

# Hasil Cek Plagiasi Critical Analysis on Legal Aid

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# Critical Analysis on Legal Aid Regulation for Marginal Community Based on Legal Language

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**Abstract:**  
Business will grow rapidly if the atmosphere of legal relationship is conducive. A conducive legal relationship means no conflict. These conflicts are determined by the certainty of the rule of law. A good rule of law is a rule that has legal certainty and justice, formulated in proper legal language and not multi interpretation. Misformulation of legal language can be a source of lack of legal protection. The aim of the study is whether there is a misformulation of legal language in the definition of legal aid which consists of legal services, free of charge, legal aid providers and legal aid recipients in Law 16/2011 from the point of language implementation of legal protection. This research is sociolinguistic by using descriptive analysis method toward regulation. The results of the research indicate that there is a misformulation in the legal language, only for the poor community, not the marginal community.

**Keywords:** legal aid, misformulation, legal language, legal assistance.

## I. INTRODUCTION

Economical development covers many aspects [1] such as economics, social, cultural, political, security, technical and many others. Current development can not only take place within a country's territory. The era of globalization has influenced the politics and policies of a country. Information is pivotal aspect in this era of globalization. The use of appropriate information will be effective in addressing problems occur in the society. [2]

Problems that occur from a legal relationship can be caused by the rule of law. Principally, the rule of law can be divided into two, individual and public. The individual is the rule of law created by the parties. The legal rules of a public nature require the role of the State.

Any legal relationships in society will be harmonious when there is no obstruction of law between parties who are bound in legal relationships as well as in business relationships. Business will grow rapidly if the atmosphere of legal relations in

all areas is conducive. Conducive or harmonious legal relationships are influenced by internal and external factors. Internal factors that determine the conduciveness of a legal relationship is the good faith of the parties which are bound in those relationship. External factors are circumstances beyond the parties such as social conditions and the rule of law. Supportive social conditions can have a positive. Another external factor is the rule of law. The rule of law that provides certainty is very important in realizing a conducive legal relationship.

A conducive or harmonious legal relationship can be interpreted as a legal relationship that has no conflicts. The conflicts can be analyzed. The model of conflicts analysis includes their settings, processes and implications. Conflicts settings include those in the conflict area, their interests, needs and objectives. While the conflicts process especially explaining the intensity, breadth and appearance of the conflict. The implications of conflicts are not only for the political elite but for the people and they are not only for transient, but also long-term impacts.

Conflict occurs when one party commits to obstruct, oppress or force other party to accept his or her opinion which then this party feels as if they were defendants with the actions of the first party. Although they may resolve the conflicts, they often require a third party to resolve them. Besides, conflict resolution efforts can be done through conflict resolution model. The nature of the conflict resolution model is to transform conflict into equal partnerships", with the following steps: 1) Building trust, 2) Developing an Inter-Village Forest Forum (Forum Kehutanan Hutan antar Desa=FKAD), 3) Preparing a team of experts, 4) creating effective communication and 5) producing a mutual agreement of regulation. [3] Conflicts arising from a legal relationship may be influenced by unclear legal formula. The existing formulas in the body of the rule of law are unclear and uncertain. The rule of law or legal norm is vague (vague norm). For example, in the field of civil law, in the legal rules relating to the granting a license on dental nurses. The multiple interpretations point is on the term legal concepts regarding the licensing of dental nurses, functional positions in independent practice and licensing of self-employment. This interpretation indicates the existence of legal uncertainty so that it can be concluded that there is no legal protection for dental nurses in carrying out independent practices. [4] In administrative law, especially the financial management of the village government level, there are still multiple interpretations on the rule of law. In criminal law, the prohibition to file an appeal for a free verdict by the Public Prosecutor does not provide the usual remedy to the free judgment and eliminates the function of the Supreme Court as an appeal court against the free judgment so that there is no fair legal certainty and the principle of equal treatment in the presence of law. [5]

A good rule of law is a rule that has legal certainty and justice. The rule of law is formulated in proper legal language and has no multi interpretation. The fault of legal language formulation can be a source of lack of legal protection.

