



## Legal Aid For Civil Servants In Corruption Cases Related To Equitable Procurement Of Goods/Services

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### abstract

*In the context of legal science, the value of justice for all Indonesian people as stated in Pancasila, the 5th Precept is termed as substantive justice, namely justice that is actually felt by the community and created through legal formation. In these precepts, the essence of justice is based on and imbued with justice in the life of the nation, justice towards the creator and fellow human beings. Laws in Indonesia must be in line with Pancasila. Equitable law enforcement means that every community must get equal treatment before the law (equality before the law) and fair or access to justice, especially civil servants in carrying out their duties and obligations as government officials. Legal aid has an important position in every criminal justice system and helps to achieve a "fair legal process". Law Number 20 of 2023 concerning State Civil Apparatus article 21 paragraph (2) letter (g) states that "State Civil Apparatus are entitled to obtain "legal aid". The provision of legal aid as part of access to justice for the community is elaborated in article 28D paragraph (1) of the 1945 Constitution which states that "everyone has the right to recognition, guarantees, protection and certainty of a just law and equal treatment before the law", this is also regulated in Law Number 16 of 2011 concerning Legal Aid in article 3 which states that "the organizer of the legal aid program shall be responsible for the provision of legal aid to the public".*

**Keywords:** legal aid, civil servants, procurement of goods and/or services, justice.





## 1. INTRODUCTION

Law has a relationship with justice so that law must be combined with justice, because the purpose of law is to achieve a sense of justice for society. Without justice, law is just formalized violence. Justice is rooted in the word "adil", while adil in Indonesian is briefly defined as "equal weight", "not one-sided" and "impartial". Justice is the trait (action, treatment, etc.) of being fair. (Yaswirman, 2013). The problem of law and justice is an old but always interesting or actual problem. Although people may criticize law and justice ten or even a hundred times a day, there is no denying that life together requires law and justice (Soejadi, 2017).

Fairness means that decisions and actions are based on objective norms. Because of its abstract nature, justice is often considered to be very relative. Measures of justice are often interpreted differently, each person does not have the same interpretation of justice. Fair according to one, not necessarily fair according to another (Santoso, 2014). In upholding the law, justice is a human struggle that evolves with the rhythm of time and space. That is why justice cannot stand alone. It is determined by the influences surrounding the event that will be given justice (Syarifuddin & Sh, 2020).

Jhon Rawls argues that justice embodies a balance between personal goals and common goals. It is argued that the value of justice is uncompromising. In a just society uncertainty is never permitted except to avoid a greater injustice (Burhanuddin, 2022). Justice and injustice are always voluntary and encompass both attitudes and actions. When people perform actions involuntarily, they cannot be categorized as unfair or just except in some specific ways (Syarifuddin & Sh, 2020). Aristotle in defining justice is strongly influenced by the element of ownership of certain objects. Ideal justice in Aristotle's view is when all elements of society get an equal share of all objects in nature, are seen as equal and have the same rights to ownership of an object (material) (Helmi, 2015). From Aristotle's review, it is stated that justice is divided into two things, namely:

1. Corrective justice provides a view that justice is reviewed based on technical principles that provide arrangements for the administration of law in order to provide protection for all consequences of human actions regardless of the background of the person concerned;
2. Distributive justice, justice that applies in the realm of public law, which focuses on the distribution of wealth and other goods obtained by the community (Endratno, 2022).





That means Justice provides confirmation of the scheme of forming a good relationship between legal subjects and one another and must be in the middle, impartial and create balance. Bismar Siregar is a former Supreme Court Justice once stated "if to uphold justice must sacrifice legal certainty, then I will sacrifice the law. the law is only a means, while the purpose of the law is justice, why is the goal sacrificed just because to realize a means, while the purpose of the law is not achieved." (Darmodiharjo, 1995). Hans Kelsen argues that justice is a certain social order under whose protection the search for truth can flourish and flourish. Because justice according to him is justice of freedom, justice of peace, justice of democracy - justice of tolerance (Satjipto Rahardjo., 2017).

