

The Role of Legal Empowerment Based Advocacy for Rural Communities on Structural Social Inequality

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Abstract

Indonesia, as a legal state, relies on its Constitution, particularly the 1945 Constitution of the Republic of Indonesia, to safeguard the rights of its citizens. Article 28 of the Constitution encapsulates a commitment to justice, emphasizing every individual's entitlement to recognition,

guarantee, protection, fair legal certainty, and equality before the law. In translating these constitutional principles into practical measures, the government enacted the Law on Legal Aid, officially designated as Law Number 16 of 2011. This legislation underscores the state's dedication to providing legal assistance and ensuring access to justice for its citizens. This study scrutinizes the implementation of legal aid, with a specific focus on the role of legal empowerment-based advocacy in addressing structural social inequalities within rural communities. Employing a normative legal approach, the research delves into positive legal aspects, documents, and statutory regulations. Also known as doctrinal legal research, this methodology relies on secondary data to examine the government's commitment to fostering justice and dismantling structural social inequalities within rural areas. By closely examining the application of legal aid in rural contexts, the research aims to offer valuable insights into the tangible impact of legal empowerment-based advocacy in combating and eradicating structural social inequalities. The findings contribute to a comprehensive understanding of the legal dynamics and mechanisms essential for fostering social justice within rural communities.

Keywords

Legal Aid, Legal Empowerment, Rural Communities, Social Inequality, Advocacy

A. Introduction

The holistic demeanor of a rule-of-law country can be significantly enhanced by acknowledging not only external attitudes but also internal qualities such as empathy, compassion, sincerity, and courage.¹ These intrinsic values are embedded in both legal norms and

¹ A "rule-of-law country" epitomizes a legal system where the foundational principle is the rule of law. This concept signifies a society in which the law applies uniformly to all individuals and institutions, without exception. In such a nation, legal equality prevails, ensuring that everyone, regardless of their social or

social norms prevalent within the nation. Social rules serve as integral components shaping the social system, providing a framework for self-regulation in social life.

Within the construct of the social system, individuals, as social beings, naturally form connections by adhering to rights and obligations, particularly those that intersect directly within the jurisdiction of a given region. This connection is especially vital among those entrusted with authority, as their presence should contribute to fostering not only a physical but also a mental attitude among those under their care. This underscores the significance of nurturing a comprehensive approach that embraces both external and internal dimensions for fostering a positive rule-of-law ethos within a nation, including Indonesia, as one of the largest countries in Southeast Asia.

Indonesia stands as a paradigmatic illustration of a legal state, wherein the constitutional edifice, as delineated in the 1945 Constitution of the Republic of Indonesia, serves as a bulwark for the protection of citizens' rights. A pivotal tenet embedded in this constitutional tapestry is articulated in Article 28, which asserts that "*Everyone has the right to recognition, guarantee, protection, and legal*

economic standing, enjoys the same legal rights and protections. The legal system operates impartially, guaranteeing fairness and due process for all, with decisions based on established laws rather than arbitrary judgments. Transparency is a hallmark, as laws are clear, accessible, and legal processes are open to public scrutiny. Accountability is a key feature, holding those in authority, including government officials, responsible under the law. Fundamental rights are protected, and citizens have avenues for legal redress if these rights are violated. The presence of an independent judiciary ensures impartial decision-making, and consistency in legal application promotes predictability and stability. In essence, a rule-of-law country embodies the principles necessary for democratic governance, protecting individual rights and fostering trust in the legal system to contribute to overall societal stability and development. *See also* Guillermo O'Donnell, "The Quality of Democracy: Why the Rule of Law Matters." *Journal of Democracy* 15, no. 4 (2004): 32-46; Lord Bingham, "The rule of law." *The Cambridge Law Journal* 66, no. 1 (2007): 67-85; Marmor, Andrei. "The Rule of Law and Its Limits." *Law and Philosophy* 23, no. 1 (2004): 1-43; Haposan Siallagan, "Penerapan prinsip negara hukum di Indonesia." *Sosiohumaniora* 18, no. 2 (2016): 122-128; Janpatar Simamora, "Tafsir Makna Negara Hukum dalam Perspektif Undang-Undang Dasar Negara Republik Indonesia Tahun 1945." *Jurnal Dinamika Hukum* 14, no. 3 (2014): 547-561.

certainty that is fair and equality before the law." This constitutional commitment underscores the nation's unequivocal dedication to safeguarding fundamental rights and ensuring equitable treatment for all its constituents.

