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A Comparison of Legal Aid Systems for Suspects in Several Countries: Implications for Indonesia

Khairul Fadli Rambe[1]
[1]Universitas Islam Negeri Imam Bonjol Padang, Indonesia
khoirulfadlirambe@gmail.com

ABSTRACT *Looking at the criminal justice system in Indonesia through the lens of the rights of the accused reveals the irony of unequal access to legal aid, which should be an essential right. A bitter reality that states, especially for marginalized communities and those with economic limitations, often goes unnoticed. Ideally, the right to legal defense, which should be available to everyone, has become mere rhetoric since the start of the legal process. This article aims to analyze and compare the legal aid systems for suspects in Indonesia, the United States and the United Kingdom in order to identify potential improvements to the legal aid system in Indonesia by adopting good practices from other countries, while taking into account the Indonesian legal and socio-cultural context. This research uses a normative juridical method, which places the main focus on a comprehensive analysis of the relevant laws and regulations, including both the legal framework in Indonesia and the applicable regulations in other countries that are the focus of comparison, namely the United States and the United Kingdom. The results of this research firmly underline the crucial role of legal aid for suspects in realizing fair criminal justice and respect for human rights. Learning from the practices of other countries such as the United States and the United Kingdom is important. The US with its adversary system emphasizing process justice, and the UK with its tradition of inclusive legal aid. These are valuable offerings for the Indonesian judiciary to consider and adapt to the legal and socio-cultural context in strengthening the national legal aid system.*

KEYWORDS *Criminal Procedure Law; Legal Aid; Suspect Rights; KUHP; Indonesian.*

INTRODUCTION

The right to legal aid for suspects is a crucial pillar in a criminal justice system based on the principles of the rule of law and respect for human rights (Hodgson 2024; Amelia et al. 2024). Legislation, as the main instrument in the administration of government and law and order, has a mandate to ensure that every citizen, including suspects, are treated fairly and equally before the law (Gentzel 2021; Syahda 2023). The right to legal aid ensures that suspects, who are often in a vulnerable position and face the power of the state, have access to proper legal representation and defense (Dehaghani and Newman 2022; Alhakim 2022).

Social reality shows that access to quality legal aid for suspects in Indonesia still faces a number of significant challenges (Irawan and Haris 2022; Rappaport 2020; Rana and Joshi 2022). Although normatively this right is guaranteed, the fact is that economic disparity is often the main barrier for suspects from marginalized groups to obtain adequate legal assistance from the beginning of the legal process. The limited number of credible legal aid organizations that are evenly distributed throughout Indonesia, especially in remote areas, means that many suspects do not have sufficient physical or informational access to take advantage of their rights (Syahr et al. 2023).

Ideally, the right to legal aid for suspects is not just a procedural formality, but as a substantive guarantee for every suspect, without exception and regardless of socio-economic status. This is because everyone has the same rights and opportunities to understand the legal process they face, to present an effective defense and to receive fair treatment from the early stages of investigation to court decisions (Williams 2020).

The juridical basis for the right to legal aid for suspects in Indonesia is expressly regulated in various laws and regulations, including Article 56 of the Criminal Procedure Code

(KUHAP) which states that suspects or defendants who are sentenced to five years or more or who are economically disadvantaged are entitled to free legal aid (Fathurrahim 2023). Law No. 16/2011 on Legal Aid reinforces this right by regulating the mechanism for organizing legal aid for the poor in a structured and systematic manner, starting from the level of investigation to cassation.

The gap between legal norms and social realities indicates structural and operational issues that need to be addressed. Although laws and regulations mandate this right, economic disparities and limited resources often prevent suspects, especially those from vulnerable groups, from obtaining an effective defense. Therefore, comprehensive efforts are needed to strengthen the legal aid system in Indonesia in order to truly realize procedural justice and protect the human rights of every individual in conflict with the criminal law.

Based on previous research that examines legal aid for suspects, namely research on obstacles in providing legal aid to suspects, that there is no implementation mechanism and rules in appointing legal counsel. Then research that examines the use of Artificial Intelligence (AI) for people with disabilities, as a form of upholding equality in law (Sijabat et al. 2023). And finally, a study that examines the dynamics and development of legal aid and its implementation in poor communities, especially in Medan City (Wahyudi et al. 2022).

Recognizing the urgency of addressing challenges in the implementation of the right to legal aid for suspects in Indonesia, this research aims to conduct a comparative study of legal aid systems in several countries that are considered to have best practices or relevant models.

METHODS

The research method used in this study on the comparison of legal aid systems for suspects in various countries is normative juridical (Negara 2023). This approach focuses on analyzing the relevant laws and regulations, both in Indonesia and in the countries used as the object of comparison, namely the United States and the United Kingdom (Williams 2020; De Cruz 2024).

