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The Concept of the Poor in Islamic Law and Its Relevance to Legal Aid

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Abstract: The definition of the poor in Islamic jurisprudence encompasses various aspects in identifying individuals eligible to receive legal aid and social assistance such as social assistance, Zakat, and the Family Hope Program, and also includes economic criteria and basic needs that must be met. This demonstrates the alignment between the principles of fiqh and contemporary social policies. This study is a prescriptive normative legal analysis; in analyzing legal materials, the researcher employs a legislative and comparative approach by drawing on references from the literature. Subsequently, the researcher analyzes these legal materials qualitatively, specifically through comparative data analysis methods, comparison is used to contrast fiqh and legislation regarding the fiqh-based definition of the poor and needy in relation to recipients of legal aid. The research findings indicate that: (1) Those currently classified as the poor and needy are individuals or families without access to steady employment; (2) The right to legal aid is actually just one aspect of access to justice. Access to justice means “being treated fairly under the law; if one is not treated fairly, one will not receive the rights to which one is entitled.” The consequence of the principle of equality before the law is that everyone has the right to be treated equally before the law, including the poor who face legal problems. (3) The principle of equality before the law is not interpreted merely as equality in the eyes of the law, but rather as equality of access to the legal system and justice.

Keywords: *Concept of the Poor, Islamic law, Legal Aid*

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Abstrak: Definisi fakir miskin dalam fiqh Islam mencakup berbagai aspek dalam mengidentifikasi individu yang berhak menerima bantuan hukum dan bantuan sosial seperti Bansos, Zakat, dan Program Keluarga Harapan (PKH), juga mencakup kriteria ekonomi dan kebutuhan dasar yang harus dipenuhi. Hal ini menunjukkan keselarasan antara prinsip-prinsip fiqh dengan kebijakan sosial kontemporer. Penelitian ini merupakan kajian hukum normatif yang bersifat preskriptif, dalam menganalisis bahan hukum, peneliti menggunakan pendekatan perundang-undangan dan perbandingan dengan menyadur referensi melalui kepustakaan, selanjutnya, peneliti menganalisis bahan hukum tersebut secara kualitatif, yaitu dengan perbandingan metode analisis data, perbandingan digunakan untuk membandingkan fiqh dan undang-undang tentang definisi fakir miskin menurut fiqh terhadap penerima bantuan hukum, hasil penelitian menunjukkan bahwa: (1) Yang termasuk sebagai golongan fakir dan miskin sekarang ini adalah seseorang atau keluarga yang tidak ada akses pekerjaan tetap, (2) Hak untuk mendapatkan bantuan hukum sebenarnya hanya merupakan salah satu dari akses terhadap keadilan. Akses terhadap keadilan berarti "diperlakukan secara adil berdasarkan hukum, dan jika tidak diperlakukan adil maka seseorang tidak akan mendapatkan haknya yang pantas, Konsekuensi dari prinsip kesetaraan di hadapan hukum adalah setiap orang berhak untuk diperlakukan dengan sama di hadapan hukum, termasuk orang miskin yang menghadapi masalah hukum. (3) Prinsip *equality before the law* tidak hanya dimaknai sebagai persamaan di mata hukum saja, melainkan dimaknai sebagai persamaan akses terhadap sistem hukum dan keadilan.

Kata Kunci: *Fakir Miskin, Hukum Islam, Bantuan Hukum*

INTRODUCTION

The Qur'an's concern for the poor is evidenced by verses revealed to the Prophet Muhammad (peace be upon him) prior to the establishment of the Islamic state in Medina. Believers are encouraged to provide food to the hungry and to remind one another to assist those in need. This study examines the evolving definition of the "Fakir Miskin" in Indonesia process that has unfolded over time noting a fundamental difference between Islamic jurisprudence (*fiqh*) and the government regarding the terminology for the poor, which necessitates a reevaluation of the concept of poverty.¹ This is not surprising, given that the terminology used by the government and Islamic law to describe the poor and the "*Fakir Miskin*" differs. In establishing poverty parameters, the government relies on statistical data released annually by the BPS, the official government agency responsible for providing data on poverty and deprivation²The BPS uses a methodology based on the basic needs approach,³ which serves as a framework for understanding the basic needs of the population. Conversely, Islamic teachings remain firmly rooted in the principles of Sharia, as outlined in the Qur'an and interpreted by Islamic scholars and jurists, who are regarded as *authoritative* figures in Islamic law.