At the crux of this dedication lies the foundational principle of Equality Before the Law, epitomizing a scenario wherein each individual possesses the entitlement to impartial treatment within the legal sphere. Irrespective of wealth, societal standing, or individual capacity, all citizens, as stipulated by legal precepts, enjoy the right to parity before the law. This principle acquires heightened significance in the context of individuals grappling with legal predicaments among the economically disadvantaged, magnifying the state's imperative to furnish protective measures, thereby averting the infringement of their human rights. By upholding this principle, the state is obligated to eschew any form of discrimination against individuals or citizens, thereby reaffirming a commitment to fairness, justice, and equality inherent in the legal system.²

In fulfillment of constitutional mandates, the government enacted the Law on Legal Aid, specifically codified as Law Number 16 of 2011, subsequently recognized as the Law on Legal Aid. This legislative initiative aligns seamlessly with the government's broader commitment to administer justice for all Indonesians, echoing the principles of the 5th Precept of Pancasila, which advocates for Social Justice for All Indonesian People.³

² Choirul Amin, "Implementation of Legal Aid for the Poor as a Form of Practicing Pancasila Values", *The Indonesian Journal of International Clinical Legal Education* 3, no. 2 (2021): 235-244. See also Rezal Helwin Bramantara, "Equality before the Law Principle in the Implementation of Legal Aid in Indonesia." *The Indonesian Journal of International Clinical Legal Education* 3, no. 2 (2021): 209-222.

³ The 5th Precept of Pancasila encapsulates a commitment to "*Social Justice for All Indonesian People.*" This principle underscores the importance of fostering a fair and equitable society. It advocates for the fair distribution of resources, eliminating discrimination based on factors such as ethnicity, religion, socioeconomic status, or gender. The precept emphasizes the protection of vulnerable groups, ensuring that the rights of minorities, the poor, and other disadvantaged populations are safeguarded. Additionally, social justice, as envisioned in the 5th Precept, involves providing equal access to basic needs and essential services, such as education, healthcare, and employment opportunities, regardless of one's background. It

It is imperative to note that the violation of people's rights is not tolerated, as emphasized by the government's dedication to upholding justice. This commitment becomes particularly relevant for rural communities, often grappling with legal challenges, notably in the realm of land disputes. Rural demographics, characterized by susceptibility to legal issues, are hampered by various constraints such as economic limitations and educational barriers. Consequently, there exists a pressing need for the state to proactively address this scenario by providing legal assistance in the form of empowering initiatives tailored to the unique challenges faced by rural communities.

B. Method

Viewed from the point of view of the method used, this type of research/approach is a type of normative legal research. The Normative Approach is research that looks at positive legal aspects as well as documents and statutory regulations. Also called doctrinal legal research, namely legal research that uses secondary data.⁴ Done by

highlights the well-being of the community as a whole, encouraging policies that contribute to the overall welfare and happiness of the Indonesian people. The principle also aligns with inclusive development, where economic and social progress benefits all segments of society. Upholding human rights is fundamental, ensuring that every individual enjoys their inherent rights and freedoms without discrimination or prejudice. Social justice in Pancasila involves fostering the active participation and empowerment of all citizens, allowing them to contribute to and benefit from the development and decision-making processes of the nation. In essence, the 5th Precept reflects Indonesia's commitment to building a just and harmonious society, where the principles of social justice guide policies and actions to create a nation that prioritizes the well-being and equal opportunities for all its people. *See* Peter Blunt, Mark Turner, and Henrik Lindroth. "Patronage, service delivery, and social justice in Indonesia." *International Journal of Public Administration* 35, no. 3 (2012): 214-220; Laurens Bakker, and Jaap Timmer. "Justice in Indonesia: The social life of a momentous concept." *The Asia Pacific Journal of Anthropology* 15, no. 4 (2014): 293-301; Ridwan Arifin, and Vania Shafira Yuniar. "Social Justice in Law, Society and Development: A Marxism Perspective of Indonesian Case." *Jurnal Hukum & Pembangunan* 51, no. 1 (2020): 1-15.

⁴ R. Abdoel Djamali, *Pengantar Hukum Indonesia* (Jakarta: Rajawali Pers, 2014), pp. 3-5.

making library materials the main focus.⁵ This research is specifically to analyze the application provision of legal aid given the role of the advocacy party legal Empowerment Based for Rural Communities Against Structural Social Inequality. This is the extent of the government's attention to upholding justice and eradicating structural social inequalities in rural communities.

C. Result and Discussion

1. Regulation of Rural Communities in Indonesia: An Analysis of Legal Frameworks and Provisions

Each indigenous group, or tribe, possesses its own distinct customary law. Indigenous (legal) societies are composed of citizens united either by heredity and blood relations (genealogical) or by the characteristics of their settlement environment (territorial), or a combination of both (genealogical-territorial). Within these societies, legal, authoritative, and environmental units are established based on shared rights to land and water for all members. Customary law manifests in various forms, drawing from the fabric of everyday life, judicial decisions, inscriptions and ancient books, accounts by researchers or Christian missionaries about the group's way of life, and specific provisions governing customary law communities. Additionally, the leader of a particular indigenous group plays a crucial role in determining and enforcing provisions that apply within the community. This intricate web of customary law reflects the rich cultural heritage and legal traditions inherent to each indigenous group, shaping their social organization and relationship with the environment.⁶

The Indonesian legal system, as anchored in the 1945 Constitution, unequivocally upholds the principle of equality before the law. Article 27, paragraph (1) explicitly declares that "All citizens have the same position before the law and government without exception." An instrumental means to actualize justice and equality within the legal framework is the provision of legal aid for citizens engaged in legal cases. Renowned legal scholar Soerjono Soekanto defines legal aid as the

⁵ Suteki Suteki and Galang Taufani, *Metodologi Penelitian Hukum (Filsafat, Teori dan Praktik)*, (Depok: PT Raja Grafindo Persada, 2018), p. 174.

