

Type: Research Article

THE ROLE OF LAW CLINICS AND LEGAL AID CENTER IN PROVIDING LEGAL AID FOR VULNERABLE GROUP: A CASE OF AFRICA, INDONESIA, AND AUSTRALIA

Daniel Akintunde*

*School of Law, University of Kwazulu-Natal
38 Mazisi Kunene Rd, Glenwood, Durban, 4041, South Africa*

Sutiani Choirunnisa

Universitas Negeri Semarang, Semarang, Indonesia

Christopher Bastiaan Fernando

*Australian Catholic University
1100 Nudgee Rd, Banyo QLD 4014, Australia*

*Corresponding author: danile.akintunde@ukzn.ac.za

Legal aid is a concept in response to the community's need for the adage law is sharp down, blunt up. In Indonesia, the existence of Law Number 16 of 2011 concerning Legal Aid cannot be separated from the legal reform agenda that gives citizens the right to obtain justice and the right to a fair and impartial trial, including through the provision of legal assistance. Legal aid is part of the advocate profession which is a noble profession or officium nobile because it requires the defense of all people

The Indonesian Journal of International Clinical Legal Education

DOI: [10.15294/ijicle.v4i1.55775](https://doi.org/10.15294/ijicle.v4i1.55775)

Submitted: Sept 12, 2022 Revised: Jan 21, 2022 Accepted: March 7, 2022

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

© 2022 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.



Daniel Akintunde, et.al.

regardless of background, race, color, religion, culture, socioeconomic, rich-poor, belief, politics, gender, and ideology. This study is intended to examine and analyze the role of law clinics and legal aid center in providing legal aid for vulnerable groups in Indonesia, Africa and Australia.

Keywords: Legal Aid, Vulnerable Groups, Justice

I. INTRODUCTION

After the 1998 reform in Indonesia, one of the agendas in Indonesian law itself focused on the courts, police, prosecutors, and legal aid institutions, be it lawyers or community legal aid institutions, which have not run optimally. State enforcement which has the rule of law is deadlocked. Law enforcement on the one hand and justice in society on the other hand requires harmony, especially in the right to obtain legal assistance for the community without discriminating against race, religion, and class. As mandated by the 1945 Constitution, especially Article 27, whether it has been amended or before the amendment. The elaboration of the 1945 Constitution Article 27 is translated into Law Number 16 of 2011 concerning Legal Aid¹.

Legal Aid Institute is the embodiment of one of the important principles adopted by the Criminal Procedure Code, namely the accusatoir principle. That is the principle that shows that an accused who is examined in a court trial is no longer an object of examination, but as a subject. The accusatoir principle has shown an open examination where everyone can attend or witness the examination. The defendant has the same rights as the public prosecutor, while the judge is above both parties to settle criminal cases according to the applicable criminal law.²

The power exercised by the government is only based on and derived from the law and is in no way based on the power of arms, arbitrary power, or the belief that the power of the government may decide all disputes within the state. Meanwhile, the poor are the responsibility of the State as regulated in Article 34 of the 1945

¹ Frans Hendra Winarta, *Legal Aid in Indonesia*. Jakarta: Elex Media Komputindo. 2011. p. 71.

² H. Rusli Muhamad, *Contemporary Criminal Procedure Law*. Bandung: PT Citra Aditya Bakti, 2007, p. 18

Constitution which reads, "*The poor and neglected children are cared for by the State.*" therefore, the legal aid movement is actually a constitutional movement.

Legal aid is not mercy and is given by the State, but is a human right of every individual and it is the responsibility of the State to protect the poor. Because human rights exist in every human being. The public must be convinced that legal aid is a human right and not a mercy. Legal aid is the responsibility of the State, government, community, community organizations, and all parties in society such as advocates, prosecutors, judges as law enforcers and other community leaders, especially in Indonesian society known as *zakat* (obligation) in Islamic teachings which requires people who are better able to help the poor, therefore, the concept of legal aid is easier for the community to accept³.

Poverty is a very complex problem, which is not only limited to economic problems but is also related to problems in other fields. Policies from the government are very much needed in helping to solve problems related to poverty in other fields, for example in the field of law. It is true, global poverty is defined as poverty within material limits, which can be measured with a nominal amount of money in rupiah or can be linked to the nominal Regional Minimum Wage (UMR) in every region in Indonesia. However, when poverty intersects with the legal field, The meaning of poverty implies that it is not only limited to the material side but also relates to the limitations of the community to get access to justice which in fact is their right. Due process of law (fair legal process) that has existed so far is in fact not in accordance with the meaning of the term itself.⁴

In Government Regulation Number 83 of 2008 concerning Requirements and Procedures for Providing Free Legal Aid, Article 1 defines that free legal aid is legal services provided by advocates without receiving honorarium payments including providing legal consultation, exercising power of attorney, representing, assisting, defend, and take other legal actions for the benefit of justice seekers who are unable to handle and resolve their legal problems. Based on the Instruction of the Minister of Justice of the Republic of Indonesia Number: M.03-UM.06.02 of 1999, those who are underprivileged are people who have very small incomes, so that their income will not be enough to finance their cases in court.

