

# Legal Aid Arrangement for Police and Police Family in Indonesia

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**Abstract**— Legal Aid is any effort, attempt, activity in order to help resolving legal cases that cover activities that provide help, advice and legal consultation either through the judiciary or outside the judiciary. In fact, RI Law no. 2 of 2002 on the Police of the Republic of Indonesia (POLRI) in Article 26 paragraph (1) "Every Member of the Police of the Republic of Indonesia shall receive a wage and other rights that are fair and proper"; And (2) "The provisions concerning salaries and other rights referred to in paragraph (1) it shall be further regulated by Government Regulation". However, the provision of legal aid for Police and Police Family is a constitutional right so that there is a void of norms and dissynchronization vertically, the authors propose in the RI Law about the next Police of the Republic of Indonesia (POLRI) regulated in Article 26 paragraph (2) whose substance is "Every Police officer and the Police Family shall be entitled to the care and service of the Legal Aid service in the judiciary and outside the judiciary". Therefore, it can be done through formulation policy of legal aid to Article 26 paragraph (1), paragraph (2) RI Law number 2 of 2002 on the Police of the Republic of Indonesia (POLRI). Furthermore, Police officers and their family members may obtain legal aid and official service from the POLRI, thus providing the fulfillment of Human Rights, justice and legal certainty, the fulfillment of constitutional rights, legal protection and equality of positions within the law.

The provision of legal aid by the Police of the Republic of Indonesia (POLRI) to Police Officers and Police Families aims to improve the welfare of the Police officers, since the form of welfare is not only in the form of material, but also in the form of peace of mind, tranquility and inner satisfaction in the performance of duties (*pelaksanaan tugas*) because there are guarantees of legal protection and the provision of legal aid from the POLRI institution, if it gets or deals with legal matters. It needs to know that the provision of legal aid by the POLRI is not merely given from the POLRI service, considering the right of Police officers and the Police family to use or not to use legal aid rights.

**Keywords**— Regulation, Formulation Policy, Legal Aid, Human Rights And justice.

## I. INTRODUCTION

Legal aid in the broadest sense can be interpreted as an effort to help the incapable group in the legal field.<sup>1</sup> According to Adnan Buyung Nasution, this effort has three interrelated aspects, namely aspects of the formulation of legal rules; The monitoring aspect of the mechanism to keep the rules obeyed; and aspect of education of society in order those rules are comprehended. It is very dangerous to say that the existing rules of law now are perfect and strong enough to protect the poor ones. These legal rules need to be reviewed for improvement or addition. This kind of effort needs to be done continuously so that the rules of law can counterbalance the rapidity of dynamics of society.

The form of legal aid is basically the same, but there are variations in various countries in the legal defense model, especially for the poor or *pro bono publico* or *pro deo*, which is relevant to the principle of equality before the law and the right to be accompanied by advocate or legal adviser (access to legal counsel). Indonesia, as elsewhere in the world, especially in the developing countries, has a problem of the disintegration of the distribution of legal sources between the rich and the poor. In reality, people in Indonesia judge the use of advocate service or legal adviser is expensive and

luxurious, although not all are true, psychologically Indonesian people hesitate to use the service of an advocate.<sup>2</sup>

Respect for human rights, including respect for the rights of suspects, so far has received less attention from Indonesia's criminal justice system especially when *Herziene Inlandsch Reglement* (H.I.R.) is applied up to 1981. Therefore, the legal community in Indonesia has long struggled and aspired to a more humane national criminal procedure law and concern the rights of suspects more. On the other hand, there have been numerous incidents of inhumane treatment, torture and treatment that disparage human, especially the poor who cannot afford legal services and advocacy of a professional advocate. Under these circumstances, legal aid is needed to defend the poor to avoid becoming victims of torture, inhuman treatment and disparaging the human committed by law enforcer. Legal aid agency as one of the subsystems of the criminal justice system can play an important role in defending and protecting the rights of suspects. Therefore, it needs a due process of law through a more humane national criminal procedure and concern the rights of suspects more.

