



# Legal Aid in *Jināyāt* and the Indonesian Criminal Code: An Account on Free Legal Advice

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## Abstract

*This study aims to investigate the comparison between the Law of Jināyāt Procedure and the The Code of Criminal Procedure (publicly known as KUHP) in providing free legal aid for suspects. This research applies a normative juridical approach with legislative and conceptual perspectives, studying Qānūn Aceh Number 7 of 2013 on the law of Jināyāt Procedure and Law Number 8 of 1981 on the Code of Criminal Procedure. This article concludes that under The law of Jināyāt Procedure, an individual provided with legal advices is threatened with sixty lashes or a fine of one thousand and two hundred grams of pure gold or sixty months of imprisonment or more. Meanwhile, criminal procedural law limits the provision of legal advice to suspects facing imprisonment of five years or more, the death penalty, or fifteen years of imprisonment. This article suggests that the concept of free legal counsel provided by the state should be extended to all suspects.*

**Keywords:** *the law of jināyāt procedure, the code of criminal Procedure, free legal assistance, state-provided legal counsel*

## Introduction

The importance of legal assistance, particularly in the context of the 20th century, cannot be overstated. The developments in legal assistance during this period have played a pivotal role

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in shaping a more just and equitable society. The transformation of legal aid from a charitable endeavor to an integral component of citizens' rights has significantly contributed to political, social, and economic entitlements (Zainuddin & Riza, 2021). The establishment of a stronger and more comprehensive foundation for the state's role in providing legal assistance, starting from the 1940s and 1950s, signifies a commitment to ensuring that citizens have access to justice. This transformation underscores the recognition that legal aid is not just a benevolent act but a fundamental aspect of fulfilling citizens' rights. This shift is crucial in promoting a society where individuals, regardless of their background or circumstances, can avail themselves of legal protection and have equal access to justice. Civil institutions have also played a vital role in enhancing legal assistance efforts. The increasing endeavors by these institutions reflect a shared commitment to the principles articulated in legal frameworks such as Article 28D Paragraph (1) of the 1945 Constitution of the Republic of Indonesia. This constitutional provision emphasizes the entitlement of everyone to recognition, guarantees, protection, fair legal certainty, and equal treatment before the law, without discrimination based on ethnicity, religion, or status in life. It is a powerful statement affirming the commitment to justice and legal protection for all citizens (Wibowo, 2021). The evolving landscape of legal assistance, encompassing both state mechanisms and civil society initiatives, demonstrates a broader societal commitment to upholding fundamental rights. The recognition of the specific position of individuals in the face of the law is critical for shaping a legal system that fosters a sense of justice in society (Ferrazzani, 2023). This commitment, evident in the multifaceted approach to legal assistance, ensures that the principles of recognition, guarantees, protection, fair legal certainty, and equal treatment before the law are not mere ideals but tangible rights that can be realized by all members of society. Overall, legal assistance is instrumental in creating a more just, inclusive, and equitable social fabric.

Law Number 8 of 1981 concerning Criminal Procedure Law, more commonly known as The Code of Criminal Procedure (KUHAP), tightly regulates the provision of legal assistance, as outlined in Articles 54, 55, and 56 of the KUHAP. Article 56 explains that the provision of legal assistance begins from the initial investigation stage to the court examination, stating: 1) Right to Legal Representation: Generally, a suspect has the right to obtain legal representation or legal counsel. If the suspect cannot afford a private attorney, the legal system typically provides a defense attorney who can represent them either for free or at a reasonable cost; 2) Legal Notification: A suspect has the right to be informed about their rights, including the right to remain silent, the right to legal representation, and other applicable rights in the legal context; 3) Defense Preparation: Legal assistance also encompasses preparation for the defense in legal proceedings, involving the formulation of arguments, legal research, and preparation for trial; 4)

Right to a Trial: During the trial, the suspect has the right to be represented by their own attorney or by an attorney provided by the state. Attorneys are responsible for defending the suspect; 5) Legal Assistance Throughout the Process: Legal assistance for the suspect is not limited to the trial alone. It involves stages such as investigation, arrest, questioning, and other legal processes that may involve the suspect (Triwulandari, 2020). Basic rights recognized in many legal systems worldwide include legal assistance for suspects or defendants in criminal cases to ensure that everyone undergoing legal proceedings has the right to understand and defend themselves (Sihombing, 2019). Meanwhile, legal counsel assistance in Aceh is regulated by *Qānūn* Aceh Number 7 of 2013 concerning the Law of *Jināyāt* Procedure. Legal assistance is provided free of charge by the state (Aceh, 2015).

