

## Research Article

# THE EXISTENCE OF LEGAL AID INSTITUTIONS IN PROVIDING LEGAL AID AMIDST COVID-19 OUTBREAK

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*Corona Virus Disease 2019 (COVID 19) which hit Indonesia made a variety of legal cases that hit many parties like the case regarding the termination of employment relations unilaterally, protection against workers, the cancellation of cooperation contracts, the community accused of spreading the COVID 19 Virus, until patients who were unable to pay medical expenses at the hospital. To date there have been no legal aid agencies that provide legal assistance on the various cases, even though they can be taken provide legal assistance, but also many things that affect a legal assistance to be applied if legal assistance through the media and or legal assistance directly is carried out as constrains because of the existence of COVID 19 itself which makes all that must participate in handling COVID 19 namely be accepting social distances and other policies, reports of people who need very minimal legal assistance and the lack of information about legal assistance*

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## I. INTRODUCTION

People who have middle to lower economic conditions seen from their material ability are not able to appoint advocates to be the power and defend their interests, this is certainly different from people who have high economic abilities which are seen as materially capable of being able to appoint lawyers to defend their interests.<sup>1</sup> Article 34 paragraph (2) of the 1945 Constitution of the Republic of Indonesia states that the state shall develop a social security system for all Indonesian people and empower the weak and underprivileged in accordance with human dignity. The 1945 Constitution of the Republic of Indonesia or the 1945 Constitution of the Republic of Indonesia is the basis for the establishment of laws and regulations such as Law Number 16 of 2011 concerning Legal Aid. In Article 3 of the law, it becomes the basis for considering the issuance of state implementation that is responsible for providing legal aid for people who have middle to lower economic capacity as a manifestation of access to justice and the regulation of legal aid organized by the state must be oriented towards the realization of just social change. To implement the provisions of Article 15 paragraph (5) of Law Number 16 of 2011 concerning Legal Aid which stipulates that "further provisions regarding the terms and procedures for providing Legal Aid are regulated by government regulations" and the provisions of Article 18 of Law Number 16 of 2011 regarding Legal Aid which stipulates that "*Further provisions regarding the procedure for distributing legal aid funds as referred to in Article 16 paragraph (1) of the provision of legal aid are regulated in a Government Regulation*", then the government shall stipulate Government Regulation Number 42 of 2013 concerning the terms and procedures for granting legal aid and distribution of legal aid funds.

Legal Aid is a legal service provided by legal aid providers free of charge to legal aid recipients. Recipients of legal aid are people or groups of people who are underprivileged while legal aid providers are legal aid institutions or community organizations that provide free legal aid to the community and legal aid can be provided by Paralegals, Lecturers of the Faculty of Law, and Students of the Faculty of Law who are deemed to be understand the law and have the ability and experience in the field of law, but in writing this article or journal it focuses more on advocates or Legal Aid Institutions (LBH) because of Law Number 18 of 2003 concerning Advocates which in its provisions requires an advocate or legal advisor to provide legal assistance to underprivileged communities

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<sup>1</sup> Susanto, M., Tresna, T., & Asmara, P. (2020). Ekonomi Versus Hak Asasi Manusia Dalam Penanganan Covid-19: Dikotomi Atau Harmonisasi (The Economy versus Human Rights In Handling Covid-19: Dichotomy or Harmonization). *Jurnal HAM*, 11(2), 301-317.

free of charge based on the conditions stipulated in the law. If the advocate does not carry out his duties to provide legal assistance to the underprivileged, then the advocate will be subject to sanctions in accordance with the applicable law.

The Corona Virus Disease 2019 (COVID 19) that hit Indonesia caused many workers to have no rights who experienced layoffs when the disease outbreak was hitting Indonesia. Referring to the right to work and a decent living, the government should ensure that there are no termination of employment by the company and the provision of decent wages in accordance with the provisions of the applicable laws and regulations. The wage system has been regulated in Article 90 of Law No. 13 of 2003 concerning Manpower which states that "entrepreneurs are prohibited from paying wages lower than the minimum wage as referred to in Article 89". So, it is clear that employers are prohibited from paying labor wages below the minimum wage as long as there is no suspension of wages and still paying wages in accordance with the provisions of the applicable laws and regulations. Similarly, Article 151 paragraph (1) of the Manpower Law states that "employers, workers/laborers, trade unions/labor unions, and the government, with all efforts must try to prevent termination of employment (PHK)". Thus, the government has an obligation to make efforts so that no workers/workers are laid off. The government must seriously protect workers or laborers in the midst of the Covid-19 pandemic.

