



Effectiveness of Legal Aid Provision by The Legal Aid Post at The Makassar District Court

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ABSTRACT

This research aims to elaborate on the effectiveness of the legal aid center in the Makassar District Court. The research method used is empirical research, and the approaches used are socio-legal and Islamic law. The primary object of this research was the Makassar District Court Special Class IA. The methods used are observation and interview, followed by implementing descriptive data analysis. The findings showed that the application of legal aid was still lacking, and the opportunity to help the community was very limited. This condition is also provided by some challenges faced, such as the fact that there are still many people who lack understanding of legal aid.

Keywords: District Court; Legal Assistance; Legal Aid Centre

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INTRODUCTION

There have been several major political events in Indonesia that have had far-reaching consequences. The lack of a legal framework is one indication.¹ There are several factors that have pushed this area of law into the spotlight. For starters, there has been an expansion of the physical facilities on which society depends. The lack of legal clarity for the public, the lack of professionalism and integrity in legal institutions, as well as the quality of services provided, have all evolved at different speeds. This case illustrates the need for enhanced public legal protection to maintain the rule of law and ensure legal certainty.²

¹ Paul Atagamen Aidonojie et al., "Bioenergy Revamping and Complimenting the Global Environmental Legal Framework on the Reduction of Waste Materials: A Facile Review," *Heliyon* 9, no. 1 (2023), <https://doi.org/10.1016/j.heliyon.2023.e12860>.

² Salahuddin Gaffar et al., "The Concept of Procedural Law Regarding the Implementation of Collective Agreements with Legal Certainty in Termination of Employment in Indonesia," *Heliyon* 7, no. 4 (2021), <https://doi.org/10.1016/j.heliyon.2021.e06690>.

According to the 1945 Constitution, Indonesia is a state of law. Article 5 paragraph 1 states that advocates are one example of the importance of the rule of law due to their function as law enforcers in Indonesia. Advocates are protected by law and are seen as independent and impartial law enforcers. Advocates play an important role in our justice system as they are given the freedom and security to enforce the law as it should be.³ Advocates have a duty to help uphold justice through the services they provide. A lawyer's primary responsibility is to educate the public about their legal rights and defend those rights in court. Advocates who uphold the rule of law and defend human rights make a significant contribution to the court system.⁴ Article 1(2) of the Advocates Law stipulates that advocates can provide legal aid to clients. Advocates are required by law to assist clients and provide advice on legal matters. In addition to their responsibility to provide legal aid, advocates also have a moral commitment to advance the social objectives of their profession.⁵

Every individual is entitled to recognition, protection and fair treatment in accordance with applicable law as stipulated in Human Rights Law No. 39 of 1999. In addition, every individual also has the right to undergo a transparent legal process and receive fair legal treatment.⁶ The obligation of every individual to consistently uphold human rights and freedoms. This phrase implies that universal access to legal services and pro bono legal counsel must be guaranteed, and that uniform legal protection must be provided to all individuals. Individuals experiencing financial hardship are obliged to receive assistance.⁷ The state has effectively fulfilled its commitment by implementing several laws and regulations that promote transparency in the administration of justice and ensure citizens' access to the justice system.⁸

Taking a legal matter to court may be expensive, and not everyone has the resources to do so. Those who cannot afford legal representation should still be provided for, especially during the trial period. These people need access to free legal representation in court. This relates to the provisions of Article 237 HIR/273 RBG of the Law of Civil Procedure (HIR/RBG), which provides that if a person wishes to file a complaint or provide a defense but cannot afford it, they are not obliged to do.⁹

Every community is entitled to free Legal Aid and the community must also be given fair behavior. Allat SWT says in Q.s An-Nisa: 58 and Q.s An-Nisa: 135 :

³ Setyo Langgeng, "Peran Advokat Sebagai Penegak Hukum Dalam Mendukung Terwujudnya Sistem Peradilan Pidana Terpadu Dalam Penegakan Hukum Pidana Di Indonesia," *Jurnal Daulat Hukum* 1, no. 1 (2018): 138–56, <https://doi.org/10.30659/jdh.v1i1.2628>.

