

# The Regulation of Legal Protection for Poor Communities Toward Justice in Indonesia and the Netherlands



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## ARTICLE INFO

### Article history

Received: October 12, 2023

Revised: February 25, 2024

Accepted: May 12, 2024

### Keywords

Communities;

Human Right;

Justice;

Protection;

Poor;

## ABSTRACT

Poor people often have difficulty accessing legal aid in court. In the criminal, civil, and state administrative justice systems, providing legal assistance to the poor is essential for achieving justice. This research aims to illustrate how legal aid, provided by advocates, can transform the reality of justice for impoverished individuals. This study uses normative legal research, providing a descriptive account through a legal framework encompassing legal aid, the judiciary, judicial authority, and advocates. The research also uses a conceptual approach to human rights and justice, aiming to establish an ideal model of legal protection for people experiencing poverty. The research results demonstrate that providing legal assistance to people experiencing poverty not only shields the community from arbitrary actions by the authorities that violate the law but also fosters order and peace, ensuring the community receives justice. However, in Indonesia, establishing criteria for the impoverished remains challenging; structurally, the institutional budget is insufficient; culturally, the impoverished often harbor misconceptions and skepticism about the quality and affordability of legal aid. Meanwhile, in the Netherlands, providing legal protection is carried out through legal assistance, with the consideration of offering *toevoeging* and consideration of legal assistance based on people's salaries. Based on the number of cases for which assistance is provided, the results and public awareness are much better, although not optimal. The concept of providing legal aid must also be directed towards a responsive and structural type, combined with the concept of access to law and justice. Budgetary policies or rules must be regulated concretely and balanced from the individual validation stage, selecting the type of service and appointing a lawyer for evaluation.



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## 1. Introduction

The human rights standards of the international community recognize access to justice as a fundamental human right and a means of protecting other universally recognized human rights.<sup>1</sup> However, access to protection and justice is often difficult to obtain, especially for communities that are weak socially and

<sup>1</sup> Rowena Rodrigues, 'Legal and Human Rights Issues of AI: Gaps, Challenges and Vulnerabilities', *Journal of Responsible Technology*, 4.August (2020), 100005 <https://doi.org/10.1016/j.jrt.2020.100005>

financially.<sup>2</sup> When human rights protection is lacking, marginalized groups are often vulnerable to violations and face significant challenges in realizing their rights, including in the formal justice system.<sup>3</sup> Therefore, the state holds essential authority to regulate and guarantee all aspects of society, particularly in law enforcement, with the aim of creating just legal protection.<sup>4</sup>

Indonesia and the Netherlands are both countries with civil law legal systems that base their state administration on written laws—the rule of law. The Indonesian Constitution of 1945 expresses a strong desire for the state to uphold equal standing under the law, ensuring that everyone has the right to access justice and receive equal treatment before the law (justice for all).<sup>5</sup> This is even a universal fundamental right for every person. In the Netherlands, the Constitution of the Kingdom of the Netherlands 2018 guarantees equal treatment for all individuals under the same circumstances. This concept holds significance as the state consistently confronts the reality of impoverished or underprivileged groups who frequently struggle to exercise their right to justice.<sup>6</sup>

To effectively implement the rule of law, the state must intervene, as it is responsible for ensuring everyone's access to justice. In other words, the state must guarantee the provision of legal aid to the poor or underprivileged so that no one is denied access to justice, which is a constitutional mandate. Both Indonesia and the Netherlands are familiar with the concepts of legal aid and legal assistance, it is a right given to poor people to receive free legal assistance by advocates as a demonstration of equal rights before the law. Because lawyers are not just commercial actors but also represent the legal system.<sup>7</sup> Even in 1972, the Legal Action Group was founded to increase lawyers' active involvement in welfare issues.<sup>8</sup>

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<sup>2</sup> Vitra Yozi and others, 'Developing Business Management Strategy Based on the Factors That Affecting Willingness to Pay Tax: Evidence from Indonesia', *Industrial Engineering & Management Systems*, 18.3 (2019), 551–62 <https://doi.org/10.7232/iems.2019.18.3.551>

<sup>3</sup> Elizabeth Kahn, 'Beyond Claim-Rights: Social Structure, Collectivization, and Human Rights', *Journal of Social Philosophy*, 52.2 (2021), 162–84 <https://doi.org/10.1111/josp.12362>

<sup>4</sup> Tauchid Komara Yuda, Pinurba Parama Pratiyudha, and Kafa Abdallah Kafa, 'Managing Social Policy in the Emerging Welfare Regime of Governance: What Indonesia Can Learn from South Korea's Experience', *International Social Work*, 66.2 (2023), 357–72 <https://doi.org/10.1177/00208728211011634>

<sup>5</sup> Muhammad Akbar Maulana Gustaf, 'Legal Aid in Indonesia: Problems and Challenges', *The Indonesian Journal of International Clinical Legal Education*, 3.2 (2021), 163–72 <https://doi.org/10.15294/ijicle.v3i2.46170>

<sup>6</sup> Laurensius Arliman S and others, 'Legal Assistance for The Poor to Reach Justice', *JCH (Jurnal Cendekia Hukum)*, 7.2 (2022), 329 <https://doi.org/10.33760/jch.v7i2.556>

<sup>7</sup> Edita Gruodytė and Stefan Kirchner, 'Pro Bono Work vs. Legal Aid: Approaches to Ensuring Access to Justice and the Social Responsibility of the Attorney', *Baltic Journal of Law & Politics*, 5.2 (2012), 43–64 <https://doi.org/10.2478/v10076-012-0010-2>

<sup>8</sup> Mavis Maclean, 'Justice and Welfare', in *Justice for Everyone* (Cambridge University Press, 2022), pp. 44–52 <https://doi.org/10.1017/9781108783194.007>

Legal aid for people experiencing poverty must be implemented in an integrated, measurable, synergistic, and planned manner based on partnerships and the involvement of various parties to guarantee substantive justice.<sup>9</sup> Compared to other factors, harmonious and detailed policies or regulations can better guarantee the legal protection that society should receive. Law enforcement is an inseparable unit, and legal aid aims to create law enforcement that is both philosophically and sociologically beneficial. Therefore, regulations that are disharmonious and not detailed often confusing and reducing the fulfillment of justice for the poor.<sup>10</sup>

The Ministry of Law and Human Rights national data reveals that approximately 34 thousand cases received legal assistance in 2016, 49 thousand cases in 2017, and 90 thousand cases (both litigation and non-litigation) in 2018. In other words, in 2016–2018 (3 years), government-funded assistance reached 173 thousand cases. Meanwhile, in the Netherlands, the Legal Aid Agency reports more than 375,000 cases yearly. The government ensured thousands of people had access to legal representation and advice. In fact, when compared with Indonesia and the Netherlands populations, the gap in legal aid between the two countries is very significant. According to World meter 2024, based on the latest United Nations data, the population in Indonesia is around 279 million people, while the Netherlands has a population of around 17 million.

