



# *Enhancing Legal Certainty: Empowering Indonesian National Police Officers with Comprehensive Legal Aid*

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**Abstract**—The fundamental basis for justice and equity within a nation is the adherence to the rule of law, as established in Indonesia's 1945 Constitution, which ensures the legal acknowledgment, safeguarding, and equitable treatment of all individuals. An effective law enforcement system, which includes the presumption of innocence and the provision of legal aid, is crucial for safeguarding fundamental rights. However, there are concerns about Indonesian National Police Officers (POLRI) taking on the role of legal consultants, which might potentially contradict established legal norms and undermine the integrity and impartiality of the court system. The simultaneous role of police personnel as both enforcers of the law and legal counselors gives rise to possible conflicts of interest and legal ambiguities. This study employs normative juridical research methods, which involve analyzing original sources such as laws and regulations, as well as secondary sources like scholarly publications and legal texts. The findings reveal a contradiction between the clause that permits police officers to serve as legal advisors and Law Number 18 of 2003 about advocates, as well as PERKAPOLRI Number 2 of 2017 regulating legal assistance procedures. This discrepancy can lead to the overlapping of functions, which can have an impact on the impartiality of the legal system. In order to ensure legal certainty, police officers who serve as legal advisors must scrupulously abide by the regulations governing the practice of law, thereby avoiding any conflicts of interest and guaranteeing the fairness of judicial proceedings. Ensuring consistent adherence to the rule of law necessitates the harmonization of regulations that govern the responsibilities of police officers and advocates. It is essential to resolve the contradictory requirements in Law Number 18 of 2003 and PERKAPOLRI Number 2 of 2017 in order to prevent legal uncertainties and protect the integrity of the justice system.

**Keywords**—Indonesian National Police Officer; Legal Aid; Legal Certainty.

## I. INTRODUCTION

In a state, the rule of law holds paramount importance. A legal system is a state that holds the utmost authority in a government structure built upon established laws, preventing rulers from exploiting power for their benefit. Everyone has an entitlement to recognition, guarantee, protection, fair legal security, and equality before the law, as guaranteed by the 1945 Constitution.[1] In order to ensure that citizens have the right to fairness and equality before the law, it is crucial to have a robust law enforcement system in place. This system upholds, recognizes, guarantees, protects, and upholds the law. Just like in a legal setting, the principle of presumption of innocence ensures that suspects or defendants have the right to legal assistance. The principle also underscores the presumption of innocence for every defendant or suspect, pending the court's verdict. The verdict confirms the individual's guilt and carries a lasting legal impact.

The legal advisory profession provides legal aid services through litigation and non-litigation processes. The advocate code of ethics and the legal requirements outlined for advocates accomplish this.[2] When seeking the assistance of a lawyer, it is crucial to have a strong understanding of the law.[3] Legal counsel plays a significant role in protecting the client's rights, which remain at risk during the trial. Advocate immunity, which shields legal professionals from civil or criminal charges while performing their professional duties, is a

privilege. Suppose law enforcement officers demonstrate professionalism by following regulated laws, adhering to the principle of good faith in enforcing the law, and being committed to ensuring fairness and promoting the well-being of the broader community. In that case, they can apply legal counsel to the right to immunity. Legal immunity protects the work of defending clients, ensuring that legal counsel faces prosecution under criminal or civil law. Legal counsel can receive immunity if they comply with the law on advocates and the code of ethics.

In the criminal justice system, judges make decisions, prosecutors bring charges, police investigate, and defenders provide legal counsel. These individuals are all part of the law enforcement bodies, and their roles and relationships define the legal arrangement. Legal counsel plays a crucial role in the judicial system, as defined in Article 5 of Law Number 18 of 2003 regarding advocates. Thus, to fulfill their responsibilities as legal counsel, advocates must empower the community and promote an awareness of human rights that aligns with the principles of justice and adherence to the law.[4] Advocacy plays a crucial role in applying the justice system, serving as a pillar in upholding the highest levels of law and human rights. The relationship between legal structure and culture requires consistent, professional, and continuous implementation of internal reforms within law enforcement agencies. The relationship with the substance of the law, specifically the drafting and formation of the law and the development of customary law, should be in sync with the needs of the community, based on objectivity, and free from any form of discrimination. The general understanding of laws that apply to the public is connected to the legal culture.

