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Dynamics Of Legal Aid Provision In The Indonesian Criminal Justice System: A Comparative Study Of The Netherlands, Australia, And South Africa

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Abstract: The Dynamics of Legal Aid Provision within the Legal System Aimed at Providing Limited Access to Justice and Referring to Core Principles Including Presumption of Innocence, Right to Know the Nature of Charges Against the Defendant, and Ability to Effectively Defend Against Those Charges in a Fair and Open Trial by an Independent and Impartial Court. The legal research method used in this study is normative juridical research that refers to the legal basis related to legal norms applicable in a country. This research approach uses legislative and comparative approaches regarding legal aid provision in Australia, the Netherlands, and South Africa. The research findings indicate that legal aid provided by lawyers representing their clients to provide legal assistance is at the core of the right to fair trial and must be provided to anyone as a concrete manifestation of the principle of equality before the law. Therefore, access to justice is not only for those with high social status but also for lower- and middle-class individuals who have economic limitations and have the same right to be treated fairly under the law. Based on these aspects, this paper will comprehensively discuss legal aid provision in the criminal justice system in the Netherlands, Australia, and South Africa.

Keywords: Legal Aid, Legal Comparison, Criminal Justice System

INTRODUCTION

In various countries, the inability to control crime and social welfare policies has increased the demand for legal services significantly, thereby increasing the unmet legal needs. The accessibility of legal services in all jurisdictions has had a significant impact on the provision of legal assistance, allocating resources to community law centers that provide free legal services to the poor who require legal aid services for free.¹ The implementation of legal aid in criminal court proceedings is widely considered as the core of criminal justice. This is the stage where the prosecution's case against the defendant is tested, the defendant is

¹ Elizabeth Stanley and Jude McCulloch (eds), *State Crime and Resistance* (Routledge, 2013): 168.

acquitted or sentenced, and if applicable, punishment is imposed. In this regard, the courtroom trial is seen as the focal point to ensure that overall fair trial is achieved. Based on this view, a fair trial is defined by how the court proceedings are conducted and the subsequent funding and provision of legal aid are targeted towards this stage of the legal process.

Legal aid in Indonesia has undergone many changes over time, from the colonial era to the independence era and to the Reform era. In fact, legal aid has been practiced in Western societies since the Roman era, where it was primarily seen as a noble undertaking in the realm of morality, especially in assisting people without expecting any remuneration or honorarium.² According to Buyung Nasution, formal legal aid in Indonesia has been in place since the Dutch colonial era, which began in 1848 when significant changes occurred in Dutch legal history. Based on the principle of concordance, with the decree of the King dated 16 May 1848 No 1, the new laws in the Netherlands were also applied to the Dutch East Indies government (then known as the Dutch East Indies), including regulations regarding the structure of the judiciary and the policy of the judiciary (Reglement op de Rechterlijke Organisatie en het beleid der justitie), commonly abbreviated as RO. Considering that it was only in this legal regulation that the "Advocate institution" was first regulated, it can be estimated that formal legal aid began to be implemented in Indonesia at the beginning of independence, and it was initially limited to Europeans in the Road van Justite courts. Meanwhile, the first Indonesian advocate was Mr. Besar Mertokoesoemo, who opened his office in Tegal and Semarang around 1923.³

During the Dutch colonial period in Indonesia, the provision of legal aid actually laid the legal basis for legal aid in Indonesia, which was regulated in the HIR (Herziene Inlandsche Reglementen or Revised Indigenous Regulations). The legal basis for legal aid was stipulated in Article 250 paragraphs (5) and (6) of the HIR, with limited scope. This means that in practice, this article prioritized Dutch nationals over Indonesians, who were then commonly referred to as Inlanders. Additionally, the effectiveness of this article was limited to situations where lawyers were willing to defend those accused and facing death penalty or life imprisonment. However, in practice, the HIR was not fully implemented; rather, it served as a guideline that seemed to be accepted in practice. New legislation regarding procedural law had not yet been enacted, and it seems that the HIR continued to be considered a guideline until the enactment of Law No. 14 of 1970 concerning the Basic Law of Judicial Power through Articles 35, 36, and 37, which regulate the guarantee of the right to legal aid as guaranteed by law.⁴ Based on the above description, this writing will later explain the principle of legal aid in legal systems in several countries. The legal aid applicable in Indonesia will be compared to highlight the differences in providing legal aid. Legal aid is provided free of charge to individuals in need of such services.

