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# Implementation of Law Number 16 of 2011 Concerning Legal Aid as a Form of Implementation of the Welfare Law State Concept

*Penerapan Undang-Undang Nomor 16 Tahun 2011  
Tentang Bantuan Hukum Sebagai Bentuk  
Implementasi Konsep Negara Hukum Kesejahteraan*

Muhammad Wahyu Saiful Huda<sup>1</sup>, Syahlila Umaya Astrovanapoe<sup>2</sup>, Tia Amalia<sup>3</sup>, Dian Latifiani<sup>4</sup>

<sup>1</sup> Universitas Negeri Semarang, <https://orcid.org/0000-0002-8755-5388>

<sup>2</sup> Universitas Negeri Semarang, <https://orcid.org/0000-0003-4723-5846>

<sup>3</sup> Universitas Sultan Ageng Tirtayasa, <https://orcid.org/0009-0002-3064-7529>

<sup>4</sup> Universitas Negeri Semarang, <https://orcid.org/0000-0003-2119-2964>

Email Korespondensi: [saifulhuda@students.unnes.ac.id](mailto:saifulhuda@students.unnes.ac.id)

**Abstract** The law that regulates all lines of life is included in regulating legal aid. Indonesia as a rule of law country certainly regulates the implementation of legal aid. However, in practice, legal aid in Indonesia is considered not to have run optimally because many people find it difficult to get legal assistance when they experience problems related to law from a civil-criminal perspective as well as state administration. This of course causes misery to the community and it can be judged that the community does not experience prosperity. Therefore, the author wants to examine this problem using normative juridical research methods. And found that there are problems juridically from Law Number 16 of 2011 Concerning Legal Aid, the community and executors providing legal aid. especially oversight of funds for the provision of legal aid. Therefore it is necessary to change from a juridical and implementation perspective to be regulated again in order to meet the needs of the Indonesian people.

**Keywords** *Legal Aid; Well-being; Implementation*

## **A. Introduction**

Indonesia is a developing country that has big goals for the lives of the people who live in it. Indonesia's state objectives have been formed since before independence and can be seen in the *Piagam Jakarta*, which is now referred to as the *Pembukaan Undang-Undang Dasar NRI 1945*, where it is written that Indonesia has objectives, namely: to protect the nation and state of Indonesia as a whole; improve overall welfare for all levels of society without exception; improve the quality and capacity of knowledge, skills, and personality of the Indonesian people; and take part in maintaining the love of the world which is based on social justice, eternal peace, and independence. Of the four goals, one of the efforts made by the Indonesian state to take part in taking care of the world's pain which is based on social justice, eternal peace and independence is to become a part of the United Nations or what is known as the United Nations (United Nations). United Nations). The United Nations is an international organization founded in 1945, the United Nations was formed as a forum or gathering place for many countries to carry out discussion activities in order to find a solution to a problem jointly that benefits all mankind.<sup>1</sup> One of the results of routine discussions held by the United Nations is the formation of the Sustainable Development Goals (SDGs) or the 2030 Agenda for Sustainable Development Goals which has the aim of protecting the sustainable growth of the community's economic welfare, protecting the sustainability of social life, protecting development and the quality of the community's environment as a whole. in order to run governance that is able to protect the quality of life for all future generations. The TPB/SDGs have goals or objectives with targets to be achieved in 2030 of 17 goals where one of the two is peace, justice and strong

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<sup>1</sup> United Nations, "About Us | United Nations," the United Nations, n.d.

institutions as well as a healthy and prosperous life.<sup>2</sup> Both of these goals are in line with the goals of the Indonesian state, namely to improve the welfare of the Indonesian people.

The relationship between peace, justice, and institutions with welfare can be seen from how the government establishes a legal order in the country it governs. The better the legal order, the more prosperous the people will be. This can be strengthened by Lawrence M. Friedman's theory which explains that the legal system consists of 3 components that mutually reinforce and connect one another, namely legal substance, legal structure, and legal culture. as an illustration, the legal structure is the machine used, the legal substance is the product produced from the machine, and the legal culture is the person who uses the machine or the person who controls the machine.<sup>3</sup> The efforts made by the Indonesian government to improve people's welfare and increase peace and justice by considering Lawrence M. Friedman's theory are by implementing a concept of a Welfare State in the policies that are formed the concept of the welfare state itself is a concept originating from European countries where experts argue that the government as the ruler of the state is considered to be responsible for ensuring the welfare of its citizens.<sup>4</sup> There are many ways that can be done to implement the concept of a welfare state in government policy, one of which is by delivering prosperous resources which can be realized in the form of the government establishing free services for the less fortunate.<sup>5</sup> An example is providing free legal aid to people who cannot afford to pay for legal aid.

