

# Access to Justice For Vulnerable Groups In Law

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## ABSTRACT

Indonesia is facing difficulties in providing particular protection to vulnerable groups who require the same level of protection and access to justice as the rest of society. This research intends to 1) understand the government's perspective in establishing policies, such as laws and regulations, that provide vulnerable groups with equal protection under the law and access to justice; and 3) challenges in providing protection for vulnerable groups. This study employs a normative legal research method that includes both an analytical and a statute-based approach. The following are the outcomes of this study's discussion: 1). The Indonesian government has established several national policies and regulations, including the National Strategy for Access to Justice (SNAK) 2016-2019, various regulations regarding the requirements and procedures for providing legal aid, and in the judicial system, the Supreme Court has enacted several regulations aimed at increasing access to justice for vulnerable groups. According to the Supreme Court, the state still has numerous obstacles in providing special protection to vulnerable groups such as children, women, people with disabilities, believers, and other minorities.

**Keywords:** Vocational, Nursing Education, Current Situation, Method

## I. INTRODUCTION

The Law Number 16 of 2011 concerning Legal Help (hereafter referred to as the Law on Legal Aid) regulates the provision of legal aid to the underprivileged in Indonesia. However, the poor are not the only ones who require legal assistance; the state must also protect vulnerable groups such as women, children, the elderly, and people with disabilities. The scope of providing legal aid only to the needy is defined in Article 1 point 1 of the Law on Legal Aid. As a result, legal aid is defined as a specialized legal service offered to low-income individuals and groups who require a free defense both outside and inside the courtroom in criminal, civil, and administrative cases. This scope raises debates in its implementation on how to access legal aid for vulnerable groups such as children, women, Indigenous peoples, people with disabilities, and other marginalized groups are among the most vulnerable (Kementerian Perencanaan Pembangunan Nasional/BAPPENAS RI, 2017).

Similarly, as stipulated in Article 5 paragraph (3) of Law Number 39 of 1999 concerning Human Rights, the concept of vulnerable groups is not specifically formulated in other laws and regulations. According to the Human Rights Reference, the vulnerable category includes: a. refugees; b. internally displaced persons (IDPs); c. national minorities; d. migrant workers; e. indigenous peoples; f. children; and g. women (Hoesin, 2003).

Meanwhile, Law Number 8 of 1981 governing the Criminal Procedure Code explicitly states one of the principles relating to legal aid in Indonesia (hereinafter referred to as KUHAP). In the Criminal Procedure Code, the notion of legal aid serves to defend all human beings, both morally and materially, as part of their dignity and rights (Afifah, 2020). Even if there are rights that must be defended, there are still incidents where the elderly are mistreated by their offspring and in-laws owing to the struggle for property. Access to justice appears to be limited (Sucahyo, 2019).

When you compare the provisions of the Law on Legal Aid and the Criminal Procedure Code, you can see the legal gap. The state is only responsible for providing legal help to the poor as an expression of access to justice, according to the preamble to the Legal Aid Law. The Law on Legal Aid has general rules that stress the criterion for being poor, and the receiver of legal aid is any individual or group of individuals who meet these criteria. This differs from the term "incapable" used in the Criminal Procedure Code for those who are eligible for state-provided legal advice. In practice, the difference in criteria used in the Legal Aid Law is narrower than the difference in criteria used in the KUHAP, despite the fact that both have the same linguistic meaning. The poverty standard is a measure of

people's income who live below the poverty line. People with incomes above the poverty level, on the other hand, may not be able to afford legal representation. These two phrases are used to define the disparity between the poor and the underprivileged when it comes to determining the scope of legal aid recipients (Sucahyo, 2019)

Recognition as persons before the law, equality before the court, equality before the law, equal protection of the law, and other essential rights such as freedom of religion, expression, and association are all crucial safeguards that will help minorities (Syofyan, 2015). Vulnerable groups are those that do not have the same ability to protect themselves as others and are more vulnerable to law violations/discrimination treatment, necessitating specific protection and treatment to ensure that their human rights (hence abbreviated as HAM) are safeguarded.

In Indonesia, children, as one of the most vulnerable populations, confront protection issues, with a significant percentage of youngsters in legal trouble (hereinafter abbreviated as ABH). A child in conflict with the law is a minor under the age of 18 who has encountered difficulties in the criminal justice system as a result of suspicion or accusation of committing a crime (Mareta, n.d.). Women, like children, are a vulnerable group that requires protection from law enforcement. Women are frequently victims of violence, yet this has resulted in a rise in cases of violence against women due to ineffective law enforcement (Mareta, n.d.).

