

# PROVIDING LEGAL AID AS A RIGHT CONSTITUTIONAL POOR PEOPLE IN INDONESIA

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**ABSTRACT:** *Legal aid is a constitutionally inherent right that poor people must obtain. However, the fact is that many poor people who conflict with the law have not received maximum legal assistance, because in providing legal aid, law enforcers, especially advocates, have not implemented optimally in providing legal assistance to poor people. This article examines the implementation of legal aid to poor people as a constitutionally inherent right granted by the government and advocates so that inherent rights are not neglected. This research method uses normative law and is supported by empirical legal research. The results of this research show that in the administration of legal assistance by advocates and the government, the position of advocates in the criminal justice system is not balanced so that advocates in providing legal assistance are still selective and are often intervened by other law enforcement officials so that they do not use legal assistance. This situation can result in the neglect of the inherent rights of poor people in obtaining legal assistance starting from the investigation stage to prosecution and even to prison. Furthermore, the implementation of legal aid is less than optimal because there are factors that hinder poor people from getting justice, this is due to public ignorance, limited norms, and frequent discrimination, even though the Criminal Code, the Legal Aid Law, and the Children's Law have been regulated, although only vaguely.*

**Keywords:** Legal Aid, Constitutional Rights, Poor People.

## I. INTRODUCTION

Article 28 D paragraph (1) of the Constitution of the Republic of Indonesia which states that "Everyone has the right to recognition, guarantees, protection, and fair legal certainty as well as an equal treatment before the law". The birth of the Legal Aid Law should be a concrete manifestation of the state's responsibility for the Right to Legal Aid as access to justice for all Indonesian people as mandated by the 1945 Constitution [1]. In the Criminal Code, every citizen who conflicts with the law must be accompanied by an advocate. Thus, the concept of legal aid in Law No. 16 of 2011 is that legal aid is financial assistance from the state for poor people who conflict with the law. Previously, the state did not fulfill the right to legal assistance for the community.

Constitutionally, legal aid is an inherent right of poor people who want to face the law, therefore, in administering legal aid, the state and advocates must be able to cooperate optimally in providing legal aid. However, in reality, there are still many poor people whose constitutional rights to obtain legal aid have not been fulfilled, so the number of people and aid institutions is very inversely proportional [2].

In reality, the legal assistance provided to poor people is not optimal. The distribution of legal aid providers is not evenly distributed throughout Indonesia. Based on the data presented in the Legal Aid Access Map obtained from the LSC (Legal Smart Channel) website, which presents the distribution of OBH in Indonesia, it illustrates that the distribution of OBH in Indonesia is still uneven, areas such as Kalimantan, Bangka Belitung, Kep. Riau, Papua, West Papua are still very minimal, you can even count them on your fingers [3]. Currently, there are only 215 districts/cities that have PBH. Of the 611 (six hundred and eleven) OBHs that have been accredited, the majority of OBHs are on the island of Java, while in other areas such as Kalimantan and especially in eastern Indonesia there are still very few and even if there are they are only concentrated in the provincial capitals. This uneven distribution of OBH causes the implementation of the Bankum Law to be ineffective and inefficient, and of course contrary to Article 2 letters e and f.

Based on these data, it can be seen that the access to justice that poor people will get from providing legal assistance is very far from expectations. So access to justice and legal aid is a fundamental right for poor people, but in practice, there is inequality in the criminal justice system. So there will be sub-optimality in providing legal assistance to the poor, and then forms of inequality will arise in achieving access to justice for the poor, starting from economic status, social status, and culture. Furthermore, this will also result in human rights violations and violate the values of Pancasila.

## II. METHOD

This article is the result of legal research that employs a normative juridical and empirical juridical method, which aims to explain the problems studied by considering legal aspects and trying to understand the social reality that exists in society. In this approach, law is not only seen as a normative or theoretical entity that stands alone but also as a part that is integrated into a social system that is related to other social conditions, namely the state of affairs. This research uses a descriptive-analytical approach by conducting a field survey and is also based on statutory regulations. An analytical approach is carried out by analyzing the identified problems using legal regulations, expert opinions, and legal theories relevant to this research.

