

THE IMPORTANCE OF ENHANCING LEGAL AID REGULATIONS AS A MECHANISM FOR LEGAL PROTECTION OF CIVIL SERVANTS

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Abstrak

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The increasing complexity of civil servants' responsibilities in Indonesia exposes them to significant risks of policy criminalization and legal vulnerability. This study analyzes the urgent need to strengthen legal aid regulations as a protective mechanism to ensure legal certainty in government administration. Employing a normative legal research method, the study examines the consistency of norms in Law No. 20 of 2023 on Civil Servants and its related implementing regulations. The findings indicate a lack of coherence between overarching regulations and their implementation, which often restricts civil servants' (ASN) access to legal aid, especially during the initial stages of legal proceedings and in high-risk sectors such as goods and services procurement. Furthermore, the provision of legal aid is frequently impeded by budgetary limitations and the risk of bureaucratic politicization at the local level. The study concludes that it is imperative to strengthen regulations by establishing an independent, autonomous, and professional legal aid model. These findings suggest that robust legal protection will address bureaucratic paralysis, empower civil servants to make strategic decisions and innovate, and improve the overall effectiveness of public policy. Comprehensive legal protection is essential to maintain the integrity and professionalism of civil servants and to ensure the delivery of high-quality and equitable public services.

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INTRODUCTION

Civil servants serve as the state's principal agents in administering government, development, and public services. As implementers of public policy, they must demonstrate integrity, professionalism, and competence to address the increasingly complex dynamics of government administration in the digital era (Mutik et al., 2023).



The complexity of these responsibilities frequently exposes civil servants to legal vulnerabilities. Each administrative decision or action undertaken in the course of official duties entails inherent legal risks, particularly when law enforcement officials interpret regulations differently (Indika, 2019). The fear of legal repercussions, especially in the management of state finances, often leads to “bureaucratic paralysis,” in which officials hesitate to innovate or make strategic decisions out of concern for criminalization. Consequently, robust legal aid regulations are essential to ensure the security and confidence of civil servants, enabling them to serve the state without undue fear (Mutik et al., 2024a).

Philosophically and constitutionally, the right to legal aid for every citizen, including civil servants, is explicitly guaranteed by the 1945 Constitution of the Republic of Indonesia. Article 27(1) affirms that all citizens are equal before the law and the government, while Article 28D(1) ensures every person’s right to recognition, guarantees, protection, and fair legal certainty (Rochman, 2020). The state’s provision of legal aid through government agencies demonstrates a commitment to access to justice and the principle of equality before the law (Putra et al., 2023). Legal aid should be regarded not merely as a defense mechanism for the guilty, but as a means to ensure that all legal processes involving civil servants adhere to established legal frameworks and respect human rights, thereby upholding due process of law (Mutik et al., 2024b). This is the rising trend of criminalization of policies in Indonesia. Policy criminalization occurs when the discretion or policies exercised by public officials—which should fall within the realm of administrative law—are forcibly drawn into criminal law, particularly corruption-related offenses (Saragih & Zarzani, 2023). There is a paradigm shift in law enforcement where criminal instruments are often prioritized as tools to test the validity of government actions, whereas, theoretically, a policy (beleid) cannot be evaluated through the lens of criminal law without concrete evidence of criminal intent (*mens rea*) and personal gain that actually harms state finances (Maruli Tua Situmeang, 2022). Errors in interpreting “abuse of authority” between the administrative and criminal spheres often place civil servants as victims of systemic legal uncertainty, making the strengthening of legal aid regulations a much-needed shield to uphold the dignity of public office (Irawan & Haris, 2022).

The legal framework for civil servants in Indonesia has evolved significantly with the enactment of Law No. 20 of 2023 on the Civil Service, which replaced Law No. 5 of 2014. While Law No. 20 of 2023, particularly Articles 21 and 106, mandates legal protection through the provision of legal aid, its implementation continues to encounter normative and empirical challenges (Afandi, 2013). Secondary regulations, such as Government Regulation No. 11 of 2017, impose restrictions that limit legal aid to certain procedural stages or exclude specific cases, such as extraordinary crimes, in a manner that may be considered discriminatory (Tri Utami & Nugroho, 2023). Such limitations contradict the principle of legal justice, which requires that every individual has the right to legal representation from the beginning of the investigative process through to a final, legally binding judgment, irrespective of the alleged criminal offense.