⁴ Muh. Amiruddin, "Peran Advokat Untuk Mencapai Keadilan Terhadap Masyarakat Kota Makassar Menurut Syariat," *Alauddin Law Development Journal* 2, no. 1 (2020): 86–95, <https://doi.org/10.24252/aldev.v2i1.13509>.

⁵ Monika Suhayati, (2016), Provision of Free Legal Aid by Advocates Based on Law No. 18 of 2003 concerning Advocates. Page 277-278.

⁶ Carolina Villacampa, "Teen Sexting: Prevalence, Characteristics and Legal Treatment," *International Journal of Law, Crime and Justice* 49 (2017), <https://doi.org/10.1016/j.ijlcj.2017.01.002>.

⁷ I. Ketut Ardhana and Ni Wayan Radita Novi Puspitasari, "Adat Law, Ethics, and Human Rights in Modern Indonesia," *Religions* 14, no. 4 (2023): 443, <https://doi.org/10.3390/rel14040443>.

⁸ Bambang Heri Supriyanto, "Law Enforcement Regarding Human Rights According to Positive Law in Indonesia," *Al-Azhar Indonesia Seri Pranata Sosial* 2, no. 3 (2014): 151–68.

⁹ Hani Rafika Putri, "Implementation of Free Legal Aid (Pro Bono) for the Poor in Indonesia," *The Digest: Journal of Jurisprudence and Legisprudence* 3, no. 2 (2022): 173–202, <https://doi.org/10.15294/digest.v3i2.66012>.

Surah An-Nisa verse 58:

إِنَّ اللَّهَ يَأْمُرُكُمْ أَنْ تُؤَدُّوا الْأَمَانَاتِ إِلَىٰ أَهْلِهَا وَإِذَا حَكَمْتُمْ بَيْنَ النَّاسِ أَنْ تَحْكُمُوا بِالْعَدْلِ إِنَّ اللَّهَ نِعِمَّا يَعِظُكُمْ بِهِ إِنَّ اللَّهَ كَانَ سَمِيعًا بَصِيرًا

Translation:

"Indeed, Allah has enjoined you to deliver the trust to those who are entitled to it, and when you set a law among men you should set it justly. Indeed, Allah is the best of those who instruct you. Indeed, Allah is All-Hearing, All-Seeing."

This verse instructs to deliver the "mandate" to the rightful person. The definition of "amanat" in this verse is something that is entrusted to someone to be carried out properly.

The word "mandate" in this sense is very broad, including the "mandate" of God to His servants, the mandate of a person to his neighbor and to himself. Allah's mandate to His servants that must be carried out includes: carrying out what He commands and avoiding His prohibitions and must also behave fairly.¹⁰

As for the hadeeth of Abdullah bin Amr bin Al-As-radiyallahu anhum reported that the Messenger of Allah (peace and blessings of Allah be upon him) said:

"Verily, those who do justice will be on pulpits of light with Allah: (i.e.) those who are just in law, and in their families and what they lead."

The Hadīth gives good news to those who judge righteously and justly among the people under their authority and jurisdiction, that they will be placed on pulpits of true light as a tribute to them in the sight of Allah, the Almighty, on the Day of Judgment. These pulpits will be on the right hand of the Almighty. This Hadīth also establishes the attributes of the right hand and the left hand for Allah without denying His attributes, assigning characteristics, tashbīh (equating His attributes with creatures), or changing the meaning.¹¹

Surah An-Nisa verse 135:

يَا أَيُّهَا الَّذِينَ آمَنُوا كُونُوا قَوَّامِينَ بِالْقِسْطِ شُهَدَاءَ لِلَّهِ وَلَوْ عَلَىٰ أَنْفُسِكُمْ أَوِ الْوَالِدِينَ وَالْأَقْرَبِينَ
إِنْ يَكُنْ غَنِيًّا أَوْ فَقِيرًا فَآلُ اللَّهِ أَوْلَىٰ بِهِمَا فَلَا تَتَّبِعُوا الْهَوَىٰ أَنْ تَعْدِلُوا وَإِنْ تَلَوَّا أَوْ نَغَرَضُوا فَاِنَّ اللَّهَ كَانَ
بِمَا تَعْمَلُونَ خَبِيرًا

Translation:

"O you who believe! Be ye upholders of justice, bearing witness for the sake of Allah, even if it be against yourselves or your parents and relatives. If he (the accused) is rich or poor, Allah knows better. So do not follow your lusts to deviate from the truth. And if you twist your words or are reluctant to bear witness, then know that Allah is aware of all that you do."

