

# THEORY AND PRACTICE

Law  
Towards Era 5.0

Sebagai negara hukum, prinsip hukum dan asas yang dianut adalah bahwa setiap orang dianggap mengetahui hukum dan peraturan pada saat diundangkan; ketidaktahuan akan hukum tidak dapat dimaafkan. Ketidaktahuan akan hukum umumnya dialami oleh kelompok masyarakat yang tidak mengenyam pendidikan tinggi atau mereka yang berada dalam kategori ekonomi rendah. Mereka memerlukan keadilan.

Tujuan dari keadilan adalah untuk memastikan bahwa hukum tidak hanya terbatas pada kelompok tertentu, karena menempuh jalur hukum, atau mencari keadilan melalui jalur hukum dapat memakan biaya yang mahal. Oleh karena itu, pemberian bantuan hukum secara cuma-cuma kepada masyarakat miskin merupakan salah satu bentuk pemerataan keadilan. Namun, dalam implementasinya, pemberian bantuan hukum untuk mencapai keadilan masih rendah.

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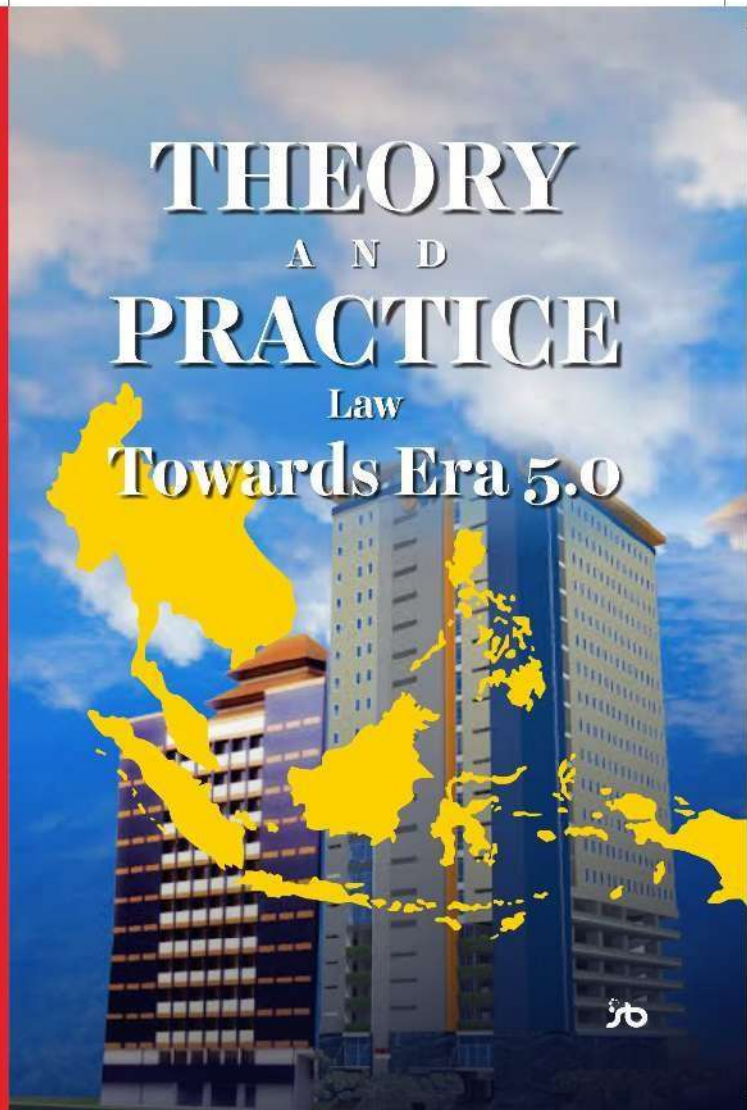
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Pustaka Kita, Harapan  
Masyarakat



# THEORY AND PRACTICE

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**Theory and Practice:**

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# **KATA PENGANTAR**

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*Direktur Program Pascasarjana Universitas  
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Indonesia, sebagaimana dinyatakan dalam Pasal 1 Ayat 3 Undang-Undang Dasar 19fi5, menjelaskan posisinya sebagai negara hukum. Dalam sebuah negara hukum, prinsip hukum, asas yang dianut adalah bahwa setiap orang dianggap mengetahui hukum dan peraturan pada saat diundangkan; ketidaktahuan akan hukum tidak dapat dimaafkan. Ketidaktahuan akan hukum umumnya dialami oleh kelompok masyarakat yang tidak mengenyam pendidikan tinggi atau mereka yang berada dalam kategori ekonomi rendah.