Civil servants are particularly vulnerable to legal issues in the procurement of goods and services sector. As budget implementers, procurement officials are exposed to ongoing legal risks because procurement processes frequently deviate from plans due to technical challenges, yet such deviations are often equated with corruption by law enforcement (Sumarwoto, 2021). The absence of adequate safeguards for procurement

managers creates anxiety among budget users, as there is no assurance that their administrative actions will not result in police or prosecutorial investigations (Mutik et al., 2024a). Furthermore, limited understanding of legal rights and the lack of standardized procedures for legal assistance at ministerial or regional agency levels exacerbate this vulnerability, leaving many civil servants feeling unsupported by their institutions when confronted with job-related legal cases.

The issue of discretion, or *freies Ermessen*, is a critical aspect requiring thorough legal analysis. Law No. 30 of 2014 on Government Administration authorizes officials to take actions or make decisions to address urgent and concrete issues (Nurmayani & Mery Farida, 2021). However, discretionary authority presents a dual challenge: it facilitates public service delivery but also risks being construed as abuse of authority if not substantiated by robust administrative evidence (Juliani, 2021). In the absence of professional legal guidance from the outset of policy-making, civil servants often face a dilemma between responding to public needs and the fear of subsequent legal audits (Suparman, 2020). Strengthening legal assistance in this context offers officials legal assurance that, provided discretion is exercised in line with the general principles of good governance, the state will offer comprehensive protection (Pardede, 2013).

The significance of this research is further underscored by the need to reconceptualize legal aid, shifting its perception from social assistance or an optional service to a mandatory legal obligation for the government. Ontologically, the government has a legal responsibility to protect employees acting on its behalf (Mutik et al., 2024b). Epistemologically, the mechanisms for providing legal aid must be clearly defined, including professional legal counsel, accountable funding, and representation during mediation and litigation (Kurnia et al., 2021). Axiologically, comprehensive legal aid regulations uphold justice and legal certainty, thereby enabling effective and efficient government administration while preventing practices that are detrimental to the public or to civil servants (Mutik et al., 2023). The consequences of inadequate legal protection for civil servants extend beyond individual experiences and negatively impact the performance of the national bureaucracy. When civil servants feel unprotected, they are likely to work rigidly, adhere strictly to procedures, and avoid risks, thereby impeding innovation and slowing development (Suratno, 2017). A work environment characterized by fear undermines the Indonesian government's ongoing bureaucratic transformation efforts. Thus, strengthening legal aid regulations is not solely an issue of individual legal defense but represents a strategic initiative to foster a resilient bureaucracy capable of innovation within a sound legal framework. This study seeks to provide a theoretical and legal basis for regulatory reforms that will serve as effective legal protection for civil servants.

Given this context, the objective of this study is to examine the urgency of strengthening legal aid regulations for civil servants within the Indonesian legal system and to identify existing regulatory gaps that impede the establishment of optimal legal protection. The study focuses on harmonizing the new Civil Servant Law, the Government Administration Law, and national legal aid regulations to develop a comprehensive legal protection model for civil servants. Employing a systematic normative approach, this research aims to offer both academic and practical contributions to policymakers, thereby enhancing legal instruments for civil servants and fostering legal certainty that upholds the integrity and professionalism of state officials in serving the public interest.

LITERATURE REVIEW

Dimensions of Legal Protection for Civil Servants

Legal protection for civil servants is grounded in the theoretical framework of legal protection, which seeks to provide individuals with security guarantees. Administratively, this protection comprises two categories. Preventive protection is implemented through clear regulations that prevent violations or criminalize official actions (Indika, 2019). Repressive protection is realized through defense mechanisms or legal aid during court proceedings when civil servants encounter legal issues (Mutik et al., 2024b)

Manifestations of the Right to Legal Assistance and Access to Justice for Civil Servants

The right to legal assistance for civil servants reflects the principles of access to justice and equality before the law. Legal aid functions not only as technical support but also as a mechanism to ensure that legal proceedings comply with due process, particularly considering civil servants' susceptibility to political and administrative pressures (Mutik et al., 2024a).

