

## Existence And Position Of Paralegal In Legal Assistance And Provision Of Legal Aid In Indonesia

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### Abstract

In a state governed by the rule of law that upholds the principles of equality before the law and access to justice, the provision of fair and equitable legal aid is a fundamental human right that must be guaranteed by the state. However, in practice, legal access disparities persist, particularly among the poor, vulnerable groups, and communities in remote areas. In response to the limited availability of lawyers and legal aid services, paralegals emerge as non-professional actors who perform non-litigation legal assistance roles. This study aims to analyze the legal legitimacy and existence of paralegals within Indonesia's legal system. Using a normative juridical approach, supported by historical and conceptual analysis, the study finds that paralegals gain legal standing

through Law No. 16 of 2011 and its derivative regulations. Nevertheless, their formal recognition remains limited, especially following Supreme Court Decision No. 22 P/HUM/2018, which restricts paralegals from participating in litigation processes. This limitation overlooks the significant role paralegals play in legal education, community advocacy, and grassroots legal empowerment. Therefore, policy reform and stronger legal recognition are urgently needed to enable paralegals to contribute more effectively to the realization of substantive justice and broader access to legal remedies.

**Keywords:** *Paralegal, legal aid, legal legitimacy*

## I. Introduction

In social and state life, legal issues are an inevitability that cannot be avoided. Every individual, group, or community can at any time be faced with legal issues, whether civil, criminal, or state administrative. In a state of law ( *rechtstaat* ), as stated in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945), the supremacy of law is a fundamental principle that is the basis of national and state life. This means that the law applies universally and equally to everyone, regardless of social, economic, racial, religious, or gender status. As a manifestation of the rule of law, the principle of equality before the law and access to justice are essential elements that must be guaranteed by the state. One form of implementation of this principle is through the provision of fair and equitable legal aid (Wicaksono et al., 2024)

Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia explicitly states that “Everyone has the right to recognition, guarantee, protection, and certainty of fair law and equal treatment before the law.” This shows that the right to obtain legal aid is not a form of state generosity, but rather an inherent human right that must be fulfilled by the state in order to guarantee substantive justice. However, in social reality, inequality in access to justice is still very high, especially among the poor, vulnerable groups, indigenous communities, women, children, and people living in remote areas. Data from the

National Legal Development Agency (BPHN) shows that the number of advocates in Indonesia is very disproportionate to the needs of the community.

Until 2020, the ratio of advocates to the population of Indonesia was still very low, with advocates concentrated more in urban areas and government centers. This condition causes a serious gap in access to legal aid, which is most needed by those who do not have economic and social power. In response to these issues, the role of paralegals is crucial in bridging the legal needs of the community and the availability of affordable and inclusive legal aid. Paralegals are individuals who, although not advocates, have been equipped with basic legal knowledge and skills to provide non-litigation legal assistance to the community. The role of paralegals is not only technical, but also transformative, because they are present in the midst of the community, integrated with the social dynamics of the community, and are often at the forefront in detecting and responding to violations of community rights. There are three main concepts in the implementation of legal aid, namely individual law, constitutional legal aid, and structural legal aid. Individual legal aid, which is traditional, is an old approach that is in accordance with the applicable legal system, where assistance is provided in certain cases that are legally considered worthy of being defended (Nafik et al., 2024)

The main focus of this approach lies in the application of the law itself, which is assumed to be neutral and fair to all parties. In contrast, the concept of structural legal aid seeks to link the practice of legal aid with efforts to change social structures that experience inequality. The goal of this approach is not only to provide support to individuals in dispute, but also to emphasize the resolution of conflicts that have an impact on social inequality more broadly. Therefore, legal aid is seen as a tool for social change towards a more just order, not just strengthening existing conditions. It is in this context that the existence of paralegals becomes increasingly relevant. Paralegals are present as non-professional actors who carry out non-litigation legal aid functions in the community

They are not advocates in the formal sense, but have basic skills and capacities in providing legal information, conducting community-based advocacy, mediating conflicts, and acting as liaisons between the

community and formal legal institutions. Their role is vital, especially amidst the limited number of advocates and law firms that can reach the community. The existence of paralegals is legally legitimized in Law Number 16 of 2011 concerning Legal Aid, specifically Article 1 number 1 and Article 9, which states that legal aid can be provided by accredited Legal Aid Institutions (LBH), which in their implementation can empower paralegals. Furthermore, Permenkumham Number 1 of 2018 concerning Paralegals in the Provision of Legal Aid specifically regulates the definition, scope, competence, and mechanism for involving paralegals. Article 1 paragraph (1) of this regulation states that a paralegal is “any person from a community or society who has knowledge and/or experience in providing legal aid.” However, the existence of paralegals in the Indonesian legal system still faces various challenges, especially related to formal recognition and limits of authority. This is proven by the Supreme Court Decision Number 22 P/HUM/2018, which states that Article 11 and Article 12 in Permenkumham No. 1 of 2018 are contrary to Law Number 18 of 2003 concerning Advocates, which gives advocates exclusive rights to provide assistance in court.

