ABSTRACT

Purpose: This research aims to examine the regulations governing the establishment of Legal Aid Institutions (LAIs/LAOs) in Indonesia, with a focus on achieving necessary legal clarity to ensure their effective functioning.

Method: This research employs a prescriptive research method, involving the description of primary and secondary data findings related to the regulations governing LAIs/LAOs establishment in Indonesia. The data are processed and analyzed to derive insights into the current legal framework.

Result and Discussion: The findings indicate that the existing regulations concerning the establishment of LAIs/LAOs in Indonesia lack clarity, particularly regarding the legal entity status utilized. While foundation status predominates, its alignment with Indonesian legal principles requires further consistency. Therefore, this research underscores the need for more transparent and comprehensive reformulation of these regulations.

Implication of the Research: Reforming the regulations governing the establishment of LAIs/LAOs holds significant implications for improving their efficiency and effectiveness. Such reforms can enhance access to justice, protect human rights, and ensure the proper functioning of LAIs/LAOs, thereby contributing to greater legal certainty and benefiting Indonesians in need of legal aid.

Originality/Value: This research contributes to the existing literature by providing insights into the regulatory framework surrounding the establishment of LAIs/LAOs in Indonesia. By highlighting the need for reform and recommending clearer regulations, this study offers practical guidance for policymakers and stakeholders involved in legal aid provision, ultimately advancing the efficacy of legal aid services in Indonesia.

Keywords: Legal Aids Institution, LAIs/LAOs, Regulation, Legal Certainty, Indonesia.

REIMAGINAR A REGULAMENTAÇÃO DAS INSTITUIÇÕES DE ASSISTÊNCIA JURÍDICA PARA AUMENTAR A SEGURANÇA JURÍDICA

RESUMO

Objetivo: Esta pesquisa tem como objetivo examinar as normas que regem o estabelecimento de Instituições de Assistência Jurídica (LAIs/LAOs) na Indonésia, com foco na obtenção da clareza jurídica necessária para garantir seu funcionamento eficaz.

Método: Esta pesquisa emprega um método de pesquisa prescritivo, envolvendo a descrição de descobertas de dados primários e secundários relacionados às normas que regem o estabelecimento de LAIs/LAOs na Indonésia. Os dados são processados e analisados para obter insights sobre a estrutura legal atual.

Resultado e discussão: As descobertas indicam que as regulamentações existentes relativas ao estabelecimento de LAIs/LAOs na Indonésia carecem de clareza, especialmente com relação ao status de entidade legal utilizado. Embora o status de fundação predominne, seu alinhamento com os princípios legais indonésios requer mais...
consistência. Portanto, esta pesquisa ressalta a necessidade de uma reformulação mais transparente e abrangente dessas regulamentações.

**Implicações da pesquisa:** A reforma das normas que regem o estabelecimento de LAIs/LAOs tem implicações significativas para melhorar sua eficiência e eficácia. Essas reformas podem melhorar o acesso à justiça, proteger os direitos humanos e garantir o funcionamento adequado das LAIs/LAOs, contribuindo assim para uma maior segurança jurídica e beneficiando os indonésios que precisam de assistência jurídica.

**Originalidade/valor:** Esta pesquisa contribui para a literatura existente ao fornecer insights sobre a estrutura regulatória que envolve o estabelecimento de LAIs/LAOs na Indonésia. Ao destacar a necessidade de reforma e recomendar regulamentações mais claras, este estudo oferece orientação prática para os formuladores de políticas e as partes interessadas envolvidas na prestação de assistência jurídica, promovendo, em última análise, a eficácia dos serviços de assistência jurídica na Indonésia.

**Palavras-chave:** Instituição de Assistência Jurídica, LAIs/LAOs, Regulamentação, Segurança jurídica, Indonésia.
1 INTRODUCTION

The purpose of this research is to explore, analyze, and understand the causes of the status of Legal Aid Institutions (LAIs/LAOs) in the form of Foundations, as well as to examine in depth the current LAIs/LAOs establishment regulations. In addition, this research aims to formulate a formula for regulating the establishment of LAIs/LAOs that is appropriate and under the applicable legal context, with the primary objective of realizing better legal certainty in supporting LAIs/LAOs’s mission of providing legal assistance to the public. Through this research, the author hopes to provide a more comprehensive view of the legal aspects that affect LAIs/LAOs operations and create a better framework to support LAIs/LAOs’s important role in maintaining access to justice and the protection of human rights. This research emerged in response to the challenges and obstacles associated with the status of Legal Aid Institutions (LAIs/LAOs) in the form of Foundations and the current regulation of LAIs/LAOs establishment. The complex and ambiguous nature of current legal aid regulations creates barriers to equitable access to justice, threatens the protection of human rights, and reduces the efficiency and effectiveness of LAIs/LAOs operations.

Legal aid organizations are one of the key pillars in creating universal access to justice in society (Wijayanti, 2017). They play a vital role in providing legal assistance to individuals who may not be able to afford to hire a lawyer or who require legal guidance in various aspects of their lives. Despite their important role, the regulations governing legal aid organizations are often complex, ambiguous, and difficult for the general public to understand (Barbero, 2020). This creates barriers for individuals seeking legal aid and, in some cases, can impede their access to the justice system.

Indonesia, as a state of law, bases its principles on the 1945 Constitution of the Republic of Indonesia (Undang-Undang Dasar-UUD 1945). In the context of the rule of law, every citizen has equal standing before the law and government and is obliged to uphold the law and government, known as the principle of "equality before the law." This principle guarantees that every person is entitled to recognition, protection, and certainty of a just law and equal treatment before the law (Kumar et al., 2022; Lutfiyah, 2021).