The norms mentioned above are typically presented in definitive form in various sources of literature. It is crucial to recognize and prioritize the status of the poor and needy as recipients of zakat⁴. In other words, a reliable

¹Barid Nizaruddin Wajdi, 'Dakwah Kultural, Karya ' Ulama Indonesia Kajian Untuk Menangkal Radikalisme Agama Muh. Barid Nizaruddin Wajdi 1', *Lentera*, 1 (2016), pp. 37–54.

²Barid Nizaruddin Wajdi.

³Romsy Khairi, 'Kontekstualisasi Kriteria Fakir Miskin Dalam Pandangan Mazhab Syafi'i Di Indonesia', *Wasathiyah*, 4.1 (2022), pp. 47–59, doi:10.58470/wasathiyah.v4i1.18.

⁴ Zulhamdi Zulhamdi, 'Problematika Pengelolaan Zakat Pada Baitul Mal Aceh', *Sarwah: Journal of Islamic Civilization and Thought*, 16.1 (2017) <<https://ejournal.iainlhokseumawe.ac.id/index.php/sarwah/article/view/129>>.

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measure of poverty can serve as a robust tool for policy makers to focus their attention on the living conditions of the poor.⁵

The group of individuals entitled to receive zakat is known as the *mustahik* of zakat. The people mentioned above are the designated recipients for its distribution, as outlined in the Qur'an, particularly in Surah At-Taubah, verse 60⁶. This designation places them among the first and second groups to receive zakat. This indicates that the primary purpose of zakat is to address poverty.⁷ Even in the context of zakat al-fitr, the categories of the poor and the needy are explicitly mentioned by the Prophet Muhammad (peace be upon him) in his hadith. As al-Sayyid Sabiq explains: "There is no significant difference between the poor and the needy in terms of need, deprivation, and entitlement to zakat." The conjunction of the poor and the needy using the coordinating particle *athaf*—which tends to distinguish between the two in the verse above—does not contradict what has been explained. This is because the needy, who are part of the poor, possess a specific characteristic. This specific characteristic is sufficient to distinguish between them.⁸ Ibn Abbas reported that the Prophet Muhammad (*peace be upon him*) made zakat al-fitr obligatory as a means of purification. He said: *'The Messenger of Allah prescribed zakat al-fitr to purify the fasting person from vain speech and sinful behavior, and to*

⁵ Muhamad Paizal, Srihani, and Wahyu Perdana, 'Potret Dimensi Pengukuran Standar Miskin Menurut Badan Pusat Statistik Dan Konsep Islam', *Aksioreligia*, 1.1 (2023), pp. 21–34, doi:10.59996/aksioreligia.v1i1.76.

⁶ Uswatun Hasanah, Harisah Harisah, and Mohammad Ali Al Humaidy, 'Innovation in Distribution of Wealth Through Zakat: Building Shared Prosperity by Applying Tafsir Qs. At-Taubah Verse 60', *Al-Hiwalah: Journal Syariah Economic Law*, 3.1 (2024), pp. 13–31, doi:10.47766/alhiwalah.v3i1.2568.

⁷ Jaka Ragil Daulay, Nispul Khoiri, and Akmaluddin Syahputera, 'Zakat Produktif (Tinjauan Hukum Islam Dalam Karya Prof. DR. Yusuf Al-Qardawi)', *Al-Mashlahah: Jurnal Hukum Islam Dan Pranata Sosial Islam*, 10.2 (2022), pp. 1001–16, doi:10.30868/am.v10i02.3184.

⁸ Sayyid Sabiq, 'Fikih Sunnah', in *Fiqih Sunnah*, 2022nd edn (digital, 2015), pp. 1–539.

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feed the poor. Whoever pays it before the Eid prayer, it is accepted as zakat; whoever pays it after the prayer, it is regarded as ordinary charity”

The term *fakir* is often merged into a single meaning with *miskin*, indicating a shared condition; in other words, *fakir* is not mentioned separately because it is already understood to have the same meaning as *miskin*. This is also reflected in certain families who define their own status when applying for social assistance from the Ministry of Social Affairs, without considering other people who are actually more eligible and deserving of such assistance. Their attitude is often, ‘as long as we get it too, because we are equally poor; what matters is justice,’ a statement that is frequently repeated.