Implications of Law No. 20 of 2023 for Legal Protection

The enactment of Law No. 20 of 2023 on the Civil Service strengthens the government's obligation to provide legal aid to civil servants in the performance of their duties. However, inconsistencies in implementing regulations, such as Government Regulation No. 11 of 2017, have historically restricted legal aid to specific discretionary stages (Mutik et al., 2023). This resulting legal uncertainty frequently disadvantages civil servants, especially in corruption-related cases (Tohadi, 2022).

Discretion and the Risk of Criminalization in Official Duties

Law No. 30 of 2014 on Government Administration grants public officials discretion to address regulatory impasses in government affairs. However, overlapping authority between administrative and criminal law, particularly in corruption cases, often leads to good-faith discretion being misinterpreted as abuse of authority that harms state finances (Naibaho et al., 2021). In this context, legal assistance functions as a "professional shield" to validate administrative actions and prevent their arbitrary criminalization.

The Impact of Legal Protection on Bureaucratic Performance and Innovation

The lack of robust legal protection leads to rigid bureaucratic behavior and a reluctance to pursue innovation (Pardede, 2013). Officials often adopt a risk-averse approach due to concerns about potential legal entanglements, which impedes development and diminishes the quality of public services. Consequently, strengthening legal aid regulations is considered an investment in fostering a professional, accountable, and integrity-driven work environment (Suratno, 2017).

RESEARCH METHODOLOGY

A normative legal research methodology, also known as doctrinal legal research (Adicahya, 2021), is used in this study. This approach is selected due to its suitability for analyzing legal norms, ensuring legislative consistency, and establishing a theoretical foundation to reinforce regulations governing legal aid for civil servants. The

methodology facilitates the assessment of the coherence of legal norms, specifically whether a legal rule aligns with superior legal norms or whether a legal action adheres to established legal principles.

Three primary approaches are employed in this study. First, the Statute Approach involves examining all relevant laws and regulations, including Law No. 20 of 2023 on Civil Servants, Law No. 30 of 2014 on Government Administration, and various government regulations concerning legal protection for civil servants (Tanjung & Faizal, 2021). Second, the Conceptual Approach draws on legal principles, doctrines, and scholarly perspectives on legal protection, access to justice, and the right to legal aid. This approach supports the construction of arguments regarding the urgency of legal aid as a mechanism for safeguarding the human rights of civil servants (Santoso & Dewi, 2019). Third, the Case Approach entails deconstructing legal phenomena or precedents involving the criminalization of policies and abuse of authority affecting civil servants, in order to analyze the implementation of legal norms in judicial practice (Rubianto et al., 2022). The Case Approach involves deconstructing various phenomena or legal precedents related to the criminalization of policies and the abuse of authority affecting civil servants, in order to analyze the practical application of legal norms.

RESULTS AND DISCUSSION

Harmonizing Standards and Ensuring Access to Justice under the 2023 Civil Service Law

Although Law No. 20 of 2023 establishes a robust legal foundation, operational gaps persist in the delivery of legal aid. Article 106 of the 2023 ASN Law obligates the government to provide legal aid, including legal representation in court cases related to official duties (Mutik et al., 2024). However, the lack of standardized operating procedures at both the ministerial and local government levels has led to sporadic implementation, often contingent on the discretion of agency leadership (Setyonagoro et al., 2022). Consequently, legal certainty for civil servants remains unfulfilled, despite the existence of a comprehensive legal framework.

