REIMAGINING LEGAL AID INSTITUTION REGULATIONS TO ENHANCE LEGAL CLARITY

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ABSTRACT

Purpose: to examine in depth the current LBH establishment arrangements. In addition, this study aims to formulate a regulatory formula for the formation of LBH that is appropriate and in accordance with the applicable legal context, with the main aim of realizing better legal certainty in supporting the mission of LBH in providing legal assistance to the community.

Methods/design/approach: This research uses qualitative methods with a prescriptive research approach by describing data findings, both primary and secondary data, that have been processed and analyzed.

Results: This research found that the regulations for the establishment of LAI/LAO in Indonesia need to be clarified, especially in terms of the status of the legal entity used. The status of the foundation dominates so that it becomes biased in carrying out its role as a legal aid institution to the community with consistency in the principles of the foundation regulated in Indonesian law. It is necessary to reformulate regulations that are more transparent and comprehensive for advocacy principles and can provide legal assistance to the community properly without being bound by limitations that may exist in the Foundation law.

Conclusion: The dominant legal entity status for the Legal Aid Institute is in the form of a Foundation, a form of Foundation legal entity that has been the most appropriate to establish LAI/LAO in Indonesia because it has advantages, the foundation is non-profit and has no members, so it is more independent and cannot be intervened by any party. The provisions of legal entities in the Legal Aid Law, which are currently still based on Foundations and Associations, need to be supported by supervisory requirements in their implementation so as not to violate the essence of the enactment of the Foundation Law. Reformulation must result in clear legal aid institutions, protect human rights, provide equal access to justice, and achieve the desired level of legal certainty.

Keywords: legal aid society, legal certainty, reimagining regulations.

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REIMAGINANDO LAS REGULACIONES DE LAS INSTITUCIONES DE ASISTENCIA LEGAL PARA MEJORAR LA CLARIDAD LEGAL

RESUMEN

Finalidad: examinar en profundidad las actuales disposiciones relativas al establecimiento de LBH. Además, este estudio tiene como objetivo formular una fórmula reguladora para la formación de LBH que sea apropiada y de acuerdo con el contexto legal aplicable, con el objetivo principal de lograr una mejor seguridad jurídica al apoyar la misión de LBH en la prestación de asistencia legal a la comunidad.

Métodos/diseño/enfoque: Esta investigación utiliza métodos cualitativos con un enfoque de investigación prescriptiva al describir los hallazgos de los datos, tanto primarios como secundarios, que se han procesado y analizado.

Resultados: Esta investigación encontró que las regulaciones para el establecimiento de LAI/LAO en Indonesia necesitan ser aclaradas, especialmente en términos del estatus de la entidad legal utilizada. La condición de la fundación domina de manera que se vuelve tendenciosa en el desempeño de su función como institución de asistencia jurídica a la comunidad con coherencia con los principios de la fundación regulados en la legislación indonesia. Es necesario reformular las regulaciones que sean más transparentes e integrales.
para los principios de promoción y puedan proporcionar asistencia legal a la comunidad adecuadamente sin estar sujetos a las limitaciones que puedan existir en la ley de la Fundación.

**Conclusión:** La condición de entidad jurídica dominante para el Instituto de Ayuda Legal es en forma de Fundación, una forma de entidad jurídica de la Fundación que ha sido la más adecuada para establecer LAI/LAO en Indonesia porque tiene ventajas, la fundación no tiene fines de lucro y no tiene miembros, por lo que es más independiente y no puede ser intervenida por ninguna parte. Las disposiciones de la Ley de asistencia jurídica, que en la actualidad siguen basándose en las fundaciones y asociaciones, deben estar respaldadas por requisitos de supervisión en su aplicación para no violar la esencia de la promulgación de la Ley de fundaciones. La reformulación debe dar lugar a instituciones claras de asistencia jurídica gratuita, proteger los derechos humanos, proporcionar igualdad de acceso a la justicia y alcanzar el nivel deseado de seguridad jurídica.

**Palabras clave:** sociedad de ayuda legal, seguridad jurídica, reimaginando las regulaciones.

### 1 INTRODUCTION

Legal aid institutions are one of the important pillars in efforts to create universal access to justice in society (Wijayanti, 2017). LBH plays a very vital role in providing legal assistance to individuals who may not be able to afford to hire lawyers or who require legal guidance in various aspects of their lives. Despite its important role, the regulations governing legal aid institutions are often complex, ambiguous, and difficult for the general public to understand (Barbero, 2020). These conditions create barriers for individuals seeking legal assistance, 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 (UUD 1945). In the context of the rule of law, every citizen has an equal position in law and government, and is obliged to uphold law and government, known as the principle of "equality before the law." This principle guarantees that everyone has the right to recognition, guarantee, protection and just legal certainty, as well as equal treatment before the law (Kumar et al., 2022; Lutfiyah, 2021).