The same thing often happens in the distribution of zakat al-fitr⁹ and sacrificial meat: when they do not receive it, they ask, ‘Why did I not receive it, and why was so-and-so given it when our status is the same?’ This becomes a recurring dilemma, even though the zakat amil or sacrificial committee has established certain criteria. In fact, for newly married couples or families whose work is limited to casual daily labor, their status is sometimes immediately regarded as *fakir* or *miskin*, making them eligible for social assistance. The recording of occupation in population data documents, such as the Family Card and the identity card issued by the Civil Registration Office (Dukcapil), also becomes an issue in itself, as it may influence whether a person is classified as poor or wealthy/able.

According to M. Syukri, the concept of poverty in Islam has two categories: first, a person who is poor in both spirit and material possessions; second, a person who, despite having abundant wealth, is poor in spirit. The determination based on Qur’anic evidence nevertheless requires a redefinition

⁹ Nurul Nurul Hidayati and Sri Wahyuni, ‘Distribution of Zakat Fitrah in Lebeng Barat Village from an Islamic Perspective’, *Al-Hiwalah: Journal Syariah Economic Law*, 3.2 (2024), pp. 116–25, doi:<https://doi.org/10.47766/al-hiwalah.v3i2.3129>.

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of the meaning of fakir and *miskin* beyond the definition that only covers “basic needs and service facilities for living¹⁰ in this case including spiritual aspects. This concept is also in line with,¹¹ In the hadith of the Prophet Muhammad (peace be upon him), Abu Hurairah reported that the Messenger of Allah said: *‘Wealth does not lie in having abundant worldly possessions, but wealth is the richness of the heart’* (HR. Muslim).

The measurement of poor and impoverished households is not limited to material factors, such as the availability of basic necessities and the quality of services for basic living needs. More broadly, this measurement also includes intangible elements, including faith and piety. Tangible aspects are assessed through indicators determined by the epistemological and philosophical foundations of Islam. Intangible aspects are measured through levels of belief, including taqlid, ilm, ayan, haqq, and haqiqah, from the lowest to the highest level, as well as levels of the (*nafs*), including *ammarah*, *lawwamah*, *mulhamah*, *mutma’innah*, *radhiyah*, *mardhiyyah*, and *kamilah*, (also from the lowest to the highest). The characteristics of both stages of belief and desire are undeniable and can be empirically verified. Both stages display distinctive features that are beyond dispute and are therefore acceptable to scientific inquiry. The implication is that the rights of the poor become clear, and proper allocations can be directed to those who are truly deserving.¹²

The ambiguity surrounding these two terms has also caused disagreement among scholars regarding which condition is more severe: fakir

¹⁰ Muhammad Syukri Salleh, ‘Concepts in Islamic Economics Revisited: The Case of Poverty. Association of Science Culture Education (ILKE), Association of Entrepreneurship and Business Ethics (IGIAD), and Scientific Studies Association (ILEM)’, *Humanomics*, 13.3 (2013), pp. 215–44.

¹¹ Abdul Manan Ismail, ‘Determination of Had Kifayah Zakat among Pre-Graduate Students at University Sains Islam Malaysia (USIM)’, *Journal for Educators, Teachers and Trainers*, 13.1 (2022), pp. 86–93, doi:10.47750/jett.2022.13.01.010.

¹² Salleh.

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or miskin. Scholars of the *Shafi'i* and *Hanbali* schools argue that fakir is more severe than miskin. Their reason is that in Qur'an Surah *al-Taubah* verse 60, Allah mentions fakir before miskin. Meanwhile, the miskin category is entitled to zakat on the basis of poverty and humiliation, because they ask others for help. According to this interpretation, zakat is essentially given to those fakir who refrain from begging and to those fakir who do beg.¹³ Other scholars hold the view that miskin is more severe than fakir. According to the *Shafi'i* and *Maliki* scholars, fakir refers to a person who has no property or income capable of meeting basic needs.¹⁴ The *Shafi'i* definition of fakir and miskin does not correspond to the definition used by the Central Statistics Agency (BPS) (BPS).¹⁵

