

# Factors Affecting Legal Aid for the Poor People in Indonesia

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## Abstract

The purpose of this study is to analyze and find the factors that influence legal aid for the underprivileged in Indonesia. This type of research is qualitative research. Research Approach The approach (approach) in this study uses a sociological juridical approach from a sociological point of view as an interpretation or interpretation. Sources of data used in this study are: Primary Data and Secondary Data. Data collection methods through observation, interviews, and literature study. Data analysis technique is qualitative data analysis. The results of the study found that the factors that affect legal aid for underprivileged communities in Indonesia, including legal factors, regarding the accreditation provisions of legal aid institutions causing legal aid agencies in operations to not be able to access budgets from the government, and weak access of the poor to legal aid. the fulfillment of their rights to legal aid, institutionally also experiencing a lack of funding, lack of confirmation on the technique of who is the recipient of legal aid, the standard measure that has been used so far is only a formal measure, namely by showing a certificate of incapacity or SKTM and the like. The next weakness is regarding the technical reporting of legal aid activities by institutions/organizations providing legal aid which requires legal aid organizations to frequently go back and forth to the regional office of human rights law to complete administrative completeness.

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## A. INTRODUCTION

Basically, legal aid is always related to the implications for the fulfillment of legal access for the community. The principles for upholding democracy, human rights and justice are the main mottos in relation to efforts to realize equality before the law as intended above. The human rights of Indonesian citizens are constitutionally guaranteed as regulated in the 1945 Constitution of the Republic of Indonesia.<sup>1</sup>

This condition brings problems when in its implementation various efforts to create legal equality face resistance. The intended resistance is to face conditions in society in the form of structural injustices that occur within the framework of legal injustice. This is an objective condition in society due to the tug-of-war between the interests and struggles of various accesses, from the owners of dominant access in society.<sup>2</sup>

That in society naturally there will always be people who have (the have) and people do not have (the have not). Especially from the economic aspect, the ability to access finance can be measured in a measurable way. The measure is per capita income.<sup>3</sup> Meanwhile, in terms of legal aid aimed at the poor, the size is not only based on economic parameters. This means that there are other measures that are far more basic.

<sup>1</sup>Anis Mashdurohatun, Adhi Budi Susilo, Bambang Tri Bawono, Vol. 56 No.2 Apr.2021, Journal of Southwest Jiaotong University, ISSN: 0258-2724, DOI : 10.35741/issn.0258-2724.56.2.32

<sup>2</sup>Teti Marsaulina. *Bantuan Hukum, Arti dan Peranannya*, Dari: <http://lbh.unpar.ac.id/radio-chevy-103-5fm/bantuan-hukum-arti-dan-peranannya/>.

<sup>3</sup> Central Bureau of Statistics. 2016: One of the important indicators to determine economic conditions in a country in a certain period is Gross Domestic Product (GDP) data, both at current prices and at constant prices. GDP is basically the amount of added value produced by all business units in a particular country, or is the total value of final goods and services produced by all economic units. GDP at current prices describes the added value of goods and services which is calculated using the prevailing prices in each year, while GDP at constant prices shows the added value of these goods and services which is calculated using prices prevailing in one particular year as a basis. GDP at current prices can be used to see shifts and economic structure, while constant prices are used to determine economic growth from year to <https://www.bps.go.id/Subjek/view/id/11>

The next issue concerns goodwill or goodwill. The problem is very basic, when it comes to providing legal aid to the community. This concretely involves many aspects. It is not only technically related to the judicial process, which is a concrete reference in the practice of providing legal aid. Moreover, the issue of legal aid is closely related to a process of legal education (legal education). The concrete thing is how to grow a legal awareness (legal consciousness) so that people understand their rights and obligations in legal relationships in society.<sup>1</sup>

An important element in this position is the level of legal awareness of the community. In this regard, legal awareness with the operation of the law has a close relationship. In connection with the above, for example, it concerns the main criteria that only people who cannot afford. Inability to become a separate problem when applied in the provision of legal aid. In a material sense, the basic inadequacy as a prerequisite for obtaining legal aid is a fundamental element in fulfilling requests for legal aid, within the framework of encouraging the upholding of the principle of equality before the law. The normative requirement is that in law enforcement there is no difference between the wealthy and the poor or the poor.

In the fulfillment of legal aid, especially for the poor, the role of legal aid institutions as Legal Aid Organizations (OBH) which formally provides services is very central. This means that the existence and presence of legal aid organizations is really needed. However, the presence of Legal Aid Organizations cannot be realized immediately. Its existence requires accommodation from various dimensions, both the political dimension in the form of political support, economically with the provision of an adequate budget and the presence of human resources who control problems and the role of other dimensions.