However, the principle of "equality before the law" does not only mean equality in the eyes of the law but also includes equal access to the legal system and justice. The Indonesian government, under Article 34 (1) of the 1945 Constitution, should care for the poor and abandoned children, which also includes the need for access to law and justice. To ensure legal access for people experiencing poverty, the Government of Indonesia implemented regulations...
through Law 16/2011 on Legal Aid and Law 18/2003 on Advocates. These regulations require legal aid providers, especially Advocates, to provide free legal aid to people experiencing poverty. However, to fulfil the requirements as a legal aid provider, many Legal Aid Institutions (LAIs/LAOs) in Indonesia choose Foundation as their legal form. This is in line with the requirement that legal aid providers be incorporated, per Article 8 of the Legal Aid Law.

Legal Aid Institutions (LAIs/LAOs) or Legal Aid Providers (PBH) currently, out of a total of 619, have 142 institutions in the form of foundations (Manurung et al., 2023). This situation occurs due to the requirements in Article 8 of Law No. 18/2018 on Legal Entities and Article 12 of Permenkum HAM No. 3/2013, which requires that LAIS/LAOSs have legal entity status. However, although the Decree of the Minister of Law and Human Rights Number M.MH-02 NH 03.03 of 2021 stated that a total of 619 organizations passed verification and accreditation, many of them still do not have legal entity status, while the existing regulations demand that LAIS/LAOS/PBH have legal entity status.

The choice of legal entities, limited to Foundations and Associations, means that most LAIs/LAOs that passed the verification process have the legal entity form of a Foundation (Suryaningsi, 2020). Foundations were chosen as LAIs/LAOs legal entities because they are generally strong with a layered board structure and have their laws, Law No. 16/2001 amended by Law No. 28/2004 on Foundations (Foundation Law) and Government Regulation No. 2/2013 as its implementing regulation. On the other hand, Perkumpulan has an egalitarian tendency and still needs to have its law as it is still in the draft law stage.

LAIs/LAOs, in the form of a Foundation legal entity, needs clarification due to rules that prohibit the proceeds of the Foundation's business from being distributed to members of the Foundation Organ, including Advocates in the LAIs/LAOs body (Brammer et al., 2021). The majority of legal aid provided by LAIs/LAOs Foundations is not free of charge but with a service fee to Advocates who sit in the institution. This condition is contrary to the rules of the Foundation Law and can result in prison sanctions and demands for refunds to the Foundation (Carolei, 2022).

Article 12 of Permenkum HAM No. 3 of 2013, Law No. 16 of 2011 on Legal Aid, and the Foundation Law must provide clear guidance on the appropriate form of legal entity for LAIS/LAOS/PBH. This creates a mismatch between existing regulations, and there needs to be a regulation that explicitly regulates the best form of legal entity for LAIs/LAOs.

The lack of clarity in the regulations has resulted in many LAIs/LAOs choosing Foundation as their legal entity form to fulfil the legal entity requirements (Amin, 2017). However, this is only sometimes in line with the non-profit nature that LAIs/LAOs should have.
Reimagining Legal AID Institution Regulation to Enhance Legal Certainty

(Al-Fatih & Aditya, 2019). This situation results in a conflict of interest between Advocates as a liberal profession and Advocates who play a role in LAIs/LAOs, and the absence of a specific law regarding LAIs/LAOs causes differences in interests between Advocates as individuals and Advocates who are part of LAIs/LAOs (Utama, 2021). In practice, establishing LAIs/LAOs with a Foundation can violate the essence of the Foundation Law by not complying with the principles of transparency, accountability, and formal requirements set out.

The research gap in this context lies where previous research has yet to provide a comprehensive analysis related to the lack of regulatory clarity and access to legal aid for Indonesians (Indrawan et al., 2021; Lutfiyah, 2021; Muliadi, 2017; Nuna et al., 2020; Rochman, 2020; Wijayanti, 2020). Previous research must provide an adequate understanding of the vagueness of the regulations governing the establishment of Legal Aid Institutions in Indonesia, particularly concerning the legal entity status that such institutions should adopt. This uncertainty provides gaps in the understanding of legal practice in the field and limits the effectiveness of legal aid provided to people in need. In addition, there needs to be a more concrete analysis of the access barriers faced by individuals who require legal aid. Thus, more clarity in regulation and accuracy in legal aid practice has led to uncertainty in access to equitable and effective legal services for the community.

The novelty of this research lies in the comprehensive approach that addresses regulatory vagueness and legal access issues in Indonesia. This research focuses on regulatory reformulation to achieve legal certainty, including a more in-depth analysis of the legal entity status that legal aid organizations should adopt. In addition, this research seeks to identify barriers to legal access and provide concrete solutions to improve broader and more equitable access for people in need of legal aid. As such, this research brings new ideas and a deeper understanding in understanding and solving the problems associated with legal aid institutions in Indonesia.