The lack or absence of legal protection causing the community to be harmed or victimized. People who have been impaired by rights that have been protected by law may take legal action. Sometimes a victim or person who has been harmed intentionally does not take any legal action. The main factor that causes a person not to file a legal effort is due to the high cost of making legal efforts. Not everyone can afford the legal process.

The legal process can be carried out through legal effort. There are two ways to conduct legal efforts, namely non-litigation and litigation. Legal assistance is needed by everyone who is experiencing a legal case but there are only few people who know free legal assistance [6].

The constitutional basis for legal aid is equality before the law for everyone (Article 28 D paragraph (1) of the 1945 Constitution). Equality before the law must be done by making the rule of law. Humanitarian side must be considered that not every criminal violation must be punished by a prison sentence [7]

The implementation of legal aid arrangements is Law number 16 of 2011 concerning legal aid. This provision provides free legal assistance to the poor. Its implementation is carried out by the Ministry of Law and Human Rights through an accredited Legal Aid Organization (OBH). Unfortunately, the implementation of Law 16/2011 in the community has not been maximized and not touched the root of the problem. [8]. The contributing factors are the small amount of OBH; the inadequate cost of bringing in expert witnesses; abuse of certificate of disability (SKTM) [9]; the difficulty of getting a copy of the news on the method of the suspect [10] The implementation of Law 16/2011 in the community has not been maximized because of the formulation of articles that lead to misformulation.

From the above description, there are problems that might raise such as:

1) Is there misformulation of legal language in the definition of legal aid, poverty, civil, criminal, and administrative cases in Law 16/2011?

2) In what aspects do the misformulation of legal language in Law 16/2011?

3) How do the implications of such misformulation of legal language for the provision of legal protection for marginal community?

## II. RESEARCH METHOD

Methods is the way or way taken by researchers in conducting research. Method is etymologically defined as the way or way of doing something. [11] This term etymologically is the starting point to the final propositions in a particular field of knowledge. [12] Research is a systematic, directed and purposive scientific activity. The data or information gathered should be relevant to the issues. It means, the data should be related, to the point and appropriate.

This sociolinguistic legal research is using descriptive analysis method on regulations related to legal aid. Legal research is a series of activities to conduct research on the law objects. Sociolinguistics is the study of language characters, variation, function, and use in a language interaction and function in society. The purpose of sociolinguistics in the discussion of language literature is to provide an overview of the social conditions of a society associated with their language. [13] Descriptive analysis is a method in examining the status of a group of people, an object, a set of conditions, a system of thought or events at present. The purpose of this descriptive study is to create a description, illustration or picture in a systematic, factual and accurate on facts, traits and relationships between phenomena under investigation. [14] From the description it can be seen that this is sociolinguistic study using descriptive analysis method on the legislations.

## III. LITERATURE REVIEW

The study on the implementation of misformulation of legal language in Law 16/2011 against the protection of legal aid is divided into two things, namely legal language and legal rules on legal aid in Law 16/2011.

### A. Legal Language

The study of legal language can not be separated from the logical and language approach. This study is important for the process of legal dispute. Between logic and language both of them are a very important study in understanding the legal dispute. Logic is a basis of one's thought. The results of that thought then poured into a form of language both spoken and written. The pouring of a legal thinking framework through the phase of reasoning should be based on a variety of legal languages known as legal concept.

Logic comes from the ancient Greek word *λόγος* (logos) which means the result of the reasoning thought expressed through words and delivered through language. In Arabic it is known as *mantiq* which means to say or speak. [15] Logic is a study of thought (especially logical/logical process) and the formal object of logic is thinking /reasoning in terms of its accuracy. Poespoprojo formulates a logic as a collection of knowledge on a particular field that is a unity arranged in a systematic way and provide a justified explanation by showing the causes. [16] According to Alex Lanur, logic is the science and the ability to think straight (accurately). Science is a collection of knowledge on a particular subject. This collection is a systematic unity as well as providing a reliable explanation. Such an explanation occurs by showing its causes. [17] Logic is a science of the foundation and method for right thinking, as science and art of reasoning and thinking accurately (the science and art of correct thinking).

