

Legal Regulation of Substitute Documents for Certificates of Indigency in Indonesian Legal Aid Administration: Normative Ambiguity, Accountability, and Comparative Lessons

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Abstract

Access to legal aid is a constitutional and human-rights-based obligation of the state, particularly for indigent persons and vulnerable groups who face legal problems but lack the economic capacity to obtain professional legal assistance. Indonesian Law No. 16 of 2011 on Legal Aid and Government Regulation No. 42 of 2013 require proof of indigency, traditionally through a Certificate of Indigency (Surat Keterangan Miskin/SKM) issued by village or urban-village authorities. At the same time, Government Regulation No. 42 of 2013 allows applicants who do not possess an SKM to submit social assistance cards or “other documents” as substitutes. This article examines the regulatory construction of substitute documents, the legal consequences of the vague phrase “other documents,” and the accountability framework for officials, applicants, and legal aid providers involved in the issuance and use of such documents. It employs normative legal research with statutory, conceptual, and comparative approaches. The analysis shows that the open-ended formulation of substitute documents promotes administrative flexibility and access to justice, but also generates legal uncertainty, unequal implementation across regions, verification difficulties, risks of misuse, and potential administrative, civil, and criminal liability. Comparative analysis of England and Wales, the Netherlands, Australia, and Finland indicates that modern legal aid systems rely on nationally standardized eligibility criteria, means testing, integrated social-security or tax data, digital verification, and audit mechanisms. The article argues that Indonesia should harmonize legal aid regulation with social welfare, civil registration, public administration, and personal data protection regimes by establishing a national list of acceptable substitute documents, creating a tiered verification model, integrating legal aid eligibility with the National Single Socio-Economic Data (DTSEN), and strengthening accountability safeguards. Such reform is necessary to ensure that administrative requirements function as instruments of inclusion rather than barriers to justice.

Keywords: legal aid; Certificate of Indigency; substitute documents; normative ambiguity; access to justice; legal certainty; Indonesia

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INTRODUCTION

Legal aid is not merely an institutional service delivered by lawyers to indigent clients; it is a legal mechanism through which the state gives practical effect to equality before the law, fair trial guarantees, and the right to effective access to justice. In a constitutional democracy, the formal recognition of rights is insufficient if poor and marginalized persons are unable to understand legal procedures, obtain professional representation, or challenge unlawful acts that affect their lives. The Indonesian Constitution recognizes Indonesia as a state based on law and guarantees recognition, protection, and equal treatment before the law. These guarantees form the normative foundation for state-funded legal aid, especially after the enactment of Law No. 16 of 2011 on Legal Aid, which explicitly places responsibility on the state to provide legal assistance to poor persons as part of the realization of access to justice (Republic of Indonesia, 1945; Republic of Indonesia, 2011).

The urgency of legal aid is closely related to structural poverty and legal inequality. Legal disputes often require financial resources, legal knowledge, time, mobility, documentation, and the ability to navigate bureaucratic procedures. These requirements place indigent persons in a disadvantaged position, particularly when they face criminal proceedings, civil disputes, labor conflicts, land conflicts, family disputes, administrative disputes, or cases involving public authorities. In this context, legal aid bridges the gap between law in the books and law in action by transforming abstract legal equality into practical legal capability (Cappelletti & Garth, 1978; Lubis, 2009; Rahardjo, 2014; Sandefur, 2008).

International human rights instruments reinforce this position. Article 14 of the International Covenant on Civil and Political Rights recognizes fair trial guarantees and the right to legal assistance in criminal proceedings when the interests of justice so require. The United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems further characterize legal aid as an essential element of a functioning criminal justice system grounded in rule of law and human rights (United Nations, 1966; United Nations General Assembly, 2012). Although these instruments are most explicit in criminal justice, the contemporary access-to-justice literature has expanded the scope of concern to people-centered justice services, legal needs, vulnerability, and institutional design (OECD & Open Society Foundations, 2019; Rhode, 2004).

