

ACCESS TO JUSTICE FOR THE POOR: LEGAL AID POLICY BETWEEN NORMATIVE GUARANTEE AND INSTITUTIONAL PERFORMANCE

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Info Articles	Abstract
Article History Received : 08-13-2026 Revised : 09-18-2026 Published : 10-01-2026 Keywords: <i>Access to justice; Legal aid; Legal needs; Paralegals; Poverty.</i> Kata Kunci: <i>Akses keadilan; Bantuan hukum; Kebutuhan hukum; Kemiskinan; Paralegal.</i>	Indonesia guarantees legal aid for the poor through constitutional provisions, a dedicated statute and judicial regulations, yet the services actually delivered remain concentrated in criminal litigation, unevenly distributed across regions and largely unmeasured against the legal problems citizens report experiencing. This study aims to assess the gap between the normative guarantee of access to justice and the institutional performance of the legal aid system, to compare delivery models in other jurisdictions, and to formulate criteria for a needs-responsive policy. The research applies normative juridical research with statutory, conceptual, case and comparative approaches, supported by an Islamic legal reading of the duty to assist the wronged and the collective obligation to sustain adjudication, drawing on Indonesian legislation and judicial regulations, foreign legal aid instruments and the access to justice literature. The findings show that the system is supply-driven rather than needs-driven: budgeting follows case counts rather than legal need, accreditation functions as a gatekeeping mechanism that disadvantages community organisations, non-litigation services remain marginal despite being where most legal problems arise, and no quality standard governs the assistance provided. The study recommends needs-based budgeting grounded in periodic legal needs surveys, statutory recognition of paralegals, enforceable quality standards, verification through the national social registry, and outcome reporting.

I. INTRODUCTION

A right that cannot be asserted is not, in any operative sense, a right. This is the premise of the access to justice movement, and it is the reason legal aid occupies a position in constitutional theory quite different from that of ordinary welfare provision: legal aid is the condition under which all other legal entitlements become

real.¹ Indonesian constitutional law recognises this through the guarantee of equality before the law and of legal certainty and equal treatment for every person.²

The statutory framework built on that guarantee is, on paper, substantial. The Legal Aid Law of 2011 establishes state-funded assistance for the poor delivered through accredited organisations, covering litigation and non-litigation services alike.³ The Judicial Power Law obliges courts to assist justice seekers and to eliminate obstacles to access, the Criminal Procedure Code requires the appointment of counsel for defendants facing serious charges, and Supreme Court regulation establishes legal assistance posts, fee waivers and circuit court sittings.⁴

The actual condition is less reassuring. Legal aid organisations are concentrated in provincial capitals and in Java, leaving large rural populations without any accredited provider within practicable distance. Funding is allocated per completed case at rates that do not cover the real cost of a complex matter, which creates an incentive to accept simple cases and to close files quickly. Non-litigation services, including counselling, mediation, document preparation and community legal education, absorb a small share of the budget although legal needs research consistently finds that most justiciable problems experienced by poor households never reach a court at all.⁵

Three further defects compound the pattern. Eligibility verification still depends in practice on certificates of indigence issued by village administrations, a document-based test that imposes transaction costs precisely on those least able to bear them, even though a national social registry now exists. Accreditation requirements, designed to ensure quality, operate as barriers for community-based organisations whose comparative advantage lies in reach rather than in formal capacity. And the status of paralegals, who deliver most first-line assistance outside the cities, has been legally unstable since parts of the implementing regulation governing them were annulled on the ground that they extended beyond the authority conferred by statute.⁶

The scholarly literature offers three relevant strands. The Cappelletti and Garth framework of successive waves of reform remains the standard structuring device, moving from legal aid for individuals, to representation of diffuse interests,

¹ Mauro Cappelletti and Bryant Garth, "Access to Justice: The Newest Wave in the Worldwide Movement to Make Rights Effective," *Buffalo Law Review* 27, no. 2 (1978): 181–292.

² Constitution of the Republic of Indonesia 1945, Articles 27(1) and 28D(1).

³ Law Number 16 of 2011 concerning Legal Aid, Articles 1(1)–(2), 4 and 6.

⁴ Law Number 48 of 2009 concerning Judicial Power, Articles 56–57; Law Number 8 of 1981 concerning the Criminal Procedure Code, Article 56(1); Supreme Court Regulation Number 1 of 2014 concerning Guidelines for Legal Services for Indigent Persons in Court.

⁵ Hazel Genn, *Paths to Justice: What People Do and Think About Going to Law* (Oxford: Hart Publishing, 1999), 22–35.