The disparity is so significant that it prompts inquiries into the factors that render implementing legal aid for people experiencing poverty in one country highly ineffective. In contrast, it functions optimally in other countries to ensure access to law and justice.<sup>11</sup> Society is susceptible to arbitrary action in legal cases. Poverty is a condition in which an individual or a group of individuals cannot fulfill their fundamental rights to maintain and develop a dignified life. Christopher McCrudden explains that human dignity is vital in developing human rights justice.<sup>12</sup>

The basic rights referred to above include, among others; first, meeting the needs for food, health, education, employment, housing, clean water, land, natural resources, and the environment; second, feeling safe from treatment or threats of violence; and third, the right to participate in social and political life. These fundamental rights do not stand alone; they influence each other, so failure to

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<sup>9</sup> k. Quintavalla, A., & Heina, 'Priorities and Human Rights', *Priorities and Human Rights*, 23.4, special section. (2019) <https://doi.org/10.1080/13642987.2018.1562917>

<sup>10</sup> Naresh C. Singh, 'Legal Empowerment of the Poor: Making the Law Work for Everyone', *Proceedings of the ASIL Annual Meeting*, 103 (2009), 147–50 <https://doi.org/10.1017/S0272503700033954>

<sup>11</sup> Jean Galbraith and others, 'Poverty Penalties as Human Rights Problems', *American Journal of International Law*, 117.3 (2023), 397–440 <https://doi.org/10.1017/ajil.2023.25>

<sup>12</sup> C. McCrudden, 'Human Dignity and Judicial Interpretation of Human Rights', *European Journal of International Law*, 19.4 (2008), 655–724 <https://doi.org/10.1093/ejil/chn043>

fulfill one right can affect the fulfillment of other rights.<sup>13</sup> This low standard of living directly impacts the health, moral life, and sense of self-worth of those classified as poor. In the end, poverty is no longer understood as economic inadequacy but also as a failure to fulfill fundamental rights and differences in treatment for a person or group of people in accessing justice in the eyes of the law.

Currently, Indonesia continues to face challenges concerning the substance of policies and setting criteria for the poor that the government can assist with; structurally, the institutional budget is insufficient, and there is no clear solution; and culturally, poor people experience misconceptions between the provision of legal aid, and the judge's decision. The comparison with the Netherlands is intended to get another picture regarding the legal aid regulations, which are pretty compelling.

Catrina Denvir et al. (2023) explain that the government sometimes arbitrarily attacks its poor communities. Austerity policies and cuts to legal aid are used to protect the authorities' interests. The government deliberately used this to facilitate the abuse of power against the most vulnerable groups in society.<sup>14</sup> Therefore, this research aims to find out how legal aid can change the reality of justice for poor people, as provided by advocates. However, the aspiration for justice frequently encounters regulations or policies not encompass impoverished communities. The expected legal protection cannot fulfill legal substance, structure, and culture aspects.<sup>15</sup> This comparison of laws in Indonesia and the Netherlands seeks to answer the differences in legal aid regulations.

Scholars have conducted several previous studies regarding the legal protection of people with low incomes before the law. For example, research by Hualing Fu (2020) shows that increasing legal aid funding has commercialized legal aid in China and weakened public interest among lawyers. However, as the legal profession developed, a spirit of public interest began to expand outside the official legal aid system, with some lawyers volunteering their services to help those in legal need and advance the public interest. Even though it discusses the same topic, this research has differences in terms of the research objects and theories used.<sup>16</sup>

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<sup>13</sup> Maxwell Abbott, 'The Right of Early Access to Criminal Legal Aid in Indonesia: Clear Rule, Clearer Violations', *Indonesia Law Review*, 8.1 (2018) <https://doi.org/10.15742/ilrev.v8n1.380>

<sup>14</sup> Catrina Denvir and others, *Legal Aid and the Future of Access to Justice* (Hart Publishing, 2023) <https://doi.org/10.5040/9781509957835>

<sup>15</sup> Tom Ginsburg, 'Lawrence M. Friedman's Comparative Law', in *Law, Society, and History* (Cambridge University Press, 2011), pp. 52–64 <https://doi.org/10.1017/CBO9780511921629.005>

<sup>16</sup> Fu Hualing, 'Pro Bono, Legal Aid, and the Struggle for Justice in China', *SSRN Electronic Journal*, 2020 <https://doi.org/10.2139/ssrn.3743658>

Other research, for example, conducted in Singapore and Malaysia by Gary Chan (2007), examined the legal status of the right of access to justice (i.e., whether this right is a right stated in the constitution or only a right originating from common law and whether these rights are qualified for economic and other interests) and related rights to legal representation, legal assistance, and emergency costs.<sup>17</sup> Helena Whalen-Bridge's (2022) research, which is almost identical to Chan's, also discusses legal aid funding and pro bono scheme support, where other actors impact access to justice. The rise of a volunteer-driven legal community also plays a significant role.<sup>18</sup>

The provision of legal aid in other developed countries, such as Australia, is also widely researched and has similar funding problems. Ronald Sackville (2018) states that the central government must provide significant funds for institutions that provide civil legal aid and support services.<sup>19</sup> As mentioned earlier, some of the research focuses on funding legal aid budgets. In the meantime, this research endeavors to present a comprehensive view of additional concerns pertaining to policy standards that determine the eligibility of impoverished communities for assistance and the significance of community cultural elements.<sup>20</sup>

The increasing complexity of legal activities in society also leads to increasingly diverse and high challenges for legal protection based on the principle of equal rights for all citizens.<sup>21</sup> The issue of providing legal aid to lower-class people cannot be resolved solely from the perspective of the economic gap and government funding. Rules and policies must be analyzed more deeply to determine developments in implementing legal assistance in society on a sustainable basis. This research is necessary to develop legal protection arrangements by offering equitable legal assistance to lower-middle-class individuals, taking into account the current conditions in Indonesia and the Netherlands.