Indonesia responded to these constitutional and human rights imperatives through Law No. 16 of 2011 on Legal Aid and Government Regulation No. 42 of 2013 on the Requirements and Procedures for Providing Legal Aid and Disbursing Legal Aid Funds. These instruments provide the general architecture of state-funded legal aid, including legal aid providers, recipients, rights and obligations, funding, verification, accreditation, and administrative requirements. One of the most consequential administrative requirements is proof of indigency. Traditionally, applicants are required to submit a Certificate of Indigency, known in Indonesian administrative practice as Surat Keterangan Miskin (SKM), issued by the village head, urban-village head, or equivalent official (Government of Indonesia, 2013; Republic of Indonesia, 2011).

The SKM requirement is intended to ensure that state-funded legal aid is targeted to people who genuinely meet the legal definition of poor persons. Yet the practical operation of the SKM requirement has generated problems. Obtaining an SKM may involve bureaucratic delay, inconsistent local standards, limited access to local offices, insufficient knowledge of procedures, and possible discretionary or abusive practices. These problems become more serious when legal aid is needed urgently, such as in criminal investigations, detention, domestic violence cases, eviction threats, labor dismissals, or other time-sensitive legal problems. Administrative proof of poverty may therefore operate paradoxically: it is designed to ensure accurate targeting, but it can also prevent the very people it is supposed to protect from accessing legal aid.

Government Regulation No. 42 of 2013 attempts to mitigate this problem by allowing applicants who do not possess an SKM to submit other documents, including social assistance cards, health insurance cards for poor persons, rice assistance cards, direct cash transfer documents, or other documents that may substitute for the SKM. This regulatory flexibility is normatively valuable because it recognizes that poverty can be evidenced through multiple social-administrative instruments. However, the phrase “other documents” is not

formulated with clear limits, national standards, or a detailed verification mechanism. It therefore creates what this article terms a normative ambiguity: a legal formulation that is open enough to promote access, but insufficiently precise to guarantee uniform implementation, legal certainty, and accountability.

The ambiguity is not merely semantic. It affects legal aid providers, local officials, applicants, auditors, and supervisory bodies. If the standard is too rigid, factually poor applicants may be excluded because they lack the accepted document. If the standard is too loose, applicants who are not eligible may obtain legal aid, public funds may be misallocated, and legal aid providers may face audit or administrative findings. Thus, the regulatory design must balance inclusion, accuracy, speed, accountability, and legal certainty. This balance is central to the legitimacy of legal aid as a rights-based public service rather than a discretionary welfare benefit.

This article contributes to the existing literature by focusing specifically on the regulation of substitute documents for the SKM in Indonesian legal aid administration. Previous scholarship has examined legal aid as a constitutional right, the implementation of free legal aid, the role of legal aid organizations, and broader problems of access to justice in Indonesia (Ahyar, 2020; Andhini, 2021; Hapsari, 2021; Sihombing et al., 2024; Wibowo & Bangun, 2021). However, the specific doctrinal problem of “other documents” as substitutes for SKM remains underdeveloped, despite its practical importance for eligibility verification and public accountability. The novelty of this article lies in connecting this doctrinal ambiguity with administrative accountability, access-to-justice theory, comparative legal aid systems, and the emerging possibility of integrating legal aid verification with the National Single Socio-Economic Data (Data Tunggal Sosial dan Ekonomi Nasional/DTSEN).

The article addresses three research questions. First, how does Indonesian law regulate substitute documents for the SKM in legal aid administration? Second, what legal implications arise from the normative ambiguity surrounding substitute documents, particularly for legal certainty, accountability, and access to justice? Third, what comparative regulatory lessons can Indonesia draw from modern legal aid systems in England and Wales, the Netherlands, Australia, and Finland to harmonize its legal aid verification regime?

Legal and Theoretical Framework

1. Legal aid, access to justice, and equality before the law

The concept of legal aid is inseparable from the broader idea of access to justice. Access to justice does not simply mean physical access to courts; it includes the ability to identify a legal problem, obtain legal information, receive assistance, participate meaningfully in proceedings, and secure an effective remedy. Cappelletti and Garth’s classic access-to-justice framework emphasized that legal systems must overcome economic, organizational, and procedural barriers that prevent disadvantaged groups from using the law effectively. Contemporary research similarly stresses that justice systems should be people-centered, evidence-based, and responsive to legal needs rather than limited to formal institutional availability (Cappelletti & Garth, 1978; OECD & Open Society Foundations, 2019; Sandefur, 2008).