¹⁰ Asthesia Dhea Cantika, "Tafsir Surat An-Nisa Ayat 58: Pentingnya Menyampaikan Amanat Ke Orang Yang Berhak," okemuslim.com, 2022.

¹¹ Qur'an.com, "Hadith on the Day of Judgment," HadeethEnc.com, 2023.

The verse also instructs Muslims not to allow unjust practices to take place in their environment. Muslims must try their best to stop unjust practices. Once a better and fairer practice is established, Muslims are obliged to protect it so that it can be continued by the next generation.¹²

The problem arises because researchers get information that there is an agency or court that does not distribute legal aid as a whole, they only distribute legal aid around their office and do not distribute all areas that cover their area. Meanwhile, according to Law Number 16 of 2011 concerning legal aid, it states that legal aid recipients are given to the poor or underprivileged and does not say there are regional restrictions.¹³ Therefore, it is crucial to find out whether the standards and effectiveness of posbakum have been adhered to by the Makassar Court Special Class IA or not. I also wanted to find out what challenges the lawyers faced in providing legal aid to those in need. In the Special Class IA Makassar Court itself, the researcher obtained information that the court did not provide information to the entire community regarding what the posbakum was and also in the author obtained information that on average those who applied for the posbakum were people who were well-off not people who were not well-off while in providing information they only provided information on Instagram, they should have provided information directly to the surrounding community because the target of the posbakum itself was the underprivileged community not for the well-off community.

METHOD

The research method used by researchers is a qualitative research¹⁴ method with the type of empirical legal research using the Sociolegal approach¹⁵ method and also the data analysis method used by the author is descriptive.¹⁶ Meanwhile, there are 3 data sources used by the author, namely primary, secondary and tertiary which are obtained using data collection techniques through observation and interviews.¹⁷ The instruments used by the author are the researcher himself, interview guidelines, stationery and sound recording devices or cellphones.

¹² M. Dangubić, M. Verkuyten, and T. H. Stark, "Understanding (in)Tolerance of Muslim Minority Practices: A Latent Profile Analysis," *Journal of Ethnic and Migration Studies* 47, no. 7 (2021), <https://doi.org/10.1080/1369183X.2020.1808450>.

¹³ Heriyanto Heriyanto, "Comparison of Law in the System of Applying Legal Aid to the Poor in Indonesia (Before and After the Enacting of Legal Aid Law)," *International Journal of Multicultural and Multireligious Understanding* 9, no. 2 (2022), <https://doi.org/10.18415/ijmmu.v9i2.3354>.

¹⁴ Katherine Becerra Valdivia, "Critical Qualitative Research and Law: Analysis of Its Role in the Chilean Academy and a Case Study," *Revista Pedagogia Universitaria y Didactica Del Derecho* 7, no. 1 (2020), <https://doi.org/10.5354/0719-5885.2020.55375>.

¹⁵ Roger Cotterrell, "Socio-Legal Studies, Law Schools, and Legal and Social Theory," *Legal Studies Research Paper*, no. 126 (2012).

¹⁶ Xiaozhi Zhang et al., "Descriptive Analysis of Depression among Adolescents in Huangshi, China," *BMC Psychiatry* 23, no. 1 (2023), <https://doi.org/10.1186/s12888-023-04682-3>.

¹⁷ Azwihangwisi Helen Mavhandu-Mudzusi, "The Couple Interview as a Method of Collecting Data in Interpretative Phenomenological Analysis Studies," *International Journal of Qualitative Methods* 17, no. 1 (2018), <https://doi.org/10.1177/1609406917750994>.