Therefore, this study examines and analyzes how LBH provides legal assistance in the COVID 19 era and what factors affect legal aid and what efforts can be made by legal aid recipients (the community) regarding legal aid.

## II. LEGAL AID DURING COVID-19 OUTBREAK: GUARANTEE OF THE JUSTICE FOR THE POOR AND THE WORKERS

According to the Big Indonesian Dictionary, underprivileged people or poor people are people in a situation where there is an inability to meet basic needs such as food, clothing, shelter, education, and health. Poverty can be caused by the scarcity of basic necessities, or the difficulty of accessing education and employment. The 1945 Constitution guarantees equality before the law, as stated in Article 27 paragraph (1) which states, "*Every citizen has the same position before the law and the government with no exceptions.*" The right to be accompanied by an advocate or legal adviser is regulated in Article 54 of the Criminal Procedure Code, in the interest of the defense of a suspect or defendant the right to obtain legal

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assistance from one or more legal advisers during the time and at each level of examination according to the procedures specified in the law. 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. The legal system in Indonesia and the 1945 Constitution guarantee equality in before the law (equality before the law), as well as the right to be accompanied.

Regarding workers or government workers, they continue to work to prevent the spread of the Corona virus (Covid-19) which is increasingly widespread in Indonesia. The efforts made include issuing a number of regulations and circulars, one of which is the Circular Letter of the Minister of Manpower No.M/3/HK.04/III/2020 concerning Protection of Workers/Labors and Business Continuity in the Context of Prevention and Control of Covid-19. This circular, which was signed on March 17, 2020, is addressed to all governors in Indonesia. Regarding the Circular of the Minister of Manpower which is considered contrary to Law Number 13 of 2003 concerning Manpower and is a form of government hands off in protecting workers or workers in terms of work safety and wages. There are 3 things related to this circular that can be explained about the importance of legal assistance for workers who have been laid off and the safety of workers during the COVID-19 period.<sup>2</sup>

First, although it has included the rights of workers if they are infected or suspected of being infected with Covid-19, they are legally flawed because the Circular is not recognized in Indonesian laws and regulations. By law, the Circular Letter is only binding on the internal government, so there is no obligation for entrepreneurs or companies to follow the Circular Letter. It also doesn't make sense if the supervision is left to the Governor because in the further context the Governor and his subordinate services are also known to be very tolerant of employers in terms of violations of the rights of workers or workers.

Second, the Circular does not require entrepreneurs to provide complete K3 equipment for the prevention of Covid-19, such as masks, hand washing facilities, or other means of preventing the transmission of Covid-19. As a result, workers must complete K3 equipment independently, even though Article 14 letter c of Law Number 1 of 1997 concerning Occupational Safety explains that safety equipment is the responsibility of the company. In addition, health checks in the company

<sup>2</sup> Idaman, H. (2021). Optimalisasi Bantuan Hukum Di Masa Pandemi Covid-19 Di Desa Asolu Kecamatan Abuki. *Jurnal Pengabdian Pada Masyarakat Membangun Negeri*, 5(1), 130-142. See also Fauzia, A., & Hamdani, F. (2021, July). Penegakan Miranda Principles Melalui Pemberian Bantuan Hukum Pendampingan di Masa Pandemi Covid-19. In *Seminar Nasional Hukum Universitas Negeri Semarang*, 7(1); Supriyadi, S. (2020). Kebijakan Penanganan Covid-19 Dari Perspektif Hukum Profetik. *Suloh: Jurnal Fakultas Hukum Universitas Malikussaleh*, 8(2), 91-109; Mahy, P. (2020). COVID-19 and labour law: Indonesia. *Italian Labour Law E-Journal*, 13(1S).

environment must also be carried out as stipulated in the Regulation of the Minister of Manpower and Transmigration No. Per.02/Men/1980 concerning Labor Health Examination in the Implementation of Occupational Safety.

