Law Development Journal
SINTA 2 Degree No. 0228/DTS/C3/DT.05.00/2026
ISSN: 2747-2604
Volume 8 No. 3, September 2026

Reconstruction of Legal Aid Norms in the New Criminal Procedure Code: From the Limits of Criminal Threats to Needs-Based Protection and *Sharia Maqasid*

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Abstract. *The reform of criminal procedural law through Law No. 20 of 2025 on the Criminal Procedure Code strengthens the recognition of the right to legal aid but does not fully guarantee effective protection for suspects or defendants who cannot afford legal representation. The main problems concern unclear standards of indigency, the appointment of legal assistance from the initial stage of examination, the quality of assistance, and the legal consequences of violations. This study aims to reconstruct the legal aid provisions in the new Criminal Procedure Code based on defense needs and human rights protection through the perspective of Maqasid Sharia. This normative juridical study employs statutory, conceptual, and philosophical approaches by examining the new Criminal Procedure Code and the theories of Maqasid Sharia, substantive justice, and access to justice. The findings indicate that legal aid should shift from a criminal-threat-based paradigm to a defense-needs-based paradigm grounded in indigency and the actual need for legal assistance. Article 154 should serve as the principal provision guaranteeing legal aid from the beginning of examination regardless of the criminal penalty, while provisions concerning serious offenses should function as an additional safeguard. The reconstruction should also establish the State's active obligation, factual and inclusive indigency standards, effective legal assistance standards, and legal consequences for violations. In conclusion, legal aid must be positioned as an active State obligation and an integral element of legitimate criminal proceedings. A Maqasid Sharia-based reconstruction is recommended to protect life, intellect, property, and dignity while strengthening substantive justice and access to justice.*

Keywords: *Criminal; Maqasid-Syariah; Reconstruction.*

1. Introduction

The reform of the criminal procedural law through Law No. 20 of 2025 concerning the Criminal Procedure Code (KUHAP) brings important changes in the construction of legal aid for suspects or defendants who are incapacitated. The change shows a paradigm shift from the old Criminal Procedure Code regulation which places criminal threats as one of the bases for the obligation to appoint legal counsel towards the recognition of legal aid as part of the protection of rights in the criminal justice process. The new Criminal Procedure Code has expanded the regulation of legal aid, including through Article 1 number 25, Article 31, Article 32, and Article 154, which in principle affirm the right of the insolvent party to obtain legal aid as well as the obligation of the official concerned to notify and appoint an advocate or legal aid provider (Hidayat et al. 2026). However, these normative advances have not fully answered the fundamental question of how the right to legal aid can be effectively used by suspects or defendants who are unable to afford it. Thus, the issue of legal aid in the new Criminal Procedure Code no longer lies solely in the existence or absence of recognition of rights, but in the gap between normative recognition and the effectiveness of legal protection in practice.

This problem is important because suspects or defendants who are unable to afford to be in a structurally unbalanced position when dealing with the state through investigators, public prosecutors, and judicial officials. Economic incompetence often goes hand in hand with limited legal knowledge, ignorance of procedures, difficulty in obtaining advocates, fear of the authorities, and inability to understand the legal consequences of the information provided (Sabrina et al. 2025). In such circumstances, notification of legal aid does not in itself result in effective protection. A right that is only available normatively can lose its meaning if the state waits for the suspect to ask for help, legal assistance is present after the examination is underway, or the refusal of legal aid is formally recorded without ensuring that the refusal is given freely and consciously. The theory of access to justice suggests that legal rights must be accessible, used, and felt by poor and vulnerable groups, while substantive justice demands that the law does not stop at formal equality, but pays attention to the real conditions of groups that have limitations in accessing defense (Silmi, Maulana, and Bagus 2025). In this context, legal aid should not be positioned as an additional facility in certain cases, but rather as an instrument of correction to structural inequities in the criminal justice process.

Normatively, the new Criminal Code has indeed shown a more progressive orientation. Article 31 requires investigators to notify their legal aid rights before the investigation begins, while Article 32 provides space for advocates or legal aid providers to accompany the investigation and express objections if there is intimidation or ensnaring questions. Article 154 even emphasizes that legal aid is provided to the incapacitated party at every stage of the examination and requires the officials concerned to notify the right and appoint an advocate or legal aid provider. However, these provisions still leave implementive-normative problems. The new Criminal Code has not explicitly determined the standard of incapacity, the deadline for appointing a companion, the obligation to ensure that the companion is present before the substantive examination, the minimum standard of the quality of assistance, the mechanism if an advocate or legal aid provider is not available, and the legal consequences if the obligation of legal aid is violated (March 2026). This condition shows that legal aid in the new Criminal Code has developed textually, but does not yet fully have the necessary coercive force for the protection to work effectively.