In the development of the concept of legal aid, the Legal Aid Institute (LBH) has changed its regulations, historically normative regulations regarding legal aid and legal aid organizations are currently regulated in the Legal Aid Law, namely Law Number 16 of 2011 concerning Legal Aid. This law is still considered unable to fulfill the nature of legal aid, namely easing the burden for poor people seeking justice (who have problems with the law), including:

1. The normative juridical problem is that there are regulations regarding the accreditation of legal aid organizations that are felt to have not hindered the implementation of legal aid for the poor or underprivileged.
2. Theoretical problems in the form of shifting the concept of Providing Legal Aid, from being unable to pay court fees to being unable to have the right to food, clothing, health services, education services, employment and business, housing.
3. Sociological problems which in this case are related to poor people or groups experiencing difficulties in obtaining Legal Aid, moreover the existence of Legal Aid Organizations or Institutions as legal aid providers must undergo various verification and accreditation processes which are quite difficult, so that the implementation of the realization of the fulfillment of rights community rights for legal aid are neglected.
4. Philosophical problems that with the existence of rules regarding the accreditation of Legal Aid Organizations or Institutions which seem difficult and the accreditation qualifications of A, B and C are not even accredited, thus it shows the value of justice that is not fulfilled, especially the value of justice for the fulfillment of people's rights poor access to legal aid.

Based on the background of the above problems, it is interesting to conduct in-depth research on the factors that influence legal aid for the poor in Indonesia.

## B. RESEARCH METHOD

This type of research is qualitative research<sup>2</sup>. Research Approach The approach (approach) in this study uses a sociological juridical approach from a sociological point of view as an interpretation or interpretation (Interpretation Understanding).<sup>3</sup> In the sociological approach, it is deeper to study phenomena that occur in society, can be seen from the point of view of the implementation or implementation of the law, so this research uses direct research to obtain data as accurate as possible.<sup>4</sup> Related to this research, the sources of data used in this study are: Primary Data, is data obtained from statements and information from respondents directly obtained through interviews and observations. Secondary Data, is legal research data obtained directly from the main source, but the data is obtained through intermediaries or other sources such as books, magazines, and

<sup>1</sup> *Ibid.* hlm. 4

<sup>2</sup> Anis Mashdurohaturun, Zaenal Arifin, The Inconsistency of Parate Execution Object Warranty of Rights in Banking Credit Agreement in Indonesia, International Journal of Applied Business and Economic Research, Vol.15 Issue.20. 2017

<sup>3</sup> Esmi Warassih. Pranata Hukum: Sebuah Telaah Sosiologis, (Semarang: Suryandaru Utama, 2005), page. 23-24. See too Anis Mashdurohaturun, M Ali Mansyur, Product capabilities dynamic on industrial design carved wood in Small and Medium Enterprises (SMES) Jepara furniture in promoting the protection of intellectual property rights, International Journal of Applied Engineering Research, Volume 12, Issue 19, 2017. pp.8217-8226.

<sup>4</sup> Muhammad Zainuddin, Pemahaman Metode Penelitian Hukum (Pengertian, Paraadigma, dan susunan Pembentukan), (Yogyakarta: CV.Istana Agency, 2019), page. 22.

journals, from the secondary data of course it has been grouped as follows: Primary Legal Materials, Legal Materials Secondary, and Tertiary Legal Materials. Data collection methods through observation, interviews, and literature studies. Data analysis techniques are qualitative data analysis is the process of searching for, and systematically compiling data obtained from interviews, field notes and documentation by organizing data into categories, describing them into units, synthesize, arrange into patterns, choose names that are important and will be studied and make conclusions so that they are easily understood by themselves and others. Efforts to validate the data are data triangulation techniques. Triangulation technique is used to check the correctness and interpretation of the data. According to Moleong, triangulation is a technique for checking the validity of data that utilizes something and outside of that it is necessary to check or compare the data. Testing the validity in this study is to use the triangulation of sources.

### C. RESEARCH RESULTS AND DISCUSSION

Various laws and regulations in Indonesia actually regulate, even require, the provision of legal assistance to vulnerable groups who are in trouble with the law, either as perpetrators or victims. Law Number 35 of 2015 concerning amendments to Law Number 23 of 2002 concerning Child Protection regulates children as one of the vulnerable groups who are entitled to legal protection in the form of legal assistance. Article 17 paragraph (1) letter b of the Child Protection Law states that "every child who is deprived of his freedom has the right to: b) obtain legal aid or other assistance effectively in every stage of the applicable legal remedy". Likewise, if a child is in a position as a victim, Article 18 of the Child Protection Law says "every child who is a victim or perpetrator of a crime has the right to get legal assistance and other assistance", this is also reinforced in Article 3 letter d jo. Article 23 paragraph (1) of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System. Meanwhile, Law Number 18 of 2017 concerning the Protection of Migrant Workers. In Article 6 paragraph (1) letter g it is stated that "every prospective Indonesian migrant worker or Indonesian migrant worker has the right to obtain legal protection and assistance for actions that degrade his dignity and status in accordance with the provisions of the laws and regulations in Indonesia and in the country of placement destination".

