

## **Effectiveness of Legal Aid Services in Joint Property Cases in Marriage at Partner Legal Aid Institutions Madani West Sulawesi**

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### ***Abstract***

*The purpose of this study is to analyze the issue of free legal aid for the weak and poor. This provision is regulated in the Legal Aid Law, which embodies Article 27 paragraph (1) and Article 28D paragraph (1) indicating that everyone has an equal position before the law and is entitled to legal protection. The state has juridically arranged such that justice can be experienced by all layers of society, but the implementation of the law still falls far short of justice itself. The research method employed is empirical legal research with a sociological juridical approach, emphasizing research aimed at obtaining legal knowledge empirically. The findings of this study indicate that LBH Mitra Madani, as a structural institution, has provided legal assistance in both litigation and non-litigation cases. Additionally, LBH Mitra Madani also conducts legal education, community organizing, and training in the field of law. However, the obstacle lies in the lack of financial support from the government, as LBH Mitra Madani has not yet been accredited. The cases assisted from 2019 to 2022 amounted to 37 cases, with civil cases dominating those handled by LBH Mitra Madani. Based on these findings, there is a need for greater financial support from the government for LBH Mitra Madani to be able to provide legal aid free of charge in accordance with regulations. Additionally, there is a need for increased accreditation and official recognition of LBH Mitra Madani as an institution capable of providing effective legal assistance. However, it is important to note that the limitation of this study is its focus on LBH Mitra Madani as a case study, which may limit the generalization of the research results to the context and characteristics of LBH Mitra Madani itself.*

**Keywords:** Legal Aid Institute, Legal Aid, Common Property

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### **1. Introduction**

Responding to legal issues, LBH Mitra Madani is dedicated to providing services to every community involved in legal proceedings, particularly in joint property cases. Notably, LBH Mitra Madani has handled cases such as Decision No. 632/Pdt.G/2020/PA. Pwl and Decision Number 641/Pdt.G/2021/PA. Pwl,

both addressing common property matters, where the court rulings favored the plaintiffs partially. However, despite these efforts, some clients have expressed dissatisfaction with the legal assistance provided, suggesting discrepancies with the Legal Aid Law.

The presence of law as a social control mechanism underscores the necessity for just and equitable legal practices. Indonesia, as a constitutional state, is obligated to enforce laws and provide legal assistance to all citizens to ensure access to justice. This obligation, enshrined in the Constitution, emphasizes the rights of every individual to equal treatment and legal protection.

The pursuit of justice, as a fundamental human right, is enshrined in the Indonesian Constitution. Mochtar Kusumaatmadja underscores the importance of just laws in democratic societies, where laws should reflect the aspirations of the people(Astomo, 2014). However, despite legal provisions, injustices persist, particularly affecting marginalized communities.

The rise in injustice cases highlights the importance of evaluating the effectiveness of legal aid services, especially those provided by institutions like LBH. Many Indonesians, particularly the economically disadvantaged, face barriers to accessing legal protection and assistance, exacerbating injustices(Sergio, 2022). Hence, government regulations mandate LBH to offer free services to those unable to afford legal aid.

The inability of financially disadvantaged individuals to navigate legal proceedings underscores the necessity for policies enabling cost-free civil litigation, such as prodeo litigation. Legal aid institutions play a vital role in ensuring fair treatment and defending the rights of indigent individuals involved in legal proceedings(Fwangchi & Ng, 2010; S. A. Muhammad, 2018; Muralidhar, 2005; Sha'aban Ado, 2018).

The legal aid regulation, governed by Law Number 16 of 2011, mandates LBH to provide free legal aid services to economically disadvantaged individuals. However, LBH Mitra Madani faces challenges in full compliance, particularly regarding accreditation and financial support, hindering its ability to provide free legal assistance as mandated.

Despite challenges, LBH Mitra Madani serves as a crucial legal aid platform for the people of West Sulawesi, particularly the economically disadvantaged. However, its operations fall short of legal aid provisions, especially regarding fee collection and accreditation. Hence, this study aims to assess "The Effectiveness of Legal Aid Services for Joint Property Cases in Mandar Community Friendship (Study of LBH Mitra Madani West Sulawesi)" to contribute to enhancing legal aid mechanisms and promoting justice within Indonesian society.