Burhanuddin explained that transformative justice is more comprehensive and towards all aspects because its application is not only about providing peace between the perpetrator and the victim of a crime by providing restitution or compensation to the victim alone, but from the beginning before the crime was committed by the perpetrator, namely looking for the root of the problem and after finding a solution, then as far as possible regulations will be formed so that in the future similar problems do not occur again (Burhanuddin, 2022).

Legal needs that develop into the need to access justice with the availability of legal services or legal aid. in the context of legal aid, there are at least four concepts regarding legal aid, namely: traditional-conventional legal aid concepts, constitutional concepts, structural concepts and responsive concepts. Meanwhile, in relation to access to justice, the concept of legal aid needs to follow five stages towards justice consisting of: naming, blaming, claiming, accessing a forum and handling. Of the four concepts of legal aid, the concept of structural legal aid is in line with efforts to understand and resolve the structural roots of problems as well as the overall stages of justice, especially regarding the approach to the problem (Purwanto, Arabiyah, & Wagner, 2023).

Legal aid as a subsystem of the criminal justice system can play an important role in defending and protecting the rights of suspects and a due process of law is needed through a national criminal procedure law that is more humane and more concerned with the rights of suspects. Due process of law must be interpreted as the protection of the freedom of a citizen who is made a suspect and defendant, where his legal status changes when he is arrested or detained, but his rights as a citizen are not lost. The right to be heard, to be accompanied by an advocate (legal counsel), the right to submit a defense, the right to collect evidence and meet witnesses, to be tried by a fair, honest and impartial court, and to be proven guilty through the court are rights that must be respected (Winarta, 1998). According





to Soerjono, legal aid is assistance provided by experts in the field of law to the public to obtain reasonable legal protection in order to uphold and fight for their rights (Widyadharma, 2010). The provision of legal aid is an important element in the justice system in Indonesia because the right to assistance is a means to find truth and justice guaranteed by the state, in the form of assistance services to provide legal protection and advocacy for the human rights of suspects or defendants. It does not mean justifying the guilt of the suspect or defendant but upholding his or her human rights so as not to be treated arbitrarily and avoiding unfair and disgraceful treatment from law enforcement officials.

In the convention of civil and political rights of 1966 article 14 paragraph (3) letter D mentioned that the obligation of legal aid by the state which states "in determining the criminal offense charged against him, everyone is entitled to guarantees - guarantees: in full equality to defend himself in person or through a defender of his own choosing, to be informed of this right if he does not have a differentiator to obtain legal assistance for the sake of justice". (Angga & Arifin, 2019). Based on article 2 of Law of the Republic of Indonesia Number 16 of 2011 concerning legal aid, the implementation of legal aid is based on the principles of justice, equality before the law, openness, efficiency, effectiveness, and accountability, so the implementation of legal aid must be in accordance with legal aid standards according to these principles. The provision of legal aid provided to legal aid recipients is an effort to realize constitutional rights and at the same time as the implementation of the rule of law to protect and guarantee citizens' rights to access to justice and equality before the law.

In corruption cases, in general, people are of the view that there are no decisions other than the maximum criminal penalty, so that every decision handed down by the court is always considered unfair and injures people's sense of justice. Regarding the examination of corruption cases, judges in their decisions are expected to be able to fulfill the values of the objectives of the law itself, such as justice, legal certainty and expediency. Especially applied in *In Concreto* cases where each party demands to get a portion of justice and benefits and on the other hand there are those who demand that legal certainty must take precedence (Sutrisno, Puluhulawa, & Tijow, 2020). Talking about the crime of corruption, corruption is literally defined as ugliness, rottenness, or dishonesty. In Black's Law Dictionary corruption is defined as "an act with the intent to obtain a benefit that is contrary to the rights and obligations of others. An official who commits unlawful acts and abuse of authority to obtain benefits for himself or others, contrary to the rights and obligations of others." (Amiruddin Amiruddin, 2012). Marwan Effendi stated "corruption in Indonesia





seems inexhaustible, the more it is prosecuted the more widespread it is, even its development continues to increase from year to year, both in the number of cases, the amount of state losses and their quality. Its scope has also touched all aspects of people's lives and across national borders. Based on this right, corruption is nationally agreed not only as an "extraordinary crime" but also as a transnational crime (Munawar & Effendy, 2016).

