

**VERIFICATION AND ACCREDITATION OF LEGAL AID ORGANIZATION; A STATE OBLIGATION**

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**ABSTRACT**

The state as well as Indonesia must fulfill the constitutional rights of citizens such as legal aid. Since 2013, Indonesia has had a priority program concerning legal aid for the poor. There is an increasing number of OBH since The Ministry of Law and Human Rights - National Legal Development Agency conducting the verification and accreditation for Legal Aid Organization. This study raises a question; is verification and accreditation of legal aid organizations based on Law No. 16/2011 a form of fulfillment of the state obligation of Human rights? This study uses a normative approach by analyzing regulations concerning providing legal aid. As result, verification and accreditation of OBH is a measure of Indonesia to fulfill its obligations in regard to guaranteeing equal rights for every citizen of Indonesia. There is a suggestion namely Indonesian government needs to support the establishment of OBH in regard to providing access to legal aid for the community equally.

**Keywords:** "Verification, Accreditation, OBH, Obligation"

**1.0 INTRODUCTION**

Indonesia is a state member of some UN conventions concerning human rights in order to fulfill its citizens' rights before the law. In specific, it is about the fulfillment of the right to obtain legal assistance.[1] There are some international instruments that discuss state parties' obligations to ensure the availability of national legal rules concerning legal aid. For example, ICCPR which states in article 14 the obligation of the state to provide legal assistance.[2] Furthermore, Articles 16 and 26 of the ICCPR provide guarantees for everyone to have the right to legal protection and to be avoided all forms of discrimination.[3]

In particular, the United Nations has regulations regarding legal aid, namely the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems.[2] It states 14 principles and 18 guidelines. This means that the existence of this international legal instrument is an achievement to ensure legal access for everyone. [4]

Indonesia, as a member country of the United Nations, already has a legal regulation regarding legal aid, namely Law No. 16 of 2011 concerning Legal Aid. This law accommodates legal aid provided to the poor. The consequence of the birth of this Law is the presence of Legal Aid Organizations which are accredited Legal Aid Providers as contained in the Decree of the Minister of Law and Human Rights (KemenkumHAM) No M.HH-

01.HH.07.02 2018 concerning Legal Aid Institutions or Organizations that have passed verification and accreditation as legal aid providers for the period 2019 to 2021.

The presence of this OBH is based on Article 7 paragraph (3) of Law Number 16 of 2011 concerning Legal Aid which requires every Legal Aid Institution/Organization to follow a verification and accreditation process. After participating in verification and accreditation, then it is declared eligible to become a Legal Aid Provider and can access budgets from the central and regional governments.[5] This is interesting so that it raises a question, namely is verification and accreditation of legal aid organizations based on Law No. 16/2011 a form of fulfillment of the state obligation of Human rights?

This question related to state obligations is based on the findings of several previous studies related to the implementation of the legal aid law. The research found that; (1) the number of Legal Aid Providers (PBH) is still minimal; (2) the distribution of the majority of Legal Aid Providers is in the capital city of each province so they cannot reach up to the district/city level; (3) The form of legal aid provided focuses on litigation assistance and the funding allocation is used for assistance to perpetrators, (4) The target group for the implementation of legal aid is the poor, as evidenced by Certificate of Economic status/poor Surat Keterangan Tidak Mampu (SKTM).[3],[6],[7]

The question of whether verification and accreditation are carried out by the National Legal Development Agency of the Ministry of Law and Human Rights of the Republic of Indonesia-Badan Pembinaan Hukum Nasional Kementerian Hukum & HAM RI (BPHN) is a form of fulfillment of State obligations as recommended in the United Nations, Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems. This is based on the recommendation that the participating countries are expected to make adjustments to the implementation of this guideline to the existing legal regulations by ensuring the strengthening of access to legal aid in the criminal law system.

## 2.0 METHODOLOGY

This research applied a normative juridical approach by analyzing regulations related to the implementation of the Law on Legal Aid, especially regarding the Verification and Accreditation process of Legal Aid Institutions/Organizations in Indonesia.