Legal Aid Institutions play an important role in the legal and judicial system and require a strong and legally independent foundation to provide effective legal services to the public. Selecting an appropriate legal entity status ensures that these institutions can optimally fulfill their functions. Currently, the legal aid system in Indonesia faces significant challenges, with one of the main obstacles being limited access for those in need of legal aid. This limitation is mainly due to the need for more clarity and adequate regulations governing the establishment of Legal Aid Institutions. Therefore, there is an urgent need to reformulate these regulations to expand and improve access to legal aid services for needy individuals.
The need to review the legal aid regulations is based on several important factors. First, confusion in the practice of legal aid institutions in the form of Foundation legal entities results in potential violations of the rules regarding the distribution of the Foundation's operating results to its members, especially the Advocates involved in the institution. Secondly, the misalignment between existing regulations, such as Article 12 of *Permenkum HAM Number 3 Year 2013, Law Number 16 the Year 2011* on Legal Aid, and the Foundation Law, which do not provide clear guidance regarding the most appropriate form of legal entity for legal aid organizations (Manurung et al., 2023). As a result, there is a need for a review to harmonize existing regulations to avoid conflicts and create a more transparent and consistent legal basis for legal aid institutions in Indonesia.

This reformulation is expected to not only fix access issues but also improve the overall quality of legal aid services, ensuring that the public can receive timely and professional legal aid. Therefore, the objective of this research is to develop a comprehensive framework to reformulate the regulations related to the establishment of Legal Aid Institutions to ensure legal certainty. The research questions formulated for this purpose are: Why is the dominant legal entity status for Legal Aid Institutions a foundation? What are the regulations that apply to the establishment of Legal Aid Institutions? Moreover, how can the regulations governing the establishment of legal institutions be reformulated to promote legal certainty?

2 METHOD

The research method used in this research is the prescriptive research method. This research aims to provide suggestions related to efforts to resolve specific problems in regulating legal aid institutions (Rahayu, 2018.). This research will describe the data findings, both primary and secondary data, which have been processed and analyzed so that they can assist in the formulation of new theories or strengthen existing theories. In this context, the research aims to formulate arguments for reformulating regulations that are considered inappropriate. This reformulation aims to increase attention to public issues and a wider diversity of views.

The research paradigm used in this research is the constructivism paradigm. This paradigm understands that the truth of reality is relative and contextual, depending on the social framework relevant to social actors (Benuf & Azhar, 2020). The purpose of this research is to understand the regulation of the establishment of legal aid institutions to achieve legal certainty. The constructivism paradigm recognizes that reality is a subjective mental construction influenced by social experiences, culture, value systems, and other local factors.
This research falls into the category of normative juridical research. The research approach used includes a statutory approach and comparative law. The normative juridical approach focuses on analyzing the legal norms that are the object of research, supported by sociological (empirical) legal research that observes the reactions and interactions that occur when legal norms are applied in society (Latumeten, 2017). In this research, this approach is used to evaluate the alignment and harmony of relevant laws and regulations, both vertically and horizontally, and compare them to formulate appropriate arrangements for legal aid institutions in Indonesia.

The data used in this research consists of two types, namely secondary data and primary data. Secondary data is obtained through literature studies, which include legal regulations, books, journals, and research results related to legal aid institutions in the form of foundations. Primary data, on the other hand, is obtained through interviews with various parties related to this research. These parties include the Ministry of Law and Human Rights (Kemenkumham), notaries involved in making legal entity establishment deeds, and legal aid institutions in the form of foundations. This study employs two primary methods for data collection: field-study and literature reviews. Field Study: Through guided interviews with relevant parties to the research, such as the Ministry of Law and Human Rights, notaries, and legal aid organizations in the form of foundations. This interview aims to obtain in-depth and relevant data related to the regulations and practices of establishing legal aid institutions. Literature Study: Used to study literature, laws and regulations, and sources relevant to the research topic.

Data analysis was conducted using a qualitative approach. The data that has been collected is analyzed in depth and comprehensively to understand aspects relevant to the regulation of the establishment of legal aid institutions in the form of foundations. Data analysis is carried out descriptively, analytically, and prescriptively by connecting empirical data with the context of applicable legislation.

Data validation is carried out using data triangulation techniques. This is done to ensure the accuracy and reliability of the data obtained. Data triangulation involves comparing data from various sources, methods, researchers, and theories. The data that has been collected is checked by referring to other data outside the same source to ensure the validity of the information found. Thus, this research methodology is designed to provide an in-depth and comprehensive understanding of the regulations for establishing legal aid institutions in the form of foundations, as well as to formulate arguments for reformulation of regulations that are more appropriate and effective to achieve legal certainty.
3 RESULTS AND DISCUSSION

3.1 THE REASONING BEHIND THE LEGAL AID INSTITUTION (LAIS/LAOS) BEING A FOUNDATION

The status of Legal Aid Institution (LAIs/LAOs) as a foundation was carefully considered, especially because several reasons supported this decision. One of the main reasons is the aspect of autonomy (Cameron & Kwiecien, 2019). A foundation is a legal entity that gives LAIs/LAOs autonomy in its management (Vigier et al., 2019). As such, LAIs/LAOs in the form of foundations can determine their direction and policies. This autonomy is important because LAIs/LAOs has noble mission is to provide access to justice to the poor and vulnerable (Danner & Schulman, 2019). However, this mission is also challenging and requires flexibility in decision-making.

Funding is also a key consideration. Foundations can secure more diverse sources of funding. In the context of LAIs/LAOs, foundation shaped LAIs/LAOs can access funds from various sources, including community donations (Wang, 2020). These funds are significant for LAIs/LAOs’s as they pay staff salaries, office rent, and other operational costs. Public donations are a vital funding source for LAIs/LAOs, and their foundation status allows them to receive the necessary contributions to carry out their mission.