The need for legal assistance can be said to be a form of preventing people from becoming victims of crime and resolving criminal cases that occur so that people are satisfied that justice has been upheld and the guilty have been punished. Ensuring that those who have committed

³ Soerjono Soekamto, *Legal Aid, A Socio-Juridical Review*, Jakarta: Ghalia Indah, 1983, p. 23.

⁴ Erwin, Muhammad. *Philosophy of Law: Critical Reflection on Law*. Jakarta: Rajawali Pres 2nd Printing, 2012, p. 29

Daniel Akintunde, et.al.

crimes do not repeat their crimes⁵. Everything is needed to change the paradigm that the law is full of cruel sanctions in underprivileged communities. In principle, legal aid is divided into two, namely litigation legal aid and non-litigation legal aid. Litigation and non-litigation assistance is required through government programs.

II. DISCUSSION

Indonesia is an archipelagic country which is included in the category of one of the most populous countries in the world after China, India and the United States. By being one of the most populous countries, in fact Indonesia consists of various groups, both the upper middle class, the middle class and the lower middle class. The division of groups or social stratification is in accordance with the pattern given by Aristotle's stratification where this stratification consists of the first group (which is the smallest group in society, namely entrepreneurs, landlords and nobles), the second group (which is a group that is quite a lot in society they consist of traders) and the third group (which is the largest group in society, mostly ordinary people). This inequality inevitably has an impact on the adage of sharp downward law, blunt upward law. This is due to the fact that many ordinary people have witnessed in various media that justice can be bought by the upper class. Although it should be, the law itself is fair to all without exception because everyone has the same position before the law. Various backgrounds or main factors that cause access to justice in the justice-seeking community have not been achieved need to be explored in order to achieve access to justice for all communities without exception.

Indonesia is a country that adheres to the rule of law system. The rule of law here implies that all citizens are equal before the law without exception. In addition to adhering to the rule of law system, Indonesia is also a country based on law (*recht staat*) which means that all forms of issues relating to affairs between citizens and citizens or citizens and the state (government), must be based on laws and regulations. invitation in force in Indonesia. As a consequence of the adoption of the rule of law and *recht staat* system, every citizen is also entitled to the same legal protection without exception. Thomas Hobbes believes that justice is the same as positive law made by the ruler.

Legal education is part based on the development of national law together with the development of national law, part based on national development. Therefore, legal counseling activities cannot be separated from the grand plan of how human life (WNI) wants to be fostered so

⁵ Romli Atmasesmita, *Contemporary Criminal Justice System*, Jakarta: Kencana, 2011, p. 19

that quality will improve together. They want a point to act together to act in accordance with what was mandated when the 1945 Institutionalized.

Referring to Article 1 of the Regulation of the Minister of Law with Human Rights of the Republic of Indonesia Number: M01.PR.08.10 of 2007 concerning Amendments to the Regulation of the Minister of Law with Human Rights of the Republic of Indonesia Number: M-01.PR.08.10 of 2006 concerning the Pattern of Joint Legal Counseling - together with legal counseling is one of the activities to disseminate information together with an understanding of each legal regulation along with applicable laws and regulations to jointly develop community law so that it can create a legal culture when the regular form together obeys or obeys every legal regulation together with the laws and regulations to be applied in order to uphold the rule of law.

Referring to Article 1 of the Regulation of the Minister of Law with Human Rights of the Republic of Indonesia Number: M01.PR.08.10 of 2007 concerning Amendments to the Regulation of the Minister of Law with Human Rights of the Republic of Indonesia Number: M-01.PR.08.10 of 2006 concerning the Pattern of Joint Legal Counseling - together with legal counseling is one of the activities to disseminate information together with an understanding of each legal regulation along with applicable laws and regulations to jointly develop community law so that it can create a legal culture when the regular form together obeys or obeys every legal regulation together with the laws and regulations to be applied in order to uphold the rule of law.

It is clearer in Article 2 of the Regulation of the Minister of Law with Human Rights of the Republic of Indonesia Number: M-01.PR.08.10 of 2007 concerning Amendments to the Regulation of the Minister of Law with Human Rights of the Republic of Indonesia Number: M-01.PR.08.10 of 2006 concerning Patterns Legal Counseling, explains about The achievement of carrying out legal counseling is made to realize the law of people who want to be better so that every member of the community is based on paying attention to their common rights as citizens together to create a legal culture when a shared attitude of behavior wants something, obeys every law together to respect human rights.