METHOD

This legal research method utilizes a juridical approach. The method involves comparing legal aid systems in several countries with a focus on their underlying principles, practical implementation, and impact on justice within the judicial system. The research will compare various aspects of legal aid, including accessibility, funding, types of services provided, and the process of providing legal aid, among the selected countries. Analysis of legal documents, research reports, and publications related to legal aid systems in the chosen countries will be conducted. These documents will be used to gain a deeper understanding of

² Bambang Sunggono, dan Aries Harianto, *Bantuan Hukum dan Hak Asasi Manusia*, (Bandung: Mandar Maju, 1994): 11

³ Bambang Sunggono, dan Aries Harianto, *Bantuan Hukum dan Hak Asasi Manusia*, (1994): 12

⁴ T. Mulya Lubis, *Bantuan Hukum dan Kemiskinan Struktural*, (Jakarta: LP3ES, 1986): 82

the legal framework governing legal aid, the policies implemented, and the performance evaluation of the legal aid system.

RESULTS AND DISCUSSION

Dynamics of Legal Aid Within Indonesia's Legal Framework

Legal aid in the reform era plays a significant role as LBH (Legal Aid Institute) has successfully built a broad coalition with grassroots communities (eviction victims), environmental ORNOP communities (such as WALHI and SKEPHI), and other legal aid organizations (YBKS/YAPHI, KSBH, Yayasan Sosial Bakti Mangkumegaran, and GPS). Brown and Fox (2000) even indirectly assess the central role of LBH (specifically YLBHI) in coordinating the ORNOP network as unique in the history of civil society coalitions against massive World Bank projects. Comparing eight cases of civil society coalitions resisting the World Bank in Asia and Latin America, Brown and Fox found central involvement of legal aid organizations only in the Kedung Ombo case.⁵

The development of legal aid in Indonesia has accelerated with the establishment of Legal Aid Institutes and mandatory legal aid organizations, which are entitled to legal protection. This led to the enactment of Law Number 16 of 2011 concerning Legal Aid. By definition, as stipulated in Article 1 paragraph (1), Legal Aid is legal services provided free of charge by the Legal Aid Provider to the Legal Aid Recipient. This means that when interpreted grammatically, there is no fee received by the legal aid provider. The legal aid provider can be a legal aid institution or a community organization that provides Legal Aid services based on this Law to impoverished individuals as recipients of such legal aid. The provision of free legal aid is given because obtaining legal aid services is costly, and impoverished individuals cannot afford to pay for lawyers to provide assistance or representation in legal proceedings faced by suspects or defendants.⁶

The provision of legal aid in Indonesia is specifically regulated by Law Number 16 of 2011 concerning Legal Aid. As defined in Article 1 paragraph (1), Legal Aid is legal services provided free of charge by the Legal Aid Provider to the Legal Aid Recipient. This means that when interpreted grammatically, there is no fee received by the legal aid provider. The legal aid provider can be a legal aid institution or a community organization that provides Legal Aid services based on this Law to impoverished individuals as recipients of such legal aid.

Post-Indonesian independence, the provision of legal aid did not receive clear attention because Indonesia during this period did not focus on rectifying aspects of legal aid provision as regulated in the HIR (*Herziene Inlandsche Reglementen*) which still lacked a clear position and legal mechanisms in providing legal aid. Political interests and upheavals were factors that led to the retention of HIR regulations in legal aid management. However, under the HIR provisions, legal aid can be provided to defendants facing the death penalty or life imprisonment. This article regulates the obligation of providing legal aid to defendants facing the death penalty. Lawyers appointed to provide legal aid must do so free of charge. While it may seem that there is room for the public to receive legal aid, in reality, such legal aid is very limited and only provided to defendants facing death penalty charges. Therefore, logically, when individuals face charges that do not include the death penalty, the defendant's right to receive legal aid cannot be fulfilled.