In the Indonesian context, legal aid is also tied to the principle of equality before the law. A formal statement that every person is equal before the law becomes hollow when poor persons cannot obtain legal representation, cannot understand procedural requirements, or cannot satisfy documentation requirements imposed by the state. Legal aid therefore

functions as a corrective mechanism against substantive inequality. It also reflects the welfare-state dimension of constitutionalism, under which the state is not only a regulator and adjudicator but also a provider of institutional conditions necessary for the enjoyment of rights (Asshiddiqie, 2019; Winarta, 2018).

From a rights-based perspective, the state should not frame legal aid as charity. The charity-based approach treats assistance as a discretionary benefit granted to the poor. The rights-based approach treats legal aid as a legal entitlement triggered by vulnerability, inability to pay, and the need for effective protection. This distinction is important for administrative design: if legal aid is a right, eligibility procedures must be simple, transparent, non-discriminatory, and capable of being challenged when applied unlawfully.

2. Legal certainty, vagueness of norms, and administrative accountability

Legal certainty requires that legal norms be sufficiently clear, consistent, public, and predictable. A norm may still contain discretion, but such discretion must be bounded by legal standards and review mechanisms. In administrative law, vagueness becomes problematic when public officials and service providers are left without clear criteria for determining rights, obligations, and eligibility. The consequence is a risk of unequal treatment, arbitrary decision-making, and inconsistent implementation across institutions and regions (Hadjon, 2019; Kelsen, 1967; Mertokusumo, 2016; Utrecht, 2017).

The phrase “other documents” in Government Regulation No. 42 of 2013 exemplifies this problem. The phrase was likely designed to prevent exclusion of poor applicants who cannot obtain an SKM. However, without a nationally standardized list, hierarchy of evidence, verification procedure, or appeal mechanism, the phrase may be interpreted differently by legal aid organizations, local governments, auditors, and officials responsible for administering legal aid funds. A flexible clause may thus become a source of legal uncertainty if it is not supported by implementing rules.

Administrative accountability is also relevant because the issuance and acceptance of substitute documents constitute public-administrative acts. Officials who issue documents confirming social or economic status must act under legal authority, verify relevant facts, and comply with general principles of good governance, including legality, accuracy, proportionality, transparency, and accountability. Legal aid providers, while not identical to government agencies, also participate in publicly funded legal aid administration and therefore must exercise due diligence in verifying applicant eligibility (Hadjon, 2018; Republic of Indonesia, 2014).

METHOD

This study uses normative legal research. Normative legal research is appropriate because the central problem is not primarily empirical behavior, but the meaning, structure, coherence, and adequacy of legal norms governing substitute documents for the SKM in legal aid administration. The research examines positive law, legal principles, legal doctrine, and comparative regulatory models to formulate a normative argument for legal reform (Marzuki, 2023).

Three approaches are used. First, the statutory approach analyzes the Indonesian Constitution, Law No. 16 of 2011 on Legal Aid, Government Regulation No. 42 of 2013, Law No. 30 of 2014 on Government Administration, Law No. 27 of 2022 on Personal Data Protection, relevant criminal and corruption law provisions, and regulations related to social

welfare data. Second, the conceptual approach examines access to justice, legal certainty, normative ambiguity, accountability, welfare-state obligations, and public service principles. Third, the comparative approach reviews selected legal aid systems in England and Wales, the Netherlands, Australia, and Finland because these jurisdictions illustrate different models of means testing, data integration, national eligibility standards, and audit-based accountability.

The legal materials consist of primary legal materials, secondary legal materials, and comparative policy documents. Primary legal materials include statutes, government regulations, constitutional provisions, and international instruments. Secondary legal materials include legal scholarship, journal articles, books, and policy reports concerning legal aid, administrative law, access to justice, and comparative legal aid systems. The materials are analyzed qualitatively through descriptive, evaluative, and argumentative legal reasoning. The analysis first identifies the relevant legal norms, then evaluates their coherence and legal effects, and finally proposes a regulatory model that can reduce ambiguity while preserving access-oriented flexibility.

