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## JURIDICAL REVIEW OF THE RIGHTS OF CIVIL SERVANTS TO OBTAIN LEGAL ASSISTANCE

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### ABSTRACT

The background to writing this journal is the importance of legal aid for civil servants. Where legal aid is exercised as the legal basis for legal aid, the right to legal aid itself must be guaranteed. This is in accordance with the 1945 Constitution. Article 27 (1) states that all citizens have equal status in law and government and are obliged to uphold the law and government without exception. Section 28D (1) entitles every human being to recognition, security, protection, fair legal certainty and equal treatment before the law (just and impartial courts). This study is a normative study that analyzes descriptively, using legal approaches, existing theories and expert opinion, to address the main controversial issue, namely when to seek legal assistance. The purpose is to find and answer the rights of civil servants. Legal aid is a means of upholding human rights values to create the rule of law. As a democracy based on the rule of law and in defense of human rights, everyone has the right to equal treatment and protection of the law. Civil servants are also entitled to legal assistance in accordance with the rule of law when needed. This study is very important given that governments have a duty to protect public servants in the form of legal aid. From this, it can be concluded that the civil servants right to legal aid under Article 106 of Law No. 5 of 2014 relates to the State Code of Civil Procedure. Article 308 Decree No. 11 Year 2017 on Management of Civil Servants shall only apply if the case is accepted by the court and there are limits/restrictions on the case. This is included in Social Assistance Legal Aid as the right to social assistance granted to civil servants is the right to receive social assistance which is part of the framework of social protection provided by the government to civil servants.

### KEY WORDS

Civil servant rights, legal aid, public service.

The affirmation of Indonesia as the rule of law is contained in Article 1(3) of the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution), conveying the message that "Indonesia is a country ruled by law". The concept of the rule of law adopted by Indonesia is balance personal interests with public interests. In other words, while the state recognizes and protects the fundamental rights and duties of its citizens, the state is empowered to protect the rights and duties of its citizens. Take precautionary measures to ensure healthy community life. Mochtar Kusumaatmadja interprets the rule of law as power under the rule of law and everyone is equal under the law.<sup>1</sup>

Enacted laws must not only be practical, efficient and effective, but aim to create an order that communities perceive as fair, consistent with their recognition of human dignity.<sup>2</sup> All relevant factors, such as the sense of justice under the rule of law, require attention to the values and standards of life reflected in the country's legal culture.

The existence of law is essential to human life and is fundamentally inseparable from its own function of providing legal protection to communities. The basis of legal protection is Pancasila as the ideological and philosophical basis of the state. With the establishment of Pancasila, the principles of legal protection of Indonesian citizens are the principle of

<sup>1</sup>Mochtar Kusumaatmadja, *Konsep-Konsep Hukum Dalam Pembangunan*, (Bandung: Alumni, 2002), hal.12.

<sup>2</sup>Frans Magnis Suseno, *Etika Politik, Prinsip-Prinsip Moral Dasar Kenegaraan Modern*, (Jakarta: PT.Gramedia, 1994), hal.112.



recognizing and protecting human dignity derived from Pancasila and the rule of law based on Pancasila.<sup>3</sup>

One of the goals of law enforcement is legal certainty. Legal certainty is protection against arbitrariness. That means someone will be able to get what they expect in a particular situation. The community expects legal certainty in criminal prosecution. Communities are more orderly when there is legal certainty. But creating a sense of justice is more important than achieving legal certainty.

Thus, based on the rule of law, States recognize and protect the human rights of all individuals regardless of their origin. As such, everyone has the right to be treated equally before the law.

Legal aid is legal services provided free of charge by a legal aid provider to a recipient of legal aid. The legal meaning of legal aid is set out in Law No. 16 of 2011 on Legal Aid.

Furthermore, Law No. 18 of 2003 on Lawyers clearly stipulates the duty of lawyers to provide legal assistance as part of their professional duties, and Article 22(1) states: "Lawyers have a duty to provide free legal assistance to those who are unable to act".