There are two (two) articles in the crime of corruption that catch those who commit corruption, namely: "Everyone who unlawfully commits an act of enriching himself or herself or another person or a corporation that may harm the state finances or the state economy shall be punished with a minimum sentence of 4 years," reads Article 2 of Article 2 paragraph (1) jo. Article 18 paragraph 1 letters a and b of Law of the Republic of Indonesia Number 31 of 1999 concerning Eradication of the Crime of Corruption as amended and supplemented by Law of the Republic of Indonesia Number 20 of 2001 concerning Amendments to Law of the Republic of Indonesia Number 31 of 1999 concerning Eradication of the Crime of Corruption. According to Law of the Republic of Indonesia Number 20 of 2001 on the Amendment to Law of the Republic of Indonesia Number 31 of 1999 on the Eradication of the Crime of Corruption, as amended and supplemented by Law of Article 18 paragraph 1 letters a and b of that law, "every other person or a corporation, abusing the authority, opportunity, or means available to him because of his position or because of the state economy shall be sentenced to life imprisonment, or imprisonment for a minimum of 1 (one) year and a maximum of 20 (twenty) years and/or a fine of at least Rp. 50,000,000 (fifty million)".

In the provisions of article 2, the core part of the offense is:

- 1) Acts that are unlawful, against the law, in violation of others' rights, or devoid of rights (Hamzah, 2005);
- 2) Enhancing oneself, others, or a company requires that riches be acquired or added, or that the use of cash be clearly and convincingly demonstrated;
- 3) can negatively impact state finances or the state economy, i.e., illegal activities have a genuine and certain negative impact on state finances.

Likewise, with the provisions of article 3, the core part of the offense is:

- 1) can negatively impact state finances or the state economy, i.e., illegal activities have a genuine and certain negative impact on state finances, who by using the opportunity or





authority or power given to him by an official directly or indirectly abuses his position and position to bring benefit or material for him (Asikin Zainal Amiruddin, 2004).

From the explanation of the 2 (two) articles, it is article 3 that has a close relationship with civil servants because the legal subject (person) who holds a position or office in the state's administration indicates that those who commit acts of corruption are public officials involved in the purchase of goods and/or services and who are implicated in cases of corruption covered by article 3 paragraph (1) jo. As amended by Law of the Republic of Indonesia Number 20 of 2001 concerning Amendments to Law of the Republic of Indonesia Number 31 of 1999 concerning Eradication of Corruption, Article 18 paragraph 1 letters a and b of that law refers to the eradication of corruption. Any official with a tie to the state through public service is considered a public servant. government workers and civil personnel with employment agreements that are chosen by the. as mentioned in Law Number 20 of 2023's Article 21 respecting the State Civil Apparatus, paragraphs (2) and (9). Civil officials are crucial to the distribution, creation, and implementation of the procurement process when it comes to products and/or services. Generally speaking, the stages at which the purchase of goods and services is implemented can be used to categorize the process. The phases of procurement activities for goods and services are divided into four (four) stages, including:

1. Preparation stage. At this stage the activities include:
  - a) Procurement Planning;
  - b) Establishment of the Procurement Committee for Goods and Services;
  - c) Designation of Goods and Services Preparation System;
  - d) Preparation of procurement schedules for goods and services;
  - e) Self-Estimated Price Preparation (HPS);
  - f) Preparation of Procurement Documents for goods and services.
2. Stage of the procurement process. At this stage activities include:
  - a) Selection of providers of goods and services;
  - b) Determination of providers of goods and services;
3. Stages of contract drafting.
4. Stages of contract execution (Asikin Zainal Amiruddin, 2004).

