

(Official Translation)

DRAFT

THE LAW OF THE REPUBLIC OF INDONESIA
NUMBER 16/ YEAR 2011 CONCERNING
LEGAL AID

BY THE GRACE OF GOD THE ALMIGHTY

PRESIDENT OF THE REPUBLIC OF INDONESIA,

Considering:

- a. that the state guarantees the constitutional right of everyone to get recognition, security, protection, and fair legal certainty and equal treatment before the law as a means of protection of human rights;
- b. that the state is responsible for providing legal assistance to poor people as the embodiment of access to justice;
- c. that regulation on the legal aid organized by the state should be oriented to the realization of a just social change;
- d. that based on the considerations as referred to in letter a, b, and c, it is necessary to form an Law on Legal Aid;

In view of : Article 20, Article 21, Article 27 paragraph (1), Article 28D paragraph (1), Article 28H

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paragraph (2), Article 28I paragraph (4) and paragraph (5), Article 34 paragraph (2) and Article 34 paragraph (4) of the Constitution of the Republic of Indonesia Year 1945;

With the joint approval of
THE HOUSE OF REPRESENTATIVES OF THE REPUBLIC OF INDONESIA
and
THE PRESIDENT OF THE REPUBLIC OF INDONESIA

HAS DECIDED:

To stipulate: THE LAW ON LEGAL ASSISTANCE.

CHAPTER I
GENERAL PROVISIONS

Article 1

In this Law referred to as:

1. Legal Aid is legal services provided by the Legal Aid Provider for free to Legal Aid Recipients.
2. Legal Aid Recipients are persons or a group of poor people.
3. Legal Aid Providers are legal aid agency or community organizations that provide legal aid services under this Law.

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4. Minister is the minister who conducts the affairs of government in the field of law and human rights.
5. Standards are the guidelines for the implementation of Legal Aid to provide legal aid as determined by the Minister.
6. Advocates Code of Ethics is a code of ethics established by advocate professional organizations that apply to the Advocate.

Article 2

Legal Aid shall be implemented based on the principles:

- a. justice;
- b. equality before the law;
- c. openness;
- d. efficiency;
- e. effectiveness; and
- f. accountability.

Article 3

Implementation of Legal Aid aims to:

- a. guarantee and fulfill the right to Legal Aid Recipients to gain access to justice;
- b. realize the constitutional rights of all citizens in accordance with the principle of equality before the law;

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- c. ensuring certainty of the implementation of the Legal Aid evenly implemented across the territory of the Republic of Indonesia; and
- d. create an effective, efficient, accountable judiciary.

CHAPTER II

SCOPE

Article 4

- (1) Legal assistance shall be provided to Legal Aid Recipients who face legal problems.
- (2) The legal assistance referred to in paragraph (1) includes civil and criminal law issues, criminal, and state administrative courts both litigation and non-litigation.
- (3) Legal Aid referred to in paragraph (1) include exercise the power, accompany, represent, defend, and/or other legal action for the benefit of Legal Aid Recipients law.

Article 5

- (1) Recipients of Legal Aid as referred to in Article 4 paragraph (1) includes any person or a group of poor people who cannot meet the basic right appropriately and independently.
- (2) Basic rights referred to in paragraph (1) includes the right to food, clothing, health services, education services, employment and enterprise, and/or housing.

CHAPTER III

IMPLEMENTATION OF LEGAL AID

Article 6

- (1) Legal Aid is organized to help resolve legal issues faced by Legal Aid Recipients.
- (2) Provision of Legal Aid to Recipient is organized by Minister and executed by the Legal Aid Provider under this Law.
- (3) The Minister referred to in paragraph (2) has as his duties to:
 - a. formulate and set policy to organize the Legal Aid;
 - b. help prepare and establish standards based on the principles of law to provide legal aid;
 - c. prepare a Legal Aid budget plan;
 - d. manage the Legal Aid budget effectively, efficiently, transparently and accountably; and
 - e. prepare and submit reports on the legal aid organization to the House of Representatives at the end of each fiscal year.

