or requesting payments from legal aid recipients and/or other parties related to the case being handled by the legal aid provider.” This provision becomes a key answer for underprivileged communities concerning their fear of legal costs.

Legal aid is a legal service provided by an Advocate free of charge to clients who are unable to pay, with certain conditions. An advocate is also obligated to provide legal aid services free of charge or *pro bono* to seekers of justice who are underprivileged. This *pro bono* assistance may take the form of legal accompaniment to help resolve legal issues they are facing. As stipulated in Law Number 18 of 2003 concerning Advocates, which states that Advocates have an exclusive status, Article 5 paragraph (1) of Law Number 18 of 2003 defines Advocates as law enforcers who are independent and free, guaranteed by law and regulations.⁷

Therefore, under the Advocates Law, an Advocate has an obligation to provide legal aid. Ideally, Legal Aid can be explained as a social responsibility of Advocates. If an Advocate does not carry out their professional obligations, it can be categorized as an act contrary to professional duties and may be subject to sanctions.⁸ The establishment of this obligation serves as proof of the presence of the State in upholding the principles of the Rule of Law and represents one of the steps taken by the State to fulfill and defend the rights that should be possessed by its citizens, especially those who are underprivileged.

The existence of legal aid for the poor is a manifestation of the principle of *equality before the law*.⁹ “Equality” originates from the English word, literally meaning sameness or equality. According to the *Encyclopedia of the Social Sciences*, when it is said that humans are equal, it refers to the idea that although in reality, humans differ in many characteristics—often associated with differences in skin color, character/disposition, etc.—they also differ based on various human institutions such as nationality, religion, social status, and so forth. Equality means the right of every human being to be recognized without discrimination that affects their ability to access, control resources, and receive benefits. In this context, equal rights become an absolute right for every human being, even if certain conditions require affirmative action. Discrimination due to power relations

⁷ Yusriyadi, 2017, *Bantuan HUKUM “Kajian Empiri Implementasi Ide-Ide Hukum”*, Undip Press, Semarang, hlm. 75

⁸ Pasal 7 huruf h Kode Etik Advokat Indonesia

⁹ Beatrix Salamor Yonna, ‘Pemberian Bantuan Hukum Pada Masyarakat Miskin Kota Ambon’, *Jurnal Muara*, 2 (2018)

results in disadvantage, injustice, and other negative impacts, including in the field of law enforcement.

Equality can be divided into four types, namely:¹⁰

- 1) **Natural Equality**, which refers to the equality that every human being possesses from birth. Humans have the ability of intelligence or reason, meaning that Natural Equality is the similarity in that each human has a mind that enables them to distinguish themselves from other beings.
- 2) **Civil Equality**, which refers to the civil rights possessed by every human being. The recognition of equality among all humans indicates a guarantee of equal treatment and the right of every individual to enjoy protection. Among these is the principle of equal treatment before the law.
- 3) **Political Equality**, which is the equal right of every citizen to actualize their political rights in the form of participation in state affairs. This includes the right to be elected and to vote in general elections. Political equality forms the basis of democracy.
- 4) **Economic Equality**, which is equality of rights in the economic sector as part of efforts to improve the standard of living. This type of equality emphasizes open access or opportunity rather than the equal distribution of outcomes. The outcomes are seen as achievements based on individual effort, but the main agenda is to open access to improve economic conditions.

Equality before the law for underprivileged communities, according to the theory of *“Equality Before The Law”*, falls under the category of **Civil Equality**, as it is the right of every individual to receive equal treatment before the law and government. This theory serves as a framework for the public to understand the notion of justice equality in legal proceedings, where there should be no distinction between the rich and the poor. It becomes the key to achieving fair justice and preventing inequality in legal processes. There should be no such concept as “the law being sharp downward but blunt upward” if the principle of *Equality Before The Law* is upheld consistently in the legal system. In court, everyone is equal before the law: if someone is proven right, their rights must be defended, and if proven guilty, they must be held accountable accordingly.

The principle of equal treatment before the law is a human right protected by the Constitution as regulated in **Article 28D paragraph (1)** of the Constitution, which states that the state guarantees the rights of every person to fair treatment, legal protection, legal certainty, and equal treatment before the law. Likewise, the existence of legal aid in society. Legal aid is not only provided to the poor, but is based on the concept of equality contained in human rights, both internationally and constitutionally, and is one of the fundamental principles in the implementation of legal aid.

Furthermore, **Law Number 39 of 1999 concerning Human Rights** also regulates the same regarding equal treatment before the law, as explained in **Article 3 paragraph (2)**, which states that the state guarantees the rights of every person to be treated, protected, and receive justice from legal certainty and equal treatment before the law.

¹⁰ Ramly Hutabarat, *Persamaan Dihadapan HUKUM (Equality Before The Law) Di Indonesia* (Jakarta, 1985)

Stipulated in **Law Number 16 of 2011 on Legal Aid**, Article 1 point 3 :
 “A legal aid provider is a legal aid institution or community organization that provides legal aid services based on this Law.” **Article 8 paragraph (2)** of Law No. 16 of 2011 outlines the requirements for legal aid providers, which include :

- 1) Being a legal entity;
- 2) Accredited based on the Legal Aid Law;
- 3) Having a permanent office or secretariat;
- 4) Having a board of management; and
- 5) Having a legal aid program.