When talking about the debate on the relationship between law and politics, it does have a long historical background. John Austin, adherents of legal positivism argues that law is not the result of power or politics. "Law is a command of the Lawgiver" or law is an order given from the authorities.<sup>6</sup> The purpose of the order in this case is the order given from those who hold the highest sovereignty or power. There is a slogan from the jurist that states that law passes through and stands in politics.

Law has such a close attachment to politics, this is because in a law there are laws that are produced through political mechanisms. Therefore, the quality of politics in a country can determine the ratio of strong or weak laws in that country. Law is a science that can be studied through the perspective of legal politics, and in

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<sup>2</sup> BAPPENAS, "Sekilas SDGs," SDGS Bappenas, n.d.

<sup>3</sup> Abdul Halim Barkatullah, "Budaya Hukum Masyarakat Dalam Perspektif Sistem Hukum," *Jurnal UKSW*, 2013.

<sup>4</sup> Oman Sukmana, "Konsep Dan Desain Negara Kesejahteraan (Welfare State)," *Sospol : Jurnal Sosial Politik* 2, no. 1 (2016), <https://doi.org/https://doi.org/10.22219/sospol.v2i1.4759>.

<sup>5</sup> Sukmana.

<sup>6</sup> Merdi Hajiji, "Relasi Hukum Dan Politik Dalam Sistem Hukum Indonesia," *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 2, no. 3 (2013): 361, <https://doi.org/10.33331/rechtsvinding.v2i3.65>.

fact politics is the background for the birth of a law, and the relationship between law and politics influences each other.<sup>7</sup>

Daniel S. Lev is of the view that the structure of power and political conception are decisive in the process of forming a law, and a place of law in a country also depends on the balance of its political situation. However, there are also other things that can affect the process of law formation, including the need to understand the background of culture, economy, social structure, legal institutions, and the situation of state institutions. Political involvement in law officially has legality and authority in formulating and forming a certain law. As for checks and balances, which provide for restrictions on the space for movement in political power that provide opportunities for every citizen who has objections to a law or law. As well as feeling aggrieved over this, they can submit it to the *Mahkamah Konstitusi* (MK) and *Mahkamah Agung* (MA) institutions.

Legal aid is one of the constitutional rights guaranteed by the state through the principle of equality before the law as stipulated in Article 28D paragraph (1) of the 1945 Constitution. The right to legal aid is an absolute universal right and its fulfillment by the state may not be reduced in an emergency. though. Therefore, the state must be responsible for providing legal assistance to less fortunate people as a form of implementing access to justice. This form of support has been explicitly regulated in Articles 56 and Article 57 of *Undang-Undang Nomor 48 Tahun 2009 tentang Kekuasaan Kehakiman* which states that for people who wish to apply to court but are unable to pay court fees, the state is obliged to bear these costs. In addition to these articles, the government has also established a legal substance that is directly related to legal aid, namely *Undang-Undang Nomor 16 Tahun 2011 tentang Bantuan Hukum*. This is also in line with international agreements formed in the International Covenant on Civil and Political Rights, in which it is stated that legal assistance is a right for everyone and has been guaranteed. so that legal aid is one of the rights for all Indonesian citizens and has been guaranteed by the state.<sup>8</sup>

Based on the description above regarding legal aid, this research takes the title Provision of Legal Aid as the Implementation of the Welfare State concept and the formulation of the problem, namely: (i) How is the provision of legal aid in Indonesia carried out? (ii) How to improve the quality of legal aid in Indonesia?