Logic is a science of basic and method for thinking accurately. Thinking "correctly" that distinguishes right and wrong reasoning. The right criterion, right or wrong reasoning is basically an accountable explanation. Logic is a science where the material object is thinking (especially reasoning/reasoning process) and the formal object of logic is thinking/ reasoning in terms of its accuracy. Logic is a priori reasoning. The logical truth can not be found and tested empirically but the truth is tested by the common sense. The logical object according to Muhammad Zainuddin, consists of:

- Material object: reasoning / way of thinking;
- Formal object: law, principle; and
- Products: thinking products (concept, proposition expressed in spoken or written form or gesture)

The expression results of thought or the common sense to achieve truth is manifested in the form of language. Language basically consists of three forms; spoken, written, and sign language. Language is always a form of thinking since by language we know the ideas of the speakers. There are several notions of language. In some common dictionaries, linguistics is defined as 'a scientific study of language'. The meaning of linguistics is "the scientific study of language and its structure, including the study of grammar, syntax, and phonetics. Specific branches of linguistics include sociolinguistics, dialectology, psycholinguistics, computational linguistics, comparative linguistics, and structural linguistics." [18]

Language is used as a communication tool. The function of the communication can then be translated into other functions, for example as a tool to work with other people or tools for self-identification. Language also serves as a tool of social integration and adaptation, as a means of social control. This last function is more widely used for legal socialization purposes as a first step in law enforcement efforts

Accuracy is very important in the context of law enforcement efforts. The rule of law in linguistics has a function as a means of communication, so the formulation of norms that exist in the rule of law must be based on the provisions in linguistics. There is a demand for the conformity of the rule of law with language and logic. The goal is to achieve legal certainty not to create multiple interpretations

In legal study it is known as legal concept. It is a constructive and systematic concept used to

understand a rule of law or a rule of law system. Understanding the legal concept is also needed in efforts to apply and develop the law. If there is a legal provision, but the legal provisions are still vague or unclear, then a legal interpretation is required for the discovery of the law. If in a problem or case that is being faced by a judge and there is no legal regulation, then it can be a legal establishment. All efforts constitute an *ars* owned by a jurist. Or it can be said that legal proficiency can be achieved if one understands very well about the legal concept.

Legal norms contained in the rule of law are written in the Articles of a rule of law in linguistics referred to as a sentence. According to JS Badudu, sentence can be seen from three types of levels, namely functions, categories, and roles. First, the level of function divides the sentence of the subject, predicate, and object, complement, and explanation. Second, the category level divides the sentence into word classes (nouns, verbs, adjectives, adverbs, pronouns, numbers, prepositions, conjunctions, interjection, and articles). Lastly, the level of the role divides the word into the types of behaviors (agentive), direct or indirect object (objective), beneficiary, place (temporal), comparative, tools (instrumental), conjunctions, prepositions, and exclamations (interjections). Those division types can not be jumbled. A single sentence can be expanded. The forms of single sentence extension include the extension of the subject, the predicate, the object, or the extension of the explanation.

The basic principle in the sentence level must be considered in formulating a legal dispute. Moreover, when establishing a legislation or clauses in the agreement. The fact that frequently, the formulation of the clause of the agreement is in the form of compound sentence that consists of vague meaning and less attention to the form of the extension of sentence itself.

