

Implementation of Legal Aid in the Criminal Justice System in Indonesia

ABSTRACT

Legal aid constitutes a constitutional right of citizens and represents an essential mechanism to guarantee equal access to justice within the Indonesian criminal justice system. This article seeks to provide a critical and comprehensive examination of the concept, normative foundation, and practical implementation of legal aid in Indonesia. Anchored in Law Number 16 of 2011 concerning Legal Aid, the provision of assistance is intended to ensure that economically disadvantaged groups are not deprived of their fundamental rights in the criminal process. The juridical framework affirms the principle of equality before the law and positions legal aid as a safeguard against potential miscarriages of justice. In the Indonesian criminal justice system, legal assistance is a crucial tool for ensuring equal access to justice and is a constitutional entitlement of citizens. The goal of this essay is to present a thorough and critical analysis of the idea, legislative framework, and actual use of legal aid in Indonesia. The access of assistance which is anchored in Law Number 16 of 2011 concerning Legal Aid, is to guarantee that economically disadvantaged groups do not lose their fundamental rights during the criminal justice system. Legal assistance is positioned as a shield against potential injustices and the legal system upholds the idea of equality before the law. Advocates and recognized legal aid groups that work through the processes of investigation, prosecution, adjudication, and correctional measures are involved in the actualization of legal aid in practice. The implementation of legal aid nevertheless faces structural obstacles, such as insufficient state funding, an unequal geographic distribution of legal aid providers, and the public's continued lack of legal awareness, even in spite of its constitutional status and statutory regulation. These difficulties highlight how important it is for governmental organizations, law enforcement, civil society, and legal experts to work together, strengthen their institutions, and allocate funds appropriately. This essay makes the case that the successful institutionalization of legal assistance is essential for maintaining human rights as well as enhancing the legitimacy and trustworthiness of Indonesia's criminal justice system.

Keyword: legal aid, criminal justice system, access to justice, equality before the law, human rights

INTRODUCTION

Legal aid is a constitutional right of citizens that plays a strategic role in ensuring the principle of equality before the law, as affirmed in Article 27 paragraph (1) and Article 28D of the 1945 Constitution. The Constitution places the state in an obligation to provide legal protection, especially for the economically disadvantaged (Asshiddiqie, 2006;). The Constitution places the state in an obligation to provide legal protection, especially for the economically disadvantaged (Manan, 2005). This principle emphasizes that access to legal aid is not merely a procedural aspect, but an integral part of the concept of Rechtsstaat and the rule of law, which form the basis of the Indonesian constitutional state. (Friedman, 1984).

From a legal system perspective, legal effectiveness is determined by three main components: structure, substance, and legal culture. The implementation of legal aid requires these three aspects: structure in the form of legal aid institutions and advocates, substance in the form of governing legal norms, and legal culture in the form of public awareness to demand their rights (Soekanto, 2009).

The main legislative foundation for legal aid service in Indonesia is Law No. 16 of 2011 concerning Legal Aid. This regulation not only governs the procedures for providing legal aid but also affirms the state's role in guaranteeing the right of the poor to receive free legal assistance (Law No. 16 of 2011). In the context of criminal law, legal aid is viewed as part of criminal policy aimed at combating crime while maintaining a balance between legal certainty, justice, and expediency (Arief, 2001; Muladi & Arief, 2010).

Progressive legal thought emphasizes that the law must side with people, not merely normative texts. Similarly, the concept of law as a tool of social engineering emphasizes that law must be an instrument of social reform. Within this framework, legal aid can be understood as an effort to reduce social disparities in access to justice (Kusumaatmadja, 2002).

From the investigation until the execution of the verdict, Indonesia's legal assistance program is essential to the criminal justice system. However, its practice still faces serious obstacles, such as budget constraints, the lack of distribution of legal aid organizations in the regions, and low public awareness of their legal rights. A similar trend is also demonstrated by alternative approaches to law enforcement, such as restorative justice, which offers a more inclusive solution to achieving justice. Strengthening legal aid institutions is not only a normative obligation but also a practical necessity to increase the legitimacy of Indonesia's criminal justice system. Government support, the professionalism of advocates, and civil society participation are prerequisites for legal aid to truly function as an instrument for protecting human rights and upholding substantive justice (Hasan, 2025).