A poor person may have the physical ability to work, but does not train and accustom himself to become a skilled worker. A poor person may have the ability to work, but does not train and accustom himself to become a skilled worker. A poor person may also have the potential to develop specific skills, but fails to cultivate perseverance in work. He chooses a stagnant way of life—silent, rigid, and unchanging—without developing skills or expertise because of laziness. In percentage terms, a fakir is only able to meet less than 50 percent of basic needs, while a miskin is able to meet between 50 and 75 percent of basic needs.¹⁶ Moreover, some economic conditions are oriented toward rent-seeking and depend on only a small number of income sources, with a very low level of diversification.

¹³ Dede Rodin, 'Rekonstruksi Konsep Fakir Dan Miskin Sebagai Mustahik Zakat', *IJTIHAD Jurnal Wacana Hukum Islam Dan Kemanusiaan*, 15.1 (2016), p. 137, doi:10.18326/ijtiHAD.v15i1.137-158.

¹⁴ Romsy Khairi.

¹⁵ Romsy Khairi.

¹⁶ Wahbah Al-Zuhaili, *Fiqh Islam Wa'Adillatuhu*, Darul Fikir, 2010th edn (Gema INsani Darul Fiqr, 2019), XI.

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Thus, the criteria of fakir and miskin as mustahiq zakat and as recipients of legal aid from the government must be aligned, especially from the perspective of the Qur'an and Hadith as the sources of Islamic law. Clarity regarding the concepts, definitions, and legal causes (*'illat*) that make these two groups eligible for zakat and legal aid is necessary, in accordance with the mandate and will of Allah as stated in the Qur'an. The poverty criteria formulated by the Central Statistics Agency (BPS) and the fakir-miskin concept found in classical texts, particularly within the Shafi'i mazhab, are not relevant to one another.¹⁷ These provisions of Islamic law constitute the most fundamental basis for the provision of legal aid in the implementation of Islamic legal processes. Indonesia is a state based on law as stated in the 1945 Constitution, and this is reinforced by the principle that all citizens are entitled to equal treatment before the law. This principle is intended to protect and recognize the human rights of all individuals, in line with the Universal Declaration of Human Rights, as reflected in Article 27 paragraph (1) of the 1945 Constitution.

The principle of equality before the law, which grants every person the right to be treated equally within the legal system, including those who are economically incapable and face legal problems, has given rise to the concepts and objectives of access to law and justice. For this reason, the Indonesian government issued Law No. 16 of 2011 concerning *Legal Aid*. The substance of this regulation emphasizes that law enforcement officials must provide free legal assistance, especially to poor people in Indonesia. Legal aid is a fundamental right of the state to ensure protection for citizens, especially those

¹⁷ Romsy Khairi.

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who face difficulties in obtaining access to justice.¹⁸ Until now, every government seeking to realize the ideal of a welfare state should properly establish legal aid programs as part of the welfare-state commitment and as an element of social welfare and justice facilities.¹⁹ Legal aid in Indonesia adopts the concept of Legal Aid, in which the government, through the Ministry of Law and Human Rights, provides financial subsidies to legal aid recipients in litigation before the courts.

Initially, the concept of legal aid or legal service was closely related to Islamic law, which teaches its followers to protect the legal rights of every individual, where all people have equal standing before the law, and there is an obligation to uphold law and justice for every individual. In order for legal aid to benefit the wider community,²⁰ its implementation must be carried out evenly through various existing law enforcement institutions, such as the courts, the prosecutor's office, advocate organizations, and civil society organizations engaged in the legal field.²¹

METHOD

The type of research used in this study is empirical juridical research, supported by primary, secondary, and tertiary data sources. The approaches employed in this study are the *sociological approach*, the *statutory approach*, and the *conceptual approach*. The research is analyzed using a descriptive

¹⁸ Senja Nasril, 'Pemenuhan Hak Masyarakat Miskin Dalam Memperoleh Bantuan Hukum Cuma-Cuma', *Lex LATA*, 4.3 (2023), pp. 319–31, doi:10.28946/lexl.v4i3.1817.