## 3.0 DISCUSSION

At the beginning of the article, it was stated that the right to legal assistance is universal and regulated in the International Covenant on Civil and Political Rights (ICCPR). Guarantees for obtaining legal protection rights and being free from all forms of discrimination are regulated in articles 16 and 26. Furthermore, Article 14 (3) ICCPR provides conditions related to legal aid, namely (1) the interest of justice, and (2) unable to pay an advocate.[8] These two conditions are contained in Law number 16 of 2011 concerning Legal Aid. In the general section, it is stated that legal aid is legal services provided by legal aid providers free of charge to legal aid recipients. There are three elements, namely, first, legal services in the form of criminal, civil and state administration. Second, legal aid providers in Indonesia are known as advocates.[9] Third, the purpose of providing legal aid is to guarantee and fulfill the rights of legal aid recipients to get access to justice.[10] Based on this description, it can

be seen that the Indonesian Legal Rules are in accordance with the mandate of the ICCPR. The next description will discuss the technical implementation of the Law on Legal Aid through the verification and accreditation process carried out by BPHN RI.

The arrangements for legal aid at the international level are contained in the United Nations General Assembly adopted The UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems. It is the first international instrument to deal with legal aid. In the annexes, it's recalling the UDHR and ICCPR. This arrangement is important as a reference to see conformity with verified and accredited OBH in Indonesia.

**Table 1. Requirements of Legal Aid**

Description	ICCPR	Law No. 16 of 2011 concerning Legal Aid
Goals	The interests of justice	guarantee and fulfill the rights of legal aid recipients to get access to justice
Subject for Legal Aid	Could not pay a lawyer	legal services provided by legal aid providers free of charge to legal aid recipients

In the Annex section of the UN principle and Guideline on Access to Legal Aid in Criminal Justice Systems which was adopted in December 2012 in the Introduction section, it is stated that the points that guide participating countries in implementing legal aid.

First, the subject of legal aid recipients, namely everyone who is in conflict with the law, namely perpetrators, witnesses, and victims. In the majority, legal assistance is to guarantee the rights of the perpetrators at every stage of the legal process. Thus, legal assistance is also provided to victims and witnesses. Legal assistance is provided to this group to ensure a sense of security and protection. Furthermore, Legal aid can be utilized to contribute to the prevention of crime by increasing awareness of the law.

Law No. 16 of 2011 concerning Legal Aid provides a definition of legal aid that focuses on the services provided, namely legal services provided by Legal Aid Providers free of charge to Legal Aid Recipients.[11] The subject of the legal aid recipient is mentioned hereinafter as the recipient of legal aid who is a poor person or group of people.[12] The words used here are singular (people) or plural (groups) which refer to the word poor. The word Poor is interesting to discuss because the Law again provides a definition that the eligibility (measurement) of poverty is that which cannot fulfill basic rights properly and independently, such as the right to clothing, food, health services, educational services, employment, and business, and/or housing. [11]

The statement in the article in this Law is felt to place a limit on the subject of legal aid recipients only to poor people or groups of people or in other words based on economic conditions alone. This is important considering that there are vulnerable groups that the state should pay attention to, namely children, women, and persons with disabilities.[12] If referring to the adoption of The UN Principles and Guidelines on Access to Legal Aid in

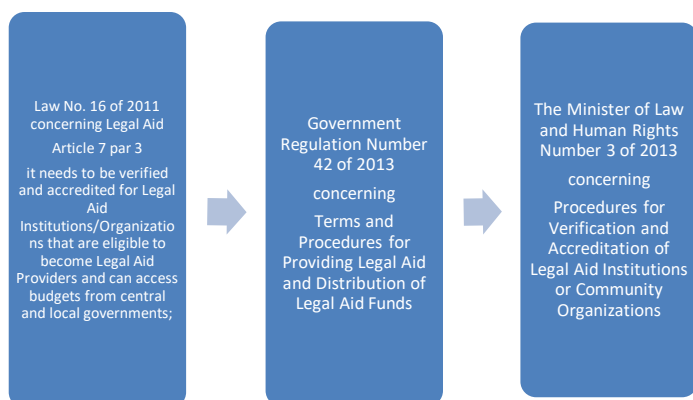
Criminal Justice Systems, Indonesia should consider a definition that also includes vulnerable groups. Point 12 mentions that other vulnerable groups need special attention when involved in the legal process, namely women, children, and groups with special needs.