Third, in point II number 4 of the Circular Letter, it stipulates that if a company restricts business activities and causes workers or workers not to come to work, changes in the amount and method of payment of wages are made by agreement between the entrepreneur and the worker or worker. The appeal is contrary to the wage mechanism as regulated in the Manpower Law. For example, in the minimum wage deferral mechanism, there is a deferral mechanism for entrepreneurs who are unable to pay according to the provisions. The entrepreneur must prove that he is unable to go through the financial statements and submit it for approval by the Governor with the consideration of the Wage Council. The mechanism for deferring the minimum wage is regulated in several regulations such as Article 90 of the Manpower Law, Kepmenakertrans No.KEP-231/MEN/2003 of 2003 concerning Procedures for Postponing the Implementation of the Minimum Wage.<sup>3</sup>

Regarding the efforts that legal aid agencies can take, namely opening legal aid posts online or online according to the current situation to help the community get justice due to the impact of COVID 19 which has paralyzed many sectors which has resulted in many workers being laid off, resulting in many funeral refusals. Victims of COVID 19 who seriously injure the soul of humanity by means of all those who need legal assistance must be accompanied through good communication from all paralegals and advocates who must be ready and prepared for this.

The factors that affect legal aid in the COVID-19 pandemic are the lack of responsiveness of the community who experience material losses or the unwillingness of the community to manage and overcome all legal problems through legal assistance and assistance, the lack of information about legal aid posts that can provide legal assistance online. news that preoccupies the community too much with worry and the steps of many people returning to their hometowns indifferent to the legal problems that befall them, the lack of people who have the sense to solve or take care of their legal problems, for example asking for legal assistance, lack of government participation in socializing activities that can be done online in order to maintain the running of various activities that can be transferred online. The legal aid post records report does not only address legal assistance, but also the various roles of the legal aid post for reports, complaints, and even to share information about the law, it can also be done with the legal aid post, considering that all professions that are considered to understand the law are required to provide legal aid

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<sup>3</sup> Mahy, P. (2020). COVID-19 and labour law: Indonesia. *Italian Labour Law E-Journal*, 13(1S); Angga, A., & Arifin, R. (2019). Penerapan Bantuan Hukum Bagi Masyarakat Kurang Mampu di Indonesia. *DIVERSI: Jurnal Hukum*, 4(2), 218-236.

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services. against underprivileged people who complain and underprivileged people who want to take care of the legal problems that befall them.<sup>4</sup>

The procedure for free legal assistance, in accordance with the mandate of Law No. 16 of 2011 concerning Legal Aid, Government Regulation No. 42 of 2013 concerning Terms and Procedures for Providing Legal Aid and Distribution of Legal Aid Funds which allows the provision of free legal aid only or free for poor people or groups of people, because the costs are charged to the state budget.<sup>5</sup> To obtain legal aid free of charge, based on Article 14 of Law No. 16 of 2011 concerning Legal Aid jo. Article 3 Government Regulation No. 42 of 2013 concerning Terms and Procedures for Providing Legal Aid and Distribution of Legal Aid Funds, applicants must meet the following requirements:

1. The applicant must submit a written application containing at least his/her identity and a brief description of the subject matter for which Legal Aid is being requested.
2. Submit documents related to the case.
3. Attach a certificate of poverty from the *Lurah*, Village Head, or an official at the same level at the place of residence of the Legal Aid applicant. According to Article 5 of Law No. 16 of 2011 concerning Legal Aid, applicants for legal aid apply for legal aid to the Legal Aid Provider, then the Legal Aid Provider within a maximum period of 3 (three) working days after the application for legal aid is declared complete must provide answer to accept or reject the application for legal assistance. In the event that the application for legal aid is received, the Legal Aid Provider provides legal assistance based on a special power of attorney from the Legal Aid Recipient. In the event that the application is rejected, the Legal Aid Provider shall state the reasons for the refusal.

After fulfilling these three conditions, regarding the legal aid funds provided by the APBN, the underprivileged can request legal aid funds to:

1. Local District Court
  - a. The accused may be accompanied by an Advocate to come to the Village Office/Village Head to request a certificate of incapacity and if experiencing difficulties can make a statement on the seal and be known to the Court or it can also be obtained with a

<sup>4</sup> Fauzi, S. I., & Ningtyas, I. P. (2018). Optimalisasi Pemberian Bantuan Hukum Demi Terwujudnya Access To Law And Justice Bagi Rakyat Miskin. *Jurnal Konstitusi*, 15(1), 50-72.

<sup>5</sup> 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.