## **2. METHODS**

This research uses qualitative methods with a literature study approach to analyze the problem of free legal aid for the weak and poor. This provision is regulated in the Legal Aid Law, which is the embodiment of Article 27 paragraph (1) and article 28D paragraph (1) which shows that everyone has an equal position before the law and is entitled to legal protection. The state has juridically arranged in such a way, so that justice can be felt by all levels of society, but the application of the law is still far from justice itself. This research is empirical legal research using a sociological juridical approach, which is an approach that emphasizes research that aims to obtain legal knowledge empirically.

## **3. RESULT AND DISCUSSION**

### **Legal aid services for marital joint property cases at Mitra Madani Legal Aid Institute**

In the realm of legal aid services at Mitra Madani Legal Aid Institute, the focus extends prominently to marital joint property cases. These cases represent a significant segment of the legal assistance provided, reflecting the institute's commitment to addressing the complexities surrounding shared assets within marriages. By delving into the outcomes and discussions pertaining to these cases, a comprehensive understanding emerges regarding the efficacy and challenges encountered in delivering legal aid services within this specific domain. Through an exploration of regulatory aspects, service provision, and infrastructure facilities, insights can be gleaned into the extent to which Mitra

Madani Legal Aid Institute navigates the legal landscape to empower individuals grappling with joint property disputes within the context of marriage. The cases that have been accompanied from 2019 to 2022 are 37 cases, which can be seen in the following table:

**Table 1. Recapitulation of Cases Handled by LBH Mitra Madani for 2019-2022**

Tahun	Perkara	Jumlah
2019	Sengketa Waris, Cerai Talak	8
2020	Isbath Nikah, Cerai talak, Harta Bersama	12
2021	Harta Bersama, Cerai Talak, Sengketa Waris	10
2022	Harta Bersama, Penetapan Ahli Waris	7
Jumlah		37

Sumber: Arsip LBH Mitra Madani

From the table above, it can be seen that the cases handled by LBH Mitra Madani are dominated by civil cases. This shows that the human resources owned by LBH Mitra Madani are very limited who have competence in the field of criminal law, so this is one of the obstacles in providing assistance. The Director of LBH Mitra Madani has tried to recruit colleagues from Advocates to join, but so far it has not materialized. That way LBH Mitra Madani continues to maximize its potential in providing legal assistance to people in need.

From several types of cases above, it can be seen that various requirements must be met as administrative completeness in the case resolution process. This is in line with the theory of administrative law which emphasizes the importance of compliance with administrative procedures in handling legal cases (Hawke, 2019). For instance, in polygamy cases, there are more requirements as there needs to be a consent letter from the wife and approval from the authorities to conduct polygamous practices. Conversely, in Child Adoption requirements, the procedure

is simpler as it only requires files from the Social Services, consistent with the theory that administrative processes should be efficient and tailored to needs (Fatia et al., 2023). By understanding the applicable administrative requirements for each type of case, LBH Mitra Madani can provide appropriate legal assistance and ensure that clients meet all necessary requirements to effectively resolve their cases.

### ***Definition of Common Property***

In classical fiqh texts, joint property is described as wealth generated by a husband and wife during their marriage, resulting in a mixing of their individual properties that cannot be distinctly separated (Widiarti, 2018). In other words, joint property refers to the wealth produced by both spouses within the confines of marriage, where individual ownership of such assets can no longer be clearly distinguished.

LBH Mitra Madani plays a significant role in assisting individuals facing disputes over joint property by providing legal guidance and representation. By understanding the intricacies of joint property as defined in classical fiqh texts, LBH Mitra Madani can better advise clients on their rights and obligations regarding the division of assets during divorce or other legal proceedings. Additionally, LBH Mitra Madani's expertise in handling joint property cases contributes to promoting fairness and justice in resolving disputes between spouses, ensuring that each party receives equitable treatment under the law.

LBH Mitra Madani can provide legal assistance to individuals facing issues in dividing their joint property in accordance with applicable laws. By offering a proper understanding of the concept of joint property, LBH Mitra Madani can help clients comprehend their rights and the procedures to be followed in resolving disputes arising from joint property. As a legal aid institution, LBH Mitra Madani aims to ensure that every individual, including those involved in the division of joint property, receives fair and adequate legal protection.