Another problem arises from the relationship between Article 154 and Article 155 of the new Criminal Code. Article 154 can be understood as a general norm that provides legal assistance to incapacitated parties at every stage of examination, while Article 155 still regulates the obligation to appoint advocates in cases with the threat of the death penalty, life, fifteen years or more, as well as threats of five years or more for incapacitated parties. If Article 155 is interpreted as the main barrier to the provision of legal aid, then there is a risk that the paradigmatic weakness of Article 56 of the old Criminal Code will reappear in a new form. In fact, the need for legal aid should not be determined solely by the severity of the criminal threat. A person who is incapable in a case with a criminal threat below a certain limit can still experience detention, job loss, psychological pressure, social stigma, and difficulty understanding and defending himself in the legal process. Therefore, the main measure of legal aid should shift from *severity of punishment* To *legal vulnerability and defense needs*, namely the inability and real need for legal defense (Sulthani, Cindrapole, and Kasih 2026). In this construction, Article 154 must be placed as the main norm of legal aid for suspects or defendants who are incapacitated, while Article 155 must be understood as a special norm that strengthens the obligation to assist in serious cases, not as a restriction on the right to legal aid.

The gap shows that the reform of the Criminal Procedure Code still needs reconstruction so that legal aid does not stop as a formal right, but turns into an active state obligation. It is not enough for the state to simply notify that the suspect has the right to legal assistance, but it must identify the incompetence, provide an understandable explanation, appoint an advocate or legal aid provider from the beginning of the examination, ensure that assistance takes place effectively, and provide legal consequences if the right is violated (Shawn and Shawn 2025). Substantive examination of the suspect or incapacitated defendant should not proceed until legal assistance is available, unless there is a completely free, conscious, written, and verifiable refusal after adequate explanation. Thus, legal aid must be understood as a protection mechanism that works from the beginning of the criminal process, when the risk of injustice is greatest.

In perspective *Maqasid Syariah*, the need for reconstruction has a strong philosophical basis because an unbalanced criminal process can threaten the fundamental benefits of human beings. Legal aid related to protection *HUFZ al-NAFS* through the prevention of loss of liberty or criminalization through unfair processes, *Hifz al-'aql* Through providing legal understanding so that suspects are able to make conscious decisions, *Hifz al-Mal* through guarantees so that economic incapacity does not eliminate the right to obtain a defense, and *Hifz al-'IRDH* through the protection of the honor and dignity of a person facing criminal proceedings (Nasution 2019). Thus, legal aid is not only a technical issue of procedural law, but is part of efforts to prevent tyranny and protect human welfare. This perspective strengthens the argument that the protection of legal aid should not be limited by the category of criminal threats, since threats to life, reason, property, and honor can arise in any criminal proceeding, including cases where the criminal threat is relatively low.

Based on these issues, this study offers a reconstruction of legal aid norms in the new Criminal Code through a need-based active legal aid model and *Sharia Maqasid*. The reconstruction is directed at strengthening Article 31 so that the notification of rights is followed by the obligation to ensure that the companion is present before the substantive examination, the strengthening of Article 32 so that the assistance has a minimum standard and does not stop at formal attendance, the strengthening of Article 154 as the main norm of legal aid for all suspects or defendants who are incapable without distinguishing the criminal threat, and the affirmation of the position of Article 155 as a special norm for serious cases. In addition, it is necessary to regulate the standard of incapacity, the mechanism of prompt appointment, the quality of assistance, the validity of the refusal of legal aid, and the legal consequences of examinations carried out without the fulfillment of legal aid rights. With this construction, the novelty of this research does not simply lie in the idea of expanding legal aid, but in the paradigm shift from legal aid based on criminal threats to legal aid based on incapacity, defense needs, active state obligations, and protection of human welfare. This model is expected to make the new Criminal Code not only textually modern, but also able to realize substantive justice and access to justice for suspects or defendants who are unable to afford it.