## B. Method

The research method used in this study is normative juridical with a statute approach. According to Peter Mahmud Marzuki in Muhaimin's Legal Research book,<sup>9</sup> this approach is to study the relevant regulations or regulations which in this research is *Undang-Undang Nomor 16 Tahun 2011 tentang Bantuan Hukum* with the

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<sup>7</sup> Fuqoha Fuqoha, "Arah Politik Hukum Nasional Terhadap Kesejahteraan Sosial Dalam Kerangka Konstitusi Ekonomi Di Indonesia," *Ajudikasi: Jurnal Ilmu Hukum* 5, no. 2 (2021): 191-206, <https://doi.org/10.30656/ajudikasi.v5i2.4203>.

<sup>8</sup> Cahya Wulandari, *Teropong Bantuan Hukum Di Indonesia* (Semarang: LPPM UNNES, 2020).

<sup>9</sup> Muhaimin, *METODE PENELITIAN HUKUM*, ed. Mataram University Press, 2020.

legal issue being studied. The primary legal material in this study is statutory regulations, namely *Undang-Undang Nomor 16 Tahun 2011 tentang Bantuan Hukum*. And Secondary book materials, including: books; law journals; legal expert's point of view; legal studies; and legal dictionary.

## C. Results and Discussion

### 1. Implementation of Provision of Legal Aid in Indonesia

As is well known, the Indonesian state adheres to the concept of a welfare state which is shown by the alignment of the goals of the Indonesian state (stated in the fourth paragraph of the 1945 Constitution) with one of the characteristics of a welfare state, namely that the state prioritizes welfare and justice for its people. Therefore, the government as the ruler of the state has the duty and obligation to form a policy aimed at increasing prosperity and justice for the people of Indonesia. One of the efforts made by the government is to provide free legal aid services for underprivileged people in Indonesia. The implementation of legal aid itself has been regulated in *Undang-Undang Nomor 16 Tahun 2011 tentang Bantuan Hukum*. This service was formed with the hope that all Indonesian people can experience true legal justice. Therefore, the provision of legal aid is a service or services provided to recipients of legal aid from legal aid providers free of charge.<sup>10</sup>

The implementation of legal aid in Indonesia is based on the following principles:<sup>11</sup>

1. Justice

The meaning of the principle of justice here is understood as the rights and obligations of every person must be placed in an orderly, good, right, proper and proportional manner.

2. Equality before the law.

The meaning of the principle of equality before the law is in accordance with its name, that is, all people have the right to be treated equally before the law and are obliged to uphold the law.

3. Openness

The meaning of the principle of openness can be understood by the public having the right to obtain honest, correct, complete and fair information in obtaining guarantees of justice with constitutional rights as the basis

4. Efficiency

The meaning of the principle of efficiency here is interpreted as maximizing the provision of legal aid through the use of existing budgetary resources.

5. Effectiveness

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<sup>10</sup> Indonesia, *Undang-Undang (UU) Nomor 16 Tahun 2011 Tentang Bantuan Hukum (LN.2011/No. 104, TLN No. 5248, LL SETNEG: 11 HLM)* (Jakarta: JDIH BPK RI, 2011).

<sup>11</sup> Indonesia.

The meaning of the principle of effectiveness is to determine the purpose of providing legal aid so that it is appropriate.

#### 6. Accountability

The meaning of the principle of accountability is that all activities from the beginning to the end of the implementation of the provision of legal aid must be accountable to the community.

In Indonesia, legal aid is divided into several types that are formed as a concept. This is because as time goes by, the concept of legal aid also develops. So that currently there are 3 types of legal aid concepts namely conventional legal aid, constitutional legal aid, and structural legal aid.

##### 1. Conventional legal aid

Conventional legal aid is legal aid that is waiting or passive in nature, legal aid providers such as advocates, paralegals, as well as lecturers and students of law faculties can only wait. Passive because this legal aid can only work if the client or community complains about their problems without knowing the legal conditions they are experiencing. This legal aid is also formal legalistic in nature, which means that the problems experienced by clients or the community are only seen from a legal perspective. This legal aid is in the form of assistance in cases or cases as well as defense in court.<sup>12</sup>