Based on these conditions, it is essential to ensure that since then, it can be said that the role of lawyers became paralyzed, and legal aid became meaningless. This period can be considered a bitter period in the history of legal aid in Indonesia. The efforts towards

⁵ Bambang Sunggono, dan Aries Harianto, *Bantuan Hukum dan Hak Asasi Manusia*, (1994):12

⁶ Yonna Beatrix Salamor, "Pemberian Bantuan Hukum Kepada Masyarakat Miskin Di Kota Ambon", *Jurnal Muara Ilmu Sosial, Humaniora, dan Seni* 2, No. 1 (2018): 278.

rebuilding culminated in the replacement of Law No. 19 of 1964 concerning Basic Provisions on Judicial Power with Law No. 14 of 1970, which once again guaranteed judicial independence from any interference and influences from external forces in all court matters.⁷

By the late 1970s, there was growing concern about the limited ability of legal aid movements to address the fundamental issues faced by the poor in Indonesia. This awareness grew stronger with the emergence of discourse on 'structural poverty' in the early 1980s. Structural poverty is poverty that does not arise naturally but is caused by imbalanced institutional structures. However, during the 1970s, Law No. 14 of 1970 concerning judicial power was considered a significant event in the history of legal aid in the Indonesian government, especially during the New Order government. The basis for providing legal aid at that time was regulated by Article 35 of Law No. 14 of 1970 concerning judicial power, which stated that every person involved in a case is entitled to legal aid. Furthermore, Article 36 stipulated that in criminal cases, a suspect, especially from the moment of arrest and/or detention, has the right to contact and request legal advice. However, this could not be fully implemented because the implementing regulations had not been issued, resulting in legal uncertainty in the implementation of legal aid.

In the 1970s, pro bono legal aid or free legal aid specifically for the poor began to emerge.⁸ The concerns of lawyers regarding the lack of access to justice for the poor prompted the establishment of Legal Aid Institutes, which were initially founded by the Indonesian Advocates Association (PERADIN) with the basic spirit of ensuring justice for the less privileged in society. Based on the spirit of addressing the legal needs of the community through legal aid, various steps were taken by the government in response to the absence of implementing regulations, including joint statements by the highest law enforcement officials and ministerial instructions and decisions. However, all of these efforts fell short of meeting the expectations of justice-seeking individuals regarding the implementation of legal aid. The implementation law for legal aid had not yet emerged, despite the addition of input from the community, until the Criminal Procedure Code (KUHAP) was enacted at the end of 1981.⁹

The provision of legal aid as regulated in the Criminal Procedure Code (KUHAP) is carried out by legal advisors who meet the qualifications stipulated by law to provide legal aid. Legal advisors in providing legal aid have become a legal obligation, determining that the defendant must be accompanied by a legal advisor in the case they are facing, from the investigation stage, prosecution, and throughout the trial until the judge's decision determines whether the defendant is guilty or not. Therefore, it is not an alternative or optional nature of providing legal aid in Indonesia but rather an obligation that must be fulfilled to provide legal aid to the defendant.

The basis for determining legal aid in Indonesia is based on the provisions in the Criminal Procedure Code Article 54, where for defense purposes, a suspect or defendant has the right to legal aid from one or more legal advisors during each stage of examination and within a specified timeframe. Indeed, there is a legal obligation to provide legal aid to the defendant without having to be determined by law enforcement officers because the Criminal Procedure Code (KUHAP) directly grants the defendant the right to receive legal aid since they have the right to have their legal aid needs met. The determination of whether someone is entitled to legal aid is based on the criminal threat facing the defendant. Legal aid can be provided if the criminal threat involves a minimum penalty of 5 years of imprisonment, as specified in the provisions of the Criminal Code (KUHP).

⁷ Bambang Sunggono, dan Aries Harianto, *Bantuan Hukum dan Hak Asasi Manusia*, (1994):14

⁸ Hertanto, Ari Wahyudi, "Advokat sebagai Bagian dari Aparat Penegak Hukum Indonesia", *Teropong: Media Hukum dan Keadilan* IV, No. 5. (2005): 182

⁹ Bambang Sunggono, dan Aries Harianto, *Bantuan Hukum dan Hak Asasi Manusia*, (1994):42