2. Research Methods

This study employs normative legal research using statutory, conceptual, case, and philosophical approaches (Suyanto 2023). The study focuses on analyzing the legal aid provisions under Law No. 20 of 2025 concerning the Criminal Procedure Code, particularly Articles 1(25), 31, 32, 153, 154, and 155, and comparing them with Article 56 of the previous Criminal Procedure Code to identify regulatory continuity, weaknesses, and paradigm shifts. The conceptual approach examines legal aid as an instrument of human rights protection, substantive justice, and access to justice, while the philosophical approach assesses its normative foundations through *Maqasid Sharia*, particularly *hifz al-nafs*, *hifz al-'aql*, *hifz al-mal*, and *hifz al-'irdh*. *Maqasid Sharia* serves as the grand theory, substantive justice as the middle theory, and access to justice as the applied theory.

The legal materials consist of primary, secondary, and tertiary sources. Primary materials include legislation governing criminal procedure, legal aid, and advocates; secondary materials comprise scholarly books, journal articles, research findings, and expert opinions; and tertiary materials include legal dictionaries and encyclopedias. The materials are analyzed qualitatively through grammatical, systematic, teleological, and philosophical interpretation. The analysis proceeds through identification of applicable norms, evaluation of normative weaknesses and potential injustice, and reconstructive analysis to formulate legal aid norms that ensure effective assistance from the initial examination, establish inclusive standards of incapacity and assistance quality, strengthen the State's active obligations, and provide legal consequences for violations.

3. Results and Discussion

3.1. Reformulation of Legal Aid Norms so that they no longer rely on the Limitation of Criminal Threats

The regulation of legal aid in Indonesia's criminal procedure law shows that there is a fundamental problem regarding the parameters used by the state to determine when legal aid must be provided. In the old Criminal Code, Article 56 placed criminal threats as one of the main measures of the obligation to appoint legal counsel, namely in cases threatened with the death penalty, imprisonment of fifteen years or more, and for suspects or incapacitated defendants who are threatened with a criminal sentence of five years or more (Sari et al. 2026). This construction shows that the state's obligation to present a defender is still greatly influenced by the categorization of the severity of criminal acts. The problem is that the severity of criminal threats is not always synonymous with a person's high need for legal assistance. An incapacitated suspect in a case with a criminal threat of less than five years remains in a structurally unbalanced position when confronted with law enforcement officials who have the authority, legal knowledge, resources, and coercive ability (Hutahaean and Saragi 2025). Thus, restricting legal aid based on criminal threats has the potential to result in injustice precisely against the groups that are most dependent on state protection.

This issue became increasingly relevant after the birth of Law No. 20 of 2025 concerning the Criminal Procedure Code which brought a more progressive direction of reform in the regulation of legal aid. The new Criminal Code has recognized legal aid as free legal services for those who are unable to afford it, regulates the notification of legal aid rights before the examination, assistance by advocates or legal aid providers during the examination, and the obligation of the officials concerned to notify and appoint advocates or legal aid providers at each stage of the examination (Nurkholis and Mubarok 2024). However, these normative advances have not completely solved fundamental problems. There is a tension between the general provisions that provide legal aid to the incapacitated at each stage of the examination and the specific provisions that still place certain criminal threats as the basis for the obligation to appoint an advocate. If the special provision is interpreted as a limitation, then the old paradigm of Article 56 of the Criminal Code has the potential to reappear in a different construction (Pratama and Suastuti 2026). On the other hand, if read systematically, the provision regarding legal aid for the incapacitated party must be placed as a general norm, while the provision regarding the threat of serious criminal punishment is understood as a special norm that strengthens the intensity of assistance, not as a basis for eliminating the right to legal aid.

On that basis, this study offers a paradigm shift from *Punishment-based threshold* To *vulnerability and legal-need based protection*. Criminal threats remain relevant to determine the level of risk and urgency of assistance, but should not be the main door to determining whether or not there is a right to legal aid for the underprivileged. The main measure should be incompetence and defense needs. A suspect who is incapable, even if he faces a case with a relatively low criminal threat, can still experience pressure from scrutiny, ignorance of rights, errors in giving evidence, inability to understand the minutes of the examination, job loss, economic losses, and social stigma (Harla 2026). Therefore, legal aid should be provided from the beginning of the examination to every suspect or incapacitated defendant regardless of the type of criminal act or criminal threat.