The study further reveals that legal aid is predominantly limited to administrative disputes, while exceptions are frequently made in criminal corruption cases. However, the presumption of innocence principle necessitates that all civil servants receive legal aid until a final and binding judgment is rendered (Mutik et al., 2024b). Terminating legal aid immediately upon a civil servant being named a suspect undermines the right to a fair defense (Tohadi, 2022). Regulatory reforms are required to guarantee that legal aid encompasses all case types arising from official duties, without exception.

Significant disparities in access to legal aid exist between central and remote civil servants. Insufficient human resources in local government legal offices and budgetary limitations are primary factors impeding the provision of adequate legal aid (Mutik et al., 2024a). These findings highlight the urgent need to establish autonomous, professional legal aid units at the regional level, ensuring equitable access to justice for all civil servants, regardless of location (Alamsyah & Gunarto, 2020). Regulatory

harmonization should guarantee clear, transparent, and accountable channels for submitting requests for state-funded legal aid.

Legal barriers to providing aid frequently stem from concerns regarding the use of State (APBN) or Regional (APBD) Budgets to defend civil servants suspected of criminal offenses. The study contends that, provided these actions occur in the course of official duties, legal aid constitutes an operational risk that the state must assume (Mutik et al., 2023). Strengthened regulations should establish a secure legal framework that enables agencies to allocate legal aid funds without fear of harming state finances, provided the objective is to ensure a fair trial for state officials.

This initial finding underscores the need to harmonize the Civil Servant Law, Government Administration Law, and Legal Aid Law. Specific government regulations are required to govern procedures, funding standards, and criteria for providing legal aid to civil servants, thereby preventing overlapping interpretations. Such regulatory strengthening will foster confidence among civil servants in the state's commitment to tangible protection, ultimately enhancing the quality of administrative law enforcement in Indonesia.

Safeguarding Civil Servants from the Criminalization of Policy Decisions

The majority of legal cases involving ASN originate from administrative errors in procurement processes, which law enforcement officials frequently classify as acts of corruption. Law enforcement often prioritizes the 'ultimum remedium' approach, favoring criminal prosecution over 'primum remedium,' which emphasizes administrative resolution through the Internal Audit Agency (Saragih & Zarzani, 2023). This practice exposes procurement officials to significant risk, as even minor procedural errors may result in the threat of imprisonment.

The urgency of legal assistance in public procurement arises from the complexity and frequent changes in procurement regulations. Research indicates that civil servants lacking legal expert support during investigations often provide administratively inaccurate statements, which may be used as preliminary evidence of corruption (Mutik et al., 2024b). Early professional legal representation can clarify that price discrepancies or project delays do not constitute state losses in the absence of intent (*mens rea*) to benefit oneself or others (Saragih & Zarzani, 2023).

The study also identifies a 'shifting of responsibility' phenomenon, where agency leaders often distance themselves when subordinates encounter legal issues related to public procurement. Theoretically, subordinates' actions reflect the agency's overall policy (Setyonagoro et al., 2022). Strengthened legal aid regulations should require agencies to provide comprehensive defense for procurement personnel, including legal representation by attorneys with certification or specialized expertise in procurement law (Alamsyah & Gunarto, 2020). This measure is essential to ensure that development through procurement proceeds without being impeded by excessive apprehension.

These findings underscore the importance of protecting procurement officials' discretion. According to Law No. 30 of 2014, actions taken in line with the general principles of good governance and not for personal gain should be shielded from criminal prosecution (Suparman, 2020). Legal assistance is vital in demonstrating that civil servants' discretionary decisions in procurement serve public interests or address urgent situations not explicitly covered by existing regulations. Regulatory

enhancements must delineate the boundaries of this protection to prevent widespread criminalization of policy decisions.

This protection is consistent with the principle of legal certainty, which requires clear rules before sanctions are imposed. The findings recommend integrating the Internal Audit Agency (APIP) audit process with the provision of legal assistance, enabling civil servants' legal status to be determined administratively before criminal proceedings commence (Mutik et al., 2024b). Robust legal assistance will increase civil servants' confidence in performing their duties, thereby improving budget absorption and the effectiveness of national development.