Law Number 8 of 2016 concerning Persons with Disabilities also regulates the rights of Persons with Disabilities to Legal Assistance, it is even said that it must be fulfilled, namely precisely in article 29 which reads "...The government and local governments are obliged to provide legal assistance to persons with disabilities in every examination at every law enforcement agency in civil and/or criminal matters in accordance with the provisions of laws and regulations.". Meanwhile, Law Number 23 of 2004 concerning the Elimination of Domestic Violence (UU PKDRT) provides regulations regarding the rights of victims of Domestic Violence (KDRT) to obtain legal assistance, namely in Article 10 letter e of the PKDRT Law which states "...The victim has the right to receive legal assistance. assistance by social workers and legal assistance at every level of the examination process in accordance with the provisions of the legislation."

The PKDRT Law and Law Number 21 of 2007 concerning the Crime of Trafficking in Persons (UU PTPPO) add the right to be accompanied by a 'companion' during the judicial process. However, the role of this facilitator refers more to psychological strengthening and other victim services, not in terms of ensuring procedural legal procedures run properly or taking legal action on behalf of women who are in conflict with the law. The presence of this companion is also limited to victims of domestic violence and the crime of trafficking in persons (TPPO), while for other forms of gender-based violence there is no guarantee of the right to be accompanied by assistance.

Within the legal framework for the protection of witnesses and victims, in accordance with the provisions of Law Number 13 of 2006 concerning the Protection of Witnesses and Victims (UU PSK), which was further amended by Law Number 31 of 2014 (UU Amendments to PSKs), as confirmed in Article 3 of the PSK Law states that several principles that form the basis for the protection of witnesses and victims include justice, non-discrimination, and legal certainty. Furthermore, Article 4 of the PSK Law states that "...Witness and victim protection aims to provide a sense of security to witnesses and/or victims in providing information in every criminal justice process...". Article 5 Paragraph (1) of the PSK Law, which is reaffirmed in the PSK Amendment Act, emphasizes that in a trial process witnesses and victims are entitled to legal assistance and assistance in legal proceedings. In Paragraph (2) and Paragraph (3) of the Law on Amendment to PSK it is explained that these rights apply to witnesses and victims of criminal acts, as well as witnesses to perpetrators, reporters, and expert witnesses. The PSK Law provides a more comprehensive guarantee for the rights of victims, including the right to obtain legal advice (Article 5 of the PSK Law).

Legal Protection Theory defines legal protection as providing protection for human rights that are harmed by others and that protection is given to the community so that they can enjoy all the rights granted by law or in other words legal protection is various legal remedies that must be provided by the authorities. law enforcement agencies to provide a sense of security, both physically and mentally from harassment and various threats from

any party.<sup>1</sup> Legal protection is the protection of the dignity and worth, as well as the recognition of human rights owned by legal subjects based on legal provisions from arbitrariness or as a collection of rules or rules that will be able to protect one thing from another. With regard to consumer protection, for example, it means that the law provides protection for the rights of customers from something that results in the non-fulfillment of these rights.<sup>2</sup> As stated by Sunaryo, one of the fundamental weaknesses in law enforcement in Indonesia is that legal protection for victims of crime is not adequately regulated. This results in the neglect of the rights of crime victims in the process of handling criminal cases and a lack of attention to the consequences that must be borne by victims of crime.<sup>3</sup>

The victim in the Criminal Procedure Code (KUHAP) only serves as a witness (victim witness) who provides information about what has been experienced in connection with a criminal act committed by the suspect/defendant to make light of a criminal act. The testimony of the victim's witness is one of the evidences in the trial. The position of the victim is not a party in a criminal case, the interests of the victim are considered to have been represented by the state, through its apparatus, namely the police and prosecutors. However, the position of the victim is not a party in a criminal case resulting in their rights not getting adequate protection.

In the Criminal Procedure Code, the rights of victims of criminal acts in a criminal justice process consist of:

- a. The right to exercise control over investigators and public prosecutors. This right is the right to file an objection to the termination of an investigation and/or prosecution in its capacity as an interested third party (Article 77 of the Criminal Procedure Code).
- b. The right to claim compensation due to criminal acts that befell the victim through merging civil cases with criminal cases (Articles 98 - 101 of the Criminal Procedure Code). charged against him.
- c. The right of the victim's family to allow or not allow the police to carry out an autopsy (Articles 134-136 of the Criminal Procedure Code).

There is no article that guarantees the right of legal assistance for victims in facing criminal justice or the rights of victims to obtain protection and recovery due to criminal acts. This proves that the protection of the rights of victims in the Criminal Procedure Code is still subordinated to the perpetrators. In addition to the limited rights, victims have an obligation to:

- a. Come, when called by investigators (Article 112 paragraph (2) of the Criminal Procedure Code).
- b. Provide true information (Article 116 paragraph (2) of the Criminal Procedure Code).
- c. Take an oath/promise (Article 160 paragraph (3) and (4) of the Criminal Procedure Code).
- d. Present at the hearing (Article 167 paragraphs (1) and (2) of the Criminal Procedure Code).
- e. Be calm in the trial (Article 167 paragraph (3) and Article 217 paragraph (2) of the Criminal Procedure Code).
- f. Respect the court (Article 218 paragraph (1) and Article 232 paragraph (2) and (3) KUHAP).
- g. Be a witness (Article 159 paragraph (2) of the Criminal Procedure Code).