RESEARCH METHODS

This study uses a normative juridical approach, which is legal research that examines primary, secondary, and tertiary legal documents, to investigate pertinent legal norms and how they are applied in practice. This methodology was chosen since the research focuses on the concept, legal underpinnings, and implementation of legal aid in Indonesia's criminal justice system. The following research methodologies were employed:

- a) A statutory approach, which involved looking into the Republic of Indonesia's 1945 Constitution, Law Number 16 of 2011 about Legal Aid, the Criminal Procedure Code (KUHP), the Criminal Code (KUHP), and associated laws and regulations.
- b) A conceptual approach, which looks at legal professionals' opinions and theories on criminal policy, equality before the law, and access to justice in connection with the delivery of legal aid
- c) A case approach, which looks at rulings from the Constitutional Court and court procedures pertaining to legal aid.

In order to study relevant legal norms and how they are applied in reality, this study employs a normative juridical approach which is legal research that looks at primary, secondary, and tertiary legal materials. Because the research focuses on the idea, legal foundation, and application of legal aid in Indonesia's criminal justice system, this methodology was selected. The research approaches used include:

- a) A statute approach, by examining the provisions of the 1945 Constitution of the Republic of Indonesia, Law Number 16 of 2011 concerning Legal Aid, the Criminal Code (KUHP), the Criminal Procedure Code (KUHP), and related laws and regulations.
- b) A conceptual approach, by examining the views and theories of legal experts on access to justice, equality before the law, and criminal policy in relation to the provision of legal aid.
- c) A case approach, by examining Constitutional Court decisions and judicial practices related to legal aid.

The following are the data sources used in this study:

- a) Primary legal materials, which include pertinent laws and rules including the Criminal Procedure Code (KUHP), the Criminal Code (KUHP), and Supreme Court rules pertaining to the review of minor cases.
- b) Secondary legal materials: these can include textbooks, legal literature, expert comments on minor crimes, scientific publications, and legal magazines.
- c) Tertiary legal materials: these include legal dictionaries and encyclopedias, which are used to improve comprehension of the concepts.

RESULT AND DISCUSSION

The Criminal Justice System in Indonesia

The criminal justice system in Indonesia is an integrated mechanism consisting of several interrelated subsystems: the police, the prosecutor's office, the courts, and correctional institutions. These four subsystems cannot operate in isolation but must function as a complementary whole to achieve the goals of the law, namely justice, legal certainty, and expediency (Mertokusumo, 2007).

The police serve as the first point of contact in the criminal justice process, particularly during the investigation and inquiry stages. Police professionalism in carrying out their duties significantly determines the quality of subsequent legal proceedings, as errors in the initial stages can lead to weak evidence in court (Law No. 8 of 1981). Furthermore, the prosecutor's office acts as the public prosecutor, controlling the course of the case (*dominus litis*), so the prosecutor's integrity significantly determines the quality of the charges presented in court (Hasan, 2025, p. 45).

The court's function is to uphold justice through impartial and independent judicial decisions. Judges are not only required to apply the law textually, but also to explore the values of justice that exist in society, as emphasized in Constitutional Court Decision No. 006/PUU-II/2004, which broadens understanding of citizens' constitutional rights. Meanwhile, correctional institutions carry out both criminal execution and correctional functions, so that the orientation of criminal punishment is not only punishment but also social reintegration (Hasan, 2025).

The development of modern criminal law demonstrates a paradigm shift from a purely repressive system to a more humanistic and participatory approach. One concrete manifestation of this development is the application of restorative justice in resolving minor crimes. This approach emphasizes restoring relationships between the perpetrator, victim, and community, and seeks to achieve just solutions through dialogue and deliberation. Thus, restorative justice

emphasizes not only punishment but also provides space for the creation of social balance and the reintegration of perpetrators into society (Fadila et al., 2024).

This transformation demonstrates that the Indonesian criminal justice system is dynamic and adaptive to societal needs. The orientation, previously dominated by a retributive perspective, has now begun to be complemented by a restorative dimension, so that criminal law is no longer viewed solely as a means of deterrence but also as an instrument for creating social harmony. This aligns with the objectives of modern criminal law, which prioritize substantive justice and the protection of human rights (Rahardjo, 2000).

However, the implementation of the criminal justice system in Indonesia still faces various obstacles. Limited human resources and budget, the uneven distribution of legal aid institutions, and low public legal awareness pose serious challenges to achieving system effectiveness. This situation demonstrates that strengthening the criminal justice system cannot rely solely on regulatory reforms but also requires institutional reform, increased professionalism of law enforcement officers, and the active participation of civil society in supporting the upholding of justice (Hasan, 2025).