Law No. 39 of 1999 on Human Rights (hereinafter referred to as HAM) defines human rights as rights inherent in the nature and existence of man as a creature of Almighty God and a gift that must be respected and preserved by the State. For the sake of human dignity and worth, one of the principles of human rights is equality before the law (equality before the law), for laws, governments and all people, but this principle is a social and economic are often compromised for a variety of reasons, including The principle of equality before law must therefore be reconciled with equal treatment.

Article 18 (4) of Law No. 39 of 1999 on Human Rights also provides for the right of suspects to legal advice and states. Legal assistance to civil servants shall be provided, in particular in relation to court proceedings relating to the performance of duties of civil servants, as provided for in Article 106(3) of Law No. 5 of 2014 on National Civil Apparatus, Paragraph (3) Article 308 Decree No. 11 Year 2017 on Management of Civil Servants.

From the above, it has become clear that the provision of legal aid by the government to public officials does not fall under the category of legal aid to protect the interests of individual public officials, but is specific and limited legal aid.

## **METHODS OF RESEARCH**

The research methodology used in this study is to find out the factors that influence the relationship between law and society and the existence of forms that restructure the rule of law in Indonesia to reflect the ideals of law and society. The second data was obtained indirectly through library surveys. This research specification describes an analysis to illustrate applicable law related to legal concepts and positive law related to the main research question. Based on primary and secondary data, identification, classification and validation, qualitative data analysis was performed and results were presented in the research report.

## **RESULTS AND DISCUSSION**

According to Article 1 (2) of Law No. 5 of 2014 on the Civil Service System, a civil servant is a civil servant appointed by a superior of a civil servant and entrusted with the duties of a government office or otherwise entrusted with a state function. A Civil Servant (hereinafter abbreviated as PNS) is an Indonesian citizen who meets certain requirements and is appointed by the Personnel Supervisor as a permanent civil servant to hold government positions. Civil servants act as liaisons for public order, public service and the state and are responsible for:

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<sup>3</sup>Philipus M. Hadjon, *Perlindungan Hukum Bagi Rakyat di Indonesia Sebuah Studi Tentang Prinsip-Prinsip Pembangunannya Oleh Pengadilan Dalam Lingkungan Peradilan Umum and Peradilan Administrasi*, (Surabaya: Peradaban, 2007), hal.18.



- Carry out public policies made by Personnel Development Officials in accordance with the provisions of laws and regulations;
- Providing professional and quality public services;
- Strengthen the unity and integrity of the Unitary State of the Republic of Indonesia.

Logemann examines relations between civil servants by using material criteria to give all civil servants who have public relations with the state an understanding of civil servants.<sup>4</sup> Civil servants, according to the Indonesian General Dictionary, 'clerk' means 'a person who works for the government (such as a company)' and 'Negeri' means the state or government, so civil servants are those who work for the government or the state: Definition of a Civil Servant by Mahfud M.D. The book Pillars of Law and Democracy is divided into two parts: Codification of Meaning and Comprehensive Understanding (Expanding Understanding).

The mandatory definition of civil servants (determining the meaning given by law) is contained in Law No. 5 of 2014 on National Civil Equipment. The meaning contained in Law No. 5 of 2014 relates to the relationship between civil servants and the government or to the status of civil servants. The definition of requirements applies to the implementation of all personnel regulations, and generally all laws and regulations, unless a different definition is given.<sup>5</sup>

Civil servants in a normative sense within the meaning of Law No. 5 of 2014 on National Civil Institutions, there are some groups that are not actually civil servants. Phrasal terms have yet another meaning, and apply only to specific issues. This definition is included:

a. Provisions relating to offenses of status contained in Articles 415 to 437 of the Penal Code. According to these articles, a person guilty of a public official offense is a person who commits an offense in connection with his or her duties as a person entrusted with public service, whether permanent or temporary. Originally, the trustee of a public office is not necessarily a public employee, but if he/she commits a crime in his/her capacity as a public employee, he or she will be assimilated with a public employee, especially for the crimes he committed;

b. Article 92 of the Criminal Code stipulates the status of members of the People's Council, members of the Local Council, and village chiefs. According to Article 92 of the Criminal Code, civil servants include those who are elected through general elections and those who are not elected but are appointed members of the People's Council, district councils, village chiefs, etc. Although the concept of civil servant under the Penal Code is very broad, this understanding applies only in the case of those who have committed crimes, offenses, and other criminal acts referred to in the Penal Code, so this understanding is not included;

c. Provisions of Law No. 20 of 2001 Law No. 31 of 1999 Concerning Elimination of Corruption Crimes.