##### 2. Constitutional legal assistance

Constitutional legal aid exists because of criticism directed at conventional legal aid. The concept of legal aid is aimed at the underprivileged community free of charge or free of charge as a form of implementation of one of the concepts of a rule of law namely the supreme of law as well as the implementation of human rights and democratic principles. The concept of constitutional legal aid does not look at and does not discriminate against the community because obtaining legal aid is the property of the entire community. Then, constitutional legal aid was also formed as an expansion of legal aid services which previously only provided legal aid in court. The concept of legal aid has an active nature, which means that legal aid providers must move on their own to find people who are less fortunate and need legal assistance to be given legal assistance in the form of defending their rights, and are no longer limited to individuals and their legalistic formalities.<sup>13</sup>

##### 3. Structural legal assistance

Structural legal assistance is legal assistance that is formed not only to help the underprivileged, but structural legal assistance is also formed as a series of actions and movements aimed at freeing society from the shackles of

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<sup>12</sup> Nike Sepvinasari and Zulfikar Judge, "Pelaksanaan Pemberian Bantuan Hukum Secara Cuma-Cuma Kepada Terdakwa Yang Tidak Mampu Di Pengadilan Negeri Jakarta Barat," *Lex Jurnalica* 12, no. 3 (2015): 234–47. Hal 238

<sup>13</sup> Sepvinasari and Judge. Hal 238

cultural structures of oppression, social structures, economic structures, and political structures. The existence of independence and competence in the community environment is less able to form their interests and rights in the community environment. There is a shared understanding among underprivileged communities regarding the urgency of legal protection for their interests. There is understanding and knowledge of underprivileged communities regarding the recognition of their rights by law and also regarding their interests.<sup>14</sup> Structural legal aid has the principle that this assistance does not only assist in court, but this assistance also provides understanding such as legal training for the community itself to understand law based on their economic and cultural conditions. In addition, structural legal assistance is also provided so that the community can understand the importance of the rights and interests that these underprivileged people have before the law with the hope that if one day they are exposed to legal problems they can independently resolve these legal problems because they are equipped with legal understanding.

In the legal order in Indonesia, it determines the method or process of solving problems, cases or cases through two ways, namely litigation and non-litigation. Litigation is a process of solving legal problems that is carried out through a trial process in court. Meanwhile, non-litigation is a process of solving legal problems that is carried out outside the court. Then, the law in Indonesia also divides the categories of legal issues into three categories, namely civil, criminal and state administration. Therefore, the scope of providing legal aid is litigation and non-litigation. The legal regulations that further regulate procedures for providing legal aid are *Peraturan Pemerintah Nomor 42 Tahun 2013 Tentang Syarat Dan Tata Cara Pemberian Bantuan Hukum Dan Penyaluran Dana Bantuan Hukum*.

#### 1. Litigation

Legal aid standards in criminal cases, namely: Making power of attorney; Carry out case titles to obtain input; Checking and creating all complete documents relating to the process of prosecution, investigation and examination in court; Carry out assistance in the process of prosecution, investigation and examination in court; Arranging duplicates, exceptions, pledoi for the needs of those receiving legal aid; Bring in experts and witnesses; Carry out appeals, legal remedies, judicial review, cassation in accordance with the wishes of those who receive legal assistance; Compile and assemble all legal documents for the purposes of those who receive legal assistance (non-litigation); Ensuring that the rights of legal aid providers as suspects are not violated by the Public Prosecutor and Judges; Ensuring the completeness of documents relating to processes during investigations,

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<sup>14</sup> Siti Aminah, *Panduan Bantuan Hukum Di Indonesia* (Jakarta: YLBHI dan PSHK, 2009). Hal 46

trials/prosecution; and other legal actions in accordance with laws and regulations.<sup>15</sup>

The benchmarks for legal aid in civil cases are: Preparing a Power of Attorney; carry out case titles at legal aid institutions; Compile a lawsuit or response to a lawsuit; to examine the integrity of documents relating to court proceedings; Registering a lawsuit in court; carry out assistance and represent those who receive legal assistance during examinations in court; carry out assistance and represent those who receive legal assistance during mediation; Make replicas or duplications and conclusions for the benefit of legal aid recipients; Prepare and bring in evidence, witnesses and/or expert witnesses; Prepare a memorandum of appeal or cassation. Other legal actions in accordance with statutory regulations.<sup>16</sup>

