



LEGAL AID ORGANIZATION PROBLEM IN PROVIDING LEGAL AID TO IMPOVERISHED COMMUNITY IN INDONESIA

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Abstract. Based on data from the Ministry of Law and Human Rights, in 2022, there are 619 registered legal aid organizations that have passed verification as legal aid providers, as mandated in the legal aid law. Despite this number, there are still many legal aid organizations or community organizations that have not been registered yet provide legal aid services. This research aims to identify and analyze the problem of providing legal aid by Legal Aid Organizations (LAO) in Indonesia and efforts to overcome this problem. The research method used is empirical juridical using primary and secondary data. The results of the research show that the problems encountered include only accredited legal aid organizations receiving funding from the government, the uneven distribution of legal aid organizations, an imbalance between legal aid recipients and the number of accredited legal aid organizations, the minimal amount of budget received by legal aid organizations, as well as procedural problems in terms of reporting and evaluation which sometimes burden legal aid organizations. Efforts made by the government to overcome the above problems are by creating policies including the application of a legal aid information system, namely SIDBANKUM, conducting intensive outreach to the wider community and a wider scope regarding the existence of LAO, collaborating and coordinating with regional governments and various relevant law enforcement agencies, carrying out screening of LAO in the regions in order to verify accreditation for the next period and increase the capacity of legal aid implementers.

Keywords: Legal Aid Organization, Legal Aid, Impoverished Community.

1. Introduction

Legal aid is a form of the right obtained by Indonesian citizens, especially for those involved in legal issues. The Republic of Indonesia's constitution, UUD 1945, Article 28 D paragraph (1) and Article 27 paragraph (1) implicitly mentions the existence of a guarantee to obtain legal assistance. This article also contains the principle of equality of position in law, which means that every person is recognized and guaranteed their personal rights, and every person, whoever they are, has the same and equal position in law and government. In line with the definition of equality before the law, everyone is supposed to get equal treatment from the government without exception.[1]

According to figures from the Central Statistics Agency, there were 25.90 million impoverished individuals in Indonesia in March 2023, or 9.36% of the country's entire population. Due to the general public's ignorance of the law, the majority of economically disadvantaged individuals will experience difficulty when confronted with legal issues. They are unsure about what to do, especially if the matter ends up in court. They do not have sufficient funds to cover all of the costs associated with the case they are facing. [2].



The understanding of poverty encompasses not just financial issues but also the deprivation of fundamental rights and disparities in treatment for an individual or group of people trying to live a dignified life.[3] Legal issues that affect numerous impoverished people or groups become more complex, requiring the government to promptly pay attention to and regulate them in a planned and systematic sustainable manner as well as manage them professionally. Pursuant to studies by the Indonesia Judicial Research Society (IJS), as many as 52% of Indonesia's general population is unaware of the existence of free legal assistance from the government.[4]. The lack of the public's awareness about legal aid caused a challenge for many people to get access to justice.

The government, as part of the Unitary State of the Republic of Indonesia, essentially has the responsibility to uphold and protect the constitutional rights of citizens, including ensuring the right of every citizen to gain access to justice through providing legal aid, particularly to people who have economic limitations. The assurance of legal assistance protection, particularly for the underprivileged, has become increasingly stronger since the passage of the law on legal aid, namely Law Number 16 of 2011. The enactment of the Law on Legal Aid serves as a foundation for the state to guarantee that citizens, especially impoverished communities, have access to justice and equality before the law.

Pursuant to Law No. 16 of 2011, legal aid refers to the free legal services offered to recipients of legal aid by legal aid providers. Due process of law, or a fair legal procedure, is supposed to be upheld by the provision of legal services and legal aid for suspects and defendants to prevent unfair and inhuman treatment[5]. Prior to the enactment of the Law on Legal Aid, the right to legal aid had been governed by either international agreements or Indonesian laws. For instance, the Criminal Procedure Code Articles 54 to 56 govern the suspect's right to obtain legal aid. Additionally, Article 22 of Law Number 18 of 2003 Concerning Advocates requires that advocates provide free legal services to the impoverished who need legal assistance.