However, in fulfilling their obligations, the victim must be alone when dealing with the perpetrator or his lawyer and law enforcement officers. It is assumed that the victim seems to have been represented by the state in this case through its law enforcement officers. In fact, in the structure of a patriarchal society, especially in cases related to violence against women, women experience a process of re-victimization due to stereotypes that have been built up due to differences in gender roles. Likewise, limited knowledge, the domestic role that is carried out and the perception of law enforcement agencies as scary things, cause women as witnesses not to be free to give information. This obligation is not matched by the victim's right to seek redress. As a result, even though the perpetrator of the crime has been sentenced to criminal sanctions by the court, the victim's condition has not recovered as before.

Given the relative lack of optimal protection of the rights of witnesses and victims to obtain legal assistance in the Criminal Procedure Code, it is unfortunate when the provisions of the Legal Aid Law (which should strengthen the rights of victims/witnesses) have not fully adopted guarantees for the right to legal assistance for witnesses/victims, as provided for in the PSK Law, for example. The Law on Legal Aid does not explicitly state that the right to legal aid in litigation includes the right to legal aid for victims in every judicial process. This can be seen, among other things, from the financing system set by the government for legal aid providers. The financing is regulated in the Decree of the Minister of Law and Human Rights Number M.HH-01.HN.03.03 of 2015 concerning the Amount of Litigation and Non-Litigation Legal Aid Fees. Based on the Ministerial Decree, the maximum litigation cost for criminal and civil cases is Rp. 5,000,000 (five million rupiah), while for non-litigation activities such as legal counseling, legal consultation, mediation, negotiation, and others, the cost varies from Rp. 140,000 (one hundred and forty thousand rupiah), up to Rp. 3,740,000 (three million seven hundred forty thousand rupiah). Of the non-litigation funds for legal assistance for victims, only Rp.140,000 for one

<sup>1</sup> Satjipto Rahardjo, 2000, *Perlindungan Hukum*, Bandung: Citra Aditya Bakti, page. 74.

<sup>2</sup> Philipus M. Hadjon, *Perlindungan Hukum bagi Rakyat di Indonesia: Sebuah Studi Tentang Prinsip-Prinsipnya, Penanganannya oleh Pengadilan dalam Lingkungan Peradilan Umum dan Pembentukan Peradilan Administrasi Negara* (Surabaya: PT. Bina Ilmu, 1987), page. 25.

<sup>3</sup> Sidik Sunaryo, 2005, *Kapita Selekta Sistem Peradilan Pidana*, Malang: UMM Pers, page. 2.

consultation per victim, and assistance outside the court only 1 time amounting to Rp. 100,000. The problems of the lack of legal aid budget from the State Revenue and Expenditure Budget (APBN) and not being able to meet the operational costs of providing legal aid, are as follows:

- a. In addition to being minimal, the litigation budget has in fact not calculated legal processes that require separate costs, which ultimately must be borne by Legal Aid Organizations (OBH), such as:
  - 1) pre-trial;
  - 2) judicial review;
  - 3) local inspection;
  - 4) application for confiscation;
  - 5) subpoena;
  - 6) execution;
  - 7) aanmaning;
  - 8) expert witness and translator fees
  - 9) simple lawsuit, can be directly appealed (but not covered, because the re-imburement system requires an appeal).
  - 10) pay the case
  - 11) obtain a copy of the decision (in practice, a large photocopy fee is still required and often without proof of payment receipt).
- a. The litigation budget does not separate operational costs and legal aid services. Operational costs should be calculated separately based on different needs and situations in the field.
- b. There is no litigation budget for victims. In criminal litigation, the majority of OBH provide legal assistance to victims, but only suspects have access to criminal litigation funds. During the investigation, and other legal assistance processes needed for the victim, bank funds were not accommodated.
- c. Non-litigation budgets, such as small consultations and out-of-court assistance, are not able to meet the victims' needs, such as the cost of making a *visum et repertum*<sup>1</sup> and *visum et psychiatry* or a psychologist's certificate, assistance needs or costs incurred while the victim is in the recovery process. Based on the experience of LBH APIK Jakarta, to provide legal assistance to victims of violence, it takes a minimum of 3 (three) months, with a large budget, which is around Rp. 5,000,000 to Rp. 10,000,000 for costs during the examination process at the police, prosecutor and court levels. Thus, the budget provided by the central government is still very minimal, especially for victims who are only able to access the non-litigation budget, which is even smaller in number than the litigation budget. In essence, the budget provided by the state for victims is insufficient and cannot fulfill the right to effective and quality legal aid.

Although it is not explicitly stated that legal aid is only for suspects/defendants, the difference in the amount of budget and accreditation between litigation and non-litigation legal aid shows the subordination of legal aid rights for witnesses/victims. The difference in the guarantee of legal aid rights between the suspect/defendant and the victim shows that the position of the suspect/defendant is prioritized, while the fulfillment of the victim's right to assistance is subordinated to fulfillment. As a result of the difference in the guarantee of legal aid rights between the suspect/defendant and the victim, the victim as the party who suffers the most in a criminal act does not get as many rights as is given by law to the suspect/defendant. The victim is not given the right to be actively involved in the investigation process until the trial, so that he loses the opportunity to fight for his rights and recover his condition as a result of the crime he experienced. Legal aid that is not victim-oriented (especially litigation), causes victims to have their rights to access justice hampered.