Legal aid standards in state administrative cases, namely: Preparing a Power of Attorney; Carrying out case titles at legal aid institutions; to examine the integrity of documents relating to court proceedings; Compile a letter of claim or response to a lawsuit; Registering a lawsuit with the court to the State Administrative Court; carry out assistance and represent those who receive assistance in the process of dismissal, mediation and examination at the State Administration meeting; carry out assistance and represent those who receive legal assistance during examinations in court; Prepare replicas or duplications as well as conclusions for the needs of legal aid recipients; Prepare and bring in evidence, witnesses and/or expert witnesses; Prepare a memorandum of appeal or cassation. Other legal actions in accordance with statutory regulations.<sup>17</sup>

## 2. Nonlitigation

Settlement of legal issues through non-litigation channels can be in the form of:<sup>18</sup>

- a. Legal counseling, namely activities organized by legal aid providers that aim to increase the legal knowledge of legal aid recipients;
- b. Legal consultation, namely a consultation carried out directly by a legal aid provider with a legal aid recipient with the aim of resolving a legal issue;
- c. Case investigation, namely an investigation carried out to obtain various kinds of information and will then be analyzed to find out a legal problem in the interest of the recipient of legal aid;
- d. Mediation, which is a method used to resolve disputes between two or more people. Such as the settlement of a dispute using mediation.

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<sup>15</sup> Indonesia, *Peraturan Pemerintah (PP) Nomor 42 Tahun 2013 Tentang Syarat Dan Tata Cara Pemberian Bantuan Hukum Dan Penyaluran Dana Bantuan Hukum* (Jakarta, 2013). Ps 4(3)

<sup>16</sup> Indonesia. Ps 5(2) dan (3)

<sup>17</sup> Indonesia. Ps 6

<sup>18</sup> Anonim, "Standar Penanganan Perkara Layanan Bantuan Hukum," Lembaga Bantuan Hukum Makassar, n.d.



- The legal aid provider can act as a mediator for both parties and be neutral;
- e. Negotiation, in which the legal aid provider acts to accompany and/or represent the legal aid recipient to resolve legal issues according to the wishes of the legal aid recipient;
  - f. Community empowerment, namely programs organized by legal aid providers to increase legal understanding of legal aid recipients and legal aid providers can monitor and assist directly with existing legal issues;
  - g. Assistance outside the court, namely assistance provided by legal aid providers to legal aid recipients. Assistance here is more aimed at witnesses and/or victims of criminal acts;
  - h. Drafting legal documents, in which legal aid providers act as legal drafters or drafters of legal documents such as agreements, statements, wills, employment contracts, grants, and other legal documents.

*Undang-Undang Nomor 16 Tahun 2011 Tentang Bantuan Hukum* explains that the provision of legal aid is carried out by legal aid providers to legal aid recipients. The legal aid provider referred to here is a special institution or organization established to provide legal aid services based on the legal aid law. This special institution or organization is formed and uses the government budget as its driving fund so that the provision of legal aid must be provided free of charge. Then, it is explained further in Article 8 of the law that the requirements for becoming a legal aid provider are to have a legal aid program, have a board, have a permanent office or secretariat, have accreditation in accordance with the law on legal aid, and are also required to incorporate. In an institution or organization providing legal aid there are several elements used to carry out the provision of legal aid such as advocates, paralegals, lecturers, and students of law faculties. In addition to the advocate profession, other legal aid providers are allowed not without reason, but because the advocate profession is minimal so legal aid needs are not fulfilled.<sup>19</sup> The legal standing they have is as strong as that of an advocate. This is confirmed in *Putusan Mahkamah Kontitisi Nomor 006/PUU-II/2004* which states that professionals other than advocates who have met the requirements to become legal aid providers have the right to receive power of attorney to appear before certain agencies in assisting recipients of legal aid and to decide article 31 of the Advocate Law. constitutes discrimination and violates the 1945 Constitution.<sup>20</sup>

#### 1. Advocates

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<sup>19</sup> Wulandari, *Teropong Bantuan Hukum Di Indonesia*. Hal 31

<sup>20</sup> Pasal 31 UU 18/2003 menjelaskan bahwa setiap orang yang bukan advokat tetapi melakukan pekerjaan profesi advokat maka dapat dipidana. Berdasarkan Putusan MK no 006/PUU-II/2004 pasal ini sudah tidak berlaku.

