

## Review Article

# IMPLEMENTATION OF LEGAL AID FOR THE POOR AS A FORM OF PRACTICING PANCASILA VALUES

**Choriul Amin\***

*Faculty of Law, Universitas Negeri Semarang, Indonesia*

\*Email: chaerulamin95@students.unnes.ac.id

*Provision of Legal Aid is one of the ways the state can achieve access to law and justice for poor people in accordance with what has been mandated by the constitution. The principle of equality before the law in the Criminal Procedure Code (KUHAP) and Article 27 paragraph (1) of the 1945 Constitution tries to be realized by the state with this legal assistance so that the poor will experience justice in law enforcement in Indonesia. Justice is the right of all Indonesian people. Justice can be obtained by all people, this is contained in the Pancasila Values especially in the 5th (five) precepts which read "Social Justice for All of Indonesia". For the poor who experience legal problems in the form of injustice, they can request legal assistance from legal aid institutions that are regulated in legislation. The purpose of providing legal aid is to guarantee and fulfill the right for Legal Aid Recipients to gain access to justice, to realize the constitutional rights of all citizens in accordance with the principle of equality in law, to ensure the certainty that the implementation of Legal Aid is carried out equally across the territory of the Republic of Indonesia, and to create an effective, efficient and accountable court. The community's right to get free legal assistance (pro-bono) is regulated in Law No. 16 of 2011 concerning Legal Aid.*

The Indonesian Journal of International Clinical Legal Education

DOI: <https://doi.org/10.15294/ijicle.v3i2.46172>

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

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

© 2021 Authors. This work is licensed under a Creative Commons Attribution—ShareAlike 4.0 International License (CC BY-SA 4.0). All writings published in this journal are personal views of the authors and do not represent the views of this journal and the author's affiliated institutions.



Choirul Amin

*This law regulates the communities receiving legal assistance, grants and funding as well as legal aid mechanisms. The implementing regulations are contained in Government Regulation (PP) No. 42 of 2013 concerning Terms and Procedures for Providing Legal Aid and Distribution of Legal Aid Funds, Minister of Law and Human Rights Regulation No. 1 of 2018 concerning Paralegal in Providing Legal Aid.*

Keywords: *Legal Aid Institute; Legal Aid; Covid-19*

## I. INTRODUCTION

Indonesia as described in Article 1 paragraph (2) of the 1945 Constitution is a legal state that has the obligation and responsibility to provide protection and recognition of the human rights of every individual living in the territory of Indonesia. Human rights are rights inherent in humans since they are still in their mother's womb. This is then complemented by a change in the placement of a suspect/defendant who was originally an object of criminal law changed into a subject of criminal law so that everyone is equal before the law or better known as equality before the law or equality before the law as contained in Article 27 paragraph (1) of the 1945 Constitution and the Criminal Procedure Code (KUHAP).

The principle of Equality Before the Law is a situation where a person has the right to be treated equally before the law. A person is not considered rich or poor, capable, or incapable because all individuals in accordance with the mandate of the law have the right to get the right to be treated equally before the law. Moreover, for the poor who experience problems with the law, the state is obliged to provide protection so that their human rights as human beings are not oppressed by others. Through this principle, the state may not discriminate for any reason against any person or citizen. This principle is easy to learn, discuss, or study academically, but not easy in practice. Even the United States, which is often regarded as the country that upholds human rights the most, still often violates this principle. The state's obligation to the poor is clearly stated in Article 34 paragraph (1) of the 1945 Constitution which states that "*the poor and neglected children are cared for by the state*".

In order to realize what has been mandated by Article 34 paragraph (1) of the 1945 Constitution, the government then issued a Law on Legal Aid, namely Law Number 16 of 2011 which was later referred to as the Law on Legal Aid. This is actually in line with the government's efforts to provide and enforce justice for every Indonesian people as enshrined in the 5th Precept of Pancasila, namely Social Justice for All Indonesian People.