RESULTS AND DISCUSSION

1. Indonesian legal framework on SKM and substitute documents

Indonesian legal aid law establishes a state-funded system for poor persons or groups who cannot fulfill basic rights properly and independently. Law No. 16 of 2011 defines legal aid as legal services provided free of charge by legal aid providers to recipients of legal aid. Its objectives include guaranteeing and fulfilling the right of legal aid recipients to access justice, realizing the constitutional right of all citizens to equality before the law, ensuring that legal aid is implemented evenly throughout Indonesia, and realizing effective, efficient, and accountable justice (Republic of Indonesia, 2011).

The central eligibility issue is proof of indigency. In the traditional administrative model, an applicant demonstrates poverty through an SKM issued by a village head, urban-village head, or equivalent official. This model assumes that local officials are closest to the applicant and therefore capable of assessing the applicant's social and economic condition. However, reliance on local certification has limitations. It may vary across regions, depend on local administrative capacity, and expose applicants to delay or discretionary refusal. It may also be vulnerable to inaccurate verification or misuse when the certificate is issued without proper factual basis.

Government Regulation No. 42 of 2013 introduces an important flexibility. Article 8(1) allows an applicant who does not possess an SKM to submit documents such as a community health insurance card, direct cash transfer document, rice assistance card, or other documents as substitutes for the SKM. Article 9(2) further requires local officials to issue an SKM and/or substitute documents for legal aid purposes when needed (Government of Indonesia, 2013). This construction indicates that the Indonesian legal aid system does not treat the SKM as the only possible proof of indigency. Instead, it recognizes the possibility of administrative equivalence through other welfare or social-protection documents.

This regulatory choice is substantively important. Poverty is not always captured through a single certificate. A person may be poor but not yet possess an SKM; a household may already be recorded in social assistance programs; a vulnerable person may lack time to obtain a local certificate before a legal deadline; and a legal aid organization may need to

act quickly to protect procedural rights. Substitute documents can therefore prevent exclusion and reduce unnecessary bureaucracy. They are consistent with the principle that administrative requirements should facilitate, not obstruct, legal aid.

Nevertheless, the regulatory terminology used by Government Regulation No. 42 of 2013 creates an interpretive problem. Several listed documents reflect social assistance programs existing at the time of enactment, while Indonesia's social protection architecture has evolved through newer instruments such as Kartu Indonesia Sehat (KIS), Kartu Keluarga Sejahtera (KKS), Program Keluarga Harapan (PKH), BPJS PBI, and data systems now moving toward DTSEN. A regulation that mentions outdated program names without establishing an adaptive mechanism for newer equivalent documents may generate uncertainty. The open phrase "other documents" solves part of the problem, but it also creates a new one: it does not specify what qualifies as equivalent, who verifies it, how validity is checked, and what happens when documents conflict.

2. Normative ambiguity in the phrase "other documents"

Normative ambiguity arises when a legal norm contains a phrase whose scope cannot be determined with sufficient certainty from the text, context, or implementing rules. The phrase "other documents" in the legal aid regulation is not inherently improper. Open clauses are sometimes necessary in administrative law because social realities change faster than statutes and regulations. However, open clauses must be supported by interpretive standards. In the absence of such standards, legal aid providers may apply different thresholds, local officials may issue different types of letters, and auditors may evaluate eligibility inconsistently.

The ambiguity operates at four levels. First, there is ambiguity of type: the regulation does not provide a current national list of accepted substitute documents. Second, there is ambiguity of authority: it is not fully clear which institution has final authority to determine whether a document is equivalent to an SKM. Third, there is ambiguity of verification: the regulation does not provide a uniform method for checking whether the document is genuine, current, and connected to the applicant. Fourth, there is ambiguity of legal consequence: the regulation does not clearly distinguish between good-faith acceptance of imperfect documents, negligent verification, deliberate falsification, and abuse of authority.