## III. DISCUSSION

The provision of legal aid certainly cannot be separated from 3 elements, namely the Government, in this case, the State (organizer), Advocates (organizer and provider), and the community (recipient) [4]. These three elements will certainly provide a link to providing access to justice, especially by the government and advocates as providers of legal aid which will create access to justice for poor people. Legal aid is a constitutional right guaranteed by the 1945 Constitution, this is a manifestation and commitment of the State to provide justice for all its people without any discrimination from any party. Article 28 D paragraph (1) of the 1945 Constitution explains that everyone has the right to recognition, guarantees, and protection as well as fair legal certainty and equal treatment

before this. This will of course also be related to the dignity of the nation which guarantees protection for its citizens, especially poor people who conflict with the law to obtain legal assistance which is an inherent right regulated in the constitution [5]. This will also, of course, be related to the application of the principle of equality before the law, which means that everyone is equal before the law so that poor people must be treated the same as people who ask for help from lawyers on a paid basis, and poor people who are civilized by the law to get legal aid free.

Apart from the 1945 Constitution, this legal aid will also be related to Pancasila values, especially human values, which are contained in the second principle. This humanitarian value will of course be closely related to human rights which are rights protected by the Indonesian people, so that poor people should be able to obtain their rights through access to justice and human rights. Thus, Pancasila protects poor people from getting access to legal aid that is mandatory and must be provided by the state and advocates, so that it can have a positive impact on society.

Legal aid is also clearly regulated in the Criminal Procedure Code, the Legal Aid Law as well as specialist laws such as the Children's Law. This illustrates that it is very important to provide legal aid at this time because considering that society will lose confidence in the law, it must be reorganized in the provision of legal aid to all members of society, especially poor people who are less well off financially and economically.

The perspective of implementing legal aid for the poor is not only seen as meeting the community's need for assistance in every legal process, but more than that, namely making the community understand the law and able to criticize existing legal products, namely by providing legal and citizenship education for the community. (civil education) [3]. This perspective can ideally solve this problem, but it is not yet appropriate at the level of implementation. Based on the results of research conducted [6], several advocates and institutions were found. Based on a perspective that views the provision of legal aid as passive and the limited access provided by the courts will reduce the optimization of the provision of legal aid to poor people. This makes it urgent for advocates/LBH to view the provision of legal aid actively and not rely too much on access provided by the courts or the government.

In general, providing legal assistance will of course also be related to the number of OBHs involved in providing legal assistance, as well as those that already have accreditation. In Indonesia, from Sabang to Mauroke, several provinces already have accredited OBH/LBH which is based on the Decree of the Minister of Law and Human Rights Number M.HH-02.HN.03.03 of 2021 concerning Legal Aid Institutions/Organizations that have passed verification and accreditation as legal aid providers. Period 2022 to. 2024, as follows:

**Table 1. Number of OBH per province in Indonesia for the period 2022 to 2024.**

No	Province	Amount of OBH
1	Nanggroe Aceh Darussalam (Capital of Banda Aceh)	21
2	North Sumatra (Capital City of Medan)	32
3	South Sumatra (Capital City of Palembang)	10
4	West Sumatra (Capital City of Padang)	8
5	Bengkulu (Capital of Bengkulu)	10
6	Riau (Capital City of Pekanbaru)	10
7	Riau Islands (Capital City of Tanjung Pinang)	6
8	Jambi (Capital of Jambi)	14
9	Lampung (Capital City of Bandar Lampung)	22
10	Bangka Belitung (Capital City of Pangkal Pinang)	6
11	West Kalimantan (Capital City of Pontianak)	5
12	East Kalimantan (Capital City of Samarinda)	17
13	South Kalimantan (Capital City of Banjarbaru)	2
14	Central Kalimantan (Capital City Palangkaraya)	6
15	North Kalimantan (Capital City of Tanjung Selor)	-
16	Banten (Capital City of Serang)	17
17	DKI Jakarta (Capital City of Jakarta)	41
18	West Java (Capital City Bandung)	47
19	Central Java (Capital City of Semarang)	57
20	Yogyakarta Special Region (Capital City of Yogyakarta)	22
21	East Java (Capital City Surabaya)	61
22	Bali (Capital City of Denpasar)	6
23	East Nusa Tenggara (Capital City Kupang)	7
24	West Nusa Tenggara (Capital City of Mataram)	20
25	Gorontalo (Capital of Gorontalo)	7
26	West Sulawesi (Capital City Mamuju)	4
27	Central Sulawesi (Capital City of Palu)	12
28	North Sulawesi (Capital City Manado)	6
29	Southeast Sulawesi (Capital City Kendari)	14
30	South Sulawesi (Capital City Makassar)	20
31	North Maluku (Capital of Sofifi)	7
32	Maluku (Capital City of Ambon)	5
33	West Papua (Capital City Manokwari)	5
34	Papua (Capital City of Jayapura)	2
35	Central Papua (Capital City of Nabire)	-
36	Papua Mountains (Capital City of Jayawijaya)	-
37	South Papua (Capital City of Merauke)	-
38	Southwest Papua (Capital City of Sorong)	-
<b>Amount</b>		<b>624</b>

Source: data from the Ministry of Law and Rights of the Republic of Indonesia, 2024

Based on this data, in providing legal assistance, it appears that there is an imbalance between the number of people providing legal assistance or OBH/LBH, especially in Lampung Province. Based on data published by BPS Lampung Province, the population according to age groups and gender in Lampung Province (thousand people), in 2023 and 2024 will be 9,313.99 people. In 2023 and in 2024 it will be 9,419.58 people [7] .

With these data, it can be seen that the number of people in Lampung Province is increasing and growing every year, this is used as the basis that the people in Lampung Province must have their rights protected legally and have the right to receive legal assistance.

Furthermore, not all of the people in Lampung Province are rich, but some poor people must receive legal assistance. This is an obligation for legal advisors, in this case advocates, to provide legal assistance. Based on BPS data from Lampung Province in 2023, the number of poor people in Lampung Province is 970.67 people. Thus, it must be of great concern that priority must be given to helping poor people in Lampung Province to provide legal assistance. In Lampung Province itself, there are only 22 accredited OBHs, so it is not comparable when looking at the current state of the implementation of legal assistance.

Based on the number of accredited OBHs in Lampung Province, in principle, they have different accreditations, namely B accreditation and C accreditation. This proves that in handling cases throughout the Lampung region, there are only a few OBHs that can provide legal assistance to poor people. However, this is because it is very difficult for OBH to register to obtain accreditation, starting from administrative requirements and other non-technical requirements. Therefore, the implementation of existing OBH legal assistance should make it easier to obtain accreditation as long as it does not violate statutory provisions.

Providing legal assistance in implementation in the community still encounters many obstacles which ultimately give rise to problems in its implementation so that as a result, access to law and justice is not realized. Based on the results of researchers' observations, several problems hinder the implementation of legal aid for poor people. One of the problems found, based on research conducted by the Indonesia Judicial Research Society (IJRS), is that as many as 52% of the general public in Indonesia are not aware of the existence of free legal aid from the Government, and as many as 48% of the public are aware of its existence. free legal assistance from the Government. The majority of these people do not use legal aid. This is due to several reasons, such as concerns that the process is convoluted and not being sure that you will get satisfactory results [8].

Furthermore, in the criminal justice system, there is also an imbalance between advocates and other law enforcers. So that law enforcement and the provision of legal assistance between advocates, police, prosecutors, and judges must have equality and balance, this aims to ensure that there are no problems in the field and there is no discrimination so that in the Criminal Procedure Code advocates must be made into an inseparable unit from law enforcers. others, even though they are not yet clearly regulated in the Criminal Procedure Code. Thus, the position of advocates in the Criminal Procedure Code must be clear advocates are law enforcers who have the right to accompany people seeking justice and have the same rights and responsibilities as other law enforcers.