Regarding the minimum 5-year penalty requirement, it becomes the defendant's right to receive legal aid without having to make a request or receive a decision from the Attorney General, as stated in Article 114 of the Criminal Procedure Code (KUHAP). If someone is suspected of committing a criminal act before the investigation begins, the investigator must inform them of their right to legal aid or that they must be accompanied by a legal advisor in their case. During the New Order era, the provision of legal aid still faced structural imbalances, leading to unequal access to resources and technology. In structural poverty, existing social structures facilitated processes that deprived individuals of their basic human rights. This was widely felt and ongoing within the development politics of the New Order era.¹⁰

Based on these conditions, various institutional structures, including social, economic, political, and even legal structures, have created problems related to poverty. Law, from the perspective of structural poverty, is no longer neutral. Law is a product of social processes that occur within society. A society with unequal relationships cannot produce fair laws for everyone. There is a need for a legal ideology that is 'reformatory' to liberate the majority of society who have been marginalized and neglected by imbalanced structures. Based on the legal aspect of legal aid in Indonesia, this writing will highlight the differences in legal aid between Indonesia and countries like Australia, the Netherlands, and South Africa.

Legal Aid in the Legal System of Indonesia and Australia

The basis for providing legal aid in Australia is governed by the Mutual Assistance in Criminal Matters Act 1987.¹¹ Firstly, the provision of legal aid involves a mechanism that requires the establishment of agreements based on bilateral or multilateral agreements or conventions, as regulated in the Mutual Assistance in Criminal Matters Act 1987, subject to the relevant provisions of the agreements or conventions. Therefore, the legalization of this aid is outlined in the agreements, where the parties making the legal aid requests must be based on the agreements made with legal aid providers in Australia.¹² However, legal aid can also be provided without a written agreement. Legal aid can be granted based on requests made without an agreement or convention, and Australia can consider requests for assistance from any foreign country if there is no agreement or convention in the Mutual Assistance in Criminal Matters Act 1987. Therefore, there is a mandatory condition that the legal aid provided is for legal subjects outside of Australia. However, if the agreement is based on an existing treaty, there are no legal issues.

On the other hand, the first principle of legal aid in Indonesia does not necessarily require a written agreement but rather a power of attorney. This is because providing legal aid is already a legal obligation, determining that the defendant must be accompanied by legal counsel throughout the investigative, prosecutorial, and trial stages until the judge's verdict decides whether the defendant is guilty or not. Thus, providing legal aid in Indonesia is not an alternative or optional measure but rather a mandatory obligation to provide legal aid to the defendant. The second principle is that the determination of whether an individual can receive legal aid services is made by the Attorney General based on the requests made by the community for such legal aid.¹³ So the decision given is under the full authority of the Attorney General because the Attorney General is the party who has the authority to make

¹⁰ LBH Jakarta, *Program Ruu Bantuan Hukum Naskah Akademik RUU Bantuan Hukum*, (Jakarta: LBH Jakarta 2009): 9

¹¹ Jude McCulloch and Megan Blair, 'From Maverick to Mainstream: Forty Years of Community Legal Centres' 37, 12, (2012): 204.

¹² Cape and Jacqueline Hodgson, 'The Right to Access to a Lawyer at Police Stations: Making the European Union Directive Work in Practice', *New Journal of European Criminal Law* 5, (2014): 426.

¹³ Jude McCulloch and Megan Blair, 'From Maverick to Mainstream: Forty Years of Community Legal Centres', (2012): 54.

decisions regarding the provision of legal aid. Meanwhile, the determination of legal assistance in Indonesia is based on orders in the Criminal Procedure Code Article 54 for the purposes of defense, the suspect or defendant has the right to receive legal assistance from one or more legal advisors during the time and at each level of examination. So there is a legal obligation to provide legal assistance to the defendant without having to be determined by law enforcement officials because the provisions of the Criminal Procedure Code are directly given to the defendant because they have the right to obtain legal assistance.

The implementation of legal aid in force in Australia is known as the Australian Central Authority encouraging Foreign Central Authorities to make contact before making a request, especially in urgent cases, to ensure the assistance sought is available under Australian law and that the request will comply with the Australian request. The Australian Central Authority is happy to discuss Australian requirements by telephone or email and can also review draft requests. The request must identify the basis for which it is made, including bilateral or multilateral agreements/conventions. If there is no relevant treaty/convention, the request should state whether legal assistance would be provided from a request made in comparable circumstances.