¹⁹ Yudi Yasmin Wijaya Fanny Tanujaya, *Bantuan Hukum*, ed. by Yudi Yasmin Wijaya Fanny Tanujaya, 1st edn (Rajawali Pers, 2022).

²⁰ Ni Gusti Agung Ayu Mas Triwulandari, "Problematika Pemberian Bantuan Hukum Struktural Dan Non Struktural Kaitannya Dengan Asas Equality Before The Law (Problematic Provision of Legal Assistance Structural and Non-Structural Relation to The Basis of Equality Before The Law)," *Jurnal Ilmiah Kebijakan Hukum*, 14.1 (2020), hal. 542.

²¹ I Hari Palgunadi Mahardika and others, 'Pengembangan Pembelajaran Model Koperasi TSTS Perangkat Dalam Konten Studi Sains , Tema 7 , Kelas', 540.Ictes 2020 (2021), pp. 366–73.

qualitative method, namely by examining the available data, then studying it in depth and interpreting it to obtain the expected conclusions. Likewise, research conducted in the field of law, as a scientific activity, also requires specific methods, systematics, and theories so that the truth found can be explained systematically, methodologically and consistently.

RESULT AND DISCUSSION

The Definition of the Poor and Needy in the Perspective of Fiqh Regarding Legal Aid Recipients

In the perspective of fiqh, the terms *fakir* and *miskin* have specific definitions, and both belong to the category of mustahiq (zakat recipients). This definition can also be applied in the context of recipients of legal aid. The poverty criteria formulated by the Central Statistics Agency (BPS) are not relevant to the concept of *fakir miskin* found in classical texts, particularly in the Shafi'i mazhab of thought.²²

1. Fakir

Fakir is someone who is in severe need and possesses little or no wealth or income sufficient to meet basic living needs. In fiqh, a *fakir* is a person who has no property at all, or only a very small amount that is insufficient for daily needs. Such people are highly dependent on the assistance of others for survival.

2. Miskin

Miskin is someone who has some wealth or income, but still not enough to meet basic living needs. *Miskin* has more wealth or income than a *fakir*, but remains below the amount required for a decent life.

²² Romsy Khairi.

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The words *fakir* and *miskin* actually carry distinct meanings, especially when used in the context of al-Qur’ani verses. However, this study requires additional analysis and a broader scope in order to clarify their meanings more precisely. In the context of legal aid recipients from the perspective of fiqh, the *fakir miskin* who are entitled to legal aid are those who:

- a. do not have the financial ability to pay for legal services or legal fees.
- b. require legal assistance to defend their rights or obtain justice.
- c. belong to vulnerable categories in need of protection, such as widows, orphans, parents without income, or those facing urgent situations that require legal aid.

In general, poverty as suffering is often limited only to material possessions. A person who has no property is considered poor, and their life is then assumed to be miserable. Many people think that rich people are always happy and joyful, whereas the opposite may be true: with their wealth, they may in fact feel troubled and suffer in their hearts on a daily basis because of that wealth.

People usually only observe outward or visible aspects, merely making assumptions. Because someone appears to have much property or a great deal of money, it is often assumed that they are always happy. Yet this assumption is not always correct. At times, wealthy people are burdened by various life problems, and even high-ranking officials may experience anxiety and sorrow, suffering inwardly due to the heavy pressure of their work—namely, that what they do is felt to satisfy no one, facing constant criticism, ridicule, and so on. Such a condition is not necessarily understood as suffering; one may be poor in wealth but not necessarily poor in spirit or heart.

Material poverty should not be made an ideal, but rather must be avoided. Instead, people should work to meet their own needs and, if possible,

help others. Those who are poor in wealth may indeed appear to suffer, but what is actually more dangerous is spiritual poverty or poverty of the heart. Such people will not experience the true joy of life. The poor are not merely a group lacking material resources; they also symbolize the need to maintain social balance, care for the vulnerable, and uphold justice as part of implementing Islam as a mercy to all creation.²³

Anything before them is perceived as heavy, burdensome, and threatening. They are unable to make sense of their lives, and therefore do not know what to do for themselves, let alone for others. Such people will not bring benefit to others; on the contrary, they may become a disturbance. Based on this condition, some scholars interpret the words *miskin* and *yatim* in al Quran Surah Al-Ma'un not in relation to wealth, but rather in relation to the heart. A person who is poor in wealth and also an orphan is not necessarily as dangerous to himself or to others. In contrast, a person who suffers from poverty of the heart, guidance, and soul may not only endanger himself and others in this world, but will also face ruin in the hereafter.²⁴