These ambiguities produce unequal implementation. A document accepted in one region may be rejected in another. A legal aid organization may accept a social assistance card as sufficient evidence, while another may require a formal SKM. Applicants who lack administrative literacy may be disadvantaged even when they are factually poor. The result is administrative discrimination: not because the law explicitly discriminates, but because unclear documentation standards allow unequal bureaucratic treatment.

The ambiguity also affects legal aid providers. Organizations accredited to provide state-funded legal aid must submit documentation for reimbursement and accountability. If eligibility evidence is later questioned, the organization may face administrative findings even when it acted in good faith. This risk may encourage legal aid providers to adopt overly cautious documentation practices, which in turn may exclude poor applicants. Thus, the lack of clarity can generate a chilling effect on legal aid delivery.

A rights-based legal aid system should distinguish between evidentiary flexibility and unregulated discretion. Evidentiary flexibility allows multiple forms of proof so that poor applicants are not excluded. Unregulated discretion leaves institutions without clear criteria.

The Indonesian regime currently contains flexibility, but it requires a more precise normative framework to prevent that flexibility from becoming uncertainty.

3. Accountability in the issuance and use of substitute documents

The issuance and use of substitute documents involve several actors: local officials or social-welfare agencies that issue documents, applicants who submit them, legal aid organizations that assess them, and government bodies that audit legal aid funding. Accountability should therefore be multi-layered rather than placed on only one actor.

Administrative accountability applies to public officials who issue SKM or substitute documents. Under Indonesian administrative law, every governmental decision or action must be based on lawful authority, proper procedure, and accurate factual assessment. A local official who issues a document without adequate verification, issues it to an ineligible person, refuses it arbitrarily, or conditions issuance on unlawful payment may violate administrative principles and may be subject to disciplinary or administrative sanctions. This accountability is essential because the document functions as a gateway to state-funded legal aid.

Civil liability may arise when unlawful issuance or use of a document causes loss to the state, to a legal aid provider, or to another person who is more entitled to receive legal aid. Under general civil-law principles, an unlawful act that causes damage may give rise to compensation. In the legal aid context, civil accountability would be relevant if fraudulent or negligent documentation results in the misallocation of public funds or exclusion of eligible recipients. However, civil liability should be applied carefully so that it does not punish good-faith assistance to poor persons where ambiguity is caused by regulatory defects rather than individual fault.

Criminal liability may arise when there is deliberate falsification, use of false documents, fraud, bribery, gratification, or corruption-related conduct. The use of forged documents to obtain state-funded legal aid may implicate criminal provisions on document falsification. If the conduct involves state financial loss, abuse of authority, bribery, or gratification, anti-corruption provisions may also become relevant. Nevertheless, criminal law should remain a last resort and should be reserved for intentional or seriously culpable conduct. Ordinary uncertainty caused by vague regulation should be addressed through administrative clarification, not over-criminalization.

Legal aid providers also have accountability duties. They should verify whether submitted documents are facially valid, correspond to the applicant's identity, and plausibly indicate indigency or welfare eligibility. However, their duty should be one of reasonable verification, not impossible certainty. A legal aid provider cannot be expected to independently reconstruct a complete poverty assessment in every urgent case. The law should provide safe-harbor rules: when a legal aid provider verifies documents through the prescribed procedure and records the verification steps, it should not be penalized merely because a later database update changes the applicant's status.

Applicants also bear responsibility. A person who knowingly submits false or manipulated documents should face legal consequences. Yet the system should not assume bad faith from poor applicants who lack complete documentation or administrative literacy. A balanced model should differentiate fraud from vulnerability, and it should provide assistance mechanisms for applicants who cannot obtain documents due to geography, disability, displacement, domestic violence, detention, or other barriers.

4. Legal implications for certainty, equality, budgetary accountability, and access to justice

The first implication is legal uncertainty. The absence of precise standards for substitute documents prevents applicants, legal aid providers, local officials, and auditors from predicting what evidence will be accepted. Legal certainty is not satisfied merely because a regulation exists; the regulation must also be operational. A vague eligibility rule undermines predictability and makes rights dependent on administrative interpretation rather than clear legal entitlement.