A civilized nation is a nation that carries out its legal functions independently and with dignity. The presence of law in society, among others, is to integrate and coordinate interests that may conflict with each other by law being integrated in such a way that these collisions can be minimized.⁶ In essence, law is a norm, and each norm must contain a value which is nothing but morality or in a broader scope, morality.

⁶ Muhammad Erwin, *Philosophy of Law: Critical Reflections on Law*, 2nd Edition, Jakarta: Rajawali Pres, 2012, p. 132.

Daniel Akintunde, et.al.

Furthermore, the rules of a legal system must conform to the substantive requirements of morality or other standard standards. Rules of law must be subject to morality⁷. Adnan Buyung Nasution gave an understanding that legal aid is essentially a program that is not only a cultural action, but also a structural action directed at changing the social order that is more able to provide a comfortable breath for the majority group.⁸. Therefore, legal aid is not a simple matter. It is an act of liberation of society from the shackles of the political, economic and social structure which is full of oppression.

Community law is an output based on the process of legal development activities, it wants to be marked together with respect for the law, through practice in the field, only legal counseling methods or techniques that want to communicate together to be able to touch the conscience of the community, made to respect the law, want to be able to work effectively, made to make the law of society. The choice of people when they act together to behave according to what they are is that the law is strongly influenced by the moral character of society, because the law is never separated based on its social environment.

Society is categorized as following the law if the superior society generally consists of people who want to obey the law because it is in accordance with the law, when it means not obeying the law because of coercion or because they are afraid to be divided. Based on the law of society, it is natural to create a legal culture if an orderly form together obeys or complies with every legal regulation along with the legal regulations that are intended to be applied in order to uphold the rule of law.

Along with the times, people increasingly doubt the capacity and capability of law enforcement and judicial institutions in Indonesia, especially for the poor. The rise of big cases that stick out in public, involving high-ranking state officials and important people in the litigation process in the middle of the road seems to have disappeared into the earth. What's more, the ethics of law enforcers are very inappropriate for a law enforcer to do. Many law enforcers are found who are willing to risk their noble duties with a nominal amount of money. It is these kinds of things that can not be avoided which lead to the emergence of public pessimism about justice in this country because of unethical law enforcers.

Law enforcement officers are required to carry out their duties in accordance with what is said in the law. This theory actually gets a lot of criticism from legal experts, including Nonet and Selznick who argue

⁷ Satjipto Raharjo, *Legal Studies*, VIII Printing, Bandung: Citra Aditya Bakti, 2012, p. 53

⁸ Shidarta, *Morality of the Legal Profession: An Offering Framework for Thinking*, Bandung: Refika Aditama, 2006, pp. 76-77.

that criticism of law always leads to its inability as a tool to regulate change and to seek justice.⁹

According to Ni'matul Huda, basically, the similarities between the concept of recht staat and the concept of the rule of law are:

- a. Basically the two concepts direct themselves to one main goal, namely the recognition and protection of human rights. While the difference between the concept of recht staat and the concept of rule of law, namely: The concept of recht staat was born from a struggle against absolutism so that it is revolutionary in nature, on the other hand the concept of rule of law develops evolutionarily.
- b. The concept of recht staat rests on a continental legal system called civil law, while the concept of rule of law rests on a legal system called common law. The characteristics of civil law are administrative, while the characteristics of common law are judicial.

This principle has an impact on equal treatment for citizens, including those who are poor who are facing legal problems. If the rich can easily pay for the services of an advocate to assist them in the judicial process, the poor also have the same right to be assisted and obtain legal aid services within the framework of legal aid in Indonesia. It was also emphasized that access to justice is an opportunity or ability of every citizen regardless of their background (race, religion, descent, education or place of birth) to obtain justice through the judiciary.¹⁰

The state based on Law Number 16 of 2011 concerning Legal Aid guarantees the constitutional rights of every person or citizen to obtain fair recognition, guarantees, protection and legal certainty as well as equal treatment before the law as a means of protecting human rights. In practice, the enforcement of equality before the law is difficult to achieve, especially if those who are involved in legal cases are poor or poor people who generally do not know the law (law ill). Those who are not capable and even blind to the law sometimes do not know their rights which are basically regulated in the law because most of them are stuck with the assumption that when they want to defend their rights, they have to spend a lot of money maybe just to eat they are still struggling. This is motivated by the very lack of socialization related to their rights when facing legal cases. What's more, there is a growing stigma that it is expensive to pay for the services of an advocate or lawyer. The court as law enforcement is an institution that will provide justice for those who seek justice, no matter who and whatever their background. But in reality the law from the beginning always contained the potential to tend to give benefits to those from the more financially capable groups. The court as law