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<sup>17</sup> Gary K Y Chan, 'The Right of Access to Justice: Judicial Discourse in Singapore and Malaysia', *Asian Journal of Comparative Law*, 2.1 (2007) <https://doi.org/10.2202/1932-0205.1036>

<sup>18</sup> Helena Whalen-Bridge, 'Access to Justice in Singapore: A Government and Lawyer Dynamic', in *The Role of Lawyers in Access to Justice* (Cambridge University Press, 2022), pp. 162–77 <https://doi.org/10.1017/9781009042253.012>

<sup>19</sup> Ronald Sackville, 'Law and Poverty: A Paradox', *University of New South Wales Law Journal*, 41.1 (2018) <https://doi.org/10.53637/QEWC6133>

<sup>20</sup> Lawrence M. Friedman and Grant M. Hayden, 'What Is a Legal System?', in *American Law* (Oxford University Press, 2017), pp. 1–18 <https://doi.org/10.1093/acprof:oso/9780190460587.003.0001>

<sup>21</sup> Reza Octavia Kusumaningtyas and James Kalimanzila, 'The Impact of Tax Incentive on Increase Foreign Direct Investment', *Journal of Sustainable Development and Regulatory Issues (JSDERI)*, 1.2 (2023), 51–63 <https://doi.org/10.53955/jsderi.v1i2.7>



## 2. Research Method

This study uses normative legal research, providing a descriptive explanation through a legal framework focusing on legal aid, justice, judicial power, and advocates. Among these laws are Law No. 16 of 2016 concerning Legal Aid, Circular Letter of the Supreme Court of the Republic of Indonesia No. 10 of 2010 concerning Guidelines for Providing Legal Aid in the General Court Environment, Netherlands Judicial Organizations Act, Court Sector (Funding) Decree 2005, and Legal Aid Directive Implementation Act.<sup>22</sup> Furthermore, this paper uses a conceptual approach regarding human rights and justice as a basis for analysis to obtain an ideal model of legal protection for people with low incomes. The legal system theory used in this paper analyzes legal problems based on three criteria: substance, structure and culture; and elaborate on existing conditions. Aside, this article compares the rules for providing legal aid in Indonesia and the Netherlands, considering that both have a civil law legal system.<sup>23</sup>

## 3. Results and Discussion

### *Legal Assistance Policy for Poor Communities Indonesia*

The law functions as a protector of human interests and is carried out professionally. This means that protection is an action or deed that is carried out in certain ways according to the applicable law or statutory regulations.<sup>24</sup> Legal protection is a right of every citizen, but it is also an obligation for the state to fulfill, and it is equal.<sup>25</sup> In principle, legal protection for society is based on and originates from the concept of recognition and protection of human dignity and worth. All efforts to fulfill rights and provide assistance are carried out to give a sense of security to witnesses and/or victims, which can be realized through restitution, compensation, medical services, and legal assistance.

Legal assistance to poor people in Indonesia is essential in every criminal, civil, and state administrative justice system. Legal aid has a directed goal, namely;<sup>26</sup>

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<sup>22</sup> Cahya Intan Ayuningsekar, Abdul Kadir Jaelani, and Sapto Hermawan, 'Legitimacy Principle of Equality in Collection of Rural and Urban Land Tax', *Journal of Sustainable Development and Regulatory Issues (JSDERI)*, 1.3 (2023), 151–74 <https://doi.org/10.53955/jsderi.v1i3.15>

<sup>23</sup> Jolanta Bieliauskaitė, 'Value-Based Education of Lawyers: Challenges to the Maintenance of Justice', *Procedia - Social and Behavioral Sciences*, 93 (2013), 804–8 <https://doi.org/10.1016/j.sbspro.2013.09.283>

<sup>24</sup> Magdalena Sepulveda Carmona and Kate Donald, 'Access to Justice for Persons Living in Poverty: A Human Rights Approach', *SSRN Electronic Journal*, 2014 <https://doi.org/10.2139/ssrn.2437808>

<sup>25</sup> Dorothy Estrada-Tanck, 'Article 7 – Equality before the Law and Equal Protection of the Law', in *The Universal Declaration of Human Rights* (Brill | Nijhoff, 2023), pp. 152–74 [https://doi.org/10.1163/9789004365148\\_009](https://doi.org/10.1163/9789004365148_009)

<sup>26</sup> Erwin Firmansyah, Cokorde Istri Dian Laksmi Dewi, and Rizky Karo Karo, 'Penerapan Acces To Justice Melalui Bantuan Hukum Non Litigasi Berbasis Kearifan Lokal', *Jurnal Lemhannas RI*, 10.2 (2022), 1–14 <https://doi.org/10.55960/jlri.v10i2.273>

guarantee and fulfill the rights of legal aid recipients to obtain access to justice, realizing the constitutional rights of all citizens following the principle of equality under the law, ensure certainty that legal aid is implemented evenly throughout the region; and realizing an effective, efficient and accountable judiciary. Compared with several countries, the provision of legal aid for poor people is very different.<sup>27</sup>

In providing this kind of legal assistance, not all people get it. Only people who meet the criteria can access it. Please note first that legal protection is divided into preventive legal protection means. In this preventive legal protection, legal subjects can submit objections or opinions before a government decision takes definitive form. The goal is to prevent disputes from occurring. Repressive legal protection means. Repressive legal protection aims to resolve disputes. The handling of legal protection by the General Courts and Administrative Courts in Indonesia falls into the category of repressive legal protection. Several studies still found that the provision of legal aid in Indonesia is inadequate.