DISCUSSION

Theoretical Review and Overview of Research Location and Discussion

Theoretical Overview

1. Overview of Legal Aid Theory

Legal Aid provides free legal aid to individuals who qualify for legal aid from legal service providers. The basic purpose of legal aid is to ensure the protection of the constitutional rights of every citizen in accordance with the principle of equality before the law. This theory concerns the provision of legal aid that must be provided to underprivileged communities.¹⁸

Legal Aid is legal services provided by Legal Aid Providers free of charge to Legal Aid Recipients. Legal aid is provided with the aim of guaranteeing and fulfilling the rights of poor communities or groups of people to obtain access to justice in order to realize the constitutional rights of all citizens in accordance with the principle of equality under the law. The provision of legal aid also aims to ensure certainty that the provision of Legal Aid is carried out evenly throughout the territory of the Republic of Indonesia; and realizing justice that is effective, efficient and accountable.

Legal Aid is provided to Legal Aid Recipients who face legal problems including civil, criminal and state administration legal issues, both litigation and non-litigation. Providing legal assistance includes exercising power of attorney, accompanying, representing, defending, and/or carrying out other legal actions for the legal interests of Legal Aid Recipients.

2. Overview of Rights Theory

"Human rights," sometimes abbreviated as "human rights," refers to the inherent and universally applicable rights that are considered to be inherent in every individual. Human rights are often known as "the rights of man" (French: "*droits de l'homme*"). The term "human rights" is an English word used to denote a particular concept. This theory concerns human rights where in this research the rights of underprivileged communities should be given equally without any limitations or distinctions in helping the community.¹⁹

Human rights are basic rights or fundamental rights that humans have, which are given by the Creator and are inherent since humans are born, and cannot be removed by anyone, including the state. In studying human rights, of course we also need to understand the development of human rights which was marked by the emergence of the first, second and third generations, with the slogans of freedom, equality and fraternity. Apart from that, there are 3 main theories that explain the origins of human rights thinking, namely natural theory, positivism and

¹⁸ Roger Cotterrell, "A Socio-Legal Quest: From Jurisprudence to Sociology of Law and Back Again," *Journal of Law and Society* 50, no. 1 (2023), <https://doi.org/10.1111/jols.12403>.

¹⁹ Frédéric Mégret, "International Human Rights Law Theory," in *Research Handbook on the Theory and History of International Law, Second Edition*, 2020, <https://doi.org/10.4337/9781788116718.00015>.

justice. Finally, we also need to understand various human rights principles, including human rights which are universal and indivisible.

3. Overview of Justice Theory

The term "fair" comes from the noun "justice", which signifies objectivity and the notion that decisions should not be made arbitrarily. Fairness in interpersonal interactions is achieved when all parties treat each other fairly, impartially, and in accordance with their respective rights and responsibilities, without bias or favoritism. This conclusion can be deduced through the application of various definitions. The rights and responsibilities of all individuals are considered equal. It is important, when discussing legal philosophy, to define legal concepts. The natural law school states that the purpose of law is to establish and enforce justice. It is challenging to strike a balance between the concepts of certainty, equality, and efficiency in the realm of justice.²⁰ This theory relates to the existence of justice for all people who want to get free legal aid without any distinction between all groups of society.

4. Overview of Social Equality Theory

Adherence to the principles of social equality is essential. It is essential to apply the principle of equality in all government and national endeavors. Indonesia's pluralistic society is multicultural. Ignoring the ideals of equality in a diverse society can result in discord or division.²¹

The theoretical foundation of the principle of legal equality. All people are treated equally under the law; this is what it means. In other words, everyone's legal standing is equal before the law. One of the key concepts in modern law is the principle of equal protection under the law. This principle is very important in the rule of law that has been implemented in Indonesia and other developing countries. If the rule of law (*rechtstaat*) is defined in part by the idea of equality before the law, then everyone should be treated equally before the law. Therefore, the rule of law requires equal protection under the law and equal access to justice for all. In the theory of equality or social equality as a provider of legal aid to the community, *Posbakum* or legal aid should not differentiate between the poor and the well-off due to the principle of equality or social equality.²²

²⁰ Tri Suhendra Arbani, "Fulfillment of Justice in the Evidence of the Dispute over the Election Results of the Presidential Election with the Concept of Spedy Trial," in *General Election Commission*, 2020, 7.