This decision substantially limits the space for paralegals to move as an answer to the thoughts of the community that are able to provide a solution to resolve an existing problem, especially for the less fortunate, especially in terms of litigation legal assistance, which is actually very much needed by the lower class when they are unable to obtain the services of an advocate (Hartanto et al., 2014). Although the scope of their authority is limited, the contribution of paralegals in providing legal counseling, community mediation, case documentation, and strengthening community capacity remains an integral part of a participatory and community-based legal aid system. Various studies have shown that the role of paralegals is very effective in building community legal awareness and strengthening the bargaining position of communities in dealing with the legal problems they experience.

Based on the description of the background above, the author is interested in conducting a study using the juridical-normative method, which is a method for studying and analyzing legal materials and issues based on laws and regulations with the title “The Position and Existence of Paralegals in Legal Assistance and Provision of Legal Aid in

Indonesia”, with the hope that the benefits that can be taken from this article are so that the public can know about the position and existence of paralegals in legal assistance and provision in Indonesia, and also so that it can be used as a reference by students, educators, practitioners, and the wider community in the development and implementation of legal theory and legal concepts in the presence and position of paralegals as assistants and providers of legal aid in Indonesia (Nafik et al., 2024). With this description, the problems raised in this paper are: 1. How is the Legal Legitimacy of Paralegals in the National Legal Order; and 2. How is the Existence and Development of Paralegals in Indonesia.

## II. Methods

Research methods are the framework used to obtain data scientifically with specific purposes and uses. Research methods are the steps taken in carrying out a research activity in order to be able to carry out its function, namely to find the truth. The truth must come from science, so it is important to know where the knowledge comes from and whether the source is reliable. Therefore, without a research method, researchers will not be able to obtain sources of knowledge in legal research, both empirical and normative. This research uses a descriptive juridical-normative approach, namely research based on laws and legal norms that are relevant to the problems being studied, with data sources originating from facts in society and literature or secondary data.

In this approach, law is understood as an autonomous and systematic norm, so that the data sources used are data and secondary, consisting of three types of legal materials

- a. Primary legal materials are laws that are binding from the perspective of basic norms. Basically, primary legal materials are materials that are binding on the issues to be studied. For example, the 1945 Constitution of the State, Laws/Government Regulations in Lieu of Laws, Government Regulations, Presidential Regulations, Provincial Regulations, and Regency/City Regulations. In this study, the primary legal materials are the 1945 Constitution of the Republic of Indonesia, Law Number 18 of 2003 concerning Advocates, Law Number 16 of 2011 concerning Legal Aid, Supreme

Court Decision (MA) Number 22 P/HUM/2018, Regulation of the Minister of Law and Human Rights (Permenkumham) Number 3 of 2021 concerning Paralegals in the Provision of Legal Aid, and Government Regulations and Other relevant Regulations;

- b. Secondary legal materials are laws that provide explanations regarding primary legal materials in the form of books, research results and/or scientific works, results of seminars or other meetings, opinions of legal experts that are closely related to the research object;
- c. Tertiary legal materials are legal materials that are supporting in nature to provide guidance and additional explanations to primary and secondary legal materials. Examples are general dictionaries, legal dictionaries, newspapers, the internet, and papers related to the research object.

This study uses a juridical-normative method as the main approach, supported by a conceptual and historical approach to trace the development of the position, existence and history related to paralegals, especially in Indonesia. A conceptual approach is needed to understand the philosophical basis, theory, principles and principles in law, such as the principle of access to justice, equality before the law, and the role of the state in guaranteeing legal aid for vulnerable groups. Meanwhile, a historical approach is used to find out and analyze the background that led to the birth of Law Number 16 of 2011 concerning Legal Aid and Permenkumham No. 1 of 2018 concerning Paralegals, as well as the shift in policy after the Supreme Court Decision No. 22 P/HUM/2018 and Regulation of the Minister of Law and Human Rights (Permenkumham) Number 3 of 2021 concerning Paralegals in the Provision of Legal Aid which limits the authority of paralegals. Data collection techniques are carried out through library research . Legal documents and literature are collected and referred to as materials in this study.

The results of the discussion are conducted in a descriptive analytical manner which will explain the position of paralegals in the eyes of the law as well as the existence and development of paralegals as assistants and providers of legal aid in Indonesia.

### III. Result and Discussion

#### *A. Paralegal Development in Indonesia*

The emergence of paralegals is an answer to the lack of understanding and fulfillment of social assumptions to realize the rights of the poor that have been clearly recognized by law against legal powerlessness and in the world of the legal profession. These rights can be implemented if these social assumptions are met, where society understands and understands its rights that have obligations and skills in fighting for the realization of these rights. Fulfillment of social assumptions and values of justice in society is the basis for the presence and development of paralegals. According to the theory of justice put forward by Aristotle, namely the emphasis on balance or proportion. Aristotle argued that everything in a country must lead to noble ideals through goodness that prioritizes the values of justice and truth in that goodness (Hartanto et al., 2014)

The balance or proportion referred to by Aristotle's theory of justice means that there is equality of rights between one individual and another. However, this justice is like a coin that has two sides, where one side says it is true that equality of rights is justice. On the other hand, it must be understood that inequality of rights also means justice. However, here Aristotle based his theory of justice on the principle of equality. There is a modern version of Aristotle's theory of justice which formulates that justice can be implemented if equal things are treated equally and unequal things are treated unequally. In the theory of justice initiated by Aristotle, he distinguishes justice into two types, namely distributive justice and commutative justice. What is meant by distributive justice is justice that emphasizes that everyone will get what is their right. So, this distributive justice is proportional.