The mechanism for providing legal assistance has the principle that the relevant investigative and/or prosecutorial authorities must be identified. The request should explain the nature of the criminal matter and summarize the relevant facts.¹⁴ The summary of facts must clearly establish the connection between foreign investigation or trial and the requested assistance. It should include sufficient information to enable Australia to address more than one criminal act. Another condition is that the legal aid provided must assess and provide information on why the investigative and/or prosecutorial authorities believe that relevant evidence is in Australia and identify the suspect, including the complete text of all relevant violation provisions and penalties related to the investigation and/or prosecution, including applicable penalties. Once these aspects are met, legal aid can be provided. The most apparent principle in providing legal aid in Australia is that it is qualified for an individual who commits several criminal acts as a requirement. If these requirements are not met, the Attorney General, as the decision-maker, is open to considering Australia's obligation based on multilateral conventions in deciding whether to provide assistance or not. On the other hand, in Indonesia, the determination of whether an individual is entitled to legal aid is based on the criminal threat against the defendant. The criminal threat that can be granted legal aid is a minimum of 5 years imprisonment. Therefore, when the defendant faces a criminal threat that violates the provisions in the Criminal Code, it becomes the defendant's right to be granted legal aid without having to request it, and the decision of the Attorney General in Article 114 of the Criminal Procedure Code (KUHP) is relevant in this matter.

Legal aid services in both Indonesia and the Netherlands

The principle of registering with LAB (Lembaga Bantuan Hukum) and adhering to quality standards collectively set by LAB, the Dutch Bar Association, and MoS & J (Ministry of Security and Justice). Typically, their work is remunerated with fixed fees based on the type of service and the average working hours for the services provided.¹⁵ While primary legal aid services are not subject to charges, secondary services are subject to means testing. LAB will assess applications based on client means, the benefits, and the significance of the legal issue in question to consider granting legal aid. Even when legal aid is granted, successful applicants must pay standard fees for each case, encouraging them to carefully weigh the pros and cons of bringing a case to court and thereby preventing frivolous cases.

¹⁴Jude McCulloch and Megan Blair, *From Maverick to Mainstream: Forty Years of Community Legal Centres*, (2012): 59.

¹⁵ Legislative Council Secretariat, *Free Legal Advice Services In The Netherlands*, Research Division, (2021): 2.

In contrast, the principle of legal aid provision in Indonesia involves independent organizations of lawyers providing legal certification on whether an individual is authorized and entitled to defend in court, provide legal assistance, and litigate in court proceedings. However, the lawyer organizations with offices in Indonesia are not centrally structured because the existing organizations are not centralized under one organization. Instead, as long as a legal service organization obtains a Decree from the Ministry of Law and Human Rights, it can take legal action to provide legal aid. Therefore, there is no single organization specifically designated to determine whether a legal aid service office is qualified to provide legal assistance to economically disadvantaged individuals for free or pro bono.

In its implementation, legal aid also involves feasibility studies to qualify for legal aid based on the applicant's taxable annual income and capital assets two years before the application year. The annual income threshold is set at €24,600 with a conversion rate of \$277,980 for single applicants and €34,700 with a conversion rate of \$392,110 for married couples, single parents, registered partners, or cohabiting residents. The capital threshold is set at €20,661 with a conversion rate of \$233,469 with a child allowance of €2,762 with a conversion rate of \$31,211 for each child under 18 years old, and special additional allowances will be given to applicants aged 65 and above. It is estimated that 37% of the Dutch population qualifies for legal aid.¹⁶

The mechanism for obtaining legal aid in Indonesia is not as detailed as that in the Netherlands. This is because, based on the provisions of Government Regulation of the Republic of Indonesia Number 42 Year 2013 concerning the Requirements and Procedures for Providing Legal Aid and the Disbursement of Legal Aid Funds Article 6 paragraph (3), it is a requirement to have a poor certificate from the Village Head, Village Chief, or equivalent official at the applicant's place of residence, along with relevant documents regarding the case. As long as this certificate is obtained, an individual or community is entitled to receive legal aid, regardless of the income level of the community, to determine their eligibility for legal aid. The principle of organization related to the financial aspect of legal aid is funded by the MoS & J (Ministry of Security and Justice), and LAB (Legal Aid Board) is responsible for budget allocation and matters related to the provision and demand for legal aid. Only a small portion of the actual costs is borne by client contributions. LAB consists of five regional offices and one central office. It is entrusted with all matters concerning the administration, supervision, and implementation of the legal aid system. Its tasks include matching the availability of legal experts with legal aid requests and monitoring and controlling the quality of the actual services provided. It also provides advice to the MoS & J regarding matters related to the provision and demand for legal aid. However, legal aid services are provided by private lawyers and mediators because LAB does not directly employ lawyers or mediators.¹⁷