Criminal procedure law is specifically regulated in Aceh, recognizing the unique status of this province within Indonesia (Vohidov, 2021). Aceh's distinctive characteristics and historical struggle for independence have contributed to its administrative advantages, shaping the dynamics of state administration in the post-independence era (Fadhil & Mukhlis, 2018). The legal framework governing Aceh is established in Law Number 11 of 2006 concerning Aceh Governance. Article 16 Paragraph (2) of this law highlights the special privileges granted to Aceh, including the implementation of Islamic law for the community adhering to this religion while ensuring harmony among religious communities. Additionally, it emphasizes the promotion of high-quality education and the enhancement of local curriculum content in accordance with Islamic law. The role of local religious scholars is also acknowledged and emphasized in contributing to the governance of Aceh (Irwanda & Din, 2020). This unique legal framework illustrates the intricate interplay between regional autonomy, cultural identity, and the legal system, reflecting Aceh's commitment to harmonious coexistence while maintaining its distinct characteristics. The application of Islamic law in Aceh's criminal procedure further exemplifies the province's commitment to accommodating the values and beliefs of its diverse population within the broader context of Indonesian governance.

In the context of implementing Islamic law in Aceh, the legal framework is articulated through written regulations known as the *Qānūn* Hukum *Jināyāt*. Firstly, these regulations are derived from *al-Qur'ān* and the *al-Sunnah* of the Prophet, emphasizing the foundational sources of Islamic jurisprudence (Mufida, 2021). Secondly, the interpretation or understanding of *Al-Qur'ān* and *al-Hadīth* is intricately linked to the specific conditions and local needs, including customs, of the Acehnese community. This principle underscores the contextual adaptation of Islamic law to the unique characteristics of the region while maintaining harmony with broader Indonesian legal frameworks (Silveira, 2023). Additionally, the *Qānūn* Hukum *Jināyāt* emphasizes the third principle, which involves ensuring consistency with regulations applicable within the framework of the Unitary State of the Republic of Indonesia. This reflects the balance sought by

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Aceh in integrating its specific legal provisions with the broader national legal system. Lastly, a commitment to consistently strive to adhere to new regulations is acknowledged, showcasing a dynamic approach to legal development and adaptation to changing circumstances (Silveira, 2023).

These principles collectively illustrate the thoughtful and contextually grounded approach taken in the development and implementation of Islamic law in Aceh, showcasing a balance between adherence to foundational principles and responsiveness to local needs and evolving legal contexts. The differences between the Code of Criminal Procedure and the Law of *Jināyāt* Procedure in terms of the effectiveness of law enforcement are influenced by the following factors:

- Article 62 of the Law of *Jināyāt* Procedure states that the provisions regarding legal assistance in that article are ambiguous and unclear. This article requires law enforcement officers to appoint an attorney for a suspect or defendant. However, on the other hand, it is unclear whether the intended legal assistance should be provided for free or should be paid by the suspect/defendant. In contrast, Article 56 of the Code of Criminal Procedure (KUHAP) in paragraph (2) stipulates that the appointed attorney, as mentioned in (1), provides legal assistance for free.
- Supreme Court Regulation Number 1 of 2014, Guidelines for Providing Legal Assistance to the Less Fortunate in Courts, does not explicitly mention Legal Assistance in Criminal Cases; the establishment of legal aid posts in each court funded by the Supreme Court aims to provide access to the less fortunate to obtain legal assistance, with the goal of equality before the law that upholds human rights to achieve competent, fair, honest, and civilized justice. However, it is regrettable that this goal cannot be maximally achieved, especially in the Legal Aid Post of the *Shariah* Court in Banda Aceh. The Supreme Court Regulation of 2014 does not explicitly mention the provision of legal assistance in criminal cases, so the legal aid organizers in the *Shariah* Court of Banda Aceh do not allocate funds for legal assistance in criminal cases (Abuanzeh, 2022).
- Governor Regulation Number 10 of 2019 on Guidelines for the Implementation and Technical Implementation of Legal Assistance for the Poor contradicts other regulations; *Qānūn* Number 8 of 2017 concerning Legal Assistance for the Poor was enacted in 2017, but the Governor's Regulation on its implementation only came about in 2019. This Governor Regulation also cannot run smoothly because after the socialization on April 9, 2019, the regulation still requires further additions. For example, regarding the budget, the *Qānūn* establishes 10 forms of legal assistance

outside litigation, but in Governor Regulation Number 10 of 2019, only 2 forms of legal assistance outside litigation remain, namely Mediation and negotiation incurring costs, nominal legal service fees that are unclearly provided to legal aid providers, and the process for the community to access legal assistance is very difficult according to this Governor Regulation.

From the aforementioned background, this research will formulate the problem, namely, how to provide pro bono legal advice to a suspect facing a 5-year prison sentence, considering the procedural law and the law of criminal procedure, and what legal consequences may arise if not accompanied by legal counsel according to the Code of Criminal Procedure (KUHP) and the Law of *Jināyāt* Procedure (Hukum Acara *Jināyāt*).

### **Methods**

The research methodology employed in this study is characterized by a normative juridical approach, incorporating both legislative and conceptual dimensions. Primary legal materials essential to this research include *Qānūn* Aceh Number 7 of 2013 regarding the Law of *Jināyāt* Procedure and Law Number 8 of 1981 concerning the Code of Criminal Procedure. In addition to these foundational legal texts, secondary legal materials such as journal articles and books are utilized to enrich the understanding of the subject matter (Mansyah, 2023a). The analysis technique employed is descriptive analysis, involving a thorough literature study focused on the laws and regulations pertinent to the research subject. This comprehensive approach allows for a nuanced exploration of the legal landscape governing the provision of legal assistance in the context of the Code of Criminal Procedure and the Law of *Jināyāt* Procedure (Carrol, 2022). The legal interpretation applied throughout this study is systematic and grammatical, emphasizing a structured and linguistic understanding of the legal provisions (Mansyah, 2023a). A significant component of this research involves the implementation of a systematic literature review (SLR) methodology. The SLR method is a well-established research approach designed to collect, evaluate, and synthesize existing research relevant to a specific topic. By adhering to predefined steps or protocols, the SLR method ensures a rigorous and objective identification of relevant literature. This method is particularly valuable for avoiding subjective biases in the identification process and contributes to the existing body of literature on the utilization of SLR methods for journal identification (Mansyah, 2023a). The overarching objective of employing the SLR method in this study is to identify, examine, evaluate, and interpret all available research that addresses the comparison between the Code of Criminal Procedure and the *Law of Jināyāt* Procedure concerning the provision of legal assistance. Through this methodological approach, the

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research aims to contribute valuable insights and a comprehensive understanding of the legal frameworks governing the provision of legal assistance in the specified contexts.

### Finding and Discussion

In developing countries, the need for responsive legal development strategies often serves as a catalyst for legal aid movements. Any effort by various social groups in society to influence the formation, conceptualization, implementation, and institutionalization of law in a political process is referred to as legal development. The awareness that positivist-instrumental law produces orthodox patterns regarding the needs and sense of justice in society triggers the need for responsive legal development (Mansyah, 2023). Legal development strategies that position the law as the commander of justice are considered the only way to achieve legal products that are more responsive to the demands of various social groups and individuals in society (Raharjo et al., 2015). These principles are designed to ensure that everyone is presumed innocent until proven guilty and that they have the right to defend themselves in the legal system. This legal protection aligns with the principles of human rights and justice (Saefudin, 2015). Thus, there is a comparison of legal counsel assistance rules between criminal procedure law and procedural law.