Article 9 of Law No. 16 of 2011 on Legal Aid grants legal aid providers the right to :

- 1) Recruit advocates, paralegals, lecturers, and law faculty students;
- 2) Provide legal aid services;
- 3) Conduct legal outreach, legal consultations, and other program activities related to the implementation of legal aid;
- 4) Receive state funding to implement legal aid based on the Legal Aid Law;
- 5) Express opinions or statements in defending cases under their responsibility in court proceedings in accordance with statutory provisions;
- 6) Obtain information and other data from the government or other agencies for the purpose of legal defense; and
- 7) Receive legal protection, security, and safety guarantees while providing legal aid.

Meanwhile, legal aid providers are required to :

- 1) Report to the Minister regarding legal aid programs;
- 2) Report every use of state funds used for the provision of legal aid under the Legal Aid Law;
- 3) Organize legal aid education and training for advocates, paralegals, lecturers, and law faculty students who are recruited;
- 4) Maintain the confidentiality of data, information, and/or statements obtained from legal aid recipients related to ongoing cases, unless otherwise determined by law; and
- 5) Provide legal aid to recipients based on the terms and procedures specified in the Legal Aid Law until the case is resolved, unless there are legally valid reasons.¹¹

Article 4 paragraph (1) of Law No. 16 of 2011 stipulates: “Legal Aid is provided to legal aid recipients who are facing legal problems,” meaning that recipients are any individual or group who are poor and unable to meet their basic needs adequately and independently, such as rights to food, clothing, health services, education services, employment and business, and/or housing. They are entitled to legal aid when involved in a legal process, whether as suspects or victims, covering civil, criminal, and administrative law matters, both litigation and non-litigation.

A person who becomes a suspect in an investigation is subject to a standard mechanism, including the provision of legal aid, where an investigator will inform the suspect of their rights, including the right to be accompanied by legal counsel. The police

¹¹ Oki Wahyu Budijanto, “Peningkatan Akses Bantuan Hukum Masyarakat Miskin,” *Jurnal Penelitian Hukum* 16, no. 4 (2016)

will ask the suspect whether they already have a lawyer for the examination process or not. For underprivileged individuals who become suspects or victims, they have the right to receive legal aid to resolve the legal issues they are facing. The right to legal assistance arises when someone becomes a suspect and must be accompanied by legal counsel, but is unable to appoint one independently, in which case the police will find a lawyer free of charge.

The police do not provide legal counsel themselves but coordinate with several advocates who offer pro bono legal assistance. The police only facilitate the availability of legal counsel in accordance with the provisions of statutory regulations. Although the police have tried to facilitate the suspect's right to be accompanied by a lawyer, the decision to be accompanied still rests with the suspect. There are still suspects who refuse to be accompanied by a lawyer even though the police have offered the option.

This may be because suspects are not yet aware of their rights and may already be afraid that using a lawyer would incur high costs. Some people also believe that hiring legal counsel would create an additional burden, especially financial costs, even though the presence of legal counsel does not necessarily guarantee the legal process will proceed as the suspect expects. If during the investigation the suspect refuses to be accompanied by a lawyer, then the police will provide a written form stating that the suspect chooses not to be represented by legal counsel.

So, in the legal process, law enforcement officers must carry out their duties in accordance with established procedures and also take part in assisting the public, especially those from underprivileged communities, so that they continue to receive protection, guidance, and services. This way, people from lower-income groups will not be afraid or hesitant to resolve any problems through legal channels, thus avoiding incidents of taking justice into their own hands. When the police provide good service, actively participate in guiding the poor, and do not abuse their authority in enforcing justice, it will create a community environment where people mutually uphold order and collective security.

V. CLOSING

Equality before the law is a fundamental foundation in a rule-of-law state—a theory that can ensure justice and equality are upheld for all citizens. When this theory is applied and implemented in accordance with its principles, the problems surrounding legal aid for the poor will find a clear reference and guideline for implementation. The government has a duty to address several persistent issues, such as the continued difficulty of poor communities in accessing justice through legal aid. This is due to factors such as insufficient case-based funding allocated to Legal Aid Organizations (OBH), convoluted mechanisms, restrictive regulations requiring a Certificate of Indigency (SKTM) which itself is not easily or quickly obtainable, a lack of public outreach, and the absence of standardized guidelines as a comprehensive reference for all parties involved in delivering legal aid services to the poor.

Optimizing the provision of legal aid must be carried out, especially regarding the budget allocated by the government. The government must increase funding and encourage local governments to include Legal Aid activities in their Regional Budgets (APBD). It is also crucial to conduct public outreach about legal aid for the poor, particularly targeting rural communities, to build a broader awareness of justice. Additionally, it is the government's responsibility to maximize the function and management of legal aid delivery-making it less complicated, more efficient, and ensuring easy access for communities to request assistance from Legal Aid Organizations. Legal Aid Organizations should also be provided with simpler, more understandable, and faster reporting systems. In this context, every element has its own responsibilities and roles-law enforcement officers, advocates, the government, and the public. As citizens of Indonesia who uphold the values of Pancasila, particularly the third principle, "*The Unity of Indonesia*," we must foster a sense of mutual care to build a peaceful, harmonious, and prosperous society.

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