The main technique for data collection was document study, which included an in-depth review of the Criminal Procedure Code (KUHAP), Law No. 16/2011 on Legal Aid in Indonesia, as well as legal regulations and literature relating to the legal aid systems in the United States and the United Kingdom. In addition, this research also utilizes literature studies that include books, scientific journals, and various other literature sources that examine the concept, implementation, and comparison of legal aid systems.

The data collected was then analyzed qualitatively using a comparative approach, which aims to identify similarities and differences in the legal aid systems in these three countries. This comparative analysis was conducted to measure the effectiveness and efficiency of each system, as well as to identify elements that could potentially be adopted in order to strengthen the legal aid system in Indonesia (Skarbek 2020; Shilpa B. P. 2024).

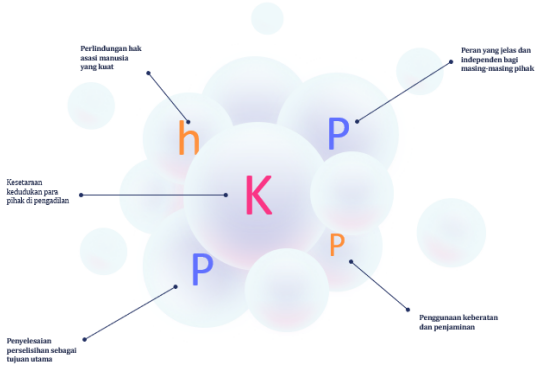
RESULT

Legal Aid for Suspects in the United States

The system of criminal procedure in the United States is known as the adversary system (Nirmala 2020). It is based on the doctrine that the accused has equal standing with the state, represented by the prosecution, in criminal trials. Key principles of the system include strong human rights protections, equal standing of the parties in court, dispute resolution as the primary goal, the use of objections and bail, and negotiations to strengthen the equality between the accused and the prosecution (Kasuri et al. 2024). In this system, there is a clear separation of roles between the prosecution, who determines the facts and evidence that can be used, and the defendant, who determines the data to be provided at trial.

The legal system in the United States, influenced by the common law tradition, places great emphasis on the adversarial system of trial (Rasyid and Setiawan 2022). This system is based on the idea that the defendant has equal standing with the state in criminal justice, with both parties facing off against each other to achieve justice. Some of the key principles of the adversarial system can be seen in Figure 1 below.

Figure 1. *Main principles of the adversarial system*



Explanation of figure 1, presented in the paragraph below

Strong human rights protections, that the US criminal justice system emphasizes strong human rights protections, is a key foundation. This is reflected in many aspects of the system, from the initial stages of arrest through to trial and sentencing.

The United States Constitution is the main foundation that guarantees the rights of individuals in criminal proceedings (Kadir 2024). For example, the Fourth Amendment protects against unreasonable searches and seizures, the Fifth Amendment provides the right against self-incriminating testimony and the right to due process, the Sixth Amendment guarantees the right to the assistance of counsel, the right to confront witnesses, and the right to a speedy and public trial, and the Eighth Amendment protects against cruel and unusual punishment. These principles not only form the basis of law, but also guide law enforcement and judicial practice in the United States.

In the US criminal justice system, the principle of equality of parties in court is an important foundation (Gemilang and Agustanti 2023). The adversary system emphasizes that the accused should not be viewed as a weak party before the state, but rather as a party with equal rights and standing with the prosecution. This means that the judicial process is viewed as a fair dispute between two equal parties, where each party has an equal opportunity to present evidence, present arguments, and defend their interests before a judge or jury. This equality is realized through various procedural mechanisms and legal protections aimed at ensuring that the accused is not disadvantaged by the overwhelming power of the state (Akbar and Mardany 2024).

The adversarial nature of the US criminal justice system means that the judicial process focuses not only on punishing the offender, but also on understanding and resolving the conflicts at the root of the crime (Feeley 2020). This means that the judicial process focuses not only on punishing the offender, but also on understanding and resolving the conflicts that underlie the crime. This system recognizes that crimes often arise from disputes or conflicts between individuals or groups, and therefore, effective solutions must include efforts to address these disputes. As such, the adversarial system seeks to achieve more comprehensive justice by not only punishing the offender, but also resolving the disputes underlying the crime.

The use of objections and guarantees in the criminal justice system through the method of filing objections or statements (requests) as well as the existence of guarantors and negotiation institutions, is crucial to be implemented. The aim is to strengthen the equal position of the defendant and the prosecution, as well as to precisely outline the boundaries of the rules of the game in the operation of the criminal justice system (Misoski 2020).