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**Figure 1. Regulations of Verification and Accreditation**

What about the legal aid verification and accreditation process, are the needs of these vulnerable groups accommodated? Verification and Accreditation is a step for the Indonesian government to fulfill Principle 13 of The UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems. Principle 13 discusses the Competence and accountability of legal aid providers. Verification and Accreditation for Legal Aid in Indonesia have been carried out since 2013. [13]

To ensure that legal aid providers have competence, participating countries are asked to (1) develop mechanisms to ensure that all legal aid providers possess education, training, skills, and experience that are commensurate with the nature of their work, including the gravity of the offenses which dealt with, and the rights and needs of women, children, and groups with special needs. (2) Disciplinary complaints against legal aid providers should be promptly investigated and adjudicated in accordance with professional codes of ethics before an impartial body and subject to judicial review.

Furthermore, to find out whether principle 13 as stated in The UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems has been implemented in Indonesia, it is necessary to review the Regulation of the Minister of Law and Human Rights Number 3 of 2013 concerning Procedures for Verification and Accreditation. Legal Aid Institute or Community Organization. This Ministerial Regulation itself already has a follow-up regulation which is an Implementing Instruction on Procedures for Verification, Accreditation, and Extension of Certification for Prospective Legal Aid Providers No.: PHN-HN.04.03-14.

It is stated in the implementation guide that the purpose of this implementation guide is to provide guidance for the Verification and Accreditation Committee, Working Group, and Prospective Legal Aid Providers in order to prepare all things needed or required, as well as what must be done in the implementation of Verification and Accreditation as well as Certification Extension. To maximize the objectives, the implementation guidelines include the steps that must be taken in the implementation of Verification, Accreditation and Extension of Certification for Prospective Legal Aid Providers.[14]

Verification is an examination of the correctness of reports and documents submitted by Legal Aid Organizations and Legal Aid Providers. Verification and Accreditation are carried out every 3 (three) years for legal aid institutions or organizations that provide Legal Aid and Legal Aid Providers. This activity is carried out within a maximum period of 4 (four) months from the date of the registration announcement. [14]

The stages in verifying and accrediting Legal Aid Providers are carried out by a) announcements; b) application; c) administrative checks; d) factual examination; e) classification of Legal Aid Providers; and f) determination of Legal Aid Providers.

In 2021, the Ministry of Law and Human Rights issued Regulation of the Minister of Law and Human Rights Number 4 of 2021 concerning Legal Aid Service Standards. Legal Aid Service Standards hereinafter referred to as Starla Bankum. This regulation is a benchmark used as a guideline in providing Legal Aid services. The allocation of Legal Aid as regulated in Law Number 16 of 2011 is expanded through the PermenkumHAM, which is stated in Article 3 Paragraph 2 letter b, namely in the context of implementing the Starla Bankum,

Legal Aid Providers are obliged to conduct an assessment of the vulnerability conditions and legal needs of Legal Aid Recipients related to issues related to legal assistance.

This opens up opportunities for Legal Aid Providers to provide wider legal aid services.[16] Recipients of Legal Aid are mentioned in the Legal Aid Act but can also be given to people who need legal assistance other than those required by the Legal Aid Law. Thus, the subject of legal aid as stated in the ICCPR as unable to pay an advocate, and The UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, which in point 12 mentions that other vulnerable groups need special attention when involved in the legal process, namely groups women, children and groups with special needs have been strengthened as stated in the Regulation of the Minister of Law and Human Rights Number 4 of 2021 concerning Standards for Legal Aid Services. Legal Aid Service Standards hereinafter referred to as Starla Bankum, recommends to OBH conduct an assessment of the condition of vulnerability and legal needs of Legal Aid Recipients related to the problems faced.