Mereka memerlukan keadilan. Lujuan dari keadilan adalah untuk memastikan bahwa hukum tidak hanya terbatas pada kelompok tertentu, karena menempuh jalur hukum, atau mencari mencari keadilan melalui jalur hukum dapat memakan biaya yang mahal. Oleh karena itu pemberian bantuan hukum secara cuma-cuma kepada masyarakat miskin merupakan salah satu bentuk pemerataan keadilan.

Pasal 3fi Ayat 1 Undang-Undang Dasar 19fi5 menekankan kewajiban negara untuk hadir dalam kehidupan masyarakat.

Kehadiran ini menegaskan bahwa negara harus memastikan bahwa setiap warga negara atau anggota masyarakat mendapatkan hak-haknya yang tanpa diskriminasi. Proses bantuan hukum dapat diakses secara langsung oleh masyarakat melalui interaksi dengan para bantuan hukum. Menurut Pasal 22 Ayat 1 Undang-Undang Nomor 18 Tahun 2003, advokat wajib memberikan bantuan hukum secara cuma-cuma kepada pencari keadilan yang tidak mampu. Hal ini mendorong lahirnya Peraturan Pemerintah Nomor 83 Tahun 2008 tentang Persyaratan dan Tata Cara Pemberian Bantuan Hukum Secara Cuma-Cuma.

Berkaitan dengan hal tersebut, buku berjudul *Theory And Practice: Law Towards Era 5.0* ini hadir sebagai bacaan positif mengenai penerapan hukum di Indonesia. Pembahasan buku ini terbagi ke dalam 19 bab. Adapun bab pertama membahas tentang "Obstacles In Implementing Passport Issuance Services In The State Of The Covid-19 Pandemic And Its Solutions (Case Study In Class 1 Immigration Office Non-Lpi Langerang)" ditulis oleh Novita Romauli Batubara, Iri Cahya Indra Permana, Gamal Abdur Nasir.

Bab kedua berjudul "Keabsahan Dokumen Elektronik Sebagai Alat Bukti Yang Sah Ditinjau Dalam Hukum Acara Perdata" yang ditulis oleh Perdi Kustiana, Syafrizal, Agus Darmawan. Bab ketiga "The Role Of The Langerang District Government In Implementing A Social Protection Program For Vulnerable Workers Based On Law Number 24 Of 2011 Concerning Social Security Implementing Agency" ditulis oleh Raddani, Ahmad, dan Upik Mutiara. Masih ada enam belas bab lainnya yang perlu Anda baca mengenai penerapan hukum di Indonesia. Selamat membaca!

Langerang, November 2023

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# **“ECONOMIC ANALYSIS OF LAW ON THE OBLIGATIONS OF LAWYERS IN PRO BONO LEGAL ASSISTANCE IN ACCORDANCE WITH ARTICLE 22 PARAGRAPH 1 OF LAW 18 OF 2003.”**

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## **Introduction**

Indonesia, as stated in Pasal 1 Ayat 3 Undang-Undang Dasar 1945 Constitution, describes its position as a legal state. In a legal state, the principle is that everyone is assumed to know the law and regulations when they are enacted; ignorance of the law cannot be excused. Ignorance of the law is generally experienced by a group of people who have not received higher education or those in a low economic category. Bambang Sunggono and Aries Harianto state that providing legal assistance to the poor is an effort to achieve justice. The goal of justice is to ensure that the law is not limited to a specific group, as pursuing legal action, or seeking justice through legal means can be expensive. Therefore,

providing free legal aid to the poor is a form of justice distribution.

Pasal 3fi Ayat 1 Undang-Undang Dasar 19fi5 Constitution emphasizes the state's obligation to be present in society's life. This presence underscores that the state must ensure that every citizen or member of society receives their rightful rights without discrimination. The process of legal assistance can be accessed directly by the public through interaction with legal aid professionals. According to Pasal 22 Ayat 1 Undang-Undang Nomor 18 Lahun 2003, lawyers are obliged to provide Pro Bono legal assistance to seekers of justice who are unable to afford it. This led to the creation of Government Regulation Number 83 of 2008 concerning the Requirements and Procedures for Providing Pro Bono Legal Assistance. Pro Bono legal assistance is accessible for criminal, civil, administrative, military, and non-litigation cases.