The flow of legal aid institutions that are developed in Indonesia basically cannot be separated from the flow of development of legal aid in developed countries. In a developed country in general, the definition of legal aid has the characteristics of different terms that are:

<sup>1</sup> Adnan Buyung Nasution, *Bantuan Hukum di Indonesia*, (Jakarta: LP3ES, 1988), hlm. 95-96.

<sup>2</sup> Brownlie, Ian, *Basic Documents on Human Rights*, (London: Clarendon Press Oxford, 1971), hlm. 91.

- a. Legal aid is the provision of services in the field of law to a person who is involved in a case, especially to people who are not able in the layers of the poor, legal blind and done freely;
- b. Legal assistance contains a broader understanding of Legal aid, in addition to containing the meaning and purpose of providing legal aid services, closer to the understanding of the profession of lawyers or advocates, who provide assistance to those who can pay performance and provide assistance to the poor people freely;
- c. Legal service that can be translated with Legal Services, generally the definition and meaning of Legal service is broader than the meaning of Legal aid, Legal assistance, because the concept of Legal service contains the meaning and purpose of eliminating discriminatory reality, without distinguishing the capable or unable parties and more likely to solve each case through peace or mediation.

That legal aid is a concept to achieve equality before the law and the provision of legal services and access to legal counsel for all people in the context of justice for all.<sup>3</sup>In the Police of the Republic of Indonesia (POLRI) which develops its relationship with legal aid, it is more likely to be legal service, although in the Criminal Procedure Code it is only known term of legal aid without clear limit.

When it is compared to the legal norm or law and regulation concerning legal aid that is applied in the Indonesian military (TNI) with legal norm or law and regulation regarding Legal Aid that is applied in the Police of the Republic of Indonesia (POLRI), there is a difference. The Regulation of Legal Aid in the Law of the Republic of Indonesia no. 34 of 2004 on the Indonesian military (TNI) is explained as follows:

- A. Article 50 paragraph (2) letter F states: "Soldiers and warriors obtain access and department services, which include: legal aid";
- B. Article 50 paragraph (3) letter C states: "The soldier's family received department services, which includes: legal aid". Furthermore, explanation of paragraph (3) "What is meant by family of soldier is the wife / husband and children who become dependent in accordance with law and regulation";

Based on RI Law no. 2 of 2002 on the Police of the Republic of Indonesia (POLRI) in Article 26 paragraph (1) "Every Police of the Republic of Indonesia shall receive a salary and other rights that are fair and proper"; And (2) "The provisions concerning salaries and other rights referred to paragraph (1) it is further regulated under a Government Regulation". However, the provision of legal aid for Police and Police's family has not been regulated yet, therefore the writer proposes in the Indonesian Law on the Indonesian National Police (POLRI) stipulated in Article 26 paragraph (2) whose substance "Every Police and the Police's family have the right to get access and department services of Legal Aid in the judiciary and outside the judiciary". That regulation above is technical rule, so it has not been clear yet, and to decide the

clarity, it cannot be interpreted, one of the right solutions is through policy of Law formulation.

Furthermore, the writer stipulates that there is a void of norm in Law of Republic of Indonesia No. 2 of 2002 on the National Police of the Republic of Indonesia (POLRI) which regulates the provision of legal aid for Police and Police's family, especially compared to the norms of RI Law No. 34 of 2004 on the Indonesian military (TNI) and the norm of Law No. RI. 16 of 2011 on Legal Aid and RI Law No. 18 of 2003 on Advocates. Furthermore, the writer determines that there has been a vertical dissynchronization in the regulation (between RI Law No. 2 of 2002 on the Indonesian National Police (POLRI), Government Regulation No. 3 of 2003 on the Institutional Technical Implementation of the General Court for POLRI officers and Government Regulations RI No. 42 Year 2010 on the Rights of POLRI officers, as well as the Regulation of the Chief of Police Number 2 Year 2017 on the Procedure for Providing Legal Aid by the POLRI. The regulation mentioned above is a technical regulation, then against unclear rules, to determine clarity it cannot be interpreted, the right thing is one of the solutions is through the policy of the Act formulation.