In providing legal assistance to poor people, this can of course be done in terms of litigation and non-litigation legal assistance. This is the scope of providing legal assistance so that in its implementation it also has implications for more optimal law enforcement in safeguarding the constitutional rights of poor people. The mechanism for providing legal aid

can also be through several institutions, namely the Legal Aid Institute (LBH), Legal Aid Organization (OBH), and through universities, namely the Faculty of Law which has a Legal Aid Institute (LBH) which is used as a legal aid laboratory. Universities providing access to legal aid can also really help fulfill the constitutional rights of the community, so it is necessary to develop the abilities of students who will become actors in providing legal aid.

The implementation of legal aid in practice in society is less than optimal because it still has various kinds of systematic problems that have an impact on the lack of access to law and justice for justice seekers [9]. Therefore, we need an idea that can solve problems in implementing the provision of legal aid for poor people, so that the realization of access to law and justice is not just a myth or a sweet promise made by the state. Referring to the definition and strategy for realizing access to law and justice, there are several efforts to optimize the implementation of providing legal aid for poor people as follows:

- 1) Stimulants for Advocates/LBH in Providing Legal Assistance.
- 2) Active, Responsive, and Structural Legal Assistance.
- 3) All access to justice is accessible.
- 4) Supervision in the Implementation of Providing Legal Aid.

Based on the above, the application of legal aid, both normatively and in terms of implementation in society, has not been optimal, so a supervisory system is needed to monitor several components of the implementation of legal aid. This supervision includes whether or not legal aid is provided, whether or not access to justice is used, and the performance of advocates or LBH in providing legal aid, in this case of course opinions are needed from the public and clients who have been recipients of legal aid, and final supervision regarding absorption. funds that look at whether the funds used for legal aid purposes are appropriate or not, so that there is no embezzlement or corruption of legal aid funds [10].

Thus, legal assistance is a constitutional right of the community, so the state and law enforcement officials, especially advocates, must be able to provide optimal legal assistance. This aims to ensure that law enforcement can provide a contribution that can fulfill the rights of the poor. Legal aid to people seeking justice is to provide balance, legal certainty, and fairness in the law enforcement process to better ensure that violations of the constitutional rights of people seeking justice are avoided.

Changes in the law in providing legal assistance to people seeking justice are by changing the criminal procedural law, both contained in the Criminal Procedure Code and the Legal Aid Law, which requires every community seeking justice who encounters the law to be accompanied by a legal advisor so that the presence of an advocate represents the interests of the law. for people seeking justice. So that there are no longer any forms of rejection of legal assistance as stated in the statement. As well as changing the position of advocates in the criminal justice system so that advocates carry out their professional duties at the same time as their rights and positions with other law enforcement officers, so that Access to Law and Justice will be realized in providing legal assistance to people seeking justice.

#### IV. CONCLUSION

Based on the explanation above, it can be concluded that in the implementation of legal assistance by advocates and the government, the position of advocates in the criminal justice system is not balanced, so advocates in providing legal assistance are still selective and often intervened by other law enforcement officials so that they do not use legal aid. This situation can result in the neglect of the inherent rights of poor people in obtaining legal assistance starting from the investigation stage to prosecution and even to prison. Furthermore, the implementation of legal aid is less than optimal due to factors that hinder poor people from obtaining justice, this is due to public ignorance, limited norms, and frequent discrimination, even though the Criminal Code, the Legal Aid Law, and the Children's Law have been regulated, although only vaguely. Even though constitutionally there are regulations, in reality, the implementation of legal assistance to the poor is not yet optimal.

It would be better if the Criminal Procedure Code, as a formal rule of criminal procedural law, is immediately revised regarding the status and position of advocates in providing legal aid, so that there is balance in law enforcement. It would be better if the Legal Aid Law and other regulations governing the provision of legal aid for the poor provide easy access to services in the provision of legal aid for the poor.

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