Accreditation is the assessment and acknowledgment of Legal Aid Organizations that will provide legal assistance in the form of classification/leveling in the provision of legal aid. After going through the verification process in 2018, the OBH that passed the verification got accreditation based on the Decree of the Minister of Law and Human Rights-Keputusan Menteri Hukum dan Hak Asasi Manusia (KemenkumHAM) No M.HH-01.HH.07.02 2018 concerning Legal Aid Institutions or Organizations that have passed verification and accreditation as legal aid providers for the period 2019 s.d. 2021.

The National Legal Development Agency (BPHN) of the Ministry of Law and Human Rights noted that the number of accredited OBH has continued to grow in Indonesia since 2013 when the verification and accreditation of legal aid providers began. There were 310 OBH in 2013-2015, 405 OBH in 2016-2018, and 524 OBH in 2019-2021.

Accreditation is carried out by classifying legal aid institutions or legal aid organizations based on several qualifications as stipulated in Article 29 Paragraph (2) of the Minister of Law and Human Rights Number 3 of 2013.

**Table 2. OBH Accredited Qualification**

Qualification	Accreditation A	Accreditation B	Accreditation C
Number of Cases	Minimal 60 kasus/tahun	Minimal 30 kasus/tahun	Minimal 10 kasus/tahun
Non-litigation Legal Aid Program	Minimum 7 Programs	Minimum 5 Programs	Minimum 3 Programs
Advocates and Paralegals	Min. 10 advocates (S1 education level), and 10 paralegals (participated in paralegal	Min. 5advocates (S1 education level), and 5 paralegals (participated in paralegal	Min. 1 advocates (S1 education level), and 3 paralegals (participated in paralegal



	training)	training)	training)
Number of Case handling	Province and Regency/City	Province and Regency/City	Province and Regency/City

Back to The UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems which states that Principle 2. Responsibilities of State number 15 require participating countries to specifically prepare legislation and regulations and ensure that a comprehensive legal aid system is in place that is accessible, effective, sustainable, and credible. States should allocate the necessary human and financial resources to the legal aid system.

Based on the description above, it is known that the legislative steps taken by the Indonesian government regarding legal aid have fulfilled the principle of state obligations. Indonesia is a country that already has regulations regarding the Provision of Legal Aid which includes the Giver, Recipient of types of legal aid services, and evaluation of the implementation of legal aid itself. This is evidenced by the existence of several regulations such as (1) Law Number 16 of 2011 concerning Legal Aid; (2) Government Regulation Number 42 of 2013 concerning Terms and Procedures for Providing Legal Aid and Distribution of Legal Aid Funds (3) The Minister of Law and Human Rights Number 3 of 2013 concerning Procedures for Verification and Accreditation of Legal Aid Institutions or Community Organizations ; (4) Regulation of the Minister of Law and Human Rights Number 4 of 2021 concerning Standards for Legal Aid Services; and (5) Decree of the Head of BPHN concerning Implementing Instructions on Procedures for Verification, Accreditation, and Extension of Certification for Prospective Legal Aid Providers Nomor: PHN-HN.04.03-14.

An interesting thing that should be a concern in the future in providing legal aid in Indonesia is the existence of legal aid organizations. In the future, the perpetrators of providing legal aid can be wider. The concept of access to justice does not only mean access to lawyers but also to other institutions.[17] This is stated in Principle 14 on Partnerships which recommends that countries involve lawyers' associations, universities, civil society, and other groups and institutions in providing legal aid.

#### 4.0 CONCLUSION

Sebagai Konklusi diketahui bahwa langkah legislasi yang diambil oleh pemerintah Indonesia tentang Bantuan hukum telah memenuhi prinsip kewajiban negara sebagaimana tersebut dalam Prinsip 13 The UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems.

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