⁹ RB Soemanto, *Law and Sociology of Law, Thought, Theory and Problems*, Solo: UNS Press, 2008, pp. 145-146

¹⁰ Satjipto Rahardjo, *Other Sides of Law in Indonesia*, Jakarta: Kompas Book, 2003, p. 177.

enforcement is an institution that will provide justice for those who seek justice, no matter who and whatever their background. But in reality the law from the beginning always contained the potential to tend to give benefits to those from the more financially capable groups. The court as law enforcement is an institution that will provide justice for those who seek justice, no matter who and whatever their background. But in reality the law from the beginning always contained the potential to tend to give benefits to those from the more financially capable groups.

The concept of access to justice for justice is not only limited to access to lawyers or access to courts, but also access to the Ombudsman and other “justice” institutions. The concept of access to justice in Indonesia is focused on the goal of a legal system that can be accessed by all citizens and the goal that the legal system should be able to produce fair provisions or decisions for all citizens, both individuals and groups.¹¹ In the concept of access to justice, justice is defined as a condition and process in which the state guarantees the fulfillment of basic rights for its citizens, namely basic rights based on the 1956 Constitution and universal principles of human rights and guarantees access for every citizen. in order to have the ability to know, understand, realize and use these basic rights through formal and informal institutions that are supported by a good and responsive public complaint mechanism in order to obtain optimal benefits and improve the quality of their own lives.

The main elements of social justice according to Rawls¹² includes (1) the main principles of social justice are equality or equality; namely: (2) similarity in distribution; above (3) primary goods (primary goods); however (4) inequalities can be tolerated as far as it benefits all parties. For this reason, it is evident that Rawls's conception of justice theory essentially includes aspects of equality and inequality. Based on Rawls's conception of social justice, this can result in an inequality that can be tolerated if it can benefit all parties, especially the disadvantaged groups.

Rawls's theory of justice departs from the intuitive belief that he puts it in a long proposition whose main points are: (1) Justice is the main virtue of social institutions, such as truth in our thinking system. Laws or institutions, however good and efficient, if they are unjust, must be corrected or abolished. Right and justice are things that cannot be compromised. (2) Everyone has rights that are embedded in the principle of justice that should not be violated even in the name of the public interest. Justice does not justify the sacrifice of the interests of a person or group of people for the sake of the people. (3) In a just society, independence is automatically guaranteed; the rights guaranteed by

¹¹ Cappelletti, Mauro and Bryant Garth (Eds), Access to Justice: Book I, pp.1-7.

¹² Rawls, John. A Theory of Justice, 2nd Edition, Bandung: Pustaka Setia, 2011, p. 9.

justice cannot fall prey to political bargaining or public interest calculations.

In essence, law is a norm, and each norm must contain a value which is nothing but morality or in a broader scope, morality. Furthermore, the rules of a legal system must conform to the substantive requirements of morality or other standard standards. Rules of law must be subject to morality¹³.

Roberto Conception states that legal aid is a general expression used to refer to any legal services offered or rendered. This consists of providing information or opinions regarding rights, responsibilities in certain situations, disputes, litigation or legal processes which can be judicial, semi-judicial or otherwise.¹⁴ Meanwhile, according to Law Number 16 of 2011 concerning Legal Aid, it is stated that Legal Aid is a legal service provided by Legal Aid Providers free of charge to Legal Aid Recipients.

Efforts to be made are Legal Aid (Non Litigation), Critical Legal Education, with a set of Community/Society, Student and Academic targets together with a collection of other strategies, together: Encouraging the growth of joint initiatives with the role of the community with various parties (Multi Stakeholders) if empowered by law through Joint Assistance for Organizing, Training, Researching Joint Studies with other integrated activities that wish to relate to controlled natural resource/agrarian issues. Encouraging communities to make efforts to identify legitimate common rights when managed by natural/agrarian sources.

Continuously improving Law which is empowered as a change generator together with Social Gear if controlled by Original/Agrarian Sources for various parties to increase support. Develop alternative education together with caricatures for the community. Facilitate natural sources/sources of agriculture that are managed with a lay dimension: legal consultant or lawsuit filing.

The implementation of legal aid must be in line with the breath whose goal is the protection of human rights and the ideals of justice not to become a meaningless activity, this is what Todung Mulya Lubis criticized for traditional and individual forms of legal aid. by pointing out a number of weaknesses, namely:¹⁵

1. Traditional and individual legal aid is only “cure” but does not seek and cure the cause of the disease where the community has previously been excluded from their own rights;

¹³ Muhammad Erwin, *Philosophy of Law: Critical Reflections on Law*, 2nd Edition, Jakarta: Rajawali Pres, 2012, p. 132.