Ensuring Independence in Legal Aid Models and Mitigating Politicization of ASN

The third key finding highlights the necessity for an independent legal aid model insulated from political interference. The study reveals that ASN legal vulnerabilities frequently emerge during political transitions, such as local elections (Tanjung & Faizal, 2021). Civil servants may be compelled to align with particular factions, and following a change in leadership, those perceived as disloyal often face non-procedural administrative sanctions or criminalization through politically motivated reports (Rubianto et al., 2022). In these situations, legal assistance from internal legal offices controlled by the newly elected local head is often ineffective or inaccessible.

Accordingly, the study proposes a legal aid model managed by an independent institution or a professional civil servant organization with full autonomy. This approach would ensure that all civil servants, regardless of political affiliation or regional power dynamics, retain access to objective legal representation (Alamsyah & Gunarto, 2020). Strengthening regulations to establish legal aid units that are functionally accountable to higher-level authorities, such as the BKN or the Ministry of State Apparatus and Bureaucratic Reform, could reduce the politicization of legal aid at the regional level (Adnan et al., 2024).

The findings also emphasize the need for legal protection for civil servants dismissed upon reaching the retirement age while legal proceedings are ongoing. Kristiawan and Karjoko's research indicates that uncertainty regarding the status of these civil servants often leads to the unjust loss of pension rights before a final and binding court decision is rendered (Kristiawan & Karjoko, 2023). Comprehensive legal aid should safeguard civil servants' administrative and welfare rights throughout the judicial process, ensuring that legal certainty benefits both the state and individual civil servants (Rumbewas & Wijiningsih, 2025).

From an axiological standpoint, strengthening legal aid for civil servants serves to uphold the dignity of the bureaucracy as a foundation of national stability. When civil servants lack protection from arbitrary actions by superiors or political pressures, their integrity is at risk (Tanjung & Faizal, 2021). Robust and independent legal aid regulations enable civil servants to maintain neutrality and professionalism, confident that the legal system will support them if they act in accordance with established rules. Reconstructing the legal aid model should also prioritize enhancing legal literacy among civil servants, empowering them to proactively mitigate risks before legal issues arise.

This study affirms that strengthening legal aid regulations for civil servants is vital for achieving substantive justice within the Indonesian bureaucracy. Theoretically, this entails shifting legal responsibility from individual civil servants to an integrated state

protection system. In practice, it requires implementing regulations under the 2023 ASN Law that define funding standards, attorney qualifications, and witness or expert protection for civil servants. The principal recommendation is to establish an autonomous National Civil Servant Legal Aid Agency to guarantee equal, professional, and fair legal protection for all public servants.

CONCLUSION

This study concludes that strengthening regulations on legal aid for civil servants is an urgent necessity to ensure legal certainty and bureaucratic professionalism in Indonesia. Based on the analysis, it was found that although Law No. 20 of 2023 on Civil Servants mandates legal protection, the implementing regulations lack alignment, resulting in legal aid being discretionary and failing to provide comprehensive protection. This regulatory gap creates vulnerability for civil servants, particularly in facing the phenomenon of policy criminalization, which often draws administrative actions into the realm of criminal corruption.

The findings indicate that legal aid is especially critical in high-risk strategic sectors, such as government procurement of goods and services. Legal uncertainty surrounding the interpretation of “abuse of authority” necessitates professional legal representation from the investigation stage to ensure that legal proceedings adhere to due process principles. Additionally, there is a need for an independent and autonomous legal aid model to mitigate the effects of bureaucratic politicization, particularly during local political transitions, which often threaten the neutrality and job security of civil servants.

The contribution of this study lies in reconstructing the legal aid paradigm—shifting it from what was previously viewed as optional social assistance to an imperative legal obligation of the state. With strong legal protections in place, the state has indirectly mitigated the phenomenon of “bureaucratic paralysis,” which hinders innovation in public services. This conclusion has practical implications for policymakers, who should immediately formulate subsidiary regulations governing operational standards, accountable financing, and the establishment of specialized legal aid units capable of ensuring that civil servants' rights are fairly and equitably protected across all regions of Indonesia.

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