**Table 1.**

### Comparison of Legal Counsel Assistance Rules between The Code of Criminal Procedure and The Law of *Jināyāt* Procedure

The Code of Criminal Procedure	The Law of <i>Jināyāt</i> Procedure
<p><b>Article 56</b></p> <p>1) If a suspect or defendant is suspected or accused of committing a crime that is punishable by the death penalty or a sentence of fifteen years or more or for those who are incapacitated and who are threatened with a sentence of five years or more who do not have their legal advisor, the relevant officials at all levels of examination in the judicial process are obliged to appoint legal advisors for them.</p>	<p><b>Article 56 paragraph (1) letter e</b></p> <p>"Get legal assistance at every level of examination"</p> <hr/> <p><b>Article 60</b></p> <p>"For the purposes of defense, the suspect or defendant has the right to receive legal assistance at every level of examination according to the procedures specified in this <i>Qānūn</i>."</p> <hr/> <p><b>Article 62</b></p> <p>1) In the event that the Suspect or Defendant is suspected or accused of committing <i>jarimah</i>, he is threatened with <i>'uqubat al-ḥudūd</i> or the threat of 60 (sixty) lashes or 1200 (one</p>

2) Every legal advisor appointed to act as intended in paragraph (1), provides his assistance free of charge.	thousand two hundred) grams of pure gold as a fine or 60 (sixty) months in prison or more or for those who are unable to have their own legal advisor who is threatened with 20 (twenty) lashes or 400 (four hundred) grams of pure gold as a fine or 20 (twenty) months in prison, the relevant official at all levels of the examination process The judiciary is obliged to appoint a Legal Advisor for them.
2) Every legal advisor appointed to act as intended in paragraph (1), provides assistance in accordance with the Legislative Regulations.	
<b>Article 63</b>	
1) A suspect or accused subject to detention has the right to contact his legal advisor in accordance with the provisions of this <i>Qānūn</i> .	
2) Suspects or Defendants who are foreign nationals and Muslims who are subject to detention have the right to contact and speak with representatives of their country in dealing with the case process.	
<b>Article 115</b>	
1) Before the examination begins, the investigator is obliged to inform the suspect of his right to obtain legal assistance or that he must be accompanied in his case by a legal advisor as intended in Article 62.	

In Table 1 above, there are differences between the Code of Criminal Procedure and the Law of *Jināyāt* Procedure in providing legal guidance. In the Code of Criminal Procedure, there is a requirement that if accompanied by legal counsel, namely when the person suspected/accused of committing a criminal act punishable by death or a penalty of fifteen years or more, or for those who cannot afford it and face a five-year penalty, must be accompanied by legal counsel (Abduh & Riza, 2018). Meanwhile, the Law of *Jināyāt* Procedure stipulates that legal assistance can be provided for free if the suspect is suspected or accused of committing a crime punishable by *'uqūbat al-ḥudūd* or a threat of 60 lashes or 1200 grams of pure gold as a fine or 60 months of imprisonment or more, or for those who cannot afford it and face a penalty of 20 lashes or 400 grams of pure gold as a fine or 20 months of imprisonment (Aceh, 2015). Both the Code of Criminal Procedure and the Law of *Jināyāt* Procedure impose specific requirements for someone to be accompanied by legal counsel for free (Bhattacharjee, 2023). Meanwhile, threats under



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five years do not have any legal obligations or implications. According to Yahya Harahap, Article 56 of the Code of Criminal Procedure is a human right in line with the Universal Declaration of Human Rights, emphasizing that the presence of legal counsel accompanying a suspect or defendant is an inherent human value, so neglecting it contradicts human rights values (Yahya Harahap, 2006).