Based on the legal aid law, the concept of a legal aid provider is no longer the same thing as an individual advocate, as the majority of the public currently understands the term. However, a legal aid provider is defined by the legal aid law as a legal aid institution or community organization that provides legal aid services in accordance with the law. Therefore, the legal aid law does not recognize all legal aid institutions or legal aid groups, and community organizations in Indonesia as legal aid providers. For eligibility as a legal aid provider, one must fulfill a number of standards.

Several requirements have to be complied with in order for a legal aid group to be accredited, which will ultimately result in the government granting funds or financing to legal aid organizations that fulfill the criteria for providing legal aid to the impoverished. There were 619 Legal Aid Organizations that had completed verification and received accreditation by the Ministry of Law and Human Rights in 2022, the year of the ministry's latest accreditation, according to a preliminary study undertaken by researchers.[6]. Once we compare the percentage of Indonesians, particularly those in poverty, who have legal issues with the sheer number of legal aid groups that have acquired accreditation, we discover that the two numbers are not comparable. Obviously, this could result in issues with the community's ability to obtain legal aid from the government. The reality is that the limited number of advocates and human resources still hampers Indonesia's Legal Aid Institutions. As a consequence of these obstacles, advocates can only contribute in limited capacities to pro bono public work. Further, there is a conflict of interest between the state and society over the defense and protection of the impoverished, which makes the implementation of legal aid even more difficult.[7]

There have been numerous studies on legal aid, including one conducted by Agus Raharjo et al. [8] on Access to Justice for the Poor (Dilemmas in Providing Legal Aid by Advocates),

which analyzes issues with advocate-provided legal aid. Research by Palgunadi[9] regarding the Reposition of Pro Bono Legal Aid by Legal Aid Organizations in the Study of Law Number 16 of 2011 concerning Legal Aid with the findings of opening access to funding for the provision of legal aid in the Legal Aid Law has shifted the underlying essence of Pro Bono Publico's dedication to Law Number 18 of 2003 concerning Advocates. Considering the importance of legal aid organizations as one of the parties authorized to provide legal aid encourages the author to identify and examine various problems related to the provision of legal aid by legal aid providers both in regulatory settings and in practice in the field. Furthermore, efforts to overcome the problem of providing legal aid provided by legal aid organizations.

The presence of legal aid organizations in providing legal aid as one of the providers of legal aid as regulated in the legal aid law is crucial. However, its presence, on the other hand, also raises a number of problems with providing legal aid in Indonesia. Accordingly, this article intends to discuss the problems in providing legal aid by Legal Aid Organizations in Indonesia and how the government policy overcome the problems of Legal Aid Organizations in providing legal aid to poor people in Indonesia.

2. Methods

This paper applies an empirical juridical research methodology in order to study legal phenomena in society as a research subject [10]. A method of qualitative research strategy was used with the aim of exploring or building a proposition or explaining the meaning behind reality.[11] The data utilized for this study is both primary and secondary, retrieved through interviews, literature studies, and documentary studies. Afterward, it is examined by applying qualitative analysis consisting of content analysis and comparative analysis methods.

3. Discussion

3.1. Problems of Providing Legal Aid by Legal Aid Organizations (LAO) in Indonesia

Law Number 16 of 2011 Concerning Legal Aid regulates the provision of formal legal aid. Based on Article 3 of Law No. 16 of 2011 concerning Legal Aid, the implementation of Legal Aid aims to:

- a) guarantee and fulfill the rights of Legal Aid Recipients to obtain access to justice;
- b) embody the constitutional rights of all citizens in accordance with the principle of equality under the law;
- c) guarantee certainty that the provision of Legal Aid is carried out evenly throughout the territory of the Republic of Indonesia; and
- d) embody justice that is effective, efficient, and accountable.

The provision of legal aid is carried out by the Ministry of Law and Human Rights, and in this case, the technical implementation is handed over to the legal aid provider. Legal aid providers are groups in the community organizations that provide legal aid services based on law. Legal Aid Providers, as referred to in Article 8 paragraph (1), include:

- a. incorporated;
- b. accredited under the Legal Aid Law
- c. have a permanent office or secretariat;
- d. have administrators; and
- e. has a Legal Aid program.