It needs a concern to analyze an appropriateness between the formulation of the Article and its language. The process of reasoning is then needed. Thinking is any mental activity that helps to formulate or solve problems, make decisions, fulfill

the desire to understand, search for answers, and find meaning. [19]The study of legal language requires the role of logic in understanding the nature of meaning, definition and decision. The concept is often called understanding. Definition is formulated into definitions, the analysis produces a verdict

In legal point of view, the establishment of understanding in legislation is essential to regulate community behavior, so it must be made clearly to them as well as what behavior is expected. As the consequences, many regulations, prior to the actual content of the arrangements, begun by limiting prior notions of the meanings used. This is done by giving the definition of juridical terms used in those regulations in the form of understanding. To compile a definition, four conditions are required:

- It is not broader / narrower than the connotation of word defined;
- does not use a defined word (circular / tautologies);
- does not use the negative form; and
- does not create a confused explanation.

#### B. The legal rules on legal aid in Law 16/2011

The definition of legal aid is the provision of legal services by legal aid providers free of charge to recipients of legal assistance (Article 1 16/2011). The legal principles that underlie legal aid consist of justice (giving proportional rights and obligations); equality before the law; openness to access to public services; efficient use of the budget; effectiveness of appropriate legal aid targets; and public accountability (Article 2 of Law 16/2011).

There are three legal aid subjects: organizers, providers and recipients of legal aid. (Article 1 number 3 of Law 16/2011). Requirements for legal aid providers are to have a legal entity accredited by the ministry of law and human rights; have a permanent secretariat office; management board and work program (Article 8 of Law 16/2011). Providers of legal aids can receive funds from the State Revenue and Expenditure Budget; Regional Revenue and Expenditures Budget; grant or other.

Legal providers who receive or request payment from legal aid recipients related to the case handled are threatened with a maximum of 1 year in prison and / or a fine Rp. 50,000,000.00 (fifty million rupiah). (Article 16 jo Article 19 jo Article 21 of Law 16/2011).

Legal aid recipient is a person / group of poor people who face legal problems and who cannot fulfill their basic rights correctly and independently (including the right to food, clothing, health care, education services, work and employment, and / or housing) (Article 1 number 1 jo

Article 4 paragraph (1) jo Article 5 of Law 16/2011). Legal Aid Provider is the Minister who manages government legal and human rights (Ministry of law and human rights) conducted by Legal Aid.

The object of legal aid is divided into three areas, namely civil, criminal, and state administrative law, both litigation and non-litigation. Providing legal aids including exercising power, accompanying, representing, defending, and / or carrying out other legal actions for the legal benefit of the Legal Aid (Article 4 of Law 16/2011).

#### IV. RESULT AND DISCUSSION

The formulation of the rule of law must be proper from the point of view of language and logic. Formulation of legal language in a legislation can be seen from the formulation of Articles. The formulation of the Articles is essentially a verdict derived from definition and understanding. Embodied in the form of definiendum and definem. In a linguistic point of view, a rule must at least meet the subject and predicate. Legal Assistance is formulated in Article 1 point 1 of Law 16/2011 as legal services provided by the Legal Aid for free to the Legal recipients. Analysis of the formulation of appropriate legal rules on the definition of legal aid consists of legal services, free of charge, legal aid providers and legal aid recipients of Law 16/2011.

### A. Legal Aid Providers

Legal aid providers are "legal aid organizations or social organizations that provide legal aid services" (Article 1 number 3 of Law 16/2011). There are conditions for legal aid providers (Article 8 of Law 16/2011). The analysis of the language aspects in this article is limited to the functional level which divides the sentence into the subject, predicate, object, complement, and explanation.

In a sentence that contains the understanding of legal aid providers, only divided into subjects and predicates. There is no object, complement and explanation. This sentence has two subjects namely legal aid agencies and community organizations. While providing legal aid services is as a predicate. This single sentence is extended to subject and its predicate. The extended meaning of the subject is having legal entity, accreditation, permanent office or secretariat, a board of management which aim to provide restrictions. Implementation of such limitations means that not all of legal entities or social organizations can provide legal assistance. Only legal entities accredited by Ministry of Justice and Human Rights can do so. The extension object of "providing legal aid services" means has a legal aid program. From the two extension of subject and predicate functions can be interpreted that a legal subject can perform legal assistance if it has an accreditation. Terms and conditions are required to be an accredited legal aid or social organization by conducting a series of procedures to obtain accreditation status.