The principle of "equality before the law" not only means equality in the eyes of the law, but also includes equal access to the legal system and justice. The Government of Indonesia, in accordance with Article 34 (1) of the 1945 Constitution, has an obligation to care for the poor and abandoned children, which also includes the need for access to law and justice. To ensure legal access for the poor, the Government of Indonesia implements regulations through Law 16 of 2011 concerning Legal Aid and Law Number 18 of 2003 concerning Advocates. The regulation requires legal aid providers, especially
advocates, to provide free legal assistance to the poor. However, to meet the requirements as a legal aid provider, many Legal Aid Institutions (LBH) in Indonesia choose Yayasan as their legal entity. This is in line with the requirement that legal aid providers be incorporated, in accordance with Article 8 of the Huku Assistance Act.

The Legal Aid Institute (LBH) or Legal Aid Provider (PBH) currently, out of a total of 619, has 142 institutions in the form of Foundations (Manurung et al., 2023). This situation occurs as a result of the requirements in Article 8 of Law Number 18 of 2018 concerning Legal Entities and Article 12 of Permenkum HAM Number 3 of 2013 which requires that LBH must 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 states that a total of 619 organizations have passed verification and accreditation, many of them still do not have legal entity status, while existing regulations demand that LBH/PBH have legal entity status.

The choice of legal entity which is only limited to Foundations and Associations causes the majority of LBH who pass verification to have the form of a Foundation legal entity (Suryaningsi, 2020). The Foundation was chosen as a legal entity of LBH because it is strong in general with a layered management structure and has its own laws, namely Law Number 16 of 2001 which was amended in Law Number 28 of 2004 concerning Foundations (Law on Foundation Law) and Government Regulation Number 2 of 2013 as its implementing regulations. On the other hand, the Association has egalitarian tendencies and does not yet have its own law because it is still in the draft law stage.

LBH in the form of a legal entity of the Foundation is confused because of the rules that prohibit the results of the Foundation's business from being shared with members of the Foundation's Organs, including Advocates in the LBH body (Brammer et al., 2021). The majority of legal assistance provided by LBH Yayasan is actually not free, but with service fees to Advocates who sit in the institution. This condition is contrary to the rules of the Foundation Law and may result in imprisonment as well as demands for refund to the Foundation (Carolei, 2022).

This problem arises because of a void in the regulation detailing the best form of legal entity for LBH/PBH. Article 12 of Permenkum HAM Number 3 of 2013, Law Number 16 of 2011 concerning Legal Aid, and the Foundation Law do not provide clear guidelines regarding the form of legal entities suitable for LBH/PBH. This creates a
discrepancy between existing regulations and no regulations that specifically regulate the best form of legal entity for LBH/PBH.

The lack of clarity in regulations has resulted in many LBH/PBH choosing the Foundation as their legal entity to meet the requirements of being a legal entity, although this is not always in accordance with the non-profit nature that LBH/PBH should have (Amin, 2017). This situation resulted in a conflict of interest between Advocates as a liberal profession and Advocates who play a role in LBH, and the absence of a special Law regarding LBH / PBH caused differences in interest between Advocates as individuals and Advocates who are part of LBH (Al-Fatih & Aditya, 2019). In practice, the establishment of LBH with a Foundation forum can violate the essence of the Foundation Law by not conforming to the principles of transparency, accountability, and formal requirements set.

Previous research has not provided a comprehensive analysis of unclear regulations and access to legal aid for Indonesians (Indrawan et al., 2021; Lutfiyah, 2021; Muliadi, 2017; Nuna et al., 2020; Rochman, 2020; Wijayanti, 2020). In previous research, there was not an adequate understanding of the unclear regulations governing the establishment of Legal Aid Institutions in Indonesia, especially related to the status of legal entities that should be adopted by these institutions. This uncertainty provides gaps in understanding of legal practice in the field and limits the effectiveness of legal assistance provided to communities in need. In addition, there is a lack of concrete analysis related to access barriers faced by individuals requiring legal assistance. Thus, the vagueness of regulations and inaccuracies in the practice of legal aid causes uncertainty in access to equitable and effective legal services for the community.

