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# **THE 5 th INTERNATIONAL AND CALL PAPER**

## **Legal Reconstruction in Indonesia Based on Human Rights**

**Imam As Syafei Building**

**Faculty of Law, Sultan Agung Islamic University**

**Jalan Raya Kaligawe, KM.4 Semarang, Indonesia**

**UNISSULA PRESS**

# The 5<sup>th</sup> PROCEEDING

## *“Legal Reconstruction in Indonesia Based on Human Right”*

**IMAM AS SYAFEI BUILDING**

Faculty of Law, Sultan Agung Islamic University  
Jalan Raya Kaligawe, KM. 4 Semarang, Indonesia

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## PREFACE

First of all, let's say Thanks to Allah, who has been giving us guidance, happiness, healthy, and mercy, so we can finish this conference proceeding without any obstacles. Praise and salutation upon our prophet Muhammad saw the last messenger, the best figure of this universe; the person who was able to save us from Jahiliyah era.

We would like to extend our thanks to the invited speakers: Prof. Henning Glaser from Thammasat University, Prof. Shimada Yuzuru from Nagoya University, Hilaire Tegnan, Ph.D from Sorbone University, Prof. Topo Santoso From Indonesian University, and Dr. Sri Endah Wahyuningsih, S.H., M.H from Sultan Agung Islamic University.

This was our fourth International conference and call for paper held by Faculty of Law, Sultan Agung Islamic University. This annual conference tries to gain any information and studies done by academician and practitioner in the concerned field to be discussed as guidelines to exchange and talk about views on the most important recent on Legal Construction and Development focusing on The Role of Indigenous and Global Community in Constructing National Law happens in both developed and developing countries and its role in shaping a good future, and to discuss the challenges and practical aspects in integrating competition law enforcement and guidelines to develop legal state in accordance with the diversity of all countries around the world. We hope this conference brings benefit for both participants and our faculty.

We are pleased to have your critique, suggestion and correction in order to make us better. Finally, we do thanks to all who helped this conference. May Allah guide us to always develop useful knowledge for human being.

## PROCEEDINGS

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# Urgency Of Legal Assistance For Poor People As A Request Of Human Rights

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## Abstract

*Realizing constitutional rights (equality before the law) and access to justice (access to law and justice) as one of the manifestations of Community Rights for the poor granted by the state is the mandate of the constitution. The regulation regarding legal aid has been issued by the state with the emergence of Law*

*The Constitution of Legal Assistance No. 16 year of 2011 concerning legal aid and is strengthened through the 1945 Indonesia Constitution in Article 28D paragraph (1) of the 1945 Constitution which states that guarantees that everyone including those who are unable to have the right to get access to justice so that their rights to recognition, guarantees, protection and legal certainty that are fair and the same treatment before the law can be realized. Normally regulations have been made for recognition, guarantees, legal protection, but the regulations made have not been effectively implemented so that the meaning of equality before the law and access to law and justice is unsure. The ineffectiveness of the application in providing legal aid is a legal issue that needs to be studied in order to find out the problem causing why the ineffectiveness of legal aid provision that can later be used as a facilitator for optimizing the provision of legal aid This article will explain systematically and scientifically using juridical-empirical methods that taking location in Semarang Regency, the sample includes the Social Service, the district court, the legal section of the Semarang Regency secretariat and advocate organizations.*

*Based on the results of the study there are problems in the application of providing legal aid in the community, which makes the provision of legal assistance to the community to be ineffective, due to the absence of local regulations as a facilitator of optimizing the provision of legal aid in order to realize the citizens' constitutional rights (equality before the law) and Access justice (access to law and justice) for the poor*

**Keywords:** Legal Aid, access to law and justice.

## A. INTRODUCTION

Legal aid is a legal services that aims to provide protection law in order to realize constitutional rights (equality before the law) citizens and justice access. Protection and recognition for human rights of individuals and citizens is consequence from Indonesia as a legal state<sup>29</sup> according to

UUD 1945 Clause 27 (1) states: "Every citizen are equal in law, and the government and shall abide by the law and the government without exception". Legal aid became essential instrument for the realization of *access to law and justice* because it is part of protection Human Rights (HR) for every individual, including the right to legal aid.

<sup>29</sup> Sri Rahayu Wilujeng, Vol. 18 No. 2 Edisi Juli-Desember 2013, "Hak Asasi Manusia: Tinjauan dari Aspek Historis dan Yuridis", *Jurnal Humanika*, , Fakultas Ilmu Budaya UNDIP: Semarang, hlm 162.