Article 7

- (1) In order to carry out the tasks referred to in Article 6, the Minister shall be authorized:

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- a. oversee and ensure that the implementation of legal aid and provision of legal aid be run according to the principles and objectives set out in this Law; and
 - b. conduct verification and accreditation of legal aid or community organizations to meet the eligibility as a Legal Aid Provider under this Law.
- (2) In order to perform verification and accreditation as referred to in paragraph (1) letter b, the Minister shall form a committee of which its elements shall consist of:
- a. the government ministry in the field of law and human rights;
 - b. law professors;
 - c. prominent public figures, and
 - d. institutions or organizations that provide legal aid services.
- (3) Verification and accreditation as referred to in paragraph (1) letter b shall be conducted every 3 (three) years.
- (4) Further provisions on procedures for verification and accreditation as referred to in paragraph (1) point b shall be regulated by a Ministerial Regulation.

CHAPTER IV

LEGAL AID PROVISION

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Article 8

- (1) The implementation of legal aid shall be done by the Legal Aid Providers who are qualified under this Law.
- (2) The requirements for the Legal Aid Providers as referred to in paragraph (1) include:
 - a. having a legal entity;
 - b. having been accredited under this Law;
 - c. having an office or a permanent secretariat;
 - d. having a board of management; and
 - e. having a legal aid program.

Article 9

The Legal Aid Providers are entitled:

- a. to recruit lawyers, paralegals, professors, and law students;
- b. to do legal aid services;
- c. to conduct legal counseling, legal advice, and other program activities related to the implementation of legal aid;
- d. to receive budget from the state to carry out legal aid under this Law;
- e. to issue an opinion or statement in defense of the case which falls under their responsibility in the trial court in accordance with the provisions of legislation;

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- f. to obtain information and other data from the government or other agencies, for the benefit of the defense of the case; and
- g. to obtain legal protection guarantees, security, and safety during the running of Legal Aid provision.

Article 10

Legal Aid Providers shall be obliged to:

- a. report to the Minister on legal aid programs;
- b. report any use of the state budget that is used for the provision of legal aid under this Law.
- c. provide education and training of legal aid for lawyers, paralegals, lecturers, law students who are recruited as referred to in Article 9 letter a.
- d. maintain confidentiality of data, information, and/or information obtained from the Legal Aid Recipient relating to the matters being dealt with, unless otherwise stipulated by the Law; and
- e. provide a Legal Aid to the Legal Aid Recipient under the terms and procedures specified in this Law until the case is completed, unless there are legitimate reasons.

Article 11

Legal Aid Providers may not be sued in civil or criminal in providing a Legal Aid which falls under their responsibility

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which is made in good faith within and outside the courtroom according to Standard Code of Ethics of Advocates based on the legislation and/or Code of Ethics of Advocates.

CHAPTER V

RIGHTS AND OBLIGATIONS OF LEGAL AID RECIPIENTS

Article 12

Legal Aid recipients are entitled:

- a. obtain a Legal Aid until their legal problems are resolved and/or the case has had a permanent legal force, as long as the relevant Legal Aid Recipients do not revoke their power of attorney;
- b. obtain a Legal Aid in accordance with the Legal Aid Standards and/or Code of Ethics of Advocates; and
- c. obtain information and documents relating to the implementation of the provision of Legal Aid in accordance with the provisions of the legislation.

Article 13

Legal Aid Recipients must:

- a. submit evidence, information, and/or case statements correctly and truly to the Legal Aid Provider;
- b. help make the provision of the Legal Aid run smoothly.

CHAPTER VI

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TERMS AND PROCEDURE FOR THE LEGAL AID PROVISION

Article 14

- (1) In order to obtain a Legal Aid, a Legal Aid applicant must meet the following conditions:
 - a. submit a written application containing at least the identity of the applicant and a brief description of the subject matter being applied for a Legal Aid;
 - b. submit documents pertaining to the case; and
 - c. attach this letter of information certifying that he/she is poor from the head of village or any other official having equal level at the Legal Aid applicant's residence.
- (2) In the event that Legal Aid applicant is not able to compile a written application, an appeal may be submitted verbally.