According to the rules mentioned above, not all legal aid institutions and organizations do not fulfill the requirements for providing legal aid as outlined in the legal aid law. The following list of concerns relates to how legal aid organizations provide their services:

1) Requirements for accreditation of Legal Aid Organizations

Legal Aid Institutions or Legal Aid Organizations that are qualified to receive financing from the government through the Ministry of Law and Human Rights must be accredited in accordance with legal aid law. The primary advantage of these certification standards lies in how they serve as an assurance of quality for legal aid organizations that are entitled to receive funds. However, on the other hand, because of the prerequisites that must be fulfilled, the existence of these requirements also indirectly burdens Legal Aid Institutions. According to research findings, a number of legal aid organizations in Banyumas Regency were unable to register with the Ministry of Law and Human Rights due to complicated administrative procedures and requirements in terms of cases handled [12].

The Implementation Instructions Concerning Procedures for Verification, Accreditation, and Extension of Certification for Prospective Legal Aid Providers Number: PHN-HN.04.03-14 issued by the Ministry of Law and Human Rights of the Republic of Indonesia through the National Legal Development Agency regulate the standards for accreditation of legal aid organizations. Accreditation is carried out by classifying LAO based on:

- a. Number of litigation cases handled related to the impoverished;
- b. Number of non-litigation activities handled related to the impoverished;
- c. Number of Advocates;
- d. Number of Paralegals;
- e. Number of administrative staff who understand information technology;
- f. Formal and non-formal education held by Advocates and Paralegals;
- g. Experience in handling or providing legal aid;
- h. Range of case handling;
- i. Ownership status and office infrastructure;
- j. Age or length of existence of Legal Aid Organization;
- k. Articles of Association and By-Laws;
- l. Financial reports in accordance with accounting standards;
- m. LAO Taxpayer Identification Number; and
- n. Internet network owned by LAO

Referring to an interview with a resource person at the National Law Development Agency [6] in charge of legal aid pertaining to the prerequisites for granting accreditation for legal aid providers in the form of Community Institutions or Legal Aid Institutions, it is necessary to fulfil the requirements, including the legality of the organization, the decree of the legal entity, the management, and the number of cases handled.

Implementing this verification and accreditation encounters many challenges, including the following:

- a) There is no common understanding of the requirements between the Central Working Group and the Regional Working Group.
- b) There is no demonstrated division of work between Regional and Central Working Groups because there are no consistent work standards and controlled output.
- c) The Central Working Group had a backlog of work as result of this problem. Accuracy and version time cannot be optimized as a result. Due to the lack of

- tiered work, this type of work method also hinders the potential of a version that is released more quickly than three years.
- d) Prospective Legal Aid Providers are still unfamiliar with the registration, verification, and accreditation processes.
 - e) The prospective legal aid provider in this situation is unaware of the more technical regulations governing the implementation of verification and accreditation.
 - f) The verification and accreditation participants are legal aid organizations rather than individual advocates. Some cases are brought by advocates on their behalf rather than on behalf of the Legal Aid Organization, which is obviously against Legal Aid policy.
 - g) Establish a minimum number of cases of 10 (ten) cases to be able to participate in verification and accreditation.
 - h) Establish a requirement for participation in verification and accreditation of a minimum of ten (10) cases.
 - i) The domicile of the Legal Aid Implementer, which must be within the province work area.
 - j) There are additional requirements for Legal Aid Organizations requesting an extension of verification and accreditation, including budget absorption monitoring and evaluation outcomes and the number of pro bono cases handled by the Legal Aid Organization.
 - k) Regarding prospective Legal Aid Providers who are geographically inaccessible to be contacted by the Regional Working Group or Central Working Group, a decision is taken based solely on an administrative review of the materials presented with the SIDBANKUM application, without any factual examination.

Access to justice becomes more challenging by a lengthy certification process because licensed Legal Aid Organizations (LAO) are mostly restricted to particular provinces in Indonesia and are located there. The process of establishing accreditation is hindered by the fact that some Regional Governments remain without Regional Regulations on Legal Aid.