⁶ Harsanto, *Sistem Hukum Indoneisa*, (Jakarta: Universitas Terbuka, 2019), p. 310

professional assistance extended to citizens requiring support in asserting their rights and securing appropriate legal protection. This commitment underscores the nation's dedication to ensuring that all individuals, irrespective of their socio-economic background, have equal access to legal recourse and protection within the legal system.⁷

Based on the foregoing, the following laws have been ratified by (2) the Parliament (DPR), such as Article No. 11 of 2005 on the ratification of the International Covenant on Economic and Social Rights (International Covenant on Civil and Political Rights) and Article No. 12 of 2005 on Ratification of the International Covenant on Civil and Political Rights, the State recognizes economic, social, cultural, civil and political rights from the poor. Although poor criteria can be developed according to the times, the change in these criteria should be a hindrance to the government to honor, protect, and fulfill the rights of the poor. Including rights to get justice.⁸

The Criminal Procedure Code Act No. 8 of 1981, commonly known as the Criminal Procedure Code (KUHAP), explicitly regulates the provision of legal aid. The provisions of Articles 54, 55 and 56 of the Criminal Procedure Code explain that the provision of mutual legal

⁷ Angga Angga, and Ridwan Arifin. "Penerapan Bantuan Hukum Bagi Masyarakat Kurang Mampu di Indonesia." *DIVERSI: Jurnal Hukum* 4, no. 2 (2019): 218-236. *See also* Cahya Wulandari, Sonny Saptoajie Wicaksono, and Umi Faridatul Khikmah. "Paralegal Existence in Providing Access to Justice for the Poor in Central Java." *IJCLS (Indonesian Journal of Criminal Law Studies)* 4, no. 2 (2019): 199-206; Ridwan Arifin, "Legal Services and Advocacy in the Industrial Revolution 4.0: Challenges and Problems in Indonesia." *Indonesian Journal of Advocacy and Legal Services* 1, no. 2 (2020): 159-162; Derry Angling Kesuma, "State Responsibility to Provide a Free Legal Aid Access for the Poor and the Obstacles in the Implementation." *The Indonesian Journal of International Clinical Legal Education* 1, no. 3 (2019).

⁸ Ahyar Ari Gayo, "Optimalisasi Pelayanan Bantuan Hukum Bagi Masyarakat Miskin." *Jurnal Penelitian Hukum De Jure* 20, no. 3 (2020). *See also* Ridwan Arifin, et al. "The International Law Principle for People with Disabilities: Analyzing Access to Justice." *Unnes Law Journal* 7, no. 2 (2021): 371-404; Chairani Azifah, "Pro Bono Legal Aid by Advocates: Guarantee of Justice for the Poor." *The Indonesian Journal of International Clinical Legal Education* 3, no. 4 (2021): 537-552; Dani Setiawan, "Access to Justice and Fair for the Poor: How Effective the Legal Aid Provided by Government?." *The Indonesian Journal of International Clinical Legal Education* 3, no. 2 (2021): 173-184.

assistance starts from the stage of preliminary examination at the investigative agency until the questioning in court. The Criminal Procedure Code clearly states that: Article 56 (1) Where a suspect or defendant is suspected or accused of an offense punishable by the death penalty or fifteen years or more in prison, or for persons incapable of punishment, the person has been sentenced to five years or more, and the person does not have his or her own legal counsel, relevant officials at all levels of judicial investigation and procedure are obliged to appoint a legal advisor for such person. Any legal counsel authorized to act as referred to in paragraph (1) shall provide free assistance.⁹

Consequently, the Indonesian government enacted Law 16 of 2011 on legal aid, establishing the foundation for the provision of legal assistance to the underprivileged. Article 3 of this law articulates the underlying rationale, asserting the state's responsibility to furnish legal aid as a means to ensure access to justice. Furthermore, the regulation emphasizes that legal assistance, as mandated by the state, should be oriented towards effecting just social change.¹⁰

Defined under the Act, legal aid is characterized as legal services offered free of charge by legal aid providers to recipients, with the primary beneficiaries being individuals or groups living in poverty. The legal aid providers, identified as Legal Aid Institutes or societal organizations, operate in accordance with the stipulations of Law Number 16 of 2011. The legislation specifies that legal assistance may be extended by Advocates, Paralegals, Lecturers, and Law Students possessing the requisite legal understanding and experience.