The definition of binding and inclusiveness is an elaboration of the civil servants purpose of existence in the Civil Service Act. Although this definition has taken many forms and forms, the status of the state is always related to state managers, i.e. civil servants, so the government's intention to classify state managers in the existing legal system is ultimately can be explained to state administrators, namely Civil Servants.

Legal aid is an important tool in the criminal justice system as it forms part of the protection of human rights (HAM) for all individuals, including the right to legal aid. The right to legal aid is one of the most important rights every citizen has. This is because in all judicial proceedings, especially in criminal law, a person identified as a defendant in a criminal proceeding cannot, fundamentally, be defended in judicial proceedings or judicial review.

The law stipulates that anyone involved in a lawsuit must be given the opportunity to obtain an attorney solely for their own interests and to defend the accused. Legal assistance has been provided since arrest and detention. Apart from that, you are also required to be informed of the charges and the legal basis on which you are being charged and of your rights as a suspect, including the right to contact an attorney for help.

<sup>4</sup>Muchsan, *Hukum Kepegawaian*, (Jakarta: Bina Aksara, 1982), hal. 12.

<sup>5</sup>Sastra Djatnika and Marsono, *Hukum Kepegawaian di Indonesia*, (Jakarta: Djambatan, 1995), hal.65.



This is in accordance with the 1945 Constitution. Article 27 (1) states that all citizens have equal status in law and government and are obliged to uphold the law and government without exception. Section 28D (1) the right of all human beings to fair and equal recognition, assurance, protection and legal certainty before the law. This national guarantee is detailed in various laws and regulations related to people's access to law and justice.

Legal aid can be used to make people aware of their rights as subjects of rights and to uphold human rights values to establish the rule of law. As a democracy governed by the rule of law and upholding human rights, everyone has the right to equal treatment and protection under applicable laws and regulations in Indonesia.

As a constitutional state, Indonesia guarantees the equality of its citizens before the law, based on the state and constitution. States should guarantee all constitutional rights to recognition, guarantee, protection and equal legal certainty before the law as a means of safeguarding human rights.

That everyone has the right to a fair and impartial trial. This right is also a fundamental right of every human being. This right is universal and applies to everyone at all times and without discrimination. Legal aid is also a state task, and since every citizen has the right to justice regardless of ethnicity, color, social status, worldview, or political position, the fulfillment of this right is the state. It is also the duty and duty of opinion. The provision of legal aid is considered a social responsibility to all without discrimination within the framework of law enforcement.<sup>6</sup>

The provision of legal aid to citizens realizes the rule of law, which recognizes, protects and guarantees the fundamental rights of citizens: the need for access to justice, equality before the law, and constitutional rights; effort to implement.

To enforce legal aid rights of suspects, the government enacted Legal Aid Law No. 16 of 2011, which provides separate references to the process of providing legal aid from legal aid providers to legal aid recipients. The scope of legal aid is defined in Article 4:

- (1) Legal aid is given to legal aid recipients who face legal problems;
- (2) Legal aid as referred to in paragraph (1) covers civil, criminal and state administrative law issues, both litigation and non-litigation;
- (3) The Legal Aid as referred to in paragraph (1) includes exercising power of attorney, accompanying, representing, defending, and/or taking other legal actions for the legal interests of the Legal Aid Recipient.

The provision of mutual legal assistance in criminal cases is the duty of the State and, in particular, from that moment on, by establishing the right to appoint a legal adviser to contact the suspect for the purpose of preparing his or her defense for the preliminary investigation. Check the status of your arrest or detention and seek assistance. Legal aid plays a role in protecting communities. Suspects or accused persons should contact those who can provide legal assistance when arrested or detained at all levels of the investigation to obtain confirmation of the avenues they can take to protect their rights.