The assumption that dispute resolution, whether through litigation or non-litigation, requires substantial costs makes the public apprehensive about engaging with the legal system. This phenomenon particularly disadvantages the financially challenged, and the significant need for legal aid further highlights that many vulnerable individuals lack access to legal support. Capitalism presents its own issue, as its presence can impact not only the economy but also other social structures (Laoda Ida, 2010). The enforcement of the law weakens when faced with power arrogance, causing the state to lose its standing in society due to power being influenced by capital owners. Mahatma Gandhi argues that democracy should ensure equal opportunities for the weak and the strong (Mahatma Gandhi, 2016), emphasizing equal rights within a democratic system and stressing the need for fair access to justice.

Money becomes a priority in society, and economic issues

are a significant factor alongside humanitarian concerns in people's activities. This presents a new challenge for free legal aid efforts. Y. Ambeg Paramata and Marulak Pardede mention that the Ministry of Law and Human Rights provides a standard fee of five million rupiahs for handling litigation cases and three million seven hundred forty thousand rupiahs for legal education initiatives (Y. Ambeg Paramarta and Marulak Pardede, 2016). The standard fee for legal assistance is the provision of legal assistance by the government as stipulated in regulations and can potentially contribute to justice inequality. This is because it becomes one of the reasons why lawyers with more resources may prefer to assist or align themselves with parties who can afford their fees or meet their financial needs.

The presence of a specialized lawyer can disadvantage the less privileged members of society. It's not unlikely that the legal aid they receive might be subpar, motivated by avoiding obligations or gaining experience, and could potentially harm the less privileged members of society. Lodung Mulya Lubis stated in 1986 that the percentage of winning cases is higher when someone uses a paid lawyer who specializes in the field, compared to someone using a pro bono lawyer. The percentage serves as an indication that pro bono legal assistance might not be more effective than legal aid provided by experienced professional lawyers who have a responsibility to their clients. This is particularly relevant in the context of Pasal 22 Ayat 1 Undang-Undang Nomor 18 Tahun 2003, where lawyers are obliged to provide pro bono legal assistance to those seeking justice who are unable to afford it. This is to ensure that the rights of the less privileged members of society to access certainty, justice, and the benefits of the law are fulfilled. An Economic Analysis of Law and the role of lawyers in the implementation of this article are necessary in order to strike

a balance between pro bono legal aid and the responsibilities of lawyers to their clients.

## **Discussion**

### **Role of Advocates in Pro Bono's Legal Aid Efforts**

Legal assistance efforts carried out by lawyers, as perceived by researchers, constitute a response to the disparity between regulations and reality. The prevalence of structural cases experienced by marginalized communities, such as forced evictions, land disputes, and mining issues, underscores the need for legal aid provided by lawyers. This aligns with Pasal 22 Ayat 1, which mandates lawyers to provide pro bono legal assistance to seekers of justice who lack financial means. This initiative aims to establish legal equality and prevent discrimination against marginalized communities. Impoverished communities aspire for impartial and fair application of the law.

Scholars like Asfinawati, M.A. Santosa, and proponents of legal supremacy, equality before the law, and law enforcement emphasize that these principles should be upheld through legal mechanisms within a rule of law state. The provision of legal aid forms part of the aspiration for universal justice devoid of discrimination. In the researcher's perspective, the presence of lawyers in cases involving impoverished communities signifies a step to prevent the state from neglecting constitutional rights. These rights are a commitment of the state to establish supremacy, equality, and law enforcement, avoiding abuse of power. According to Angga and Ridwan Arifin, Pasal fi Undang-Undang of the Law on Legal Aid defines recipients of legal aid as individuals facing civil, criminal, or administrative issues, regardless of litigation status. Those whose constitutional rights have been violated by law enforcement figures, who lack access to justice, or who suffer

legal persecution are eligible for legal aid. Educating the public stands as an essential responsibility for lawyers. Advocacy and legal aid for impoverished and underserved communities can also manifest through imparting legal knowledge, empowering them with understanding to prevent falling victim to legal unawareness. The legal aid efforts undertaken by lawyers, in the researcher's view, strive to emancipate marginalized communities from the detrimental impacts of injustice during legal proceedings. These marginalized and impoverished communities are subjects of the law within a rule of law state, highlighting the imperative to not neglect them. The state holds an obligation to ensure legal equality. In the researcher's perspective, the presence and involvement of lawyers in pro bono legal aid efforts expand the reach of legal assistance, aiming to prevent any unjust outcomes for impoverished communities within legal processes.