Getting legal aid services is something that is expensive, because the poor are unable to pay for an advocate to provide assistance or to fight

back in the legal process experienced by a suspect or defendant. The inability to obtain their rights in accordance with legal procedures requires the establishment of a policy so that later everyone can get free legal assistance. Legal aid programs, especially for the poor, are basically equal distribution of justice. The law is only for the rich while the poor are very difficult to deal with the law as the adage of the law is sharp down and blunt up. The role of Legal Aid Institutions is very instrumental in realizing the principle of equality before the law.

Law No. 16 of 2011 concerning Legal Aid requires law enforcers, especially advocates as legal aid providers, to provide free legal aid for the poor in Indonesia, moreover, this obligation is a normative obligation for advocates as *Officium Nobile* (noble professions) and mandates from Law No. 18 of 2003 concerning Advocates to provide a defense for everyone when in trouble with the law regardless of individual background, race, ethnicity, political beliefs, social strata, economy and gender. Based on this, the right to obtain legal assistance for the poor is one of the objectives of access to law and justice.

Based on this, there is a big question about how the causes of the implementation of legal aid for the poor are still constrained as a form of effective and optimal practice of Pancasila values to realize access to law and justice. The cause is a problem in the application of legal aid that must be sought, researched and given a solution so that the application of legal aid can run optimally and effectively. Therefore, it becomes an interesting thing to conduct an assessment and research to find out the problems in the application of legal aid in Indonesia which is then formulated an idea so that it can be a solution to optimize the implementation of legal aid for the poor as a form of more practical practice of Pancasila values. effective and optimal in Indonesia. Based on this background, several problems can be formulated for assessment and research to answer these problems. First, what are the obstacles to implementing legal aid for the poor as a form of practicing Pancasila values in Indonesia? Second, how to optimize the provision of legal aid for the poor as the practice of Pancasila values?

## II. IMPLEMENTATION OF LEGAL AID IN INDONESIA FROM THE PERSPECTIVE OF PANCASILA

According to Law no. 16 of 2011 concerning Legal Aid and according to PP No. 42 of 2013 concerning Terms and Procedures for Providing Legal Aid and Distribution of Legal Aid Funds, Legal Aid is a legal service provided by a Legal Aid provider free of charge to Legal Aid Recipients. Then in the implementation of Law no. 16 of 2011 concerning Legal Aid

Choirul Amin

has a purpose in providing legal aid, namely as stated in Article 3 of Law No. 16 of 2011 concerning Legal Aid, namely:

- 1) Guarantee and fulfill the right to receive Legal Aid to get access to justice
- 2) Realizing the constitutional rights of every citizen in accordance with the principle of equality in law
- 3) Ensure that there is certainty that the implementation of Legal Aid is carried out evenly throughout the territory of the Republic of Indonesia, and
- 4) Realizing an effective and efficient judiciary and can be accounted for.

Article 27 paragraph (1) of the 1945 Constitution states that "*Every citizen has the same position before the law and the government with no exceptions.*" As for the right to be accompanied by an advocate or legal adviser, it is regulated in Article 54 of the Criminal Procedure Code. from one or more legal advisers during the time and at each level of examination according to the procedures specified in the Law. The legal system in Indonesia and the 1945 Constitution guarantee legal equality, as well as the right to be accompanied by an advocate. Legal aid aimed at the poor, as previously explained, has a close relationship with equality before the law and justice for all. Therefore, legal aid is a human right.

Indonesia is a state of law which means the state gives the consequence that every citizen has the same rights and obligations between citizens with one another and there is no difference between the two so that there will be no gap between the rich and the poor before the law. Equality before the law is commonly known as equality before the law.