Certificate from the Head of the District Court stating that he is unable.

- b. After that, the defendant came to the District Court to ask for Legal Aid Funds by showing a Certificate of incapacity.

2. Local Legal Aid Institute

- a. The defendant may be accompanied by an Advocate to come to the Village Office/Village Head to request a certificate of incapacity and if experiencing difficulties can make a statement on the seal and be known to the Court or it can also be with a Certificate from the Head of the District Court stating that he is unable.
- b. After that, the defendant came to the Office of the Legal Aid Institute to request legal aid funds by showing a Certificate of incapacity. Next, come to the District Court. Please note that legal aid is free at Aid Organizations. This law (OBH) and 23 LBH that have been accredited by the Ministry of Law and Human Rights, based on facts on the ground have not been realized. This legal aid has not been realized due to the procedures and procedures provided by the Regional Office, and it is very difficult to apply for the disbursement of legal aid funds. In reality/facts in the field, 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.

It is very possible to get assistance, legal assistance, and counseling or socialization about the law to be done online. Various questions are currently emerging in the midst of the COVID-19 pandemic for people who have legal problems, such as cases concerning cases of unilateral termination of employment, protection of workers, cancellation of cooperation contracts, people accused of spreading the COVID 19 virus to hospital patients who are unable to pay fees. treatment at the hospital with questions that arise, among others, whether the court remains open and serves justice seekers and litigants, whether all application files and/or lawsuits that go to court will be processed, whether there will be a direct court, whether there is a court process that the results of the decision are made online, can the judicial process be carried out online, if the court and online court proceedings can be carried out what are the procedures, and can I receive legal assistance, how do I get the help of an advocate to represent and defend all client interests n. Various other questions also arise, but people who currently still often hear various news that increase panic and paralyze all economic business sectors as well as policies that greatly suppress mobility that affect the circulation of money and the economy.

Complaints about unlawful acts, requests for legal assistance, making various court files, as well as requests for making various files related to legal cases can be done online. References to various policies that regulate various activities carried out using online or online media are still minimal because the virus outbreak that hit Indonesia was very undetected long ago, therefore when it comes to legal or juridical discussions, a policy that is supposed to be for while it is allowed to keep these activities running and not paralyzed. For example, the application for a poverty certificate submitted to the village head should be done online and various things or activities related to law and the judicial process can also be done online.

The community should do various things to meet their needs as recipients of legal aid, considering the various activities and policies that lead to individuals and even legal entities as recipients of legal aid during the corona virus pandemic with various interests that they want to be defended as the purpose of providing legal aid must be people. people who meet the criteria referred to by law. The community can do various ways to get legal assistance, the community must be more active in looking for news related to their interests related to legal cases or related to legal aid posts that are already on the internet. The community must support government policies and not violate government regulations on any basis. Legal assistance can be obtained by the community if the community is willing to try harder in the COVID-19 pandemic for the information received must be selected and do not accept all information raw without being filtered. All activities related to the law such as non-acceptance of rights, termination of employment, cancellation of cooperation agreements, as well as financial difficulties due to the demands of various parties who wish to do and carry out something related to matters of interest and law and indeed require legal assistance and legal assistance because the Aid Institute There are many available laws that are ready and prepared to serve the Indonesian people, so it is only the people who are willing or not trying to get their rights, to get the fulfillment of their interests through requests for legal assistance.

To answer various questions that arise in the community regarding legal remedies that can be taken during the COVID-19 pandemic, the community must try harder to surf the internet and try to continue to carry out all their interests through online media, namely people who want to understand the current court mechanism, want to understand the mechanism for resolving cases in the police, various requests to lawsuits as well as to deny various accusations that lead to the community as well as interests related to law and the legal process because there are already available on the internet everything related to the law and the number of legal posts as well as for people who have interests related to law and indeed having a low economic situation, it is highly recommended to contact various parties who are willing to provide legal assistance so that