Therefore, when a suspect faces legal counsel in the course of an investigation, it becomes very important to provide legal assistance to the suspect to enforce their rights. Suspects therefore need an attorney to balance their positions. An imbalance between suspects and law enforcement leads to failure to fulfill their rights and obligations in court proceedings. Suspects and defendants must be given appropriate legal assistance in fulfilling these rights and obligations. Under current law, suspects cannot be coerced or pressured, so they have the right to release information to obtain true justice at every level of the investigation. Legal assistance is therefore required by appointing a legal advisor or attorney for the suspect to reduce the risk of torture or coercion against the suspect by public officials.

The legal aid provider for the suspect must meet the requirements specified in Article 8 of Law Number 16 of 2011 concerning Legal Aid.

Recipients of Legal Aid are entitled to:

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<sup>6</sup>YLBHI and PSHK, *Panduan Bantuan Hukum di Indonesia*, (Jakarta: YLBHI and PSHK, 2006), hal. 47.



- Get legal aid until the legal issues are resolved and/or the case has permanent legal force, as long as the legal aid recipient concerned does not revoke the power of attorney;
- Get Legal Aid in accordance with Legal Aid Standards and/or the Advocate Code of Ethics;
- Obtain information and documents related to the implementation of the provision of Legal Aid in accordance with the provisions of laws and regulations.

The presence of legal counsel is expected to play a legitimate role in providing legal assistance during the investigative stage to suspects with low competence or who do not understand the law. In addition to providing opportunities for poor people to defend themselves, it involves professional legal advocacy. Legal counsel plays an important role in any criminal justice system in providing investigative-level legal assistance.

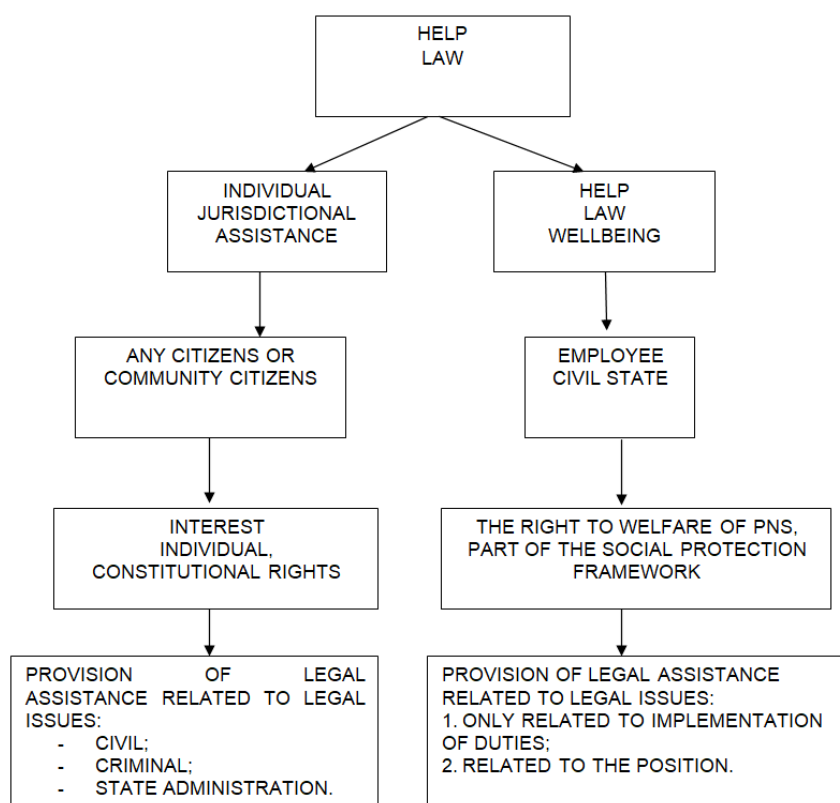


Figure 1 – Juridical review of the rights of civil servants to obtain legal assistance

Provision of legal assistance by legal counsel to suspects from the moment of arrest or detention under Article 69 of the Code of Criminal Procedure.