There are 524 Accredited Legal Aid Institutions or Organizations for the Period 2019-2021, 60 for the East Java Region and 9 in the Surabaya City Region (Decree of the Minister of Law and Human Rights of the Republic of Indonesia Number: M.HH-01.HN.07.02 of 2018 concerning Institutions / Legal Aid Organizations Who Have Passed Verification and Accreditation as Legal Aid Providers for the Period 2019 S.D. 2021)

The real implementation in the community, legal subjects may consist of individuals, civil societies, legal entities and social institutions. Civil society can

be Commanditer Vennotschap (CV), Business Trade (UD), Firma (Fa), Matschaap (Ma). The limitation of the definition contained in Article 1 number 3 of Law 16/2011 has the consequences that individuals and civil society lose their opportunity to be able to do legal assistance. This is one of the factors why legal aid has not been maximally felt by the poor.

### B. Legal Aid Recipients

Legal Aid recipients are formulated in Article 1 number 2 of Law 16/2011 as persons or groups of the poor. The word "poor" contains an abstract meaning and requires an interpretation. Authentic interpretation of the word "poor" contains in the provisions of Article 5 of Law 16/2011 that is inability to fulfill basic rights properly and independently. The word "basic rights" also contains an abstract meaning which requires interpretation. Basic rights are interpreted authentically as rights to food, clothing, health care, education services, work and business, and / or housing. Legal aid recipient is a person / group of poor people who face legal problems and who cannot fulfill their rights (Article 1 point 1 jo Article 4 paragraph (1) jo Article 5 of Law 16/2011)

Unlike the language point of view, based on the grammatical interpretation it can be seen that the poor understanding by the Big Indonesian Dictionary (KBBI) about the definition of the poor, that is not wealthy; all-incompetent (very low-income) The Supreme Court defines the poor as an incapable. In Perma no. 1 Year 2014 on Guidelines for the Provision of Legal Services for Disadvantaged People in the Court.

In relation to income, it has been regulated in Law 13/2003 on manpower. The interpretation of a contrario over the poor is a decent income position. Its authentic interpretation contained in Law 13/2003. Every worker / laborer is entitled to income that fulfills a decent living for humanity (Article 88 paragraph (1) of Law 13/2003). The definition of income that meets a decent livelihood is the amount of income or income of the worker / laborer from his / her work so as to be able to adequately meet the

needs of the worker / laborer and his family which includes food and beverages, clothing, housing, education, health, recreation and pension (Elucidation of Article 88 paragraph (1) of Law 13/2003), housing education, health, recreation, and old age pension (Elucidation of Article 88 paragraph (1) of Law 13/2003). Minimum wage are in accordance with minimum wage requirements. Minimum wages consist of:

- minimum wage by province or regency / municipality;
- the minimum wage by sector in the province or district / city (Article 89 paragraph (1) of Law 13/2003).

There is a prohibition on giving wages lower than the minimum wage. Violation of this provision is defined as a

criminal offense. The offense is punishable by imprisonment of a maximum of 1 (one) year and a maximum of 4 (four) years and / or a fine of at least Rp 100,000,000.00 (one hundred million rupiah) and a maximum of Rp 400,000,000.00 (four hundred million rupiah) (Article 90 paragraph (1) in conjunction with Article 185 of Law 13/2003).