Advocates in legal regulations have been regulated in the Law on Advocates and the Law on Legal Aid. Advocate is a profession that organizes the provision of legal services, both outside and in court that has met the requirements in the Advocate Law. Even though advocates have their own legal rules, in providing legal aid what is meant is the provision of free legal assistance. Thus, the rule of law used by advocates, in this case, is the legal aid law because the provision of legal aid in the advocate law is inherent in the advocate profession.<sup>21</sup> This profession itself is also known as the official noble or noble profession. The requirements to become an advocate himself have been regulated in more detail in Article 3 paragraph (1) of *Undang-Undang Nomor 18 Tahun 2003*. Meanwhile, the requirements for the advocate profession to provide legal aid are that the advocate must be registered with an institution or organization providing legal aid and the advocate is not during a sentence for violating the code of ethics, violating AD/ART, other internal violations which must be proven by a statement from the Legal Aid Provider.<sup>22</sup>

## 2. Paralegals

Paralegals and advocates are 2 different professions, but in terms of work, the two professions coexist. The word paralegal itself has been known since the mid-20th century in Western countries. Whereas in Indonesia, prior to the enactment of the Legal Aid Law, the term paralegal was introduced indirectly in *Undang-Undang Nomor 32 Tahun 2009 Tentang Pengelolaan Lingkungan Hidup* which explains that a group of people is given the right to be able to file a lawsuit as a representative for the losses they experience. The definition of a paralegal according to the Legal Aid Law is a person who has no law degree but has a basic understanding and knowledge related to law and human rights with the aim of providing legal assistance to someone who is less fortunate.<sup>23</sup>

The work of paralegals and advocates can be considered side by side because paralegals are referred to as legal assistants. That is, paralegals have a duty to help resolve cases or cases and this also relieves the advocate's duties so that advocates can carry out their duties more efficiently and effectively.<sup>24</sup> This is the result of the *Putusan Mahkamah Agung Nomor 22/P/HUM/2018*

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<sup>21</sup> Muhamad Adystia Sunggara et al., "Penerapan Dan Pemberian Bantuan Hukum Bagi Masyarakat Kurang Mampu," *SOLUSI* 19, no. 2 (2021). Hal 141

<sup>22</sup> Indonesia, *Peraturan Menteri Hukum Dan Hak Asasi Manusia Nomor 10 Tahun 2015 Tentang Peraturan Pelaksanaan Peraturan Pemerintah Nomor 42 Tahun 2013 Tentang Syarat Dan Tata Cara Pemberian Bantuan Hukum Dan Penyaluran Dana Bantuan Hukum* (Jakarta: KEMENKUMHAM, 2015). Ps 29

<sup>23</sup> Indonesia, *Undang-Undang (UU) Nomor 16 Tahun 2011 Tentang Bantuan Hukum (LN.2011/No. 104, TLN No. 5248, LL SETNEG: 11 HLM)*. Ps 9-10

<sup>24</sup> Dwi Dasa Suryantoro, "Kedudukan Paralegal Dalam Pendampingan Hukum," *Legal Studies Journal* 1, no. 2 (2021): 39-60. Hal 42-43

where at that time many advocates submitted requests regarding the presence of this paralegal and feared it would reduce the work of advocates. The results of the decision explain that in providing legal assistance in litigation, paralegals are not allowed to do it themselves but remain under the supervision of advocates. So that the work of paralegals and advocates is not the same, but side by side. Then, paralegals only have the authority to provide legal assistance on a non-litigation basis because litigation legal assistance is the duty of an advocate.<sup>25</sup> To be able to provide legal assistance, a paralegal must meet the following requirements, a paralegal must be registered with an accredited legal aid provider, obtain a certificate of advocacy assistance from the legal aid provider where he is registered, a paralegal must also have a paralegal training certificate organized by an institution or organization community legal aid, government agencies in the field of law, universities, or legal aid providers.<sup>26</sup>