The novelty of this research lies in a comprehensive approach that aims to overcome regulatory uncertainty and legal access problems in Indonesia. This research focuses on regulatory reformulation to achieve legal certainty, including a more in-depth analysis of the legal entity status that should be adopted by legal aid institutions. In addition, this study seeks to identify concretely barriers to legal access and provide concrete solutions to increase wider and more equitable access for people in need of legal assistance. Thus, this research brings new ideas and deeper understanding in understanding and solving problems related to legal aid institutions in Indonesia.

Legal Aid Institutions play an important role in the legal and judicial systems, so they need a strong and legally independent foundation to provide effective legal services
to the community. The selection of the right legal entity status is essential to ensure these institutions can fulfill their functions optimally. Currently, Indonesia’s legal aid system faces significant challenges, with one of the main barriers being limited access for those in need of legal aid. This limitation is mainly due to unclear and inadequate regulations governing the establishment of Legal Aid Societies. Therefore, there is an urgent need to reformulate these regulations to expand and improve access to legal aid services for individuals in need.

The need for a review of the regulations of legal aid institutions is based on several important factors. First, confusion in the practice of legal aid institutions in the form of Foundation legal entities which results in potential violations of rules related to the distribution of the Foundation’s business results to its members, especially advocates involved in the body of the institution. Second, the incompatibility between existing regulations, such as Article 12 of Permenkum HAM Number 3 of 2013, Law Number 16 of 2011 concerning Legal Aid, and the Law on Foundations, which does not provide clear guidance regarding the most appropriate form of legal entity for legal aid institutions (Manurung et al., 2023). As a result, there is a need for review to harmonize existing rules to avoid conflict of rules and create a clearer and more consistent legal basis for legal aid institutions in Indonesia.

This reformulation is expected to not only improve access issues but also improve the overall quality of legal aid services, ensuring that communities can receive timely and professional legal assistance. Therefore, the purpose of this study is to develop a comprehensive framework to reformulate regulations related to the establishment of Legal Aid Institutions to ensure legal certainty. The questions that are the focus of this research are: 1. Why is the dominant legal entity status for the Legal Aid Institute in the form of a foundation? 2. What are the regulations that apply in establishing the Legal Aid Institute? and 3. What is the ideal form of structuring Legal Aid Institute Regulations to provide Legal Clarity?
2 THEORETICAL FRAMEWORK

2.1 WELLBEING COUNTRY

The theory of the welfare state became the main foundation in this study. This theory focuses on the role of the state in providing social services and protection to citizens, including access to justice in the context of legal aid (Laperrière & Orloff, 2019). This theory supports the idea that every citizen has an equal right to access justice and legal protection, regardless of differences in social, economic, or other status differences (Jiang et al., 2019). One of the important tasks carried out by the Unitary State of the Republic of Indonesia is to protect and create general welfare for its people. In that order, the State has the obligation to facilitate the fulfillment of all rights of every citizen (Kusumaningrum, A. E. et al., 2023). States are responsible for ensuring that access to justice is afforded equally to all its citizens. This research will use welfare state theory to argue that LAI establishment regulations should prioritize social welfare principles.

2.2 PRINCIPLES OF LEGAL CERTAINTY

The principle of legal certainty is an important element in this study. This principle emphasizes the importance of clear, understandable, and consequent laws (Navarrete, 2019; Rochman, 2020) [12]. Legal certainty creates a solid basis for people to understand their rights and obligations in the legal system (Drahmann, 2020). This principle will be used to evaluate the extent to which the current LAI establishment regulations achieve the desired level of legal certainty and how the reformulation of the regulations can improve legal certainty.

2.3 LEGAL SYSTEM THEORY

Legal system theory, as developed by Lawrence M. Friedman, will help understand the role of LBH within the broader legal framework (Shepherd et al., 2020). The way LBH interacts with the existing legal system and how its establishment regulations must be in accordance with the structure of the legal system will be the focus
of this study. The Indonesian legal system has distinctive features and characteristics, which need to be considered in formulating effective LAI regulations.

2.4 THEORY OF LEGAL CERTAINTY

The theory of legal certainty, especially from Gustav Radbruch, views that the rule of law must be based on clear and understandable facts. This theory emphasizes the importance of the rule of law that cannot be easily changed and must protect the human rights of individuals. In the context of this study, the theory of legal certainty will be used to analyze the extent to which the reformulation of regulations regarding the establishment of LAI can ensure legal clarity and certainty in the provision of legal assistance.