Through effective and quality legal assistance, the rights of other victims such as the right to recovery, compensation, or restitution can be fulfilled. In other cases, legal aid will also protect victims from discrimination, re-victimization and intimidation, such as intimidation to withdraw a report, or intimidation that endangers the safety of the victim. By getting legal assistance, the victim will get legal information about the legal procedures to be followed, guarantees of their rights and how to claim them. This gives victims the confidence to be witnesses and claim their rights. Thus, basically legal assistance to victims will assist law enforcement officers in bringing justice to citizens. Considering that legal assistance and assistance for victims is very important in seeking a sense of justice for victims,<sup>2</sup> access to legal aid for them must also be opened as widely as possible in the legal aid law as a means of expanding access to justice.

1. Legal Aid Law Complements and Synchronizes Legal Aid Guarantees.

With the aim of prioritizing access to justice for citizens, the Law on Legal Aid must contain provisions for

<sup>1</sup> Josephin Mareta. 2016. "Mekanisme Penegakan Hukum dalam Upaya Perlindungan Hak Kelompok Rentan," Jurnal HAM 7, no. 2 (2016), page. 150.

<sup>2</sup> Penny Naluria Utami. 2016. "Optimalisasi Pemenuhan Hak Korban Kekerasan terhadap Perempuan Melalui Pusat Pelayanan Terpadu," Jurnal HAM 7, no. 1 (2016), page. 65.

existing legal aid rights, namely Law Number 23 of 2004 concerning Elimination of Domestic Violence, Law Number 23 of 2002 concerning Child Protection (Child Protection Law), Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, Law Number 8 of 2016 concerning Persons with Disabilities, Law Number 13 of 2006 concerning the Protection of Witnesses and Victims, as well as Perma Number 3 of 2017 concerning Guidelines for Prosecuting Women in Conflict with the Law. So that the recipients of legal aid are not only economically poor groups, but also include vulnerable groups of people.

## 2. Expanding the Definition of Legal Aid Recipients

Everyone has the right to be treated equally before the law (equality before the law). For those who cannot afford to be clearly protected by the principle "The poor and neglected children are cared for by the State as referred to in Article 34 of the 1945 Constitution of the Republic of Indonesia. Thus, the fulfillment of the right to legal aid, which is a very fundamental human right, is basically a responsibility. state answer. According to the Law on Legal Aid, legal aid is only given to the poor, namely "Every person or group of poor people who cannot fulfill their basic rights properly and independently, tends to be interpreted as the right to food, clothing and health services. With this definition, to obtain legal aid services through the scheme of the Law on Legal Aid, applicants for legal aid must show documents that validate their poor status, such as a Certificate of Disability (SKTM) or other documents such as the Community Health Insurance Card (JKM), Direct Cash Assistance (BLT), Poor Rice Card, or other documents in lieu of a poor certificate. Although poverty is recognized as a vulnerability, it must be realized that the poor are not the only vulnerable group in Indonesia. There are groups such as: women, children, minorities, persons with disabilities, or indigenous peoples who because of their social structure are discriminated against and marginalized. By limiting the right to legal aid only to the economically poor, the national legal aid policy, closes access for vulnerable groups to justice.

Those belonging to vulnerable and marginalized groups are actually also entitled to legal assistance. So it is necessary to expand the Law on Legal Aid to cover vulnerable and marginalized groups. Next, determine priorities in providing legal services to legal aid recipients by looking at the urgency of legal aid recipients as well as how much impact they get as a result of the treatment they get. It is necessary to expand this understanding so that field implementers have strict guidelines for determining the recipients of legal aid to be handled.

The Government of the Republic of Indonesia through the Ministry of National Development Planning Agency/Bappenas RI, has actually established the National Strategy for Access to Justice for 2016-2019 (SNAK). The SNAK has actually expanded the target focus of the government's legal aid program, which includes not only the poor but also marginalized groups, namely the community, children, and women with disabilities, as well as communities, children and women who need special protection such as victims of violence, minorities, indigenous peoples, agricultural laborers, plantation workers and fishermen. Therefore, the implementation of the Law on Legal Aid should ideally be in line with the national strategy for access to justice.

Ideally, the provision of legal aid should also be expanded to include vulnerable groups as recipients of legal aid. However, currently the expansion of legal aid to cover vulnerable groups is still hampered by the currently unclear definition and criteria of vulnerable groups. The definition of the concept of "vulnerable group" does not seem to have been explicitly formulated in various laws and regulations in Indonesia. Referring to the Big Indonesian<sup>1</sup> Dictionary, vulnerable has the definition as:

- (1) susceptible to disease and
- (2) sensitive, easy to feel.