The principle of legal aid in the Netherlands also involves providing legal assistance through 30 offices nationwide, with its headquarters located in Utrecht. The locations are evenly spread based on geography, making it easily accessible to every Dutch citizen from the Counter, approximately one hour's journey by public transport. Generally, each counter has at least six legal advisors. Since Counter services do not cover legal aid and extensive representation in court, paralegals can also serve as advisors. The Counter is equipped with computer terminals for clients to search for references to documentation on various legal topics. The Counter has set up a call center and website that facilitate user access to various documentation and information on various legal issues. Thus, there is mapping of which offices will provide free legal aid that voluntarily provides legal services.

¹⁶ Legislative Council Secretariat, *Free Legal Advice Services In The Netherlands*, Research Division, (2021): 3.

¹⁷ Legislative Council Secretariat, *Free Legal Advice Services In The Netherlands*, Research Division, (2021): 4.

One of the voluntary principles that provide free legal aid is the *Rechtswinkel*. Many municipalities throughout the Netherlands have *Rechtswinkels*. The *Rechtswinkel* in Tilburg is the oldest and also one of the largest. The front office provides free advice on all kinds of legal questions. It provides necessary information and may refer clients to someone who can help. The back office handles more complex cases that only involve Labor Law, Rental Law, Social Security, and Consumer Issues. On behalf of their clients, they can write letters and negotiate with the opposing party and then go to court if necessary. People can get advice from *Rechtswinkel* by phone or in person.

The implementation of scattered offices in Indonesia, in principle, is not as systematic as in the Netherlands because the free services provided are independent without being regulated by the state regarding which location needs legal services. Therefore, organizations providing legal aid services are free to have offices anywhere as long as they obtain legality from the Ministry of Law and Human Rights. Thus, according to Law Number 16 of 2011 concerning Legal Aid Article 8 paragraph (2), it sets out the requirements for legal aid providers, including:

- a. Having legal entity;
- b. Accredited according to this Law;
- c. Having a permanent office or secretariat;
- d. Having a board of directors; and
- e. Having a Legal Aid program.

So, as long as these requirements are met, there is freedom for legal aid providers to provide legal services to the poor. However, the noticeable difference lies in the systematic approach to providing legal services in the Netherlands, as the provision of legal services in the Netherlands is not much different but is structured, systematic, and organized.

Legal Aid in the Legal System of Indonesia with South Africa

The basis for providing legal aid in South Africa is governed by the provisions of the Criminal Matters Act (ICCMA) No. 75 of 1996. The implementation of legal aid does not consider how much someone has committed criminal offenses. Therefore, perpetrators of criminal offenses are given the freedom to use legal aid or not because the provisions that provide the basis for legal aid do not consider the nature of their legal actions.

The principle in providing legal aid in South Africa can make requests according to the criminal actions. That is, the request for aid is proportional to the level of crime being investigated. Given the limited resources available for law enforcement and prosecution authorities in South Africa, the requesting country is urged to consider the need for disputed evidence.¹⁸ So, even though there are no rules regarding the criteria for an individual or the public to receive legal aid, there are conditions that do not provide legal certainty. This is where poor communities in need of legal aid are not assessed based on the legal merits of their cases but rather on the perceived limited capacity of law enforcement agencies to take legal action against the offenders. Therefore, legal aid is only possible for severe and serious cases, and the availability of law enforcement personnel becomes a determining factor in providing legal assistance.

In the provision of legal aid in South Africa, there is actually an injustice because not all individuals receive legal aid, especially if they are involved in minor offenses. This is due to the Criminal Matters Act (ICCMA) Nr. 75 of 1996, which, although it does not set limits, it is the law enforcement agencies themselves that impose restrictions. If significant resources are required to process the request and the violation being investigated is minor, such

¹⁸ UN Office on Drugs and Crime, *Early Access to Legal Aid in Criminal Justice Processes: A Handbook for Policymakers and Practitioners* (2014): 57.

requests may be given low priority.¹⁹ Therefore, even individuals who should have access to legal representation in court are not necessarily accepted if their cases are deemed not significant enough. Law enforcement agencies may not pursue such cases, automatically denying legal aid. This deeper analysis reveals that the real victims are those whose rights are not upheld and who do not receive justice.