Equality before the law gives everyone the right to be treated equally, namely legal assistance in the form of legal assistance, including for the poor who are in trouble with the law. According to Rhode, equality before the law is not only defined as equality before the law, but also implies equality of access to the legal system and justice. Rich people who have problems with the law will usually pay an advocate to assist them in the judicial process, but it is different from poor people who have problems with the law and then cannot pay an advocate to help and accompany them during the judicial process. This situation then makes it difficult for the poor to get justice for what is a legal problem. Whereas the poor also have the same right to obtain legal assistance as they are accompanied by an advocate. This is certainly not without reason because the provisions of Article 34 paragraph (1) of the 1945 Constitution state that the poor and abandoned children are cared for by the state. The meaning of the provisions of Article 34 paragraph (1) of the 1945 Constitution clearly states that the poor and neglected children are the responsibility of the state. The state is obliged to provide facilities in the form of providing legal assistance to the poor who are dealing with

legal issues free of charge or free of charge without any cost. This is also in accordance with the principle of justice in the 5th (five) principle of Pancasila, namely "*Social Justice for All Indonesian People*".

Legal aid is legal services provided by legal aid providers free of charge to legal aid recipients. Legal aid recipients are a group of people or groups of poor people. While the legal aid providers are Legal Aid Institutions or community organizations that provide legal aid services based on Law no. 16 of 2011. Actually, it is not only advocates who can provide free legal aid to the community. Legal assistance can be provided by Paralegals, Law Faculty Lecturers, and Law Faculty Students who are considered to understand the law and have the ability and experience in the field of law.

Assistance and defense from an advocate (access to legal counsel) is a human right for everyone and is one of the elements to obtain justice for everyone. Therefore, in a state of law, no one should be discriminated against and have their rights ignored when experiencing legal problems, whether rich or poor, capable or incapable, whether it is a light case or a serious case and without regard to the background of the individual concerned, such as religion, descent, race, ethnicity, political beliefs, social strata, economy, skin color and gender all still have to get justice and equality in accordance with what has been mandated by Pancasila and the 1945 Constitution.

However, problems arise when the provision of legal aid will be carried out, whether it comes from law enforcement officials or from the poor who have problems with the law itself. Many of the poor people have not received legal assistance while undergoing investigations at the police and the prosecutor's office, this is because many law enforcement officers are not aware of the existence of Law Number 16 of 2011 concerning Legal Aid, most of them still refer to the Book of Criminal Procedure Law (KUHAP).

The Criminal Procedure Code states that legal assistance is given to those whose criminal penalties are more than 5 (five) years. However, according to Law Number 6 of 2011 it is stated that the state is responsible for providing legal aid for the poor as a manifestation of access to justice. The legal aid is in the form of free legal services, which means that in every case faced by the poor, they must obtain legal aid facilities which are accommodated by the State Revenue and Expenditure Budget (APBN). Another reason is that not all regions in Indonesia have a sufficient number of legal aid institutions. Data from the Ministry of Law and Human Rights in 2013 shows that there are 310 legal aid organizations spread across Indonesia. A total of 152 organizations are located in Java with the highest number in DKI Jakarta, which is 46 organizations. For many outside Java, there is only one legal aid agency.

Another problem is that there are still limited human resources, namely paralegals who are at the forefront of providing legal aid in

Choirul Amin

Indonesia. In addition, the budget for providing legal aid in Indonesia is still very minimal and has not been able to meet the needs of paralegals and the poor. It can be seen that free legal aid to Legal Aid Organizations (OBH) and LBH which have been accredited by the Ministry of Law and Human Rights, based on facts on the ground has not been realized. This legal aid has not been realized because the procedures and procedures provided by the Regional Office to apply for the disbursement of legal aid funds are very difficult. In reality on the ground, the legal aid funds provided by the APBN through the National Legal Development Agency (BPHN) have not been disbursed to date. The only LBH that can apply for the disbursement of legal aid funds are those that already have accreditation granted by the Ministry of Law and Human Rights.

The obstacles to the disbursement of legal aid funds are due to the following factors:

- 1) Many OBH/LBH do not understand the mechanism for disbursing funds from Kanwil
- 2) Lack of socialization related to the process of submitting and disbursing legal aid funds from the Central BPHN to each LBH entitled to the funds
- 3) Most of the consultations are given directly to clients without first being asked to submit the specific requirements required by each LBH
- 4) There is no Standard Operating Procedure (SOP) from each LBH when dealing with underprivileged clients who request free legal assistance.
- 5) Bureaucratic procedures from the Ministry of Law and Human Rights are considered long-winded, making it difficult for each LBH to implement.