Therefore, to understand the substantive factors in the issue of legal aid in Indonesia, it is necessary to know that legal aid in Indonesia is regulated explicitly in Law No. 16 of 2011. Legal aid is defined as legal services provided by legal aid providers free of charge to legal aid recipients. Meanwhile, legal aid recipients are defined as poor people or groups of people who cannot fulfill fundamental rights properly and independently and who face legal problems. Furthermore, in the general provisions of the Law, it is stated that parties entitled to receive legal assistance are poor people or groups of people.<sup>28</sup>

Indonesian regulations have generally set rules for who can receive legal assistance. However, the practical implementation of these criteria falls short of being satisfactory. This is because the definition of poverty remains unclear – what are the indicators of not being able to fulfill fundamental rights properly? The Indonesian Central Statistics Agency (BPS) measures poverty using the ability to meet basic needs (basic needs approach). BPS also sets the poverty line per household in 2023 on average at IDR 2.592.657/poor household/month. This means that households whose income is less than this figure will have difficulty meeting basic needs.

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<sup>27</sup> Valesca Lima and Miriam Gomez, 'Access to Justice: Promoting the Legal System as a Human Right', 2020, pp. 1–10 [https://doi.org/10.1007/978-3-319-71066-2\\_1-1](https://doi.org/10.1007/978-3-319-71066-2_1-1)

<sup>28</sup> Suyogi Imam Fauzi and Inge Puspita Ningtyas, 'Optimalisasi Pemberian Bantuan Hukum Demi Terwujudnya Access to Law and Justice Bagi Rakyat Miskin', *Jurnal Konstitusi*, 15.1 (2018), 50 <https://doi.org/10.31078/jk1513>

However, if it is only stated that they cannot fulfill basic needs, this can be proven by determining if the person is indigent.<sup>29</sup> In the Netherlands, it is known that legal aid is also based on the aid recipient's salary. In contrast, most impoverished individuals in Indonesia do not hold office jobs and do not have access to pay slips. Therefore, who will judge these salary criteria? The Indonesian bureaucracy frequently registers impoverished individuals as recipients of government aid, such as basic food and money, using a pre-prosperous card or a similar document as proof. It can also be proven by providing a certificate of incapacity.

The government's socialization of legal aid procedures reveals that recipients must attach a poverty certificate from the village official—*Lurah*. However, there is no detailed regulation on demonstrating these individuals' poverty. Therefore, if the village official approves the certificate application, they have satisfied the requirements or provided proof that the individual belongs to the impoverished community. In some countries, financial problems significantly impact the provision of legal aid. The government must selectively 'choose' who has the right to receive assistance. Therefore, the regulations defining the eligibility criteria for legal aid recipients need to be more comprehensive. In the realm of legal structure, identifying the recipient ultimately determines the required budget for legal assistance.

The provision of legal aid is carried out by advocates who have the status of administrators providing legal assistance or advocates recruited by providing legal aid. The budget source for providing legal assistance is charged to the State Revenue and Expenditure Budget (SREB). This is regulated in Government Regulation No. 42 of 2013. In addition to the SREB, grants, donations, and other legal and non-binding funding sources also contribute to the legal aid budget. The government can also allocate regional revenue and expenditure budgets by reporting implementation to the Minister of Law and Human Rights and the Minister of Home Affairs. Since the government guarantees or provides legal aid funds, legal aid providers may not receive any payment for their cases, necessitating legal aid at no cost. Increasing the number of impoverished individuals receiving legal assistance, even without proper filtering, will inevitably strain the current budget. Mistakes in determining the recipient of this right will have a detrimental effect on the state budget.<sup>30</sup>

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<sup>29</sup> Liz Curran and Mary Anne Noone, 'Access to Justice: A New Approach Using Human Rights Standards', *International Journal of the Legal Profession*, 15.3 (2008), 195–229 <https://doi.org/10.1080/09695950902785879>

<sup>30</sup> Majda Lamkaddem and others, 'Legal Aid and Clients with Multiple Problems: A First Screening at the Dutch Legal Services Counter', *International Journal of the Legal Profession*, 29.3 (2022), 303–17 <https://doi.org/10.1080/09695958.2022.2074424>



Apart from that, legal culture also influences the effectiveness of legal protection in realizing justice. Identifying the valid entitlement of legal aid recipients is crucial to budget discussions. However, the low number of legal aid applications is closely linked to the debate on legal culture, revealing that many people lack equal rights before the law.<sup>31</sup> The Indonesian National Legal Development Agency explained that the total number of requests for legal aid in 2016 reached 6695 cases, comprising 5,592 litigation cases and 1,103 non-litigation cases. Only 3,335 cases received acceptance, while 797 others faced rejection. This means that only 4132 cases were responded to, and there were around 2563 cases that were lost or even ignored.

Moreover, since each region centrally inputs this data, it's plausible that several cases remain unreported due to impoverished individuals' lack of awareness about seeking legal aid. The current state of public awareness regarding legal aid and access to law and justice is concerning. Data from the National Legal Development Agency states that if real cases were handled by the government, there would have been approximately 173,000 cases in three years (2016–2018). Meanwhile, in 2023, the implementation of legal aid will cost around IDR 56 billion per year for all of Indonesia, carried out by 619 legal assistance agencies. Previously, in 2016–2018, the government only used around IDR 46 billion funds.<sup>32</sup>

There is an overlapping understanding between legal aid funded by the government and free legal aid provided by advocates or pro bono. People tend to seek legal assistance from legal aid institutions rather than lawyers. a) People perceive legal aid organizations as more client-focused, while law firm advocates prioritize material or financial gains; b) public skepticism regarding the caliber of pro bono services; and c) the public's limited comprehension of the law. The substance of the regulations for providing legal aid in Indonesia must be evaluated to be more applicable. Institutional standard operating procedure need to harmonize the criteria for legal aid recipients. Budget considerations must also be made to obtain maximum-quality assistance. More importantly, pro-bono options can help overcome the shortfall in the legal aid budget provided by the government. Pro bono means that the advocate charges no fees. Meanwhile, for legal assistance, there is a price that must be paid to lawyers, but the government spends it. All of them aim to provide legal services that can advance the economy, solve client problems, and strengthen the rule of law.<sup>33</sup>

