



LEGAL AID AND THE WELFARE OF CONVICTED PERSONS WITHIN THE INDONESIAN CRIMINAL JUSTICE SYSTEM



Fransiskus Rahmad Zai¹ , Elizabeth Ghozali^{2*}

*Correspondence :

Email : ibethghoz@gmail.com

Affiliation:

¹ Faculty of Law, Universitas
Katolik Santo Thomas,
Medan, Indonesia

² Faculty of Law, Universitas
Katolik Santo Thomas,
Medan, Indonesia

Article History :

Submission : Agustus 5, 2026

Revised : Agustus 19, 2026

Accepted : Agustus 20, 2026

Published : Oktober 1, 2026

Keywords : Legal Aid,
Integrated Criminal Justice
System, Convicted Persons,
Post-Conviction Rights,
Normative Desynchronization

Abstract

Article 1 paragraph (3) of the 1945 Constitution affirms Indonesia as a state based on the rule of law obliged to guarantee equality before the law, yet within the Integrated Criminal Justice System the guarantee of legal aid loses coherence once proceedings enter the post-conviction phase. This study examines the normative position of legal aid for suspects, defendants, and convicted persons within that system and identifies the regulatory gap responsible for its post-conviction collapse. It applies a normative juridical method with statutory and conceptual approaches, analysing primary legal materials from the Constitution through the Judicial Power Law, the 2025 Criminal Procedure Code, the Legal Aid Law, and the Corrections Law, read through substantive justice theory, the due process and crime control models, and the doctrine of civil death. The findings demonstrate a disharmony of rules (*disynchronization*) across four dimensions: legal subject, temporal scope, institutional and financial responsibility, and remedial mechanism, which cumulatively generate an operational legal vacuum for indigent convicts. Because legal aid regulation in Indonesia remains strongly pre-conviction centric, convicted persons undergo a form of legal de-subjection and lose effective access to assistance in pursuing case review, clemency, and conditional rights such as remission and parole. The study concludes that closing this gap requires a temporally, not merely institutionally, conceived integration of the criminal justice system, and proposes a six-step normative reconstruction beginning with the regulatory measures least dependent on new financing. Its contribution is a four-part typology of disynchronization applicable beyond the Indonesian context.

Abstrak

Pasal 1 ayat (3) UUD 1945 menegaskan Indonesia sebagai negara hukum yang wajib menjamin persamaan di hadapan hukum, namun dalam Sistem Peradilan Pidana Terpadu jaminan bantuan hukum kehilangan koherensi begitu proses memasuki tahap pascapemidanaan. Penelitian ini menguraikan kedudukan normatif bantuan hukum bagi tersangka, terdakwa, dan terpidana dalam sistem tersebut serta mengidentifikasi kesenjangan regulasi yang menyebabkan keruntuhannya pada tahap pascapemidanaan. Penelitian menggunakan metode yuridis normatif dengan pendekatan perundang-undangan dan konseptual, menganalisis bahan hukum primer mulai dari UUD 1945, Undang-Undang Kekuasaan Kehakiman, Kitab Undang-Undang Hukum Acara Pidana 2025, Undang-Undang Bantuan Hukum, hingga Undang-



Undang Pemasarakatan, yang dibaca melalui teori keadilan substantif, model due process dan crime control, serta doktrin civil death. Temuan penelitian menunjukkan disharmoni norma (disinkronisasi) pada empat dimensi: subjek hukum, cakupan temporal, tanggung jawab kelembagaan dan pembiayaan, serta mekanisme pemulihan, yang secara kumulatif melahirkan kekosongan hukum operasional bagi terpidana tidak mampu. Karena regulasi bantuan hukum di Indonesia masih sangat berorientasi pada tahap prapemidanaan, terpidana mengalami de-subjektifikasi hukum dan kehilangan akses efektif terhadap bantuan dalam mengajukan peninjauan kembali, grasi, serta hak bersyarat seperti remisi dan pembebasan bersyarat. Penelitian menyimpulkan bahwa penutupan kesenjangan tersebut memerlukan integrasi sistem peradilan pidana yang dipahami secara temporal, bukan sekadar kelembagaan, dan mengusulkan rekonstruksi normatif enam langkah yang dimulai dari langkah regulatif yang paling tidak bergantung pada pembiayaan baru. Kontribusinya berupa tipologi disinkronisasi empat bagian yang dapat diterapkan melampaui konteks Indonesia.

INTRODUCTION

Article 1 paragraph (3) of the 1945 Constitution (UUD 1945) expressly declares that Indonesia is a state based on the rule of law (*rechtsstaat*). The concept of the rule-of-law state places the state and the individual in an equal position, in which the power of the ruler is strictly constrained by human rights (Winarta, 2000). According to the theory advanced by Julius Stahl, the crucial elements of a *rechtsstaat* comprise four principal pillars, namely the protection of human rights, the separation or division of powers, the administration of government based on regulation, and the existence of an administrative court (Asshiddiqie, n.d.). As a logical consequence of its status as a rule-of-law state, Indonesia bears a constitutional responsibility to protect all of its citizens, a mandate enshrined in the fourth paragraph of the Preamble to the 1945 Constitution. That commitment is operationalized through the articles of the constitution and through the organic statutes beneath it, and one of its most direct manifestations is the state's guarantee that every individual may obtain access to legal aid when confronted with judicial proceedings (Sihombing et al., 2024). Nowhere is this guarantee more consequential than in the criminal process, where the coercive power of the state over an individual's liberty is at its most intense, and where the absence of competent assistance carries the gravest cost.

A substantial body of Indonesian scholarship has examined legal aid as an instrument of the principle of equality before the law under Article 27 paragraph (1) of the 1945 Constitution, reinforced by Article 4 paragraph (1) of Law Number 48 of 2009 on Judicial Power, and as a concrete expression of the state's constitutional responsibility for the indigent under Article 34 (Winarta, 2000; Arliman S et al., 2022).

Within criminal law enforcement specifically, legal aid has been studied chiefly as a component of the integrated criminal justice system spanning investigation by the Police, prosecution by the Public Prosecution Service, examination at trial, and representation by advocates, each governed by its own sectoral statute and reinforced by Law No. 16 of 2011 on Legal Aid (Tri Utami et al., 2024). What this literature has not yet done, however, is follow the right to legal aid across the boundary that matters most for an indigent defendant: the moment a judgment acquires permanent legal force (*inkracht van gewijsde*) and responsibility shifts to the correctional institution under Law No. 22 of 2022 on Corrections. Existing studies evaluate legal aid delivery either within the pre-conviction litigation process or within the general architecture of correctional rights, but rarely trace the same right across that transition, leaving the post-conviction period comparatively under-examined despite the severity of state power exercised within it.

This gap matters because legal dogmatics already reveals a persisting disharmony of rules between the sectoral statutes governing legal aid and the Criminal Procedure Code (KUHP) with respect to the position of legal aid institutions, which have not been fully and rigidly integrated as an equal principal pillar within the integrated criminal justice system (Wesnawa & Swardhana, 2024). Prior evaluations of Indonesian legal aid, including comparative work against Malaysia's system, have tended to assess service quality and coverage within the existing pre-conviction-centric frame, which risks measuring the system against its own limited ambition rather than against the full temporal span of a person's exposure to state punitive power (Tri Utami et al., 2025; Maala, 2021). By positioning the analysis explicitly at the pre-conviction/post-conviction boundary, and by asking what happens to the right to legal aid once a person's legal status changes to that of a convict, this study is able to identify a disintegration of norms that gives rise to legal loopholes and obstacles in fulfilling the rights of suspects, defendants, and convicted persons at every level of adjudication - a boundary problem the existing literature has approached only indirectly.