This shift must also be followed by changes to the meaning of legal aid. Legal aid is not enough to be understood as the formal presence of an advocate, but it must be an effective accompaniment. The legal assistant must have the space to provide consultation before the examination, explain the rights of the suspect, accompany the examination in its entirety, raise objections to intimidation or ensnare questions, ensure that the minutes of the examination are read and understood before signing, and take the necessary legal action for the interests of the defense (Wijaya and Setiawan 2025). Similarly, the denial of legal aid cannot be solely proven through the signature of the suspect. Refusal must be made freely, consciously, in writing, and after the suspect has obtained an adequate explanation of the rights, benefits, and consequences of the unassisted examination. Thus, legal protection does not stop at the notification of rights, but continues at ensuring that those rights can actually be exercised.

Theoretically, the shift finds legitimacy in substantive justice, access to justice, and *Maqasid Syariah*. Substantive justice requires that the law not only provide formal equal treatment, but also correct the factual inequality between those who can afford to pay advocates and the poor who depend on state aid. Meanwhile, the perspective of access to justice places legal aid as the basic infrastructure so that legal rights can be truly reached and used by the poor and vulnerable groups (Hadaiyatullah 2026). Restrictions based on criminal threats can actually create indirect discrimination because people who can afford can still get an advocate in any case, while people who cannot afford to get help only if their cases meet certain thresholds.

In perspective *Maqasid Syariah*, the restriction of legal aid based on criminal threats is also not entirely in line with the purpose of protecting human welfare. Criminal proceedings can threaten life and liberty (*HUFZ al-NAFS*), interfering with a person's ability to understand and make legal decisions (*Hifz al-'aql*), causing economic losses (*Hifz al-Mal*), as well as damaging honor and dignity (*Hifz al-'IRDH*). This threat does not only appear in cases with serious crimes (Hadaiyatullah 2026). Therefore, the need for legal aid must be linked to the condition and vulnerability of people facing criminal proceedings, not solely to the number of criminal threats.

Based on this argument, the reformulation of legal aid norms in the Criminal Procedure Code must be directed to a universal model for suspects or incapacitated defendants, with incapacity and defense needs as the main basis. Article 154 of the Criminal Code needs to be placed as a general norm that guarantees legal aid for every suspect or incapacitated defendant at every stage of examination, while the provisions regarding cases with serious criminal threats must be positioned as a special norm that strengthens the obligation to assist and should not be interpreted as a restriction of rights. With this construction, the criminal threat is not removed from the system, but its position is reduced from the condition of obtaining legal aid to a factor to determine the intensity of protection. This reformulation shifts the orientation of legal aid from just protection based on criminal categories to protection based on vulnerability, defense needs, and human welfare.

3.2. Strengthening the State's Active Obligation in Guaranteeing Legal Aid from the Beginning of the Investigation

The fundamental problem in legal aid for suspects or incapacitated defendants does not solely lie in the existence or not of the recognition of the right to obtain an advocate, but in who must ensure that the right is actually implemented. In a construction that places only legal aid as a right, the state tends to be passive, the suspect is told that he is entitled to legal aid, then is left to ask for or seek his own assistance. Such a model is problematic because the groups that need legal assistance the most are the groups that are economically, knowledgeably, and psychologically limited in accessing it (Supriyanta 2020). Therefore, legal aid must be reconstructed from mere *passive right* It is a positive obligation of the state, which is the state's obligation to actively ensure that suspects or defendants who are unable to obtain effective legal assistance from the beginning of the examination. This idea is in line with the research findings that the state is not sufficiently present after a violation of rights, but must be present before the suspect's legal position becomes weaker.

The initial stage of the examination is the most critical point in the criminal justice process because in that phase the suspect begins to face directly with law enforcement officials and provide information that can then be included in the examination minutes, case files, and even affect the prosecution and evidence process at the trial (Sept. 2026). Thus, delays in assistance are not just administrative problems, but can cause legal consequences that are difficult to recover. Testimony given when the suspect does not understand his rights, does not know the legal consequences of his statement, or is under pressure to examine can form a weak defense position from the start. Therefore, the principle *effective legal assistance* requires that assistance be provided before the substantive examination begins, not after the examination takes place or after the minutes of the examination are completed. The research material also shows that mistakes in the early stages can have long-term consequences for the entire criminal process.

The new Criminal Procedure Code has shown an important development by directing the state's obligation to notify legal aid rights and appointing advocates or legal aid providers for underprivileged parties. However, normatively, these obligations need to be read further so as not to stop at the notification formality (Tanmadibrata 2026). The question is how to ensure that the notification actually results in real mentoring. If the suspect has been informed of his rights but the examination continues when the advocate is not present, then substantively these rights have not been fully fulfilled. Thus, the state's active obligations must include at least an early identification of the incapacity, notification of rights in easy-to-understand language, prompt appointment of a companion, and a guarantee that substantive checks are not carried out before the companion is present, unless there is a completely free and conscious refusal. This research also shows that the state's active obligations must be supported by financing, institutional, and equitable service distribution systems because the obligation to appoint advocates will not be effective if the state does not provide adequate resources and legal aid networks.