The rights referred to in this justice are the rights that every citizen has, such as the right to defend his life by getting the same rights to the law, which means that the right to the law does not differentiate between each citizen in terms of their ability or inability to access or obtain legal assistance. If observed further, this distributive justice speaks of rights that are determined and divided fairly in the relationship between society

and the state. The state that acts as a facilitator for its citizens is emphasized to provide things that are the needs of its citizens as long as the state is able. This is close to a state that achieves social justice for society (Abdurrozaq et al 2014)

Meanwhile, commutative justice talks about the problem of determining fair rights between several equal individuals, both equal in physical and equal in non-physical aspects. In commutative justice, the object of the rights of other parties is what has become the property of an individual at the beginning, the property rights must return to that individual in the process of commutative justice. There are various types of objects of this property right, such as physical and moral interests, relationships and causality, to things that were not originally owned by an individual but will later be owned in a legal way in obtaining them. This explains that every individual has an obligation to respect other parties and if an individual damages, reduces or makes the right unable to function properly, there are sanctions that will be given in the form of compensation. So, based on the explanation above, legal aid is included as an inherent right. Therefore, in the provision of legal aid there are several principles, namely rights to legal representation, and access to justice . The rights to legal representation means that a person has the right to have a representative or person to accompany him during the trial, which in this case is an advocate. Meanwhile, access to justice has a broader dimension in its meaning, which is not only interpreted as fulfilling a person's access to the courts, but must also guarantee that the law and its final results are appropriate and fair.

According to Adnan Buyung Nasution, justice is closely related to human rights and the right to obtain justice, as well as the right to obtain a fair and just trial process ( due process of law ) which is the right of a justice seeker. However, justice can only be obtained if there is a fair trial, namely the right to be tried by a court that has competence, honesty and openness which has not yet been fully implemented in Indonesia, especially for justice seekers who are still unable and marginalized. This results in a lack of access to justice and respect for human rights, especially human rights for the poor and the powerless. However, the constitution has mandated that every citizen has the right to equality before the law,



where the state through its government has an obligation to carry out the mandate of the constitution by forming regulations as a basis for paralegals to take action on legal assistance to the less fortunate (Setiani, 2023)

Aid comes from the word “assistance” which in KBBI means any item used to help, assistance or support and the word “law” which in KBBI means regulations or customs that are officially considered binding, which are confirmed by the authorities or government. So, in general, legal aid is something that is used to help in the legal field. The definition of legal aid is also contained in Article 1 number 9 of Law Number 18 of 2003 concerning Advocates which reads as follows:

“ Legal Aid is a legal service provided by an Advocate free of charge to Clients who cannot afford it. ”

The definition contained in the law above is not much different from that contained in Law Number 16 of 2011 concerning Legal Aid.

The term legal aid has different meanings because there is no precise formulation of what is meant by legal aid. This is due to several factors, namely the legal aid concept factor, where there are two different foreign terms that influence the concept of legal aid. The foreign terms are legal aid and legal assistance . The term legal aid itself is often used to describe legal aid in the narrow sense, namely a free case for those who cannot afford it. Based on this understanding, legal aid plays a role in providing defense for the interests and basic rights of the poor and for people who are legally blind. The second influencing factor is related to the developing paradigm regarding the law that talks about the relationship between law and various things that are outside the law which in the end this is known as the term advocate. The concept of advocacy includes a broader understanding of the concept above in the concept of advocate includes activities that involve activities to influence the authorities on issues concerning the people, especially those who have been marginalized and excluded from the political process.

This has led to the existence of various types of paralegals, some of which are known as follows:

1. Legal Aids

Namely someone who provides legal services to someone who is involved in a case or matter, where the characteristic given is the provision of free legal aid services, especially given to the underprivileged. The purpose of this legal aid is to enforce the law in order to defend the interests and basic rights of the underprivileged.

## 2. Legal Assistance

In addition to containing meaning and aiming to provide legal assistance services, legal assistance is also known to the general public as an advocate. The concept of assistance services provided by advocates is the existence of costs incurred by those who are able to pay for achievements or legal assistance provided free of charge to poor people.

## 3. Legal Service or Public Service

What is meant by legal service or public service is assistance provided to people with small incomes and poor people with the aim of eliminating discrimination in legal aid services provided between poor people and people with more sources of income and positions in power. Legal service acts with a tendency to peacefully resolve every case or dispute.

The thing that must be considered in providing legal aid is the fact that those who can receive legal aid are poor people and the aid is given to the poor people for free. This free legal aid is included in the function and role of an advocate. According to the Decision of the Constitutional Court (MK) Number 88/PUU-X/2012, it states that those who can provide legal aid are not only the role of advocates, but can be done by paralegals, lecturers, and law faculty students who are recruited as legal aid providers, both students from the sharia faculty and students from the police college.

The provision of legal aid for the poor is intended as a way to correct social imbalance. In this case, the provision of legal aid to the poor and marginalized is very important in order to realize Access to Justice for anyone. A person who can provide evidence that shows that he is unable,

such as a certificate of inability or providing evidence that he has no income can apply for legal aid. In legal aid, there are three elements in it, including the following :

- a. The existence of legal services.