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<sup>31</sup> Barikar C. Malathesh and others, 'Free Legal Aid for Persons with Mental Illness and Other Marginalized Group of Population', *Asian Journal of Psychiatry*, 59 (2021), 102654 <https://doi.org/10.1016/j.ajp.2021.102654>

<sup>32</sup> Peter Swire and Suzanne Vergnolle, 'A Mutual Legal Assistance Case Study: The United States and France', *SSRN Electronic Journal*, 2017 <https://doi.org/10.2139/ssrn.2921289>

<sup>33</sup> Mostafa Soliman, 'Legal Services Help to Build Better Communities', *SSRN Electronic Journal*, 2018 <https://doi.org/10.2139/ssrn.3252010>

### *Legal Assistance Policy for Poor Communities in Netherlands*

In the Netherlands, individuals without a residence permit can still receive the fundamental right to legal aid. The Dutch constitution reimburses most of the costs for anyone who needs legal assistance but cannot afford it. The Dutch constitution explicitly states this. The Netherlands has ten districts, each with its own court. The District Court consists of a maximum of five sectors, including the administrative, civil, criminal, and sub-district sectors. Courts in the Netherlands also frequently accept community cases in exchange for legal assistance.<sup>34</sup> For example, some small social organizations in Amsterdam offer socio-legal assistance and advice on any issues that cannot be approached in a regular legal organization.

In terms of legal substance, the Netherlands implements its legal aid through the 1994 Legal Aid Law, which was last amended in 2011. In addition, there was a 1981 Mutual Legal Assistance Agreement between the United States and the Kingdom of the Netherlands. This agreement is self-executing and utilizes existing legal authority. The new agreement provides for broad cooperation in criminal matters. The mutual assistance available under the agreement includes (1) carrying out requests relating to criminal matters, (2) taking testimony or statements from people, and (3) affecting the production, preservation, and authentication of documents, records, or evidence. The US-EU Mutual Legal Assistance Agreement came into effect in 2003. However, the Netherlands Antilles and Aruba will remain unaffected by previous agreements.<sup>35</sup> Moreover, the Netherlands has implemented the EC-Directive through Articles 23a–23k in the Legal Aid Act to Council Directive, which regulates legal aid in European cross-border cases.

Structurally and institutionally, the Netherlands has a Raad voor Rechtsbijstand (Legal Aid Agency) formed by the Lord High Chancellor. This institution aims to ensure people have the legal representation they need. The council will financially support communities if they cannot afford a lawyer. Lawyers who provide legal aid will receive 'toevoeging' awards. *Toevoeging* refers to a decision in which the Legal Aid Agency provides mediation subsidies or additional legal assistance. If it accepts the addition, the board will cover most of the cost of the mediator's or attorney's salary. The community can request additions through a mediator or lawyer. In some cases (criminal cases), the court ordered the Legal Aid Agency to provide additional assistance. In some cases (criminal cases), it is requested that the Legal Aid Agency must give additional. The community will pay some of the costs themselves. The size of the community's contribution varies depending on

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<sup>34</sup> Esther M. Verboon and others, 'Focus on Client Needs – A Study on Frontline Legal Aid in the Netherlands', *European Journal of Social Work*, 26.1 (2023), 134–47 <https://doi.org/10.1080/13691457.2021.1954889>

<sup>35</sup> 'Netherlands-United States: Treaty on Mutual Legal Assistance', *International Legal Materials*, 21.1 (1982), 48–57 <https://doi.org/10.1017/S0020782900054899>

their income level. Apart from asking for help from a lawyer, people can also ask for help from a 'mediator.' Negotiation experts will resolve conflicts. There is no need to go to court. The board will pay a portion of the mediator's fees.

Interestingly, in the Netherlands, the *Raad voor Rechtsbijstand* has an agreement with lawyers and mediators regarding the amount and distribution of benefits. The board also serves as a monitoring body to ensure the quality of the work of lawyers and mediators. Lawyers will no longer receive monetary benefits if they fail to meet the agreed standards. This will efficiently impact the government budget to provide legal aid for people experiencing poverty. The most crucial aspect is that the government bears a reasonable cost to ensure equitable access to the legal system. Moreover, the Netherlands aggressively conveys the virtues of clinical legal education as part of the law school curriculum.<sup>36</sup> According to data from *Raad voor Rechtsbijstand*, 6,529 lawyers and mediators will provide legal aid in 2020. This number shows a decline in the last couple of years; 2018 there were 7,072 lawyers.

The legal aid budget is in the spotlight because it is a significant issue in many countries, including the Netherlands. In other countries, budget problems have declined for several decades.<sup>37</sup> This will proceed smoothly if the legal assistance aims to achieve quality justice and equality rather than merely settling a case. Maurits Barendrecht said legal aid tends not to provide fair results and that a judge without a lawyer is more valuable than a lawyer without a judge.<sup>38</sup> Legal professionals will think again about the quality of their work in providing free legal aid in the Netherlands. They cannot survive if they are not skilled and dedicated people committed to upholding all individuals' rights. The government does not incur defense or legal assistance costs that do not meet quality standards. In contrast to Indonesia, performance evaluation, which impacts allowance provision, has not been a concern.

There is still talk of anxiety about determining which poor people can access legal aid programs. All individuals in the Netherlands have access to justice, irrespective of their financial situation. However, the Legal Aid Agency also measures it by considering that poor people meet certain income and asset requirements. Screening begins when people apply to the Legal Aid Council, providing details about their financial situation and the nature of the legal

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<sup>36</sup> Richard J. Wilson, 'Legal Aid and Clinical Legal Education in Europe and the USA: Are They Compatible?', in *Outsourcing Legal Aid in the Nordic Welfare States* (Cham: Springer International Publishing, 2018), pp. 263–85 [https://doi.org/10.1007/978-3-319-46684-2\\_11](https://doi.org/10.1007/978-3-319-46684-2_11)

<sup>37</sup> Marzena Świstak, 'Financial-Law Problems in Providing Free-of-Charge Legal Aid in Poland. Legal Comparative Aspects', *Review of European and Comparative Law*, 44.1 (2021), 103–26 <https://doi.org/10.31743/recl.11495>

<sup>38</sup> Maurits Barendrecht, 'Legal Aid, Accessible Courts or Legal Information? Three Access to Justice Strategies Compared', *Global Jurist*, 11.1 (2011) <https://doi.org/10.2202/1934-2640.1374>

problem. Then, the Board assesses the feasibility of providing the necessary assistance.