²¹ Helene Ahl, Joel Hedegaard, and Barry Golding, "Why Some Homogeneous Adult Learning Groups May Be Necessary for Encouraging Diversity: A Theory of Conditional Social Equality," *Australian Journal of Adult Learning* 63, no. 2 (2023).

²² Jared S. Colton and Steve Holmes, "A Social Justice Theory of Active Equality for Technical Communication," *Journal of Technical Writing and Communication* 48, no. 1 (2018), <https://doi.org/10.1177/0047281616647803>.

Results and Discussion

Below is a synopsis of information obtained from interviews with research staff at the Makassar Special Class IA District Court regarding legal aid services for the poor. Access to justice (posbakum) for the community is a fundamental objective of this discussion.

To what extent does the court plan to provide free legal aid services for the poor (posbakum) at the Makassar Special Class IA District Court? In fulfilling its objective to provide legal aid to the community, the legal aid post at the Makassar Special Class IA District Court faces both favorable conditions and severe challenges. How do you promote the legal aid post to the general public?²³

"As new issues arise and access to posbakum becomes easier, financially disadvantaged individuals have many opportunities to overcome legal challenges. A significant barrier to the ability of legal aid posts to provide legal assistance to the public in Makassar District Court is the lack of public trust and knowledge regarding the law and the responsibilities of legal aid posts. In addition, the expansion of legal aid posts is affected by the lack of required supporting infrastructure. Makassar District Court intends to utilize social media to increase public awareness of the legal aid post."

The results of research from community interviews on the implementation of legal aid (pos bakum) for poor people at the Makassar Special Class IA District Court are as follows:

What is the current progress of the Makassar Special Class IA District Court in implementing legal aid (posbakum) for the poor? What are the current prospects and obstacles of the legal aid post at the Makassar Special Class IA District Court? In relation to the communication of information about the legal aid post (posbakum), what specific message would you like to convey to the Makassar District Court?²⁴

"The location of Pos Bakum in Makassar is optimal for handling legal issues in the city. However, the importance of Pos Bakum is still unknown to most residents of Makassar due to the lack of direct social interaction. Regarding our legal requirements, we are not sure how to approach legal professionals. Therefore, community education needs to be done directly."

a. Implementation of legal aid posts in providing services to underprivileged people who want to litigate at the Makassar District Court Class IA Specialized

Legal aid for the poor in Makassar District Court is regulated in Supreme Court Regulation (PERMA) Number 1 Year 2014 on Waiver of Case Fees in District Courts. If you or your organization are low-income and need legal aid, you should provide the following information to your local legal aid office.

1. Letter of Incapacity (SKTM) provides formal certification of a person's disability. The Social Protection Card (KPS), Poor Rice Card (Raskin), Poor Family Card

²³ Makassar District Court Employee, Interview Results, 2023

²⁴Resident of Makassar City, Interview Results, 2023

(KKM), Direct Cash Transfer Card (BLT), and Family Hope Program Card (PKH) are additional cards that provide social benefits;

2. Official poverty records compiled by the government's unified database of the poor or other reputable organizations. Once the individual or organization meets the prerequisites, the legal aid post will provide assistance in the form of legal representation during the trial, until the judge makes a decision. This depends on the party seeking legal aid submitting a request and application to the legal aid post. A person sentenced to less than five years' imprisonment must be represented by legal aid during the actual trial process. Because every type of defendant has legal rights that must be upheld. It is mandatory for defendants serving a sentence of five years or less to offer equivalent legal aid.

As the interview findings show, the Legal Aid Post provides assistance to the poor in the following ways:

1. Posbakum services benefit those in need by assisting them with other services, such as the newly developed public service, which allows them to exercise their rights to raise their legal objections in disputed court cases. When Posbakum is enforced, it helps people to obtain justice and equality before the law, both of which are necessary for the full realization of individual rights.
2. Helping those who do not know much about the law in practical ways. The Posbakum of Watampone Religious Court attracts those who are interested in seeking justice privately. Due to their ignorance of the legal system and lack of confidence in their future plans, the information officer advised them to use Posbakum's litigation services. Posbakum staff also provided some specific information regarding the case at hand.
3. Benefiting the local economy, the program informs people who are unable to attend court hearings about the steps they need to take to obtain documents or services, such as making a formal application for a court fee waiver.