What is meant by legal services here are services provided to people who need assistance in the scope of legal cases because of their connection to a legal problem, but the person still lacks in understanding the law and is listed as someone who is financially incapable.

- b. Actions to become a defense attorney/proxy outside of court.

The act of becoming a defender or attorney representing the person concerned in a case outside the court is an act carried out by a legal aid provider to provide assistance acting for and on behalf of and in the interests of the person who needs legal assistance. Because, this is done in handling civil cases or state administrative cases. Meanwhile, for criminal cases it is carried out starting from the police level to the court (O'Brien et al., 2020)

- c. The existence of legal advice/legal consultants.

Legal advice provided means legal advice from a legal aid provider to someone who is facing a legal case or problem and needs legal assistance. Such legal assistance includes advice, considerations and legal understanding related to the problem being faced. Providing legal assistance to the underprivileged should not be viewed as merely an act of compassion for the weak. However, more than that, providing legal assistance must be understood as part of a moral movement that fights for human rights and as an effort to realize the ideals of a welfare state and social justice.

To maximize the services mentioned above, there is an understanding of the concept of the legal aid service approach into 3 (three) models put forward by Yesmil Anwar and Adang, as follows:

1. The Concept of Traditional Legal Aid

This concept is the concept of legal services provided to the poor individually, the nature of passive legal aid and its approach method is very legal formal. This concept also means viewing all legal cases from the poor simply from the perspective of applicable law, as stated by Selnick is a normative concept. In the sense of viewing all as legal problems for the poor simply from the perspective of applicable law. This concept is a long-standing concept, which emphasizes cases that are legally required to receive defense.

## 2. The Concept of Constitutional Legal Aid

This legal aid concept exists as assistance for the poor with broad objectives, such as providing an understanding of the rights of the poor who are also legal subjects, upholding and restoring human rights values that play a role as the main pillar in the establishment of a legal state ( *rechstaat* ). This legal aid concept is characterized by being active in providing legal assistance to the community collectively (Dancer, 2018).

## 3. The Concept of Structural Legal Aid

The concept of structural legal aid is legal aid that aims to create various conditions in order to realize the law, so that unequal structures can be replaced with fairer structures, where policies made in their implementation can guarantee equal roles in the legal and political spheres. This concept is closely related to structural poverty. Until now, various campus legal aid institutions tend to use the concept of a traditional legal aid service approach and legal aid-based consultation services with the implementation of services ranging from power of attorney to the implementation of other legal actions for the legal interests of the recipient of legal aid.

Until now, there has not been a single definition that can comprehensively describe the meaning of paralegal. Some people still describe paralegals as figures similar to “*Pokrol Bambu*” or *gemachtigde* , a Dutch term meaning delegation but in the legal realm referring to the recipient of power of attorney. “*Pokrol Bambu*” is generally a person who

can provide legal advice or opinions without having a formal legal education background. Initially, “Pokrol Bambu” had a very crucial role in providing legal aid, especially because many people felt they could not be reached by certified lawyers. In fact, in some rural areas, paralegals are at the forefront in helping to resolve legal problems outside the courts. When viewed from a global perspective, what is meant by paralegal refers to someone who does not have a higher legal education background (at least a Bachelor of Laws degree). The task of a paralegal itself is to assist the work of an advocate. Paralegals are required to provide assistance to advocates in resolving various cases to defend the legal interests of each client in seeking justice

Paralegal is basically someone who provides assistance to advocates in handling legal problems faced by clients. In several large countries such as the United States, jurists recognize that paralegals are a profession that is under the direct supervision of lawyers. Meanwhile, unlike the United States, paralegals in the United Kingdom are understood as legal services that are not carried out by lawyers, but still have the authority to provide legal services, regardless of who the implementer is. However, until now there has been no common understanding regarding the role, status, scope of work, working conditions and requirements, training, and regulations governing the profession of paralegals, so that each authority tends to interpret it according to their respective perspectives (Gunawan et al., 2023)

Various well-known legal organizations in the world advocate official definitions of paralegal that have slight differences between each other. Some of the recommended definitions include the following:

1. The National Association of Licensed Paralegals (UK) describes a paralegal as: “A person who is educated and trained to perform legal duties, but who is not a qualified lawyer”.
2. The ABA/American Bar Association (United States) itself states that a paralegal is: “A person who has met the requirements with education and training or work experience in a law firm, law office, corporation, government agency, or other agency that performs substantive legal work delegated to him/her but under the direct responsibility of the lawyer. “In this case, it is

described that the paralegal profession is based directly under the lawyer to carry out legal obligations.

3. NFPA/National Federation of Paralegal Associations (United States) defines that: “ A paralegal is a person who has completed the education, training and work experience to perform substantive legal work that requires knowledge of legal concepts and that is commonly, but not exclusively, performed by lawyers. Paralegals may be employed by lawyers, law firms, government agencies or others or may be authorized by law or a court to perform their work. Substantively this work requires the recognition, evaluation, organization, analysis and communication of relevant facts and legal concepts. ”
4. NALA/National Association of Legal Assistants (United States) defines a paralegal as follows: “ A person who assists a lawyer in providing legal services. Through formal education, training and experience, a paralegal has knowledge and expertise in the substantive and procedural legal systems and is qualified to perform legal work under the supervision of an attorney ”. NALA adopted the ABA definition in 2001, namely paralegal or legal assistant as an additional definition.