In addition to autonomy and more diverse sources of funding, foundation status also opens the door to the formation of an extensive network. Foundations can build partnerships with various parties, both locally and nationally (Cameron & Kwiecien, 2019). This is particularly important in the context of LAIs/LAOs, where cooperation with the government, community organizations, and other non-governmental organizations is key to delivering broader and more effective legal aid services (Lailam & Andrianti, 2023). Focusing on these reasons, LAIs/LAOs's status as a foundation was deemed the right choice. This decision was not merely a legal status but also a strategy to give LAIs/LAOs autonomy, access to sufficient funds, and a strong network. As such, the foundation form provides a strong foundation for LAIs/LAOs’s to carry out their mission to provide access to justice to people in need.

The decision of many Legal Aid Institutions (LAIs/LAOs) in Indonesia to adopt the foundation form is influenced by various factors, and these factors are analyzed by utilizing the legal system theory introduced by Lawrence M. Friedman.
a. Legal Substance

The legal basis for foundations in Indonesia, established under Law Number 16 of 2001 in conjunction with Law Number 28 of 2004 (Foundation Law), makes them a preferred choice for Legal Aid Institutions/Legal Aid Organizations (LAIs/LAOs) due to the streamlined establishment and ratification procedures. Official recognition as a legal entity necessitates approval by the Minister of Law and Human Rights of the Republic of Indonesia. This critical ratification process ensures the validity of the foundation's deed of establishment, aligning with current laws and regulations to prevent fraudulent practices (Jiang et al., 2019).

Foundations can establish supporting business entities, but some constraints apply. For instance, the foundation is prohibited from conducting business activities within its structure, necessitating separate business forums (Vnutskikh et al., 2021). Participation in external business ventures is permissible, provided they are prospective and utilize no more than 25% of the foundation's assets (Sharma et al., 2022). Despite the comprehensive legal framework provided by the Foundation Law, practical discrepancies, particularly concerning salaries/honorariums paid to advocates within the foundation, might persist.

Suggested Solutions for Addressing Irregularities:

- Establish Transparent Policies: Develop and implement clear, transparent policies in consultation with relevant stakeholders, including advocates, for determining and disbursing salaries/honorariums;
- Oversight Mechanism: Institute an independent oversight body comprising legal or financial experts to ensure adherence to payment policies;
- Financial Audits: Conduct regular financial audits to verify that salaries/honorariums align with established policies;
- Training Programs: Provide financial management training for advocates to enhance their understanding of salary/honorarium-related rights and obligations.

Enhancing the Legal Framework for LAIs/LAOs:

- Specific Legislation: Develop specialized legislation that outlines the rights, responsibilities, and expected standards of LAIs/LAOs;
- Regulatory Authority: Establish a regulatory body responsible for registering, monitoring, and guiding LAIs/LAOs;
• Increased Funding: Augment funding for LAIs/LAOs to enable more comprehensive client services;

• Through these actions, the Indonesian government can effectively support the efficiency of LAIs/LAOs, ensuring client rights and operational effectiveness.

b. Legal Structure

The legal framework of the Indonesian legal aid system encompasses various institutions, with key players including legislative bodies, the Ministry of Law, and Human Rights (MoLHR), the Directorate General of General Legal Administration (Ditjend AHU), Legal Aid Institutions/Legal Aid Organizations (LAIs/LAOs), and Advocates (Barbero, 2020; Gimpel, 2021). The choice of a foundation as the preferred legal entity for LAIs/LAOs was influenced by the ambiguity in the Legal Aid Law. The legislators drafting this law did not explicitly define the appropriate legal status for LAIs/LAOs; they merely stipulated that LAIs/LAOs must have a legal entity (Saltarella et al., 2023). Even the MoLHR, in its regulatory framework derived from the Legal Entity Law, needed to specify the legal entity required for LAI accreditation.

This uncertainty led to a prevalent trend in establishing LAIs/LAOs as foundations. However, there needs to be more connection between this practice and the legal requirements outlined in the Foundation Law. According to the Foundation Law, foundations should comprise supervisors, administrators, and trustees, with no provision for other organizational structures.

The lack of both internal and external oversight mechanisms by the government has further exacerbated the issue. Consequently, some foundations are established not with the primary objective of providing legal assistance to the disadvantaged but to generate income for their founders or members. Article 6(2) of the Legal Aid Law outlines the supervisory role of the foundation's organs, yet it is evident that this provision does not address the problem comprehensively. To rectify this, the central government must assume a more proactive role in supervising and monitoring LAIs/LAOs (Metaxas, 2022). Unfortunately, the MoLHR has not effectively carried out this role thus far. Several potential solutions can be considered to address the issues highlighted in the paragraph.

• Amendment of Legal Aid Law: The legislative bodies should prioritize amending the Legal Aid Law to provide clear and unambiguous guidance on the appropriate legal
entity for LAIs/LAOs (Carolei, 2022). This would help eliminate the current ambiguity that has led to the widespread establishment of foundations;

- Regulations by the MoLHR: The Ministry of Law and Human Rights (MoLHR) should proactively develop and enforce comprehensive and transparent regulations governing the establishment and operation of LAIs/LAOs (Abbott, 2018; Smith & Fotheringham, 2022). These regulations should provide specific criteria for the composition of the foundation's organs and clearly outline the activities that LAIs/LAOs are permitted to engage in;

- Enhanced Oversight by Ditjend AHU: The Directorate General of General Legal Administration (Ditjend AHU) should strengthen its oversight of LAIs/LAOs. This involves rigorous monitoring to ensure LAIs/LAOs comply with all relevant laws and regulations;

- Dedicated Support Unit: The MoLHR should establish a specialized unit to provide guidance, support, and supervision to LAIs/LAOs. This unit could play a pivotal role in monitoring their performance and promptly addressing any violations of legal requirements (Salam & Suhartono, 2020).