Concept and Legal Basis of Legal Aid

Legal aid is an effort to provide legal services to the community, particularly those with economic difficulties, so that they can still obtain their rights and justice before the law. This concept is born from the principle that everyone has the right to equal treatment before the law (equality before the law) without discrimination. In practice, legal aid includes not only assistance in court, but also legal consultations, mediation, and legal counseling for the community (Sulaiman, 2019).

The primary legal basis for providing legal aid in Indonesia is Law Number 16 of 2011 concerning Legal Aid. This law stipulates that the state is obliged to guarantee the right of the poor to receive free legal aid. In addition, there are

several other legal instruments that strengthen the implementation of legal aid, including:

- a) Article 27 paragraph (1) of the Republic of Indonesia's 1945 Constitution, which declares that all people are equal before the law.
- b) Law Number 39 of 1999 respecting Human Rights, which ensures that every citizen has the right to justice and legal protection.
- c) The Criminal Procedure Code (KUHP), which gives defendants or suspects the right to legal representation.
- d) Government Regulation Number 42 of 2013 on the Conditions and Processes for Legal Aid Provision and Fund Disbursement.

This demonstrates that legal aid in Indonesia has a strong legal basis as a manifestation of the principle of a state based on the rule of law (*rechtstaat*) (Marzuki, 2017). Legal aid in Indonesia is implemented based on several key principles, namely:

- a) Free for the poor, thus avoiding any financial burden.
- b) Independence, meaning that legal aid providers are free from interference from any party.
- c) Justice and equality, so that all parties have equal access to the law.
- d) Accountability, meaning that every legal aid service can be accounted for (Harahap, 2020).

Legal aid in Indonesia is implemented through Legal Aid Institutions (LBH) and community organizations accredited by the Ministry of Law and Human Rights. The forms of implementation provided include:

- a) Legal assistance in criminal, civil, and state administrative cases.
- b) Legal counseling to increase public legal awareness.
- c) Policy advocacy related to protecting the rights of the poor.
- a) However in practice various obstacles remain such as the limited number of advocates and the minimal legal aid budget (Rahman, 2021).

The fundamental tenets of the rule of law—justice and equality before the law—are embodied in the idea of legal aid. Along with other legal tools, the passage of Law Number 16 of 2011 about Legal Aid reaffirms the state's commitment to ensuring the impoverished have access to justice. The state is required by law and the constitution to provide an efficient, open, and responsible legal aid system. Therefore, in order to achieve a fair, inclusive, and discriminatory judicial system, it is strategically imperative to strengthen the implementation of legal assistance.

Implementation of Legal Aid in Law Enforcement

Legal aid in Indonesia is provided by advocates and Legal Aid Organizations (OBH) that have received official accreditation from the Ministry of Law and Human Rights. OBHs play a central role in providing legal services, including assistance from the investigation and prosecution stages to the trial process. This assistance is both representative and educational, providing clients with legal understanding regarding their rights and obligations throughout the legal process. Thus, the implementation of legal aid serves as an instrument to ensure access to justice for the underprivileged, while also supporting the principle of fair trial in the criminal and civil justice systems (Marzuki, 2017). Legal assistance provided by advocates and OBHs encompasses several services, including:

- a) Legal Assistance: accompanying clients through all stages of the legal process, from investigation and prosecution to trial (Sulaiman, 2019).
- b) Legal Consultation and Counseling: providing legal understanding regarding rights, obligations, legal procedures, and dispute resolution mechanisms (Harahap, 2020).
- c) Mediation and Policy Advocacy: OBHs play a role in mediation between disputing parties and public policy advocacy to encourage more just and accessible legal reforms for the poor (Rahman, 2021).

Despite clear legal bases and implementation mechanisms, the implementation of legal aid faces various challenges, including limited human resources, budget constraints, geographical and socio-cultural constraints, and the independence and integrity of advocates or OBH (BPHN, 2020; Mappifhui, 2022; Marzuki, 2017).

Evaluations of the implementation of legal aid in Indonesia indicate that the program is effective in increasing access to justice for the poor. This effectiveness can be measured through specific indicators, namely an increase in the number of cases receiving legal assistance, high levels of client satisfaction with the legal services received, and increased public legal awareness regarding their rights and obligations in the judicial process. However, the evaluation findings also emphasize the urgency of strengthening the regulatory framework governing the implementation of legal aid, increasing the human resource capacity of Legal Aid Organizations (OBH), and implementing more systematic and comprehensive monitoring and accountability mechanisms. These steps are necessary to ensure the provision of legal aid is sustainable, effective, and consistent, while ensuring the principles of justice, non-discrimination, and equality before the law are effectively realized (Harahap, 2020).