The mandatory task of a paralegal is to provide assistance in the work of an advocate. This is what makes paralegals also called Legal Assistants . The existence of paralegals in Indonesia follows the situation in an area that is still constrained by the number of workers who can provide legal assistance, in places that lack the number of workers, paralegals play a role in advocating for the community.

Furthermore, paralegals experienced rapid development starting from the 1970s, where at that time a small part of NGOs made outreach activities for the rights of marginalized communities. Nowadays, becoming a paralegal is not limited to the requirements as before which could only be if someone had a Bachelor of Law degree or someone who was a law faculty student. However, there are still main requirements to become a paralegal, namely having to follow special education regarding

the scope of paralegals which includes systems, legal basis, human rights, legal skills and organization. (Yusup et al., 2022)

As time goes by, and due to the emergence of many dynamics in Indonesia, paralegals are ultimately considered as part of the law enforcement system that aims to fight for equal rights for all people, where the main point is the underprivileged (poor) and also the disadvantaged (marginalized) communities.

### ***B. Legal Basis for Paralegals in Indonesia***

1. Before the enactment of the Regulation of the Minister of Law and Human Rights (PERMENKUMHAM) Number 03 of 2021

Acceptance of the right to legal aid has only recently occurred and is guaranteed in the International Covenant on Civil and Political Rights (ICCPR) . Articles 16 and 26 of the ICCPR guarantee that everyone has the right to obtain legal protection and must be protected from all forms of discrimination. Initially, paralegals in Indonesia were legally recognized but had not received a clear mention. Finally, with the issuance of the Regulation of the Minister of Law and Human Rights Number 03 of 2021 concerning Paralegals, it became a breath of fresh air for paralegals in Indonesia, because in the Regulation of the Minister of Law and Human Rights there is a mention and contains meaning regarding the regulation of the position of paralegals in Indonesia. The following are the aspects and legal basis for paralegals as providers of legal aid to the poor and marginalized in seeking justice before the issuance of PERMENKUMHAM No. 03 of 2021, namely as follows:

- a. Law Number 16 of 2011 concerning Legal Aid.

Article 9 letter (a), Law Number 16 of 2011 concerning Legal Aid, states:

“Legal aid providers have the right to recruit advocates, paralegals, lecturers, and law faculty students. Legal aid providers are legal aid institutions or

community organizations that provide legal aid services and that legal aid providers are obliged to organize legal aid education and training for advocates, paralegals, lecturers, and law faculty students who are recruited.” The task of providing legal aid is not only the task of an advocate, but can also be done by lecturers, law students and paralegals on the condition that they have first received legal aid training from the legal aid provider. This can be seen in Article 10 letter (c) of Law Number 16 of 2011 concerning Legal Aid. Therefore, a paralegal can be stated as anyone who has been trained and has knowledge and skills in the field of law to help resolve legal problems experienced by other people or their community.

In carrying out their roles and duties, paralegals receive guidance from a mentor who is an advocate working in an organization or legal aid institution. The role carried out by a paralegal is to be a liaison between advocates and poor or marginalized communities in an area that is difficult for an advocate to reach. Paralegals who have completed education and training conducted by an organization or legal aid institution generally come from an environment that has legal problems and gain the trust of the community to become representatives to represent the legal interests of the community. However, based on the facts in the field, it states that there are several organizations or legal aid institutions that provide education and training to become a paralegal to someone who has a strong desire and determination in enforcing law and justice, even though the person initially had legal problems with himself or the people around him.

Below are several regulations that discuss paralegals as follows:

- b. Law Number 32 of 2009 concerning Environmental Protection and Management.



Article 91 of this law discusses the regulation of the community's right to sue, which in essence states that the filing of a class action lawsuit is carried out by a community because it has the right to file such a lawsuit for its own interests or for the interests of the community affected by losses due to environmental pollution and/or damage. Based on the article, the community has the right to a healthy and clean environment, so that if there is a loss experienced by the community to the environment, they can and have the right to file a class action lawsuit. The community that has an interest in the environment is indirectly known as a paralegal.

- c. Law Number 23 of 2004 concerning the Elimination of Domestic Violence.

In this law, especially in Article 10 letter (d) it is explained that assistance can be provided by social workers and legal aid to a victim at every level of the examination process. Then, there is a statement stating that in providing services, volunteer companions can accompany victims at the investigation, prosecution or court examination levels in providing assistance to victims to provide information on domestic violence experienced in Article 23 letter (b). Based on the two articles, the definition of paralegals can be seen as social workers and volunteer companions.

The term social worker (PEKSOS) who acts as a paralegal is also mentioned in the law on the elimination of domestic violence, namely in Article 13 letter (b), Article 17, Article 22, Article 25 letter (c), Article 33 paragraph (2), Article 34 paragraph (2), Article 39 letter (b), and Article 41 and Article 42. Meanwhile, the term companion volunteer is also included in Article 17, Article 25 letter (c), Article 29 letter (d), Article 30 paragraph (3) Article 33 paragraph (2), Article 34

paragraph (2), Article 39 letter (c), Article 41 and Article 42 .