This weak group is usually unable to help themselves, so they need the help of others. In addition, vulnerable groups are also defined as groups that are easily influenced. Article 5 paragraph (3) of Law Number 39 of 1999 concerning Human Rights, for example, states that every person belonging to a vulnerable community group has the right to receive more treatment and protection with respect to his specificity. The definition of vulnerable groups based on the law includes, among others, children and women victims of violence, the elderly and pregnant women. We must also understand that those belonging to the marginalized group are usually also classified as poor. However, marginalized and poor are not necessarily the same. Poor people usually belong to the marginalized group, but marginalized people cannot always be called poor.<sup>2</sup> According to the Big Indonesian Dictionary, marginal is something related to borders, while marginalization is marginalizing or cornering. Marginal people are people who are marginalized or marginalized from social life in a society.<sup>3</sup> The marginal groups, among others, are people with disabilities, commercial sex workers (PKS) who experience discrimination, children and women who experience discrimination and exploitation as well as

<sup>1</sup> Departemen Pendidikan Nasional. 2002. *Kamus Besar Bahasa Indonesia*, 3rd ed. Jakarta: Balai Pustaka, page. 9.

<sup>2</sup> Hetifah Syaefudin, "Kelompok Marjinal di Perkotaan: Dinamika, Tuntunan, dan Organisasi," [okumen.tips/documents/kelompok-marjinal-diperkotaan-dinamika-tuntunan-dan-organisasi.html](http://okumen.tips/documents/kelompok-marjinal-diperkotaan-dinamika-tuntunan-dan-organisasi.html), accessed on 06/03/2022

<sup>3</sup> Ikhwan Fahrudin, "Kaum Marjinal Tanggung Jawab Siapa?," <http://bloktuban.com/2018/06/02/kaum-marjinaltanggungjawab-siapa/>, accessed on 06/03/2022

people living with HIV (PLWHA) and children living with HIV (ADHA). Moreover, conditions in the field also show that vulnerable groups are often faced with difficulties in obtaining a Certificate of Disability (SKTM) which is a requirement for obtaining legal assistance.

Restrictions on the provision of legal aid based on the SKTM also have an impact on OBH which prioritizes cases with the dimensions of human rights violations or cases of a specific nature, such as women victims of violence, children, persons with disabilities, consumer rights, and rights to natural resources. This kind of OBH is often unable to access the Legal Aid Law financing schemes in cases of human rights violations against individuals or groups who do not meet the criteria for obtaining an SKTM. Data from LBH APIK Jakarta, one of the OBH that provides legal assistance with a Gender Structural Legal Aid (BHGS) approach, for example, shows that, throughout 2018, LBH APIK Jakarta has provided legal assistance in 837 cases of domestic violence, discrimination or violence against women and girls groups. children, minorities, evictions, torture, employment. However, the financing of legal aid for these vulnerable groups cannot use the current legal aid funding scheme under the Legal Aid Law. This is because these victims cannot always be categorized as economically poor (based on the SKTM), but in general they also cannot be categorized as people who can afford the services of an advocate. So, in the end, vulnerable groups, especially women and child victims from vulnerable groups, cannot access justice through legal assistance.

The Supreme Court has actually issued Perma Number 3 of 2017 concerning Guidelines for Adjudicating Cases of Women Facing the Law, defining women in conflict with the law as “women in conflict with the law, women as victims, women as witnesses or women as parties.” This means, in the criminal justice system, women who are in conflict with the law are those who are: (1) Suspects/Defendants; (2) Victims and (3) Witnesses. As for civil courts or State Administration (TUN), women who are in conflict with the law are those who are: (1) Plaintiffs; (2) the Defendant; (3) Witness; or (4) Intervention party (third). This understanding can be used to discuss the right to legal assistance for women who are in conflict with the law, whether in the realm of criminal law, civil law or state administration.

Thus, the provisions of Article 1 Paragraph (2) of the Legal Aid Law which reads: “...Recipients of Legal Aid are poor people or groups of people...” should be changed to: “...Recipients of Legal Aid are people who cannot afford legal advisory services...”.

Meanwhile, the provisions of Article 5 of the Legal Aid Law which reads: “...Recipients of Legal Aid as referred to in Article 4 paragraph (1) include any person or group of poor people who cannot fulfill their basic rights properly and independently. (2) The basic rights as referred to in paragraph (1) include the right to food, clothing, health services, education services, employment and business, and/or housing...” changed to: “...Recipients of Legal Aid as referred to in Article 4 paragraph (1) includes every person who is unable to pay for legal advisory services and fulfills basic rights properly and independently. (2) The basic rights as referred to in paragraph (1) include the right to food, clothing, health services, education services, employment and business, and/or housing. (3) Recipients of Legal Aid as referred to in paragraph (1) also include and are not limited to minority and vulnerable groups such as women, children, persons with disabilities, indigenous peoples, and the elderly...”