3 METHOD

The research paradigm used in this study 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). This research belongs to the category of normative juridical research. The research approach used includes statutory and comparative legal approaches. The normative juridical approach focuses on the analysis of 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). The data used in this study consists of two types, namely secondary data and primary data. Secondary data is obtained through literature studies that include legal regulations, books, journals, and research results related to legal aid institutions in the form of foundations. Primary data, on the other hand, were obtained through interviews with various parties related to this study. These parties include the Ministry of Law and Human Rights (Kemenkumham), notaries involved in the process of making the deed of establishment of a legal entity, as well as legal aid institutions in the form of foundations. To collect data, this study used two main techniques, namely field studies and literature studies. Field Study: Through guided interviews with parties that have relevance to the research, such as the Ministry of Law and Human Rights, notaries, and legal aid institutions in the form of foundations.
4 DISCUSSION

4.1 THE DOMINANT LEGAL ENTITY STATUS FOR LEGAL AID INSTITUTIONS IN THE FORM OF FOUNDATIONS

Local governments have a very important role in carrying out their responsibilities towards environmental health. A strong legal basis guides their steps in maintaining and improving the quality of the environment. These responsibilities include the protection and prevention of pollution, sustainable management of natural resources, and improving community welfare. Law of the Republic of Indonesia Number 18 of 2008 concerning Waste Management Article 3 mandates that waste management is carried out based on the principle of responsibility, the principle of sustainability, the principle of benefit, the principle of justice, the principle of awareness, the principle of togetherness, the principle of safety, the principle of security, and the principle of economic value. Article 4 Waste management aims to improve public health and environmental quality and make waste a resource.

The status of the Legal Aid Institute (LBH) in the form of a foundation was chosen with careful consideration, mainly because of a number of reasons that support this decision. One of the main reasons is the autonomy aspect (Cameron & Kwiecien, 2019). Yayasan merupakan badan hukum yang memberikan LBH otonomi dalam pengelolaannya (Vigier et al., 2019). Thus, LBH in the form of a foundation has the freedom to determine its own direction and policies. The presence of this autonomy is very important because LBH has a noble mission, which 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.

In addition, the aspect of funds is also a key consideration. Foundations have the ability to secure more diverse funding sources (Wang, 2020). In the context of LBH, this means that LBH in the form of a foundation can access funds from various sources, including community donations. This fund is very important for LBH because it is used to pay staff salaries, office rent, and other operational costs. Community donations are a vital source of funding for LBH, and the foundation's status allows them to receive the necessary contributions in carrying out their mission.
In addition to autonomy and more diverse funding sources, the foundation's status also opens the door to the establishment of a wide network (Cameron & Kwiecien, 2019). The Foundation can build cooperation with various parties, both at the local and national levels. This is particularly important in the context of LBH, where cooperation with governments, community organizations, and other non-governmental organizations is key to providing broader and more effective legal aid services (Lailam & Andrianti, 2023). By focusing on these reasons, the status of LBH in the form of a foundation is considered the right choice. This decision is not merely a legal status, but also a strategy to give LBH autonomy, access to sufficient funds, and a strong network. Thus, the form of the foundation becomes a strong foundation for LBH in carrying out their mission to provide access to justice to people in need.

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

### 4.1.1 Legal Substance

The legal basis of foundations in Indonesia, established under Law Number 16 of 2001 juncto Law Number 28 of 2004 (Law on Foundations), makes them the preferred choice for Legal Aid Institutions/Legal Aid Organizations (LBH) because of their simpler establishment and attestation procedures. Official recognition as a legal entity requires approval from the Minister of Law and Human Rights of the Republic of Indonesia. This important attestation process ensures the validity of the deed of establishment of the foundation, in accordance with applicable laws and regulations to prevent fraudulent practices (Jiang et al., 2019).

Foundations have the freedom to establish supporting business entities, but there are some restrictions that apply (Vnutskikh et al., 2021). For example, foundations are prohibited from conducting business activities within their structure, thus requiring a separate business forum. Participation in external business ventures is allowed, provided that the venture is prospective and uses no more than 25% of the foundation's assets (Sharma et al., 2022). Despite the comprehensive legal framework provided by the Foundation Law, practical differences, especially regarding salaries/honorariums paid to advocates within foundations, may remain.
4.1.2 Legal Structure

The legal framework of the legal aid system in Indonesia includes a wide range of institutions, with key players including the legislature, the Ministry of Law and Human Rights (Kemenkumham), the Directorate General of General Legal Administration (Ditjen AHU), the Legal Aid Institute/Legal Aid Organization (LBH), and Advocates (Barbero, 2020; Gimpel, 2021). The selection of the foundation as the preferred legal entity by LAI/LAO is influenced by vagueness in the Legal Aid Law. The lawmakers responsible for drafting these laws did not explicitly define the proper legal status for LAI/LAO; they simply stipulate that LAI/LAO must be incorporated (Saltarella et al., 2023). The Ministry of Law and Human Rights, within its regulatory framework derived from the Legal Entities Law, failed to specify the specific legal entity required for LAI accreditation.