Minorities, including vulnerable groups, do not receive the same level of protection as other rights that the UN considers more vital. However, difficulties impacting minorities have become increasingly significant in recent years, as ethnic, racial, and religious tensions have risen, jeopardizing economic, social, and political cooperation within the country, as well as the country's integrity, a country's territory (Lembar Fakta, 1998).

## II. RESEARCH METHOD

This research uses normative legal research. The problem approach used in this research is an analytical approach which examines juridical principles, principles, rules, systems and concepts (Irwansyah, 2020), and a statutory approach which examines laws and regulations relating to the protection and access to justice for vulnerable groups (Irwansyah, 2020).

The study is carried out by classifying the legal texts utilized as sources. The legal materials used are main legal materials based on books about disadvantaged groups' access to justice, legal literature, and regulations relevant to this research's debate. Secondary legal documents supplement main legal resources, such as scientific journals, reports, circulars, and other research outcomes relevant to the subject of research, by giving explanations. Based on the method used, an analysis of the discussion that comes from the formulation of the problem can be found, then concluded to obtain objective and relevant research results in mapping the concept of justice for vulnerable groups

## III. DISCUSSION

### 3.1 Partisanship of the Government in Formulating Policies towards Vulnerable Groups

Basic rights have been explicitly regulated in the constitution. In the 1945 Constitution of the Republic of Indonesia (hereinafter abbreviated as the 1945 Constitution of the Republic of Indonesia) the regulation of human rights can be found in the first paragraph of the opening of the 1945 Constitution of the Republic of Indonesia.<sup>1</sup>

Recognition of human rights is also contained in the Body of the 1945 Constitution in Article 27, Article 28, Article 29, Article 30, Article 31, Article 34 of the 1945 Constitution of the Republic of Indonesia. With regard to Article 27, the human rights of citizens are "his position in the government", while regarding "The position in government includes three branches, namely legislative power, executive power, and judicial power, this means that every citizen is given the right to participate in the three branches of power as long as they fulfill the conditions that have been set (Syofyan, 2015).

Irwanto explained in a webinar activity, actually marginal groups and hidden groups are the essence of poverty. Poverty can be overcome by the government depending on the political dynamics that dominate the government bureaucracy and leaders who occupy important positions in the bureaucracy. However, the government actually has a policy framework such as the Elimination of All Forms of Discrimination Against Women; Child protection; Rights of Persons with Disabilities; Gender Mainstreaming in National Development; Children's Participation in Development; Women's Empowerment and Child Protection; Community Participation in the Development of Women's Empowerment and Child Protection (KOMPAK, 2020).

Social problems such as access to equal justice and disparities between regions in obtaining access to social services and legal aid are one of the challenges to achieving Indonesia's development goals. In fact, the constitution guarantees that everyone has the same opportunities and rights in the eyes of the law as stated in the 1945 Constitution of the Republic of Indonesia (Konsorsium Masyarakat Sipil Untuk Indeks Akses Terhadap Keadilan, 2020).

The Indonesian government has established several national policies and regulations such as the 2016-2019 National Access to Justice Strategy (SNAK) as an update of the 2009 SNAK. In addition, the Human Rights Agenda has also become a mainstream issue in Indonesia, as evidenced by the inclusion of policies related to human rights in the Plan The National Action for Indonesian Human Rights (RAN HAM), the Medium Term Government Plan (RPJMN) which is then determined through the Government Work Plan (RKP) every year. The targets of the 2016-2019 National Access to Justice Strategy are (Kementerian Perencanaan Pembangunan Nasional/BAPPENAS RI, 2017): Fulfillment of public access, especially the vulnerable or marginalized, to services and the fulfillment of basic rights that are non-discriminatory, easy and affordable;

- 1) The fulfillment of public access, especially those who are vulnerable or marginalized, to forums for resolving disputes and conflicts that are effective and provide protection for human rights;
- 2) Fulfillment of public access, especially those who are vulnerable or marginalized, to a legal aid system that is easily accessible, sustainable and reliable; and
- 3) Realization of control, management and utilization of land and natural resources with legal certainty and justice for the community.

Regarding policy, the government has issued various regulations regarding the requirements and procedures for providing legal aid and distribution of legal aid funds, procedures for verification and accreditation of legal aid institutions or community organizations, and paralegals in providing legal aid. However, from the point of view of access to justice as one of the main objectives of legal aid policy, there are various challenges that must be overcome, including (Konferensi Nasional Bantuan Hukum, 2019) :

- a) The legal aid policy has not yet reached and expanded to provide comprehensive access to justice, both in terms of the number and distribution of legal aid service providers, legal aid recipients, legal aid providers in the regions, forms of legal aid activities, as well as in terms of the size of the legal aid budget;
- b) The implementation of the legal aid policy does not guarantee the quality of services, including the standard of legal aid services, education of legal aid providers, verification and certification, as well as the use and supervision of supporting technology;
- c) Ineffective synergy between providers and legal aid resources, to optimize legal aid policies that are oriented towards access to justice for anyone.