¹⁴ Abdurrahman, *Aspects of Legal Aid in Indonesia*, Jakarta: Cendana Press, 1983, p. 31

¹⁵ Todung Mulya Lubis, *Legal Aid and Structural Poverty*, Jakarta: Cendana Press, 1983, pp. 1-3

2. The existing legal system still supports traditional and individual forms of legal aid, where the legal settlement process still revolves around the courts and the proceedings in it;
3. It is urban, because the legal experts who provide legal aid services are located in urban areas and are not easily accessible to rural communities and areas that are difficult to reach;
4. It is passive, waiting for the poor to realize their rights and claim them;
5. Too attached to legal approaches, not how to help quickly resolve or resolve conflicts;
6. Still running alone, not collaborating with legal aid organizations, even though legal aid organizations are considered the fastest to resolve conflicts; and
7. It has not led to the creation of a social movement, where the legal aid movement is associated with power resources so that the position of the community will be stronger and accelerate the resolution of conflicts between the center and the periphery.

Legal aid institutions are non-profit institutions whose establishment aims to provide legal aid services for free (free of charge) to people who need legal assistance, but cannot afford even those who do not understand the law. Through the legal aid movement, we must seize the human rights of the poor who have been held captive by the rich for a long time, although it must be realized that legal aid alone is not enough.

Talking about judges and judges' decisions in Indonesia, cannot be separated from the discussion of justice. Access to justice is a form of embodiment of the principle of the rule of law and the recognition of human rights as guaranteed in the 1945 Constitution of the Republic of Indonesia. The rights and obligations of Indonesian citizens are expected to become a unified whole. aims to realize a just Indonesia in accordance with the precepts of social justice for all Indonesian people.

Terminologically, the concept of access to justice has a goal of social justice and being able to prevent and overcome poverty is actually an effort to have affirmative action against vulnerable groups, especially the poor or the underprivileged. Various efforts have been made to achieve a guarantee of justice, one of which is by way of legal remedies (legal remedies) and judicial remedies (justice remedies). Guarantees of access to justice in Indonesia are contained in articles related to human rights in the 1945 Constitution, Law Number 39 of 1999 concerning Human Rights, Law Number 11 of 2005 concerning Economic Rights.

The concept of access to justice itself has a basis that must be accessible to all groups and must produce a provision that is fair to all parties. The concept of access to justice prioritizes the main idea in order to achieve social justice for citizens from all walks of life without

exception. This exception is intended that access to justice does not look at differences in background, whether race, religion, descent, education of Indonesian citizens in terms of Indonesian citizens seeking justice through the judiciary. All Indonesian citizens have the same opportunity and/or ability in getting access to justice. Although in the end the meaning of the word fair is sometimes difficult to apply in real life.

- a. the legal system must be accessible to all Indonesian citizens without exception;
- b. the legal system must be able to produce a provision or decision that can be perceived as fair for all Indonesian citizens (both individually and in groups).

Broadly speaking, in general, legal problems that are often experienced by poor people or groups are the non-fulfillment of their basic rights in various fields. There are at least four main problems of access to economic, social and cultural rights, one of which is the growing view that economic, social and cultural rights are rights that are not justiciable (cannot be prosecuted in court). Instrumentally, the guarantee of economic, social and cultural rights also has a fundamental weakness which assumes that the fulfillment of these rights is carried out in stages (progressive realization).¹⁶

The poor are the exception to the law which they think is often unfair and closes their opportunity to improve their standard of living and this is the case in most of the poorest and developing countries in the world. They work not within the legal corridor but outside the law itself: laborers who work without contracts, unregistered businesses and occupy land without legal documents. Because of this, they are the most vulnerable parties to be categorized as law violators and at the same time do not get any assistance from the state when their rights are violated. Literally, poverty comes from the basic word poor which means no possessions. In a broader sense, poverty can be connoted as a condition of incapacity either individually and family.¹⁷

What is happening in Indonesia today, namely the widespread and systemic structural impoverishment, cannot be understood apart from the context of the development of labor law reform in Indonesia after the financial crisis. There have been at least three waves of legal reforms (1997-1998, 2000-2004, and 2005-present). However, in the process, the strong influence of Neo-Liberalism was identified as working through the hands of multilateral development banks (multilateral development banks, such as the World Bank, Asian Development Bank, and IMF). These institutions seem to be involved in designing the direction of the development of labor law.

¹⁶ Sri Palupi, Problems and Challenges in Accessing Economic, Social and Cultural Rights, In Prasetyohadi and Savitri Wisnuwardhani, ed., *Enforcement of Human Rights in 10 Years of Reform*. Jakarta: Komnas HAM, 2008, pp. 102-103.