Against this background, the present study asks three questions. First, what is the normative position of legal aid for suspects, defendants, and convicted persons within the regulatory architecture of Indonesia's integrated criminal justice system, read across the Judicial Power Law, the Criminal Procedure Code, the Legal Aid Law, and the Corrections Law? Second, does that architecture sustain the guarantee of legal aid across the transition from pre-conviction to post-conviction status, and if not, what form does the resulting desynchronization take? Third, what normative reconstruction would be required to establish legal aid as a continuous guarantee spanning the entirety of a person's exposure to the state's punitive power, rather than a benefit

confined to the pre-conviction phase? The article argues that Indonesian law does not suffer from an absolute legal vacuum in this area, since the right to legal aid is repeatedly affirmed at the constitutional and statutory level, but from an operational legal vacuum produced by four distinct and mutually reinforcing forms of disynchronization - of legal subject, of temporal scope, of institutional and financial responsibility, and of remedial mechanism - that together strip the right of practical content once a person becomes a convicted inmate.

METHODS

This study is conducted using a normative juridical research method (doctrinal legal research), proceeding from the normative problem of disynchronization identified above. The research focuses on three tasks: an inventory of the legal norms governing legal aid across the pre-conviction and post-conviction phases; a vertical and horizontal synchronization analysis of the statutory and constitutional instruments in which those norms are found; and an examination of the legal principles and doctrinal concepts - equality before the law, substantive justice, access to justice, and civil death - that inform how the resulting gaps should be evaluated and addressed.

The primary legal materials examined comprise the 1945 Constitution, Law Number 48 of 2009 on Judicial Power, Law Number 20 of 2025 on the Criminal Procedure Code, Law Number 18 of 2003 on Advocates, Law Number 16 of 2011 on Legal Aid, Law Number 22 of 2022 on Corrections, and Government Regulation Number 99 of 2012 on the requirements for exercising the rights of correctional inmates, together with their principal implementing regulations. These instruments were selected because each governs a distinct link in the chain of state authority over a person moving from suspect to convict, and their joint reading is what the vertical and horizontal synchronization analysis depends upon. Secondary legal materials comprise peer-reviewed journal articles, books, and research reports addressing legal aid, access to justice, and correctional law, retrieved through a structured search of Indonesian and international legal databases (Google Scholar, Scopus-indexed law and social-science journals, and SINTA-accredited Indonesian journals) using the search terms "legal aid", "bantuan hukum", "integrated criminal justice system", "post-conviction", and "corrections law", restricted to publications from 2000 to 2026 and prioritising sources published from 2018 onward to capture the regulatory developments introduced by the 2022 Corrections Law and the 2025 Criminal Procedure Code.

The study applies a statute approach (*pendekatan perundang-undangan*), examining the coherence of these instruments both vertically, across the hierarchy of

norms from the Constitution down to implementing regulations, and horizontally, across statutes of equal rank governing different actors in the criminal justice chain, and a conceptual approach (*pendekatan konseptual*), applying the doctrines of substantive justice (Radbruch's *Spannungsverhältnis*), the due process and crime control models (Packer, 1964), and civil death (Chin, 2012) as the analytical lenses through which the synchronization findings are interpreted. Legal materials were analyzed qualitatively and descriptively: each instrument was coded for the legal subject it addresses, the phase of the criminal process to which it applies, the institution responsible for implementation, and the remedial mechanism it provides, if any, generating the four-part disynchronization typology developed below. This coding frame is offered as the basis on which the same corpus, or an updated one incorporating subsequent implementing regulations, could be re-examined by another researcher.

RESULT AND DISCUSSION

RESULT

The Doctrinal and Philosophical Foundations of Legal Aid

Doctrinally, legal aid is not merely an ordinary instrument of public service. It constitutes a tangible manifestation of the principle of access to justice inherent in the pillar of the rule-of-law state (*rechtsstaat*). Over time, the meaning of legal aid has broadened. It no longer denotes only the provision of formal defense in the courtroom (legal representation), but has been transformed into an emancipatory instrument for the protection of human rights (Nashriana et al., 2023).

As a constitutional right, legal aid guarantees the equality of every individual before the law. The principle of equality before the law is applied in providing legal aid to those who lack the means, because Article 34 paragraph (1) of the 1945 Constitution constitutionally provides that the indigent and neglected children are cared for by the state. Through the implementation of the concept of *pro bono publico*, that is, legal services rendered in the public interest free of charge, the state intervenes in socio-economic inequality within society. Such intervention is crucial to ensure that an individual's procedural rights are not diminished in the course of judicial proceedings (Vanhala & Kinghan, 2022). In the framework of criminal law in particular, legal aid functions as a counterweight to state power as exercised by law enforcement officials, so that the potential for arbitrariness (abuse of power) may be eliminated (Ritonga & Alfiansyah, 2026).

In practical terms, legal aid is defined as free legal services rendered by practitioners or legal experts to the public, particularly to disadvantaged groups

facing legal problems (Maala, 2021). Legal scholars share a similar view of the essence of such assistance: Darwan Prinst emphasizes that the principal objective of legal aid is to facilitate the resolution of a case (Prints, 2002). In the same vein, Adnan Buyung Nasution holds that legal aid focuses on serving litigants in order to protect the rights of the poor for the sake of upholding justice (Nasution et al., 2007).

This expansion in the meaning of legal aid cannot be separated from the paradigm shift in justice within contemporary legal scholarship. Within the framework of substantive justice theory, law cannot be measured solely by the fulfillment of formal procedure (formal legality); it must instead be assessed by the extent to which it is capable of delivering just outcomes for those in the weakest position. Through his doctrine of *Spannungsverhaeltnis*, Gustav Radbruch places justice as the highest value that must prevail whenever it collides with legal certainty and expediency. Applied to the question of legal aid, restricting access to legal assistance purely on procedural or administrative grounds constitutes a sacrifice of justice for the sake of certainty that cannot be justified philosophically. Consequently, the state may not stop at providing norms that formally guarantee rights, but is obliged to ensure that such guarantees can be genuinely exercised by the most vulnerable rights-holders (Sihombing et al., 2024).

Historically, the modern legal aid movement developed through what are known as the waves of access to justice. The first wave concentrated on providing legal counsel for those unable to pay for the services of an advocate. The second wave broadened the focus to the protection of collective and diffuse interests, while the third wave emphasized the simplification of dispute resolution mechanisms and the legal empowerment of communities (Golub, 2003). Normatively, Indonesia has entered the second and third phases through the regulation of non-litigation legal aid under Law No. 16 of 2011; in the field of criminal law, however, its implementation remains trapped in the logic of the first wave, which is casuistic and courtroom-oriented. As a result, legal aid has yet to function as an instrument of structural legal empowerment capable of transforming the asymmetrical power relations between the state and impoverished citizens (Ningtyas et al., 2023).

An equally significant doctrinal debate concerns the tension between the charity-based paradigm and the rights-based paradigm in the delivery of legal aid. The charity-based paradigm positions legal aid as an act of state compassion or of professional generosity on the part of advocates, so that its fulfillment depends on the availability of resources and the voluntariness of the provider. The rights-based paradigm, by contrast, treats legal aid as a state obligation whose fulfillment citizens are entitled to demand. Frans Hendra Winarta firmly rejects the charity-based

paradigm, asserting that legal aid is a human right and not an act of charity (Winarta, 2000). The fundamental problem in Indonesian criminal law practice is that, although the regulations have textually adopted the rights-based paradigm, the institutional design and financing scheme continue to operate on charity-based logic, particularly at those phases not directly connected with trial proceedings.