- 2) The number of legal aid organization distributions is uneven and not proportional to the number of legal aid recipients

The Ministry of Law and Human Rights has accredited and registered 619 legal aid providers in the form of community organizations or legal aid institutions through the year 2022, according to research data collected from the ministry. The following table shows the information:

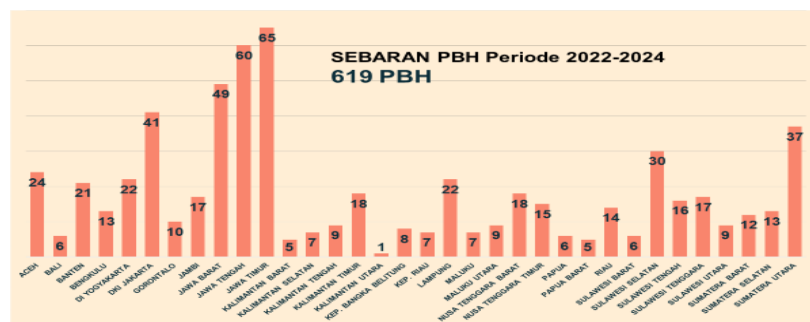


Figure 1. PBH distribution for the 2022-2024 period

According to the above data, there is an increase of 619 LAO-registered accredited Legal Aid Providers. However, when measured in terms of numbers, it is not proportionate to the number of cases affecting the impoverished or the number of people receiving legal aid. In addition to the numerical imbalance, there is also a distribution issue. Only 34 of 37 provinces in Indonesia have legal aid providers registered by the Ministry of Law and Human Rights. Additionally, there is only one distribution in a province. This data is data per province. In fact, each province consists of several districts where there are still many districts/cities that do not have Legal Aid Providers. The limited or uneven number of legal aid providers indirectly affects the number of legal aid recipients who are entitled to legal aid, or in other words, access to justice becomes uneven.

3) Funding for the Legal Aid Provider

One form of the government's legal responsibility in terms of legal protection for its citizens is to be involved in the implementation of legal aid in the form of providing legal aid funds. Based on the results of the research, the amount of funding budgeted by the state or provided by the state for the implementation of legal aid can be seen in the following figure:

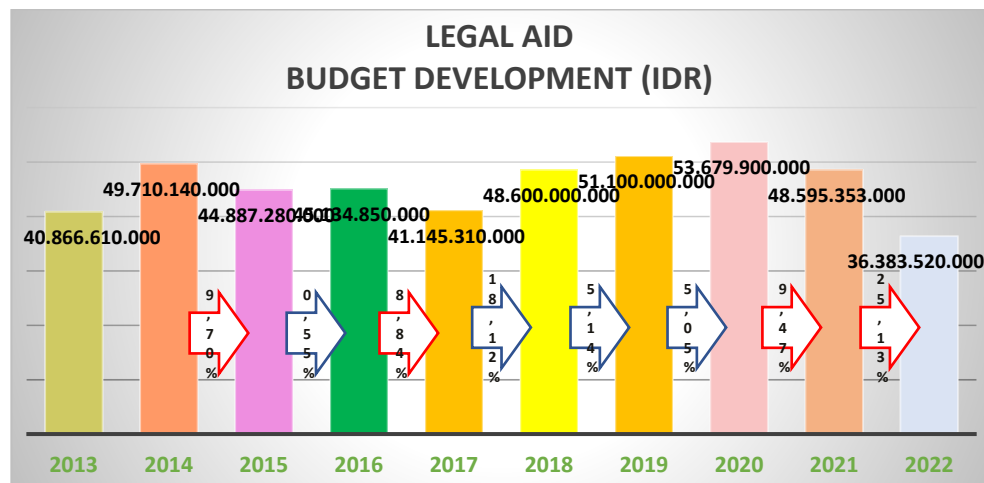


Figure 2. Legal Aid Budget Development

In accordance with the abovementioned data, there is a tendency for government funding for legal aid initiatives not to increase significantly. In fact, there is a tendency for the funding to decrease in 2022. According to the results of interviews with various reputable legal aid institutions, funding concerns are the most common barrier to case handling. Impoverished people who visit LAO wish to request legal assistance since they frequently worry about the lack of money. However, once the funding source is no longer available, it is not optimal to provide legal aid services, except legal aid in the context of litigation or filing a lawsuit, consulting on legal concerns. Meanwhile, reaching the trial stage and even taking legal action is rare.