To facilitate legal aid for the financially disadvantaged, funding is allocated from the State budget and revenue expenditures (APBN). Additionally, various regions within Indonesia, at the city/regency level, supplement these resources by earmarking funds from the Budget and

⁹ Saru Arifin, "Commitment of Local Government in Providing Legal Aid for the Poor Society." *Jurnal Dinamika Hukum* 16, no. 1 (2016): 8-16.

¹⁰ Ari Wibowo, and Michael Hagana Bangun. "Legal Aid by the State as a Constitutional Right of the Poor: Problems and Challenges in Indonesia." *The Indonesian Journal of International Clinical Legal Education* 3, no. 2 (2021): 185-196; Khoirum Lutfiyah, "Equality before the Law Principle and the Legal Aid for the Poor: An Indonesian Insight." *The Indonesian Journal of International Clinical Legal Education* 3, no. 4 (2021): 517-536.

Expenditure Income Regional Budget (APBD). Notably, several regions administer their legal aid programs with distinct standards and conditions, as defined by local public policy (*Perda*). This multifaceted approach reflects the nation's commitment to ensuring that legal aid is not only accessible but also tailored to the diverse needs and conditions across different regions of Indonesia.¹¹

The terminology associated with legal assistance comprises two distinct terms *legal aid* and *legal adviser*. Originally, *legal aid* denoted support provided to individuals lacking the financial means to secure legal representation. However, the evolution of this term has broadened its scope to encompass a more comprehensive context, now extending to legal assistance provided by attorneys who either charge fees or receive compensation directly from clients. This expanded definition acknowledges the diverse modalities through which legal aid is administered, catering not only to the financially disadvantaged but also to those seeking legal support through professional legal services.¹²

¹¹ Judith Prima Hapsari, "The Poor and Justice: Implementation of Legal Aid for the Poor in Indonesia (Problems and Solutions)." *The Indonesian Journal of International Clinical Legal Education* 3, no. 4 (2021): 553-568; Muhammad Irfan Faza, "How Do the Poor Get the Justice They Deserve? Study of the Legal Aid Law in Indonesia." *The Indonesian Journal of International Clinical Legal Education* 3, no. 2 (2021): 151-162.

¹² Ajeet Singh Baghel, "Right to Free Legal Aid-A Step Towards Equal Justice to Citizens." *Contemporary Issues and Recent Advances in Management, Commerce, Economics* (2021): 7. Furthermore, it is emphasized that *professional legal services* encompass a broad spectrum of specialized legal assistance and counsel provided by qualified and licensed legal professionals, typically attorneys or lawyers. These professionals have undergone rigorous legal education and training, ensuring they possess the necessary expertise and ethical standards required to navigate the complexities of the legal field. One fundamental aspect of professional legal services involves the provision of legal advice and counsel. Attorneys offer guidance to individuals, businesses, or organizations, interpreting and applying laws, understanding legal rights and obligations, and formulating strategic courses of action. This role extends to representation in various legal proceedings, including court hearings, negotiations, and alternative dispute resolution processes, where legal professionals advocate on behalf of their clients to protect their legal interests and rights. In addition to advising and representing clients, legal professionals engage in document drafting and review. This entails creating, scrutinizing, and interpreting legal documents such as contracts, agreements, wills, and deeds to ensure their legal soundness and alignment with the client's objectives. Legal

The organizational framework of legal aid, oriented towards its beneficiaries, serves the dual purpose of recognizing and safeguarding citizens' rights, thereby ensuring access to justice and equality before the law. This initiative represents a concerted effort to operationalize fundamental rights and uphold the rule of law. Legal aid, conceptualized as a legal service, surpasses the provision of assistance solely to the incapacitated; it is committed to delivering legal protection and safeguarding the constitutional rights of suspects and defendants from the moment of arrest to the final court decision. This encompasses the entitlement to be shielded from dishonorable or arbitrary conduct by law enforcement officials, emphasizing that even convicted suspects maintain the right to legal assistance and protection. In essence, legal aid serves as a foundational element in the cultivation of a just and equitable legal system, embodying the principles of justice, fairness, and equal access to legal redress.¹³

services also encompass extensive research and analysis, involving the gathering of relevant information, examination of legal precedents, and providing informed opinions on complex legal issues. Legal professionals often play a crucial role in court proceedings, representing clients by presenting legal arguments, examining witnesses, and advocating for their positions before judges or juries. Beyond the courtroom, they engage in negotiations and mediations to resolve disputes amicably, working towards mutually acceptable agreements between conflicting parties. Moreover, legal services include assisting clients in understanding and complying with various laws and regulations relevant to their activities. This compliance and regulatory advice is particularly vital for businesses and individuals to operate lawfully and avoid legal pitfalls. Professionals in legal services also prioritize continuous learning and professional development, staying updated on changes in laws, regulations, and legal practices through ongoing education. See also Earl Johnson, *Justice and Reform: Formative Years of the American Legal Service Programme*. (London: Routledge, 2020); Stewart Macaulay, "Professional Competence and the Law." *Stewart Macaulay: Selected Works* (2020): 107-114; Jeanne Charn, "Legal Services for All: Is the Profession Ready." *Loyola of Los Angeles Law Review* 42, no. 4 (2009): 1021-1064; Renee Newman Knake, "Democratizing the Delivery of Legal Services." *Ohio State Law Journal* 73, no. 1 (2012): 1-46.