The most important main target for the legal rights of the community, especially those who are vulnerable or marginalized in the legal aid system, is the fulfillment of a legal aid system, which is easily accessible, sustainable and credible.

In the judicial system, the Supreme Court (hereinafter referred to as MA) has attempted to improve access to justice for vulnerable groups by enacting several Supreme Court Regulations (hereinafter abbreviated as Perma) as the basis for judges in adjudicating cases of vulnerable groups, including (IJRF (Indonesian Judicial Reform Forum), 2018):

- a) In 2014, the Supreme Court issued Perma No. 1 of 2014 concerning Guidelines for Providing Legal Services for Underprivileged Communities in Courts to protect poor justice seekers in criminal, civil, religious civil, and TUN cases. One of the breakthroughs in this Perma is the provision for hearings outside the court building to facilitate access for citizens who have difficulty reaching the court office.
- b) The Supreme Court also issued Perma No. 4 of 2014 concerning Guidelines for Implementing Diversion in the Juvenile Criminal Justice System as a guide for judges in carrying out diversion (transferring the settlement of children's cases from the criminal justice process to processes outside the criminal justice system) for children who are in conflict with the law.
- c) Recognizing that there is a special need in handling women in conflict with the law, the Supreme Court issued Perma No. 3 of 2017 concerning Guidelines for Adjudicating Women in Confrontation with the Law. This regulation becomes very relevant when judges have to decide cases such as Domestic Violence (KDRT), abortion, sexual violence, and female perpetrators of murder which are full of gender inequality.

### 3.2 Challenges in Providing Protection and Access to Justice for Vulnerable Groups

There are still many challenges faced by the state in providing special protection to vulnerable groups. Because of their position that is vulnerable to being victims of human rights violations, including: children, women, people with disabilities, believers and other minority groups.<sup>2</sup> These challenges are (IJRF (Indonesian Judicial Reform Forum), 2018) :

- 1) Access to Justice for Children
  - a) The Juvenile Criminal Justice System (SPPA) is still unable to divert children with certain categories from the formal criminal process.
  - b) Law enforcement officers (hereinafter abbreviated as APH), find it difficult to seek diversion, even though it is regulated in the SPPA Law.
  - c) Data regarding the implementation of the diversion is not yet available.
  - d) The imposition and implementation of court decisions are still hampered.
  - e) There are still many children who do not have a Birth Certificate and have not been recorded on the Family Card.
- 2) Access to Justice for Women
  - a) Women still find it difficult to access information about court services.
  - b) It is difficult for women to access courts because of geographical difficulties and expensive judicial costs.
  - c) Legal assistants and legal aid organizations in limited areas.
  - d) Traumatic judicial process for women. Some women also get revictimization in court.

- e) Women find it difficult to access marriage and divorce documents
  - f) Cultural barriers in law enforcement.
  - g) The number of court decisions that are not executed.
  - h) The absence of a gender perspective in the case of women accused of narcotics crimes.
- 3) Access to Justice for Persons with Disabilities
- a) Persons with disabilities are made difficult if they are witnesses in court.
  - b) The absence of provisions for the provision of appropriate accommodation in the criminal justice process.
  - c) Health workers do not understand the condition of persons with disabilities.
  - d) Traumatic judicial process for victims with disabilities.
  - e) Court facilities that are not friendly to persons with disabilities.
  - f) Law enforcement officials do not yet understand the steps in dealing with cases involving persons with disabilities.
- 4) Access to Justice for Other Minority Groups
- a) Discriminatory regulations against minority groups, including religious groups and minority beliefs.
  - b) Lack of evidence-based policies.
  - c) Lack of integration of the criminal justice system.
  - d) A culture of society that rejects diversity hinders access to justice
  - e) The principle of presumption of innocence has not been applied properly in cases involving minority groups.
  - f) The stagnation of the criminal justice process is also found in responding to cases of violence against sexual and gender minorities.

#### IV. CONCLUSION

The government already has a policy framework such as eliminating all forms of discrimination against women and children. In the judicial system, the Supreme Court has also sought to improve access to justice for vulnerable groups by enacting several Supreme Court Regulations. Despite all the existing policies, challenges remain in providing protection and access to justice for vulnerable groups.

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