The essence of poverty in legal aid is spiritual poverty, and this is a direct cause that threatens human security. This study concludes that poverty in legal aid must be understood as spiritual poverty. When dealing with spiritually poor individuals, legal practitioners must have holistic analytical skills and view poverty as part of the social system and the legal system.²⁵ Spiritual poverty is

²³ M T Schmitt, N R Branscombe, and D M Kappen, 'Attitudes toward Group-Based Inequality: Social Dominance or Social Identity?', *British Journal of Social Psychology*, 42 (2023), doi:10.1348/014466603322127166.

²⁴ Dahliana Sukmasari, 'Konsep Kesejahteraan Masyarakat Dalam Perspektif Al-Qur'an', *At-Tibyan*, 3.1 (2020), pp. 1–16, doi:10.30631/atb.v3i1.15.

²⁵ Jabbar Sabil dan Arief Muda Rianto, "Maqasid Perspective On The Meaning Of Poverty In Legal Aid (Study of Poverty as a Threat to Human Security)," *Al-Iqtishadiah: Jurnal Hukum Ekonomi Syariah*, 4.2 (2023), hal. 175–89, doi:https://journal.ar-raniry.ac.id/iqtishadiah/article/view/4187.

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a reason for providing legal aid, on the one hand to strengthen access to justice and on the other to empower people through law. This is also a reason not to view poverty in legal aid solely from an economic perspective. Legal aid providers can distinguish between poverty as a criterion for receiving legal aid and poverty as a reason for providing legal aid.

In addition to material poverty, Islam recognizes the term spiritual poverty (*faqīr al-qalb*), which can damage both the self and others. On one hand, a spiritually poor person lacks self-confidence and is therefore unable to defend himself. On the other hand, there are also spiritually poor people who are unwilling to take responsibility for what they have done, and instead resort to excuses (*al-hilah*), blame-shifting, or manipulation.²⁶

In modern implementation, many countries with Muslim-majority populations or that apply Sharia principles in their legal systems, such as Indonesia, adapt this definition in legal aid programs. Governments usually establish more detailed criteria to identify who falls into the category of *fakir miskin* eligible for legal aid, often based on income level and specific needs. Based on this definition, the author concludes that '*fakir miskin*' refers to an individual or family that does not have permanent employment, because without stable income their financial needs cannot be met. Poverty is a condition in which basic rights needed to sustain a dignified life cannot be fulfilled,²⁷ as the education level of the head of household increases (compared to those who have never attended school), the poverty rate also decreases.²⁸

²⁶ Sabil dan Rianto, "Maqasid Perspective On The Meaning Of Poverty In Legal Aid (Study of Poverty as a Threat to Human Security)."

²⁷ Muhamad Paizal, Srihani, and Wahyu Perdana.

²⁸ Muhamad Paizal, Srihani, and Wahyu Perdana.

State Responsibility for Legal Aid

State responsibility in providing legal aid for the poor is very important to ensure equal access to justice for all citizens. The handling of the poor is a directed, integrated, and sustainable effort carried out by the government, regional governments, and/or society through policies, programs, and activities of empowerment, assistance, and facilitation to meet the basic needs of every citizen. The poor are not merely a group experiencing material deprivation, but also symbolize the need to maintain social balance.²⁹ In addition, the state is responsible for protecting and recognizing the human rights of every person or citizen as a logical consequence of its status as a state based on law. Indonesia is a state based on law, as stated in Article 1 paragraph (2) of the 1945 Constitution, and is responsible for protecting and recognizing the human rights of every person and citizen. Article 27 paragraph (1) of the 1945 Constitution establishes the principle of equality before the law, meaning that every citizen has the same position before the law.

The consequence of the principle of equality before the law is that every person is entitled to equal treatment before the law, including poor people who face legal problems. In addition, Article 34 paragraph (1) of the 1945 Constitution states that the state shall care for abandoned children and the poor. The phrase “shall care for” does not only mean fulfilling food and clothing needs, but also includes the need for access to law and justice. In principle, the concept of legal aid itself refers to the provision of legal services to poor communities. In other words, the principle of equality before the law is not only interpreted as equality in legal standing, but also as equality in access to justice and judicial institutions.