- d. Law Number 2 of 2004 concerning the Settlement of Industrial Relations Disputes

Article 87 of this law mentions paralegals known as labor unions and labor organizations that serve as legal counsel for litigation in industrial relations courts. This industrial relations settlement law explains the work of paralegals, namely the authority given to labor unions or labor unions and employer organizations to act on behalf of their members as legal counsel. The definition of a labor union itself is an organization formed and used by workers or laborers in a company or outside the company. This labor union has a free, open, independent, democratic character, and is responsible for defending and protecting the rights and interests of laborers or workers and improving the welfare of laborers or workers and their families.

- e. Law Number 11 of 2012 concerning the Juvenile Justice System in Indonesia.

Furthermore, in the law on the juvenile justice system, it is stated that social assistance and advocacy are provided by professional social workers and social welfare workers as in Article 68 paragraph (1) letter b. Then, in letter e in the same article and paragraph, it is stated that another task of professional social workers and social welfare workers is to make and submit reports to community counselors regarding the results of guidance, assistance, and coaching that have been given to children who have been sentenced to criminal penalties or actions based on court decisions. In addition, providing considerations to law enforcement officers to provide social rehabilitation treatment for

children is also the task of professional social workers and social welfare workers.

So, the terms used for paralegals in the law on the juvenile justice system in Indonesia are professional social workers and social welfare workers. As stated in Article 63 of this law, professional social workers and social welfare workers and counselors are community officers, where the task of paralegals in this regulation is assistance in mentoring and social advocacy to children in litigation, whether the child is a victim, witness or child who is the perpetrator himself.

f. Law Number 35 of 2014 concerning Child Protection.

In the provisions of Article 1 number (14) it is stated that the Companion is a social worker who has professional competence in his/her field. According to this article, a paralegal is referred to as a companion, namely a social worker.

g. Constitutional Court Decision Number 88/PUU-X/2012.

In the Constitutional Court Decision Number 88/PUU-X/2012, this began with a letter of application from a number of advocates on August 8, 2012, requesting the Constitutional Court to conduct a judicial review of Article 1 paragraph (1), paragraph (3), paragraph (5), paragraph (6); Article 4 paragraph (1), paragraph (3); Article 6 paragraph (2), paragraph (3) letter a, letter b; Article 7 paragraph (1) letter a, letter (b) and paragraph (4); Article 8 paragraph (1), and paragraph (2); Article 9 letter a, letter b, letter c, letter d, letter e, letter f, and letter g; Article 10 letter a, letter c; Article 11; Article 15 paragraph (5); and Article 22 of Law Number 16 of 2011 concerning Legal Aid.

The applicant believes that the advocate feels disadvantaged by the existence of Article 9 letter a and Article 1 paragraph (3) of Law Number 16 of 2011 concerning Legal Aid. Therefore, the panel of judges at the Constitutional Court rejected the applicant's application based on legal considerations which in essence the applicant's application does not contain any contradiction with the 1945 Constitution of the Republic of Indonesia.

So before the Regulation of the Minister of Law and Human Rights concerning Paralegals in the Provision of Legal Aid, the position and existence of paralegals already existed and were recognized, but there were still obstacles, such as separate arrangements in several regulations that resulted in unclear recognition of paralegals in Indonesia, because before the Regulation of the Minister of Law and Human Rights Number 1 of 2018, paralegals were only recognized socially, not fully recognized formally.

In Article 4 of the Minister of Law and Human Rights Regulation Number 1 of 2018 concerning Paralegals in the Provision of Legal Aid which was enacted on January 26, 2018, it is stated that "To be recruited as a paralegal as referred to in Article 3 paragraph (2) must meet the following requirements: a. Indonesian citizen; b. At least 18 (eighteen) years old; c. Have knowledge of community advocacy; and/or d. Meet other requirements determined by the Legal Aid Provider."

Then Article 11 of Permenkumham Number 1 of 2018, states: "Paralegals can provide legal assistance through litigation and non-litigation after being registered with a legal aid provider and obtaining a basic paralegal training certificate." This means that to become a paralegal, you do not need to have a higher

legal education background. Simply by registering with a legal aid provider and taking basic paralegal training, a paralegal can provide legal assistance through litigation and non-litigation.

After that, Article 12 of the Minister of Law and Human Rights Regulation Number 1 of 2018 states that:

1. “The provision of legal aid through litigation by paralegals is carried out in the form of legal assistance within the scope of the same legal aid provider.”;
2. “Accompaniment and/or exercise of power in the examination process at trial; or”
3. “Accompaniment and/or exercise of power of attorney over recipients of legal aid at the State Administrative Court”;
4. “The assistance of an advocate as referred to in paragraph (1) is proven by a certificate of assistance from the advocate providing legal assistance.”

Then in Article 13, it is stated that: “The provision of non-litigation legal assistance by paralegals as referred to in Article 10 is carried out through the following activities:

- a. Legal counseling;
- b. Legal consultation;
- c. Investigation of cases, both electronically and non-electronically;
- d. Legal research;
- e. Mediation;
- f. Negotiation;
- g. Community empowerment
- h. Out-of-court assistance; and/or
- i. Drafting legal documents.”