Enhancement of Litigation and Non-Litigation Assistance to Victims In the legal aid system built under the Law on Legal Aid, legal aid services provided by OBH include litigation and non-litigation legal services. According to Article 1 paragraph 5 of the Law on Legal Aid, litigation is the process of handling legal cases that are carried out through the courts to resolve. The realm of providing legal assistance for litigation is assistance and/or exercising power starting from the level of investigation, investigation and prosecution. Assistance and/or exercising power of attorney in the examination process at trial and assistance and/or exercising power of attorney against Legal Aid Recipients in the State Administrative Court.<sup>1</sup> Furthermore, according to Article 1 paragraph 6 of the Law on Legal Aid, it is stated that Non-Litigation is the process of handling legal cases carried out outside the court to settle. The realm of non-litigation legal aid includes the provision of legal aid in a non-litigation manner that can be carried out by advocates, legal, lecturers and students of law faculties within the scope of legal aid providers that have been verified and accredited. The provision of legal aid on a non-litigation basis includes activities of (1) legal counseling; (2) legal consultation; (3) case investigation; (4) legal research; (5) mediation; (6) negotiation; (7) community empowerment; (8) assistance outside the court; and/or (8) drafting of legal documents.<sup>2</sup> Non-litigation assistance activities outside the court should also be changed into litigation assistance due to the legal process against the complainant/victim which also reaches the court process.

As previously explained, the implementation of legal aid based on the Law on Legal Aid currently seems to prioritize litigation assistance and a larger allocation of funding for assistance for perpetrators. Legal assistance in the implementation of legal assistance for people who are victims of criminal acts is still considered unbalanced when compared to legal assistance for perpetrators of criminal acts. Article 4 paragraph (1)

<sup>1</sup> BPHN. 2014. Implementasi Undang-Undang Nomor 16 Tahun 2011 tentang Bantuan Hukum, Jakarta.

<sup>2</sup> Ibid, hlm. 122

Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 10 of 2015 concerning Implementing Regulations of Government Regulation Number 42 of 2013 concerning Terms and Procedures for Providing Legal Aid and Distribution of Legal Aid Funds Legal aid in litigation in handling criminal cases is given to recipients of legal assistance with the status of suspects, defendants and convicts who submit ordinary legal remedies or extraordinary legal remedies. While the legal assistance provided to victims only touches on non-litigation activities such as legal consultations and reporting at the police level, in fact victims are also entitled to legal assistance in the form of legal assistance or legal advice at trial so that the rights of victims are still fulfilled. Conditions in the field indicate that OBH who provide assistance to victims at the police level to court level, and assist victims outside the court process often have difficulty accessing legal aid funds, due to the lack of budget for victim assistance. Based on assistance data from LBH APIK Jakarta which focuses on assisting women and children victims of violence, within a period of 3 (three) years starting from 2016-2018 there were 2339 cases that were accompanied by litigation and non-litigation. Meanwhile, from the number of cases above, only 78 cases were financed by the central government's legal aid program.

In fact, efforts to fulfill the rights of victims carried out with legal assistance are actually very important. According to Arif Gosita,<sup>1</sup> what is meant by victims are those who suffer physically and spiritually as a result of the actions of others that are contrary to their own interests or other people who seek to fulfill the interests of themselves or others that are contrary to the interests of the suffering human rights. When viewed from the victim's point of view, the victim also needs the presence of an advocate to be able to maintain a balance in his position so that the victim's position can be seen to be in balance with the perpetrator. This is due to the view that in the criminal justice process the position of the victim is often seen as a weak party and even less attention is paid to it. Whereas the position and existence of this victim should be the central axis of the criminal justice process because it is the justice of the victim who is injured by the perpetrator who ultimately undergoes the criminal justice process. Besides being able to reduce the suffering of victims of the crime they experienced, legal assistance to victims is also expected to prevent ongoing intimidation of victims so as to reduce the level of crime and not result in ongoing victims. So, it is very ironic when, the legal assistance provided to the victim turns out to be in the form of non-litigation activities such as legal consultation and assistance outside the court at a lower cost. Legal aid services must also be able to accommodate the needs of both out-of-court settlement of cases for pre- and post-trial legal aid recipients, such as the needs of victims outside the court requiring medical examination activities such as *visum et repertum* financing which to this day is still borne by the complainant/victim. when the complainant/victim is a person with a disability such as deafness, then a linguist and psychological examination by a psychologist are needed which until now is difficult to obtain for free and also a safe house. Apart from that, the form of pre- and post-trial litigation against victims requires legal strengthening, empowerment of victims so that they do not become victims again.

There are many weaknesses in the implementation of providing free legal aid to poor justice seekers in Indonesia. First, the development of the University Legal Aid Bureau (BBH) is due to cultural barriers. There are several things that caused the Legal Aid Bureau at the Law Faculties of State Universities to decline, including:<sup>2</sup>

1. Concentration of divided lawyers

At BBH, lawyers are lecturers who have the main task as teaching staff who must prepare themselves with comprehensive legal knowledge so that they can carry out their obligations to teach. This causes their thoughts and energy to be consumed so that they cannot divide their time to become advocates who help underprivileged people. Because to be a reliable advocate, seriousness and full concentration are needed.