In the criminal law context, legal aid also serves to safeguard the integrity of the judicial process itself. A criminal justice model that prioritizes crime control tends to tolerate repressive efficiency even at the risk of erroneous punishment, whereas the due process model treats layered verification and legal assistance as mechanisms of quality control over judicial decisions (Packer, 1964). The absence of competent legal assistance increases the probability of wrongful conviction, which directly diminishes the legitimacy of court judgments. Legal aid therefore protects not only the interests of the individual suspect or convicted person, but also the public interest in the accuracy and reliability of the criminal justice system as a whole (Widyawati et al., 2022). The logical consequence of the doctrinal framework set out above is that the guarantee of legal aid cannot be temporally confined to any single phase of the criminal process. For as long as a person remains within the state's punitive power, that person is entitled to legal assistance. Restricting this right to the pre-conviction phase rests on a flawed normative logic, since it is precisely in the post-conviction phase that state power over the convicted person reaches its most absolute point while the convict's capacity to defend their rights is at its weakest. It is this extreme asymmetry of power that should doctrinally constitute the strongest justification for the presence of legal aid, rather than a ground for its exclusion (Kumar et al., 2022).

The Regulatory Framework of Legal Aid in Indonesia

Normatively, the regulation of legal aid in Indonesia is dispersed across various sectoral instruments that, both horizontally and vertically, display overlap (disynchronization). The normative position of legal aid is rooted in the following provisions: Article 27 paragraph (1) and Article 34 of the 1945 Constitution serve as the philosophical and constitutional foundation, establishing the principle of equality before the law while simultaneously imposing upon the state the responsibility to protect indigent citizens. The Judicial Power Law provides the operational basis for the administration of justice: Article 4 paragraph (1) directs that courts must adjudicate according to law without discriminating between persons. This provision is concretely reinforced by Article 56 paragraph (1), which in substance provides that every person involved in a case is entitled to obtain legal aid. Article 56 paragraph (2) further confers a juridical mandate upon the state to bear the cost of legal aid for justice seekers who lack the means.

Law Number 20 of 2025 on the Criminal Procedure Code sets out provisions on legal aid comprehensively in Chapter VIII (Articles 149 to 155) on Advocates and Legal Aid. One crucial point appears in Article 1 number 25 of the new Criminal Procedure Code, which broadens the operational definition of legal aid as free legal services rendered by advocates or legal aid institutions (LBH) not only to indigent suspects and defendants, but also to complainants, reporting parties, witnesses, and victims. Law Number 18 of 2003 on Advocates and Law Number 16 of 2011 on Legal Aid constitute the organic sectoral basis governing pro bono obligations and the establishment of a budgeting system for accredited legal aid institutions (Ningtyas et al., 2023). Law Number 22 of 2022 on Corrections constitutes the legal regime governing the execution of criminal sentences and regulates the rights of correctional inmates, including the right to obtain legal aid; it does not, however, refer explicitly to the financing scheme and institutional mechanisms established under the Legal Aid Law, thereby leaving a declaratory norm without operational instruments.

When the regulatory configuration above is analyzed vertically, the right to legal aid appears to rest on a firm and consistent constitutional foundation. Article 27 paragraph (1) and Article 34 of the 1945 Constitution give rise to an imperative state obligation, which is then elaborated in tiered fashion through the Judicial Power Law, the Criminal Procedure Code, the Advocates Law, and the Legal Aid Law. That vertical consistency, however, loses its normative force as the hierarchy of norms descends. At the statutory level, legal aid remains formulated as a right the state is obliged to fulfill. At the level of implementing regulations, the right is transformed into a program bounded by budget ceilings, case quotas, and specific administrative requirements. It is this normative reduction from right to program that practically limits the scope of fulfillment, since a right contingent upon budgetary availability is, in essence, no longer a right that can be claimed absolutely.

A horizontal analysis of these sectoral regulations reveals a more serious problem, namely the absence of bridging norms between legal regimes. The Judicial Power Law regulates the right to legal aid within the framework of the administration of justice; the Legal Aid Law governs the financing mechanism and the verification of legal aid organizations; the Criminal Procedure Code regulates the procedural rights of suspects and defendants; while the Corrections Law regulates the rights of inmates within the framework of correctional guidance. These four regimes operate with different logics, different nomenclatures for legal subjects, and different implementing agencies, without a single provision expressly linking one regime to another. The absence of bridging norms causes the right to legal aid to fragment along the boundaries of institutional authority rather than following the continuity of the protected subject's legal needs.

This fragmentation is aggravated by differences in the nomenclature designating the beneficiaries of the right. The Criminal Procedure Code employs the terms suspect and defendant and, since the entry into force of Law Number 20 of 2025, has been extended to include complainants, reporting parties, witnesses, and victims. The Legal Aid Law uses the term legal aid recipient, confined to poor individuals or groups. The Corrections Law uses the term correctional inmate. This terminological inconsistency is not merely a matter of drafting; it carries direct juridical consequences, since qualification as a rights-holder determines whether a person may access state-funded legal aid services. A convicted person holding the status of correctional inmate does not automatically qualify as a legal aid recipient within the meaning of the Criminal Procedure Code, leaving room for interpretations detrimental to that group. It should be noted that the broadened definition of legal aid in Article 1 number 25 of Law Number 20 of 2025 represents significant normative progress, since for the first time the scope of legal aid beneficiaries under criminal procedural law has been extended beyond suspects and defendants. That expansion, however, still rests on the same mode of reasoning, namely broadening the range of subjects within the pre-conviction phase without extending the temporal reach into the post-conviction phase. In other words, the legislature has widened the scope horizontally across the parties to litigation, but has not extended it vertically along the trajectory of a person's legal status through to the completion of sentence execution. This advance therefore does not yet address the core problem of desynchronization that forms the focus of this study (Faisal et al., 2024).

From the whole of this analysis of the regulatory framework, it may be concluded that the problem of legal aid in Indonesia is not one of a legal vacuum in the sense of a complete absence of norms (absolute legal vacuum), but rather one of an operational legal vacuum arising from the lack of synchronization among the norms that do exist. The norm guaranteeing the right is in place, yet the norm governing how that right is to be exercised in the post-conviction phase has never been formulated. In legislative studies, such a condition is classified as a failure of normative implementation due to the absence of implementing regulations, the practical effect of which is indistinguishable from the absence of the right itself (Tri Utami et al., 2025).

The Position of Legal Aid within the Integrated Criminal Justice System and the Problem of Post-Conviction Legal Exclusion

Dogmatically, the position of legal aid institutions within Indonesia's Integrated Criminal Justice System has not been established as an equal and autonomous subsystem. Under Article 1 number 1 of Law Number 48 of 2009, judicial power is

defined as the independent power of the state to administer justice in order to uphold law and justice. Theoretically, the conception of an independent and fair trial cannot be realized if the principal countervailing power, namely legal counsel or legal aid organizations, is positioned as inferior to other law enforcement agencies such as the Police and the Public Prosecution Service within the circuit of the Integrated Criminal Justice System. Mardjono Reksodiputro stresses that the integration of the criminal justice system must not be understood merely as administrative synchronization among the law enforcement apparatus of the state (crime control model), but must guarantee balanced mechanisms for protecting the rights of suspects and defendants (due process model) (Reksodiputro, 2020). The absence of formal recognition of legal aid institutions as a core component in the chain of the Integrated Criminal Justice System renders horizontal oversight of potential abuse of power fragile at every level of adjudication (Aldyan & Negi, 2022).

This condition is aggravated by a conflict of norms in the form of a restrictive construction of the phrase "level of adjudication". In practice, the interpretation of the stages of adjudication is frequently narrowed to the formal process of adjudication culminating in the judge's gavel at first instance, on appeal, or in cassation. The implication is that the phase of sentence execution in correctional institutions is classified as falling outside the jurisdiction of the judiciary. This dichotomy generates a horizontal conflict of norms in which the constitutional right mandated by the Judicial Power Law is not operationally accommodated within the regime of Law Number 22 of 2022 on Corrections. Such a rigid separation between the judicial phase and the executorial phase produces a fundamental desynchronization of law. Once the legal focus shifts to corrections legislation, convicted persons gradually undergo legal de-subjectivation; they tend to be treated as objects of bureaucratic state guidance, while the right of access to justice inherent in them as substantive legal subjects is significantly diminished (Gomes, 2019).