The application of the concept of standard costs for implementing litigation and non-litigation legal assistance, as regulated in Article 21 Government Regulation No. 42 of 2013 concerning Requirements and Procedures for Providing Legal Aid and Distribution of Legal Aid Funds, has the impact of equalizing budgeting for the implementation of legal assistance activities without taking into account geographical conditions, social conditions of legal aid recipients, types of cases and the needs of legal aid recipients. For instance, the Minister of Law and Human Rights decided in 2017 that the amount of fees issued at each stage of a

lawsuit—from filing to trial to reaching a first-level court decision—was IDR 5,000,000 (five million rupiah). This budget may be sufficient to manage divorce situations where the parties have mutually consented to the separation, making the trial and evidence procedure less complicated. Due to the proximity of the National Legal Analysis and Evaluation Center of the National Legal Development Agency I of the Ministry of Law and Human Rights with the court in their working environments. However, there may be multiple defendants in a lawsuit against the legislation, increasing the likelihood that the trial may drag out due to delays and complex evidence. This condition is exacerbated in areas with subpar transportation or locations with certain geographical characteristics, such as Kalimantan, Papua, or island regions. This circumstance affects how legal aid groups choose which cases to take on. Divorce cases naturally constitute the majority of cases for which legal aid is provided since there is a propensity for legal aid organizations to select cases that are quick and easy to resolve.

4) Evaluation and reporting that must be performed

Monitoring and evaluating the execution of government-sponsored legal aid initiatives is necessary, according to the Implementation Guidelines concerning Supervision, Monitoring, and Evaluation of the Implementation of Legal Aid (PHN-HN.03.03-36). The Central Supervisory Committee or Regional Supervisory Committee periodically or incidentally performs monitoring, which is the activity of attentively observing the condition or traits of LOA. Evaluation is an activity to assess the implementation and quality of the provision of legal aid from providers to recipients in compliance with Legal Aid standards. Evaluation is performed on a regular or incidental basis. At least 2 (two) times in 1 (one) year are set aside for routine monitoring. Monitoring and evaluation are performed on:

- a. implementation of the provision of Legal Aid in accordance with litigation and non-litigation Legal Aid standards;
- b. implementation of legal aid standards for Legal Aid Organizations and Legal Aid Recipients;
- c. compliance and accuracy of budget distribution reporting in accordance with financial reporting standards.

Evaluation and monitoring efforts are essential to LAO's implementation of providing legal aid. This evaluation is conducted in the form of an accountability report that LAO provides regarding the implementation of legal aid, particularly in relation to the use of the government budget that LAO has been provided. Based on the results of interviews with LAO, the implementation of evaluations sometimes experiences problems in reporting, not only requiring evidence that has been uploaded to the system but also original evidence related to the use of the legal provision budget. In addition, there is a lack of supervisory cooperation with regional governments, particularly in locations where there is already regional legal aid legislation. [12]. Government, in this context, the Ministry of Law and Human Rights as a supervisor, perceived when the monitoring and evaluation process is carried out, it is often found that legal aid recipients do not know and do not recognize the advocates assigned by LAO to accompany them. This issue is for the reason that it is frequently found to be not optimal in the process of LAO providing legal assistance. For instance, in investigations, plenty of legal aid recipients did not receive the full benefits. Advocates only accompanied them in the signing process but were not accompanied directly.



The government must implement legal aid-related policies in order to address numerous LAO issues, such as difficulties in providing impoverished people with legal representation. Concerns with LAO's uneven number distribution, LAO funding for the provision of legal aid, and issues with the monitoring and assessment of LAO's application of legal aid are only a few of the numerous challenges with LAO registration and verification. These issues are specifically connected to the requirements that must be met in order to receive accreditation.