Based on the provisions found in Article 56 of the Code of Criminal Procedure, it is a mandatory, and failing to comply with it will have legal consequences. As known, the defendants in this case are individuals who are unable to afford legal representation, a fact that becomes apparent during the examination process, and they face a minimum of 8 years of imprisonment. According to Article 56 of the Code of Criminal Procedure, defendants must receive assistance from legal counsel appointed by the investigator, either for free or without charge (Budijanto, 2017). However, the reality is that defendants do not have legal representation during the investigation process. They are not even granted rights as defendants. When a legal officer offers legal counsel services, even if defendants sometimes decline, the obligation of Article 56 of the Code of Criminal Procedure has been fulfilled (Muscella, 2022).

Article 56 of the Code of Criminal Procedure, which should serve as the state's protection for the poor in obtaining justice, according to Pujiarto et al., (2015), has its weaknesses. There are no sanctions for law enforcement officials if this article is violated. Ideally, an article in such a position should be supported by clear rules in case of negligence or violation of the guaranteed rights in the article, as explained by Maria (2007) that legal norms can be a single legal norm and can also be a paired legal norm. A single legal norm is a command (*das solen*) about how someone should behave. A paired legal norm is a legal norm consisting of two legal norms, namely primary and secondary legal norms (Alhadithi, 2023). The primary legal norm is an instruction (*das solen*) on how someone should act or behave, while the secondary legal norm is a legal norm that contains procedures for handling if the primary legal norm is not fulfilled or ignored. This secondary legal norm provides guidance for law enforcement to act if the primary legal norm is not complied with, and it contains sanctions for someone who does not comply with the provisions in the primary legal norm (Maria, 2007).

In further analyzing Article 56 of the Code of Criminal Procedure, it becomes apparent that the absence of specified legal consequences may raise questions about the enforceability of the obligation outlined in the provision. Legal scholars often contend that the effectiveness of any legal obligation hinges on the presence of consequences for non-compliance. Mochtar Kusumaatmadja's perspective, as articulated in 1999, underscores the concept that obligations, to truly carry legal weight, necessitate accompanying repercussions in the event of non-fulfillment. Moreover, the assertion made by Kusumaatmadja, 1999 prompts a broader exploration of legal philosophy, where obligations are viewed as more than mere directives.



Rather, they are construed as imperative duties mandated by the law, signifying a compelling need for individuals to either act in a prescribed manner or abstain from certain actions. Failure to adhere to these legal duties, as suggested by Kusumaatmadja, should consequently trigger specific legal consequences for the party obligated. It is essential to consider the implications of this legal interpretation in the broader context of jurisprudence, as it brings to light the intricate relationship between legal obligations and the repercussions that underpin their efficacy. The discussion surrounding the interplay of obligations and consequences is crucial not only for a nuanced understanding of legal frameworks but also for fostering a more comprehensive approach to legal analysis and interpretation.

Drawing insights from an examination of past Supreme Court decisions that have attained the status of jurisprudence, it is discernible that the elucidations can be categorized into several key aspects. These aspects shed light on the judicial reasoning, principles, and precedents that have shaped legal interpretations over time. The following elaboration outlines these facets based on the identified patterns in the study:

- Temporary Decision of the Tegal District Court Number 34/Pid.b/1995/PN.Tgl dated June 26, 1995, which stated that the Panel of Judges of the Tegal District Court decided that the investigation by the Police Headquarters into the timber smuggling case involving the Defendant Aki (Oh Pek Kie) alias Pontjodiyono was legally invalid because during the investigation process, the Defendant was not accompanied by legal counsel (Fenyk, 2023). The Tegal District Court's decision was based on considerations that essentially explain the following:
  - a. During the investigation by the Police Headquarters Investigator, the Defendant was not accompanied by legal counsel as mandated by Article 56 paragraph (1) of the Code of Criminal Procedure.
  - b. Although the Defendant had made a Statement Letter dated January 17, 1995, stating that he did not need to be accompanied by legal counsel, considering the term "mandatory" in Article 56 paragraph (1) of the Code of Criminal Procedure, the Panel argued that appointing legal counsel to accompany the Defendant is mandatory, whether requested or not by the Defendant.
  - c. By not implementing Article 56 paragraph (1) of the Code of Criminal Procedure, the results of the investigation in this case become invalid.
  - d. Because the public prosecutor's indictment in this case was based on an invalid examination, the indictment became invalid.
  - e. Therefore, it is a sufficient reason for the Court to declare the Indictment Letter "Not Accepted" (Kuffal, 2010).