The pre-conviction centric character of legal aid regulation in Indonesia leaves a massive legal gap. The right to substantive legal aid mandated by Article 56 of the Judicial Power Law encounters an operational deadlock at the post-conviction stage. The legal aid scheme formulated in Law No. 16 of 2011, together with the codification of criminal procedural law (KUHAP), is dominated almost entirely by assistance at the early litigation stages of investigation, prosecution, and trial. Once a person's legal status changes to that of a convict serving a sentence in a correctional institution, access to legal protection for the poor and other vulnerable groups is effectively severed. This normative gap results in the loss of legal assistance for testing the accuracy of judgments through the extraordinary remedy of case review

(peninjauan kembali), for petitioning for clemency, and for pursuing conditional rights such as remission, assimilation, and parole (Abbott, 2018).

Asserting legal rights at the post-conviction stage demands a high level of legal competence and understanding. From the perspective of Satjipto Rahardjo's sociology of law, complex procedural rules may become a barrier that discriminates against the poor, who are unable to navigate the labyrinth of judicial bureaucracy (Siregar, 2024). In reality, a substantial proportion of indigent convicts can reasonably be expected to lack the intellectual or financial capacity to draft a memorandum for case review or to satisfy rigid administrative requirements unaided, a plausible inference from comparative evidence that legal and administrative complexity systematically disadvantages unrepresented parties regardless of jurisdiction (Vanhala & Kinghan, 2022), although this study's normative-juridical method does not itself generate direct data on the educational or financial profile of the correctional population, a limitation returned to in the conclusion. The absence of any legal guarantee for the establishment of legal aid posts (Posbakum) structurally integrated within correctional institutions causes the substantive rights of inmates to expire mid-course as unenforceable rights (Tri Utami et al., 2025). To date, the state has not formulated any clear scheme for extending the mandate of legal aid organizations (OBH) to provide continuous assistance to inmates isolated within correctional institutions. This failure to widen access to legal aid at the execution phase undermines the ideal of an independent judicial power, whose task is not only to impose punishment but also to safeguard substantive justice for every citizen without exception (Limanté et al., 2022).

Legal exclusion at the post-conviction stage can be explained theoretically through the concept of civil death developed in Anglo-American punishment scholarship, most influentially reformulated by Chin (2012) as a critique of the cumulative collateral consequences that attach to a criminal conviction long after the formal sentence has been served. This concept describes a situation in which a person who has been sentenced gradually loses the legal capacity to act as an equal subject, even though no judgment has ever formally stripped that person of the status of legal subject. In the Indonesian context, such civil death does not occur through the express revocation of rights, but through structural neglect in the form of an absence of means to exercise those rights. Formally, a convicted person retains the right to file for case review; without legal assistance, however, that right carries no practical value whatsoever. This is the most subtle form of rights violation, namely violation through the state's failure to provide the means of fulfillment (violation by omission) (Kumar et al., 2022).

It must be emphasized that the post-conviction phase is by no means free of legal questions. On the contrary, this phase is dense with decisions bearing directly on personal liberty, ranging from the calculation of the term of imprisonment and the determination of the expiry date to the assessment of eligibility for remission, decisions granting assimilation, and the determination of parole. Each of these decisions constitutes an administrative legal act whose validity can in theory be reviewed, yet in practice is almost never reviewed because those with the greatest interest have no access to legal assistance. Consequently, administrative authority within correctional institutions operates without effective juridical oversight, a condition structurally prone to producing deviations (Widyawati et al., 2022). This imbalance becomes even more apparent when compared with the intensity of legal assistance at the pre-conviction stage. At the investigation and trial stages, the state provides a mechanism for the mandatory appointment of legal counsel for offenses carrying certain penalties, allocates a legal aid budget, and attaches the legal consequence of nullity of proceedings where that obligation is breached. At the post-conviction stage, by contrast, there is no equivalent mechanism whatsoever, whether in the form of a duty of appointment, a dedicated budget allocation, or a sanction for failure to comply. Such a stark asymmetry of protection is difficult to justify doctrinally, given that both phases take place within the framework of state punishment and both concern individual liberty (Abbott, 2018).

The Anatomy of Normative Disynchronization in the Criminal Legal Aid System

In legislative studies, legal disynchronization is understood as the misalignment of two or more norms governing the same object, whether in a hierarchical relationship (vertical disynchronization) or between norms of equal rank (horizontal disynchronization). In the matter of criminal legal aid in Indonesia, such disynchronization does not take the form of a frontal contradiction between norms, but rather a disconnection between norms that cumulatively produces a protection gap. Disynchronization of this character is in fact harder to detect and harder to correct, because it cannot be resolved through the classical principles for settling conflicts of norms, such as *lex superior derogat legi inferiori*, *lex specialis derogat legi generali*, or *lex posterior derogat legi priori*. Those three principles presuppose two mutually contradictory norms, whereas what occurs here is two norms that are equally valid yet never meet.

The first form is disynchronization of the legal subject. As already explained, each statutory regime employs a different nomenclature for the subject without any equating clause. Consequently, the shift in a person's legal status from defendant to convict automatically removes that person from the scope of subjects protected by

the criminal procedural regime, without simultaneously bringing them within the scope of subjects operationally protected by the legal aid regime. What emerges may be termed a status gap, namely a condition in which a person no longer meets the qualifications of the former regime but is not yet accommodated within the new one.

The second form is temporal desynchronization, that is, misalignment as to the period during which the guarantee of the right applies. The Judicial Power Law formulates the right to legal aid for every person involved in a case without limiting it to any phase, a formulation that is grammatically broad in reach. Implementing regulations and administrative practice, however, construe that scope narrowly as being confined to the levels of court examination. A narrowing of meaning thus occurs through lower-ranking regulations, a practice that is doctrinally problematic because implementing regulations have no authority to narrow a right conferred by statute.

The third form is institutional and financial desynchronization. State-funded legal aid is delivered through accredited legal aid organizations coordinated by the ministry responsible for legal affairs, whereas physical access to convicted persons lies entirely within the control of correctional technical implementation units. There is no norm imposing an obligation on correctional units to facilitate the presence of legal aid organizations on a scheduled and continuous basis, just as there is no budget line specifically earmarked for legal assistance inside correctional institutions. As a result, post-conviction legal assistance depends entirely on the voluntary initiative of legal aid organizations and the discretionary policy of the heads of technical implementation units.

The fourth form is desynchronization of the mechanism for remedying rights. Where the right to legal aid is violated at the pre-conviction stage, criminal procedural law provides the juridical consequence that the proceedings may be declared invalid. Conversely, where that same right goes unfulfilled at the post-conviction stage, no corrective mechanism is available, whether through the pretrial institution, an administrative lawsuit, or internal correctional oversight. A right without a remedial mechanism is in essence an unenforceable right, so that its presence in legislation is merely symbolic (Tri Utami et al., 2025).

These four forms of desynchronization are mutually reinforcing and form a closed circle. The status gap prevents convicted persons from accessing services; temporal narrowing furnishes a normative justification for refusal; the absence of institutional and budgetary norms removes the means of implementation; and the absence of a remedial mechanism forecloses any possibility of correction. Under such a

configuration, the failure to fulfill the right to post-conviction legal aid is not an incidental failure of implementation, but a predictable consequence of the existing normative design. Partial improvement to any single aspect will therefore be ineffective without a comprehensive reconstruction of all four aspects simultaneously (Wesnawa & Swardhana, 2024).