Arrangements regarding legal aid expressly provided for in Law No. 16 Year 2011 on Legal Aid is expected to protect the constitutional right of every individual to receive legal aid but it is also expected to accommodate the protection of the poor in the face of legal cases<sup>30</sup>. Speaking about the principle of equality before the law, human rights, and access to law and justice is an easy thing, but when the level of practice the reality of society is not in accordance with what was discussed and all are not nearly done because the lack of optimization of the regulation on aid law in the area in the form of local regulations and the need for socialization as a service to foster public awareness of legal aid or access to law and justice, Based on this, whether the application of legal aid for the poor has been effective and optimal as perwujudan access to Law and justice as a commitment to the fulfillment of the constitutional rights of the right to legal aid which is realized by establishing a Regional Regulation on Legal Aid for the poor in the District of Semarang. Those requirements are based on the reality of the poor and vulnerable with law problems. Data troubled by poor people in the district according to the figures presented in the table :

Jumlah Penduduk Miskin Menurut Kabupaten/Kota  
Provinsi Jawa Tengah Tahun 2011 - 2016

Kabupaten / Kota	Jumlah Penduduk Miskin					
	2011	2012	2013	2014	2015	2016 (***)
(1)	(2)	(3)	(4)	(5)	(6)	(7)
01 Kab. Cilacap	281.950	265.885	255.749	239.750	243.470	230.161
02 Kab. Banjumas	328.510	309.777	296.807	283.480	285.850	277.664
03 Kab. Purbalangga	198.000	184.907	181.141	176.040	178.490	171.777
04 Kab. Banjaregara	177.313	167.030	168.823	159.480	165.360	158.200
05 Kab. Kebumen	279.415	262.810	251.129	242.310	241.940	235.831
06 Kab. Purworejo	121.941	114.786	108.995	102.110	101.250	99.071
07 Kab. Wonosobo	182.951	172.376	170.127	165.830	166.410	160.125
08 Kab. Magelang	179.581	169.389	171.022	160.480	162.380	157.734
09 Kab. Boyolali	139.516	131.455	126.466	118.580	119.970	116.976
10 Kab. Klaten	203.052	191.285	179.480	168.180	172.300	168.013
11 Kab. Sukoharjo	91.968	85.875	84.054	78.850	79.940	78.908
12 Kab. Wonogiri	146.372	137.863	132.196	123.850	122.980	124.377
13 Kab. Karanganyar	124.493	117.363	114.394	107.290	106.430	108.873
14 Kab. Sragen	154.260	145.316	139.040	130.280	130.420	125.487
15 Kab. Grobogan	227.778	214.617	198.967	186.530	184.490	186.695
16 Kab. Blora	134.931	127.059	123.755	115.980	115.050	113.938
17 Kab. Rembang	140.377	132.370	127.984	119.990	119.110	115.811
18 Kab. Pati	175.124	164.897	157.904	148.050	147.050	151.476
19 Kab. Kudus	73.591	69.332	70.081	65.800	64.100	66.588
20 Kab. Jepara	113.349	108.980	106.853	100.480	100.610	103.782
21 Kab. Demak	192.465	181.591	172.465	161.950	160.890	158.003
22 Kab. Semarang	95.994	90.625	83.195	79.760	81.250	80.718
23 Kab. Temanggung	94.923	89.489	91.120	85.530	87.450	83.782

<sup>30</sup> Nasution, Isnandar Syahputra. Vol. 4 No. 1 Edisi Maret 2015, "Urgensi Peran Pengadilan dalam Memberikan Pelayanan Bantuan Hukum Terhadap Orang Miskin Sesuai Undang-Undang No.16 Tahun 2011 Tentang Bantuan Hukum", *Jurnal Hukum dan Peradilan*, Mahkamah Agung RI: Jakarta, hlm. 171 –188

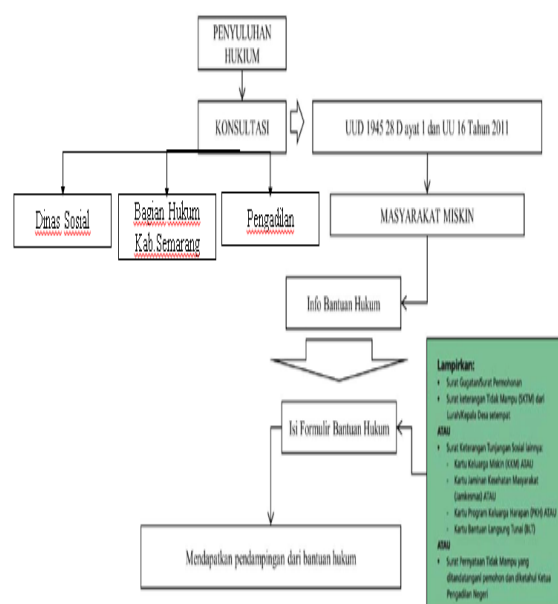
<sup>31</sup> Abdulkadir Muhammad, 2004, *Hukum Dan Penelitian Hukum*, Bandung: Citra Aditya Bakti, , hlm 134.