Article 15

- (1) The applicant for a Legal Aid shall submit their application to the Legal Aid Provider.
- (2) The Legal Aid Provider within a period of 3 (three) working days after the request for a Legal Aid is otherwise declared complete must provide answers as to accept or reject the application for the Legal Aid.
- (3) If the application for the legal aid is accepted, Legal Aid Provider shall provide the Legal Aid based on a special power of attorney from the Legal Aid Recipients.

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- (4) If the application for the Legal Aid is rejected, the Legal Aid Provider concerned shall state the reason for rejection.
- (5) Further provisions concerning the terms and procedure for the granting of legal aid is regulated by a Government Regulation

CHAPTER VII

FUNDING

Article 16

- (1) The funding of legal aid that is required and used for the provision of Legal Aid in accordance with this Law shall be charged to the State Budget.
- (2) In addition to funding as referred to in paragraph (1), the source of the Legal Aid can come from:
 - a. grants or donations; and/or
 - b. other funding sources which are legitimate and not binding.

Article 17

- (1) The Government shall allocate the Legal Aid organization funds in the State Budget.
- (2) The funds for the implementation of Legal Aid as referred to in paragraph (1) shall be allocated to the budget of

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the Ministry that conducts the affairs of government in the field of law and human rights.

Article 18

Further provisions concerning the procedures for disbursement of funds of Legal Aid as referred to in Article 16 paragraph (1) to the Legal Aid Providers shall be regulated by Government Regulation.

Article 19

- (1) Regional organization can allocate legal aid budget in the Budget Revenue and Expenditure.
- (2) Further provisions on the organization of legal aid as referred to in paragraph (1) is regulated by a Regional Government Regulation.

CHAPTER IX

PROHIBITION

Article 20

Legal Aid Providers are prohibited from receiving or requesting payment from Legal Aid Recipients and/or other parties related to cases being dealt with by the Legal Aid Providers.

CHAPTER X

CRIMINAL PROVISIONS

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Article 21

Legal Aid Providers who are proven to receive or request payment from their Legal Aid Recipients and/or other parties related to the case being dealt with as referred to in Article 20, shall be punished with a maximum imprisonment of 1 (one) year or a maximum fine of IDR50,000,000.00 (fifty million rupiah).

CHAPTER XI

TRANSITIONAL PROVISIONS

Article 22

The Legal Aid organization and budget organized by the Supreme Court of the Republic of Indonesia, Indonesian National Police, the Attorney of the Republic of Indonesia, and other agencies at the time this Law comes into force, shall remain to be implemented until the end of the fiscal year concerned.

Article 23

- (1) The provision of Legal Aid that is being processed before this Law comes into force shall remain to be implemented until the end of the fiscal year concerned.
- (2) In the event that legal aid has not been completed by the end of the fiscal year concerned as referred to in paragraph (1), subsequent legal aid provision shall implemented under this Law.

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CHAPTER XII

CONCLUDING PROVISIONS

Article 24

At the time this Law comes into force, all acts regulating the legal aid shall be declared to remain valid as long as not contrary to the provisions of this Law.

Article 25

This Law shall come into force on the date of promulgation.

For public cognizance, it is ordered that this Law be published in the Official Gazette of the Republic of Indonesia.

Ratified in Jakarta

On

PRESIDENT OF THE REPUBLIC OF INDONESIA,

signed

SUSILO BAMBANG YUDHOYONO

Promulgated in Jakarta

On

MINISTER OF JUSTICE AND HUMAN RIGHTS

OF THE REPUBLIC OF INDONESIA,

Signed

PATRIALIS AKBAR

OFFICIAL GAZETTE OF THE REPUBLIC OF INDONESIA NUMBER

ELUCIDATION

THE LAW OF THE REPUBLIC OF INDONESIA

NUMBER ... YEAR ...

CONCERNING

LEGAL AID

I. GENERAL

The right to legal aid has been accepted universally and guaranteed in the International Covenant on Civil and Political Rights (*International Covenant on Civil and Political Rights (ICCPR)*). Article 16 and Article 26 of the ICCPR guarantees everyone the right to legal protection and should be avoided from any forms of discrimination. While Article 14 paragraph (3) of the ICCPR, provides legal aid-related terms, i.e.,: 1) the interests of justice, and 2) cannot afford to pay the Advocate.