Based on the above explanation, the writer considers that it is necessary to conduct a study with the theme: "Arrangement of Legal Aid for Police and Police's family". Discussion and review are focused on answering: (1) the urgency of legal aid arrangement for the Police officer and the Police's family, and (2) legal aid in the perspective of Human Rights and justice

## II. RESEARCH METHOD

For Research Method used by the writer is the method of normative juridical or normative legal research. Research approaches that are used are legislation approach, conceptual approach, comparative approach, philosophy approach, historical approach and document study approach, using primary law material, secondary and tertiary legal materials. Collection of research results through legislation, official records or treatises in legislation arrangement, judgment decisions, textbooks, legal dictionaries, legal journals, and comments on court decisions and other research results.

## III. DISCUSSION

### 1. Juridical Aspect of giving the Legal Aid

Referring to Juridical Aspect by comparing the rule of legal aid in some countries, such as:

- For the Philippine National Police, the provision of legal aid for each PNP (The Philippine National Police) member who faces the law case is arranged in part 56 Article 49 of Republic Law No 6975. The law protection and assistance for Thailand State Police Officer are arranged in a criminal code and a criminal-law procedural code. It is special for Police family is not arranged in a law book of The Philippine National Police and Thailand criminal procedural code.
- Convention for The Protection of Human Rights and Fundamental Freedoms (Europe Convention of Human right) Article 6: Right for the equitable court (3) b, c: "Each individual who is accused doing an injustice at least

<sup>3</sup>Frans Hendra Winarta, *Probono Publico hak konstitusional fakir miskin untuk memperoleh bantuan hukum*, Jakarta: Gramedia Pustaka Utama, 2009, hlm. 57.

has the right to": b. "given an sufficient time in preparing advocacy; c. "defend for themselves through legal aid as their choice, or in case of lacking of fund for paying the legal aid, it should be given free of charge.

- International Covenant on Civil and Political Rights, Article 26 "All individuals have the same right in a law and the right of getting the same law protection without any discrimination. In this case, law must forbid the discriminations, for instance, tribe, color, gender, language, religion, politics and other opinions, origin of nation or social, wealth, birth and other status".

Referring to juridical aspect of the legal aid arrangement in Indonesian law:

UU RI no 8 Year 1981 on Procedure of Criminal is arranged on:

- Article 54 "For the sake of advocacy, a suspect or defendant has the right to get the legal aid from a law advisor during the time and in each investigation, according to the procedure in the constitution.
- Article 55 determined "In purpose of getting the law advisor in Article 54, a suspect or defendant has the right to choose the advisor by themselves.
- Article 56 section (1) "A suspect or defendant is accused doing injustice threatened a dead penalty or criminal penalty for fifteen years or more or for those who are not able are threatened for fifteen years or more and who do not have law advisor, the intended official in all investigation levels in a judicature must choose the law advisor for them", section (2) "each chosen law advisor do as stated in section (1), gives the help for free.
- Article 69 decides "A law advisor has the right to contact the suspect since s/he is caught in all investigation levels according to the procedure in a constitution.

The constitution of Republic of Indonesia No. 39 Year 1999 on Human Right is arranged in:

- Article 5 section (2) "Each individual has the right to get the assistance and justice protection from the objective court and impartiality"; and
- Article 18 section (4) "Each individual who is investigated has the right to get the legal aid since the investigation until there is a decision from the court that has got the power of the permanent law.

The Constitution of Republic of Indonesia No. 48 Year 2009 on Judicial Power is arranged in:

- Article 56 section (1) "For those who got the case have the right to get a legal aid"; and
- Article 57 section (2) "The legal aid mentioned in section (1), is given for free for all judicature levels until the decision is made and has the power of permanent law.

The Constitution Design of Republic of Indonesia No. ... Year ... on Procedure of Criminal is arranged in:

- Article 89 section (1) "In purpose of inspection in all police investigation and examination in the courthouse, a suspect of defendant has the right: a. chooses his/her law advisor and give his/her identity; c. to be given the information about his/her right.
- Article 92 "For the advocacy interests, a suspect or defendant has the right to get the legal aid from one or

more law advisors during the given time and in all investigation levels, according to the procedure in the constitution";

- Article 93 section (1) "The official who has the authority in all investigation levels must choose a person to be a law advisor to give the legal aid for the suspect or defendant who is not able to be punished in a prison for five years or more and does not have the law advisor.
- Article 103 "A law advisor has the right to accompany the suspect or defendant since s/he is caught in all investigation levels according to the procedure in the constitution".