²⁹Schmitt, Branscombe, and Kappen.

The regulations governing legal aid include the Legal Aid Law, the Advocates Law, Government Regulation No. 42 of 2013 concerning the requirements and procedures for providing legal aid and distributing legal aid funds (hereinafter referred to as the Legal Aid Government Regulation), and Government Regulation No. 83 of 2008 concerning the requirements and procedures for providing free legal aid. In carrying out its duties as a state based on law, the government may use the Legal Aid Law to establish important mechanisms for providing legal aid to poor communities or certain social groups. Article 8 states that legal aid providers who meet the requirements under this law may carry out legal aid services. In addition, Article 19 provides that: (1) regions may allocate budgets for the provision of legal aid in the regional revenue and expenditure budget; (2) further provisions regarding the implementation of legal aid as referred to in paragraph (1) shall be regulated by regional regulations.³⁰

State responsibility in fulfilling legal assistance for the poor is essential to ensure equal access to justice for all citizens. The following are some steps usually taken by the state in carrying out this responsibility:

1. *Providing Free Legal Aid*: The state must provide free or low-cost legal aid services for the poor. This may be carried out through legal aid offices, non-governmental organizations, or state-managed legal aid programs.
2. *Developing Policies and Regulations*: The state must develop policies and regulations that support access to legal aid for the poor. This includes rules governing funding and the provision of legal aid services.

³⁰ Michele Aprilia Nugraha Putri and Agus Riwanto, 'Bentuk Tanggung Jawab Negara Dalam Pemberian Bantuan Hukum Kepada Masyarakat Miskin', *Res Publica: Jurnal Hukum Kebijakan Publik*, 7.3 (2023), p. 282, doi:10.20961/respublica.v7i3.54907.

3. *Providing Legal Education and Information:* The state must ensure that the poor have access to information about their rights and how to obtain legal aid. This can be done through legal education campaigns, the provision of informational materials, and legal outreach programs.
4. *Increasing the Capacity of Legal Aid Providers:* The state must support and strengthen the capacity of institutions that provide legal aid, including training for lawyers and paralegals who work with poor communities.
5. *Monitoring and Evaluating Legal Aid Programs:* The state must regularly monitor and evaluate the effectiveness of legal aid programs to ensure that they achieve their goals and truly assist the poor.
6. *Ensuring Procedural Justice:* The state must ensure that the poor receive fair treatment and equal rights in judicial proceedings, including the right to be accompanied by legal counsel and to receive a fair trial.

In Indonesia, the state's responsibility to provide legal aid for the poor is regulated by Law No. 16 of 2011 on Legal Aid. This law requires the government to provide free legal aid to poor individuals or groups who are unable to afford it. The implementation of this law aims to ensure that every citizen, including those who are less capable economically, has equal access to justice.

Access to the Fulfillment of the Right to Justice in Legal Assistance for the Poor

One of the problems faced by poor communities is access to justice, especially for those who are dealing with legal issues. This is another dimension of poverty, in which access to justice is highly limited for them, making it difficult for them to receive fair treatment in court. Although the

state has established fair legal procedures, in reality, things are not as simple as the legal principles suggest.

In reality, there are still parties who attempt to obstruct the smooth course of legal processes, both among law enforcement officers (police, prosecutors, judges, law enforcement personnel, and lawyers) and among the poor themselves. The right to legal aid is in fact part of justice. Access to justice means being treated fairly under the law, and if one is not treated fairly, one will not receive proper redress. A comprehensive approach is needed to address the issue of access to justice in order to achieve social justice, not merely access to the courts. This paper discusses two issues. First, the dilemma faced by advocates in providing legal aid, whether as a legal obligation or as a form of social sensitivity. Second, the difficulty of accessing legal aid funds after the enactment of Law No. 16 of 2011. From this, the concept and purpose of achieving law and justice arise based on these principles and objectives.