b. Opportunities and challenges faced by the legal aid post in providing legal assistance to the public at the Makassar District Court class IA Khusus

The courts as part of Indonesian state institutions in the judicial field should not be left behind in maintaining services in the modern legal field for people seeking justice.²⁵ In their efforts to assist the poor by providing information, assistance and legal documents, Posbakum officers at the Makassar District Court encountered the following problems, all of which are interrelated:

1. Pro bono legal aid is not available to those in need, thus reducing its availability at the Makassar Class IA District Court. The solution to overcome this difficulty is to qualify as soon as possible so that the legal aid post can accelerate the process of receiving pro bono legal aid to obtain their rights in resolving cases at the Makassar Class IA District Court.

²⁵ Orin Gusta et al., "The Impact of Covid-19 Pandemic on Effective Electronic Criminal Trials : A Comparative Study," *Journal of Human Rights and Legal System* 3, no. 2 (2023): 185–209, <http://www.jhcls.org/index.php/JHCLS/article/view/57>.

2. If the court's DIPA (Daftar Isian Pelaksanaan Anggaran) runs out, posbakum services are suspended for those who cannot afford them.
3. Inadequate housing makes it difficult for Posbakum officers to fulfill client requests.
4. The services provided by Posbakum Officers are substandard due to the large number of claimants who use and seek them out.
5. The absence of confidence shown by those seeking help in handling diverse situations.

Those who need legal assistance, and especially those who intend to file a case, can rely on Posbakum at the Makassar District Court. Both the rich and others who are unfamiliar with the law. The Posbakum program at the Makassar District Court improves worker efficiency and provides access to free legal aid to litigants. This allows those experiencing legal problems to proceed with their cases without having to worry about the costs involved.

c. Effectiveness Of Legal Aid Provision By The Legal Aid Post (Posbakum) At The Makassar District Court, Special Class II

The following are the results of the author's search through interviews related to the effectiveness of posbakum legal aid at the Makassar District Court Class IA Special:²⁶

1. The implementation of Posbakum at the Makassar Court Special Class IA is very beneficial for low-income people and people who have little understanding of legal processes and court procedures. As long as people are unaware of the existence of Posbakum, the Makassar Court Special Class IA will not be able to fulfil its obligation to provide free legal aid to the poor or underprivileged.
2. Although the Posbakum programme has been successfully implemented by the Makassar Court Special Class IA, the government is obliged to highlight the disparities in public access to legal aid services that exist in Makassar City.
3. The Posbakum method used by the Makassar Court Special Class IA often experiences obstacles when handling criminal and civil cases. Among the many obstacles that must be overcome are the distribution of legal aid letters and the use of legal data that is not in accordance with Supreme Court Regulation No. 1 of 2014.
4. The lack of success of the Posbakum at the Makassar Special Court Class IA can be attributed to the need for a larger assistance budget, which is used for case support (particularly in urgent cases), the preparation of case files and applications, and the provision of lawyers. The Special Court of Makassar Class IA itself only limits the number of cases that can be covered by the court in providing free legal aid each year. In addition, there should be clear limits to prevent irrational interpretation and potential misallocation of legal aid to facilitate the provision of legal aid.

CONCLUSION

Effectiveness Of Legal Aid Provision By The Legal Aid Post at The Makassar District Court, Special Class II pecial is still not well implemented, this is because the dissemination of

²⁶ Makassar District Court Employee and Legal Aid Post Officer, Interview Results, 16 August 2023

information and distribution of legal aid has not been comprehensive to the underprivileged community, this is because so far posbakum has focused more on using social media (instagram) as a place for socialization about posbakum so that it ignores direct socialization to the community through sub-district offices or village offices in Makassar. The opportunity with the existence of posbakum is to provide information to the public regarding legal cases and help resolve legal cases faced by the underprivileged community while the challenges faced by posbakum in providing legal assistance are the lack of understanding of posbakum which results in the community not believing in the legal assistance provided by posbakum at the Makassar District Court Class IA Special.

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