⁶ Supreme Court of the Republic of Indonesia, Decision Number 22 P/HUM/2018, concerning the review of the Regulation of the Minister of Law and Human Rights on Paralegals in the Provision of Legal Aid.

to a broader institutional access approach. Empirical legal needs research, developed by Genn and extended through comparative surveys, establishes that the distribution of legal problems bears little relation to the distribution of formal legal services. Capability-oriented theory, particularly Sen's account of justice as the removal of remediable injustice rather than the design of perfect institutions, supplies the normative criterion that matters for policy: whether a person can actually do something about a wrong.⁷

Indonesian scholarship has examined the Legal Aid Law extensively, but predominantly in terms of normative content and budgetary allocation. Comparatively little work evaluates the system against measured legal need, and almost none integrates the Islamic legal foundation of assistance to the wronged into a policy design argument. That combination is the gap addressed here. Three questions follow: what explains the divergence between Indonesia's normative guarantee and its institutional performance; what do comparative delivery models suggest about the structural determinants of that divergence; and what criteria should govern a needs-responsive legal aid policy?

II. RESEARCH METHODS

The research is normative juridical, employing statutory, conceptual, case and comparative approaches.⁸ The statutory approach analyses the Constitution, the Legal Aid Law and its implementing regulations, the Judicial Power Law, the Advocates Law and Supreme Court regulations on services for indigent litigants. The conceptual approach reconstructs access to justice theory, legal needs methodology and the Islamic legal concepts of assisting the wronged, collective obligation and treasury-funded adjudication. The case approach examines the judicial review decision on paralegal regulation. The comparative approach considers England and Wales, the Netherlands, South Africa and the Philippines, chosen because each represents a distinct funding and delivery architecture.

Primary materials comprise legislation, implementing and judicial regulations, and judicial decisions, together with classical Islamic legal sources on the obligations of the judge and the treasury. Secondary materials consist of peer-reviewed scholarship, legal needs surveys and institutional reports published principally within the last fifteen years. Analysis proceeds by qualitative content analysis, comparative tabulation and normative evaluation against criteria derived from the constitutional guarantee and from the maqāṣid framework. The study uses published aggregate data and does not conduct an original legal needs survey, which is acknowledged as its principal limitation.

⁷ Amartya Sen, *The Idea of Justice* (Cambridge: Harvard University Press, 2009), 96–105.

⁸ Peter Mahmud Marzuki, *Penelitian Hukum*, rev. ed. (Jakarta: Kencana, 2017), 55–60.

III. RESULTS AND DISCUSSION

A. A Supply-Driven System in a Needs-Driven Field

The first finding is structural. Indonesian legal aid is budgeted, allocated and reported on the basis of cases handled by accredited organisations. Nothing in the architecture begins from the question of what legal problems the population actually experiences. The consequence is a system that optimises what it measures: numbers of completed files, predominantly criminal, predominantly urban.

Legal needs research internationally has established that the most common justiciable problems among poor households concern employment, debt, housing, welfare entitlements, family relations and identity documents, and that only a small minority of these ever become court cases. A delivery system oriented to litigation therefore addresses the visible tail of the distribution while leaving its body untouched. The marginality of non-litigation funding in the Indonesian scheme is not a budgetary detail; it is a misalignment between the instrument and the problem.

The per-case funding formula reinforces the misalignment. Because payment attaches to completion rather than to complexity or outcome, an organisation maximising its ability to continue operating will rationally prefer many simple matters to few difficult ones. Nothing in this is attributable to bad faith by providers; it is the predictable behaviour of institutions responding to the incentives the funding rule creates. Reform must therefore begin with the rule rather than with exhortation.

B. Gatekeeping, Paralegals and the Geography of Access

The second finding concerns institutional access to the scheme itself. Accreditation requires organisational formality, office infrastructure, advocates on staff and documented case histories. These are reasonable proxies for capacity in a city and prohibitive obstacles in a district where the only functioning legal assistance is provided by a community organisation staffed by trained non-lawyers. The accreditation rule thus systematically excludes precisely the providers located where the unmet need is greatest.

Paralegals occupy the centre of this problem. Comparative experience shows that trained non-lawyer assistance is the most cost-effective instrument for first-line legal problems and often the only feasible one in rural areas.⁹ Indonesian law, however, regulates paralegals through ministerial regulation constrained by the statutory monopoly of advocates on legal representation, and the annulment of key provisions in 2018 demonstrated that the gap cannot be closed by executive instrument alone. Statutory recognition, with a clearly delimited scope of permitted assistance, is the only durable solution.

⁹ Vivek Maru, "Between Law and Society: Paralegals and the Provision of Justice Services in Sierra Leone and Worldwide," *Yale Journal of International Law* 31, no. 2 (2006): 427–476.

The geographic dimension deserves emphasis because it converts a service problem into an equality problem. Where accredited providers are absent, the constitutional guarantee is formally intact and practically void. Circuit court sittings and legal assistance posts mitigate but do not resolve this, since they address the cost of reaching a court rather than the absence of advice before a dispute reaches that stage.