Although legal aid is not explicitly stated as the responsibility of the state but the provisions of Article 1 paragraph (3) of the Constitution of the Republic of Indonesia Year 1945 assert that "Indonesia is a law state". In a law state, the state recognizes and protects human rights of every individual including the right to legal aid. Implementation of legal aid to citizens is an attempt to meet as well as the implementation of the law state that recognizes and protects and guarantees the rights of citizens who need access to justice and equality before the law. Guarantee of constitutional rights referred to above has not received adequate attention, so that the establishment of this Law on Legal Aid has become the basis for the state to guarantee its

citizens, especially for poor people or groups of poor people to gain access to justice and equality before the law. Therefore, the responsibility of the state shall be implemented through the establishment of this Legal Aid Law.

So far, the provision of legal aids has not much touched many people or groups of poor people, so they are difficult to access justice because it is hampered by their inability to realize their constitutional rights. Arrangements regarding the provision of legal aid in this legislation is a guarantee against the constitutional rights of poor individuals or groups of the poor.

Some of the subject matters that are set forth in this Law, among others include: the sense of Legal Aid, Legal Aid Recipient, Legal Aid Providers, the rights and obligations of legal aid recipients, terms and procedure for application for a legal aid, financing, restrictions, and criminal provisions.

II. ARTICLE BY ARTICLE

Article 1

Self-explanatory.

Article 2

Letter a

What is meant by "the principle of fairness" is putting the rights and obligations of each

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person proportionally, proper, correct, good, and orderly.

Letter b

What is meant by "the principle of equality before the law" is that everyone has rights and equal treatment before the law and the obligations of upholding the law.

Letter c

The definition of "openness principle" is to provide access to the public to obtain information completely, truly, honestly, and impartial justice in obtaining justice assurance on the basis of constitutional rights.

Letter d

What is meant by "efficiency principle" is to maximize the provision of legal aid through the use of existing budget resources.

Letter e

What is meant by "the principle of effectiveness" is to determine achievement of appropriate legal assistance.

Letter f

What is meant by "accountability principle" is that each activity and the end result of the implementation activities of legal aid should be accountable to the public.

Article 3

Self-explanatory.

Article 4

Self-explanatory.

Article 5

Self-explanatory.

Article 6

Paragraph (1)

Self-explanatory.

Paragraph (2)

This provision is without prejudice to the professional obligations of an Advocate to organize or implement a legal aid on the basis of legislations governing Advocate.

Paragraph (3)

Self-explanatory.

Article 7

Paragraph (1)

Letter a

Self-explanatory.

Letter b

Verification and accreditation are intended to assess and determine the feasibility of legal aid agency or community organizations as legal aid providers.

Paragraph (2)

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Self-explanatory.

Paragraph (3)

Self-explanatory.

Paragraph (4)

Self-explanatory.

Article 8

Self-explanatory.

Article 9

Letter a

What is meant by "law student" includes also a student of the faculty of sharia, the military college, and police college.

Letter b

Self-explanatory.

Letter c

What is meant by "other activities program related to the implementation of legal aid" is the program of: investigating the case, legal documentation, legal research, mediation, negotiation, and community empowerment.

Letter d

Self-explanatory.

Letter e

Self-explanatory.

Letter f

Self-explanatory.

Letter g

Self-explanatory.

Article 10

Self-explanatory.

Article 11

Self-explanatory.

Article 12

Self-explanatory.

Article 13

Self-explanatory.

Article 14

Paragraph (1)

Letter a

What is meant by "identity" among others includes full name, gender, place and date of birth, full address, and work as evidenced by the Identity Card and/or other documents issued by the competent authority.

Letter b

Self-explanatory.

Letter c

Self-explanatory.

Paragraph (2)

Self-explanatory.

Article 15

Self-explanatory.

Article 16

Self-explanatory.

Article 17

Self-explanatory.

Article 18

Self-explanatory.

Article 19

Self-explanatory.

Article 20

Self-explanatory.

Article 21

Self-explanatory

Article 22

Self-explanatory.

Article 23

Self-explanatory.

Article 24

Self-explanatory.

Article 25

Self-explanatory.

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