The principles of efficiency and effectiveness, fair competition, openness or transparency, non-discrimination, and accountability are the foundation upon which the





purchase of goods and services must be conducted. These standards are followed both domestically and internationally (Mudrajat Kuncoro, 2005).

When purchasing products or services from the government, criminal offenses may arise as a result of the actions or circumstances that set off the criminal offense, namely by: bribery, combining work, splitting work, direct appointment, arranging / engineering the auction / tender process, falsifying company documents, inflating prices (mark-ups), subcontracting the entire work, making specifications that lead to certain partners, making tender conditions to limit bidders, reducing the quantity of goods and / or services, reducing the quality of goods and / or services, fictitious procurement, misdesigning contracts, contracts without available budgets, waste of regional / state finances, determining the applicable self-estimated price (HPS). When civil servants experience legal problems while carrying out state duties, especially in the procurement of goods and / or services, the state should be present to defend by considering the principle of presumption of innocence. Legal aid is given in accordance with the demands of civil servants who require it because of their engagement in legal problems. civil servants are entitled to fair trial rights from the start of the handling or examination process by the police on charges against the suspect until a final court decision is issued.

## 2. LITERATURE REVIEW

The relationship between justice and law, as well as its ramifications for government officials' purchase of goods and services, are demonstrated in the literature review that follows:

### 2.1 The Relationship Between Law and Justice

(Yaswirman, 2013) emphasizes that law must be closely linked to justice, because the main purpose of law is to achieve justice for society. Without justice, law only becomes a formalized form of violence. (Santoso, 2014) highlights the relative nature of the concept of justice, where views of justice can vary between individuals. (Syarifuddin & Sh, 2020) illustrates that justice in upholding the law is a process that evolves according to the times and the situation around it.

### 2.2 Views of figures and theories on justice

Rawls (Burhanuddin, 2022) states that justice is the balance between personal and collective goals, which should not be compromised.





Aristoteles (Helmi, 2015) mentions two aspects of justice: corrective justice which is concerned with protecting the consequences of human actions, and distributive justice which focuses on the distribution of wealth and goods in society.

### 2.3 The Role of Legal Aid in Realizing Justice

(Purwanto et al., 2023) underscored the importance of legal aid in addressing structural root causes and facilitating the process towards justice. (Winarta, 1998) emphasizes the need for due process of law in safeguarding citizens' rights, including in the context of legal aid.

Law No. 16/2011 on legal aid (Angga & Arifin, 2019) emphasizes that the implementation of legal aid must be based on the principles of justice, equality before the law, and effectiveness.

### 2.4 Corruption in Goods and Services Procurement and its Implications

(Asikin Zainal Amiruddin, 2004) provides a definition of corruption and highlights the acts that characterize corruption in the procurement of goods and services.

Civil servants have an important role in the procurement of goods and services, but are sometimes involved in corruption that harms the state. (Asikin & Zainal, 2004).

### 2.5 Protection of Rights and Principles in Handling Corruption Cases

Efforts to handle corruption cases must pay attention to the rights of suspects, including the right to a fair trial and the principle of presumption of innocence (Sutrisno et al., 2020). Law enforcement in corruption cases must follow the principles of transparency, efficiency, and effectiveness in the procurement process. (Mudrajad Kuncoro, 2016).

From this literature review, it appears that the relationship between law and justice plays an important role in law enforcement, including in the context of public procurement by civil servants. Protection of rights, enforcement of legal principles, and prevention of corruption are important focuses in realizing justice in the legal system.

## 3. RESEARCH METHOD

This kind of research uses conceptual and statutory approach methodologies in the legal domain. acquiring legal information from publications such as legal dictionaries, dissertations with real legal concerns, legal magazines, and textbooks.







Researching libraries is one method used to gather legal materials. Following the collection of legal resources through library research, inductive reasoning logic is used to support the qualitative analysis techniques.

