

Overview on Indonesia Legal Aid Law

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Since 2005, Jakarta Legal Aid Institute (LBH Jakarta) proposed the draft on legal Aid Law to the Indonesia Government. This initiative supported by Legal Development Facility (Australian Aid). We cooperated with universities, legal scholars, local and international expert to get input to the draft of law. We also disseminated the draft of law to the public before we send it to the government.

Finally, the bill has been drafted in the House of Representative since 2009. A newly completed legal aid law consists of 25 articles, including the provisions of legal aid beneficiaries, legal aid providers, and a state-funded legal aid. (Law No. 16/2011 concerning Legal Aid)

The law has the following important elements:

The legal aid beneficiary -- the poor people both individually and collectively who cannot fulfill their basic rights including right to food, education, health, education, work and or housing (article 1 para. 2 & article 5 of the law)

Note: Based on the ICCPR article 14. The beneficiary not only the poor, but also related with the interest of justice.

- Interest of justice means the defendants who do not have sufficient means to pay for it/attorney).¹
- Cases with complexity
- Vulnerable groups such as women, child, LGBT, Indigenous peoples, Person with Disability
- Death penalty cases

HRC interpreted the interest of justice based on article 14 (3) ICCPR with the more focus on the severity of the penalty. In addition, such case categorized as the most serious crimes like a crime against the state, murder, etc.

European human rights court give interpretation to the interest of justice based on article 6 (3) c with this following categories:

1. Is the rights of defendants under the threat? (*liberty is at stake*);
2. Difficulties and complexity of the case.
3. The ability of the defendant to defend themselves (self help).²

Take into account the larger purpose of legal aid institutions, which is to work for the interests of justice. It does not only mean the poor, but also women, children, people criminalized by the system, minority groups, LGBT, etc.

Scope of legal aid arena

The new law defines those eligible for legal aid beneficiaries as underprivileged individuals involved in civil, criminal, or administrative procedure and in non-litigation matters. In addition

¹ Requirement to get legal aid or legal services according to article 14 (3)d ICCPR and article 6 (3)c EU convention

² Public Interest Law Initiative et. al, *International Standards Regarding Access To Legal Aid* : Council of Europe, European Union, United Nations 160-161 (2003).

to the goal of equal access to justice, which fulfills the constitutional right to equality before the law, the new statute is designed to make the judiciary "effective, efficient, and accountable,"

The legal aid providers – a legal aid institute or non-governmental organization (NGO) which provides free legal aid to the poor people (article 1 para. 3 of the law). The legal aid providers shall meet the following requirements:

- a. having a legal status,
- b. accredited,
- c. having a permanent office/secretariat,
- d. having an organizational structure,
- e. having a legal aid program (article 8 of the law).

The legal aid providers have the following rights;

- a. to recruit an advocate, paralegal, law professor, and a law student,
- b. to provide a legal aid service,
- c. to conduct a community legal teaching, legal advise, to receive a state-funded legal aid, to issue a legal opinion, to receive relevant information/data from the state or other the state institutions in relation to the case handling, to get legal and security protection in doing legal aid (article 9 of the law).

The role of Ministry of Justice and Human Rights - The Ministry office has the following mandates:

1. To develop and to enact the National Legal Aid plan;
2. To develop and to enact the National Legal Aid standards;
3. To develop the National Legal Aid Budget;
4. To govern effective, transparent, efficient and accountable legal aid budget;
5. To develop and submit annual legal aid report to the House of Representative (article 6 paragraph 3 of the law).

Note:

Standards that must be met by legal aid providers are established in the new law; organizations or agencies that meet the standards will be able to receive state funding. Payments will be handled by the Ministry of Justice and Human Rights, from government monies, with procedures to be set by ministerial decree. Legal aid providers are not restricted to being solely dependent on public funding, as they can also receive money from other sources, such as grants and donations.

Accreditation and Verification of the legal aid providers – the Ministry of Human Rights and Justice shall conduct accreditation and verification to the legal aid providers in every 3 years. The Ministry office shall create a committee for conducting accreditation and verification which consists of Ministry of Justice and Human Rights, academician, public figure and the legal aid providers (article 7).

Note:

The accreditation refers to the article 1 para. 3 of the law

A state-funded legal aid – a legal aid fund comes from the both national and local budgets, and other grants and/or legitimate funding resources. (article 19)