The government rule of Republic of Indonesia No. 3 Year 2003 on the technical implementation of public judicature institutional for Police officer is arranged in:

- Article 13 section (1) " A suspect or defendant of Indonesia Police Officer (POLRI) has the right to get the legal aid in all investigation levels in a judicial process"; section (2) "Indonesia Police Officer (POLRI) must provide the legal aid for the suspect of defendant of Indonesia Police Officer (POLRI) who is suspected doing in justice related to the duty"; section (3) " A legal aid as mentioned in section (2) is done by making use of a law advisor from Indonesia Police Officer Institution and/or other law advisors.

The government rule of Republic of Indonesia No. 42 Year 2010 on the right of Indonesia National Police is arranged in:

- Article 7 section (1) "Each Indonesia National Police (POLRI) and the family have the right to get the legal aid from a service inside and outside of the judicature"; section (3) "The later Conditions about the implementation of legal aid and safety protection as mentioned in section (1) and (2) is arranged in Chief of Police's rule".

The Chief of Indonesia National Police's rule of Republic of Indonesia No. 2 Year 2017 on the procedure of giving the legal aid by The Indonesia National Police is arranged in:

- Article 3 section (1) "Those who have the right to get the legal aid: a. Indonesia National Police Institution; b. work unit; c. Civil servant in Indonesia National Police; and d. The big family of Indonesia National Police.
- Article 8 section (1) "The law advisor is allowed to do the legal aid in an investigation level; b. prosecution; and/or c. in all judicatures".

A decree No: SKEP/168/III/2004 on The Procedure of Law Service Implementation in Department of Resilience is arranged:

- Part B Number 6 "The one who has the right to get the legal aid (The chief, work unit, Indonesia army, civil servant and their family, along with pensioner and retiree of civil servant) have the right to get the law service both officially and personally.

## 2. Sociological aspect in giving the legal aid

a. Giving the legal aid to the defendant Abd. Latif, a member of criminal detective of Police sector Sedati in Sidoarjo related to the interest of individual or personal. According to verdict of appeal in Supreme Court Number : 1867 K/PID.SUS/2016 on November 10<sup>th</sup>, 2016 has corrected based on the decree in a high court in Surabaya Number :



154/PID.SUS/2016/PT.SBY on April 19<sup>th</sup>, 2016 which gives a power to the decree of district court in Surabaya Number: 2451/PID.SUS/2015/PN.SBY on February 1<sup>st</sup>, 2016 related to the criminal law to the defendant I, so Amar said that: it has been proved legally and confidently as the guilty person who has done a criminal act “A bad conspiracy of the person who did the narcotic criminal act done without the right and against the law as the distributor in narcotic buy and sell group I not in the form of plant which its weight is not more than 5 grams” given a dead penalty<sup>4</sup>

b. Giving the legal aid to the Irwantono as a defendant, a member of criminal detective of Police sector in Sumenep, related to the interests of service. It is based on the decree of a high court in Sidoarjo Number: 1084/Pid.B/2011/PN. Sidoarjo on February 21<sup>st</sup>, 2012 about the criminal decree because her/his mistake causes the other individual dies in article 359 in a law book with Brigadier Irwantoro as the prisoner, jailed for 2 years, but the criminal case has the permanent power.

c. Giving the legal aid to the case of Yuyun Wilujeng as a defendant, who is also an official wife of Brigadier I Sukolik, a member of water police in East Java police, is related to the personal or individual's interest.

In cassation level, the decree of Supreme Court of Republic of Indonesia Number: 1061 K/Pid/2011 on March 28<sup>th</sup> 2012, the case of the defendant in criminal case in embezzling in the position is arranged in article 374 in a law book based on the cassation decree which empower the decree of high court in Surabaya Number: 860/Pid.B/2009/PN.Sby on February 20<sup>th</sup>, 2010. It says that the defendant is free from all charges<sup>5</sup>.

d. Giving the legal aid to Feri Agoestina Maindah Ekowati as defendant, who is also a child from Aiptu Agus Subakti (member of Sukolilo police sector in Surabaya) is related to the personal's interest.