Indonesian National Police Officers (POLRI) are not just law enforcers but the guardians of our legal system. The police need to have a thorough understanding of the established laws. This design aims to equip individuals with a comprehensive understanding of the laws and enhance their skills across all legal domains. In Indonesia, Indonesian National Police Officers have the power to oversee the assignment process and enforce criminal law. Furthermore, as a reputable agency, we ensure police professionals are equipped to fulfill their duties following the law. This pledge guarantees that all actions taken by the police are lawful, mandatory, and consistent with their responsibilities. Indonesian national police officers must possess the authority and responsibility to uphold justice for the community and its members.

The lack of clarity regarding legal assistance within the National Police is not just a concern but a pressing issue that needs immediate attention. It has raised concerns among the public and led to questions about the principle of legal certainty.[5] The Chief of Police has provided institutional legal counsel that violates the law, further exacerbating the confusion. Public law should construct legal aid in an easily understandable way. This law ensures that there are no loopholes that legal counsel can exploit to avoid criminal liability for their actions.

When Indonesian national police officers also act as advocates, it creates a conflict between law enforcement and the community. We have updated the regulations governing the National Police to ensure a professional and knowledgeable police force. Indonesian national police officers are now required to have a law degree and undergo various levels of education. They must also take an advocate oath and gain experience to effectively carry out their functions, duties, and authorities. These changes aim to create a police force that can provide legal assistance and act as legal advisors when necessary. When establishing a police force that upholds integrity and professionalism, it is crucial to address any instances where police officers may become overly protective of the institution. This action goes against the principles outlined in Law Number 18 of 2003 regarding advocates.

Regarding legal aid, the National Police can serve as legal counsel in court and participate in criminal cases. They can also train to become legal advisors by following Advocate Law Number 18 guidelines 2003. This action includes completing internships in the advocacy office and taking the advocate oath. Meanwhile, individuals from the National Police who lack the expertise of legal professionals often make appearances in court by simply presenting a warrant from their superiors.

With a legal framework that explicitly governs obligations, organizations, status, authorities, and responsibilities, particularly regarding advocates who take measures to uphold the rule of law, The police chief's actions need more clarity and are subject to specific laws. This legal framework undermines the purpose of regulations: to protect individuals affected by the agency's internal affairs. It is highly unusual for police officers with warrants to serve as legal advisors, as this exceeds their authority. Therefore, these actions should be considered private acts of the institution rather than linked to the specific laws governing the agency responsible for enforcing the law. State law enforcement officials must uphold their commitments and adhere to the principles of the rule of law. Thus, the state must ensure its citizens' well-being and safety, a responsibility deeply ingrained in the government and subsequently entrusted to the judicial authorities. Following PERKAPOLRI Number 2 of 2017, which outlines the procedures for providing legal assistance to the National Police of the Republic of Indonesia, there are no specific legal requirements to become an institutional legal advisor. The advocate's oath emphasizes this. If a sworn advocate can violate the law, what about an Indonesian National Police Officer who acts as legal counsel without taking the advocate profession's oath?

## II. LITERATURE REVIEW

### A. Principles of Legal Certainty

Legal principles are fundamental to legal regulations as they serve as the foundation upon which these regulations are established. Sudikno asserted that legal principles serve as the legal criteria for legal rules. An effective law is one that can harmonize these three elements to promote the well-being and success of society.[6] Legal principles (*rechtsbeginsel*) are basic thoughts that are general or are the background to concrete regulations (positive law) and can be found by looking for the general characteristics of concrete regulations. Legal certainty is the main principle in forming legal rules to create clarity in legal regulations. Gustav Radbruch first offered the idea of legal certainty in his book "*Einführung in die Rechtswissenschaften*," where he stated that there are three basic values in law: justice (*Gerechtigkeit*), expediency (*Zweckmäßigkeit*), and legal certainty (*Rechtssicherheit*). Legal certainty, as a fundamental principle, ensures clarity, predictability, and stability in the legal system, thereby contributing to the creation of social order and providing judicial protection.[7]

In his work entitled "Legal Science," Satjipto Rahardjo outlines these three main principles and provides a basis that supports their validity. Radbruch stated that "legal certainty is interpreted as conditions in which the law can function as a rule that must be obeyed." The purpose of the law is to create social order. Legal certainty, an inseparable concept from law, especially in terms of written legal norms, can be understood in various ways. One way to understand the term "certainty" is to state that there is clarity and a strong belief that the law must be implemented in society to avoid many misinterpretations. This reiteration of the concept in different contexts helps to reinforce understanding and invoke a sense of clarity in the audience.