By implementing these measures, the Indonesian government can substantially improve the operational efficiency of LAIs/LAOs. This, in turn, will contribute to the protection of the rights of their clients and the overall effectiveness of the legal aid system.

c. Legal Culture

Legal culture plays a crucial role in shaping the preferences and decisions of Legal Aid Institutions (LAIs) when selecting their legal entity (Suryaningsi, 2020). The relationship between social behaviour and the legal system is intricate (Manurung et al., 2023). LAIs often opt for the foundation as their legal entity based on the legal culture of the community they serve.

The influence of the community's social behaviour is significant. People associate foundations with credibility and trustworthiness, making them an attractive choice for LAIs. Foundations are perceived as entities more likely to gain the community's trust as donors. This trust is pivotal for LAIs, as it often relies on public donations and support to sustain its operations. Additionally, the non-profit nature of foundations aligns with the public's perception that donations will be used for socially beneficial, humanitarian, or religious purposes. The societal trust in foundations' commitment to social welfare is a driving factor in LAIs' decision to adopt this legal structure.
Moreover, being structured as a foundation can facilitate LAIs' access to assistance from government programs. This legal entity is often seen as more aligned with the government's initiatives for supporting organizations that contribute to the public good. In essence, the legal culture, which reflects the community's beliefs, values, and norms concerning the law, significantly influences the choice of a foundation as a legal entity for LAIs. This cultural context enhances their credibility, supports their fundraising efforts, and opens doors to potential government assistance. Understanding and aligning with these cultural factors is essential for the success and sustainability of LAIs in their mission to provide legal aid to the community.

3.1.1 Reformulating Regulations for the Establishment of Legal Aid Institutions (LAIS/LAOS) in Indonesia

Legal Aid Institutions (LAIs/LAOs) play a pivotal role within Indonesia's legal system. They provide legal assistance to the impoverished and vulnerable segments of society while upholding the rule of law (Mannas & Elvandari, 2022; Panjaitan et al., 2020). However, the current regulations governing the establishment of LAIs/LAOS are only partially adequate. Therefore, reformulating these regulations is essential to ensure that LAIs/LAOS can operate effectively and align with the principles of legal certainty, transparency, and accountability.

Reforming the regulations for establishing LAIs/LAOS should focus on clarifying the status and responsibilities of LAIs/LAOS within Indonesia's legal framework. This clarity is crucial to establish strong legal legitimacy for LAIs/LAOS, enabling them to fulfil their role effectively. Furthermore, reformulating regulations should address transparency and accountability measures for LAIs/LAOS. This is vital to ensure that LAIs/LAOS can maintain the public's trust and manage its finances responsibly. In certain instances, close cooperation between LAIs/LAOS and the government can be a more effective solution to ensure legal certainty and equitable access to justice. Therefore, the reformulation of regulations should consider this as well.

Finally, it is paramount that the reformulation of regulations recognizes the essential role that LAIs/LAOS plays within Indonesia's legal system. LAIs/LAOS is at the forefront of providing legal aid to the impoverished and vulnerable, and it plays a key role in safeguarding the rule of law. Hence, reformulating regulations should guarantee that LAIs/LAOS can effectively carry out its responsibilities. Considering these factors, it is hoped that the reformulation of regulations governing the establishment of LAIs/LAOS will lead to the
development of professional, transparent, and accountable LAIs/LAOs organizations capable of delivering high-quality legal assistance services to the community.

3.2 CURRENT ARRANGEMENTS FOR THE ESTABLISHMENT OF LEGAL AID INSTITUTIONS

The law on legal aid in Indonesia requires legal aid providers to be accredited every three years (Wijayanti, 2017). To be accredited, an LAO must be incorporated, have a permanent office, have a board, and have a legal aid program. The LAO must also meet several criteria, such as handling a certain number of cases related to poor people, having a certain number of advocates and paralegals, and having a certain amount of experience in providing legal assistance. The law does not specify the appropriate legal entity for LAOs, but many LAOs choose to be structured as foundations.

Law No. 16 of 2011 on Legal Aid in Indonesia regulates the provision of legal aid through legal aid providers (LAOs). The state plays a role in supporting the implementation of legal aid. The law and its derivative regulations stipulate that LAOs must be incorporated, accredited, have a permanent office, have a board, and have a legal aid program. However, the law needs to specify the appropriate legal entity for LAOs.

Article 7 of the law states that verification and accreditation are carried out every three years. The Minister of Law and Human Rights Regulation on Procedures for Verification and Accreditation of Legal Aid Institutions and Community Organizations and the Implementation Instructions for the Head of BPHN No: PHN-HN.04.03-09 TAHUN 2018 on Procedures for Verification and Accreditation of Legal Aid Providers and Extension of Certification specify the following criteria for accreditation:

a. Number of litigation cases handled related to poor people;
b. Number of non-litigation activities;
c. Number of advocates and paralegals owned;
d. Formal and non-formal education possessed by advocates and paralegals;
e. Experience in handling or providing legal assistance;
f. Coverage of case handling;
g. Ownership status and office infrastructure;
h. Age or length of existence of LAO;
i. Statutes and bylaws;
j. Financial reports following accounting standards;
k. LAO’s Taxpayer Identification Number;
l. Network owned by LAO.