The denial of legal aid cannot be treated as an automatic reason for the state to waive its obligations. In an unbalanced position, a rejection signature does not necessarily reflect free will (Arky, Indra, and Diana 2024). Suspects may refuse because they do not understand the benefits of legal aid, fear that the examination process will become more complicated, or are under psychological distress. Therefore, the refusal must be preceded by an adequate explanation of the rights, benefits of assistance, the risk of examination without an advocate, and the legal consequences of the refusal. The rejection must then be given freely, consciously, in writing, and verifiable. With such a mechanism, the state cannot use the rejection document as a formal instrument to avoid the obligation to provide legal assistance.

The state's active obligation must not stop at the act of appointing a person as an advocate or legal aid provider. The appointment must result in substantive assistance (Hidayat et al. 2026). Advocates must have the opportunity to communicate with the suspect before the examination, explain his rights, participate in the examination in its entirety, raise objections in case of intimidation or ensnare questions, and ensure that the suspect's statement is recorded correctly (Shawn and Shawn 2025). Thus, a measure of the success of legal aid cannot be based solely on the question of whether an advocate is present in the courtroom, but whether his or her presence changes the suspect's legal position to be more protected.

The state's active obligations must also be accompanied by clear legal consequences. Without consequences, the obligation to appoint advocates has the potential to become an administrative norm that does not have coercion. Examination of suspects or incapacitated defendants conducted without notification of rights and without proper legal assistance should be viewed as a procedural defect. The consequences can be in the form of the obligation to repeat the examination with assistance, strict testing of information obtained without assistance, or restrictions on the use of the information as a basis for proof (Mulyana et al. 2026). Thus, legal consequences function not only as a sanction after a violation occurs, but as a preventive mechanism to force the authorities to ensure that the right to legal aid is fulfilled from the beginning.

From a substantive justice perspective, such a change is necessary because formal equality does not result in justice if the parties have unequal capabilities (Al Farizi, Maisarah, and Fada 2026). The state has the apparatus, authority, legal knowledge, and resources, while the incapable suspect often faces the criminal system without adequate knowledge and economic ability. Therefore, truly fair treatment requires the state to provide stronger protection to those who are factually in a weak position. The state's active obligation is a form of correction to this inequality.

From the perspective of access to justice, legal aid must be understood as a bridge between the recognition of rights and the ability to exercise rights. A right that is only notified but cannot be used in real terms cannot be called access to justice (Scott, Scott, and Scott, 2026). The state must ensure that legal aid is available quickly, easily, equitablely, and effectively, including in areas with limited advocates or legal aid institutions (Silalahi et al. 2026). Therefore, the design of legal aid needs to be supported by a picket advocate system, a region-based legal aid network, institutional cooperation, state financing, and supervisory mechanisms. Thus, access to justice does not stop as a normative principle, but is realized through legal infrastructure that can be used by poor and vulnerable groups.

In perspective *Maqasid Syariah*, the active obligation of the state is an instrument to prevent *Tyranny* in criminal proceedings. Unaccompanied examinations can be threatening *HUFZ al-NAFS* through the risk of loss of freedom, *Hifz al-'aql* through the inability to understand legal rights and consequences, *Hifz al-Mal* through economic losses and inability to obtain defense, and *Hifz al-'IRDH* through threats to honor and dignity (Hadaiyatullah 2026). Thus, the state has a moral and legal obligation to ensure that criminal proceedings do not turn into mechanisms that result in harm to structurally weak groups. The Research Material explicitly places the state's active obligations in this context as part of the prevention of tyranny and the protection of human life, intellect, property, and honor.

The reformulation of legal aid in the new Criminal Procedure Code must shift the paradigm from "the state informs rights" to "the state ensures that rights are implemented". State obligations are not sufficient in the form of formal notification or appointment, but must include identification of incapacity, effective explanation of rights, appointment of advocates before substantive examinations, quality assurance of assistance, financing and equitable distribution of services, verification of refusal, as well as legal consequences for violations (Stuart 2026). This model places legal aid as a preventive active state obligation, not just a passive right waiting to be requested. In the end, this paradigm shift became one of the main foundations of legal aid-based reconstruction *Maqasid Syariah*: The state not only guarantees that a person has the right to be defended, but is obliged to ensure that the incapable person can actually defend himself effectively from the first encounter with criminal power.

