

Research Article

HOW DO THE POOR GET THE JUSTICE THEY DESERVE? STUDY OF THE LEGAL AID LAW IN INDONESIA

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Indonesia is a country that respects and upholds human rights. All Indonesian people have the same rights when confronted with the law. They have the same position and should not be discriminated against. Economically disadvantaged people find it difficult to obtain a legal position. To examine this problem, the authors use the approach used is an approach using legal science and social science called the socio legal approach. The poor who are experiencing legal problems have the right to get the same treatment as others. They are entitled to get assistance from advocates. The guarantee of the community to achieve justice can be interpreted as equal rights to obtain, use and benefit from the judicial process obtained through the courts or through informal mechanisms. Providing legal assistance to the poor does not always run smoothly, there must be obstacles that prevent it. However, despite experiencing obstacles in providing legal aid in Indonesia, it can already be said to be effective, proven by the many legal cases that use legal assistance without the need for the poor to pay.

Keywords: *Legal Aid; Resistance; Effective*

The Indonesian Journal of International Clinical Legal Education

DOI: <https://doi.org/10.15294/ijicle.v3i2.46169>

Submitted: Nov 11, 2020 **Revised:** Jan 30, 2021 **Accepted:** Feb 22, 2021

Available online at <https://journal.unnes.ac.id/sju/index.php/iccle>

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I. INTRODUCTION

Indonesia is a country that respects and upholds human rights. We can know this in the 1945 Constitution. It contains many rules regarding human rights that must be respected and protected and implemented by the state. One of them is in compliance with the law. As a state of law in accordance with the contents of Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia which reads "The State of Indonesia is a state of law". If you look at the phrase, it becomes clearer that Indonesia places the law as the highest rule so that all Indonesians have an obligation to obey the laws in their country.

All Indonesian people have the same rights when faced with the law. They have the same position and should not be discriminated against based on their diverse backgrounds. There is no difference between one ethnic group and another, the elite and the poor. However, we often see that in reality it is difficult for people who are economically disadvantaged to get an equal legal position.

One of the problems that are often experienced by the poor or economically weak is the difficulty of getting access to the legal field to obtain justice. Especially for those who are poor people who are facing legal problems. The absence of economic power in fact makes it difficult for them to achieve justice, let alone achieving that justice to just get access is very difficult. Then how can they get fair treatment while undergoing the judicial process if access is difficult to obtain. Although the state has made efforts to run a fair legal process,

Poverty is a matter of concern because it can involve various fields of human life. The absence of costs often makes people surrender to the situation. Moreover, they have to deal with the law, minimal education and the cost of living are lacking, making them unable to present legal counsel to help solve the legal problems they are experiencing. Helping our fellow human beings is our duty, but helping to solve legal problems comes at a cost. Therefore, many do not want to provide legal assistance for free because completing the law requires a fee, especially if our current mindset is based on profit so that what we do must generate profit for us.

In Indonesia, there are many legal cases with decisions from judges that do not reflect justice and this inevitably afflicts the economically weak community. There are many trivial cases but heavy decisions are given and on the other hand serious cases get trivial judges' decisions. This will provide a bright spot if the poor find it difficult to get justice because from the start there has been no access to justice.

Therefore, the state is present in the midst of community problems in order to provide legal protection to the poor as a form of upholding the principle of the rule of law where all are considered equal before the

law itself. This is realized by the existence of the Law on Legal Aid. The government made this regulation with the aim of recognizing and protecting and providing guarantees for the human rights of the Indonesian people in order to provide access to achieve justice and realize equality before the law without distinguishing whether the people are rich or poor.

The birth of Law no. 16 of 2011 concerning Legal Aid is a form of government concern for those who are facing legal problems but cannot afford to pay an advocate to help them solve legal problems. These laws and regulations are proof that Indonesia provides recognition, protection and guarantees human rights and also as the embodiment of Indonesia as a state of law that upholds justice and treats all of them equally before the law without discrimination.¹

Law No. 16 of 2011 concerning Legal Aid has a goal, namely to guarantee and fulfill the rights of the poor recipients of legal aid to get access to justice, fulfill their constitutional rights in which the state adheres to the principle of equality before the law, ensure that the implementation of legal aid is carried out for all those who need assistance in dealing with legal problems throughout the territory of the Indonesian state.