### 3. Faculty of law lecturers and students

In addition to advocates and paralegals, law faculty lecturers and students are also included as elements of legal aid providers. By holding a legal aid program in the realm of tertiary institutions, it can make it easier for the public to get free legal assistance. This program is carried out by lecturers and students of the university's law faculty. This form of providing legal assistance is a form of implementation of campus service to the community based on the Tri Dharma of Higher Education. This program itself has been around since the 1950s. The presence of this program has two functions at once. First, make a law laboratory for law faculty students to learn, hone, and apply their abilities in the field of law. Second, this program also helps local communities who want to get free legal assistance as a form of community service.<sup>27</sup> The requirements that must be met by lecturers to be able to provide legal assistance are that they must be registered with an accredited legal aid provider, obtain written evidence of assistance from an advocate issued by the legal aid provider where they are registered, at least have a law degree, are teaching staff at the law faculty. Meanwhile, law faculty students must fulfill the following requirements, must be registered with an accredited legal aid provider, have written evidence of advocate assistance issued by the legal aid provider where they are registered, can prove that

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<sup>25</sup> Eka N.A.M. Sihombing, "Eksistensi Paralegal Dalam Pemberian Bantuan Hukum Bagi Masyarakat Miskin," *Jurnal Ilmiah Penegakan Hukum* 6, no. 1 (2019): 70–77, <https://doi.org/10.31289/jiph.v6i1.2287>.

<sup>26</sup> Indonesia, *Peraturan Menteri Hukum Dan Hak Asasi Manusia Nomor 10 Tahun 2015 Tentang Peraturan Pelaksanaan Peraturan Pemerintah Nomor 42 Tahun 2013 Tentang Syarat Dan Tata Cara Pemberian Bantuan Hukum Dan Penyaluran Dana Bantuan Hukum*. Ps 30

<sup>27</sup> Yuffi Praditya Noor Kuncoro, "Kedudukan Dosen Dan Mahasiswa Fakultas Hukum Sebagai Pemberi Bantuan Hukum Dalam Perspektif Undang-Undang Nomor 18 Tahun 2003 Tentang Advokat" (Untag Surabaya, 2014).

they are a law faculty student, must have taken and graduated in the eyes of procedural law courses both criminal, civil, and state administration as evidenced by photocopies of the course grade transcripts and have been legalized, and must have paralegal training certificates organized by legal aid community institutions or organizations, government agencies in the field of law, universities, or legal aid.<sup>28</sup>

## 2. Efforts to Improve the Quality of Legal Aid in Indonesia

The meaning of the welfare law state is the rationale for raising the community's economic system. Because in a welfare state, there is a value of justice as the soul of economic development.<sup>29</sup>

The notion of a welfare legal state is often referred to as a modern legal state which falls into the category of material meaning. The opinion of Bagir Manan states that the government or the state is not only responsible for the order and security of its people but must also create general welfare, social justice, and prosperity for its people.<sup>30</sup>

In another work, Bagir Manan mentions the notion of a welfare legal state or a modern legal state which has aspects, namely: legal, socio-economic, and political aspects. The legal aspect obliges the state to have the principle of supremacy of law in carrying out its law enforcement, the rule of law and the principle of legality. The social aspect wants the birth of general welfare and social justice and the political aspect wants the presence of limits on the power of the state in politics.<sup>31</sup>

If seen, the notion of a welfare legal state is ideally an act of developing the notion of a material rule of law state. When trying to create people's welfare, the concept/understanding of a welfare legal state was introduced by Otto Bar, which was quoted by Maran Muslimin. That is, a modern rule of law has changed to a state that has the characteristics of a Welfare State or a State of Culture. The state is said to be a company that brings benefits to the people because it carries out general needs and passes *wetmatigheid van udmministratie*. The streams of law are formed by the King together with the people. So that the people participate in determining the interests in general, not only the king himself as in *polizeistaat*.<sup>32</sup>

The state in its role has been positioned with a strong position in producing public welfare and social justice. The concept of the state in various reading materials has the denominator: the state which is a tool for service or the social law state. Lemaire argues that the terminology is a state that carries out public welfare or a welfare state. The concept of a modern rule of law on the other hand wants every action taken by the state or government to be based on law, the state is also given tasks, roles, and responsibilities with a wider scope for the welfare of its

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<sup>28</sup> Indonesia, *Peraturan Menteri Hukum Dan Hak Asasi Manusia Nomor 10 Tahun 2015 Tentang Peraturan Pelaksanaan Peraturan Pemerintah Nomor 42 Tahun 2013 Tentang Syarat Dan Tata Cara Pemberian Bantuan Hukum Dan Penyaluran Dana Bantuan Hukum*. Ps 31-32

<sup>29</sup> Elviandri, Dimiyati, and Absor, "QUO VADIS NEGARA KESEJAHTERAAN: MENEGUHKAN IDEOLOGI WELFARE STATE NEGARA HUKUM KESEJAHTERAAN INDONESIA."