Based on the decree of cassation in Supreme Court of Republic Indonesia Number: 225K/PID/2010 on June 2<sup>nd</sup>, 2010, the case of the defendant in criminal case in embezzling in the position is arranged in article 374 in a law book based on the cassation decree which empower the decree of high court in Surabaya who gave freedom (*Vrijspreek*) from all the charges<sup>6</sup>, so the criminal case has a permanent power.

### 3. Protection Aspect for Police Officer and Family in Legal Aid Arrangement

Legal aid around Indonesia national police is necessary. It is related to the duty of Police since Dutch era until now, such as maintaining security and discipline of the society, enforcing the law, protecting and servicing the society. As Indonesia national police is being the part of ABRI, in which the legal aid can be given by Indonesia national police (POLRI) although Police officer is obeying the military of jurisdiction (as member of army, navy and air force) arranged in a law book of Republic of Indonesia No. 31 Year 1997 about military court. After reformation, Indonesia national Police

<sup>4</sup> Putusan Kasasi Mahkamah Agung Nomor : 1867 K/PID.SUS/2016 tanggal 10 November 2016

<sup>5</sup> Putusan Mahkamah Agung RI Nomor : 1061 K/Pid/2011 tanggal 28 Maret 2012

<sup>6</sup> Putusan Kasasi Mahkamah Agung RI Nomor : 225K/PID/2010 tanggal 2 Juni 2010

(POLRI) is obeying the general court arranged in article 29 section (1) Constitution of Republic of Indonesia No. 2 Year 2002 about Indonesia national police (POLRI), then for the matter of legal aid should be given according to the valid constitution.

By seeing the comparison of duty of Indonesia National Police (POLRI) and Indonesia National Army (TNI), it should be a concern for giving the legal aid for police officers and their family, because Indonesia National Police (POLRI) and Indonesia National Army (TNI) have the same duty to keep freedom for the society if it is seen the duty of Indonesia National Police (POLRI) in guarding the development of Republic of Indonesia. The implementation of Indonesia National Police's (POLRI) duty seems to be more serious and has the risk, both about a law and dead risk which can give the effect to the Police's family.

The main duty and authority of the Indonesia National Police (POLRI) is arranged in provision of the norm article 13 Constitution of Republic of Indonesia No. 2 Year 2002 about Indonesia National Police (POLRI) as mentioned: “Maintaining the security and discipline of the society, enforcing the law, giving protection and servicing the society.” The main duty of Indonesia National Army (TNI) is arranged in article 7 section (1) Constitution of Republic of Indonesia No. 34 Year 2004 said that: “The main duty of Indonesia National Army (TNI) is enforcing sovereignty of Indonesia, maintaining integrality of Indonesia based on Five Principles and Constitution of Republic of Indonesia Year 1945, and protecting the nation from the thread and interference towards nation and state”.

As in philosophical view, the legal aid principle becomes a hope for Indonesia society and a responsibility for the Indonesia government. In giving the legal aid should be in line with the philosophical principle, as one of the basic in making the constitution of legal aid. In line with philosophical view, the legal aid is going to be priority guidance from Indonesia National Police (POLRI) Institution in giving the legal aid for Police officers and their family and being a hope for Police officers and family, who face the law issues.

Based on the consideration in constitution of Republic of Indonesia No. 2 Year 2002 about Indonesia National Police (POLRI), the principle of legal certainty is not arranged although there is a law protection principle, justice principle, prosperity principle, law enforcement principle, then the philosophical basic of constitution of Republic of Indonesia No. 2 Year 2002 about POLRI, in the future, it should bring the legal certainty principle to be a philosophical basic in giving the legal aid for police officers and their family.