Challenges and Efforts to Strengthen Legal Aid Implementation

Legal aid is a crucial instrument in ensuring access to justice for all citizens, especially those with limited means. Indonesian legal assistance is governed by Law Number 16 of 2011 on Legal assistance which affirms that every citizen has the right to receive free legal assistance if they cannot afford legal fees. Theoretically, the provision of legal aid plays a crucial role in upholding the principles of social justice and protecting human rights. However, in practice, the implementation of legal aid in Indonesia faces various complex structural and operational obstacles (PBHI & IJRS, 2020).

a) Limited Human Resources

One major obstacle is the limited number of advocates and Legal Aid Organizations (OBH) throughout Indonesia, particularly in remote areas. Many rural areas lack access to OBHs or advocates ready to provide professional and ongoing legal assistance. This situation creates inequality in access to legal services, resulting in people in remote areas having a lower opportunity to obtain legal protection than those in urban areas. These limitations indicate an uneven distribution of human resources and emphasize the need for advocate recruitment strategies and the development of legal aid organizations (OBH) in areas that have historically been underserved (Setiawan, 2020).

b) Budgetary Constraints

In addition to human resource constraints, budgetary constraints are a significant factor affecting the quality of legal aid services. A limited budget limits the capacity of OBHs to conduct advocacy, legal assistance, and legal counseling on a broad scale. Lack of financial support from local governments often hampers the effectiveness of legal aid programs and limits OBHs' ability to reach the poor. This situation demonstrates that the provision of legal aid requires not only adequate regulations but also consistent funding support for optimal service delivery (PBHI & IJRS, 2020).

c) Low Public Legal Awareness

Low public legal awareness is also a major challenge. Many citizens are unaware of their right to free legal aid, so they rarely utilize available services. This impacts poor access to justice for the most vulnerable groups in society. This lack of legal understanding emphasizes the importance of systematic legal education, including through public information campaigns, legal counseling at the community level, and integration of legal education into community social programs (Elisa & Handayani, 2020).

To overcome these various obstacles, efforts are needed to strengthen the implementation of holistic legal aid. First, synergy between the government, OBH

(legal aid bodies), law enforcement officials, and the community must be strengthened. This collaboration can include program coordination, the provision of legal facilities, and monitoring the performance of legal aid services to ensure they are targeted. Second, increasing the number of advocates and developing OBHs in remote areas must be prioritized to ensure a more equitable distribution of human resources and ensure adequate legal access for the public. Third, legal education for the community must be improved through ongoing counseling programs, seminars, and legal campaigns. Legal education not only raises awareness but also empowers the community to exercise their legal rights effectively.

By implementing these strategies, legal aid services in Indonesia are expected to reach a wider audience, improve service quality, and reinforce the principle of social justice. Furthermore, strengthening the implementation of legal aid also has implications for upholding human rights and increasing public trust in the judicial system. An integrated approach involving various parties and combining aspects of regulation, human resources, funding, and legal education is key to achieving equitable access to justice throughout Indonesia.

CONCLUSION

Legal aid in Indonesia is a fundamental instrument for ensuring access to justice and protecting human rights, particularly for the economically disadvantaged. Law Number 16 of 2011 concerning Legal Aid, along with the constitutional basis and other legal instruments, affirms the state's obligation to provide free legal assistance. Thus, legal aid is not merely a procedural mechanism within the criminal justice system, but also an integral part of efforts to uphold substantive justice and strengthen the legitimacy of judicial institutions.

The implementation of legal aid involves accredited advocates and Legal Aid Organizations (OBH), with services that include legal assistance, consultation, mediation, legal counseling, and policy advocacy. Despite clear regulations, practice faces various obstacles, such as limited numbers of advocates and OBHs, minimal budgets, uneven distribution of services, and low public legal awareness. This situation demonstrates that the successful implementation of legal aid depends not only on regulations but also on institutional capacity, the professionalism of implementers, and active community participation.

Strengthening the implementation of legal aid must be carried out holistically through synergy between the government, law enforcement officials, OBHs, and the community. Strategies that include increasing the number of advocates, developing legal aid institutions (OBH) in remote areas, providing adequate budgets, and providing ongoing legal education programs are expected to expand access to justice, ensure the principle of non-discrimination, and increase public trust in the justice system. Thus, legal aid is not merely a means of protection for vulnerable groups, but rather a strategic instrument for building a fair, accountable, and highly integrated criminal justice system. Effective implementation will ensure substantive justice, respect for human rights, and the creation of an inclusive and socially just state based on the rule of law.

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