The Netherlands designs the income and asset requirements for free legal aid to ensure that individuals who cannot afford legal representation receive the help they need. The system aims to be inclusive, even though specific thresholds may differ. This means that this legal aid is not provided haphazardly to ensure that state finances are not wasted on people who do not deserve it. Analysis of financial details and the nature of the case can be more effective than simply providing a sheet of paper without analysis and checking.

European countries are more advanced in implementing legal aid in terms of legal substance and structure. However, in some cases, there are also problems with budget regulations, which impact lawyers' remuneration, and the emergence of private institutions providing legal insurance—this is the dominant way to transfer this risk in Europe,<sup>39</sup> it is even done for business purposes. In the Netherlands, there is privately held court costs insurance, also known as Legal Expenses Insurance (LEI).<sup>40,41</sup> Ben van Velthoven (2011) predicted a shift in the burden of legal aid from the government to the private sector. Legal assistance from the LEI could lead to a significant decline in demand for lawyers' services. Access to justice will be adversely impacted for citizens who do not purchase insurance. At the same time, access to justice will receive a big boost, as low-income people will receive better services to meet their interests. However, the shift from legal aid to LEI does not favor low-income people who cannot afford insurance.<sup>42</sup>

The government's collection of legal aid applications provides insight into the legal culture of Dutch society when it comes to accessing legal aid. The Netherlands offers a wide range of areas for requesting legal assistance, such as labor/employment, family law (domestic violence, divorce, alimony, child abduction, etc.), contracts, social security, housing, criminal law, immigration, administrative law, and various civil matters. Almost 400 thousand legal aid cases are filed yearly, whereas, in the Netherlands, there are only less than 2 million

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<sup>39</sup> Anthony Heyes, Neil Rickman, and Dionisia Tzavara, 'Legal Expenses Insurance, Risk Aversion and Litigation', *International Review of Law and Economics*, 24.1 (2004), 107–19 <https://doi.org/10.1016/j.irle.2004.03.007>

<sup>40</sup> Jef P. B. De Mot, Michael G. Faure, and Louis T. Visscher, 'Third Party Financing and Its Alternatives: An Economic Appraisal', *SSRN Electronic Journal*, 2016 <https://doi.org/10.2139/ssrn.2747277>

<sup>41</sup> Fiona M. Kay, 'Lawyers: Social Organization of the Profession', in *International Encyclopedia of the Social & Behavioral Sciences* (Elsevier, 2015), pp. 628–34 <https://doi.org/10.1016/B978-0-08-097086-8.86065-1>

<sup>42</sup> Ben C. J. van Velthoven and Carolien M. Klein Haarhuis, 'Legal Aid and Legal Expenses Insurance, Complements or Substitutes? The Case of the Netherlands', *Journal of Empirical Legal Studies*, 8.3 (2011), 587–612 <https://doi.org/10.1111/j.1740-1461.2011.01221.x>

cases per year. Nearly 40% of Dutch citizens are entitled to an 'additional'—legal aid based on income. In percentage terms, the Netherlands is far ahead of Indonesia.

### *The Governing Budgetary to Address Legal Protection Challenges Toward Justice*

Legal assistance is not a simple matter but rather a series of actions to liberate society from the shackles of oppressive political, social, and economic structures. Legal assistance demonstrates equal rights before the law, granting people experiencing poverty the right to free legal assistance (*probono publico*).<sup>43</sup> The concept of equality before the law and the right to be defended by an advocate (access to legal counsel) are human rights that need to be guaranteed<sup>44</sup> to eradicate poverty in Indonesian society, especially in the legal field.<sup>45</sup>

Access to law and justice is a mandate of the United Nations Development Program to reduce poverty and strengthen democratic governance.<sup>46</sup> Access to law and justice is not just about increasing access to the courts and guaranteeing someone's legal representation. Access to justice is defined as a community's ability to seek and obtain remedies for complaints in accordance with human rights standards through formal or informal justice institutions.<sup>47</sup> This is access for the community and impoverished groups to a fair, effective, and accountable mechanism for protecting rights. In the Indonesian context, access to justice refers to the conditions and processes in which the state guarantees the fulfillment of basic rights based on the 1945 Indonesian Constitution and universal principles of human rights and guarantees access for every citizen (claim holder).<sup>48</sup>

Conceptually, there are four distinct ways in which legal aid can be applied:<sup>49</sup> First, the traditional method provides legal services to impoverished individuals

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<sup>43</sup> Rebecca Nieman, 'Go Back to Your Roots! A Call to the Legal Services Corporation to Provide Increased Legal Assistance to Low-Income, Community Nonprofits', *SSRN Electronic Journal*, 2017 <https://doi.org/10.2139/ssrn.3022260>

<sup>44</sup> Philip Mirvis and others, 'Global Pro Bono Service: Implications for Employees, Companies and the Communities Served', in *Employee Engagement in Corporate Social Responsibility* (1 Oliver's Yard, 55 City Road London EC1Y 1SP: SAGE Publications Ltd, 2020), pp. 120–40 <https://doi.org/10.4135/9781529739176.n8>

<sup>45</sup> Nico Schrijver, 'A New Convention on the Human Right to Development: Putting the Cart before the Horse?', *Netherlands Quarterly of Human Rights*, 38.2 (2020), 84–93 <https://doi.org/10.1177/0924051920924547>

<sup>46</sup> Dr Thangavel V, 'Protecting and Promoting Human Rights in World Scenarios: A Qualitative and Quantitative Research', *SSRN Electronic Journal*, 2023 <https://doi.org/10.2139/ssrn.4461002>