The LAIs/LAOs verification and accreditation process stages are established in Article 3 of Minister of Law and Human Rights Regulation Number 3 of 2013, detailing the following steps: a) Announcement; b) Application; c) Administrative inspection; d) Factual examination; e) Classification of legal aid providers; f) Determination of Legal Aid Provider. In practical terms, the regulations governing the establishment of Legal Aid Institutions present multiple problems:

a. Ambiguity in the statutory regulations regarding the legal entity form for Legal Aid Institutions has led to multiple interpretations (Riyanto et al., 2023). In practice, many Legal Aid Institutions have adopted the legal entity form of a Foundation despite potential conflicts with Foundation laws and regulations.
b. Issues during the accreditation and verification process:
   • Setting and interpreting the standards and requirements that Legal Aid Institutions must meet for verification has been inconsistent. The accreditation committee sometimes relaxes these standards, resulting in discrepancies between the verification process and the regulations that underpin it (Abbott, 2018). This can lead to the misallocation of Legal Aid funds to less deserving institutions, and the accreditation process may not accurately reflect the quality of Legal Aid Institutions.
   • The verification process, as outlined in Article 8 of Permenkumham No. 3 of 2013, involves both administrative and factual audits. During administrative inspections, the Verification Committee primarily checks the completeness of files related to Legal Aid Law requirements. However, many Legal Aid Institutions have not adequately prepared the necessary documents, leading to incomplete assessments during the accreditation process.
   • The determination of verification results is often a subject of debate among Verification Committee members. Some members may argue that a Legal Aid Institution should not pass verification despite meeting the minimum requirements because they believe it is lacking in providing legal aid services effectively (Salam & Suhartono, 2020). Conversely, some members may argue that a Legal Aid Institution should pass even if it does not meet the minimum requirements based on its extensive experience and proven quality. Establishing clear criteria for verifying legal aid institutions presents a challenge, as these criteria should ensure institutions’ competence in providing practical legal assistance.
c) Problems Arising from Legal Assistance Provision:

One of the predominant issues is the ambiguity surrounding the criteria for legal aid recipients. Given the marginalized status of impoverished individuals, legal assistance is of paramount importance (Mandjo & Sarson, 2021). According to Article 1 Number 2 of Law Number 16 of 2011, legal aid beneficiaries are identified as poor individuals or groups. However, the criteria outlined in Article 5 of the same law for defining poverty demonstrate a discrepancy. It defines people experiencing poverty as those unable to access fundamental rights adequately and independently like food, clothing, health, education, employment, and housing. This inconsistency between the explanation and the formulation of the law has made Legal Aid Institutions exceedingly cautious in accepting clients. There is often hesitance because reimbursement is uncertain after providing legal aid, leading these institutions to request payment from clients for operational purposes (Smith & Fotheringham, 2022). This cautious approach negatively impacts the protection of clients' rights, potentially resulting in the exploitation of vulnerable individuals or their denial of deserved legal protection.

Additionally, Legal Aid Institutions need more support in various areas such as human resources, finances, and infrastructure, hindering their ability to provide adequate legal aid services (Barbero, 2020). Uneven distribution and limited access to these institutions, mainly concentrated in urban areas, pose a challenge for those in rural or remote regions. Service quality is also affected due to insufficient staff training and case handling. Furthermore, funding constraints, often reliant on government support or donors, lead to financial instability for many of these institutions.

A critical challenge arises from the low level of legal literacy in the community. Many impoverished individuals encounter legal issues but fail to take advantage of legal aid due to their lack of awareness (Gimpel, 2021). This is partly due to the public's ignorance regarding legal aid programs and their entitlement to legal assistance. Finally, inadequate supervision of Legal Aid Institutions in delivering legal aid services presents an additional hurdle, impacting the quality and accessibility of these services.

The issues mentioned earlier demand immediate resolution. Consequently, cooperation is required between the Government, Legal Aid Institutions, and relevant entities to enhance
the verification process, implement training for securing sufficient funding, and broaden public access to high-quality legal aid services (Sharma et al., 2022). This is imperative to guarantee equal legal protection and ensure access to justice for all.

The existing legal aid system encounters numerous obstacles that impede justice accessibility for needy individuals. Predominantly, the scarcity of Legal Aid Institutions, primarily located in major urban centres, presents challenges for residents in remote areas who face difficulties accessing legal aid (Brammer et al., 2021). Furthermore, the inadequate allocation of funds to these institutions is a significant hindrance, rendering them incapable of delivering comprehensive and quality services to those in need. Additionally, the need for more support from both the Government and society obstructs efforts to enhance the effectiveness of the legal aid system.

Legal Aid Institutions play a pivotal role in upholding legal certainty. Within a multifaceted legal framework, they aid individuals in comprehending their rights and responsibilities while extending justice access to those facing financial disadvantages (Jiang et al., 2019). Furthermore, these institutions oversee the execution of laws and public policies, contributing to the establishment of transparent and accountable governance. Consequently, Legal Aid Institutions become vital strategic partners for the Government in advancing legal certainty in Indonesia.

The proposed regulatory reform for Legal Aid Institutions intends to address various challenges within the current legal aid system. One of the fundamental changes involves facilitating more accessible and affordable legal aid services for those in need. This reformulation also encompasses enhancing service quality and protecting advocates and legal aid support personnel. These measures are geared towards elevating the professionalism and efficacy of Legal Aid Institutions in delivering top-notch services to the populace.