DISCUSSION

Implications of the Exclusion of Legal Aid for the Substantive Rights of Indigent Convicts

The exclusion of legal aid at the post-conviction stage produces layered implications for the substantive rights of convicted persons. The first and most serious implication concerns the foreclosure of access to the extraordinary remedy of case review. Normatively, case review is the only institution available for correcting a judgment that has acquired permanent legal force where new circumstances are discovered, where judgments conflict with one another, or where a judicial error is established. All three grounds demand a high level of juridical analytical ability, since the petitioner must be able to identify juridical defects in the legal reasoning of the judgment and to set them out in a memorandum satisfying formal requirements. To require a convicted person of limited educational background to draft such a memorandum unaided imposes a burden that is factually impossible to discharge.

The second implication concerns petitions for clemency as a constitutional right of the convicted. Although clemency is a prerogative power of the head of state, a petition nonetheless requires an argumentative construction addressing humanitarian grounds, the state of the petitioner's health, conduct while serving the sentence, and considerations of proportionality in punishment. Without legal assistance, clemency petitions tend to be inadequately prepared, so that the prospect of their being granted becomes very slight. This gives rise to a paradoxical inequality: convicted persons able to pay an advocate stand a far greater chance of obtaining the state's pardon than indigent convicts, even though the humanitarian rationale of the institution of clemency ought to operate irrespective of the petitioner's economic means.

The third implication concerns conditional rights of an administrative character, comprising remission, assimilation, pre-release leave, and parole. These rights are often regarded as technical matters of correctional administration, whereas in essence every decision concerning a conditional right bears directly on the duration of a person's deprivation of liberty. For inmates convicted of corruption, narcotics, terrorism, and related offences, the administrative burden is compounded by the additional-requirements regime introduced by Government Regulation Number 99 of

2012 on the requirements for exercising the rights of correctional inmates, which conditions eligibility for remission and assimilation on a recommendation from the investigating or prosecuting agency and, in practice, on cooperation-with-authorities (justice collaborator) status - requirements that are substantive rather than merely documentary, and that an inmate has essentially no realistic prospect of satisfying without legal assistance capable of engaging the relevant agency directly. For this category of inmate the problem is therefore not administrative failure alone but a compounding of substantive statutory hurdles with the absence of any assistance in navigating them. For inmates outside these categories, the administrative requirements to be met include the completeness of judgment documents, letters from the relevant agencies, guarantees of community acceptance, and, in certain cases, satisfaction of civil payment obligations. Indigent convicts, particularly those without family support outside the institution, very frequently lose their conditional rights not because they fail to meet the substantive requirements, but simply because of administrative failures that could in fact be prevented through straightforward legal assistance.

The fourth implication is structural, namely the weakening of oversight over the administration of corrections. The presence of legal aid organizations inside correctional institutions benefits not only individual convicts but also functions as a natural mechanism of external oversight over penal practice. The absence of independent actors who routinely access correctional institutions for the purpose of legal assistance removes one of the most effective layers of oversight, namely oversight exercised by parties with a direct interest in challenging deviations. Within the framework of correctional governance, the absence of this layer of oversight is plausibly associated with elevated risk of informal levies and discriminatory treatment in the granting of rights, a dynamic documented in comparable correctional settings even where the precise mechanism differs (Gomes, 2019).

The fifth implication concerns the failure to attain the objectives of the correctional system itself. Law Number 22 of 2022 places social reintegration as the principal objective of the correctional system, displacing the retributive paradigm. Social reintegration presupposes that convicted persons leave correctional institutions with heightened legal awareness and an orderly civil status, encompassing clarity of identity documents, settlement of legal obligations, and an understanding of their rights as citizens. Without legal assistance while serving their sentence, convicted persons instead leave with an accumulation of unresolved legal problems, which subsequently becomes a driver of reoffending. The exclusion of post-conviction legal aid thus harms not only convicted persons individually but is also counterproductive to the objectives of the state's penal policy (Widyawati et al., 2022).

A Comparative Perspective: Post-Conviction Legal Aid Practice in Other Jurisdictions

Comparison with other jurisdictions shows that the limited availability of legal aid at the post-conviction stage is not a distinctively Indonesian problem, yet various jurisdictions have developed institutional mechanisms to address it. In the United States legal tradition, the right of prisoners to access the courts is recognized as a constitutional right requiring the state to provide supporting facilities in the form of law libraries, assistance from trained personnel, and facilities for correspondence with courts and legal counsel. Although the scope of the right to state-funded counsel at the post-conviction stage remains limited, the recognition of the state's duty to provide the means of access is a principle conceptually worth adopting, since it shifts the state's obligation from merely refraining from obstruction to an active duty to provide (Alpert, 1976).

Practice within the Council of Europe reflects a more integrated approach. The European Prison Rules expressly recognise a prisoner's right to legal advice and to confidential consultation with a legal adviser as a standard of correctional administration rather than a discretionary privilege (Council of Europe, 2006). England and Wales illustrates both the strength and the fragility of this approach: legal aid for prison-law matters was substantially narrowed by the Legal Aid, Sentencing and Punishment of Offenders Act 2012, only for the Court of Appeal to hold, in *R (Howard League for Penal Reform) v Lord Chancellor* [2017] EWCA Civ 244, that legal aid must be restored for categories of case - including parole board hearings with a real risk of unfairness - where its absence would deprive prisoners of effective access to justice. Under this approach, visits by legal counsel are not treated as incidental activities contingent upon permission, but as scheduled services constituting an obligation of the administering authority, an obligation that in the English case was ultimately vindicated through litigation rather than assumed voluntarily by the correctional authority. Studies on the accessibility of legal aid for vulnerable groups show more generally that the effectiveness of a rights guarantee is largely determined by the existence of active outreach mechanisms, since vulnerable groups generally do not know their rights and will therefore never submit an application on their own initiative (Limanté et al., 2022).

Experience in Southeast Asia likewise offers relevant lessons. A comparative study of Indonesia and Malaysia indicates that differences in the fulfillment of the right to legal aid are determined more by the quality of oversight and service quality assurance mechanisms than by the size of the budget allocation (Tri Utami et al., 2025; Maala, 2021). Institutionally, this difference is traceable in part to structure:

Malaysia's Legal Aid Act 1971 establishes a dedicated Legal Aid Department (Jabatan Bantuan Guaman) staffed by career civil servants with statutory continuity of function, whereas Indonesia's Legal Aid Law delivers services through periodically accredited non-governmental legal aid organisations whose funding and caseload are renewed on a grant cycle. A standing civil-service institution is structurally better positioned to sustain the kind of continuous, unglamorous post-conviction casework - prison visits, case-review memoranda, clemency petitions - that a grant-funded organisation, evaluated primarily on litigation-stage case counts, has little institutional incentive to prioritise. Where the delivery of legal aid is not accompanied by adequate quality standards and oversight, increased funding tends merely to raise the number of recorded cases without improving the quality of assistance actually received by beneficiaries (Tri Utami et al., 2025; Maala, 2021).

Studies of the experiences of prisoners from minority groups and foreign nationals reveal another important dimension, namely that barriers to access to justice within correctional institutions are cumulative. Language barriers, barriers of legal knowledge, financial barriers, and barriers of distance from family compound one another, producing a level of exclusion far higher than the sum of each barrier taken separately. This finding is directly relevant to Indonesia, given that its archipelagic geography and the practice of placing convicts far from their place of origin create a similar pattern of cumulative barriers (Gomes, 2019).

The common thread running through these comparisons is that the effectiveness of post-conviction legal aid guarantees rests on three institutional preconditions. First, a norm expressly obliging correctional authorities to facilitate access to legal assistance, rather than merely refraining from obstructing it. Second, an active outreach mechanism in the form of periodic legal counseling and identification of inmates' legal needs. Third, a financing scheme specifically allocated to post-conviction assistance, separate from the litigation legal aid ceiling. It is precisely these three preconditions that are absent from the Indonesian legal framework and that consequently form the principal agenda for normative reconstruction (Sihombing et al., 2024).