the case settlement process can be resolved more easily than surrendering to interests and rights that are not obtained. There are various factors that influence the level of public awareness regarding the importance of legal remedies in dealing with various interests related to social life, cultural factors, egocentricity, lack of knowledge, underprivileged community resources with concern for interests, resignation to circumstances, Anti-legal affairs are very high among people with low incomes as parties who are entitled to receive legal aid, people who are entitled to receive legal assistance are mostly people who do not understand the law, what is law, what is justice, what is an application, what is law? what is a lawsuit, what is an interest, what is a right, and what is an obligation, what is the legal basis, what is a violation, what is a crime, what is the fulfillment of rights, what are human rights related to the situation, even what efforts can be made very questionable circumstances in individuals and the environment of a person who is entitled to receive legal assistance. Various serious studies examining the concern for the settlement of legal cases that befall legal aid recipients and the willingness to sue and take care of the rights that have been violated are still present in low capacity and legal illiteracy. Will there be a strong effort to fulfill thoughts, awareness, and curiosity regarding the resolution of problems related to the law while the people who are entitled to receive legal assistance are at a low level of society and far from vulnerable to justice and the fulfillment of interests related to law. Many crimes and violations are chosen and carried out by parties who are considered entitled to receive legal assistance because crimes are repaid with crimes, even violators are considered necessary in order to have color in life, are chosen as a way out other than the word of agreement and accept the conditions and ways of peace between the disputing parties or have legal interests.

For example, traffic violations that are most often carried out by low-income people, fights between youths lead to revenge, persecution as retaliation for behavior deviations, peace between groups that are in conflict or conflict, the use of assistance from civil servants or village officials or between civil servants or village officials as mediators, the lack of knowledge of low-income people on important information related to the rule of law and even low concern for news or legal service advertisements found on the internet, television, and other media.

Legal assistance will be difficult to provide if the human resources of the community who are entitled to receive legal assistance do not want legal assistance on the basis of reasons for complex activities that require costs and take up time that should be used to earn income, especially reports or requests for legal assistance made by the entitled party. receive legal assistance.<sup>6</sup>

<sup>6</sup> Arief, S. (2019). Law Construction in Modern Society. *The Indonesian Journal of International Clinical Legal Education*, 1(1), 255-260; Widyawati, A., Rasdi, R., Arifin, R., & Adiyatma, S. E. (2020). Covid-19 and Human Rights: The Capture of

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What can be done by parties who are entitled to receive legal aid is to learn to accept the judicial process that should be carried out because the Indonesian state has guaranteed equality of human rights and obligations in the eyes of the law and the state has obligated the parties providing legal aid, namely those who are considered legally capable of defending the interests of the parties involved. have the right to receive legal assistance in court and in the eyes of the trial so that people who are entitled to receive legal assistance will be more participative to carry out state policies as protectors of the rights of all their people in the eyes of the law. Striving to position itself as a society that obeys the law and a society that highly respects obligations and the implementation of all its obligations and minimizes disputes and conflicts of interest which result in referring to the applicable legal rules in Indonesia.

Legal consultation, legal assistance, and legal assistance became one process at first through the media or online or online during the current Corona Virus Disease 2019 (COVID 19) virus in Indonesia. All processes of legal consultation, legal assistance, and other forms of legal aid currently being carried out by the legal aid provider to the legal aid recipient will be carried out properly by directly meeting between the two parties if it has passed or the handling of Corona Virus Disease 2019 has been completed. (COVID 19) in Indonesia, it can still be carried out online or online, namely as a use of technology or for the purpose of minimizing the potential for the virus to exist on both sides (if it has not been long since the Corona Virus Disease 2019 (COVID 19) period).

Various government policies regarding the handling of Corona Virus Disease 2019 (COVID 19) must be obeyed by all parties as an effort to fulfill the obligations of the Indonesian people on the basis of compliance with the instructions of leaders or stakeholder officials at the center of government so that the Indonesian state recovers quickly so that various activities in various Aspects of social life, economy, and other aspects can return to normal, the parties must cooperate in these times, namely to fulfill all their obligations without exception and take part in carrying out the wheels of activity, especially in the field of law and legal aid.

### III. CONCLUSION

This study concludes and underscores that legal aid during the COVID-19 pandemic is regulated in various laws and regulations. Legal Aid is generally regulated in the Law on Legal Aid, the Law on Advocates, and also in the Law on Human Rights. Regarding various special policies during the COVID-19 pandemic, there are several regulations from

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the Fulfilment of Rights During the Covid Outbreaks. *Unnes Law Journal: Jurnal Hukum Universitas Negeri Semarang*, 6(2), 259-286.

various Ministries, starting from the Ministry of Manpower, Ministry of Education, and Ministry of Social Affairs.

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