This uncertainty has led to a prevalent tendency to establish LAI/LAO as a foundation. However, there is a discrepancy between this practice and the legal requirements outlined in the Foundation Law. According to the Foundation Law, foundations must consist of supervisors, administrators, and trustees, with no provision for other organizational structures.

The lack of internal and external oversight mechanisms by the government further exacerbates this problem. As a result, some foundations were established not with the primary purpose of providing legal assistance to underprivileged communities, but rather to earn income for their founders or members. Article 6(2) of the Legal Aid Law outlines the supervisory role of foundation organs, but it is clear that this provision is insufficient to address this issue comprehensively. To remedy this, it is imperative that the central government take a more proactive role in monitoring LAI/LAO (Metaxas, 2022). The Indonesian government needs to substantially improve the operational efficiency of LAI/LAO. This, in turn, will contribute to the protection of their clients' rights and the effectiveness of the legal aid system as a whole.

4.1.3 Legal Culture

Legal culture plays an important role in shaping the preferences and decisions of Legal Aid Societies in choosing legal entities (Suryaningsi, 2020). The relationship...
between social behavior and the legal system is complex (Manurung et al., 2023). LAIs often choose foundations as their legal entity based on the legal culture of the communities they serve.

The influence of people's social behavior is quite significant. People tend to associate foundation with credibility and trust, making it an attractive option for LAI. Foundations are considered as entities that are more likely to gain the trust of the community as donors. This trust is especially important to LAI, as LAI often relies on donations and public support to sustain its operations. In addition, the non-profit nature of the foundation aligns with public perception that donations will be used for social, humanitarian, or religious purposes. Public trust in the foundation's commitment to social welfare was a driving factor in LAI's decision to adopt this legal structure.

The foundation structure can facilitate LAI's access to assistance from government programs. These legal entities are often considered more aligned with government initiatives in support of organizations that contribute to the public interest. At its core, the legal culture, which reflects society's beliefs, values, and norms about law, significantly influences the choice of the foundation as a legal entity for LAI. This cultural context enhances credibility, supports fundraising efforts, and opens up opportunities for government assistance. Understanding and aligning with these cultural factors is critical to the success and sustainability of LAI in carrying out its mission of providing legal assistance to the community.

The Legal Aid Institute (LBH) plays an important role in the Indonesian legal system. They provide legal assistance to the poor and vulnerable and uphold the rule of law (Mannas & Elvandari, 2022; Panjaitan et al., 2020). The current regulations governing the establishment of LBH are not entirely adequate. The reformulation of these regulations is essential to ensure that LBH can operate effectively and in line with the principles of legal certainty, transparency, and accountability.

Reformasi peraturan pendirian LBH harus berfokus pada kejelasan status dan tanggung jawab LBH dalam kerangka hukum Indonesia. Kejelasan ini sangat penting untuk membangun legitimasi hukum yang kuat bagi LBH, yang memungkinkan mereka untuk memenuhi peran mereka secara efektif. Selain itu, perumusan ulang peraturan harus membahas transparansi dan akuntabilitas untuk LBH. Hal ini sangat penting untuk memastikan bahwa LBH dapat menjaga kepercayaan publik dan mengelola keuangan mereka secara bertanggung jawab. Dalam beberapa kasus, kerja sama yang erat antara
LBH dan pemerintah dapat menjadi solusi yang lebih efektif untuk memastikan kepastian hukum dan akses yang adil terhadap keadilan. Oleh karena itu, perumusan ulang peraturan juga harus mempertimbangkan hal ini.