¹⁷ Todung Mulya, Op. Cit., p. 35

Daniel Akintunde, et.al.

Poverty is seen as a condition of a person or group of people, men and women whose basic rights are not properly fulfilled to lead and develop a dignified life. Thus, poverty is no longer understood as only limited to economic inadequacy, but also the failure to fulfill basic rights and different treatment for a person or group of people, in living a life with dignity. Living poor does not only mean living in conditions of lack of clothing, food and shelter.

However, poverty also means low access to productive resources and assets to obtain the necessities of life, including: science, information, technology, and capital. So with a reality like that makes it helpless and therefore the range of getting good treatment in all things. Therefore, there is a need for a social security system including law in order to protect economic, legal, cultural rights and interests and so on.

The provision of legal aid is not only given to the poor when they face cases in court. Legal assistance provided to cover civil, criminal and state administrative law matters. There are also 2 (two) types of legal aid provided, namely legal aid in court or better known as litigation and legal aid outside court or better known as non-litigation. In accordance with the provisions of Article 4 paragraph (3) of Law Number 16 of 2011 concerning Legal Aid, the scope of legal assistance provided to Legal Aid Recipients includes exercising power of attorney, accompanying, representing, defending and/or taking other legal actions for the Recipient's legal interest.

Legal aid through litigation is a mechanism for resolving cases through the courts using a legal approach (law approach) through authorized law enforcement officials or agencies in accordance with the laws and regulations. 19 Meanwhile, non-litigation legal aid is a settlement mechanism outside the trial, but uses a mechanism that lives in society whose forms and types vary greatly, such as ways of deliberation, peace, kinship, customary settlement and others. Legal aid for litigation or legal aid with a trial route is actually expected to be the last resort or *ultimum remedium*, which is the last resort that can be done when efforts to resolve amicably and kinship do not succeed. In criminal cases, This litigation legal aid is given when the criminal threat of the defendant is more than 5 years in prison. This is a form of guarantee for the granting of rights for the defendant which has been accommodated by law and even at the investigation level has been given the right to be accompanied by legal counsel. The granting of this right is accommodated by the Criminal Procedure Code (KUHAP) Article 56 paragraph (1).

The provision of legal assistance in litigation, especially in criminal cases is to accompany, not represent. This means that during the trial process, the legal aid agency only accompanies the power of attorney and the power of attorney must be present at each trial. Meanwhile, the

provision of legal assistance in litigation in civil cases is more representative and/or accompanying. This means that during the trial process, the legal aid agency can represent and/or assist the attorney and the attorney is not required to be present at every trial agenda.¹⁸

The provision of litigation legal assistance, especially in civil cases, can break the public's assumption that having a civil case at the court level is complicated, because according to the applicable procedural law, the litigants must make a file (on the jinawab answer agenda) even though it can be submitted orally. However, when the community has authorized the case at the legal aid agency, all files will be made by the legal aid agency acting as its legal counsel. Although it is still undeniable, litigation does take a long time because it is carried out in accordance with the applicable procedural law procedures, draining energy and thought.¹⁹

The procedure or mechanism for applying for legal aid is also very easy, that is, only by attaching a certificate of incapacity which can be taken care of by underprivileged communities from the RT, RW to the sub-district level. This certificate of incapacity serves as concrete evidence that the person concerned is indeed a member of the poor community.

In practice, the general public knows that legal aid is only given to litigation cases. Ordinary people do not know that they are entitled to legal assistance in non-litigation areas. This is due to their lack of knowledge about their rights and also due to the lack of socialization to them of their rights. The rise of various legal aid institutions that are incorporated in a legal aid organization is expected to play a maximum role in carrying out the mandate of Law Number 16 of 2011 concerning Legal Aid.²⁰

In fact, the role of LBH, especially for the poor, is very significant. This can be seen from the benefits of the services of legal aid institutions, including the following:

1. Strive to make it easier for the underprivileged in dealing with legal problems;
2. Ensuring that the subject matter can be applied objectively;
3. Starting from the legal process is not treated arbitrarily by law enforcement officers, namely the police, prosecutors, and judges (criminal cases);
4. Accelerate the process of legal settlement;
5. Fight for what are the rights of the underprivileged (civil cases);

¹⁸ Hakim, Abdul and Mulyana W. Some Thoughts on Legal Aid (Towards Structural Legal Aid). Bandung: Alumni, 1981, p. 42

¹⁹ Sadiawati, Diani and Mas Acmad Santosa. National Strategy for Access to Justice. Jakarta: Bappenas, 2009, p. 68

²⁰ T. Mulya Lubis, Legal Aid with Structural Poverty, Jakarta: LP3ES, 1986.

Daniel Akintunde, et.al.

6. Helping underprivileged communities in legal settlements because they will not be charged anything;
7. Representing underprivileged communities in court proceedings; and
8. Poor people will get satisfaction.