3.3. Reconstruction of *Sharia-Based Legal* Aid to Realize Effective Protection

The renewal of legal aid arrangements through Law No. 20 of 2025 concerning the Criminal Procedure Code shows an important shift from the construction of the old Criminal Procedure Code. Legal aid is no longer solely placed as a limited right based on the category of criminal threats, but has been extended to suspects, defendants, complainants, complainants, witnesses, and incapacitated victims. Article 1 number 25, Article 31, Article 32, and Article 154 of the new Criminal Code show a tendency to strengthen protection for parties who are in vulnerable positions when dealing with criminal proceedings (Wahyudi et al. 2022). The arrangement provides the basis for the notification of legal aid rights, assistance during the examination, and the obligation of the official concerned to appoint an advocate or legal aid provider for the incapacitated party.

This normative construction has not completely resolved the substantive issue of legal aid. The existence of norms that recognize the right to legal aid does not in itself guarantee that the right can be used effectively. The problem arises in the distance between normative recognition and the exercise of rights in criminal proceedings. Standards regarding disability have not been formulated objectively and comprehensively (Tanmadibrata 2026). The mechanism for appointing advocates or legal aid providers does not yet have a time limit that provides certainty. The quality of mentoring does not yet have a measurable minimum standard. Equitable distribution of legal aid services also still needs institutional strengthening. The legal consequences of examinations carried out without fulfilling the right to legal aid have not received a sufficiently firm formulation. This condition poses a risk that legal aid only stops as a notified right, not a right that is actually received and used by the suspect or the incapacitated defendant.

This problem shows that the reformulation of legal aid is not enough to be carried out by expanding the subject of legal aid recipients. The reformulation must change the character of legal aid from a declarative right to an active protection mechanism. The state did not adequately convey to the suspect that he had the right to obtain legal assistance (Diankorona Riadi 2026). The state must ensure that the incapacitated suspect actually obtains assistance before the substantive examination begins. The right that can only be used after the examination has taken place has the potential to lose its protective function because the suspect's initial information can be an important part of the construction of a criminal case.

Article 31 of the new Criminal Code therefore needs to be placed as an entrance for the protection mechanism. The obligation of the investigator to notify the right to legal aid must be followed by the obligation to ensure the presence of an advocate or legal aid provider for the suspect who is unable to do so (Daharis et al. 2024). Substantive checks should not be pursued simply because the right to legal aid has been formally notified. Delaying the examination until the legal companion is present is a logical consequence of the principle that the assistance must be effective from the beginning. Exceptions can only be applied if the suspect refuses legal aid freely, knowingly, in writing, and after obtaining an adequate explanation of his rights and the consequences of his refusal. The reconstruction is necessary to prevent the notification of rights from turning into an administrative formality.

Article 32 also needs to be strengthened because the existence of advocates or legal aid providers is not physically synonymous with effective assistance. Legal assistants must have the space to provide consultation before the examination, explain the rights of the suspect, participate in the examination in its entirety, express objections to intimidation or ensnaring questions, and ensure that the minutes of the examination are read and understood before signing. Assistance that is only characterized by the presence of an advocate without adequate advocacy will result in what can be termed formal assistance, not substantive protection (Mulyana et al. 2026). Research shows that these weaknesses are directly related to the lack of minimum standards for the quality of assistance in the new Criminal Procedure Code.

The same problem is found in the provision of a copy of the examination minutes. A copy of the BAP should not be understood only as an administrative document, but as an instrument of control over the examination process. The suspect or defendant who is unable to afford it needs legal assistance to read, understand, and test the suitability of the content of the BAP with the information actually provided. The defense function of the copy of the BAP becomes stronger if its provision is linked to the obligation of the legal assistant to conduct examinations and provide legal advice (Ramadhanti et al. 2026). The strengthening of Article 153 is thus necessary so that examination documents are not only available to legal aid recipients, but can also be used effectively to correct errors or irregularities in the examination process.

Article 154 has the most strategic position in reconstruction because it has placed legal aid for the underprivileged at every stage of examination. The norm should be developed into a master norm that provides universal guarantees for suspects or incapacitated defendants regardless of the type of criminal act and the criminal threat. The size of legal aid needs to shift from severity of punishment to vulnerability and legal need. Criminal threats remain relevant in determining the urgency of assistance, but should not be used as a basis for denying legal aid to people who are unable to afford it. The findings of the study show that Article 154 must be the center of reconstruction because the main problem of the new Criminal Procedure Code is no longer the absence of legal aid arrangements, but the lack of strong coercion of the norm.