<sup>47</sup> Vanessa C. Burbano, John Mamer, and Jason Snyder, 'Pro Bono as a Human Capital Learning and Screening Mechanism: Evidence from Law Firms', *Strategic Management Journal*, 39.11 (2018), 2899–2920 <https://doi.org/10.1002/smj.2947>

<sup>48</sup> Wilfried Hinsch and Markus Stepanians, 'Human Rights as Moral Claim Rights', in *Rawls's Law of Peoples* (Wiley, 2006), pp. 117–33 <https://doi.org/10.1002/9780470776612.ch7>

<sup>49</sup> Anny Yuserlina, 'Pelaksanaan Pemberian Bantuan Hukum Pada Tingkat Penyidikan Berdasarkan Kitab Undang-Undang Hukum Acara Pidana (KUHP) Di Wilayah Hukum Polres Bukittinggi', *Ensiklopedia Sosial Review*, 3.2 (2021), 237–46 <https://doi.org/10.33559/esr.v3i2.791>



individually, characterized by a passive nature of legal aid and a formal, legal approach. Second, constitutional methods encompass legal assistance to disadvantaged individuals, operating within broader initiatives and objectives, such as enhancing legal knowledge and promoting human rights principles. Third, structural methods are activities aimed at creating conditions for the realization of laws that can change unequal structures towards more just ones. This concept is closely related to structural poverty. Fourth, the responsive method is provided to the poor free of charge, covers all areas of law and human rights, and does not differentiate between the defense of individual and collective cases.

Based on the aforementioned concepts, responsive and structural legal aid can facilitate the realization of access to law and justice for the impoverished. Combining the concept of providing legal assistance with access to law and justice can make it possible for disadvantaged individuals to access the legal system and attain justice. However, numerous challenges exist in ensuring equitable legal assistance for the underprivileged. Policy and regulation makers must submit plans for community legal access requirements.

Responding to budget planning and expenditure issues is crucial for the justice system and legal aid provision. However, in general, the justice systems in Indonesia and Europe are not responsive to budget planning and expenditure issues, which is a significant problem. Federica Viapiana's (2019) research reveals that the design of budgets typically relies solely on historical costs despite their crucial role in court functioning. Budgets are, in fact, one of the most neglected subjects in court administration studies. The justice system and court budgeting should be done with a "performance-based" perspective.<sup>50</sup>

Naturally, this also applies to legal aid budgets. The existing budget has a significant influence on lawyer remuneration. Remuneration will be based on the quality of work and the results of assistance. The existing budget also influences how many cases the government can fund. The higher the affordability of legal aid, the closer it is to total value so that all poor people who need legal assistance can access the help they need.<sup>51</sup> Performance-based budgeting will indirectly evaluate the number of legal aid services that are not optimal from year to year, especially when compared with the Netherlands. This method will connect organizational costs and output, policy development and resource allocation, performance targets and resource use, managerial discretion, and accountability.

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<sup>50</sup> Federica Viapiana and Marco Fabri, 'Administration of Justice and Courts' Budget: An Independence and a Managerial Issue', *Ciências e Políticas Públicas / Public Sciences & Policies*, 5.1 (2019), 53–68 <https://doi.org/10.33167/2184-0644.CPP2019.VVN1/pp.53-68>

<sup>51</sup> Simon Rice, 'Examining a Right of Access to Laww', *SSRN Electronic Journal*, 2017 <https://doi.org/10.2139/ssrn.3072054>

The issues persist in the legal aid budget, the development of digital assistance can facilitate the implementation of additional policies to optimize access. This is crucial to reverse the downward trend in the number of individuals with complete access to high-quality legal aid. In fact, high-quality legal services not only need to be provided to the majority of society but also at the lowest cost. In this case, financing digital technologies that guarantee the spread of socially significant legal services would be an acceptable option.<sup>52</sup> In Andrew Mowbray's (2020) research, it is even possible to use artificial intelligence to obtain legal information,<sup>53</sup> or use of digital evidence in legal assistance.<sup>54</sup>

Another way could be to set up a sustainable system of voluntary contributions for lawyers and organizations. Based on a comparison of Indonesian institutions that provide legal assistance, the ratio is only approximately 1:150 cases (as of 2018). Therefore, government must develop lawyers' contributions to legal aid provision. For example, each lawyer contributes two hours per week in England and Wales, so at least 17 million hours of free legal advice per year are available to those who need it. Then, law firms or chambers consisting of 10 or more attorneys may establish pro bono departments. Pro bono contributions raise awareness and inspire people to participate in pro bono work.<sup>55,56</sup> This method can reduce the gap between the number of legal aid cases and the institutions that assist.<sup>57</sup>

The resolving budgeting problems from the perspective of objectivity in selecting legal aid recipients can be referred to in the way assets and salaries are assessed in the Netherlands. However, the UK assessment process can also be referred to. Providing legal aid is an integral part of a fair and inclusive justice system. The Legal Aid Agency manages legal assistance.<sup>58</sup> Significant changes were made by introducing the Legal Aid, Sentencing, and Punishment of Offenders Act 2012 (LASPO). LASPO is changing the UK's legal aid delivery

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<sup>52</sup> Anastasia Selkova, 'Would Online Legal Services Guarantee the Availability of Justice and Legal Aid?', *SHS Web of Conferences*, 134 (2022), 00035 <https://doi.org/10.1051/shsconf/202213400035>

<sup>53</sup> Andrew Mowbray, Philip Chung, and Graham Greenleaf, 'Utilising AI in the Legal Assistance Sector—Testing a Role for Legal Information Institutes', *Computer Law & Security Review*, 38 (2020), 105407 <https://doi.org/10.1016/j.clsr.2020.105407>

<sup>54</sup> Joshua I. James and Pavel Gladyshev, 'A Survey of Mutual Legal Assistance Involving Digital Evidence', *Digital Investigation*, 18 (2016), 23–32 <https://doi.org/10.1016/j.diin.2016.06.004>

<sup>55</sup> Fatos Selita, 'Improving Access to Justice: Community-Based Solutions', *Asian Journal of Legal Education*, 6.1–2 (2019), 83–90 <https://doi.org/10.1177/2322005819855863>