The second implication is unequal access. Applicants in regions with flexible interpretation may obtain assistance more easily than applicants in regions that insist on SKM. This disparity is difficult to justify because the legal aid right is national, not local. A person's ability to access legal aid should not depend on the administrative culture of a particular village office, legal aid provider, or regional government.

The third implication concerns budgetary accountability. Legal aid is financed from public funds. Therefore, documentation must be auditable. A vague standard makes auditing difficult because auditors may not have a uniform benchmark for determining whether a substitute document was adequate. This creates risks in both directions: funds may be disbursed to ineligible applicants, or legitimate legal aid providers may be penalized because the documentation standard is unclear.

The fourth implication concerns human rights. Excessive formalism in documentation can exclude poor persons from legal aid. Indonesia's Access to Justice Index found that non-use of legal aid remains significant, and lack of knowledge, fear of complicated processes, and uncertainty about where to obtain help remain important barriers (Indonesia Judicial Research Society, 2020). Administrative barriers therefore have real human consequences. When a poor person is unable to satisfy documentation requirements, the result may be loss of liberty, loss of housing, loss of livelihood, or inability to challenge unlawful state action.

The fifth implication concerns data governance. The proposed use of DTSEN and other integrated databases can improve accuracy and reduce reliance on local letters. However, digital integration involves personal data processing and must comply with the Personal Data Protection Law. Legal aid eligibility data may include socioeconomic status, family composition, and other sensitive information. Therefore, any digital verification model should incorporate purpose limitation, data minimization, access control, audit logs, and complaint mechanisms (Kementerian PPN/Bappenas, 2026; Republic of Indonesia, 2022).

5. Comparative lessons from England and Wales, the Netherlands, Australia, and Finland

Comparative law is useful not because foreign models can be transplanted mechanically, but because they reveal regulatory design options. The systems reviewed below show that legal aid eligibility can be structured through nationally standardized criteria, means testing, merits testing, digital verification, welfare or tax data integration, and audit mechanisms. These elements are relevant for Indonesia because the problem under study is not the existence of legal aid, but the reliability and accessibility of eligibility verification.

Table 1. Comparative eligibility and verification models in selected legal aid systems

Jurisdiction	Eligibility structure	Primary evidence base	Verification model	Lesson for Indonesia
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England and Wales	Scope test under LASPO, means test, and merits/interests-of-justice assessment depending on case type.	Income, assets, family circumstances, essential living costs, and passporting benefits.	National guidance; financial eligibility checks; documentary and benefits-based verification.	Separate access-oriented eligibility from auditable financial verification; define accepted benefits and evidence.
Netherlands	Subsidized legal aid assessed by financial test and interest/merits elements.	Income and assets, often assessed through the Legal Aid Board using population register and tax data.	Legal Aid Board verifies applicant data through citizen service number and tax-authority connection.	Use national identity and fiscal/social data to reduce reliance on local poverty letters.
Australia	Legal assistance funded through national agreements; state/territory legal aid commissions commonly apply means, merits, and guideline tests.	Income, assets, household circumstances, and vulnerability factors; service priorities under national partnership.	Federal-state funding framework with governance, accountability, and service reporting requirements.	Combine national funding standards with local delivery while preserving accountability and services for vulnerable groups.
Finland	Legal aid based on available means; may be free or subject to deductible depending on income, expenses, dependents, and assets.	Income, expenditure, assets, liabilities, family size, social welfare decisions, tax certificates, and bank statements.	Means testing through public legal aid offices and e-service tools.	Allow graded subsidy and digital preliminary calculation to improve certainty and accessibility.

Sources: Legal Aid Agency (2026); Raad voor Rechtsbijstand (2021); European e-Justice Portal (2025); Attorney-General’s Department of Australia (2025); National Legal Services Authority of Finland (2026).

In England and Wales, civil legal aid eligibility is shaped by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) and financial eligibility rules. Applicants must first establish that the case falls within scope, and financial eligibility is then assessed through a means test. Government guidance explains that means testing considers income, assets, family circumstances, and essential living costs, while some welfare benefits may operate as passporting evidence (Legal Aid Agency, 2026). The relevance for Indonesia is the separation of eligibility dimensions: the nature of the case, the applicant’s means, and the merits or justice-related need are assessed through defined criteria rather than through an open-ended local certificate alone.