¹³ Sukinta Sukinta, "Peranan Lembaga Bantuan Hukum Bagi Masyarakat dalam Memperoleh Keadilan", *Thesis*. (Semarang: Universitas Diponegoro, 1997). See also Mustika Prabaningrum Kusumawati, "Peranan dan Kedudukan Lembaga Bantuan Hukum sebagai Access to Justice bagi Orang Miskin." *Arena Hukum* 9, no. 2 (2016): 190-206; Fachrizal Afandi, "Implementasi Pengabdian Masyarakat

2. The Problem of Legal Aid for Rural Communities: A Discourse of Social Inequality

Law is a Means To create order in society. Roscoe Pound¹⁴ argues that "*the first and simplest idea is that law exist in order to keep the peace in a given society, to keep the peace at all events and at any price*". If the law has been able to create safe conditions in the community, then all aspects of life in society will also become more organized. Minimizing conflicts in the community. If examined further from the point of view of legal functions, there are at least four basic functions, namely:¹⁵

- a. Law as maintaining order and security;
- b. Law as a means of development;
- c. Law as a means of enforcing justice;
- d. Law as a means of education in the community.

The four functions also serve as guidelines for legal formation. When finding the law, care must be taken to ensure that the law as it is created does its job well. Economic development cannot be separated from legal development, since there are two factors between the economy and the law that influence each other. During the New Order, economists, business people, and authorities viewed law as an impediment to economic activity. At that time, the law was not used as the basis, guide and executor of activity in the economic field. The existence of the law was undermined by the authorities only to protect the political and economic interests of the new order that served the interests of the developed nations. As a result, the law seems to move

Berbasis Access to Justice Pada Lembaga Bantuan Hukum Kampus Negeri Pasca Pemberlakuan Undang-Undang Bantuan Hukum." *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 2, no. 1 (2013): 31-45; Maulana Fahmi Idris, "Access to Justice for Disability in the Perspective of John Rawls Theory (Case of Demak Regecy Indonesia)." *Journal of Law and Legal Reform* 2, no. 3 (2021): 391-400; Setia Untung Arimuladi, "Access to Justice Based on Expert Testimony in Tax Crimes: An Integrated Criminal Justice System Perspective in Indonesia." *Pandecta Research Law Journal* 17, no. 1 (2022): 29-36.

¹⁴ Roscoe Pound, *An Introduction to The Philosophy of Law*, (New Haven: Yale University Press, 1961).

¹⁵ Sunaryati Hartono, *Indonesian Development Economics Law*, (Bandung: Binacipta, 1988), pp. 10-11.

more statically and unable to adapt to developments. Overtime, people gradually began to realize that the authority of the law creates a favorable business environment and attracts investment. This has also led to legal developments into modern law in Indonesia.¹⁶

Living law is part of rural community as an autonomous entity, set the life system, which is born from and within the community and maintained by the community. Explanation of chapter IV of the Basic Law (before the amendment) implies that in Indonesia there are approximately 250 *zelfbestuurende land scappen* and *volkgemen-scappen* which have their own social systems and have strong relations with land, management of natural resources, and power to maintain values local values or local wisdom.¹⁷ Through this living law, it has actually given the village the freedom to develop independently. There are four basic characteristics possessed by living law, including:¹⁸

- a. Has strong collectivism nature;
- b. It has magical-religious pattern that is related to the life view of the indigenous people;
- c. Covered by concrete thoughts, very concerned about the number and repetition of concrete relationships that occur;
- d. Visual, meaning that legal relations are deemed to occur only if they are determined by a bond that can be seen or with visible signs.

The Law of Life has experienced a huge shock in the current era of globalization. The shock caused by social changes in society covers various aspects of life, including the economy. The threat of modern law, which has no benefits and the existence of the law of life, makes existence more and more extinct. One example is when primary forest was dominated by the government under Law 41 of 1999 and sold to capitalists, the traditional rights of rural communities were removed. This situation is exacerbated by the absence of rural

¹⁶ Ardhiwinda Kusumaputra, and Endang Retnowati. "Intergration Between Modern Laws with Living Laws in Rural Communities in The Rural Economic Development." *Trunojoyo Law Review* 1, no. 1 (2019): 1-12.

¹⁷ Ronny Hanitijo Soemitro, *Legal Sociology Problems* (Bandung: Sinar Baru, 1984), pp. 82-83.