This construction also provides a basis for rearranging the relationship between Article 154 and Article 155. The provisions regarding the obligation to appoint an advocate in cases threatened with the death penalty, life imprisonment, imprisonment of fifteen years or more, and imprisonment of five years or more for incapacitated parties should not be construed as limiting the scope of Article 154 (March 2026). Article 155 is more appropriately placed as a special norm that strengthens the intensity of protection in serious cases, while Article 154 is a general norm that guarantees legal assistance for every suspect or incapacitated defendant at every stage of the examination. Such a reading prevents the reappearance of the weaknesses of Article 56 of the old Criminal Code in a new form.

The standard of inability is also an inseparable part of the reconstruction. The term "incapable" should not be reduced to the possession of a certificate of incapacity. Inability can be seen from a person's factual ability to obtain legal services independently. Economic conditions, lack of adequate income, social vulnerability, educational limitations, disabilities, language barriers, age, and certain conditions that reduce a person's ability to understand and defend themselves can be

Law Development Journal
SINTA 2 Degree No. 0228/DTS/C3/DT.05.00/2026
ISSN: 2747-2604
Volume 8 No. 3, September 2026

indicators of the need for legal aid (March 2026). Such an approach is more in line with the idea of substantive justice because it assesses the real condition of the individual, not just his or her administrative status.

The principle of prudence is also necessary in determining the status of incapacity. Doubts about one's economic ability should not be used to delay protection at the initial stage of the examination. Administrative verification can be carried out later as long as the right of defense is not sacrificed. The risk of providing legal aid to someone who is then judged capable is less than the risk of leaving someone who is completely incapable of being examined without assistance at an early stage (Silalahi et al. 2026). This protection orientation makes the legal aid mechanism more responsive to the needs of vulnerable groups.

Reconstruction also requires clear legal consequences for violations of the right to legal aid. Rights that have no legal consequences when violated have the potential to lose coercion. Examination of suspects or incapacitated defendants without notification of rights and proper assistance needs to be qualified as a procedural defect (Tanmadibrata 2026). The information obtained through the examination must be subjected to stricter testing and should not automatically be used as the main basis of proof. The examination may be ordered to be repeated with adequate legal assistance. Judges also need to be given the obligation to examine the fulfillment of legal aid rights as part of testing the validity of criminal proceedings. This model makes legal consequences not just sanctions, but preventive instruments so that law enforcement officials from the beginning comply with legal aid obligations.

Perspective *Maqasid Syariah* provides a philosophical basis for the reconstruction. Legal aid is not only related to procedural rights, but also related to the protection of human interests in the face of state power. *Hifz al-nafs* demanding the protection of one's soul and freedom from unfair criminal proceedings. *Hifz al-'aql* Requiring the suspect to understand the rights and legal consequences of each statement. *Hifz al-mal* demanding that poverty is not a reason for a person to lose the opportunity to obtain legal defense. *Hifz al-'irdh* wants protection of the honor and dignity of a person from arbitrary criminal proceedings (Hadaiyatullah 2026). These four dimensions show that the need for legal aid is more appropriately determined based on vulnerability and defense needs rather than solely on the severity of the criminal threat.

Substantive justice strengthens the argument by placing the real impact of norms as a measure of justice. The formal similarities between the able and the incapable do not result in an equal position when both are faced with the criminal justice system. Able people can get advocates with their own resources, while people can't afford to rely on the state's legal aid system. Legal aid must therefore be positioned as a corrective mechanism against factual inequality (Sulthani et al. 2026). The state needs to provide more active protection to those who are economically and socially weaker so that the principle of equality before the law does not stop at formal equality.

The perspective of access to justice then translates the principle into institutional design. Access to justice is not enough to be realized through the existence of legal aid norms in the law (Silmi et al. 2025). These rights must be able to be obtained quickly, easily, evenly, and effectively. Initial identification, notification of rights, rapid appointment of companions, quality standards, financing, equitable distribution of legal aid providers, supervision, and legal consequences are a single system. The absence of any of these elements can create a gap between rights that are normatively available and rights that are factually usable.