Van Apeldoorn states that "legal certainty can also mean things that can be determined by law in concrete cases." Legal certainty ensures that the law is applied, that people entitled to it according to the law can receive their rights, and that decisions can be implemented. Legal certainty provides judicial protection against arbitrary actions, meaning someone can obtain something they hope for under certain circumstances. Certainty comes from the word "certain," which grammatically means "certain," "must," and "certain."

Overall, the principle of legal certainty, according to various opinions, underlines the importance of several main aspects, namely the basis of rationality in the formation of legal regulations (Sudikno), the three main pillars for achieving justice and benefit (Radbruch), clarity and consistency in law enforcement (Rahardjo), and the ability to determine legal outcomes in concrete cases (Van Apeldoorn). The principle of legal certainty is fundamental in the legal system because it provides the clarity, predictability, and stability needed to create social order. With legal certainty, individuals can plan their actions with confidence that the law will be applied consistently and fairly. Experts' views show that legal certainty is necessary as a rational basis for legal regulations and an essential element in creating a just and effective legal system.

### B. Legal Aid

Legal aid is one of the critical pillars of a fair and equitable justice system, functioning to help underprivileged individuals or groups access justice. In the Republic of Indonesia, two types of legal aid are recognized: Prodeo legal aid and Pro Bono legal aid.[8] Prodeo legal aid refers to the provision of law by the State to individuals or groups who are financially disadvantaged. This assistance is provided through funding from various legal aid providers, such as legal aid agencies, community organizations, and universities, by relevant regulations. Pro Bono legal assistance is a form of legal assistance advocates provide at no cost. This type of assistance is regulated in Article 22, paragraph (1) of Law Number 18 of 2003 concerning Advocates. According to this law, advocates must provide free legal assistance to individuals who cannot afford legal fees.[9] Pro Bono legal assistance is now mandatory for every Indonesian Advocate. The main aim of legal aid, both Prodeo and Pro Bono, is to guarantee the constitutional right of every citizen to obtain legal defense and prevent discrimination in law enforcement. Legal aid principles include social justice, equality before the law, and non-discrimination, ensuring that all individuals, regardless of economic status or background, have equal access to justice. The Legal Aid Institute (LBH) and civil society organizations are essential in providing these services in Indonesia. However, they face various challenges, such as limited resources and low public awareness of their legal rights. Other challenges include a need for more attorneys willing to provide pro bono services and complex jurisdictions.

The offer of legal assistance by the Indonesian National Police (POLRI) can cover several things. First, POLRI can provide legal assistance to individuals or groups who need it, especially concerning criminal acts or other legal issues. They can provide legal advice, navigate the legal process, or even provide legal representation if necessary.[9] Apart from that, POLRI can also play a role in providing legal information to the general public, increasing legal awareness, and providing free legal consultation services. However, it is essential to note that in some cases, the availability of legal assistance from POLRI may be limited or depend on the policies and capacity of each regional police force. The legal basis for offering legal assistance by the Indonesian National Police (POLRI) is based on several relevant regulations and laws:

1. Law Number 2 of 2002 concerning the National Police of the Republic of Indonesia provides a legal basis for the POLRI's functions and duties, including efforts to provide legal assistance to the community.

2. The Republic of Indonesia State Police Regulation (PERKAPOLRI) Number 2 of 2017 concerning Procedures for Providing Legal Assistance by the Republic of Indonesia State Police regulates the procedures and mechanisms regulating how the POLRI provides legal assistance to the public. Apart from that, there is also a Regulation of the Head of the National Police of the Republic of Indonesia (PERKAPOLRI) regarding Legal Assistance, which can provide additional guidelines or more detailed regulations regarding the provision of legal assistance by the POLRI.
3. Other legal provisions, such as those in the Criminal Procedure Code (KUHAP) or relevant regional regulations, can also be the basis for the POLRI's offer of legal assistance.