**Table 2. Human Resources of LBH Mitra Madani**

No	Nama	Jabatan	Bidang
1	Adv. Muh. Amin Sangga, S.H., M.H.	Direktur	Pimpinan
2	Adv. Yusuf Daud, S.H., M.H.	Sekretaris	
3	Adv. Muhammad Taufan, S.H.	Bendahara	
4	Adv. Multazam, S.H.	Kepala Bidang	Bidang Hukum dan Advokasi
5	Tahira	Anggota	
6	Fithsuryah L. Rajab, S.H.	Anggota	Bidang Humas dan Pubdok
7	Firdaus, S.H	Kepala Bidang	
8	Sevi Mayasari	Anggota	
9	Wawan, S.H	Anggota	Bidang Administrasi dan Kesekretariatan
10	Adv. Muammar Khadafi, S.H	Kepala Bidang	
11	Supriadi, S.H	Anggota	
12	A. Besse Nurfadilah, S.H.	Anggota	

From the data, it is evident that LBH Mitra Madani has very limited human resources, with some staff members lacking formal legal education. Despite the recognized importance of legal knowledge among law enforcers, particularly within the advocate role in the judiciary system, this deficiency poses a significant challenge. Advocates are not only considered part of law enforcement but are also expected to serve as a counterbalance to the predominant roles of law enforcement agencies such as the police and prosecutors, especially concerning defendants with limited resources. Consequently, having well-qualified advocates is crucial to ensuring effective legal assistance provision (Darling-Hammond, 2018).

Furthermore, the lack of human resources at LBH Mitra Madani can also affect the quality of services provided to the community in need. With limited staff members, LBH might face challenges in handling a high volume of cases or

providing adequate attention to each case individually. This could result in delays in case resolution or even suboptimal legal representation for clients. Therefore, enhancing human resources at LBH Mitra Madani could be a crucial step in improving the quality and effectiveness of the legal aid services provided.

**Table 3. Things Registered in LBH Madani Partners**

No	Jenis Perkara	Pemohon	Tahun
1	Sengketa Waris	Ali Pua Nonci	09-04-2019
2	Sengketa Waris	Kadang dan Yunus	05-07-2019
3	Sengketa Waris	Arianti	01-01-2021
4	Sengketa Waris	Nuhung bin Maleleang	06-07-2022
5	Penetapan Ahli Waris	Inra Nurdiansyah	01-02-2021
6	Penetapan Ahli Waris	H.A.M. Djufri	22-03-2021
7	Penetapan Ahli Waris	Sidik bin Jabbar	07-05-2021
8	Harta Bersama	Reskiani, S.Kep.	13-07-2021
9	Harta Bersama	Nurling	22-10-2021
10	Harta Bersama	Nuraeni	01-03-2022
11	Cerai Gugat	Nurlina	12-03-2019
12	Cerai Gugat	Sri Wahyuni	07-12-2019
13	Cerai Gugat	Rudi M, M.Si.	28-12-2020
14	Cerai Gugat	Abigail Lomo	23-06-2022
15	Cerai Talak	Abdul Jalal, M.M	12-11-2018
16	Cerai Talak	Abdul Sikki	19-05-2022
17	Cerai Talak	Eka Ramadhani	06-07-2022
18	Isbat Nikah	Syarif Hidayatullah	23-02-2021
19	Isbat Nikah	Burhan	20-12-2021
20	Isbat Nikah	Syamsuddin Totona	13-05-2022
21	Isbat Nikah	Hasriah	18-05-2022

Sumber Data: Dokumen LBH Mitra Madani.

Table 3 presents a summary of cases registered with LBH Mitra Madani. This table encompasses various types of cases such as inheritance disputes,

determination of heirs, division of joint property, divorce, and marriage validation. Each case is accompanied by details including the name of the applicant or plaintiff, and the year in which the case was registered. These cases span multiple years, indicating LBH Mitra Madani's ongoing involvement in providing legal assistance to individuals facing various legal issues (LBH Mitra Madani, LBH Mitra Madani Documents).

Despite efforts to collect case data comprehensively, the researcher could only present 21 cases due to some data loss caused by flooding, as reported by LBH Mitra Madani. Nevertheless, this table provides insights into the diversity of legal issues handled by LBH Mitra Madani, ranging from inheritance disputes to marriage validation. This diversity underscores the importance of LBH Mitra Madani's role in providing comprehensive legal assistance to the community, especially in navigating complex legal issues (LBH Mitra Madani, LBH Mitra Madani Documents).