Based on the above background, the author wishes to discuss the implementation of providing legal aid to the poor who are dealing with the law in accordance with the legal aid law. Then regarding the issue with the existence of the legal aid law, whether the provision of legal aid has been carried out properly according to the regulations made by the government to provide access for the poor seeking justice.

The problems that become the core and the author's attention from the background exposure that has been stated above are:

1. How to Provide Legal Aid according to Law no. 16 of 2011 concerning Legal Aid ?
2. Are there any Barriers to the Provision of Legal Aid?
3. Is the application of Law no. 16 of 2011 concerning Legal Aid Has Been Effective?

The approach used is an approach using the science of law and social science called the sociolegal approach. Approach by examining legal issues normatively based on documents and library materials that are in accordance with the problems being studied. Legal issues

¹ Abbott, M. The Right of Early Access to Criminal Legal Aid in Indonesia: Clear Rule, Clearer Violations. *Indonesia Law Review*, 8(1), 1-16. See also Arifin, R. (2020). Legal Services and Advocacy in the Industrial Revolution 4.0: Challenges and Problems in Indonesia. *Indonesian Journal of Advocacy and Legal Services*, 1(2), 159-162; Mansar, A., & Minin, D. (2017). The Reconstruction of Legal Aid Law For Children Who Get Conflict With Law in Process of Justification For Children based on The Value of Pancasila. *The 2nd Proceeding "Indonesia Clean of Corruption in 2020"*.

normatively by reviewing the laws and regulations and all regulations that have been made by the Government that are related to the issues raised. This is of course so that the author's intentions can be conveyed and help in solving legal problems that occur.²

II. PROVIDING LEGAL AID IN INDONESIA: A HUMAN RIGHTS APPROACH

Protection and fulfillment of human rights in the legal field must be provided by the state as a consequence of the state of Indonesia as a state of law. The state is obliged to provide legal protection for its people. In addition, it is also emphasized that the community has equality before the law, so it is clear that in its fulfillment there should be no discrimination or selective discrimination because equality has been guaranteed directly and stated in the constitution. However, in reality there is inequality when implementing these principles in the community.

The principle of equality before the law is a right for all Indonesians, including the poor with a weak economy. Poor people who are experiencing legal problems have the right to get the same treatment as others. They have the right to get advocate assistance even though they don't have the cost to pay for it.

The right to obtain legal assistance from lawyers or legal aid institutions when stumbling upon a legal case is a right for everyone. Because the state has guaranteed it with the issuance of Law no. 16 of 2011 concerning Legal Aid, so that no one should underestimate people who need legal assistance but do not have the commercial ability to pay for the services of an advocate. The right to obtain a defense from an advocate (access to legal counsel) is one element to obtain justice for everyone.³

The provision of free legal aid given to the poor has been guaranteed by the state by the existence of laws and regulations governing legal aid, but regarding its application in the field it must be studied and examined whether it has gone well as expected by the Government or vice versa. .

Community guarantees to achieve justice can be interpreted as equal rights to obtain, use and benefit from the judicial process obtained

² Sulistyowati Irianto, *Memperkenalkan Kajian Sosio Legal dan Implikasi Metodologis*, Jakarta : Pustaka Larasan, 2012, p. 2.

³ Agus Raharjo, *Akses Keadilan Bagi Rakyat Miskin (Dilema Dalam Pemberian Bantuan Hukum Oleh Advokat)*, *MIMBAR HUKUM* Vol. 27, No. 3, October 2015, p. 435. *See also* Nasution, A. B. (1994). *Defending human rights in Indonesia*. *Journal of Democracy*, 5(3), 114-123.

through the courts or through non-formal mechanisms.⁴ That way the poor have a guarantee to obtain justice through the facilities and infrastructure that have been provided by the Government to support the achievement of access for the poor to achieve justice.

Legal aid according to the legal aid law explains that legal aid is a legal service provided by legal aid providers free of charge to legal aid recipients.⁵ Recipients of legal aid here are addressed to those who are poor people who are affected by legal problems but are unable to pay for the services of an advocate to assist them in solving legal problems. Through this law, it is hoped that all circles of society can feel and gain access to fight for justice, not only among the elite who have a strong economy so that it is easy to get supporting facilities to achieve justice.