### III. METHOD

This research uses a normative juridical approach to analyze the issue of legal assistance provided by the Indonesian National Police (POLRI).[10] A qualitative methodology is employed to do textual analysis and literature reviews in order to comprehend pertinent legal principles. The legal sources utilized comprise of statutory regulations such as Law Number 2 of 2002 regarding the State Police of the Republic of Indonesia and Regulation of the State Police of the Republic of Indonesia (PERKAP) Number 2 of 2017 concerning the Procedures for Providing Legal Aid by the State Police of the Republic of Indonesia. The analysis of legal sources involves comparing these provisions with societal legal principles and assessing the probable consequences of implementing measures that are not in accordance with applicable law.

### IV. RESULT AND DISCUSSION

Legal certainty is that a particular action or decision follows the Law based on the clear and concrete authority of the relevant legal provisions. The principle of legal certainty protects individuals seeking justice, ensuring they can expect predictable outcomes in certain circumstances.[11] Sudikno explained that legal principles are the core of legal regulations because they are the basis for forming them. Legal certainty is one of the main principles that supports forming legal regulations to create clarity in legal regulations.[12] Gustav Radbruch's theory posits that there are three fundamental principles in Law: fairness, utility, and legal certainty. According to Radbruch, legal certainty holds paramount importance as it serves as the foundation for a fair and efficient legal system. Legal certainty fosters social order and affords individuals with legal protection by ensuring clarity, predictability, and stability. Satjipto Rahardjo defined legal certainty as the state in which the Law operates as a mandatory rule, highlighting the significance of firmly believing in the application of the Law throughout society. Van Apeldoorn elucidates that legal certainty encompasses determinable aspects governed by the Law in specific instances, underscoring the significance of legal certainty in guaranteeing consistent application of the Law, the fulfillment of entitled rights for individuals, and the enforceability of decisions. Legal certainty is an essential component of the legal system, ensuring clarity, predictability, and stability necessary for establishing social order and safeguarding individuals' legal rights. Legal certainty provides persons with the assurance that the Law will be consistently and impartially administered, allowing them to confidently plan their conduct. Expert opinions indicate that legal certainty is crucial for establishing logical legal norms and ensuring the fairness and effectiveness of a legal system.

It is imperative for those who are pursuing justice to have a comprehensive comprehension of the Law as it applies to their specific circumstances. This knowledge can assist individuals in making well-informed judgments prior to initiating legal proceedings and ensuring the safeguarding of their rights. The link between Law Number 18 of 2003 on Advocates and PERKAPOLRI Number 2 of 2017 on Procedures for Legal Aid resulted in a conflict. Hence, it is imperative to cultivate professional consciousness among the several vocations involved in order to prevent redundancy within these occupations. According to Article 31 of Law Number 18 of 2003 regarding Advocates, individuals who falsely claim to be lawyers or advocates, but do not meet the qualifications outlined in articles 9 and 10, may face a maximum penalty of 5 years imprisonment or a fine of up to IDR 50,000,000.00 (fifty million rupiah).

This article establishes legal penalties for those who falsely represent themselves as advocates without meeting the necessary criteria. The analysis demonstrates that the Advocates Law safeguards the general public against detrimental practices conducted by individuals lacking the necessary qualifications or permissions to offer legal aid. This article establishes legal certainty by imposing criminal sanctions, ensuring that only advocates who meet the standards stipulated by Law are authorized to provide legal help to the community. Article 3 of PERKAPOLRI Number 2 of 2017, which deals with Legal Assistance Procedures, states:

*"Indonesian National Police officials who provide legal assistance comply with the provisions of the laws and regulations regarding advocates."*