¹⁸ Satjipto Rahardjo, *Wajah Hukum di Era Reformasi: Kumpulan Tulisan Menyambut 70 Tahun Prof. Dr. Satjipto Rahardjo, S.H.* (Bandung: PT Citra Aditya Bakti, 2010), pp. 51-52.

communities using forest land. Even the investors who take control of the forest and are doing massive logging and ignoring the local intellectual values that exist in the surrounding community. As a result, the economic growth of rural communities died down. Land that could be used for their benefit was confiscated. This is where the modern legal position of the state really acts arbitrary over the law of life. Such conditions would not have arisen if the law-making process (the law-making process) of the state were concerned with the very function of the law.¹⁹

In addition, there are three aspects (*geldingsgrondslag van strafrecht*) should also be considered fundamental in the creation of new laws, namely:²⁰

- a. Fulfill the philosophical aspects, namely laws that are considered to fulfill sense of justice (*philosophofische geldingsgrondslag*);
- b. Fulfill sociological aspect, that the laws established acceptable to society (*sociologische geldingsgrondslag*);
- c. Juridical aspects (*juridische geldingsgrondslag*), namely that the law is the result of formulation by authorized body, and does not conflict with higher law.

In Article 2 of the Law on Legal Aid, it is said that legal aid is carried out based on the principle; of justice, equality before the law, openness, efficiency, effectiveness, and accountability. This principle will encourage customary courts to make several improvements as follows: First, harmonization of customary values so that they are in line with the principles of justice including harmonization of customary values so that they do not conflict with universal justice values such as human rights; second, renewal of customary values so that they are in line with the principle of equality before the law, including customary values that are gender biased; and third, renewal and improvement of administration and customary justice management to make it more accountable. The condition of customary justice which still requires improvement is also in line with Sinclair Dinnen who understands that the position of customary justice in the formal legal system is often

¹⁹ Kusumaputra, "Intergration Between Modern Laws with Living Laws in Rural Communities in The Rural Economic Development".

²⁰ T. Boestomy, *Civil Law and State Administrative Law in Theory and Practice*, (Bandung: Alumni, 1994), pp. 56-57.

questioned, not only concerning the pattern of relations when both are to be implemented, but also includes some doubts regarding the existence of this customary justice institution, among others:²¹

- a. The fact that most customary justice is held by those who are old, where their frame of mind often do not look at the development of conditions that exist in society, especially the younger generation. This affects the decisions they make such that the decisions discriminate against women and children (especially in patrilineal societies);
- b. Allegations that even in customary courts a culture of nepotism and corruption is prone to occur;
- c. The coercive power of customary court decisions is often doubted;
- d. The principles and objectives of the sentencing of customary courts are different from the existing formal system so that the impact of the resulting decision will be very different (in this case the author does not look at whether the intended impact is positive or negative);
- e. Whereas the customary justice institution will only be effective and binding in a homogeneous traditional society, but it will be very different if it is applied in the scope of urban areas.

The efficacy of customary justice, while rooted in tradition, is a subject that requires refinement, as highlighted by Sinclair Dinnen. One notable concern revolves around the age of those presiding over customary justice, a majority being elderly individuals whose perspectives may not align with the evolving conditions of society, especially in relation to the younger generation. This generational disparity has consequences, as decisions made often exhibit biases, particularly discriminating against women and children, especially in patrilineal societies.

Moreover, skepticism surrounds the integrity of customary courts, with allegations of a prevalent culture of nepotism and corruption. This raises questions about the fairness and impartiality of the decisions rendered in such settings. Additionally, the coercive power

²¹ Bruce L. Benson, "Customary law with private means of resolving disputes and dispensing justice: A description of a modern system of law and order without state coercion." *The Journal of Libertarian Studies* 9, no. 2 (1990): 25-42.

of customary court decisions is a point of doubt, calling into question the enforceability and legitimacy of their rulings. The principles and objectives guiding the sentencing in customary courts also diverge from those in the formal legal system, resulting in decisions that may yield vastly different impacts.

Furthermore, there's a recognition that the effectiveness and binding nature of customary justice are contingent on the homogeneity of the traditional society in which it operates. This effectiveness diminishes significantly when applied within the complex and diverse scope of urban areas, where the dynamics and expectations differ markedly from those in more traditional settings. The challenges identified underscore the need for careful consideration and potential reforms to ensure that customary justice aligns more effectively with contemporary societal values and expectations.

D. Conclusion

This study, finally concluded that, the diversity of indigenous communities is reflected in their unique customary laws, shaping their social units based on heredity, settlement, or a combination of both. The Indonesian legal system, underpinned by the 1945 Constitution, ensures equality before the law, a commitment further reinforced by the enactment of Legal Aid Law No. 16 of 2011. This legislation, as outlined in Article 3, underscores the state's responsibility to assist the poor in accessing justice, emphasizing a coordinated effort toward achieving just social change.

Law, as posited by Roscoe Pound, serves the fundamental purpose of maintaining societal peace. The four functions of law provide a framework for its creation, necessitating careful consideration to ensure its proper functioning. During the New Order era, the perception of law as an impediment to economic activity prevailed, but contemporary perspectives recognize the integral role of law in guiding and executing economic endeavors. The laws of life, embedded in rural communities as autonomous entities, dictate their internal and external systems, encompassing approximately 250 autonomous lands and indigenous communities in Indonesia.

