

The Urgency of Legal Aid in Criminal Cases in Indonesia

ABSTRACT

Access to justice is a fundamental pillar in a democratic legal system that upholds human rights. In the context of criminal law, legal aid plays a crucial role in ensuring fair legal protection, particularly for underprivileged individuals who are often in vulnerable positions. Although Indonesia has established a comprehensive legal framework enshrined in the 1945 Constitution, the Criminal Procedure Code (KUHAP), and Law Number 16 of 2011 on Legal Aid the implementation still faces various structural and cultural challenges. This study employs normative and sociological legal approaches to examine the urgency of legal aid in criminal cases and the obstacles encountered in its execution. These include the uneven distribution of legal aid organizations, limited funding and trained personnel, as well as the low legal awareness among the poor. The findings highlight the need for stronger state commitment through institutional capacity building, increased funding, and legal education initiatives to realize a fair and inclusive criminal justice system that guarantees the rights of all citizens.

Keyword: Legal Aid, Justice, Criminal

INTRODUCTION

The principle of equality access in obtaining justice is a fundamental foundation of a democratic and civilized legal system. If seen from the point of criminal law, this principle is particularly crucial given the unequal position between suspects or defendants and state law enforcement officials. When someone faces criminal proceedings, the right to legal aid is a non-negotiable constitutional guarantee as part of human rights. (Irawan, H., & Hasan, 2024, 4603). Fundamentally, Every person in his position as a citizen has the right to be guaranteed the right to receive legal aid, ensure there is no difference in treatment in the legal process (equality) and protection from legal action. Indonesia itself has recognized and regulated the right to legal aid through various legal instruments, including the 1945 Constitution of the Republic of

Indonesia, the Criminal Procedure Code (KUHAP), and Law Number 16 of 2011 concerning Legal Aid.

In practice, the realization of legal aid in criminal cases still faces various challenges. Classic problems such as a shortage of available lawyers, geographical disparities, budget constraints, and a lack of legal awareness among the poor hinder the fulfillment of these rights(LBH Jakarta, 2023). This raises significant questions about the extent to which the state is present in ensuring justice for every citizen, especially vulnerable and economically disadvantaged groups.

This research examines the urgency and reality of implementing legal aid in criminal cases in Indonesia, as well as the obstacles faced in realizing a just and inclusive criminal justice system. Using a normative juridical and sociological approach, this paper also examines the contribution of legal aid to upholding The principle of fair trials and proper legal procedures, which are integral parts of a state based on the rule of law.

RESEARCH METHODS

This study uses a normative research method and sociological juridical methods. The normative juridical approach is used to analyze positive legal norms governing legal aid in criminal cases, including the constitution, laws, implementing regulations, and court decisions (Soekanto dan Mamudji, 13-14). Meanwhile, the sociological juridical approach is used to examine how these laws are implemented in practice, particularly regarding the effectiveness of providing legal aid to the poor. (Muhammad, 2013, 125)

The data sources in this study include primary legal materials: the Constitution, the Criminal Code, Law Number 16 of 2011 concerning Legal Aid in Indonesia, and court decisions. Secondary legal materials: books, legal journals, reports from Non-Government Organizations such as the

International Court of Justice Reform, Legal Aid Institute, National Human Rights Commission, and other academic publications. Tertiary legal materials: Legal dictionaries, legal encyclopedias (Marzuki, 2016, 141-142). Data collection techniques were conducted through literature and documentation studies. Data analysis was conducted qualitatively by interpreting legal norms and comparing them with empirical reality.

RESULT AND DISCUSSION

The Urgency of Legal Aid in Criminal Cases

Legal aid in criminal cases is the primary means of realizing the principle of equality before the law and the right to a fair trial.⁶ United Nations Office on Drugs and Crime (UNODC, 2014, 15) In the criminal legal system, suspects and defendants are in a highly vulnerable position, especially if they come from low-income groups. The inability to afford legal counsel often prevents them from receiving adequate defense, which ultimately impacts the quality of court decisions. (Muladi, 2002, 113),

Article 56 of the Criminal Procedure Code states that if a suspect or defendant is suspected of committing a crime punishable by five years or more in prison and cannot afford it, they must be provided with legal counsel from the start of the examination. This provision is reinforced by Article 34 of Law Number 16 of 2011, which confirms that every individual and group of poor people have the right to receive legal aid free of charge. Legal assistance from a legal expert is what Soerjono Soekanto meant when he said "legal aid." Legal aid is available to those who need it so they can realize their rights and obtain reasonable legal protection. (Irawan dan Hasan, 2024, 3)

Recent developments indicate regarding the concept of providing legal aid is now integrated with the aspirations of a welfare state, so that almost all governments now support legal aid programs as part of welfare and social

justice policies. From this advancement in thinking regarding the concept of legal aid, various forms of legal aid provided to the community have emerged. Cappelletti and Gordley, in their article entitled "Legal Aid Modern Themes and Variations," as cited by Soerjono Soekanto, categorize legal aid into two categories: legal aid of a juridical-individual nature and legal aid of a welfare nature. (Hasan, 2025, 7)

Philosophically, legal aid is not merely a procedural facility, but rather part of the fulfillment of human rights. Indonesia's international commitment to the International Covenant on Civil and Political Rights (ICCPR) also mandates that everyone charged with a crime must be provided with legal aid if they cannot afford a lawyer. Moeljatno, in his paper on Zaiunudin Hasan, states that criminal acts originate from The word "strafbaar feit," according to Simons, refers to behavior (handeling) that is punishable by law. (Hasan, 2021, 2)

According to 2022 data from LBH Jakarta, more than 70% of the criminal clients they assist come from economically disadvantaged groups. Without legal assistance, they are vulnerable to abuse of power, false arrest, criminalization, and even being forced to confess to illegal acts (for example, through torture or psychological pressure). (LBH Jakarta, 2022) Therefore, legal aid is a crucial instrument in protecting citizens' basic rights in the face of a repressive criminal justice system.