According to the provisions of this article, a person receiving legal aid in a criminal case may receive legal aid right from the time such person is arrested or detained.

Although legal assistance to public officials is a right of public officials and an obligation of the government, there are limitations to these rights, particularly in special cases regarding their duties and who has gone to court before the court is a limitation, according to the author different from the purpose and purpose of providing legal aid in Law No. 16 Legal Aid 2011, while in Law No. 16 2011.

The provision of legal aid is regulated from the initial stage when a person encounters legal problems, including civil, criminal and administrative law matters, both disputed and non-controversial dispute, and it is the right of every citizen to protect his personal preferences.





In the article titled Legal Aid-Topic and Variations, Capletti and Gordley expand on the following types of legal aid as presented by Mulyana W. Kusumah, on the importance of legal aid:<sup>7</sup>

- Juridical-Individual Legal Aid: Legal aid is a right given to community members to protect individual interests;
- Welfare Legal Aid: legal aid is a right to welfare which is part of the social protection framework provided by the welfare state.

Thus, if we analyze Article 92, Clauses (1) and (3) of Law No. 5 of 2014 on the civil state apparatus and Article 308, Clauses (1) and (3) of Government's Regulation No. 11 of 2017 on governance. As a civil servant, he stated that the government's obligation to provide protection in the form of legal aid to public officials only concerns cases brought before the courts concerning the performance of their duties, we can classify this as included in social legal aid, as legal aid provided to public servants as the right to social assistance, as part of social protection provided by the government.

Legal aid to public officials is not included in the category of personal legal aid when legal aid is a right granted to members of the public for the protection of private interests, because in the employee's rule limits protection in the form of legal aid to a public official who receives legal aid only in cases brought before a court in connection with the performance of his functions as an officer.

## CONCLUSION

The provision of legal aid to public officials is not included in the category of individual legal aid when legal aid is a right granted to members of the public for the protection of private interests, because the personnel regulations place limitations on protections in the form of legal aid for public servants only, legal aid is provided only in matters brought before the court concerning the performance of duties by a public official, in the sense that it does not include personal (private) interests.

## REFERENCES

1. Hadjon, Philipus M. *Perlindungan Hukum Bagi Rakyat di Indonesia Sebuah Studi Tentang Prinsip-Prinsip Pembangunannya Oleh Pengadilan Dalam Lingkungan Peradilan Umum and Peradilan Administrasi*, Surabaya: Peradaban, 2007.
2. Handayani, Febri. *Bantuan Hukum di Indonesia*. Yogyakarta: Kalimedia, 2016.
3. Hartini, Sri and Tedi Sudrajat. *Hukum Kepegawaian Indonesia*, Jakarta: Sinar Garfika, 2017.
4. Kusumaatmadja, Mochtar. *Konsep-Konsep Hukum Dalam Pembangunan*, Bandung: Alumni, 2002.
5. Lubis, Suhrawardi K. *Etika Profesi Hukum*, Jakarta: Sinar Garfika, 2012.
6. Mukianto, Jandi. *Prinsip and Praktik Bantuan Hukum di Indonesia*, Depok: Kencana, 2017.
7. Subekti, R. *Perlindungan Hak Asasi Manusia Dalam KUHAP*. Jakarta: Pradnya Paramita, 1984.
8. Suseno, Frans Magnis. *Etika Politik, Prinsip-Prinsip Moral Dasar Kenegaraan Modern*, Jakarta: PT.Gramedia, 1994.
9. Sutomo, *Handout Hukum Acara Pidana*, Surabaya, 2008.
10. Triadmojo, Sudiby. *Hukum Kepegawaian Mengenai Kedudukan Hak and Kewajiban Pegawai Negeri Sipil*, Jakarta Timur: Ghalia Indonesia, 1983.
11. YLBHI and PSHK, *Panduan Bantuan Hukum di Indonesia*, Jakarta: YLBHI and PSHK, 2006.

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<sup>7</sup>Febri Handayani, *Bantuan Hukum di Indonesia*, (Yogyakarta: Kalimedia, 2016), hal. 22.