This article's analysis emphasizes the importance of compliance with applicable laws and regulations relating to the advocate profession.[13] By referring to these provisions, police officials must ensure that the

process of providing legal assistance does not conflict with the principles regulated in the Law on Advocates. This provision creates legal certainty for the community that the legal assistance provided by the Police will comply with the standards set by Law. Analyzing legal provisions aims to ensure the effective recognition and enforcement of the principle of legal certainty, particularly regarding the provision of certainty for Indonesian National Police Officers when providing legal assistance. For example, Article 31 of Law Number 18 of 2003 concerning Advocates regulates sanctions for individuals who claim to be lawyers or advocates without fulfilling the specified requirements. This article emphasizes the importance of legal certainty in ensuring that people providing legal assistance have the necessary qualifications and permits by applicable Law. Thus, Article 31 guarantees the public that they will only get legal assistance from individuals who meet the standards set by Law.

In addition, Article 3 of the Regulation of the Chief of the Indonesian National Police (PERKAPOLRI) Number 2 of 2017 concerning Procedures for Legal Assistance regulates the procedures that must be followed by Officials of the National Police of the Republic of Indonesia in providing legal assistance. Analysis of this article is essential to ensure that the process of providing legal assistance by the Police is by applicable legal provisions and does not conflict with recognized principles of legal certainty.

The gap between the PERKAPOLRI and the Law and Advocates is a critical problem that requires immediate attention. The regulation, although aimed at outlining procedures for the Police to provide legal assistance, may conflict with the principles set out in Law Number 18 of 2003. This difference could lead to overlapping functions, seriously affecting legal institutions' integrity and neutrality systems. Law Number 18 of 2003 clearly states that advocates are obliged to provide defense and legal advice in court, thus reaffirming the role of the advocate profession in providing legal services. For Republic of Indonesia Police Officials, they must comply with the requirements set out in the Law regarding advocates to provide legal advice. It is crucial to ensure that police officers acting as advocates fully understand and comply with their legal obligations.

This gap raises concerns about the impartiality and autonomy of the legal system, as overlapping regulations can blur the distinction between the responsibilities of law enforcement and legal counsel. Legal counsel in court is critical to ensure that all individuals are treated fairly and have equal access to justice in the legal system. Given the potential for overlap between Indonesian National Police officials who serve as legal advisors at their institutions, concerns may arise regarding conflicts of interest or impartiality in providing legal assistance. This case is especially relevant when the Police act as legal advisors in cases involving conflict with the community. Situations like this can cause the public and other interested parties to question the fairness of the legal process.

All individuals connected to the legislative hierarchy must comply with the third element of the legislative hierarchy, also known as the Law of advocates.[14] A law is a unique legal provision with higher authority than laws in general. This system is the *lex specialis derogat legi generalis* principle, the rule of Law. This regulation differs from PERKAPOLRI because it does not have a position in the legal hierarchy, not only within the framework of statutory regulations and advocacy laws but also in the Criminal Code. The National Police's profession as a provider of legal advice needs to meet the requirements stipulated in the Law on advocates. This situation hampers the effectiveness of advocates when dealing with police officers who double up as advocates and Indonesian National Police Officers. Republic of Indonesia Police officers are solely responsible for upholding the institution. However, there are concerns that they may face legal repercussions when dealing with legal issues regarding obligations and benefits.

The presence of Indonesian National Police officials who have the authority to protect institutions within the judiciary must be taken into account when discussing the provision of legal advice.[15] They are authorized to carry out institutional defense functions in district courts as long as they comply with statutory provisions. Furthermore, Indonesian National Police officials who defend institutions or act as legal advisors in court must have the necessary documents, including a valid power of attorney, by applicable regulations. Among them are the advocate's identity card and the minutes of the advocate's oath. Finding a solution that can reconcile these two regulations is critical, given the importance of upholding integrity and ensuring clear roles in the criminal justice system. Steps can be taken to address and minimize potential gaps in regulations by ensuring that the involvement of Indonesian National Police Officers as legal advisors is in line with specific legal principles. This action helps maintain the integrity of the legal profession. Therefore, ensuring consistency between National Police Chief Regulation Number 2 of 2017 and Law Number 18 of 2003 will contribute to the long-term sustainability of a fair and efficient justice system.