In the midst of demands for the role of aid agencies in providing legal services to the community, especially the underprivileged and legally blind, legal aid institutions, although not routinely, still provide legal services. According to Frans Winarta, as a conception of defense for the poor, legal aid actually requires operational funds from groups that are classified as economically strong, such as businessmen, bankers, advocate associations, humanitarian organizations, the legal community, and the government. Of the several legal aid organizations in Indonesia, most practice and function as an advocate's office (legal advisor) and raise funds from clients for the legal services provided, regardless of social strata. Even though legal aid is free of charge because it is provided for the poor.²¹

In addition to the presence of Law Number 16 of 2011 concerning Legal Aid has a positive impact, but this law also has a negative side. That is, there is an article in this law that is felt to be a weakness in itself. The articles referred to are Article 8 paragraphs (1), (2) letters a and b. This article regulates the requirements that are met by legal aid institutions in order to become legal aid providers. This requirement may hinder the access to justice process for the underprivileged because there are still many legal aid institutions that are not yet legal entities, not yet accredited under Law Number 16 of 2011 concerning Legal Aid.²²

The existence of a pattern of accreditation by this law will also have an impact on the number of cases that can be handled by the legal aid agency concerned. Non-litigation legal aid can also be seen directly in various courts, both district courts, religious courts and state administrative courts in collaboration with various legal aid institutions. The form of providing legal aid referred to here is, what institution should be taken in the future.

The process of resolving a case by way of providing litigation legal assistance would be better if it was used as an alternative last settlement, so that efforts to settle through non-litigation channels could be further maximized. This should be an important note for existing legal aid

²¹ Frans Hendra Winarta, *Legal Aid, A Human Rights Not Mercy*, Jakarta: First Edition, Elex Media Komputindi Gramedia Group, p. 29

²² Soekanto, Soerjono, *Factors Affecting Law Enforcement*, Fifth Edition, Raja Grafindo Persada, Jakarta, 2004, p.45

institutions. Legal aid institutions are expected to be able to advocate for the community that the provision of legal aid is a last resort²³.

The role of LBH can be to minimize case settlement both at the investigation level, investigation, examination process in court for criminal cases, and for civil cases both at the level of the lawsuit making process, mentoring in court, even not closing the possibility for peace efforts for the plaintiff and defendant. So that the pile of cases that need to be resolved quickly will not happen.

In essence, resolving cases using the services of LBH will not guarantee that law enforcement will run as it should, but with the services of LBH in resolving cases, it will at least give a sense of trust to the litigants, and will also guarantee a sense of justice. . LBH's function here is not only in mentoring but will also be an institution that controls the settlement of cases, starting from the investigation process to decisions for criminal cases and for civil cases starting from the preliminary process to implementing decisions.

This is corroborated by the opinion of Trisno Kamba, the head of the advocacy section of the organization, who stated that, in general, justice seekers come to LBH when their cases begin to be processed at the Police or are already in the Prosecutor's Office and Courts, so that this causes difficulties for those who seek justice. handle the case. In fact, if the assistance starts from the beginning, it will be easier to find the best solution, for example by peaceful means without having to go to the police or even go to court.²⁴.

The right of individuals and of each litigant to be assisted by a legal aid agency (Access to Legal Counsel) is imperative in the context of achieving a fair legal process. The presence of legal aid agencies can prevent unfair treatment by the police, prosecutors, or judges in the (criminal) examination process. Often a person is treated unfairly and humanely and lacks respect for the right to life (Right of Life). Justice for all people must be obtained so that a democratic society can achieve a just and peaceful life through the enforcement of the rule of law. Justice should not be distinguished on the basis of social, economic, political, ethnic ideology, race, skin color, religion, gender, and anything else.

Justice must be achieved by all people, both rich and poor, civilian and military, private and bureaucratic, young and old, and so on. Indeed, the provision of legal services through legal aid institutions can answer the social jealousy of the poor towards the rich through defense of fate. they are in law. Legal aid through the services of legal aid agencies can also be a safety valve to prevent social unrest and reduce the gap between rich and poor.

²³ Sunardi. Joint Litigation Court Non-litigation, Mandar: PT Mandar Maju, 1999, p 56

²⁴ Morris Ginsberg, Justice When Society, Bantul: Pondok Education, 2003, p. 29

III. CONCLUSION

Legal aid is the basic right of everyone who is in a legal case as a means of defending the constitutional rights of everyone and is a guarantee of equality before the law. The impact of the provision of legal aid is as a manifestation of access to justice and justice for all. The scope of providing legal aid is more accurately targeted at the poor because most of them sometimes do not know that they have the same rights before the law. In the distribution of legal aid, it is necessary to have a big role from the government in order to achieve equity in distributing legal aid to the community, especially for those who cannot afford it. Legal aid institutions play a major role in access to justice for underprivileged communities because they play a major role in providing solutions from the level of consultation, the level of assistance for the community outside the court (non-litigation) to the level of assistance for the community at the court level (litigation). With the role of legal aid institutions, it is hoped that they can participate in achieving the function of legal aid, equitable distribution of legal aid funds, equitable distribution of those who are entitled to legal aid funds and participate in realizing legal institutions as access to justice.