<sup>30</sup> Bagir Manan, *Politik Perundangundangan Dalam Rangka Mengantisipasi Liberalisme Perekonomian* (Bandar Lampung: FH UNLA, 1996).

<sup>31</sup> Elviandri, Dimiyati, and Absor, "QUO VADIS NEGARA KESEJAHTERAAN: MENEGUHKAN IDEOLOGI WELFARE STATE NEGARA HUKUM KESEJAHTERAAN INDONESIA."

<sup>32</sup> Elviandri, Dimiyati, and Absor.

people.<sup>33</sup> Therefore, the duty of the state in terms of its goals is to achieve the welfare of its people so that it can be seen and can be felt directly that the law really has a role in carrying out the welfare of its people. It was this point that Sajipto Raharjo mentioned regarding the law that should create happiness.<sup>34</sup> The hope of a welfare law state in which the state has an active role in its regulation of economic matters is stated in *UUD NRI 1945*. There are various terms used and all of them lead to people's welfare. The term "fair and prosperous" was used by the Founding fathers in *Pembukaan UUD NRI 1945*, the second Alenia and the mention of "public welfare" and "social justice" which were also listed in *Pembukaan UUD NRI 1945*, fourth Alenia.<sup>35</sup>

The Law on Legal Aid cannot be used as a hope for access to law and justice, especially for the poor, because the application of these rules is still experiencing various problems in fulfilling access to law and justice. In practice, the Legal Aid Law is not enforced in a normative manner because there are still many objections regarding legal aid. In addition, there are still many people who do not understand about the existence of this legal aid. In court practice law also tends to be sharp downwards and blunt upwards, there is a lot of discrimination against people who are deemed incapable or do not have power. This discrimination also often occurs in the provision of legal aid funds. This happened because there was no supervision at the time the granting of this legal aid fund was made.<sup>36</sup>

Therefore it is necessary to establish an institution to oversee the provision of legal aid and especially the provision of funds for legal aid so that the implementation can be carried out optimally. And the need to revise the Legal Aid Law because it is felt that it is no longer relevant to address the problems that exist in society. Because society develops and the law must also follow society.

#### **D. Conclusion**

As a rule-of-law country, of course, every implementation of activities is based on applicable laws or regulations. Especially on legal aid, which has been regulated in the Law on Legal Aid. With the provisions of litigation and non-litigation assistance in the realm of civil, criminal, and state administrative law. And in the implementation of legal aid it is also based on existing principles in order to maximize its implementation.

A welfare state is a country that provides benefits and welfare for its people. Welfare in the political, legal and economic context. And in legal aid there are several obstacles in its implementation from the executors, the law, and the people which

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<sup>33</sup> Marojohan S. Panjaitan, "Pengembangan Sistem Ekonomi Kerakyatan Dalam Perspektif Negara Hukum Kesejahteraan Berdasarkan UUD 1945," *Jurnal Wawasan Hukum* 26, no. 01 (2012): 441-51.

<sup>34</sup> Sajipto Raharjo, *Membedah Hukum Progresif* (Jakarta: Kompas, 2006).

<sup>35</sup> Elviandri, Dimiyati, and Absor, "QUO VADIS NEGARA KESEJAHTERAAN: MENEGUHKAN IDEOLOGI WELFARE STATE NEGARA HUKUM KESEJAHTERAAN INDONESIA."

<sup>36</sup> Suyogi Imam Fauzi and Inge Puspita Ningtyas, "Optimalisasi Pemberian Bantuan Hukum Demi Terwujudnya Access to Law and Justice Bagi Rakyat Miskin Optimization of Legal Assistance to the Fullest Access to Law and Justice For," *Jurnal Konstitusi* 15, no. 1 (2018): 52.

need a change from the Legal Aid Law to boost the implementation of the provision of legal aid in Indonesia.

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