Drawing from Jeremy Bentham's utilitarianism theory, legal aid institutional reform should primarily promote the overall welfare of society. Thus, the reformulation must prioritize the effectiveness of Legal Aid Institutions in granting access to justice, especially for economically disadvantaged individuals. Accelerating the establishment of legal aid institutions and the provision of legal services is essential. According to Bentham's perspective, emphasizing legal certainty, accessibility, transparency, and effectiveness is fundamental to reshaping the regulations governing the establishment of legal aid institutions. Reformulation must be firmly rooted in these core principles to ensure the optimal functioning of Legal Aid Institutions within the legal system.
3.3 REGULATORY REFORM FOR APPROPRIATE LEGAL INSTITUTIONS TO ACHIEVE LEGAL CERTAINTY

The Legal Aid Law was created to ensure legal certainty and order in providing Legal Aid for people experiencing poverty. In practice, several problems arise related to the regulation of the establishment of Legal Aid Institutions. Legal Aid regulations have also been regulated in several other laws and regulations. In this discussion, as an analysis of the reformulation, the establishment of Legal Aid Institutions with legal certainty is limited to the Legal Aid Law and its derivative regulations, the Law on Advocates, and the Law on Foundations. The problems in the formulation of articles related to the establishment of Legal Aid Institutions are presented in the following table form:

Table 1
Analysis of the Establishment of Legal Aid Institutions in the Legal Aid Law and the Law on Advocates

<table>
<thead>
<tr>
<th>Arrangement</th>
<th>Analysis</th>
<th>Recommendation</th>
</tr>
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<tbody>
<tr>
<td>Article 1 number 1 of the Legal Aid Law: Legal Aid is legal services provided by Legal Aid Providers free of charge to Legal Aid Recipients.</td>
<td>The General Provisions in the Assistance Law do not provide an understanding of what is meant by “legal services.” The word legal services are not used in the body of the Legal Aid Law. So, it is not clear what is meant by legal services provided free of charge from legal aid providers to legal aid recipients. This ambiguity gives rise to the potential for different interpretations at the level of legal aid providers, legal aid recipients, and legal aid providers, especially regarding using the word “free.”</td>
<td>Change Need to create clear boundaries regarding “legal services.”</td>
</tr>
<tr>
<td>Article 1 number 2 of the Legal Aid Law: Recipients of Legal Aid are poor people or groups of people.</td>
<td>The Legal Aid Law limits the criteria for legal aid recipients to only poor people. This is in disharmony with Article 56 of the Criminal Procedure Code, Article 23 of the SPPA Law, Article 64 of the Child Protection Law, Article 56 paragraph (1) (2) of the Judicial Power Law, Article 18 paragraph (4) of the Human Rights Law, Article 66 paragraph (6) Human Rights Law, Article 10 d of the Law on the Elimination of Domestic Violence, Article 35 of the TPPO Law, Article 29 of the Law on Persons with Disabilities, where in these articles legal assistance must be provided to legal aid recipients with different categories and conditions.</td>
<td>Change By reformulating the limitations and scope of Legal Aid Recipients in this law.</td>
</tr>
<tr>
<td>Article 7, paragraph (3) of the Legal Aid Law: Verification and accreditation, as referred to in paragraph (1) letter b, is carried out every 3 (three) years.</td>
<td>The LAIs/LAOs accreditation and verification process is carried out every 3 (three) years. This is quite a long time, considering that many Legal Aid Institutions are ready for verification but must wait a long time to follow the accreditation and verification process. The lengthy accreditation and verification process hinders Legal Aid Institutions from providing legal aid services.</td>
<td>This verification and accreditation period, with options: 1. Fixed 3 (three) years with budget considerations, but strict evaluation (reward and punishment) every year</td>
</tr>
</tbody>
</table>
(can reduce or revoke accreditation status); 2. Every year, however, the Legal Aid Center’s accreditation status period remains 3 (three) years and will vary from one Legal Aid Center to another.

| Article 8 paragraph (2) of the Legal Aid Law: Requirements for Legal Aid Providers as referred to in paragraph (1) include: (a) being a legal entity; | Article 8, paragraph (2) letter states that one of the requirements for providing legal Aid is to be a legal entity. Still, the law does not explain the appropriate form of legal entity for Legal Aid Institutions. | Change Reform by providing clear boundaries regarding the appropriate legal entity for Legal Aid Institutions. |
| Article 12 Permenkumham No. 3 of 2013: Legal Aid Institutions or Organizations that apply for Verification and Accreditation as Legal Aid Providers must fulfill the requirements of letter (a) as a legal entity; | In Article 12 letter (a), it is stated that to apply for verification and accreditation as a legal aid provider, one must fulfill the requirements, one of which is to be a legal entity, but the regulation also does not explain the form of legal entity used as a condition for accrediting Legal Aid Institutions. It should be explained about the form of legal entity used by Legal Aid Institutions so as not to give rise to multiple interpretations. | Change Reform by providing clear boundaries regarding the appropriate legal entity for Legal Aid Institutions. |

Based on the table above, there are regulations regarding the implementation of legal aid services and the legal assistance establishment that need to be reformulated. Establishing Legal Aid Institutions does not necessitate the specific form of a Foundation according to Legal Aid laws and regulations. It simply requires them to have a recognized legal entity. The ambiguity surrounding the legal entity type for Legal Aid Institutions has led to many adopting Foundation status. However, these Legal Aid Institutions, in practice, do not adhere to Foundation Law. The author proposes the concept of legal reformulation as follows.

1) Transforming the Draft Association Law into the Association Law

The development of associations continues in Indonesia, while legal regulations still refer to the Burgerlijk Wetboek (BW) for Indonesia, which encompasses the Civil Code and Staatblad, both originating from colonial law (Cameron & Kwiecien, 2019). Including provisions for associations in the Civil Code, particularly in Book Three concerning the Law of Engagements, suggests that an Association constitutes a collective commitment of two or more individuals to specific provisions. Establishing an Association should be categorized as a multi-faceted legal action rather than an agreement creating a binding commitment.