Normative Reconstruction toward Sustainable Legal Aid within the Integrated Criminal Justice System

On the basis of the entire analysis above, the normative reconstruction of the position of legal aid within Indonesia's integrated criminal justice system must be built upon one fundamental premise, namely that the integration of the criminal justice system must be understood temporally and not merely institutionally. Institutional integration demands the synchronization of authority among agencies,

whereas temporal integration demands continuity of rights protection throughout the trajectory of a person's legal status, from designation as a suspect through to the completion of sentence execution and social reintegration. So long as integration is understood in institutional terms alone, the correctional phase will always be treated as territory lying outside the judiciary, and the exclusion of legal aid will continue to recur even as regulations are renewed (Reksodiputro, 2020).

The first step of reconstruction is to settle the interpretation of the phrase "level of adjudication" through an authentic norm. Such clarification may be effected through implementing regulations to the Criminal Procedure Code or through a limited amendment to the Legal Aid Law, expressly formulating that the guarantee of legal aid encompasses all stages of court examination as well as the stage of executing the judgment, including the filing of extraordinary remedies and the fulfillment of conditional rights. An express formulation is necessary because experience has shown that general formulations invite a narrowing of meaning by implementing regulations and administrative practice.

The second step is the creation of bridging norms between the corrections regime and the legal aid regime. Such bridging norms should contain at least four principal elements: an obligation on correctional technical implementation units to facilitate scheduled legal visits and consultations; an obligation to convey information on legal rights to every inmate upon admission and orientation; a referral mechanism from correctional officers to accredited legal aid organizations; and provisions on the confidentiality of communications between inmates and legal aid providers. Without a confidentiality element, legal assistance inside correctional institutions loses its substantive meaning, because inmates will not disclose their problems openly.

The third step is the establishment of legal aid service units structurally attached to correctional institutions, designed institutionally so as to guarantee their independence. Such a unit may be designed as a legal aid post located administratively within the correctional institution yet functionally accountable to an accredited legal aid organization or to the local judiciary. This construction is important in order to avoid conflicts of interest, since a unit placed entirely under the control of the correctional authority would be unable to provide assistance in matters that call the authority's own conduct into question.

The fourth step is reform of the financing scheme. The legal aid budget should be formulated in two separate lines, namely a line for litigation assistance and a line for post-conviction assistance, each with distinct performance indicators. Performance indicators for post-conviction assistance cannot rely on case numbers as in litigation,

but should instead employ indicators such as the coverage of legal counseling, the number of inmates receiving consultations, and the success rate in securing conditional rights and extraordinary remedies. Without separate budget lines and indicators, allocations for post-conviction assistance will always be eroded by litigation needs, which are more readily measured in administrative terms (Tri Utami et al., 2024).

The fifth step is the construction of a mechanism for remedying rights. An institution should be formulated to enable inmates or legal aid providers to challenge correctional administrative decisions detrimental to conditional rights, whether through a tiered internal objection mechanism or through an administrative lawsuit before the administrative court under simplified procedures. A remedial mechanism serves a dual function, operating both as a means of correction in concrete cases and as a structural incentive for the authorities to take decisions more carefully and with proper documentation.

These six steps should not be mistaken for a costless agenda. Each presupposes additional financing, additional institutional capacity within the Ministry of Law and the accredited legal aid organisations it coordinates, and additional absorptive capacity within correctional technical implementation units that are, on the available evidence, already operating under significant resource constraint (Tri Utami et al., 2025). The comparative lesson of the preceding section is instructive here: Malaysia's advantage lies less in the scale of its funding than in the structural continuity of a standing institution, which suggests that the sequencing of reconstruction matters as much as its content. A defensible starting point is not the simultaneous adoption of all six steps but the two that are least costly and most foundational - authentic clarification of "level of adjudication" (step one) and the confidentiality and referral elements of bridging norms (step two) - since both can be achieved through regulatory rather than budgetary means and would, on their own, remove the principal legal obstacles to voluntary provision by existing legal aid organisations while the financing and institutional steps are phased in. Without such sequencing, a reconstruction agenda this comprehensive risks being adopted only symbolically, in the same manner that the right to legal aid itself has so far been adopted symbolically at the post-conviction stage.

Taken together, these reconstruction measures converge on a single normative objective, namely establishing legal aid organizations as an equal and autonomous subsystem within the integrated criminal justice system, with a mandate operating continuously from the investigation phase through to the completion of social reintegration. Such positioning is not merely a matter of institutional arrangement,

but a direct consequence of Indonesia's constitutional commitment as a rule-of-law state guaranteeing equality before the law. So long as legal aid continues to be treated as an accessory whose presence depends on the phase of proceedings and on resource availability, the ideal of substantive justice for indigent convicts will remain confined to the normative plane and will never be realized in actual legal experience (Limanté et al., 2022; Aldyan & Negi, 2022).

The six reconstruction steps elaborated above may be summarized according to the substance of each step, the legal instrument through which it may be effected, and its position in the sequencing logic developed in the preceding section.

Table 1. Normative Reconstruction Agenda for Post-Conviction Legal Aid

Step	Substance of Reconstruction	Legal Instrument	Nature and Sequencing
1	Authentic clarification that "level of adjudication" covers the execution of judgment, extraordinary remedies, and conditional rights	Implementing regulation to the Criminal Procedure Code or limited amendment to the Legal Aid Law	Regulatory; first priority - requires no new budgetary allocation
2	Bridging norms between the corrections and legal aid regimes: scheduled legal visits, rights information at admission, referral, and confidentiality of communication	Government or ministerial regulation harmonizing the Corrections Law and the Legal Aid Law	Regulatory; first priority - confidentiality and referral elements are foundational
3	Legal aid service units attached to correctional institutions but functionally accountable to accredited organizations or the local judiciary	Ministerial regulation together with institutional design safeguarding independence	Institutional; phased - requires added capacity in technical implementation units
4	Separation of the legal aid budget into a litigation line and a post-conviction line, each with distinct performance indicators	Budgeting and planning regulation of the Ministry of Law	Budgetary; phased - indicators based on service coverage rather than case counts
5	Mechanism for remedying rights against correctional administrative decisions detrimental to conditional rights	Tiered internal objection procedure or simplified administrative action before the administrative court	Institutional; phased - operates as both correction and incentive

6	Capacity building and legal empowerment of inmates through periodic counseling, accessible legal materials, and paralegal cadres	Program-level policy of correctional institutions and legal aid organizations	Complementary and continuous - supplements rather than substitutes professional assistance
----------	--	---	--

Table 1 should be read along two axes at once. The vertical axis sets out the substance of each reconstruction step, while the horizontal axis distinguishes the type of legal instrument required and, consequently, the political and budgetary cost of adoption. The distinction matters because the six steps are not equally difficult to enact. Steps one and two can be effected through regulatory instruments already available to the executive, whereas steps three to five presuppose new institutional structures and dedicated appropriations. The comparative-institutional literature explains why this distinction should not be treated as a mere matter of drafting technique: the strength of an institution is determined not by the formal design of its rules but by the degree to which those rules are actually enforced and remain stable over time, so that a norm adopted without enforcement capacity produces the appearance of reform without its substance (Levitsky & Murillo, 2009). Read in that light, Table 1 is not a wish list but a sequencing instrument, consistent with the observation that penal reform in Indonesia has repeatedly foundered less on the absence of norms than on the absence of implementing capacity (Faisal et al., 2024).