Then in Article 14 of the Minister of Law and Human Rights Regulation Number 1 of 2018 it states:

“(1) In addition to providing legal assistance as referred to in Article 10, Paralegals can provide legal services in the form of:”

- a. "Policy advocacy for regional apparatus at village/sub-district level up to district/city level;"
- b. "Assistance to programs or activities managed by ministries, non-ministerial government institutions, district/city regional governments, or village governments; and/or"
- c. "Work together with legal counselors to form and/or foster legally aware family groups."

"(2) The provision of legal services as referred to in paragraph (1) is carried out under the coordination of the legal aid provider."

Then in Article 15 of the Minister of Law and Human Rights Regulation Number 1 of 2018 it is stated that:

1. "Legal aid providers are required to create a code of ethics for paralegal legal aid services;
2. "The code of ethics as referred to in paragraph (1) is reported to the BPHN;"
3. "In providing legal aid, paralegals must comply with and obey
  - a. "The code of ethics for paralegal legal aid services created by the legal aid provider where the paralegal is registered as referred to in paragraph (1); and
  - b. "Legal aid standards are in accordance with the provisions of laws and regulations."

Due to several things, a Judicial Review or Testing of Permenkumham Number 1 of 2018 was then submitted to the Supreme Court of the Republic of Indonesia by several advocates. This is because the enactment of Permenkumham Number 1 of 2018 concerning Paralegals in the Provision of Legal Aid, seems to provide freedom for paralegals in court proceedings.

In relation to the principle of *Lex Superior Derogat Legi Inferiori*, which means that higher regulations override lower regulations, the provisions in Article 11 and Article 12 of Permenkumham Number 1 of 2018 which permit paralegals with the Advocate Law. Therefore, the

position of paralegals as parties who can provide legal assistance in the realm of litigation as regulated in the two articles is not comparable to the process that must be taken to become an advocate. A law graduate, before being able to become an advocate, is required to take the Advocate Professional Special Education (PKPA), undergo a two-year internship, then take the exam and take the oath as an advocate. After all these processes have been completed, he or she is entitled to represent a party in the trial process. Based on this inconsistency, the Supreme Court through Decision Number 22 P/HUM/2018 decided to revoke the provisions that permit paralegals to provide legal assistance in the realm of court litigation.

2. After the enactment of the Regulation of the Minister of Law and Human Rights (PERMENKUMHAM) Number 03 of 2021

As previously stated, the provisions regarding the authority and/or role of paralegals themselves have been regulated in the Minister of Law and Human Rights Regulation Number 1 of 2018, which was then revoked by several provisions in the Supreme Court Decision Number 22 P/HUM/2018 concerning the Testing of the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 01 of 2018 concerning Paralegals in the Provision of Legal Aid, it was stated that the provisions of Article 11 and Article 12 were revoked

As a follow-up, the Regulation of the Minister of Law and Human Rights Number 3 of 2021 concerning Paralegals in the Provision of Legal Aid was issued (State Gazette of the Republic of Indonesia 2018 Number 182), which automatically revokes the validity of the previous regulation. This regulation comes into effect six months after the date of its enactment, namely since February 3, 2021. The provisions in the regulation apply to paralegals who are part of legal aid institutions. Article 1 number 1 of Permenkumham Number 3 of 2021 explains that “Legal aid is a legal service provided free of charge by a legal aid provider to the recipient of the assistance.” Meanwhile, Article 1

number 2 states that “The recipient of legal aid is an individual or group of poor people, while the provider of legal aid is a legal aid institution or community organization that provides legal aid services in accordance with the provisions of Law Number 16 of 2011 concerning Legal Aid.

Article 1 of the Regulation of the Minister of Law and Human Rights Number 3 of 2021 states as follows: “Any person who comes from a community, society, or legal aid provider who has undergone paralegal training, does not work as an advocate, and does not independently accompany legal aid recipients in court.”

The requirements for recruiting paralegals in Permenkumham Number 3 of 2021 concerning Paralegals in the Provision of Legal Aid are regulated in Article 4, namely: “Indonesian citizens, at least 18 (eighteen) years old, have the ability to read and write, are not members of the Indonesian National Army (TNI), the Republic of Indonesia Police, or State Civil Apparatus, and meet other requirements determined by the Legal Aid Provider and do not conflict with laws and regulations.” In Article 4 of Permenkumham Number 3 of 2021, there are differences with Permenkumham Number 1 of 2018 regarding formal and/or material requirements in the recruitment of paralegals, where in Permenkumham Number 1 of 2018 there were improvements which previously only contained 4 points, but now it has been developed into 5 points, including the addition of provisions to have knowledge in advocating for the community with only the ability to read and write, then the addition of requirements that do not allow paralegals to come from TNI, Polri and/or ASN backgrounds, and the last is to expand the provisions which were originally other requirements could be determined by the legal aid provider, but now the requirement has been added not to conflict with other laws and regulations.

In addition, Article 5 of Permenkumham Number 3 of 2021 requires paralegals to have competence, the competences



that paralegals must have in providing legal aid include: “a. Having the ability to understand basic law, regional conditions and interest groups in society; b. Having the ability to strengthen the community in fighting for human rights and other rights protected by law; c. Having the skills to advocate for the community in the form of defending and supporting the community.” To obtain these competencies, Paralegals are required to attend education and training organized by Legal Aid Providers. The difference in the regulation regarding paralegal competency education is that in Permenkumham Number 1 of 2018 the status of paralegal competency education is limited to the rights of a paralegal only, but in Permenkumham Number 3 of 2021 the status has been increased to an absolute obligation that must be carried out by paralegals if they want to become paralegals in providing legal aid.