### 4. The Urgency of Legal Aid for Police Officers and Their Family

Giving the legal aid in POLRI institution to the police officers and their family has been done since POLRI was being a part of TNI, at that time, it was called as Armed Forces of Republic of Indonesia (ABRI) obeying the military judicature, after the reformation, POLRI institution is obeying the high judicature in which there is a division of law in Indonesia National Police headquarter in Jakarta and the field of law in Regional Police (POLDA) and the field of law in

*Polrestabes, Polresta, Polres* all around Indonesia to give the legal aid until now.

In fact, there is a rule for provision of law norms related to the legal aid for police officers and their family which is not appropriate with the norm level. Regarding the legal aid for police officers and their family, it is not arranged in constitution of Republic of Indonesia year 2002 about Indonesia National Police (POLRI), but it is arranged in Government Regulation of Republic of Indonesia No. 3 Year 2003 about the institutional technical implementation of high judiciary for police officer, Government Regulation of Republic of Indonesia No. 42 year 2010 about the right of police officer and Indonesia National Police No. 2 Year 2017 about the procedure of giving the legal aid by POLRI.

There is an emptiness of norm in constitution of Republic of Indonesia No. 2 Year 2002 about Indonesia National Police (POLRI) which manages the legal aid giving for police officers and their family, and it can be seen in constitution of Republic of Indonesia No. 34 Year 2004 about Indonesia National Army (TNI) and constitution of Republic of Indonesia No. 16 Year 2011 about the legal aid and constitution of Republic of Indonesia No. 18 Year 2003 about lawyer. Then, there is a vertical different rule between constitution of Republic of Indonesia No. 3 Year 2002 about Indonesia National Police (POLRI), Government Regulation No. 3 Year 2003 about the institutional technical implementation in high judiciary for police officer, and Government Regulation of Republic of Indonesia No. 42 Year 2010 about the right of police officers and Indonesia National Police Regulation No. 2 Year 2017 about the procedure of giving the legal aid by POLRI. Therefore, the writer suggests in constitution of Republic of Indonesia about Indonesia National Police (POLRI) is arranged in article 26 section (2) which is said that "Each police officers and their family have the right to get legal service of legal aid in both a judiciary or outside of judiciary". This is the law solution that can be done as stated in article 26 section (1) constitution of Republic of Indonesia No. 2 Year 2002 about Indonesia National Police (POLRI).

Each rule is formed to overcome the law problem or fill the emptiness of it by considering the existed rule, which will be changed or revoked to maintain the law and justice for the society. Juridical principle covers the law problem related to the managed matter, so it is needed to form the new constitution rule. Some of the law problem are: an outdated rule, overlapped rule, unsynchronized rule between higher rule and shorter rule and vice versa. The rule, which is shorter than other, has the limited power. The rule can exist but it is does fully covered or there is no rule at all.<sup>7</sup>

The opinion of Artidjo Alkostar (The Chief of General Criminal of Indonesia Supreme Court) says that the formulation of the policy for police officers and their family should put forward the rights of the suspect, the rights of the victims has been reviewed in procedure of criminal constitution, and even there is restorative justice that can be done penal mediation. The minor penal mediation to the

<sup>7</sup> Lampiran I Undang-Undang RI No. 12 Tahun 2011 tentang Pembentukan Peraturan Perundang-Undangan.

victim of criminal case can be corrected, which is for the doer, society and police officers and their family. The police officer got the law case because it is related to the legal service, it is fully can be corrected from the constitution to be given the law service and the legal aid. Meanwhile, for the police officers and their family who got the law case because of the personal problem, they can be given a law service and legal aid since there is no prohibition and problem related to the law which should be done the same as the civilians.<sup>8</sup>

RM. Panggabean (former of senior Official in Law Field of POLRI Headquarter) says that there is no prohibition of giving legal aid to the police officers and their family, if it is based on the constitution. It is also valid for Open Legal System principle which means that the constitution is commonly valid, but there is no prohibition which is specifically valid. The reason of forming the particular constitution of giving the legal aid is to accommodate the internal interest of Indonesia National Police (POLRI) and to clarify the law rule. It can be done through the formulation of policy to article 26 section (1), section (2) the constitution of Republic of Indonesia Year 2002 about Indonesia National Police (POLRI) and in the procedure of criminal constitution which is being discussed in legislative council.<sup>9</sup>