Terakhir, sangat penting bahwa perumusan ulang peraturan harus mengakui peran penting LBH dalam sistem hukum Indonesia. LBH berada di garis depan dalam memberikan bantuan hukum kepada masyarakat miskin dan rentan, dan memainkan peran kunci dalam menjaga supremasi hukum. Oleh karena itu, perumusan ulang peraturan harus menjamin bahwa LBH dapat secara efektif melaksanakan tanggung jawabnya. Dengan mempertimbangkan faktor-faktor tersebut, diharapkan reformulasi peraturan yang mengatur pendirian LBH akan mengarah pada pengembangan organisasi LBH yang profesional, transparan, dan akuntabel, yang mampu memberikan layanan bantuan hukum yang berkualitas tinggi kepada masyarakat.

4.2 REGULATIONS APPLICABLE IN THE ESTABLISHMENT OF LEGAL AID INSTITUTIONS

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

Law No. 16 of 2011 concerning Legal Aid in Indonesia regulates the provision of legal aid through legal aid providers (LAO). The state plays a role in supporting the implementation of legal aid. The law and its derivative regulations stipulate that the LAO must be incorporated, accredited, have a permanent office, have an administrator, and have a legal aid program. However, the law does not mention the exact form of legal entity for the LAO.

Article 7 of the law states that verification and accreditation are carried out every three years. The Regulation of the Minister of Law and Human Rights concerning Procedures for Verification and Accreditation of Legal Aid Institutions and Community Organizations and Implementation Guidelines for the Head of BPHN Number: PHN-
HN.04.03-09 OF 2018 concerning Procedures for Verification and Accreditation of Legal Aid Providers and Extension of Certification stipulates the following accreditation criteria:

a. Number of litigation cases handled related to the poor;
b. Number of non-litigation activities;
c. Number of advocates and paralegals held;
d. Formal and non-formal education owned by advocates and paralegals;
e. Experience in handling or providing legal assistance;
f. Scope of case handling;
g. Ownership status and office infrastructure;
h. Age or length of existence of LAO;
i. Articles of association and bylaws;
j. Financial statements that follow accounting standards;
k. LAO Taxpayer Identification Number;
l. Network owned by LAO.

The stages of the LBH verification and accreditation process are regulated in Article 3 of the Regulation of the Minister of Law and Human Rights Number 3 of 2013, which details the following steps: a) Announcement; b) Application; c) Administrative examinations; d) Factual examination; e) Classification of Legal Aid Providers; f) Determination of Legal Aid Providers. In practice, the regulations governing the establishment of the Legal Aid Society pose many problems:

4.2.1 Vagueness in laws and regulations regarding the legal entity form of the Legal Aid Institute gives rise to multiple interpretations (Riyanto et al., 2023). In practice, many Legal Aid Institutions use the legal entity form of the Foundation, even though this has the potential to conflict with the laws and regulations regarding the Foundation.

4.2.2 Problems in the accreditation and verification process

- The establishment and interpretation of standards and requirements that Legal Aid Societies must meet to be verified are inconsistent. Accreditation committees
sometimes relax these standards, resulting in discrepancies between the verification process and the regulations that support it (Abbott, 2018). This may result in improper allocation of Legal Aid funds to unauthorized 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 administrative and factual examinations. In the administrative examination, the Verification Committee mainly checks the completeness of files related to the requirements of the Legal Aid Law. However, many Legal Aid Institutions have not adequately prepared the required documents, resulting in incomplete assessments during the accreditation process.

- The determination of verification results is often a matter of debate among members of the Verification Committee. Some members may argue that a Legal Aid Society does not pass verification despite meeting the minimum requirements because they believe that it does not provide legal aid services effectively (Salam & Suhartono, 2020) [36]. Conversely, some members may argue that a Legal Aid Society should pass even if it does not meet the minimum requirements, based on its extensive experience and proven quality. Setting clear criteria to verify legal aid institutions is a challenge, because these criteria must ensure the competence of institutions in providing practical legal aid.

- The extended accreditation and verification cycle, which is established every three years by the Regulation of the Minister of Law and Human Rights Number 3 of 2013, can be problematic. Given the large number of Legal Aid Institutions preparing to be verified, this extended timeframe may result in delays, thus preventing them from providing legal aid services promptly.

4.2.3 Problems Arising from Legal Assistance Provision

One of the main problems is the vagueness of the criteria for recipients of legal aid. Given the marginalized status of the poor, legal aid is of paramount importance (Mandjo & Sarson, 2021). According to Article 1 number 2 of Law No. 16 of 2011, recipients of legal aid are identified as poor people or groups. However, the criteria outlined in Article 5 of the same law to define poverty show discrepancies. The article defines the poor as those who cannot adequately and independently access basic rights such as food, clothing, health, education, employment, and housing. This inconsistency
between the explanation and formulation of the law makes the Legal Aid Institute very cautious in accepting clients. There are often doubts due to uncertain reimbursement after providing legal assistance, leading these institutions to demand payment from clients for operational purposes (Smith & Fotheringham, 2022). This cautious approach negatively impacts the protection of client rights, potentially resulting in the exploitation of vulnerable individuals or not receiving proper legal protection.