To fulfill the need for the right to legal aid for every poor person who is in conflict with the law and to overcome the uneven distribution of legal aid providers, of course, the role of paralegals is needed to handle non-litigation and litigation cases. Rikardo Simarmata stated that paralegals emerged in the long journey of working legal aid institutions to play an important role in facilitating the formation of people's organizations, educating, raising awareness, conducting social analysis, advocacy, assisting lawyers, mediating and collecting documentation.

### III. OPTIMIZING THE IMPLEMENTATION OF LEGAL AID TO THE POOR AS A

## FORM OF PRACTICING PANCASILA VALUES

The application of providing legal aid in practice in the community is not optimal because it still has various kinds of problems that are systematic so that it has an impact on the lack of realization of access to law and justice for the poor. Therefore we need an idea that can solve problems in the application of providing legal aid for the poor, 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 the realization of access to law and justice, there are several efforts in optimizing the implementation of providing legal aid for the poor as follows.

- 1) **Stimulants for Advocates/LBH in Providing Legal Aid**  
According to the World Organization of Advocates, namely the BAR Association, stimulants are one way to make advocates consciously want to provide legal assistance, because repressive methods are not effective in making lawyers aware of providing legal assistance. This stimulant method is carried out such as holding an award to inspire other advocates to provide legal assistance to the poor.
- 2) **Active, Responsive and Structural Legal Aid**  
The urgency in changing the orientation of legal aid so that it is active, responsive and structural is needed because of the limitations of clients (poor people) who do not have knowledge and awareness of the law and budget provided by the courts and the state. Being active-responsive means that advocates must know more about the needs of clients (the poor) when they have legal problems without having to wait for requests from clients, law enforcement officers, or courts. Structural nature here means that advocates in providing legal assistance are not only to solve problems in court (legal advisors), but advocates / LBH make their clients understand the law more so that a structural legal awareness is created, this place advocates other than as legal advisers as well as legal mentor.
- 3) **Full access to justice is reached**  
When advocates/LBH have agreed that the orientation of legal aid must be active, responsive and structural, it will become a necessity that all access to justice (such as courts of first instance, appeal, cassation, and judicial review), means that clients can exercise their rights in full to access law and justice.
- 4) **Purifying the Meaning of Free in Providing Legal Aid**  
The provision of free legal aid is not something that is impossible to achieve, when a policy and procedure mechanism can be

changed to make it easier to absorb legal aid funds, both from the APBN, APBD and the court (Supreme Court). These changes can be started from the accreditation procedure and the mechanism for the absorption of legal aid funds to make it easier without compromising the quality, so that it can be accessed by every advocate/LBH and advocate organization. The convenience provided can be in the form of creating a branch office/institution that reduces the absorption of legal aid funds in each city/regency because so far the absorption of funds must be managed at the regional office in the province, besides that while waiting for the establishment of branches in each city/regency, it can be combined by maximizing online, both through the system and human resource training. When the accreditation procedure and the mechanism for the absorption of legal aid funds have been simplified, it is not impossible to realize the meaning of free legal aid for the poor. This means that advocates/LBH will not hesitate to provide free legal aid, because the absorption of funds can help revive their work activities.

5) Supervision in the Implementation of Providing Legal Aid

Starting from the absence of supervision in the application of legal aid both normatively and in implementation in the community, it is necessary to have a supervisory system to oversee several components of the application of legal aid. This supervision includes whether or not legal aid is provided, whether or not access to justice is used, the performance of advocates or LBH in providing legal aid, in this case, of course, an opinion is needed from the public and clients who have been recipients of legal aid, and the final supervision regarding the absorption of legal aid funds that see whether the funds used for legal aid are appropriate or not, so that there is no embezzlement or corruption of legal aid funds. After the material under supervision is known, what is no less important is the supervisor, which can consist of the government, advocate organizations and the community. Based on this, if the idea of 5 (five) efforts to optimize the provision of legal aid for the poor has been accepted and carried out, then it is not impossible that access to law and justice will be realized for the poor throughout Indonesia.