3.2. Government Policy in Overcoming Problems with Legal Aid Organizations in Providing Legal Aid in Indonesia

The presence of LAO as a provider of legal aid, as explained in the first problem formulation, has experienced numerous issues and obstacles in the implementation of providing legal aid. As a consequence, the government needs a role or a strategy that the government must create to deal with these problems. It is possible to develop a policy to address these issues. Policy can be defined as a series of program plans, activities, actions, decisions, attitudes, to act or not to act carried out by the parties (actors), as stages for resolving the problems faced [13]. Policies can come from an actor or a group of actors that contain a series of programs/activities/actions with specific objectives.

The following are some of the policies the government has put forth to address the challenges faced by Legal Aid Organizations (LAO) in providing legal aid to impoverished communities:

- a. Create a sidbankum application system (legal aid information system) to facilitate the registration process for LAOs who will register for the accreditation process for their LAOs.

The National Legal Development Agency's sidbankum application, which was released by the Ministry of Law and Human Rights, could assist in the implementation of legal aid. From registration through access to the evaluation results, legal aid activities can be tracked in this system. Files can be uploaded to Sidbankum without first having to be brought to the Regional Office of the Ministry of Law and Human Rights.

- b. Engage in extensive socialization to inform the larger community and a wider audience about LAO's presence.

Extensive socialization efforts should be made since there are still many people who are unaware that legal aid, a government program that provides legal services to the underprivileged, exists. This socialization is done both directly to those who may require legal aid, such as those in prisons, and within community groups as well. Surely, without assistance from multiple parties, this activity will not be able to function effectively.

- c. Cooperate and coordinate with local governments to share resources for legal assistance, as well as with the Supreme Court through the court's Legal Assistance Post.

As an effort to strengthen this cooperation, an MoU was made with related parties, including the Supreme Court, through the Legal Aid Post Program. Legal Aid Posts are a form of legal service regulated in the Republic of Indonesia Supreme Court Regulation Number 1 of 2014. Legal aid posts aim to provide services in the form of providing legal advice, counseling, and filing lawsuits for the impoverished or those seeking justice.[14]. Collaboration is also carried out with regional governments, especially those that already have regional regulations regarding legal aid. Aside from that, it can also motivate regions to develop and rapidly put into effect legal aid regional legislation where none now exists. Both the central government and the regional governments are accountable for funding



legal aid in regulations. The Legal Aid Law provides space for regions to allocate funds for providing legal aid in the Regional Revenues and Expenditures Budget. [15] Increased funding and access to legal aid services can be provided through collaborating with other parties.

- d. Conduct an LAO screening in the area to confirm accreditation for the upcoming period. Standardization is required for legal aid providers to carry out their services, and it can be obtained through the e-accreditation and verification process. [16] Since LAOs are not dispersed equally, and the LAO verification procedure takes three years, many areas, particularly in eastern Indonesia, do not yet have accredited LAOs. As a result, the National Legal Development Agency condensed the number of LAO distributions in a formation for 2024. As an example, it is not permitted to fill it in Jakarta or other regions where it is already full. These areas are typically those with little to no, if any, LAO. Therefore, it is not just in the provinces, particularly in the eastern or positive regions. To capture and equalize the distribution of LAO, the Minister of Law and Human Rights may specify this in a regulation.

- e. Expanding the ability to provide legal aid.

In addition to advocates as parties who are able to provide legal aid, enhancing the capacity of paralegals is another way to increase the capacity of those who execute legal assistance. Legal Aid Organizations may employ paralegals and advocates to help with legal matters. Paralegals can come from law students or someone who takes paralegal education or training. Paralegals are required to have integrity and understand the basics of law before providing services [17].

4. Conclusion

Legal Aid Organizations, legal aid services providers to the community, have many problems in their implementation, including only accredited legal aid organizations that receive funding from the government, the uneven distribution of legal aid organizations, an imbalance between legal aid recipients, and the number of organizations. Accredited legal aid is the minimal amount of budget obtained by legal aid organizations, as well as procedural problems in terms of reporting and evaluation, which sometimes burden legal aid organizations. In response to these issues, the government has implemented policies that include developing a sidbankum application system (legal aid information system), actively educating the public about LAO, and collaborating and coordinating with local governments on the distribution of legal aid funds. Additionally, the Supreme Court is enhancing the capability of those who provide legal aid by screening LAO in the regions as part of the accreditation verification process for 2024 through the Legal Aid Post in the court area.

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