In the current era of globalization, the impact on the laws of life is profound, particularly in the face of social change that reverberates

across various aspects, including the economy. The traditional rights of rural communities face challenges, exemplified by the appropriation of primary forests under Law No. 41 of 1999, leading to their sale to capitalists. This situation is exacerbated by the disregard for local intellectual values by investors engaging in large-scale logging, posing a threat to the existence of the laws of life. In navigating these complexities, it becomes imperative to strike a balance between legal frameworks, economic interests, and the preservation of the rich cultural heritage inherent in indigenous communities.

E. References

- Afandi, Fachrizal. "Implementasi Pengabdian Masyarakat Berbasis Access to Justice Pada Lembaga Bantuan Hukum Kampus Negeri Pasca Pemberlakuan Undang-Undang Bantuan Hukum." *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 2, no. 1 (2013): 31-45.
- Amin, Choirul. "Implementation of Legal Aid for the Poor as a Form of Practicing Pancasila Values", *The Indonesian Journal of International Clinical Legal Education* 3, no. 2 (2021): 235-244. <https://doi.org/10.15294/ijicle.v3i2.46172>.
- Angga, Angga, and Ridwan Arifin. "Penerapan Bantuan Hukum Bagi Masyarakat Kurang Mampu di Indonesia." *DIVERSI: Jurnal Hukum* 4, no. 2 (2019): 218-236.
- Arifin, Ridwan, and Vania Shafira Yuniar. "Social Justice in Law, Society and Development: A Marxism Perspective of Indonesian Case." *Jurnal Hukum & Pembangunan* 51, no. 1 (2020): 1-15.
- Arifin, Ridwan, et al. "The International Law Principle for People with Disabilities: Analyzing Access to Justice." *Unnes Law Journal* 7, no. 2 (2021): 371-404.
- Arifin, Ridwan. "Legal Services and Advocacy in the Industrial Revolution 4.0: Challenges and Problems in Indonesia." *Indonesian Journal of Advocacy and Legal Services* 1, no. 2 (2020): 159-162.
- Arifin, Saru. "Commitment of Local Government in Providing Legal Aid for the Poor Society." *Jurnal Dinamika Hukum* 16, no. 1 (2016): 8-16.

- Arimuladi, Setia Untung. "Access to Justice Based on Expert Testimony in Tax Crimes: An Integrated Criminal Justice System Perspective in Indonesia." *Pandecta Research Law Journal* 17, no. 1 (2022): 29-36.
- Azifah, Chairani. "Pro Bono Legal Aid by Advocates: Guarantee of Justice for the Poor." *The Indonesian Journal of International Clinical Legal Education* 3, no. 4 (2021): 537-552.
- Baghel, Ajeet Singh. "Right to Free Legal Aid-A Step Towards Equal Justice to Citizens." *Contemporary Issues and Recent Advances in Management, Commerce, Economics* (2021).
- Bakker, Laurens, and Jaap Timmer. "Justice in Indonesia: The social life of a momentous concept." *The Asia Pacific Journal of Anthropology* 15, no. 4 (2014): 293-301.
- Benson, Bruce L. "Customary law with private means of resolving disputes and dispensing justice: A description of a modern system of law and order without state coercion." *The Journal of Libertarian Studies* 9, no. 2 (1990): 25-42.
- Bingham, Lord. "The rule of law." *The Cambridge Law Journal* 66, no. 1 (2007): 67-85.
- Blunt, Peter, Mark Turner, and Henrik Lindroth. "Patronage, service delivery, and social justice in Indonesia." *International Journal of Public Administration* 35, no. 3 (2012): 214-220.
- Boestomy, T. *Civil Law and State Administrative Law in Theory and Practice* (Bandung: Alumni, 1994).
- Bramantara, Rezal Helwin. "Equality before the Law Principle in the Implementation of Legal Aid in Indonesia." *The Indonesian Journal of International Clinical Legal Education* 3, no. 2 (2021): 209-222.
- Charn, Jeanne. "Legal Services for All: Is the Profession Ready." *Loyola of Los Angeles Law Review* 42, no. 4 (2009): 1021-1064.
- Djamali, R. Abdoel. *Pengantar Hukum Indonesia* (Jakarta: Rajawali Pers, 2014).
- Faza, Muhammad Irfan. "How Do the Poor Get the Justice They Deserve? Study of the Legal Aid Law in Indonesia." *The Indonesian Journal of International Clinical Legal Education* 3, no. 2 (2021): 151-162.