## IV. CONCLUSION

The 1945 Constitution of the Republic of Indonesia and Pancasila have mandated all Indonesian people not to discriminate against anyone, be it ethnicity, religion, political views, race, social strata, economic conditions whether rich or poor. Because the right to equality is a human



right that has been inherent since birth, therefore every human being must uphold the rights of others. In legal matters there is also no difference, there should be no discrimination against a person or group which will result in the erosion of the values of justice as stated in Pancasila. This is better known as equality before the law, which means that there is equality of position and legal knowledge before the law. People who experience legal problems have the right to get legal assistance, whether rich or poor, able or unwilling and willing or not, all Indonesian people are entitled to legal assistance. This mandate is reinforced by the existence of Law no. 16 of 2011 concerning Legal Aid which provides legal certainty that obtaining legal aid is the right of all Indonesian citizens which can be obtained free of charge regardless of differences. Therefore, it is necessary to optimize efforts so that later the implementation of the provision of legal aid to the poor can be realized properly and correctly so that the principle of justice here can be fulfilled. There needs to be improvements in each sector, such as simplification of access for advocates/LBH to access legal aid funds that have been budgeted for by the government so that legal assistance and also the provision of legal aid can be implemented in real terms and without any real obstacles experienced by both givers and recipients of legal aid in the future.

## V. REFERENCES

- Deborah, L. R. (2004). *Access to Justice*. Oxford University Press.
- Dacey, A.V. (2007). Pengantar Studi Hukum Konstitusi, terjemahan *Introduction to the Study of the Law of the Constitution*, Penerjemah Nurhadi.
- Eka, N. A. M. S. (2018). *Eksistensi Paralegal Dalam Pemberian Bantuan Hukum Bagi Masyarakat Miskin*, Fakultas Hukum, Universitas Muhammadiyah Sumatera Utara.
- Raharjo, A., Angkasa, A., & Bintoro, R. W. (2015). *Akses Keadilan Bagi Rakyat Miskin (Dilema Dalam Pemberian Bantuan Hukum Oleh Advokat)*, Jurnal Bagian Hukum Pidana Fakultas Hukum Universitas Jenderal Soedirman, Purwokerto.
- Sumarjono, M. (2001). *Pedoman Pembuatan Usulan Penelitian Sebuah Panduan Dasar*. Jakarta: Gramedia Pustaka Utama.
- Suyogi, I. F., & Ningtyas, I. P. (2018). *Optimalisasi Pemberian Bantuan Hukum Demi Terwujudnya Access to Law and Justice Bagi Rakyat Miskin*, Fakultas Hukum Universitas Jenderal Soedirman, Purwokerto.
- Undang-Undang Dasar Negara Kesatuan Republik Indonesia Tahun 1945

Choirul Amin

Undang-Undang Nomor 16 Tahun 2011 Tentang Bantuan Hukum

Winata, F. H. (2009). *Pro Bono Publico, Hak Konstitusional Fakir Miskin untuk Memperoleh Bantuan Hukum*. Jakarta: Gramedia.

Yonna, B. S. (2018). Pemberian Bantuan Hukum Kepada Masyarakat Miskin Di Kota Ambon, *Jurnal Ilmu Sosial, Humaniora, dan Seni*, 2(1).

[...] [www.cnnindonesia.com/nasional/20151211144459-12-97582/kemenkumham-banyak-rakyat-miskin-tak-dapat-bantuan-hukum](http://www.cnnindonesia.com/nasional/20151211144459-12-97582/kemenkumham-banyak-rakyat-miskin-tak-dapat-bantuan-hukum) diakses pada tanggal 28 April 2020 pukul 13.04

#### ***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:***

Amin, C. (2021). Implementation of Legal Aid for the Poor as a Form of Practicing Pancasila Values. *The Indonesian Journal of International Clinical Legal Education*, 3(2), 235-244. <https://doi.org/10.15294/ijicle.v3i2.46172>