#### 4. RESULT AND DISCUSSION

Legal needs that have evolved into the need to access justice have been linked to the availability of legal services (Paterson, 2011). Legal aid according to article 4 of Law Number 16 of 2011 concerning legal aid includes:

1. Purchase of legal aid to legal aid recipients facing legal problems;
2. Providing legal assistance to legal aid recipients who face legal problems covering civil law, criminal law, and state administrative law both litigation and nonlitigation;
3. Providing legal assistance includes exercising power of attorney, accompanying, representing, defending, and/or taking other legal actions for the legal interests of legal aid recipients.

Giving legal aid is fundamentally a program that aims to transform the social order that does not belong to become a social order that benefits the majority. It is both a cultural and structural activity. It is an endeavor to release individuals from the constraints of repressive social, political, and economic systems. The conceptualization of legal aid does not avoid the goal of reorganizing societies suffering from severe structural inequalities by creating resources and redistributing power to force participation from below. The key is to remember that those who need legal aid who are marginalized must be restored to their basic rights to be protected. From this discussion, the researcher concludes that with the existence of legal aid to assist civil servants as actors in the procurement of goods and / or services, their rights are not lost and there is no manipulation of cases or actions that incriminate suspects or defendants so that justice can be carried out and impartial. The law must be applied fairly and proportionally according to the level of guilt and do not let innocent people be punished or give punishment beyond their guilt. Efforts to provide access to the law as a consideration of the legal aid law create legal aid formalities to access justice.

Gaps appear in the legal aid law where the lack of development of the concept of establishing a legal aid institution that is based on services to alleviate the roots of inequality such as structural problems, as well as Law Number 20 of 2023 concerning civil state apparatus Article 21 paragraph (2) letter (g) confirms that state civil apparatus employees are entitled to "legal aid" without further explanation of the legal aid. Legal reform programs accompanied by the discourse of good governance and access to justice immediately seem





good because both are equipped with the concepts of good and justice. The Indonesian state on the basis of the constitutional mandate should no longer act as a facilitator but must increase its role to become an initiator of the need for legal services for every citizen including civil servants where the state forms a clear and definite forum in the form of legal aid so that the optimization of access to justice for Indonesian citizens can be carried out properly. The implementation and realization of the concept of legal aid for civil servants related to corruption in the procurement of goods and / or services is not an empty idea, because it rests and rests on constitutional orders. In addition to Indonesia being a state of law, the constitution also explicitly orders the state to guarantee and be responsible for the right to legal needs for every Indonesian citizen. Not all legal aid provided to civil servants is implemented optimally because the KORPS of civil servants has not been implemented properly and the lack of information on legal aid institutions. The function of the KORPS of civil servants is to provide legal protection and advocacy to members of the ASN corps who experience legal problems in carrying out their duties. To facilitate the implementation of legal assistance, it is imperative to create it firmly in compliance with relevant laws derived from the legislative provisions. In order to realize a sense of justice and uphold civil servants' rights, the government implements policies with the intention of guaranteeing legal protection for civil servants. This includes, but is not limited to, offering legal assistance in relation to criminal acts of corruption in the procurement of goods and/or services.

## 5. CONCLUSION

Legal aid is a crucial component of Indonesia's justice system because the state guarantees the right to assistance as a means of obtaining the truth and justice. This assistance takes the form of advocacy for suspects' or defendants' human rights and legal protection. This does not mean justifying the wrongdoing of the suspect or defendant but upholding his or her human rights so as not to be treated arbitrarily and to avoid unfair and disgraceful treatment from law enforcement officials. Legal aid as a subsystem of the criminal justice system can play an important role in defending and protecting the rights of suspects and a due process of law is needed through a national criminal procedure law that is more humane and more concerned with the rights of suspects. Legal reform programs accompanied by the discourse of good governance and access to justice immediately seem good because both are equipped with the concepts of good and justice. The Indonesian state on the basis of the constitutional mandate should no longer act as a facilitator but must become an initiator of the need for legal services for every citizen including civil servants





where the state forms a clear and definite forum in the form of legal aid so that the optimization of access to justice for Indonesian citizens can be carried out properly. Implementation and realization of the concept of legal aid for civil servants.

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