Clear and independent roles for each party, where each party involved has a clear and independent role. The public prosecutor is responsible for determining the facts that can be proven and what evidence will be used to support his or her argument. On the other hand, the defendant has the right to determine the data that will be submitted at trial as a defense, including submitting other evidence to refute the information against him. In other words, both parties have autonomy in preparing and presenting their cases, creating a contradictory trial process (Ingram 2021).

It is in this system that judges use the "*beyond reasonable doubt*" standard of proof where there is a jury system as a safeguard against state power, court hearings are oral, and the judge's role is to ensure that all parties follow the rules. There is also the "*plea of guilty*" process where a guilty plea can become a binding judgment (Hermawati 2023).

Legal aid system for suspects in the United Kingdom

The United Kingdom, as part of the countries that adhere to the Common Law legal system, has a long tradition of providing legal aid. This system is rooted in the idea that everyone, regardless of their financial capabilities, should have equal access to justice.

The United Kingdom government has established a special committee, the Rushcliffe Committee, to review the need for legal aid in England and Wales. This demonstrates the country's serious concern for the provision of legal aid as part of a fair criminal justice system (Mastari and Maharani 2024). Several important aspects of the legal aid system in the UK can be seen in Figure 2 below.

Figure 2. *Key aspects of the legal aid system in the UK*

The explanation of Figure 2 is described in the paragraph below.

Common Law and Adversarial Legal Systems Countries that adopt the common law system have adversarial courts, where two opposing parties (prosecutor and defendant) face each other in court (Roberts and Petzsche 2025). In this system, legal aid is very important to ensure a balance of power between the state and individuals, especially suspects facing criminal charges.

Legal Aid and Advice Act 1949, the establishment of the Rushcliffe Committee led to the birth of the Legal Aid and Advice Act 1949, which became an important milestone in the development of the modern legal aid system in England. This law introduced a publicly funded legal aid scheme to help individuals who could not afford legal services.

Development of the Legal Aid System: Since the Legal Aid and Advice Act 1949, the legal aid system in England has continued to develop and undergo various changes, including expansion of the scope of legal aid, changes in funding mechanisms, and efforts to ensure the quality of legal aid services (Dunne 2021).

Criminal Legal Aid, in the context of criminal justice, legal aid is crucial for suspects at every stage of the legal process, from police interrogation, court hearings, to further legal proceedings such as appeals. Legal aid ensures that suspects understand their rights, receive effective defense, and are treated fairly by the justice system.

With this information, it is possible to comprehensively describe how the United Kingdom implements its legal aid system, particularly in the context of criminal justice. This demonstrates that the British justice system is rooted in the tradition of common law, the principle of equal access to justice, and the state's commitment to providing effective legal aid.

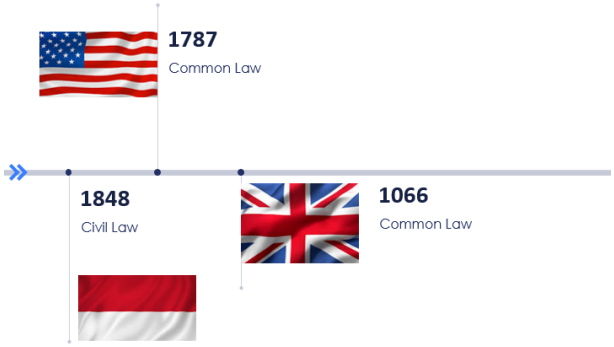
Legal aid system for suspects in the United Kingdom

This study conducts an in-depth comparative analysis of legal aid systems in Indonesia, the United States, and the United Kingdom. The aim is to identify similarities, differences, and the strengths and weaknesses of each model. From this comparison, it was found that although Indonesia has a strong legal foundation, there are still significant challenges in implementation, particularly in terms of accessibility for marginalized communities. Conversely, the United States with its adversarial system and the United Kingdom with its tradition of inclusive legal aid offer approaches that can serve as inspiration. The implications for Indonesia are that there is an opportunity to adapt positive elements from both countries, such as strengthening the role of lawyers and expanding the scope of legal aid, to achieve greater equality and ensure that the rights of suspects are optimally fulfilled.

1. ***A systematic comparison between the legal aid systems of Indonesia, the United States, and the United Kingdom***

The legal aid system plays a crucial role in a country governed by the rule of law that upholds human rights and equality before the law (Pech 2022). Indonesia, the United States, and the United Kingdom have unique characteristics in the provision of legal aid, which are shaped by the legal framework, historical background, and socio-political dynamics of each country. As shown in Figure 3, which illustrates the differences between legal systems (Aripkah 2023).

Figure 3. *Differences in legal systems*



The explanation is provided in the paragraph below.