In providing legal aid, there are two modes of the concept of providing legal aid, namely:⁶

First, legal aid with an individual juridical model. This model gives the idea that every right given to citizens to protect their individual interests, the implementation of this legal aid depends on the active role of the community in need where for those who need legal assistance they can ask for help from a lawyer and then to the services of the lawyer, which will be paid by the state. Second, the welfare model of legal aid. Legal aid with this welfare model is part of the social direction needed to neutralize uncertainty and poverty. The intensive role of the state is needed to meet the needs of its citizens,

If we look at the two models of legal aid above, we can be sure that the Indonesian state in making Law no. 16 of 2011 concerning Legal Aid is more inclined to the second legal aid model, namely the welfare legal aid model because the law accommodates the rights of Indonesian citizens which are basic needs in this case from a legal perspective.

Law No. 16 of 2011 concerning Legal Aid regulates who can receive legal aid from the state and how the mechanism of carrying out legal aid and which institutions or organizations can be categorized as legal aid institutions or organizations. The state is not arbitrary in determining which institutions can provide legal assistance. According to the legal aid law, to determine which institutions or organizations can provide legal aid, they must meet the requirements. If the institution has fulfilled the specified conditions, the state will then provide funds related to the implementation of the legal aid.

⁴ Fachrizal Afandi, Implementasi Pengabdian Masyarakat Berbasis ACCES TO JUSTICE Pada Lembaga Bantuan Hukum Kampus Negeri Pasca Pemberlakuan Undang-Undang Bantuan Hukum, *RECHTS VINDING* Vol. 2, No. 1, April 2013, pp. 41-42.

⁵ Article 1 paragraph (1) of Law no. 16 of 2011 concerning Legal Aid.

⁶ Ajie Ramdan, Bantuan Hukum Sebagai Kewajiban Negara Untuk Memenuhi Hak Konstitusional Fakir Miskin, *Jurnal Konstitusi* Vol. 11, No. 2, June 2014, pp. 239-240.

Institutions that will provide legal assistance in accordance with Article 7 of Law no. 16 of 2011 concerning Legal Aid must carry out verification and accreditation organized by the Ministry of Law and Human Rights. By going through several stages, namely verification or examination of documents submitted by the agency to the Ministry of Law and Human Rights. Then the Ministry of Law and Human Rights will provide an assessment or accreditation of the institution. The assessment is used as an acknowledgment of the institution that will provide legal aid later which will then be classified in the provision of legal aid.⁷

The implementation of the provision of legal aid is carried out by legal aid institutions or community organizations regulated in laws and regulations and in the mechanism carried out by advocates, paralegals, lecturers and students of the Faculty of Law who of course meet the requirements to provide legal assistance to poor people who need their services.⁸

III. OBSTACLES IN PROVIDING LEGAL AID IN INDONESIA

Law No. 16 of 2011 concerning Legal Aid directly provides protection for the rights of citizens who are undergoing or undergoing legal processes. The main purpose of the law is none other than to provide access to the poor to achieve justice and to create a responsible judicial environment. The provision of legal aid is not only providing advocacy services, but is expected to improve and create a better justice system.

The provision of legal aid is of course expected to become a system that can provide protection for the rights of the community in the course of a judicial process to obtain justice through a transparent judiciary and while protecting human rights.

The noble ideals or goals of the Indonesian state, especially in terms of providing legal assistance to the poor, do not always run smoothly, there must be obstacles that hinder the creation of access to justice for the underprivileged. This obstacle is of course a new task for the Government to overcome so that access or a way to seek justice for the poor who are facing legal problems is not blocked.

There are several factors that cause the provision of legal aid to experience obstacles in its implementation. One of them lies in the law itself. The legal aid law still contains weaknesses, namely regarding the reporting mechanism that needs to be done to obtain a legal aid budget

⁷ Article 7 of Law no. 16 of 2011 concerning Legal Aid

⁸ Iwan Wahyu, Pelaksanaan Pemberi Bantuan Hukum Dikaitkan Dengan Undang-Undang No. 16 Tahun 2011 Tentang Bantuan Hukum, *ARENA HUKUM* Vol. 8, No. 3, December 2015, pp. 331-333.

which is often difficult because the procedures are so complicated that they have to carry out verification, accreditation, and go through other long processes so that it is felt less time efficient.⁹

The limited funds or government budget to carry out the provision of legal aid also makes the process of providing legal aid difficult. According to the provisions of Article 9 of Law no. 16 of 2011 concerning Legal Aid, it is explained that "Regions can allocate budgets for the implementation of legal aid in the regional income and expenditure budgets".¹⁰ Thus, the local government is not given the obligation to provide a special budget for legal aid so that the budget for implementing the legal aid program is limited as a result, the program can be constrained and not run smoothly.