IV. REFERENCES

- Abdurrahman, *Aspek-Aspek Bantuan Hukum di Indonesia*, Jakarta: Cendana Press, 1983.
- Cappelletti, Mauro and Bryant Garth (Eds), *Access To Justice: Book I*.
- Erwin, Muhammad. *Filasafat Hukum: Refleksi Kritis Terhadap Hukum*. Jakarta: Rajawali Pres Cetakan Ke-II, 2012.
- Frans Hendra Winarta, *Bantuan Hukum di Indonesia*. Jakarta: Elex Media Komputindo. 2011.
- Frans Hendra Winarta, *Bantuan Hukum, Suatu Hak Asasi Manusia Bukan Belas Kasihan*, Jakarta: Cetakan Pertama, Elex Media Komputindi Kelompok Gramedia.
- H. Rusli Muhamad, *Hukum Acara Pidana Kontemporer*. Bandung : PT Citra Aditya Bakti, 2007.
- Hakim, Abdul dan Mulyana W. *Beberapa Pemikiran mengenai Bantuan Hukum (Ke arah Bantuan Hukum Struktural)*. Bandung: Alumni, 1981.
- Morris Ginsberg, *Keadilan Ketika Masyarakat*, Bantul: Pondok Edukasi, 2003.
- Muhammad Erwin, *Filasafat Hukum: Refleksi Kritis Terhadap Hukum*, Cetakan Ke-II, Jakarta: Rajawali Pres, 2012.

- Muhammad Erwin, *Filasafat Hukum: Refleksi Kritis Terhadap Hukum*, Cetakan Ke-II, Jakarta: Rajawali Pres, 2012.
- R.B. Soemanto, *Hukum dan Sosiologi Hukum, Pemikiran, Teori dan Masalah*, Solo: UNS Press, 2008.
- Rawls, John. *A Theory Of Justice (Teori Keadilan)*, Cetakan Ke-2, Bandung: Pustaka Setia, 2011.
- Romli Atmasasmita, *Sistem Peradilan Pidana Kontemporer*, Jakarta: Kencana, 2011.
- Sadiawati, Diani dan Mas Acmad Santosa. *Strategi Nasional Akses Terhadap Keadilan*. Cetakan Ke-1. Jakarta: Bappenas, 2009.
- Satjipto Rahardjo, *Sisi-Sisi Lain dari Hukum di Indonesia*, Jakarta: Buku Kompas, 2003.
- Satjipto Raharjo, *Ilmu Hukum*, Cetakan Ke-VII, Bandung: Citra Aditya Bakti, 2012.
- Shidarta, *Moralitas Profesi Hukum: Suatu Tawaran Kerangka Berpikir*, Bandung: Refika Aditama, 2006.
- Soekanto, Soerjono, *Faktor-Faktor yang Mempengaruhi Penegakan Hukum*, Cetakan Kelima, Raja Grafindo Persada, Jakarta, 2004.
- Soerjono Soekanto, *Bantuan Hukum, Suatu Tinjauan Sosio-Yuridis*, Jakarta : Ghalia Indah, 1983.
- Sri Palupi, *Problem dan Tantangan dalam Akses Hak Ekonomi, Sosial dan Budaya*, Dalam Prasetyohadi dan Savitri Wisnuwardhani, ed., *Penegakan Hak Asasi Manusia dalam 10 Tahun Reformasi*. Jakarta: Komnas HAM, 2008.
- Sunardi. *Litigasi bersama Nonlitigasi Pengadilan*, Mandar: PT mandar Maju, 1999.
- Todung Mulya Lubis, *Bantuan Hukum dan Kemiskinan Struktural*, Jakarta: Cendana Press, 1983.
- Todung Mulya Lubis, *Pertolongan Hukum bersama Kemiskinan Struktural*, Jakarta : LP3ES,1986.

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:

Akintunde, D., Choirunnisa, S., & Fernando, C. B. (2022). The Role of Law Clinics and Legal Aid Center in Providing Legal Aid for Vulnerable Group: A Case of Africa, Indonesia, and Australia. *The Indonesian Journal of International Clinical Legal Education*, 4(1), 89-106. <https://doi.org/10.15294/ijicle.v4i1.55775>