In Indonesia, recognition of the importance of legal aid is reflected in national legislation, with the principles of equality before the law and access to legal counsel as key pillars. Law No. 16 of 2011 on Legal Aid and the Criminal Procedure Code (KUHAP) serve as the main legal basis for the provision of legal aid (Lindsey and Pausacker 2021). However, social realities reveal disparities in the parameters for providing legal aid between the two laws, particularly regarding the criteria for recipients of legal aid for the poor and those living in remote areas.

The United States, with its Common Law legal system and Western legal tradition, also recognizes the importance of legal aid in the criminal justice system. The criminal justice system in the United States emphasizes an adversarial system, characterized by clear and independent roles for each party involved in the legal process. The concept of the "*criminal justice system*" itself was first introduced in the United States as a response to dissatisfaction with the mechanisms of law enforcement agencies (Wardhani et al. 2022).

The United Kingdom, which also follows the Common Law legal system, has a long tradition of providing legal aid. The legal aid system in the United Kingdom is rooted in the idea that every individual, regardless of their financial capacity, should have equal access to justice. The UK government has established a special committee, the Rushcliffe Committee, to review the need for legal aid in England and Wales, reflecting the state's serious concern for the provision of legal aid as an integral part of a fair criminal justice system (Joyce and Laverick 2023).

2. *Advantages and disadvantages of the model of inter-country legal aid systems and its connection to the system in Indonesia*

Further analysis of the legal aid system models in Indonesia, the United States, and the United Kingdom reveals that each approach has advantages and disadvantages that need to be considered approach has advantages and disadvantages that need to be considered:

First, the legal aid system models in Indonesia, the United States and the United Kingdom have their own advantages and disadvantages. Indonesia's legal aid system, which is regulated in Law No. 16/2011 and KUHAP, provides a clear legal basis for the provision of legal aid. However, there is a disparity in the parameters for providing legal aid between the two laws, which can cause confusion in its implementation. *Second*, the adversarial system in the United States emphasizes clear and independent roles for each party, which can ensure a fair trial. However, this system can be costly and complex, which can make access difficult for underprivileged individuals (Hathaliya et al. 2022). *Third*, the UK has a long tradition of legal aid provision, with an emphasis on equal access to justice regardless of financial means. However, the legal aid system in the UK also faces challenges related to funding and efficiency.

To develop a more effective and efficient legal aid system, Indonesia can draw valuable lessons from models implemented in other countries.

3. *Elements of systems from other countries that can be adopted*

In efforts to improve the legal aid system in Indonesia, there are several elements from other countries' systems that can be considered for adoption or adaptation. First, the criminal justice system concept from the United States, which emphasizes an adversarial system, can be adopted (Barnes and Burke 2020). This system emphasizes clear and independent roles for each party (prosecutor and defendant), which can help ensure a more fair and transparent judicial process (Safira 2023). Its implementation can be carried out by strengthening the role of advocates and increasing the capacity of prosecutors and judges in implementing the adversarial system.

Second, the long tradition of legal aid provision in the UK, rooted in the idea that everyone, regardless of financial means, should have equal access to justice, can be adapted (Denvir 2023). This could be implemented by expanding the scope of legal aid and increasing the budget for legal aid, as well as establishing mechanisms to ensure the quality of legal aid services.

These two elements are relevant because they can help overcome the challenges of disparities in access to and quality of legal aid services in Indonesia, which have been a serious obstacle to achieving equitable justice for all citizens. The adoption of an adversarial system, for example, can encourage the strengthening of the capacity of advocates and law enforcement officials to act professionally and impartially, thereby reducing the potential for injustice due to disparities in legal knowledge and skills (ILIADIS et al. 2021). Meanwhile, adapting the British tradition of providing inclusive legal aid can ensure that everyone, regardless of economic status, has equal access to quality legal representation across the board.

CONCLUSION

This article reaffirms the crucial importance of legal aid in the criminal justice system, especially for suspects. Legal aid is not merely a formality, but an essential pillar in ensuring the fulfillment of human rights and the creation of a fair trial. With effective legal aid, suspects have an equal opportunity to defend themselves, present their version of events, and avoid potential abuse of power in the legal process. Therefore, the state has a great responsibility to ensure that legal aid is accessible to all who need it, regardless of their social or economic background.

In efforts to improve the legal aid system in Indonesia, it is important to look at and learn from good practices in other countries. Countries such as the United States and the United Kingdom, with their different experiences and models of legal aid systems, can provide valuable insights. The United States, with its adversarial system that emphasizes procedural justice, and the United Kingdom, with its long tradition of providing inclusive legal aid, offer different but equally relevant perspectives. By adopting or adapting positive elements from these systems, Indonesia can strengthen its own legal aid system, while still taking into account its unique legal and socio-cultural context.

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