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- Supreme Court Decision of the Republic of Indonesia Number 1565 K/Pid/1991 dated September 16, 1993, which basically states, "If the requirements of the application are not fulfilled, such as the Investigator not appointing Legal Counsel for the Suspect since the beginning of the investigation, then the demand of the Public Prosecutor is declared unacceptable" (Intaniasari, 2020).
- In the Supreme Court Decision of the Republic of Indonesia Number 367 K/Pid/1998 dated May 29, 1998, it was decided that the investigation and the Prosecutor's Examination Report (BAP) were null and void, and the demand of the Public Prosecutor was not acceptable, even if the examination in the trial was accompanied by Legal Counsel (Intaniasari, 2020).

The parallel between Article 56 of the Code of Criminal Procedure and Article 62 of the Law of *Jināyāt* Procedure lies in their shared concern for legal representation, yet notable differences arise in their treatment of the consequences of lacking legal counsel (Kirchengast, 2021). While the Jinayat Procedure Law fails to articulate specific legal repercussions when a suspect or defendant is unaccompanied by legal counsel, the Code of Criminal Procedure similarly lacks explicit regulations but suggests through expert opinions and judicial decisions that such absence renders the trial process invalid. This implies that the efficacy of the legal proceedings hinges on the presence of legal representation, underscoring the critical role of expert interpretations and judicial precedent in shaping the legal ramifications of these provisions.

The Code of Criminal Procedure and the Law of *Jināyāt* Procedure ought to refrain from unduly restricting access to state-provided legal counsel, a measure essential to curbing potential abuses of authority by law enforcement officials. This imperative aligns with the explicit protection of human rights for suspects or defendants enshrined in the constitution, specifically outlined in Article 28I paragraph (2) of the 1945 Constitution of the Republic of Indonesia, which affirms that "everyone is free from discriminatory treatment and has the right to protection from discriminatory treatment." The provision of legal aid assumes a paramount role in realizing the entitlement to recognition, guarantees, protection, and fair legal certainty, along with ensuring equal treatment before the law. This underscores the pivotal role of legal assistance in safeguarding the fundamental human rights of individuals involved in legal proceedings, ultimately contributing to the integrity and fairness of the justice system (Ferrazzani, 2023).

Here is the application of legal aid for suspects based on the implementation of the Code of Criminal Procedure in the field: firstly, it does not guarantee the rights of the poor community to law and justice to force assistance (Erundu, 2023). There are still several legal

issues at the practical level in society that result in the ineffectiveness of providing legal aid, namely the poor understanding of legal aid by the impoverished community. Regarding the implementation of providing legal aid in the Gorontalo City Police, the process involves investigators in providing legal aid until the suspect accepts it. The stages involve the examination of the suspect, the provision of legal aid, and legal assistance by legal aid providers. In the implementation of legal aid for suspects, it is still not optimal; some suspects are not accompanied by legal advisors due to their lack of understanding of free legal aid and other rights. There is a shortage of legal advisors/lawyers collaborating with institutions that cannot assist the impoverished community involved in criminal cases because they handle cases in court, resulting in ineffective legal aid provision and a lack of understanding or awareness by the public about the availability of legal aid, thus their rights in legal aid are not maximally realized.