The function of an advocate is regulated by defining an advocate as someone who provides legal assistance in litigation and non-litigation cases. Legal regulations also regulate the requirements that an advocate must fulfill.[16] It is expected that both advocates and the legal assistance provided, which is part of the function of the advocate profession, must comply with the regulations that have been established. This regulation highlights the importance of complying with applicable legal provisions when providing legal services as an advocate. Therefore, an advocate's responsibilities extend beyond the courtroom and encompass various aspects of a person's legal affairs. This Law provides a solid foundation outlining the framework of the legal profession,

emphasizing the importance of qualifications and compliance with relevant regulations in fulfilling their legal duties.

The Chief of Police Regulation and the task order in the police spring (police warrant) regulate the law enforcement officers of the Indonesian National Police who act as legal advisors.[17] However, if legal advisors are regulated by Law, a hierarchy of statutory regulations is drawn up: (a.) 1945 Constitution; (b.) TAP MPR; (c.) Law/Perpu; (d.) Government Regulation; (e.) Provincial Regional Regulations; (f.) Regency or City Regulations. Officials of the Republic of Indonesia State Police who act as advisors in the legal sector do not comply with the established rules of the Law on Advocates, the Hierarchy of Legislative Regulations, and the Criminal Code. Article 31 Law Number 18 of 2003 regulates criminal penalties for people falsely claiming to be lawyers or advocates even though they do not meet the requirements. Individuals who take part and carry out advocacy without appropriate permits will face severe consequences, including a potential prison sentence of up to 5 years and a maximum fine of 50 million Rupiah.

The Law on Advocates outlines a person's requirements to become an advocate. The National Police of the Republic of Indonesia can only provide legal assistance, not legal advisors or advocacy institutions that guide the process when carrying out a ceremony wearing a toga.[18] This process not only erodes trust in the Indonesian National Police but also damages the institution's integrity and harms legal advisors. Therefore, thoroughly reviewing the legal regulations and laws is crucial to overcome this disparity. Corrective or harmonization efforts can be made to resolve conflicts in the role of legal advisors within the Indonesian National Police who provide legal assistance to fellow members of the National Police. The National Police Chief must obey and follow the steps in Law Number 18 of 2003 because its authority is higher than other regulations.

In conclusion, the Indonesian National Police needed to follow the instructions given by the Advocates regarding the requirements contained in the Advocate Law, and they also ignored the Law itself. The final decision needs to be enforced against the Republic of Indonesia State Police Officials, who have a dual profession and the legal profession as a whole. The Law also oversees advocacy to ensure compliance with codes of ethics and laws governing the legal profession.

#### V. CONCLUSION

Legal certainty is a fundamental principle that guarantees that acts and judgments are in accordance with explicit and specific legal regulations. This principle offers persons pursuing justice with more than merely anticipated results in particular situations. It provides people with a sense of security and trust in the judicial system. Academics such as Sudikno highlight the significance of legal principles as the basis for legal rules, with legal certainty being essential for ensuring clarity in legal frameworks. Gustav Radbruch's approach emphasizes the significance of legal certainty in constructing a fair and equitable legal system. Simultaneously, Satjipto Rahardjo and Van Apeldoorn emphasize its function in guaranteeing the uniform implementation and safeguarding of people's rights. The disparity between legislation, such as Law Number 18 of 2003 regarding Advocates and PERKAPOLRI Number 2 of 2017 about Procedures for Legal Aid, presents pressing difficulties that require prompt response. Law Number 18 of 2003, specifically Article 31, establishes penalties for those who falsely represent themselves as advocates without fulfilling the necessary qualifications, thereby ensuring that legal advice is exclusively supplied by competent professionals. In contrast, Article 3 of PERKAPOLRI Number 2 of 2017 highlights the need of Indonesian National Police officials adhering to advocate-related laws and regulations when offering legal aid. Ensuring consistency in these standards is crucial to uphold the honesty and transparency in the legal profession. Ensuring compliance with legal principles, particularly the principle of certainty, is crucial for the efficiency of legal institutions. By addressing discrepancies in regulations, we may ensure that legal help is supplied by highly skilled professionals, which in turn promotes trust and integrity within the legal system. Adhering to advocate-related rules and regulations is of utmost importance for officers of the Indonesian National Police, emphasizing the significance of maintaining legal standards for the welfare of society.

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