- Gayo, Ahyar Ari. "Optimalisasi Pelayanan Bantuan Hukum Bagi Masyarakat Miskin." *Jurnal Penelitian Hukum De Jure* 20, no. 3 (2020).
- Hapsari, Judith Prima. "The Poor and Justice: Implementation of Legal Aid for the Poor in Indonesia (Problems and Solutions)." *The Indonesian Journal of International Clinical Legal Education* 3, no. 4 (2021): 553-568.
- Harsanto, Harsanto. *Sistem Hukum Indoneisa*, (Jakarta: Universitas Terbuka, 2019).
- Hartono, Sunaryati. *Indonesian Development Economics Law*, (Bandung: Binacipta, 1988).
- Idris, Maulana Fahmi. "Access to Justice for Disability in the Perspective of John Rawls Theory (Case of Demak Regecy Indonesia)." *Journal of Law and Legal Reform* 2, no. 3 (2021): 391-400.
- Johnson, Earl. *Justice and Reform: Formative Years of the American Legal Service Programme*. (London: Routledge, 2020); Macaulay, Stewart. "Professional Competence and the Law." *Stewart Macaulay: Selected Works* (2020): 107-114.
- Kesuma, Derry Angling. "State Responsibility to Provide a Free Legal Aid Access for the Poor and the Obstacles in the Implementation." *The Indonesian Journal of International Clinical Legal Education* 1, no. 3 (2019).
- Knake, Renee Newman. "Democratizing the Delivery of Legal Services." *Ohio State Law Journal* 73, no. 1 (2012): 1-46.
- Kusumaputra, Ardhiwinda, and Endang Retnowati. "Intergration Between Modern Laws with Living Laws in Rural Communities in The Rural Economic Development." *Trunojoyo Law Review* 1, no. 1 (2019): 1-12.
- Kusumawati, Mustika Prabaningrum. "Peranan dan Kedudukan Lembaga Bantuan Hukum sebagai Access to Justice bagi Orang Miskin." *Arena Hukum* 9, no. 2 (2016): 190-206.
- Lutfiyah, Khoirum. "Equality before the Law Principle and the Legal Aid for the Poor: An Indonesian Insight." *The Indonesian Journal of International Clinical Legal Education* 3, no. 4 (2021): 517-536.
- Marmor, Andrei. "The Rule of Law and Its Limits." *Law and Philosophy* 23, no. 1 (2004): 1-43.

- O'Donnell, Guillermo. "The Quality of Democracy: Why the Rule of Law Matters." *Journal of Democracy* 15, no. 4 (2004): 32-46.
- Pound, Roscoe. *An Introduction to The Philosophy of Law*, (New Haven: Yale University Press, 1961).
- Rahardjo, Satjipto. *Wajah Hukum di Era Reformasi: Kumpulan Tulisan Menyambut 70 Tahun Prof. Dr. Satjipto Rahardjo, S.H.* (Bandung: PT Citra Aditya Bakti, 2010).
- Setiawan, Dani. "Access to Justice and Fair for the Poor: How Effective the Legal Aid Provided by Government?." *The Indonesian Journal of International Clinical Legal Education* 3, no. 2 (2021): 173-184.
- Siallagan, Haposan. "Penerapan prinsip negara hukum di Indonesia." *Sosiohumaniora* 18, no. 2 (2016): 122-128.
- Simamora, Janpatar. "Tafsir Makna Negara Hukum dalam Perspektif Undang-Undang Dasar Negara Republik Indonesia Tahun 1945." *Jurnal Dinamika Hukum* 14, no. 3 (2014): 547-561.
- Soemitro, Ronny Hanitijo. *Legal Sociology Problems* (Bandung: Sinar Baru, 1984).
- Sukinta, Sukinta, "Peranan Lembaga Bantuan Hukum Bagi Masyarakat dalam Memperoleh Keadilan", *Thesis*. (Semarang: Universitas Diponegoro, 1997).
- Suteki, Suteki and Galang Taufani, *Metodologi Penelitian Hukum (Filsafat, Teori dan Praktik)*, (Depok: PT Raja Grafindo Persada, 2018).
- Wibowo, Ari, and Michael Hagana Bangun. "Legal Aid by the State as a Constitutional Right of the Poor: Problems and Challenges in Indonesia." *The Indonesian Journal of International Clinical Legal Education* 3, no. 2 (2021): 185-196.
- Wulandari, Cahya, Sonny Saptoajie Wicaksono, and Umi Faridatul Khikmah. "Paralegal Existence in Providing Access to Justice for the Poor in Central Java." *IJCLS (Indonesian Journal of Criminal Law Studies)* 4, no. 2 (2019): 199-206.

Acknowledgment

Authors would like to thank to the Postgraduate Program Faculty of Law, Universitas Indonesia (Indonesia), Faculty of Law Universitas Riau (Pekanbaru, Indonesia), Universiti Teknologi MARA (Malaysia), Novena University (Nigeria), and The University of the West Indies, Five Islands Campus (Antigua and Barbuda). Also thank to *Ikatan Penulis Mahasiswa Hukum Indonesia* (Indonesian Law Student Writers Association) for unlimited assistance on the earlier version of this paper.

Funding Information

None

Conflicting Interest Statement

There is no conflict of interest in the publication of this article.

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.