The first two rows constitute the regulatory core of the agenda and are analytically prior to the rest. So long as the phrase "level of adjudication" remains open to a narrowing construction, every subsequent step rests on a contestable legal basis, and the exclusion of the correctional phase can be reproduced administratively even where the constitutional guarantee is not formally denied (Wesnawa & Swardhana, 2024). The second row supplies the operational counterpart to that clarification. An obligation to facilitate scheduled legal visits and confidential consultation reflects the standard already articulated in the European Prison Rules, which treat access to a legal adviser as an obligation of correctional administration rather than a discretionary privilege (Council of Europe, 2006). The referral and information elements are equally indispensable, because empirical studies of legal aid accessibility consistently show that vulnerable groups rarely initiate applications on their own initiative and that effective provision therefore depends on active outreach rather than passive availability (Limantè et al., 2022). Survey evidence on socially excluded populations points in the same direction: such groups experience justiciable problems at higher rates yet are markedly less likely to seek formal advice, so that a purely demand-driven scheme systematically under-serves precisely those it is designed to reach (Buck et al., 2005).

Rows three and four turn to the institutional and financial preconditions. The comparison with Malaysia developed earlier suggests that the decisive variable is not the size of the allocation but the structural continuity of the providing institution, since a standing service is better positioned to sustain the unglamorous, low-visibility casework that post-conviction assistance in fact consists of (Tri Utami et al., 2025; Maala, 2021). The fourth row is best understood as the measurement condition of the third. Where performance is assessed by the number of cases recorded, additional funding tends to inflate throughput without improving the assistance actually received, a pattern already documented in the Indonesian legal aid scheme (Tri Utami et al., 2024). The access-to-justice literature has long insisted that access must be measured by what people are able to obtain from legal institutions rather than by the volume of services nominally supplied, which is why the indicators proposed in the fourth row are framed in terms of counseling coverage and the realization of conditional rights rather than case counts (Sandefur, 2008).

The final two rows address what remains once norms, institutions, and financing are in place. The fifth row responds to the fact that a right without a remedy is administratively unenforceable; a tiered objection procedure or a simplified administrative action gives inmates and their representatives a means of contesting correctional decisions that curtail conditional rights, and simultaneously creates an incentive for more careful and better-documented decision-making (Widyawati et al., 2022; Kumar et al., 2022). The sixth row is deliberately positioned as complementary rather than substitutive: legal counseling, accessible materials, and paralegal cadres build collective legal capability, but they cannot discharge the state's obligation to provide professional assistance, and treating empowerment as a substitute would reproduce the very asymmetry that structural legal aid seeks to dismantle (Golub, 2003; Vanhala & Kinghan, 2022; Ningtyas et al., 2023). Taken as a whole, therefore, Table 1 should be read as a conditional rather than a cumulative agenda: the regulatory steps are the precondition of the institutional ones, and adopting the latter without the former risks the symbolic implementation that has so far characterized the treatment of legal aid at the post-conviction stage (Gomes, 2019; Sihombing et al., 2024).

CONCLUSION

On the basis of a normative juridical analysis of the criminal justice system in Indonesia, it may be concluded that the normative position of legal aid for suspects, defendants, and convicted persons has not been fully and equally integrated within the integrated criminal justice system. In regulatory terms, the right to legal aid is strongly guaranteed in layered fashion, from the constitution (Article 27 paragraph

(1) of the 1945 Constitution) and the principle of justice without discrimination under Law No. 48 of 2009 on Judicial Power (Articles 4 and 56), through to operational regulations such as the Criminal Procedure Code and Law No. 16 of 2011 on Legal Aid. The synchronization of these rules is severed, however, upon entry into the post-conviction phase. The prevailing legal aid scheme is predominantly oriented toward the fulfillment of pre-conviction litigation rights (investigation, prosecution, and trial), thereby generating a vacuum and an obscurity of protective norms for convicted persons undergoing correctional guidance in correctional institutions under Law No. 22 of 2022. As a result of sectoral overlap and the failure to position legal aid institutions as an autonomous subsystem pillar within the integrated criminal justice system, the substantive rights of indigent convicts, such as access to extraordinary remedies, petitions for clemency, and the fulfillment of the right to social reintegration without stigma, frequently encounter operational deadlock.

As an academic recommendation arising from this study, the government and the legislature need to undertake regulatory reconstruction by accelerating the enactment of implementing regulations to the Criminal Procedure Code that rigorously govern the mechanism of legal aid at the post-conviction level. In addition, horizontal harmonization is required among the Judicial Power Law, the Corrections Law, and the Legal Aid Law in order to affirm that the guarantee of legal protection must be safeguarded without interruption, from the outset of investigation through to the completion of correctional guidance and the full social reintegration of former convicts into society. Consistent with the sequencing logic developed above, priority should be given to the regulatory steps - authentic clarification of "level of adjudication" and the bridging norms governing access and confidentiality - that do not depend on new budgetary allocation, so that the most immediate legal obstacles to voluntary assistance are removed while the financing and institutional reforms are phased in.

This study's conclusions are subject to the limitations inherent in a normative-juridical method: they identify the structure and consequences of a normative gap but do not themselves generate primary data on the lived experience of indigent convicts, on correctional caseworkers' practice, or on the actual frequency of the case-review, clemency, and conditional-rights failures the analysis anticipates. The comparative material in this study is likewise illustrative rather than systematic, drawn from a small number of jurisdictions selected for doctrinal relevance rather than representativeness. Empirical and socio-legal research building on the normative map offered here - survey or interview-based studies of correctional caseworkers and indigent inmates, and systematic tracking of case-review and clemency outcomes by socioeconomic status - would be a natural and valuable next step, and would allow

the sequencing proposal advanced in Section 3.7 to be tested against implementation evidence rather than doctrinal inference alone.

DECLARATIONS

AUTHOR CONTRIBUTION STATEMENT

The first author conceived the study, undertook the doctrinal analysis of the primary legal materials, and drafted the manuscript. The second author contributed to the literature review, the comparative analysis, and the critical revision of the manuscript. Both authors read and approved the final version for submission.

FUNDING STATEMENT

This research received no specific grant from any funding agency in the public, commercial, or not-for-profit sectors.

DATA AVAILABILITY STATEMENT

This is a doctrinal legal study; no new empirical dataset was generated or analysed. The primary legal instruments and secondary literature examined are publicly available at the sources cited in the References.

DECLARATION OF INTERESTS STATEMENT

The authors declare that they have no known competing financial interests or personal relationships that could have influenced the work reported in this paper.

ADDITIONAL INFORMATION

Correspondence and requests for materials should be addressed to the corresponding author. The interpretations expressed herein are those of the authors and do not represent the official position of any institution.

ORCID

Fransiskus Rahmad Zai <https://orcid.org/0009-0003-8248-1812> 
Elizabeth Ghozali 

REFERENCES

- Abbott, M. (2018). The right of early access to criminal legal aid in Indonesia: Clear rule, clearer violations. *Indonesia Law Review*, 8(1), Article 2. <https://doi.org/10.15742/ilrev.v8n1.380>
- Aldyan, A., & Negi, A. (2022). The model of law enforcement based on Pancasila justice. *Journal of Human Rights, Culture and Legal System*, 2(3), 178 – 190. <https://doi.org/10.53955/jhcls.v2i3.51>
- Alpert, G. P. (1976). Prisoners' right of access to courts: Planning for legal aid. *Washington Law Review*, 51(3), 653.