2. The Legal Aid Bureau in Higher Education is "non-profit oriented" while the income level of Lecturers is low

The position of Lecturers with limited income to non-profit oriented BBH is seen as very difficult to implement compared to Professional Advocates with abilities that can be said to be comparable to the abilities of lecturers. This causes Lecturers to be not serious in implementing BBH and prefer to open an independent Professional Law Bureau or become expert staff of a leading law firm with a fairly large income level. As a result, the Legal Aid Bureau at State Universities relies on students who technically and mastery of legal materials are still limited and untested in society so that justice seekers are often disappointed with the BBH service.

3. Limited Funding

The existence of limited funds allocated by universities to BBH which did not meet basic needs hampered the development of BBH.

4. Professionalism of advocates at BBH at State Universities

The implementation of a legal higher education curriculum that is less supportive and does not direct advocates at BBH when they are still in college, to develop competence or legal skills as legal practitioners,

<sup>1</sup> Siswanto Sunarso. 2012. *Viktimologi dalam Sistem Peradilan Pidana*. Jakarta: Sinar Grafika, page. 31.

<sup>2</sup> Frans Hendra Winarta. *Hukum Penyelesaian Sengketa Arbitrase*. Nasional Indonesia & Internasional, Sinar Grafika, Jakarta. 2011. page. 58.



has created new problems for advocates at BBH in dealing with legal issues. On the other hand, in their capacity as lecturers, they are required to develop their skills and abilities as scientists. This is what causes the lecturers or advocates to develop into experts who tend to be only competent as intellectuals and academics who lack depth and understanding of the practices, duties, and responsibilities of a professional advocate.

#### 5. Lack of public trust

Starting from the limitations of BBH in State Universities as stated in the previous points, this has led to a lack of public trust in BBH to handle their problems. This condition is also supported by the birth of NGOs in the field of legal aid initiated by legal figures who are very concerned about the protection of human rights and the interests of the small people who are very oppressed by the regime in power.

Second, the acquisition of a Certificate of Incapacity (SKTM) which is issued by an authorized official such as the Lurah, Village Head, or an official equivalent to the domicile of issuing the letter is often a problem in the procedure for providing free legal aid. Of the number of LBHs that the author managed to attend, all of them stated that obtaining the SKTM was one of the biggest obstacles in providing free legal aid. Indeed, in the end the SKTM will be given by the official. However, the time span of the SKTM application and the SKTM issuance time causes disruption to the dispute resolution process being applied for because the application can only be processed if the requirements are complete. In the case of the applicant coming from outside the city where the application for legal aid is submitted, it is also an obstacle that is routinely faced by the free legal aid provider.

On the issue of obtaining an SKTM, where if an applicant wants to apply for legal assistance, it is free to have an Identity Card (KTP) outside the city of Medan so that he is required to return to the city as stated on the ID card. Here is the problem, the applicant who does not have the money to return to his hometown does not have the cost of the fee, so he is prevented from applying for free legal aid." The position of the applicant for the SKTM letter should not be complicated by the government because it is considered to have no humanity, but it returns to the reason why SKTM is needed. Based on the author's research, the reason for the rejection of the issuance of the SKTM is the question of why it must be outside the city where the application resides. This is one of the reasons for the SKTM rejection by the Kelurahan/Village Head. The unavailability of funds to return to the city of residence in accordance with the ID card should be a consideration in issuing the SKTM.

Lastly, the implementation of the provision of legal aid is not rural oriented. In fact, the legal aid movement is a form of struggle for human rights for the underprivileged, which is definitely more needed in the lower social structure. Not only this reason, Indonesia in Pancasila states that the ideals of the Indonesian people are: Social justice for all Indonesians. So, if the provision of free legal aid is only oriented to the city, can the poor in the interior be able to taste the exalted justice. "The purpose of legal aid thus needs to be expanded not only to individual legal aid but also to structural not only 'urban' but also 'rural'.<sup>1</sup>

The mistake of the legal aid movement in Indonesia so far is that our legal aid movement is too individual and urban. In fact, if we want to talk about human rights, it is the poor people from the lower structures who live in rural areas. It is time for our legal aid movement to actively come to the countryside and do legal aid work in the broadest sense. We should not be shackled to mere formal channels, because there are many informal channels that have time to be addressed.

## D. CONCLUSION

Factors that affect legal aid for underprivileged communities in Indonesia are including legal factors, regarding the provisions for accreditation of legal aid institutions causing legal aid agencies in operation to be unable to access government budgets, and weak access of the poor to the fulfillment of their rights to legal aid. Legal aid, institutionally also experienced a lack of funding, lack of confirmation of the technique of who is the recipient of legal aid, the standard measure that has been used so far is only a formal measure, namely by showing a certificate of incapacity or SKTM and the like. The next weakness is regarding the technical reporting of legal aid activities by institutions/organizations providing legal aid which requires legal aid organizations to frequently go back and forth to the regional office of human rights law to complete administrative completeness.

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<sup>1</sup> Abdul Hakim G. Nusantara dan Mulayana W. Kusumah. 1981. *Beberapa pemikiran Mengenai Bantuan Hukum: Kearah Bantuan Hukum Struktural*, Bandung: Alurni, page.13.

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