The competency education in Article 6 of Permenkumham Number 3 of 2021 is organized by legal aid providers and can collaborate with:

- a. “College;
- b. “Central government institutions and regional governments; and/or”
- c. “Non-governmental organizations.”

The thing that differentiates it from Permenkumham Number 1 of 2018 is that Article 7 of Permenkumham Number 1 of 2018 permits the implementation of competency education for:

- a. “Legal Aid Provider;”
- b. “College;”
- c. “Non-governmental organizations that provide legal aid; and/or”
- d. “A government institution that carries out its functions in the legal field.”

In the context of paralegal empowerment, legal aid providers can involve paralegals who have full qualifications to provide legal aid, in

accordance with the provisions of Article 9 of the Regulation of the Minister of Law and Human Rights Number 3 of 2021. The difference with the provisions in Permenkumham Number 1 of 2018 lies in Article 11, which states that paralegals can provide legal aid, both through litigation and non-litigation, after being registered as part of the legal aid provider.

In addition, Permenkumham Number 3 of 2021 also states the following: “Legal aid providers can assign paralegals who have the competence to provide legal services in the form of: a. Advocacy for regional apparatus policies at the village/sub-district level up to the provincial level; b. Assistance for programs or activities managed by ministries, non-ministerial government institutions, provincial governments, district/city governments, or village governments; and/or c. Collaborating with legal counselors to form and/or foster legally aware family groups.”

In this point of further empowerment regulation, it is exactly the same between Permenkumham Number 1 of 2018 and Permenkumham Number 3 of 2021, but in Permenkumham Number 1 of 2018, this is regulated in Article 14.

Furthermore, regarding the empowerment of paralegals themselves through litigation, it has been revoked since the issuance of Supreme Court Decision Number 22 P/HUM/2018 so that the authority of paralegals is currently limited to assistance or provision of non-litigation legal assistance, but in Permenkumham Number 3 of 2021 there is no mention at all regarding the authority of paralegals through non-litigation clearly and straightforwardly, this is considered very inappropriate because the Supreme Court only considers that what is contrary to Law Number 18 of 2003 concerning Advocates is related to the empowerment of paralegals in the aspect of litigation, so the provisions in Article 11 that were revoked were actually only the phrase “litigation and”, so that the wording of Article 11 becomes “Paralegals can provide legal assistance through non-litigation after being registered with a Legal Aid Provider and obtaining a basic level paralegal training certificate”.

Based on the Supreme Court Decision Number 2 P/HUM/2018 which annulled the provisions of Article 11 and Article 12 in the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 1 of 2018 concerning Paralegals in the Provision of Legal Aid, this does not immediately eliminate the existence or role of paralegals in the provision of legal aid. Paralegals still have room to contribute, especially in the form of non-litigation legal aid as regulated in Article 13 of the same regulation.

## IV. Conclusion

Based on the results of the study and analysis of the problems discussed in this research, several conclusions can be drawn as follows:

1. The legal legitimacy of paralegals in the national legal system is still limited and has not yet fully received formal recognition in the Indonesian positive legal system. The existence of paralegals gained initial legitimacy through the regulation in Law Number 16 of 2011 concerning Legal Aid, which provides space for legal aid institutions to recruit paralegals as legal aid providers, as long as they meet certain provisions, such as training and involvement in accredited institutions. Further regulations appeared in Permenkumham Number 1 of 2018, which was later revised due to Supreme Court Decision Number 22 P/HUM/2018 which revoked the authority of paralegals to provide litigation assistance in court. Furthermore, Permenkumham Number 3 of 2021 was issued which explicitly limits paralegals to the area of non-litigation legal aid. This limitation shows that the construction of national law still views the paralegal profession as subordinate to advocates, which is contrary to the spirit of access to justice for vulnerable groups, and ignores the social context behind the existence of paralegals in the field.
2. The existence and development of paralegals in Indonesia show significant dynamics in realizing the principles of a democratic, participatory, and just legal state. Paralegals have played a role as non-formal actors who carry out educational, advocacy, facilitative, and transformative functions in the process of community legal empowerment. In various local contexts, paralegals have succeeded

in reaching marginalized groups. Paralegals are not only a bridge between the community and legal institutions, but also as a driver of community-based legal awareness. However, the limited formal legal recognition causes the position of paralegals in the structure of the judicial system to still be in a gray area, thus potentially hindering the optimization of their role in supporting the realization of access to justice and equality before the law.

3. Amidst the lack of advocates spread evenly throughout Indonesia, the existence of paralegals is an urgent and solution-oriented need. They not only provide legal information, but also mediate conflicts, provide administrative assistance, and organize communities to fight for their rights collectively. The development of modern legal thinking that is more responsive and humanistic confirms that the presence of paralegals is not merely a complement to the formal legal system, but an integral part of expanding legal democratization at the grassroots ( Grassroots Legal Empowerment ).

Thus, it can be emphasized that the legitimacy and existence of paralegals must be placed within the framework of the rule of law which is not only procedural, but also substantial, which guarantees social justice, distributive justice, and legal empowerment for all citizens without discrimination.

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