Regulation and Implementation of Legal Aid in Criminal Cases in Indonesia

Normatively, Indonesia has a fairly strong legal framework to guarantee legal aid in criminal cases. Several legal instruments that serve as important foundations include Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia, and Articles 56 to 58 of the Criminal Procedure Code (KUHAP), which explicitly regulate the right of suspects or defendants to obtain legal counsel, especially if they are economically disadvantaged. This provision is reinforced by Law Number 16 of 2011 concerning Legal Aid, which provides

systematic regulations regarding legal aid institutions, accreditation mechanisms, funding, and the rights of legal aid recipients. (Marzuki, 2016, 158)

However, In the application realm, the implementation of legal aid still faces various obstacles. The distribution of legal aid organizations (OBH) in Indonesia is uneven and is more concentrated in urban areas, while rural areas still struggle to access legal services. Furthermore, limited state budgets impact the quality of services and the capacity of legal assistance. The limited availability of human resources, particularly advocates willing to handle legal aid cases for free or with low incentives, also poses a serious obstacle to implementation in the field (Soekanto, 2012, 47-48)

Weak public legal awareness exacerbates this situation. Many citizens, especially those from low-income groups, are unaware of their right to free legal aid. Furthermore, the social stigma that legal aid is synonymous with "defense against criminals" remains quite strong, ultimately hindering public participation in exercising this right. The state also remains heavily dependent on non-governmental organizations, such as NGOs and Legal Aid Institutions (LBH), to carry out its legal aid services. This dependence demonstrates the state's suboptimal role in ensuring access to justice, as part of its constitutional responsibility. (Rahayu, 2021, 245-260)

CONCLUSION

Legal aid in criminal cases is a fundamental element in ensuring justice and protecting human rights, particularly for the underprivileged. In Indonesia's complex and repressive criminal justice system, the presence of legal counsel serves not only as legal assistance but also as a protection of the principles of equality and justice in the judiciary and a deterrent to abuse of authority by law enforcement officials.

Normatively, Indonesia has a sufficient legal basis, both in the constitution, the Criminal Procedure Code, and Law No. 16 of 2011. However, in practice, the implementation of legal aid still faces various structural and cultural challenges. Inequitable distribution among legal aid organizations, budget constraints, a shortage of advocates, and weak public awareness are key obstacles eroding the effectiveness of the right to criminal legal aid.

Therefore, serious and sustained efforts are needed by the state to ensure that legal aid is truly accessible, equitable, and of high quality, as part of its commitment to access to justice.

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REFERENCES

Abdulkadir Muhammad. (2013), *Hukum dan Penelitian Hukum*, Bandung: Citra Aditya Bakti

Irawan, H., & Hasan, Z. (2024). Dampak teknologi terhadap strategi litigasi dan bantuan hukum: Tren dan inovasi di era digital. Innovative: *Journal of Social Science Research*.

Lembaga Bantuan Hukum (LBH) Jakarta. (2023), *Laporan Tahunan 2022*, Jakarta: LBH Jakarta.

Lembaga Bantuan Hukum Jakarta, (2022), *Laporan Tahunan 2022: Potret Ketimpangan Akses Keadilan Bagi Rakyat Miskin*, Jakarta: LBH.

Muladi, (2002), *Hak Asasi Manusia, Politik, dan Sistem Peradilan Pidana*, Jakarta: Bina Aksara.

Peter Mahmud Marzuki, (2016), *Penelitian Hukum, Cet. ke-13*, Jakarta: Kencana. Peter Mahmud Marzuki. (2016), *Penelitian Hukum*, Jakarta: Kencana.

Siti Rahayu, (2021) "Peran Negara dalam Penyediaan Bantuan Hukum: Antara Kewajiban dan Ketergantungan pada LSM", *Jurnal Hukum dan Pembangunan*, Vol. 51, No. 2

Soerjono Soekanto dan Sri Mamudji, (2010) *Penelitian Hukum Normatif: Suatu Tinjauan Singkat*, Jakarta: Rajawali Pers.

Soerjono Soekanto. (2012), *Faktor-Faktor yang Mempengaruhi Penegakan Hukum*, Jakarta: Rajawali Pers.

United Nations Office on Drugs and Crime (UNODC). (2014), *Handbook on Ensuring Legal Aid in Criminal Justice Processes*, Vienna: UNODC.

Zainudin Hasan, (2025), *Bantuan Hukum*, Lampung: Universitas Bandar Lampung, hlm. 7

Irawan, Hengki, and Zainudin Hasan. "Dampak teknologi terhadap strategi litigasi dan bantuan hukum: tren dan inovasi di era digital." Innovative: *Journal of Social Science Research* 4.2 (2024): 4600-4613. hal 3

Zainudin Hasan, Penghentian Penuntutan Tindak Pidana Penggelapan Sebagai Implementasi Peraturan Kejaksaan Agung Republik Indonesia Nomor 15 Tahun 2020 Berdasarkan Keadilan Restoratif Justice. *JHM* Vol. 2 No. 1 April 2021. hlm. 2.