### **Economic Analysis of Law Towards Pasal 22 Ayat 1 Undang-Undang Nomor 18 Tahun 2003 about Advocates Regarding Pro Bono Legal Aid**

The economic aspect serves as a significant factor contributing to the presence of justice inequality. Individuals classified within a low socioeconomic status often encounter injustice, stemming from the absence of the state's intervention. Hence, the state's involvement in the socioeconomic sphere to ensure societal justice becomes crucial and highly necessary in order to mitigate justice disparities.

According to Gunaryo, social conditions shape the character and nature of laws, given that the law possesses a dynamic nature. Individuals with favorable economic conditions typically avoid discriminatory issues, while those with less favorable economic standings may face legal challenges. The latter group experiences



legal hurdles due to limited access to resources. Accessibility to legal aid for individuals with better economic standing is simplified, enabling them to reach optimal legal support with ease. This contrasts starkly with individuals lacking financial means, who must resort to minimal state-provided pro bono legal aid.

Each legal case involves varying operational aspects that require financial allocation. Budget constraints can impede the maximum effectiveness of legal assistance efforts. Factors such as geographical location, witnesses, and experts are integral components that should be funded by the state. Without sufficient funding, pro bono legal aid efforts, in the researcher's view, may encounter suboptimal outcomes. The current uniform allocation of pro bono legal aid budgets to all cases fails to address the diverse needs of cases, displaying a skewed perspective by the state. Ideally, the state should allocate resources, accordingly, ensuring that legal aid is attainable for economically disadvantaged individuals. Experts and witnesses, important components of legal cases, should be adequately budgeted for by the state. The current budget allocation aligned with pro bono legal aid laws might set a minimal standard. Adjustments should be made if legal proceedings require additional funding.

Timely disbursement of allocated budgets is essential for equitable access to justice by economically challenged individuals. The researcher's perspective reveals that the complex and layered mechanisms in budget disbursement, as commonly perceived among lawyers, hinder the maximization of pro bono legal aid services. Such inefficiencies may lead to suboptimal outcomes, thwarting economically disadvantaged individuals' pursuit of justice. In contrast, individuals with better financial means can access legal aid more easily due to their ability to hire private legal services. This discrepancy highlights the need for

the state to streamline the process and ease the mechanism of budget disbursement, ensuring that economically disadvantaged individuals can access justice optimally. In conclusion, the economic aspect significantly impacts justice inequality, and the state's intervention is crucial to rectify this imbalance.

## **Conclusion**

Legal assistance efforts carried out by lawyers are part of the response to bridge the gap between rules and reality. The prevalence of structural cases experienced by marginalized communities, such as forced evictions, land disputes, and mining issues, necessitates legal aid provided by lawyers. As stipulated in Pasal 22 Ayat 1, lawyers are required to provide free legal assistance to seekers of justice who lack financial means. This initiative aims to establish legal equality, striving to prevent discrimination against smaller communities. Legal disparities can erode trust in the legal system, leading to a loss of faith in both the law and the state. Such loss of trust can result in substantial disadvantages for both society and the state, potentially leading to societal conflict.

The legal assistance provided by lawyers serves as an effort to liberate marginalized communities and impoverished individuals undergoing legal proceedings from the detrimental impacts of injustice. These marginalized and impoverished individuals are subjects of the law within a rule of law state, emphasizing the state's obligation to ensure legal equality. The presence and involvement of lawyers in pro bono legal aid endeavors expand the reach of legal assistance, aiming to prevent any unjust outcomes during ongoing legal processes. However, the existing laws concerning pro bono legal aid for impoverished communities may not be optimal and require further regulation, potentially with administrative sanctions, to ensure comprehensive coverage of

social and legal activities for economically vulnerable individuals during legal proceedings. The high number of impoverished individuals falling victim to legal injustices serves as an indicator that complete and thorough justice from legal aid efforts provided by lawyers or the state has not been fully realized.

Both the legal provisions regarding pro bono legal aid for lawyers and the existing laws regarding pro bono legal aid in economic terms do not yet represent a serious framework that deems legal aid for impoverished communities as essential. This lack might be due to the absence of associated penalties, which could potentially discourage lawyers from engaging in pro bono legal aid efforts. The pursuit of justice for disadvantaged individuals facing legal injustices could be hindered by practical difficulties in accessing allocated budgets.

In summary, legal aid efforts undertaken by lawyers play a vital role in addressing the gaps between legal regulations and real-world circumstances. The existence of legal disparities can result in societal mistrust and challenges. The participation of lawyers in pro bono legal aid endeavors strives to provide equitable access to justice for marginalized and impoverished communities. However, existing legal frameworks might need further refinement and enforcement to ensure that legal aid for these communities is adequately supported and realized.

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