Previous studies have also highlighted the importance of legal aid in ensuring fair access to the justice system for all individuals, especially those in vulnerable economic situations (Chaara et al., 2022). In this context, legal aid becomes key in ensuring that economically disadvantaged or vulnerable individuals still have equal access to justice as others. The research emphasizes that legal aid plays a significant role in addressing the access gap to the justice system that often occurs in societies, particularly in developing countries like Indonesia.

(Sandefur, 2020) also points out that individuals facing legal issues often encounter significant economic challenges in accessing quality legal aid. Financial constraints may hinder individuals from using legal services or filing lawsuits in court. Therefore, legal aid services provided by institutions such as LBH Mitra Madani are crucial in ensuring that those in need receive the legal assistance they require, regardless of their economic status.

In the context of joint property cases found in Table 3, indicates that this issue often leads to conflicts among the parties involved and requires legal intervention for resolution (Shamir, 2016). Thus, the role of LBH Mitra Madani in providing legal aid in joint property cases becomes increasingly important in

ensuring that such disputes are resolved fairly and in accordance with the law, while also ensuring that the rights of all parties are well protected.

### **The effectiveness of joint property legal aid services in marriage at Mitra Madani Legal Aid Institute**

#### ***Regulatory Aspects***

The legal aid services offered by LBH Mitra Madani are built upon the principles outlined in the Legal Aid Law, which serves as its legal framework. This ensures that the provision of legal aid is rooted in a solid legal basis, guaranteeing that every recipient receives proper legal protection and upholds fundamental principles of justice. Moreover, the Legal Aid Law explicitly mandates that organizations like LBH Mitra Madani offer free or affordable legal assistance, especially to marginalized groups within society. As such, LBH Mitra Madani operates within the parameters set by this law to ensure that all individuals have equal access to justice, regardless of their socioeconomic status.

By adhering to the Legal Aid Law, LBH Mitra Madani plays a pivotal role in promoting fairness and equality in legal services. This commitment extends to providing assistance to individuals who may face financial constraints or other barriers in accessing legal aid. As a result, LBH Mitra Madani acts as a vital resource for ensuring that even the most vulnerable members of society have access to legal representation and protection. Through its adherence to legal principles and dedication to serving those in need, LBH Mitra Madani contributes to the realization of justice and equity within the legal system.

Overall, LBH Mitra Madani's commitment to providing legal aid services in accordance with the Legal Aid Law underscores its dedication to upholding the principles of justice and equality. By offering free or affordable legal assistance to those in need, LBH Mitra Madani ensures that all individuals, regardless of their financial circumstances, have access to legal protection and representation. In doing so, LBH Mitra Madani contributes significantly to promoting a fair and inclusive legal system that serves the interests of all citizens. This aligns with theories of justice, particularly as elucidated by John Rawls, which emphasize the importance of ensuring fairness and equality in the provision of legal services to

uphold social justice(K. Muhammad et al., 2023; Nabila et al., 2023; Ningsih et al., 2023).

### ***Aspects of Services and Infrastructure Facilities***

LBH, as one of the non-governmental institutions involved in providing free legal assistance to recipients of legal aid as mandated in the Legal Aid Law, is appropriate for every LBH to provide the best service to every recipient of legal aid. In this context, justice theory, as elucidated by John Rawls, underscores the importance of ensuring that legal services are provided fairly and equitably to all parties, especially to those in need (Benson, 2019; Rosenfeld, 2020; Waldman & Ojelabi, 2014). This includes providing equal opportunities for less privileged individuals to access the legal system. Therefore, effective provision of legal aid by LBHs such as LBH Mitra Madani is crucial for upholding the principles of justice in society.

## **4. CONCLUSION**

LBH Mitra Madani, as a structural institution, provides comprehensive legal assistance encompassing both litigation and non-litigation cases, along with legal counseling, community organizing, and law-related training. Despite these efforts, the absence of government financial support due to accreditation challenges hampers its operations. From 2019 to 2022, LBH Mitra Madani handled 37 cases, mainly civil, revealing a limitation in human resources, particularly in criminal law expertise. To address these challenges, it is recommended to review legal aid regulations, fostering flexibility for Legal Aid Institutes to educate the public effectively and enhance legal awareness. Additionally, advocating for opportunities for lawyers to improve their competencies ensures professionalism in delivering legal assistance to recipients of legal aid. This study's scope includes recommendations for improving legal aid provision within LBH Mitra Madani, focusing on regulatory enhancements and professional development opportunities for lawyers.

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