C. The Islamic Legal Foundation of Assistance

Islamic legal tradition supplies a foundation for legal aid that is both older and more institutional than is generally recognised in Indonesian policy debate. The duty to assist the wronged is treated as a communal obligation, and the maintenance of adjudication itself, including the remuneration of judges and the costs of bringing parties before a court, is classified among the responsibilities of the public treasury rather than among the private burdens of litigants.¹⁰

Two doctrinal elements bear directly on policy design. The first is the classical insistence on equality of the parties before the judge, expressed in the instruction attributed to the second caliph that the judge treat the parties equally in seating, attention and countenance so that neither expects favour nor fears partiality.¹¹ Equality of treatment inside the courtroom is meaningless where one party arrives represented and the other does not, which makes state-funded representation a condition of the principle rather than an addition to it.

The second element is the classification of the obligation as collective. A collective obligation is discharged when a sufficient number fulfil it and continues to bind everyone until then, which translates directly into a coverage standard: the duty is not satisfied by the existence of legal aid somewhere, but only by its sufficiency relative to need. Read through the *maqāṣid*, legal aid serves the protection of life, lineage, property and honour indirectly but indispensably, since each of these can be lost through an adjudication one cannot contest.

D. Comparative Delivery Architectures

Table 1. Comparative Legal Aid Delivery Models

Jurisdiction	Funding and delivery	Strength	Weakness
Indonesia	State budget paid per case to accredited organisations	Statutory entitlement; civil society delivery	Supply-driven; litigation bias; uneven coverage
England and Wales	Centralised agency with scope defined by statute after 2012 retrenchment	Clear eligibility rules and quality contracts	Large areas of civil law removed from scope

¹⁰ Abū al-Ḥasan al-Māwardī, *al-Aḥkām al-Sulṭāniyya wa-l-Wilāyāt al-Dīniyya* (Beirut: Dār al-Kutub al-ʿIlmiyya, 1985), 92–97.

¹¹ Ibn Qayyim al-Jawziyya, *Iʿlām al-Muwaqqiʿin ʿan Rabb al-ʿĀlamīn*, ed. Mashhūr Ḥasan ʿĀl Salmān (Dammam: Dār Ibn al-Jawzī, 2002), 1:85–88.

Netherlands	Legal aid board with subsidised lawyer fees and first-line legal counters	Strong triage between advice and representation	Rising contributions reduce effective access
South Africa	National legal aid body with salaried lawyers and justice centres	Constitutional anchoring; predictable coverage	Capacity concentrated in criminal defence

Source: Processed from primary legal materials and comparative literature, 2026.

Two comparative lessons are directly transferable. The first is the value of triage: systems that separate first-line advice from full representation, as the Dutch counters do, resolve a large share of problems at low cost and reserve expensive representation for matters that require it. The second is the danger of scope retrenchment: the English experience after 2012 shows that removing civil categories from eligibility does not reduce legal need but displaces it into unrepresented litigation, which raises costs elsewhere in the system.¹² Indonesia's low non-litigation allocation risks producing the same displacement without ever having funded the services in the first place.

E. Criteria for a Needs-Responsive Policy

Five criteria follow. First, needs-based budgeting: allocations should be informed by periodic legal needs surveys disaggregated by region and problem type, so that funding follows the distribution of problems rather than the distribution of providers. Second, statutory recognition of paralegals, with a defined scope of assistance, training standards and supervision, placing the arrangement beyond the reach of the objection that sustained the 2018 annulment. Third, enforceable quality standards, including minimum service specifications, peer review and a complaints mechanism, since unmeasured quality is the least visible form of denial of access. Fourth, verification through the national social registry rather than through certificates of indigence, removing an administrative barrier that falls hardest on the poorest. Fifth, outcome reporting, replacing counts of completed files with indicators of problem resolution, so that the system is evaluated by what it achieves for claimants.

These criteria converge with the Islamic framing developed above. A collective obligation measured by sufficiency demands coverage data; equality before the judge demands quality standards; treasury responsibility for adjudication demands that verification not impose costs on the indigent. The argument for reform therefore does not require choosing between constitutional and religious justifications, since both point to the same institutional conclusions.

¹² Roger Smith, "Legal Aid after LASPO: The English Experience of Retrenchment," *International Journal of the Legal Profession* 25, no. 1 (2018): 69–84.

IV. CONCLUSION

The divergence between Indonesia's legal aid guarantee and its performance is explained by the system's supply-driven architecture. Budgeting follows completed cases rather than measured need, accreditation excludes providers located where need is greatest, paralegal assistance lacks statutory footing, non-litigation services remain marginal although most legal problems never reach a court, and no quality standard governs what is delivered. The guarantee is formally robust and operationally partial.

Comparative analysis identifies triage and scope protection as the two structural determinants of effective delivery, while Islamic legal tradition supplies a coherent foundation through the collective obligation to assist the wronged, the equality of parties before the judge, and the treasury's responsibility for the costs of adjudication. These converge on the same design conclusions as the constitutional analysis.

The study recommends needs-based budgeting grounded in periodic legal needs surveys, statutory recognition of paralegals with a delimited scope, enforceable quality standards with peer review, eligibility verification through the national social registry, and reporting based on outcomes rather than file counts. Further research should conduct a national legal needs survey capable of quantifying the mismatch between the distribution of legal problems and the distribution of funded services, which is the evidentiary foundation every element of this reform requires.

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