Legal Aid Institutions face limitations in areas such as human resources, finance, and infrastructure, which hinder their ability to provide adequate legal aid services (Barbero, 2020). Uneven distribution and limited access to such institutions, especially those concentrated in urban areas, pose challenges for those in rural or remote areas. Service quality is also affected due to lack of staff training and inadequate case handling. In addition, funding constraints, which often depend on government or donor support, cause financial instability for many of these institutions.

A critical challenge arises from the low level of legal literacy in society. Many people living in poverty face legal problems but fail to avail legal aid due to their lack of awareness (Gimpel, 2021). Ignorance of the public about legal aid programs and their right to legal aid. Finally, the lack of supervision of Legal Aid Institutions in providing legal aid services is also an additional obstacle that impacts the quality and accessibility of legal aid services.

The previously mentioned issues demand immediate resolution. Therefore, cooperation between the Government, Legal Aid Institutes, and related parties is needed to improve the verification process, implement training to obtain adequate funding, and expand public access to quality legal aid services (Sharma et al., 2022). This is essential to ensure equal protection of the law and ensure access to justice for all.

The current legal aid system still faces many obstacles that hinder access to justice for individuals in need. In particular, the scarcity of Legal Aid Institutions, especially those located in large urban centers, presents challenges for residents in remote areas who face difficulties accessing legal aid. In addition, inadequate allocation of funds to these institutions becomes a significant obstacle, making them unable to provide comprehensive and quality services to those in need (Brammer et al., 2021). In addition, the lack of support from both the Government and the community itself also hinders efforts to improve the effectiveness of the legal aid system.
Legal Aid Institutions play an important role in enforcing legal certainty. Within a diverse legal framework, they help individuals to understand their rights and responsibilities while expanding access to justice for those who cannot afford it (Jiang et al., 2019). These institutions also oversee the implementation of law and public policy, which contributes to the establishment of transparent and accountable governance. The Legal Aid Institute is an important strategic partner for the Government in advancing legal certainty in Indonesia.

4.3 THE IDEAL FORM OF STRUCTURING LEGAL AID INSTITUTE REGULATIONS TO PROVIDE LEGAL CLARITY

The Legal Aid Law was created to ensure legal certainty and order in providing Legal Aid to underprivileged communities. In practice, several problems arise related to the establishment of Legal Aid Institutions. Legal Aid arrangements have also been regulated in several other laws and regulations. The reformulation of the establishment of Legal Aid Institutions that have legal certainty is limited to the Legal Aid Law and its derivative regulations, the Advocates Law, and the Foundation Law. Problems in the formulation of articles related to the establishment of the Legal Aid Institute are presented in the form of the following table:
### 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>
</thead>
<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 is 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 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 LBH 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 have to 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 (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.</td>
</tr>
<tr>
<td>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;</td>
<td>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.</td>
<td>Change Reform by providing clear boundaries regarding the appropriate legal entity for Legal Aid Institutions.</td>
</tr>
<tr>
<td>Article 12 Permenkimhan No. 3 of 2013: Legal Aid Institutions or</td>
<td>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</td>
<td>Change Reform by providing clear boundaries regarding the appropriate</td>
</tr>
</tbody>
</table>
Based on the table above, it can be seen that there are regulations regarding the implementation of legal aid services and the establishment of legal aid that need to be reformulated. The establishment of a Legal Aid Institute does not have to be in the form of a foundation in accordance with the laws and regulations of Legal Aid. They just need to have a recognized legal entity. The unclear form of legal entity for Legal Aid Institutions has caused many Legal Aid Institutions to choose Foundation status. However, the Legal Aid Institute is not in practice subject to the Foundation Law. Ideally, the concept of legal reformulation is as follows:

**4.3.1 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 includes the Civil Code (KUH Percivil) and the Staatblad, both of which are derived from colonial law (Cameron & Kwiecien, 2019). The inclusion of provisions regarding associations in the Civil Code, especially in the Third Book on the Law of Engagement, indicates that an association is a collective commitment of two or more individuals to a particular provision. The establishment of the Association should be categorized as a legal act that has many aspects, and not as an agreement that creates a binding commitment. An association, which corresponds to the "zedelijke ligchamen" in the Civil Code, is different from a partnership, which is referred to as a Company, in which the Company is a partnership between several individuals engaged in profit-seeking business activities. In contrast, fellowships are non-profit. Therefore, the Association Bill must be passed immediately into the Association Law.
4.3.2 Choosing the correct form of legal entity