In terms of requesting legal aid, the principle can include specifying the desired timeframe for fulfilling the request and providing reasons for the time limit, such as in court proceedings or investigations. This means that the defendant can request to postpone the trial, but this must be based on strong legal grounds for the request to be included. The defendant then outlines the basis of the request in the legal aid request agreement, stating in writing what is being requested so that the judge can consider it before summoning for a trial in court. Furthermore, legal aid requests in South Africa must be accompanied by translations. Requests for legal aid must be submitted in writing and in the official language, which is English. In contrast, in Indonesia, legal aid can be provided without the need for an English copy because the language used is standardized Indonesian.

CONCLUSION

The development of legal aid within Indonesia's legal framework has seen significant progress and challenges over time. In the reform era, legal aid, particularly through LBH (Legal Aid Institute), forged alliances with grassroots and environmental communities, enhancing civil society coalitions against large projects like the World Bank. Legal aid's importance grew with the establishment of Legal Aid Institutes and mandatory organizations under Law Number 16 of 2011, providing free legal services to impoverished individuals. Post-independence, legal aid initially lacked clear attention due to regulatory gaps and political factors. However, efforts towards reform led to Law No. 14 of 1970, emphasizing legal aid provisions for every individual involved in cases, especially in criminal proceedings. Despite these advancements, challenges persisted in implementing legal aid due to regulatory uncertainties. The emergence of pro bono legal aid in the 1970s reflected growing concerns about justice disparities, leading to the establishment of Legal Aid Institutes by organizations like PERADIN. However, the absence of implementing regulations hindered effective legal aid delivery until the enactment of the Criminal Procedure Code (KUHAP) in 1981. Under KUHAP, legal aid became a legal obligation, ensuring defendants' rights to legal representation. Legal aid provisions were based on Article 54, granting suspects or defendants the right to legal aid during each stage of legal proceedings. This was crucial in ensuring fair trial rights for all individuals, especially those facing severe penalties. Despite these improvements, structural imbalances persisted during the New Order era, impacting legal aid access for the poor and marginalized. The ongoing struggle to address structural poverty and ensure equal access to justice resources remained a key challenge within Indonesia's legal aid landscape.

The concept of providing legal aid in the criminal justice system in Australia is qualified based on whether an individual has committed multiple criminal acts as a requirement. If this condition is not met, then the Attorney General, as the decision-maker, is open to considering Australia's obligations based on multilateral conventions when deciding whether to provide assistance. In contrast, in Indonesia, determining whether an individual is entitled to legal aid depends on the severity of the criminal threat faced by the defendant. Additionally, in the Netherlands, there are more detailed qualifications regarding legal aid providers, as they must meet the standards set by LAB, Dutch Bar Association, and MoS & J, which specifically assess the suitability of legal aid providers. Moreover, the eligibility for

¹⁹UN Office on Drugs and Crime, *Early Access to Legal Aid in Criminal Justice Processes: A Handbook for Policymakers and Practitioners* (2014):.58.

legal aid in the Netherlands also considers the economic capability of the applicant. On the other hand, in Indonesia, there is no institution that determines eligibility; instead, it is determined by the Criminal Procedure Code (KUHAP), with the main requirement being obtaining a poverty certificate from the village or sub-district where the individual resides. Furthermore, in South Africa, a unique aspect that sets it apart is the absence of specific criteria regarding the types of criminal offenses that qualify for legal aid. Additionally, the defendant can submit a legal aid request to be considered by the court's chairman. Indonesia should adopt and enhance the quality aspects of legal aid by providing qualifications for authorized institutions to offer legal representation and aid for free. This ensures that legal aid in Indonesia is not just about fulfilling the obligation of having institutions or legal advisors providing legal aid but also focuses on the qualifications of legal institutions that are suitable for assisting defendants or underprivileged individuals. The provision of legal aid should solely aim to provide a sense of justice to the community as a whole.

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