- Arliman S, L., Suryanef, Arif, E., & Sarmiati. (2022). Legal assistance for the poor to reach justice. *JCH (Jurnal Cendekia Hukum)*, 7(2), 329 – 343. <https://doi.org/10.33760/jch.v7i2.556>
- Asshiddiqie, J. (n.d.). Gagasan negara hukum Indonesia. https://www.jimly.com/makalah/Konsep_Negara_Hukum_Indonesia.pdf
- Buck, A., Balmer, N., & Pleasence, P. (2005). Social exclusion and civil law: Experience of civil justice problems among vulnerable groups. *Social Policy & Administration*, 39(3), 302 – 322. <https://doi.org/10.1111/j.1467-9515.2005.00441.x>
- Chin, G. J. (2012). The new civil death: Rethinking punishment in the era of mass conviction. *University of Pennsylvania Law Review*, 160(6), 1789 – 1833.
- Council of Europe. (2006). European Prison Rules: Recommendation Rec(2006)2 of the Committee of Ministers to member states. Council of Europe.
- Faisal, Rahmanto, T. Y., Muhtar, M. H., & Hardianto, D. (2024). Genuine paradigm of criminal justice: Rethinking penal reform within Indonesia's new criminal code. *Cogent Social Sciences*, 10(1), 2301634. <https://doi.org/10.1080/23311886.2024.2301634>
- Golub, S. (2003). Beyond rule of law orthodoxy: The legal empowerment alternative (Carnegie Endowment Rule of Law Series, Working Paper No. 41). Carnegie Endowment for International Peace.
- Gomes, S. (2019). Access to law and justice perceived by foreign and Roma prisoners. *Race and Justice*, 9(3), 359 – 379. <https://doi.org/10.1177/2153368717699972>
- R (Howard League for Penal Reform) v Lord Chancellor [2017] EWCA Civ 244.
- Kumar, P., Banshkar, A. K., Shekhar, S., & Rani, K. M. P. (2022). Prisoners are too 'victims' of the criminal justice system: Can they have an idea of 'fair access to justice'? *Journal of Victimology and Victim Justice*. <https://doi.org/10.1177/25166069221134215>
- Levitsky, S., & Murillo, M. V. (2009). Variation in institutional strength. *Annual Review of Political Science*, 12, 115 – 133. <https://doi.org/10.1146/annurev.polisci.11.091106.121756>
- Limantė, A., Vaičiūnienė, R., & Zėkas, T. (2022). Accessibility of legal aid to children in conflict with the law: Bringing the general concept to practice. *Baltic Journal of Law & Politics*, 15(2), 152 – 173. <https://doi.org/10.2478/bjlp-2022-0014>
- Maala, R. K. (2021). Getting justice through legal assistance: A comparing case of Indonesia and Malaysia. *The Indonesian Journal of International Clinical Legal Education*, 3(3), 353 – 366. <https://doi.org/10.15294/ijicle.v3i3.48261>

Malaysia. Legal Aid Act 1971 (Act 26).

Nashriana, N., Banjarani, D. R., Del Rosario, M. S., & Novianti, V. (2023). Enhancing restorative justice in Indonesia: Exploring diversion implementation for effective juvenile delinquency settlement. *Sriwijaya Law Review*, 7(2), 318 – 334.

<https://doi.org/10.28946/slrev.Vol7.Iss2.2427.pp318-334>

Nasution, A. B., et al. (2007). Bantuan hukum: Akses masyarakat marginal terhadap keadilan — tinjauan sejarah, konsep, kebijakan, penerapan dan perbandingan. LBH Jakarta.

Ningtyas, D. P. A., Al Uyun, D., & Susmayanti, R. (2023). Peran bantuan hukum struktural dalam transformasi sosial: Sebuah upaya mewujudkan kesetaraan gender dan perubahan struktur dalam masyarakat. *Jurnal Ilmiah Kebijakan Hukum*, 17(3), 327 – 348. <https://doi.org/10.30641/kebijakan.2023.V17.327-348>

Packer, H. L. (1964). Two models of the criminal process. *University of Pennsylvania Law Review*, 113(1), 1 – 68.

Peraturan Pemerintah Nomor 99 Tahun 2012 tentang Perubahan Kedua atas Peraturan Pemerintah Nomor 32 Tahun 1999 tentang Syarat dan Tata Cara Pelaksanaan Hak Warga Binaan Pemasyarakatan [Government Regulation No. 99 of 2012] (Indonesia).

Prints, D. (2002). Hukum acara pidana dalam praktek. Djambatan.

Reksodiputro, M. (2020). Sistem peradilan pidana: Melihat kejahatan dan penegakan hukum dalam batas-batas hukum. Pusat Pelayanan Keadilan dan Pengabdian Hukum Universitas Indonesia.

Ritonga, A. S., & Alfiansyah, M. (2026). Peran bantuan hukum dalam melindungi korban ketidakadilan. *Sosial Simbiosis: Jurnal Integrasi Ilmu Sosial dan Politik*, 3(2). <https://journal.lpkd.or.id/index.php/Sosial>

Sandefur, R. L. (2008). Access to civil justice and race, class, and gender inequality. *Annual Review of Sociology*, 34, 339 – 358. <https://doi.org/10.1146/annurev.soc.34.040507.134534>

Sihombing, J. S. P., Saraswati, R., Yunanto, & Turymshayeva, A. (2024). The regulation of legal protection for poor communities toward justice in Indonesia and the Netherlands. *Journal of Human Rights, Culture and Legal System*, 4(2), 331 – 353. <https://doi.org/10.53955/jhcls.v4i2.274>

Siregar, M. (2024). Teori hukum progresif dalam konsep negara hukum Indonesia. *Muhammadiyah Law Review*, 8(2), 1 – 15. <https://doi.org/10.24127/mlr.v8i2.3567>

Tri Utami, N. A., Oktobrian, D., Cahyani, E. D., Turnip, G. E., & Safitri, F. R. (2024). The effectiveness of legal aid standards for suspects in the Indonesian criminal

- justice system in achieving access to justice. *Fiat Justisia: Jurnal Ilmu Hukum*, 18(2), 95 – 108. <https://doi.org/10.25041/fiatjustisia.v18no2.3249>
- Tri Utami, N. A., Raharjo, A., Prayitno, K. P., Wahyudi, S., Bintoro, R. W., & Ismail, N. (2025). Evaluation of legal aid service quality and supervision in Indonesia and Malaysia. *Journal of Human Rights, Culture and Legal System*, 5(1), 187 – 216. https://doi.org/10.53955/jhcls.v5i1.50_2
- Undang-Undang Nomor 18 Tahun 2003 tentang Advokat [Law No. 18 of 2003 on Advocates] (Indonesia).
- Undang-Undang Nomor 48 Tahun 2009 tentang Kekuasaan Kehakiman [Law No. 48 of 2009 on Judicial Power] (Indonesia).
- Undang-Undang Nomor 16 Tahun 2011 tentang Bantuan Hukum [Law No. 16 of 2011 on Legal Aid] (Indonesia).
- Undang-Undang Nomor 20 Tahun 2025 tentang Kitab Undang-Undang Hukum Acara Pidana [Law No. 20 of 2025 on the Code of Criminal Procedure] (Indonesia).
- Vanhala, L., & Kinghan, J. (2022). The 'madness' of accessing justice: Legal mobilisation, welfare benefits and empowerment. *Journal of Social Welfare and Family Law*, 44(1), 1 – 20. <https://doi.org/10.1080/09649069.2022.2028407>
- Wesnawa, I. B. P. E., & Swardhana, G. M. (2024). Contradictions in the regulation of the provision of legal aid in the Indonesia criminal procedure code. *International Journal of Judicial Law*, 3(5), 7 – 11. <https://doi.org/10.54660/ijjl.2024.3.5.07-11>
- Widyawati, A., Pujiyono, Rochaeti, N., Ompoy, G., & Muhammad Zaki, N. N. (2022). Urgency of the legal structure reformation for law in execution of criminal sanctions. *Lex Scientia Law Review*, 6(2), 327 – 358. <https://doi.org/10.15294/lesrev.v6i2.58131>
- Winarta, F. H. (2000). Bantuan hukum: Suatu hak asasi manusia bukan belas kasihan. Elex Media Komputindo.