Selection of the most appropriate form of legal entity to formulate regulations for the establishment of legal aid institutions. The most appropriate reformulation of the rules for the establishment of legal aid institutions should take into account the legal context and legal culture of each country (Cameron & Kwiecien, 2019; Lailam & Andrianti, 2023; Rabe & Haddeland, 2023). In comparison to legal aid agencies in some countries:

4.3.2.1 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 independent legal aid institutions, thus providing fair legal aid and legal certainty.

4.3.2.2 Dutch

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

4.3.2.3 Australia (New South Wales)

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

4.3.2.4 Thailand

Thailand has a Legal Execution Department (LED) that provides legal assistance to qualified individuals, especially in the context of sentencing execution. This model is a government agency that has a special role in overseeing the implementation of punishment.
4.3.2.5 English

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

The choice of the right legal entity form may vary depending on the legal context and policies of a country. Some countries may have more success with government funding models, while other countries may maintain legal institutions as government bodies. The reformulation should take into account the needs, resources, and legal values of the country to select the most appropriate form of legal entity for legal aid institutions, to ensure legal certainty (Cameron & Kwiecien, 2019; Guo et al., 2020; Wang, 2020). The reformulation of the establishment of legal aid institutions in Indonesia, must consider the legal context, culture, and needs of the Indonesian people.

Reformulation of the establishment of legal aid institutions with legal certainty, this is in line with the theory of the welfare state which emphasizes the role of the state in protecting and improving social welfare. Legal aid institutions must ensure all citizens, especially the underprivileged, have equal access to legal services, which in turn can improve their quality of life. The principle of legal certainty emphasizes clear, predictable, and consistent laws. Reformulation should lead to regulations that are understandable and consistently applied within legal aid institutions. It should also ensure the protection of individual rights. Ideally the reformulation should integrate legal certainty and justice, ensuring clear rules, protection of human rights, and equal access to justice. This is in line with the concept of legal certainty which emphasizes clarity and consistency in laws and processes. The reformulation aims to create a legal aid institution that has legal certainty, ethics, and moral principles. This reformulation must result in clear laws, protect human rights, provide equal access to justice, and achieve the desired legal certainty. Reform of regulations establishing legal aid institutions can improve access to legal services for those in need, improve the quality of services, and provide benefits to the community.
5 CONCLUSION

*The dominant legal entity status for Legal Aid Institutions is in the form of foundations,* The dominant legal entity status for Legal Aid Institutions is in the form of Foundations, the form of Foundation legal entities that have been the most appropriate to establish LAI/LAO in Indonesia because it has several advantages. First, the foundation is non-profit and has no members, so it is more independent and cannot be intervened by any party. However, there are some barriers to public access to legal services. These barriers include geographical barriers, different quality of service, and limited resources. To overcome these challenges, the study provides concrete solutions by recommending a more transparent and comprehensive reformulation of LAI/LAO establishment regulations.

**Applicable Regulations in the Establishment of Legal Aid Institutions,** the provisions of legal entities in the Legal Aid Law which are currently still based on Foundations and Associations need to be supported by supervisory requirements in their implementation so as not to violate the essence of the enactment of the Foundation Law. The association, which is currently still guided by the Law on CSOs, must be immediately created and ratified by the Government legislature which is currently still in the form of a bill so that in its implementation it can provide legal certainty for Legal Aid Institutions and communities who choose to use associations as the basis for their Business Entities.

**The ideal form of structuring Legal Aid Institute Regulations to provide Legal Clarity,** With a more precise and clear reformulation of regulations, a balanced integration between legal certainty and justice is expected. Reformulation must result in clear rules, protect human rights, and provide equal access to justice. This approach is in line with the concept of legal certainty, which emphasizes clarity and consistency in laws and legal processes. Creating a legal aid institution that not only has legal certainty, but also internalizes ethics and moral principles in every action and decision taken. Thus, this reformulation must result in clear laws, protect human rights, provide equal access to justice, and achieve the desired level of legal certainty. Regulatory reform in the establishment of legal aid institutions has the potential to increase access to legal services for those in need, improve the quality of services provided, and provide significant benefits to society as a whole.
REFERENCES