In addition, the limited number of legal aid providers also adds to the inhibiting factor in providing legal aid to the poor. What if there are more people who need legal assistance than the number of people who provide legal assistance. Of course, this cannot be done and the human rights that every community has to obtain legal assistance are not implemented. Considering the poverty rate in Indonesia which is still quite high, so it is necessary to hold personal legal aid providers in every region of Indonesia, especially areas with a dense population and dominated by people who come from the lower middle class.

Difficult access and legal aid services provided by legal aid organizations is another cause of delays in the provision of legal aid. The minimum number of cases handled by legal aid organizations with the need for legal aid is the best, access services are still far from expectations. The distribution of legal aid organizations spread throughout the territory of Indonesia is not enough to reach all of them. There are many areas outside Java that have not been reached by legal aid organizations. In the Maluku region there are only 5 legal aid organizations and in the Papua region there are only 4 legal aid organizations.¹¹

The provision of legal aid services must still be accessible and accessible to the public, especially the poor who need the assistance of advocacy services. Legal aid institutions in Indonesia must be able to reach all regions of the Indonesian state in order to provide convenience

⁹ Fitria, Pemberian Bantuan Hukum Kepada Masyarakat Miskin Dalam Perkara Pidana, *JIM Bidang Hukum Pidana* Vol. 1, No. 1 Agustus 2017, p. 29.

¹⁰ Article 9 of Law no. 16 of 2011 concerning Legal Aid

¹¹ Oki Wahyu Budijanto, Peningkatan Akses Bantu Hukum Kepada Masyarakat Miskin, *Jurnal Penelitian Hukum DE JURE* Vol. 16, No. 4, Desember 2016, pp. 470-471. See also Novanda, G. D. (2020). Advocacy and Legal Aid During Covid-19 Pandemic: How Indonesia Survives?. *The Indonesian Journal of International Clinical Legal Education*, 2(2), 101-110; Rusmiati, E., Afriana, A., & Fakhriah, E. L. (2021). Legal Aid For Marginal Communities In Indonesia (Investment Fraud Victim Case). *PalArch's Journal of Archaeology of Egypt/Egyptology*, 18(08), 1748-1762.

for people who need assistance. This ease of access will later create a sense of public confidence in the legal aid system that has been created by the Indonesian government. This ease of access is not only related to location issues, but also relates to the time efficiency of services provided by legal aid agencies.

Poor people often find it difficult to get access to justice. Poor people also consider that solving legal problems with the help of lawyers is taboo. People are hesitant to go to legal aid institutions because of their lack of knowledge about the importance of legal aid when experiencing or facing legal problems. The public's view of the high cost of paying for lawyers is also an inhibiting factor in the provision of free legal aid. They tend to come forward on their own to face the trial process. This makes the small community distrust law enforcement officials because they only understand justice from their perspective, which is limited in legal knowledge.

Not only that, people with low economic capacity and knowledge are also often exploited by profit seekers. Many of them claim to be as good as advocates or intermediaries between a client who is dealing with the law and his advocate. Not infrequently they ask for payment and take advantage in the midst of problems that are being experienced by someone who needs legal assistance. Therefore, the poor tend to choose to fight on their own in court and accept all decisions handed down by the judge.

Another inhibiting factor also comes from the self-advocates or lawyers who provide legal assistance. When they are asked to provide assistance to the poor, they often do not do it optimally considering that the funds are paid for by the state and the advocate does not determine for himself how much the client must pay for the services provided by the advocate or lawyer.

Establishment of Law no. 16 of 2011 concerning Legal Aid is a form of respect for the Indonesian state for human rights. Because the existence of this law guarantees and fulfills the rights of a recipient of legal aid to gain access to justice, realize the constitutional rights of every Indonesian citizen in accordance with the principle of equality before the law, and create an effective, efficient, transparent, honest judicial environment. and be responsible.

The application or implementation of Law no. 16 of 2011 concerning Legal Aid has in fact been quite effective. This is evidenced by the fact that there are many legal settlements in Indonesia that use free legal aid to help the poor who are affected by legal problems.