##### 5. *Legal Aid in the perspective of Human Rights and justice*

There is a assurance of giving the law protection and assistance from POLRI, if it gets or faces the law problem, it should be oriented to social change. Each individual has the same right to get the justice and fair and impartial court managed in Human Right Universal Declaration and Civil Right Covenant and Politic in the constitution No. 12 Year 2005, it says that each individual has the same right to get confession, assurance, protection and certainty of law and the same treatment in a law which is managed in Article 28D section (1) the constitution of Republic of Indonesia Year 1945. It says that each civilian has the same right to get the same opportunity in the government administration arranged in Article 28D section (3) the constitution of Republic of Indonesia Year 1945. It states that each individual has the same right to get the same treatment without any discrimination. It is arranged in Article 28I section (2) the constitution of Republic of Indonesia. The responsibility of Republic of Indonesia should be implemented through endeavors in the field of legislation, Judication, executorial arranged in Article 2 section (2) Civil Right Covenant and Politic in the constitution of Republic of Indonesia No. 12 Year 2005.

The legal aid is closely related to the constitutional right, human right and the right used to get the justice. Constitutional justice is arranged in each constitutional in a state. In Indonesia, it can be seen on the amendment of basic constitutional of Republic of Indonesia Year 1945 specifically about Human Right in Article 28 A until 28 I. The basic principle of law is not to forbid the equality principle in the

<sup>8</sup> Artidjo Alkostar, (Ketua Muda Pidana Umum Mahkamah Agung RI), Wawancara, Mahkamah Agung RI, Jakarta, tanggal 19 Maret 2013.

<sup>9</sup> RM. Panggabean, (mantan pejabat senior di Divisi Hukum Mabes POLRI), wawancara, Jakarta, tanggal 29 Januari 2013.

law field. Republic of Indonesia must not forbid the International Convention (ICCPR). In reformation era, Republic of Indonesia is closely to the law principles, as the democratic states. To enforce the law and service, it should be based on the valid basic principle in International Convention, the basic constitution of Republic of Indonesia Year 1945, and the basic principle of law enforcement.<sup>10</sup>

Atidjo Alkostar says that each civilian has the right to get the legal aid in enforcing the law and giving the law service. Thus, it cannot be separated between civilians and police officer/ Army. The main point of law is justice. It is a must to provide the Indonesians the same law service. In law enforcement, the fairness fair principle is valid to the suspect, defendant, requisitionist and the member of POLRI in all levels such as investigation, prosecution, and investigation in the court.<sup>11</sup> legal aid is a part of implementation about the justice enforcement. Each individual should get the right and fair treatment. In a law field, it is called Due Process of Law.

#### IV. CONCLUSION

Based on the explanation above, it can be concluded that:

1. The urgency of legal aid management for police officers and their family is to give the assurance law in giving the legal aid from Indonesia National Police (POLRI) to the police officers and their family. It is to:
  - a. Assurance and fill the right of the legal aid receiver to get the justices access.
  - b. Actualize constitutional right for all civilians (including police officers and their family) by considering the principle of equality;
  - c. Assurance the implementation of legal aid which is done equally all around Indonesia
  - d. Establish the effective, efficient, and responsible judicature
  - e. Increase the prosperity of the police officers and their family since the prosperity does not define by material only but also by inner satisfaction in doing the duty and living in the community in society.
2. Legal aid in Human right view and justice is necessary to be managed the norm rule of legal aid since it is related to social contract. Thus, personally, police officers and their family hand over their rights to the government so that it becomes the responsibility of the government to protect personal rights. The management of legal aid for police officers and their family is to impose the norm rules as the orientation in elaborating the constitution. This is expected to lead and evaluate the attitude faced by police officers and their family at the time they faced law problem in all level investigations.

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<sup>10</sup> Artidjo Alkostar, *Loc.Cit.*,

<sup>11</sup> Artidjo Alkostar, (Ketua Muda Pidana Umum Mahkamah Agung RI), Wawancara, Jakarta, tanggal 29 Maret 2013.