<sup>56</sup> Nigel Duncan, Rachael Field, and Caroline Strevens, 'Ethical Imperatives for Legal Educators to Promote Law Student Wellbeing', *Legal Ethics*, 23.1–2 (2020), 65–88 <https://doi.org/10.1080/1460728x.2020.1834070>

<sup>57</sup> Jess Mant and Julie Wallbank, 'The Post-LASPO Landscape: Challenges for Family Law', *Journal of Social Welfare and Family Law*, 39.2 (2017), 149–51 <https://doi.org/10.1080/09649069.2017.1306340>

<sup>58</sup> Felicity Kaganas, 'Justifying the LASPO Act: Authenticity, Necessity, Suitability, Responsibility and Autonomy', *Journal of Social Welfare and Family Law*, 39.2 (2017), 168–88 <https://doi.org/10.1080/09649069.2017.1306345>

landscape. Although not all of them are efficient and successful,<sup>59</sup> but the stages of providing legal aid for poor people in England can be used as knowledge, including:<sup>60</sup> 1) Eligibility Evaluation: The Legal Aid Agency will first assess the eligibility of individuals who need legal assistance. Eligibility is usually based on their income and asset level. 2) Types of Assistance Once eligibility is determined, the available assistance types will be considered. This may include legal consultation, assistance at trial, or full legal representation. 3) Selection of Service Provider: After determining eligibility and the type of assistance, people will be directed to the appropriate legal service provider. This can be an independent legal practitioner or a non-profit organization partnering with a legal aid agency. 4) Implementation and Monitoring: Following the start of legal aid, government will regularly monitor and evaluate the process to ensure that individual legal needs are appropriately met.

At this stage, it should be possible to dispel any suspicion of subjectivity or doubt regarding the criteria for poor people who can receive assistance. Essentially, using an Indigent Certificate or *Prasejahtera* Card in Indonesia can be an authentic and straightforward proof. You can omit the asset and salary validation stages. Regrettably, discrepancies in society's actual conditions often arise at this stage. Therefore, the letter or card can still be used, but it must be used to evaluate and validate potential aid recipients with the latest asset conditions and salaries. Assessments are also carried out by appointed central institutions. The Netherlands has also undertaken this task. The most intriguing aspect is that it can be determined the type of assistance and service provider by assessing the individual's condition, including their assets and salary, and the nature of the legal problems they face. This method can facilitate structural legal assistance, which involves utilizing the law to transform an inequitable system into a more equitable one.

This method can be elaborated with a remuneration system—additional payments given to advocates. This implies that the cost of assistance varies depending on the difficulty level. In the end, this will have an impact on the government's budgetary requirements. On the extreme end, legal aid institutions with positive evaluation results may set different "price" rates. This will encourage lawyers to work by paying attention to the values of other clients. Indirectly, the

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<sup>59</sup> Konstantinos Kalliris and Theodore Alysandratos, 'The Effects of LASPO on Court Efficiency and the Impact of Litigants in Person: An Empirical Study', *SSRN Electronic Journal*, 2022 <https://doi.org/10.2139/ssrn.4196138>

<sup>60</sup> Fachrizal Afandi, 'Implementasi Pengabdian Masyarakat Berbasis Access To Justice Pada Lembaga Bantuan Hukum Kampus Negeri Pasca Pemberlakuan Undang-Undang Bantuan Hukum', *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional*, 2.1 (2013), 31 <https://doi.org/10.33331/rechtsvinding.v2i1.80>

institution will implement ways to overcome multi-problem situations and provide education and training programs for legal professionals.<sup>61</sup>

Achieving this takes time, but since value-based education forms the foundation of lawyer education, lawyers understand the theoretical value of justice within the framework of ethics and law and incorporate it into their daily attitudes and practices, thereby facilitating the application of justice.<sup>62</sup> Everything will lead to accessible and fair legal assistance. Government must take into account to create responsive legal aid based on human rights without distinguishing between individual and collective defense. Concrete regulations and policies must ultimately govern the provision of legal aid, particularly on important issues, especially in civil law countries. Indonesia is a country that is 'obsessed' with written rules. Policies that are only derived from standard operating procedure rules are easily changed or not adhered to.<sup>63</sup> Therefore, it is crucial to reorganize budgetary arrangements according to higher laws. The legal protection intended in this paper is directed at fair protection based on human rights.<sup>64</sup>

#### 4. Conclusion

Legal aid to people experiencing poverty is more than just an extra service in the justice system; it is crucial to ensuring justice. Providing legal assistance is also part of fulfilling human rights to equality before the law. Legal aid for poor people is essential in every justice system in Indonesia and the Netherlands. However, poor people often have difficulty accessing legal assistance in court. Budgetary policies and regulations pose a significant challenge to providing legal assistance. Legal and institutional structures always tie the provision of legal aid to the budget. Meanwhile, community knowledge and the quality of assistance primarily determine legal culture—the community's awareness of accessing legal assistance. Budgetary considerations also influence the quality of assistance. Therefore, the concept of providing legal aid must be directed at the concept of delivering responsive and structural legal aid combined with the concept of access to law and justice. Legal assistance is provided to change structural inequality and is easily accessible so that assistance is obtained that is fair and based on human rights. Budgetary policies or rules must be regulated concretely and balanced from the individual validation stage, selecting the type of service and appointing a lawyer for evaluation.

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<sup>61</sup> Verboon and others.

<sup>62</sup> Bieliauskaitė.

<sup>63</sup> Bob Hudson, David Hunter, and Stephen Peckham, 'Policy Failure and the Policy-Implementation Gap: Can Policy Support Programs Help?', *Policy Design and Practice*, 2.1 (2019), 1–14 <https://doi.org/10.1080/25741292.2018.1540378>

<sup>64</sup> Wawan Andriawan, 'Pancasila Perspective on the Development of Legal Philosophy: Relation of Justice and Progressive Law', *Volksgeist: Jurnal Ilmu Hukum Dan Konstitusi*, 5.1 (2022), 1–11 <https://doi.org/10.24090/volksgeist.v5i1.6361>

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