An association, which corresponds to "zedelijke ligchamen" in the Civil Code, differs from
a partnership, referred to as a Company, where a Company is an alliance between multiple individuals engaged in profit-seeking business activities. In contrast, associations are non-profit in nature. Therefore, it is imperative to pass the Association Bill into the Association Law promptly.

2) Choosing the correct form of legal entity

The selection of the most appropriate form of legal entity for formulating regulations for establishing legal aid institutions. The most appropriate reformulation of rules for the establishment of legal aid institutions must take into account the legal context and legal culture of each country (Cameron & Kwiecien, 2019; Lailam & Andrianti, 2023; Rabe & Haddeland, 2023). The following is a comparison of legal aid institutions in the country:

a. South Africa

South Africa has Legal Aid South Africa (LASA), which operates as an independent legal entity funded by the Government. This model integrates government funding with legal assistance independence institutions, providing fair legal aid and legal certainty.

b. Netherlands

In the Netherlands, a Legal Aid Board (Road Voor Rchtsbijstan) provides legal assistance to women who meet the requirements based on financial criteria. This model can be described as a government agency that manages legal aid funds.

c. Australia (New South Wales)

In NSW, Legal Aid NSW is a government agency that provides legal Aid. Funding comes from the Government, and this model creates a legal entity completely tied to the Government.

d. Thailand

Thailand has a Legal Execution Department (LED) which provides legal assistance to eligible individuals, especially in the context of sentence executions. This model is a government agency that has a special role in supervising the execution of sentences.

e. England

In England, a Legal Aid Agency (LAA) manages public legal Aid. The LAA is a government agency that works with legal aid funds and functions as part of the Ministry of Justice.

The choice of an appropriate legal entity's form can vary depending on a country’s legal context and policies. Some countries may be more successful with a government funding model, while others may maintain legal institutions as government bodies (Cameron &
Kwiecien, 2019; Guo et al., 2020; Wang, 2020). The reformulation should consider the country's needs, resources, and legal values to choose the most appropriate legal entity form for a legal aid institution, ensuring legal certainty. For the reformulation of legal aid institution establishment in Indonesia, it must consider the country's legal context, culture, and societal needs. While examples from other countries provide inspiration, the most suitable applications for Indonesia may vary. Several legal entity forms can be considered:

- Independent legal entity with government funding (Netherlands model): This model allows independence while ensuring government resources;
- Government bodies (Australian and UK models): Legal aid institutions become part of the government, facilitating funding and supervision;
- Hybrid model (combination of Government and private funding): Combining government funding with private or international donors' support can raise additional funds for better access to legal services;
- Legal institutions under the Ministry of Justice: Legal aid institutions could be integrated into relevant ministries to ensure direct government involvement;
- The best choice depends on factors such as Indonesia's legal structure, available resources, desired independence, and commitment to achieving legal certainty and justice. Involving stakeholders, including civil society, is essential to ensure the legal entity form reflects Indonesia's unique needs.

Analyzing the reformulation of legal aid institution establishment with legal certainty, it aligns with the welfare state theory emphasizing the state's role in protecting and improving social welfare. Legal aid institutions must ensure all citizens, especially the less fortunate, have equal access to legal services, ultimately improving their quality of life. The principle of legal certainty stresses clear, predictable, and consistent laws. Reformulation must lead to understandable regulations consistently applied within legal aid institutions. It should also ensure the protection of individual rights.

Balancing a welfare state's social welfare role and legal certainty is essential for reformulation. It should benefit society while adhering to important legal principles. Analysing the reformulation of legal aid institutions using Gustav Radbruch's theory of legal certainty emphasizes putting justice ahead of applicable law. Reformulation must ensure a solid moral and ethical basis, emphasizing justice and human rights protection. Proposed forms include clear laws, transparency, professional management, equal access, and independent oversight.
Reformulation should integrate legal certainty and justice, ensuring clear rules, human rights protection, and equal access to justice. This aligns with the concept of legal certainty, emphasizing clarity and consistency in law and processes. Reformulation aims to create legally certain, ethical, and morally principled legal aid institutions. It should produce clear laws, protect human rights, provide equal access to justice, and achieve the desired legal certainty. Reforming the regulations for legal aid institutions' establishment can increase access to legal services for those in need, improving the quality of services and benefiting the community.

4 CONCLUSION

The research findings reveal the need for clarity in Indonesia's Legal Aid Institutions (LAIs/LAOs) establishment regulations, necessitating reform for legal certainty. Although foundations serve as the predominant legal entity for LAIs/LAOs, this study identifies key issues, including geographical barriers and resource limitations, hindering community access to legal services. To address these challenges, transparent and comprehensive reformulations of LAIs/LAOs establishment regulations are recommended. These reforms aim to enhance operational efficiency, ensure equal access to quality legal aid, and uphold human rights. Additionally, a comprehensive reformulation of legal entity provisions under the Legal Aid Law is proposed, requiring support from supervisory requirements to maintain alignment with the Foundation Law. The objective is to establish a transparent framework that strengthens LAIs/LAOs operations and safeguards legal certainty and human rights. Clearer regulations are anticipated to enhance LAIs/LAOs' efficiency, bolster access to justice, and underscore their pivotal role in upholding justice and human rights within Indonesia's legal landscape.

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