In this context, there are several issues and dilemmas that arise in the implementation of the Law of *Jināyāt* Procedure in Aceh, especially concerning legal assistance for suspects of *Jināyāt* offenses. Despite regulations requiring investigators to appoint lawyers for suspects before the examination begins, the implementation still leaves confusion and a lack of awareness, especially on the part of the Sharia Police District. One major problem is the lack of understanding by the Sharia Police District regarding the existence of legal aid organizations that can be accessed for free by those who cannot afford a lawyer. This creates a situation where no *jināyāt* cases are accompanied by legal advisors unless actively sought by the individuals involved. Nevertheless, this lack of knowledge cannot be used as an excuse to withhold legal aid from *jināyāt* offenders, especially those required to be accompanied by legal advisors based on regulations (Adi, 2021). Furthermore, a lack of understanding about the importance of legal aid among suspects and their families is another factor hindering the effectiveness of legal aid implementation. Sometimes, they are discouraged from using legal advisors on the grounds that it will complicate the process and prolong the duration of the trial. This understanding can create a dilemma for those who want to expedite the legal process and avoid more complex evidence (Ghambaryan, 2020). In some cases, the Sharia Police District does not even recommend the use of legal advisors, especially if the suspect is caught in the act. This indicates that not only is there a lack of understanding, but there are also internal perspectives within law enforcement that can influence decisions related to legal aid. Overall, the implementation of Criminal Procedure Law in Aceh in the context of *jināyāt* still faces complex challenges, including a lack of awareness, misunderstanding, and internal perspectives that can affect a suspect's right to legal aid. Further efforts are needed to enhance understanding and awareness among law enforcement officers and the community to better ensure the rights inherent to suspects.

It is important to clarify that human rights are fundamental rights inherent to every individual based on the principles of humanity. Violations of human rights can be brought to

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court through legal mechanisms regulated in the 1945 Constitution of the Republic of Indonesia. Article 7 asserts the right of every person to use national and international legal avenues in response to human rights violations, whether guaranteed by Indonesian law or international law accepted by Indonesia (Raharjo et al., 2015). According to (Mozin & Sunge, 2021), these provisions, including the right to access justice, are outlined in Article 17. The right of every person, without discrimination, to access justice through filing applications, complaints, and lawsuits, whether in criminal, civil, or administrative contexts, must be examined through a fair and impartial judicial process. It also emphasizes the right to receive legal assistance from the investigation to a legally binding decision, as stipulated in Article 18 paragraph (4). Thus, if the 1945 Constitution and Human Rights Law can serve as the basis for providing free legal aid from investigation to trial without a minimum five-year prerequisite, amendments to the Code of Criminal Procedure (KUHAP) and the Law of *Jināyāt* Procedure are needed to align with the constitutional rights of the suspect. These amendments are necessary to ensure that legal assistance is provided effectively, without time-based constraints that could hinder access to justice for those in need.

### Conclusion

The Law of *Jināyāt* Procedure and the Code of Criminal Procedure differ in providing legal assistance to suspects facing a prison term of five years. Under the Law of *Jināyāt* Procedure, individuals receiving legal counsel face a penalty of 60 lashes or a fine of 1200 grams of pure gold or a prison term of 60 months or more, or for those unable to pay. Meanwhile, criminal procedure law limits the provision of legal advice only to suspects facing a prison term of five years or more and the death penalty or a 15-year sentence. However, both the Code of Criminal Procedure (KUHAP) and the Law of *Jināyāt* Procedure lack legal consequences if law enforcement officials fail to provide legal counsel. Therefore, a future recommendation in this article is to establish legal consequences for the non-provision of free legal counsel, such as imposing sanctions on law enforcement officials, rendering documents in the determination void, rendering suspects non-rejectable, ensuring that suspects receive justice, benefits, and legal certainty. Furthermore, the concept of providing free legal counsel by the state should be extended to all criminal cases, eliminating specific conditions such as a five-year prison threat or a threat of 60 lashes, a fine of 1200 grams of pure gold, or a 60-month prison term or more. This norm should be abolished because its goal is to protect the human rights of the suspect from threats and violence. Therefore, a suggestion for further research is to explore and formulate regulations regarding the legal consequences if free legal counsel is not provided by law enforcement officials. These regulations may include the imposition of sanctions for violations,

the annulment of documents in the determination, and provisions that suspects cannot be rejected to ensure optimal justice, benefits, and legal certainty. Additionally, consideration should be given to revising the concept of providing free legal counsel to cover all criminal cases without specific conditions, thus more effectively protecting the human rights of suspects from potential threats and violence.

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