Legal aid is used to erase the gap between the poor and the rich. Now with the law on legal aid, the poor can fight for justice. Because justice is essentially a right for every human being, not only for those who are rich, but even the poor have the right to fight for and get justice in court. Soerjono Soekanto gives his views on the main problems in law

enforcement which are influenced by several factors, namely the law itself, the law enforcement apparatus, the supporting facilities for law enforcement, community and cultural factors.¹²

These factors can be used as guidelines or benchmarks for the effectiveness of providing legal aid to a country. Advocates in providing legal aid to the poor who need assistance, they have to do it like it or not because it is an obligation for them with the existence of the legal aid law.

Law No. 16 of 2011 concerning Legal Aid can run effectively if it is also supported by someone who needs legal assistance. Even though regulations have been established and made by the Government, sometimes something that is the target does not support the regulation. For example, poor people who cannot afford to pay for the services of their lawyers are reluctant to come to legal aid agencies to ask for legal assistance when they have legal problems. This is of course due to the lack of awareness of the community about the importance of getting legal assistance in undergoing each trial process and also the public's lack of understanding of the purpose of establishing legal aid institutions as a means of accessing justice for the poor who cannot afford lawyers.

Therefore, advocates also have a role to change the wrong mindset of the community regarding the advocate profession. They must be able to convince the public that advocates do not always work for money, but also can work wholeheartedly to help the poor without expecting anything in return.

The effectiveness of the implementation of this legal aid can be measured by its existence in the judiciary. If in every legal case settlement process in court legal assistance or advocacy uses legal assistance.¹³ If this happens within the judiciary, then the Government's goal to provide equitable access to justice can be said to be successful.

The existence of a law on legal aid is very helpful for the poor in dealing with and resolving their legal problems. With the Law no. 16 of 2011 concerning Legal Aid raises awareness for economically disadvantaged communities about the importance of resolving legal issues through the judiciary if mediation outside the judiciary cannot be taken. In addition, these laws and regulations also change the perspective of the poor who find it difficult to get justice if they experience legal cases, now they do not have such apathetic thoughts. Because they have equal access in obtaining and fighting for the justice they dream of.

Thus, the application of Law no. 16 of 2011 concerning Legal Aid in Indonesia can be said to have been carried out effectively because it is

¹² Soerjono Soekanto, *Pengantar Penelitian Hukum*, Rajawali Pers, Jakarta, 2007, p. 13

¹³ La Ode Dedihasriadi, Efektivitas Implementasi Undang-Undang Nomor 16 Tahun 2011 Tentang Bantuan Hukum Di Kabupaten Kolaka, *Al-'Adl* Vol. 13, No. 1, January 2020, pp. 89-90.

evidenced by the many settlements of legal cases that use legal assistance without having the poor pay money to pay an advocate or lawyer, but the burden of payment is borne by the state.

IV. CONCLUSION

Justice is a right for every society and its fulfillment is obligatory to be carried out by the state. The fulfillment that can be done by the state through the government is by providing access to obtain justice. In this case, the Government has provided access to justice for the poor. This was realized by the issuance of Law no. 16 of 2011 concerning Legal Aid. For the poor who are unable to present and pay for the services of an advocate to provide assistance during the trial process, they can go to a legal aid institution to ask for assistance in dealing with the legal problems that are befalling them.

Advocates or lawyers, lecturers, paralegals and others who are appointed as providers of assistance to the poor who request legal assistance are obliged to provide assistance to them because it has been mentioned in the legislation regarding legal aid. With this law, it is hoped that the principle of equality before the law can be implemented and run well, so that the poor have the right to fight for and get justice in the judiciary. The existence of access to justice is expected to be able to create an efficient, effective, honest, transparent and responsible judicial environment and eliminate discrimination in the judiciary.

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Conflicting Interest Statement

All authors declared that there is no potential conflict of interest on publishing this article.

Funding

None

Publishing Ethical and Originality Statement

All authors declared that this work is original and has never been published in any form and in any media, nor is it under consideration for publication in any journal, and all sources cited in this work refer to the basic standards of scientific citation.

Cite this article as:

Faza, M. I. (2021). How Do the Poor Get the Justice They Deserve? Study of the Legal Aid Law in Indonesia. *The Indonesian Journal of International Clinical Legal Education*, 3(2), 151-162. <https://doi.org/10.15294/ijicle.v3i2.46169>