The Netherlands provides an instructive model of data-based verification. The Legal Aid Board assesses eligibility using income and asset information and can verify personal data through the municipal population register and tax authorities using the citizen service number. This arrangement reduces dependence on local discretionary letters and creates a more uniform national eligibility assessment (Raad voor Rechtsbijstand, 2021). The Dutch model suggests that Indonesia could move gradually from paper-based local certification toward nationally integrated verification, provided that data protection safeguards are established.

Australia illustrates a federal model. Legal aid services are delivered by state and territory legal aid commissions and community legal services, while federal funding and reform priorities are structured through national agreements. The National Access to Justice Partnership 2025-30 provides funding for legal assistance services and emphasizes accountability, value for money, reduced administrative fragmentation, and support for vulnerable communities (Attorney-General’s Department of Australia, 2025). Indonesia can draw from this model by combining national standards with decentralized delivery, especially because legal aid services must reach geographically diverse communities.

Finland represents a welfare-state approach. Legal aid is granted based on the applicant’s available means, calculated from income, expenditures, maintenance liability, assets, liabilities, and family situation. The applicant may receive legal aid free of charge or subject to a deductible. The Finnish system also allows preliminary calculation through e-services and relies on supporting documents such as bank statements, tax certificates, and social welfare decisions (National Legal Services Authority of Finland, 2026). This model is useful for Indonesia because it shows that eligibility can be nuanced rather than binary. Not all applicants need be treated only as eligible or ineligible; some systems allow partial subsidy depending on means.

The comparative lesson is clear: modern legal aid systems do not generally rely solely on a locally issued poverty certificate. They combine nationally defined criteria, recognized documentary evidence, database checks, reasonable verification duties, and audit mechanisms. Indonesia’s SKM and substitute-document regime can be improved by adapting these elements to Indonesian constitutional, administrative, and social welfare structures.

6. Proposed harmonization model for Indonesia

The reform challenge is to reduce ambiguity without eliminating flexibility. A closed and rigid list of documents may exclude poor persons whose poverty is real but undocumented. An entirely open clause may undermine legal certainty and accountability. The appropriate model is therefore a structured flexibility model: the law should provide a national list of presumptively accepted documents, a secondary category of conditionally accepted documents, and an emergency pathway for urgent cases.

Table 2. Proposed regulatory model for substitute documents in Indonesian legal aid administration

Regulatory issue	Proposed rule	Responsible institution	Safeguard	Expected effect
Unclear document types	Create a national list of accepted substitute documents, including KIS, KKS, PKH, BPJS PBI, DTSEN confirmation, and equivalent social-welfare records.	Ministry of Law; BPHN; Ministry of Social Affairs; Bappenas; Ministry of Home Affairs.	Annual updating clause for renamed or replaced social assistance programs.	Uniform implementation and reduced regional disparity.
Urgent cases without documents	Allow provisional legal aid when delay would risk loss of liberty, procedural rights, safety, housing, or essential livelihood.	Legal aid provider, with post-service verification.	Written reasons, applicant declaration, verification within a fixed period.	Prevents administrative barriers from defeating urgent access to justice.

Verification uncertainty	Adopt tiered verification: facial document check, NIK matching, database confirmation, and risk-based audit.	Legal aid provider and authorized data custodian.	Audit logs, data minimization, and limited access rights.	Improves accuracy without overburdening providers.
Provider liability risk	Introduce safe-harbor rules for providers that follow prescribed verification procedures in good faith.	Ministry of Law/BPHN and auditors.	Exception for fraud, collusion, or gross negligence.	Encourages legal aid delivery while preserving accountability.
Data protection risk	Integrate DTSEN verification with personal data protection compliance.	Bappenas, Ministry of Law, data controllers/processors.	Purpose limitation, consent or lawful basis, cybersecurity, complaint mechanism.	Digital verification with rights protection.
Weak accountability for false issuance	Clarify administrative, civil, and criminal consequences for officials, applicants, and third parties.	Local government, inspectorate, law enforcement bodies.	Proportionality; distinction between error, negligence, and fraud.	Deters misuse while avoiding over-criminalization.