The reconstruction offered by this research ultimately forms a model of active legal aid based on *Maqasid Syariah*. The model rests on six main characters, namely legal aid is provided based on incompetence and defense needs, assistance begins from the beginning of the examination, the state is obliged to actively appoint a companion, assistance must meet minimum quality standards, denial of legal aid must be done freely and consciously, and violations of the right to legal aid must have legal consequences (Hadaiyatullah 2026). Article 154 is placed as the main norm, while Article 155 functions as a special norm that strengthens assistance in serious cases. The construction suggests that the research does not stop at the proposal to expand legal aid, but offers a normative design of how such rights should work in the criminal justice system.

The normative formulation that can be offered is that every suspect or defendant who is unable to afford to receive the assistance of an advocate or legal aid provider from the beginning of the examination at each stage of the criminal justice process without being limited by the type of criminal act or criminal threat. The official concerned is obliged to identify the incapacity, explain the right to legal aid in understandable language, and appoint a companion before a substantive examination is conducted. The examination must be postponed if the companion is not present, unless there is a free, conscious, written, and verified refusal after the suspect has obtained an adequate explanation. An examination carried out by ignoring these rights must have consequences for the validity of the procedure and the evidentiary value of the information produced.

This construction is the main distinguishing point of this research. The study does not stop at criticism of the limitations of Article 56 of the old Criminal Procedure Code, because changes through the new Criminal Procedure Code have shifted the problem. The more relevant issue now is how to ensure that the new norm actually produces effective protection for suspects or incapacitated defendants. The findings of the study show that the new Criminal Code has made normative progress, but still needs to be strengthened on the standards of incompetence, appointment mechanisms, quality of assistance, equitable distribution of services, and the legal consequences of violations.

The novelty of the research lies in the construction of legal aid as an active obligation of the state based on the needs of defense and *Maqasid Syariah*, not just a formal right that depends on criminal threats (Hadaiyatullah 2026). The reconstruction connects Article 1 number 25, Article 31, Article 32, Article 153, Article 154, and Article 155 in one normative building. Article 154 is the parent norm that guarantees legal assistance for suspects or incapacitated defendants. Article 31 is the entrance to active obligations from the beginning of the examination. Article 32 is the basis for effective assistance standards. Article 153 is strengthened as an instrument of defense control through BAP. Article 155 is placed as a special norm for serious cases without prejudice to the rights under Article 154. The new norm regarding legal consequences is an instrument to ensure that all such constructions have coercion.

The model also brings together three layers of thinking in research, namely *Maqasid Syariah* as a philosophical basis for the protection of benefits, substantive justice as the basis for correcting factual inequality, and access to justice as an operational basis so that the right to legal aid can be truly used by the poor and vulnerable groups (Hadaiyatullah 2026). Legal aid with such construction is no longer understood simply as a free facility provided by the state, but as a protection infrastructure in the criminal justice process. The state is not only obliged to recognize the right to defense, but also to ensure that these rights are present when they are most needed, provided by qualified companions, are available equally, and have legal consequences if ignored.

This conception puts the renewal of the Criminal Code on a more substantive orientation. The modernization of criminal procedure law is not enough to measure the number of new norms that have been incorporated into the law. A more important measure lies in the ability of these norms to protect human beings when dealing with criminal power. The reconstruction of legal aid based *on Maqasid Syariah* offers this direction by shifting the orientation from criminal threats to defense needs, from notification to active obligation, from formal presence to effective assistance, and from non-sanctioned rights to coercive rights. This shift is the main contribution of research in building a fairer criminal procedure law for suspects or defendants who are unable to afford it.

4. Conclusion

This study concludes that the reconstruction of legal aid in the new Criminal Procedure Code needs to be directed at a paradigm shift from formal protection to effective and human needs-oriented protection. Criminal threats are no longer appropriately placed as the main measure to determine access to legal aid for suspects or defendants who are unable to afford it. Incompetence and need for legal defense must be the main basis, because a person's vulnerability in criminal proceedings is not always directly proportional to the severity of the criminal threat. The novelty of this research lies in the construction of active legal aid based *on Maqasid Syariah* which integrates the basic shift in the provision of legal aid, the state's active obligations, standards of incapacity, the quality of assistance, and the legal consequences of violations in one normative design. This construction places the protection of soul, intellect, property, and honor as the substantive orientation of legal aid. This model also brings together the demands of substantive justice with access to justice, so that legal aid does not stop as a right written in the Criminal Code, but becomes an instrument that is able to ensure that the criminal justice process takes place in a fair, equitable, and dignified manner.

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