The Indonesian government has issued guidelines for the implementation of these principles and objectives through Law No. 16 of 2011 on Legal Aid (hereinafter referred to as the Legal Aid Law). The purpose of this regulation is to oblige law enforcement institutions, especially lawyers as legal aid providers, to provide free assistance to poor communities in Indonesia, and ultimately to ensure that advocates, as the front line of legal aid services, can operate effectively.

Advocates have a moral responsibility to fight for justice and legal certainty without social, economic, or gender discrimination. This is part of the noble duty of advocates and the mandate of Law No. 18 of 2003 on Advocates. Providing defense to every individual in need, regardless of background, is a human right that must be upheld. One of the goals of access to law and justice is to provide legal aid to the poor. Access to justice is a concept

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that refers to the ability of individuals or groups to obtain legal protection and justice through the judicial system.³¹ This includes several aspects, namely:

1. Affordability and availability of legal services: legal services must be accessible to everyone, not only to those who are financially capable. (*meaning that the requirements are fulfilled because they are poor*).
2. Fair and transparent procedures: judicial processes must be fair, impartial, and transparent so that everyone receives equal treatment under the law. (*no legal manipulation or al-ḥīlah*).
3. The right to legal representation: every individual must have the right to be represented by a lawyer or legal adviser, especially in complex cases. (*meaning the availability of legal assistance as a state and statutory obligatio*).
4. Legal information and education: poor communities must have access to information about their rights and legal procedures
5. Effective implementation of the law: court decisions and laws must be enforced effectively so that recognized rights can be realized, (*thereby ensuring access to justice that can correct or remedy injustice or error/redress*)

This concept is important to ensure that every person, regardless of social, economic, or other backgrounds, has an equal opportunity to obtain protection and justice through the legal system. The state, through its institutions, seeks to fulfill its responsibility to provide access to justice for the poor. The focus on free litigation legal aid is very limited in terms of who can provide it, since free legal aid in litigation can only be provided by advocates

³¹ Made Putra Darma Yasa; I Wayan Novy Purwanto, 'Problematika Kepastian Hukum Penentuan "Orang Tidak Mampu" Dalam Kewajiban Notaris Memberikan Jasa Cuma-Cuma', *ALADALAH: Jurnal Politik, Sosial, Hukum Dan Humaniora*, 4.2 (2026), pp. 340–61, doi:<https://doi.org/10.59246/aladalah.v4i2.1952>.

and legal aid organizations (LBH). This effort deserves appreciation, although there are still several aspects that need to be criticized. The implementation of this effort to realize access to justice includes three things: The right to benefit from and use judicial institutions.

1. Assurance of facilities to fulfill the rights of poor communities in achieving justice.
2. Effective methods and procedures to expand public access to justice.

CONCLUSION

This study concludes that the definition of fakir miskin in Islamic fiqh encompasses various aspects that help identify individuals entitled to legal and social assistance. The scope of free litigation legal aid is very limited in terms of who may provide it, as free legal aid in litigation can only be provided by advocates and legal aid organizations (LBH). In the perspective of fiqh, fakir miskin is defined comprehensively, covering economic criteria and basic needs that must be fulfilled. This study also finds that the definition of fakir miskin applied in legal aid can likewise be applied in the context of social assistance such as social aid, zakat, and the Family Hope Program. This shows a harmony between fiqh principles and contemporary social policy. This study concludes that poverty in legal aid should be understood as spiritual poverty.

Legal aid for the poor in Indonesia is clearly regulated through laws and regulations that ensure access to justice for all citizens. This is consistent with the principles of Islamic fiqh, which emphasize the importance of social justice, zakat, infak, waqf, and *amar ma'ruf nahi munkar*. These regulations, together with the application of fiqh principles, make the legal aid system in Indonesia more inclusive and just, providing legal protection for those most in need. The poor are defined and identified as recipients of assistance in various

assistance schemes regulated by Islamic law and social policy. Defining the poor in the context of today's complex modern society in a more comprehensive manner, and in accordance with present conditions, is highly necessary. Therefore, those who are classified as fakir and miskin today may be understood as individuals or families who do not have access to permanent employment or a stable source of income, or who have inadequate jobs with income below the standard of a decent living.

This, then, is the conclusion of the definition of fakir miskin from the perspective of fiqh as recipients of legal aid, as well as the state's responsibility in providing legal assistance for the poor and ensuring access to justice through legal support for the poor.

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