First, the government should harmonize legal aid regulation with social welfare and civil registration regulation. The list of documents mentioned in Government Regulation No. 42 of 2013 should be updated or supplemented by a ministerial regulation or joint regulation that recognizes contemporary social protection instruments. The list should not be static; it should include a functional equivalence clause so that when a program changes name or format, the legal aid system can continue to recognize the updated document.

Second, Indonesia should integrate eligibility verification with DTSEN, while respecting personal data protection. DTSEN is designed as a single integrated socio-economic database to support planning, policy evaluation, and strategic decision-making from central to regional levels (Kementerian PPN/Bappenas, 2026). Its potential use for legal aid verification is significant because it can reduce reliance on local poverty certificates and support national consistency. However, integration must be legally authorized, technically secure, and limited to the data needed for eligibility assessment.

Third, the regulation should establish a hierarchy of proof. Primary proof may include a current SKM or a database-confirmed welfare eligibility record. Secondary proof may include social assistance cards, BPJS PBI status, KIS, KKS, PKH participation, or other official documents showing socioeconomic vulnerability. Tertiary proof may include a sworn statement or local confirmation used only in urgent cases and subject to subsequent verification. This hierarchy would preserve flexibility while giving legal aid providers and auditors clearer standards.

Fourth, the system should include a provisional legal aid mechanism. In urgent cases, the absence of documentation should not prevent immediate legal assistance. A detained suspect, domestic violence victim, eviction-affected family, or person facing an imminent deadline may not be able to obtain an SKM or social document in time. A provisional mechanism would allow legal aid providers to act first and complete verification afterward, subject to documented reasons and risk-based review.

Fifth, accountability rules should be clarified. Administrative sanctions should apply to officials who issue documents negligently or unlawfully. Civil liability should be available where unlawful conduct causes demonstrable loss. Criminal liability should be reserved for intentional falsification, fraud, bribery, gratification, or corruption-related conduct. Legal aid providers should be protected when they follow prescribed verification procedures in good faith. This balanced approach prevents misuse without discouraging legal aid services.

Finally, the state should strengthen public information and legal literacy. Many eligible persons may not understand what documents are required or where to obtain them. Clear public guidance, standardized forms, digital checking tools, and coordination between legal aid organizations and local governments would reduce confusion. Access to justice depends not only on legal norms but also on whether people can use them.

CONCLUSION

The regulation of substitute documents for the Certificate of Indigency in Indonesian legal aid administration reflects a necessary attempt to reconcile two values: inclusive access to justice and accountable use of public funds. Government Regulation No. 42 of 2013 rightly recognizes that an SKM should not be the only evidence of poverty. Allowing social assistance cards and other documents as substitutes prevents bureaucratic formalism from excluding poor applicants. However, the current formulation remains normatively ambiguous because it does not provide a current national list of accepted documents, a clear verification mechanism, a hierarchy of evidentiary value, or a precise accountability framework.

This ambiguity produces legal uncertainty, regional disparity, audit risks, potential misuse of public funds, and administrative discrimination against factually poor persons who lack recognized documents. It also exposes local officials, applicants, and legal aid providers to unclear liability risks. The problem is therefore not simply technical; it affects the constitutional function of legal aid as an instrument of equality before the law and access to justice.

Comparative experiences from England and Wales, the Netherlands, Australia, and Finland show that effective legal aid systems rely on standardized eligibility criteria, means testing, welfare or tax data integration, digital verification, and audit mechanisms. Indonesia does not need to copy any one model, but it can adapt the underlying regulatory principles. The recommended reform is a structured flexibility model: a national list of accepted substitute documents, conditional recognition of equivalent documents, provisional legal aid for urgent cases, DTSEN-based verification, data protection safeguards, safe-harbor rules for good-faith providers, and proportionate accountability for misuse.

Such harmonization would allow administrative requirements to function as gateways rather than barriers. It would also strengthen legal certainty, improve targeting of legal aid funds, protect vulnerable communities, and reaffirm that legal aid is not charity but a constitutional right embedded in the rule of law.

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