## B. FORMULATION OF THE PROBLEM

Based on this background, the problem can be formulated to research and study to answer these problems, namely how urgency of legal aid for the poor as the realization of human rights in the Semarang District.

## C. RESEARCH METHODS

This research uses normative-empirical approach (Law applied research)<sup>31</sup>, With secondary data through library research on legal aid for the poor which took place in the district of Semarang, the sample includes Social Office, the district court, the legal department secretariat Semarang district Electoral these locations as a sample to answer the urgency of the delivery of legal aid in the districts of Semarang



## D. RESULT AND DISCUSSION

The legal principle of Equality before the law and equal access to justice which affirms that everyone should receive equal treatment before the law and that everyone should

have equal opportunity to obtain justice.<sup>32</sup>This is in accordance with the requirements for a state of law with guarantees for human rights which is based on Article 34 paragraph (1) of the 1945 Constitution which states that “The poor and displaced children are maintained by the state”. In this case, the state recognizes the right of citizens to get the same treatment that the poor are examples of groups that are vulnerable to injustice in society<sup>33</sup>

Law No. 16 of 2011 on Legal Aid is a means representation state in its function as a legal state, where the state has the authority to determine the means of the important aspects of legal aid for the poor or a certain group of people. These aspects are aspects of the formulation of the rule of law, oversight aspects of the legal aid delivery mechanisms, and aspects of public education for the rule of law that has been created can be internalized<sup>34</sup>

Regional Regulation of Semarang District 7 in 2018 on Poverty Reduction Semarang district social services through integrated services and Referral System Integrated (RSI) and the Movement of Society Mandiri Sejahtera only accommodate all the aspirations of the community, especially for the poor who are in legal matters. In the form of assistance in the form of legal guidance, provision of data, and efforts to find a solution for the poor was problematic of this law. Legal aid is given only limited assistance efforts have not been in the direction of the defense, so the procedure and implementation of defense in the courts context of legal aid has not been implemented.

On the Legal Division of the District Government of Semarang in His ministry is limited in the form of mentoring,

consulting, and outreach to the community, against attempts sustainability efforts of legal issues that plagued these communities is directed to the Institute of General Jurisdiction who was in court, because there is no Legal Aid Post in the District Government of Semarang , Going forward Semarang regency Legal Bureau in the process of discussion on the preparation of Academic Paper for Local Rule Making on Legal Aid.

As has been said above relating to legal aid for the poor in Semarang District recently held at the Institute of General Jurisdiction Semarang District Court. through. Posbakum District Court Ungaran who provide services in the form of information, consultation and legal advice, as well as the making of legal documents required in accordance with the legislation. which is based the Rules of the Supreme Court No. 1 of 2014 on Guidelines for Providing Legal Services to the People Disadvantaged in court. Formally organizing legal aid for the poor in the district of Semarang organized by the District Court of the District of Semarang, Under these circumstances, local governments should participate and assume responsibility for the state to guarantee and protect the right of every citizen to get access to justice through the application of legal aid program that is poured into a regional regulation. As a form of (legal services) that aims to provide protectionlaw in order to realize constitutional rights (equality before the law) citizens and justice access. on the community can not afford in the region

## **E.CONCLUSION**

Uregensi legal aid services for poor people in the county have not been done

<sup>32</sup> Bachtiar, 2018, *Penyelenggaraan Bantuan Hukum Bagi Masyarakat Miskin Oleh Pemerintah Daerah*, Jurnal: *Supremasi Hukum*, Vol 14 Nomor 1

<sup>33</sup> Kemiskinan atau tidak mampu dapat diartikan adalah ketidak-cukupan seseorang untuk bisa memenuhi kebutuhan-kebutuhan primernya seperti pangan, sandang dan papan untuk kelangsungan hidup dan meningkat posisi sosial ekonominya. Tetapi masalahnya adalah sumber-sumber daya material yang dimiliki masyarakat miskin keadaanya sangat terbatas hanya dapat digunakan untuk mempertahankan kehidupan fisiknya dan tidak memungkinkan untuk dapat meningkatkan kesejahteraan.

<sup>34</sup> Mahkamah Konstitusi 2012 “Putusan Nomor 88/PUU-II/2012” Pertimbangan hukum..., hlm. 146.

effectively Semarang caused by limited in the form of mentoring, consulting, and outreach to the community, against attempts sustainability efforts of legal issues that plagued these communities are still directed to the Institute of the General Court which is in court

## F.ADVISE

Local Government have to immediately establish local regulations are expected presence of the Regulation at least answer the high expectations of the public will be the completion of the issue of legal aid in the area, where until now there are still poor people who do not have access to legal aid.

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