The definition of poor is defined differently by the Central Bureau of Statistics (Badan Pusat Statistik=BPS) and the United Nations. BPS defines poor as a poverty line.[21]

The poor parameter according to BPS is placed on the average expenditure per capita per month under the Food Poverty Line / FPL (2,100 kilocalories per day) / or Non-Food Poverty Line / FPL (51 urban commodities and 47 rural commodities. [20]The parameter of the poor according to the United Nations is having an income of less than US \$ 1 per day of the United Nations Millennium Declaration in the resolution of the UN General Assembly 55/2 dated 18 September 2000 concerning the UN Millennium Declaration / MDG (A / RES / 55/2). [22] This declaration was followed up in the Results of the World Summit. [23] The provision of legal aid

has not been maximally given to the poor who face legal problems not including women, children, laborers, farmers, victims of environmental pollution of marginal communities. [24] In the city of Surabaya legal aid is not maximally felt by people with disabilities, workers, people who have the friction with water pumps in Keputih Surabaya.

The juridical evidence of a person designated as poor is having a poor certificate (SKTM) from head of the village or officials of the same level at the residence of the applicant for legal aid (Article 14 paragraph (1) sub-paragraph c of Law 16/2011). This multiple interpretation of "poor" resulted in the difficulty of marginal communities to obtain SKTM as one of the requirements for obtaining legal aid.

### C. Legal Service

Legal Assistance is a legal service provided by the Legal Aid for free to the Legal Aidee. Legal services are also formulated in Article 1 number 3 of Law 16/2011 as Legal Aid services. The definition of legal services provided in Article 1 Sub-Article 2 of Law 18/2003 concerning Advocates is services provided by Advocates in the form of providing legal consultations, legal assistance, exercising power, representing, accompanying, defending and taking other legal actions for the client's legal interests.

The litigation cost unit of the case is Rp. 8.000.000 with the following details:

Criminal Cases	Civil Cases	State Administrative Cases	Cost value
Stage of Lawsuit	Stage of Lawsuit	Stage of Lawsuit	Rp. 2.000.000
Court Decision Level Stage I	Court Decision Level Stage I	Court Decision Level Stage I	Rp. 3.000.000
Court of Appeal Decision Stage	Court of Appeal Decision Stage	Court of Appeal Decision Stage	Rp. 1.000.000
Court of	Court of	Court of	Rp.

Appeal Decision Stage	Appeal Decision Stage	Appeal Decision Stage	1.000.000
Review Stage	Review Stage	Review Stage	Rp. 1.000.000
Total unit cost			Rp. 8.000.000

Legal aid costs include the costs of the judicial process (also outside the court) in the general court, religion and state administration. These costs do not include the stamp, the costs of the parties' calls, notification of the contents of the lawsuit, confiscation fees, local inspection fees, witness / expert fees, execution costs, office supplies, copy of decisions, sending letters to the parties, archiving and filing and the need for court clerks. The amount of this deduction is Rp. 750,000 per case.

#### <sup>6</sup> D. Free of Charge

<sup>6</sup> Legal aid is legal services provided to the poor for free. For the purposes of defense, a suspect or defendant who is punishable by imprisonment for a maximum of 15 years and does not have legal counsel is entitled to obtain legal assistance from an advocate appointed by the competent authority at all levels of examination. The appointed advocate may not refuse. They must provide legal consultation, exercise power, represent, accompany, defend and take other legal actions. Advocates who receive or request money for legal aid <sup>7</sup> cases will face a maximum prison sentence of 1 (one) year or a maximum fine of Rp. 50,000,000.00 (fifty million rupiahs).

From the above description, it is noted that the results of the research indicate that there is a misformulation in the legal language in the definition of legal aid which consists of legal services, free of charge, legal aid providers and recipients of legal aid in Law 16/2011. This misformulation of legal language caused in a lack of legal protection for marginal communities.

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## V. CONCLUSION

From the above description it can be concluded that there is an error formulation of legal language in the definition of legal aid which consists of legal services, free of charge, legal aid providers and legal aid recipients on Law 16/2011 which resulted in not maximally provision of legal assistance for marginal communities. The recommendation is that the revision of legal aid arrangements is accessible to the marginal communities, both in the substance and procedure. Add the obligations of legal aid agencies or advocates to provide free legal assistance to the group of marginal communities with minimum one case per year.

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