

## Legal Assistance of the Justice Seeking Community through the Legal Aid Postal Service at the Pasarwajo Religious Court

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### Abstrak

Keberadaan Lembaga Bantuan Hukum dalam mewujudkan keadilan yang berpihak pada masyarakat keadilan sangat penting di Negara Indonesia. Salah satu perwujudan itu diwujudkan dalam bentuk Pemberian Layanan bantuan hukum yakni Pos Bantuan Hukum di Pengadilan Agama Pasarwajo. Kegiatan ini merupakan bentuk pengabdian kepada masyarakat antara dosen fakultas hukum, Yayasan Lembaga Bantuan Hukum Amanah Peduli Kemanusiaan yang bermitra dengan Pengadilan Agama Pasarwajo dalam pemberian bantuan hukum kepada masyarakat miskin. Pada dasarnya, Posbakum Pengadilan Agama Pasarwajo telah menerapkan dan melaksanakan ketentuan yang ada dalam Perma Nomor 1 Tahun 2014 jo. SOP Pelayanan Pos Bantuan Hukum (POSBAKUM) Pengadilan Agama Pasarwajo No : SOP/AS/02 Tanggal 2 sedangkan peran Posbakum Pengadilan Agama Pasarwajo ada 4 yakni a) Memberikan bantuan hukum secara prodeo menurut UU 16 Tahun 2016 dan Perma No. 1 Tahun 2014; b) Memberikan akses keadilan bagi masyarakat yang kurang mampu terhadap pelayanan pengadilan; c) Melaksanakan asas peradilan yang cepat, murah dan biaya ringan; d) Mewujudkan peradilan yang agung sebagai mitra dari pengadilan agama pasarwajo.

### Abstract

The existence of legal aid institutions in realizing justice in favor of the justice community is very important in the State of Indonesia. One of the manifestations is manifested in the form of providing legal aid services, namely the Legal Aid Post at the Pasarwajo Religious Court. This activity is a form of community service between law faculty lecturers and The Amanah Peduli Humanitarian Legal Aid Foundation (YLBH ALIM), in partnership with the Pasarwajo Religious Court in providing legal assistance to the poor. Basically, the Pasarwajo Religious Court Posbakum has implemented and implemented the provisions contained in Perma Number 1 of 2014 jo. SOP for

*Legal Aid Postal Services (POSBAKUM) of the Pasarwajo Religious Court No. SOP/AS/02 dated 2 while the roles of Posbakum for the Pasarwajo Religious Court are 4, namely a) Providing legal assistance on a free basis according to Law 16 of 2016 and Perma No. 1 of 2014; b) Providing access to justice for underprivileged communities to court services; c) Implementing the principle of fast, low-cost and low-cost justice; d) Realizing a great judiciary as a partner of the Pasarwajo.*



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## INTRODUCTION

Every people has their own position of Equality before the law, including the right to be defended (the right to obtain statutory counsel), *equality before the law*, and justice for all. (Siwi, 2020) In pursuit of justice, it is often only available to those with high school education and secondary economic status. (Safrin Salam, Nurwita Ismail, Faharudin, Nuragifah, Erni Dwita Silambi, Shinta Nurhidayati Salam, Rosnida, 2020) Limited access of the lower community to justice, the State gave birth to a law that favors the poor, namely Law Number 16 of 2011 concerning Legal Aid (hereinafter referred to as Law No. 16 of 2011). One of the objectives of providing legal aid is to realize the constitutional rights of all citizens in accordance with the principle of equality of position in the law (Article 3 of Law No. 16 of 2011). This principle means that everyone has a good right to access justice, especially in the context of legal aid. (Siwi, 2020) The concept of legal aid in Law Number 16 of 2011 is legal assistance is economic assistance provided by the state to people who have limited resources that conflict with the law to obtain justice. (Timon, 2021)

There are 2 laws in its form, namely: one, unwritten law where such a law is a legal provision that lives in citizens or which is often said to be customary law; Second, written law is made by an authorized institution and has sanctions and has a policy of forcing. (Akhmaddhian, Budiman, & Zen, 2019) The passing of Law Number 16 of 2011 concerning Legal Aid should be a tangible manifestation of the state's responsibility to the right to legal aid as access to justice for all Indonesians, as stipulated in the 1945 Constitution of the Republic of Indonesia, Law No. 39 of 1999 related to Human Rights (HAM). ), the Code of Criminal Procedure (KUHAP), the Universal Declaration of Human Rights, Article 14 (3) (d) of the International Covenant on Civil and Political Rights ratified by Law No. 12 of 2005, there is also a guarantee that everyone gets qualified legal advice and services from a lawyer (the right to a lawyer) for the poor. (Chundhamani, 2019)

One of the implementation efforts of the implementation of legal aid is carried out through the provision of legal aid services. (Salam, 2020) The legal basis used is Law Number 16 of 2011 concerning Legal Aid (hereinafter referred to as Law No. 16 of 2011 and Supreme Court Regulation Number 1 of 2014 concerning Guidelines for Providing Legal Services for Underprivileged People in Court (hereinafter referred to as

Perma Number 1 of 2014). According to the provisions of Article 12-point b of Law No. 16 of 2011, it stipulates that recipient of legal assistance are entitled to legal assistance in accordance with the Legal Aid Standards and/or the Advocate Code of Ethics. The implementation of this legal provision is regulated in the form of providing legal services to the incapacitated community in court. This is regulated in Perma No. 1 of 2014, especially article 1 point 6 which stipulates that court posbakum is a service formed by and exists in every first-level institution to provide legal services in the form of information, consultation, and legal advice, as well as the preparation of legal documents needed in accordance with the laws and regulations governing judicial power, general judiciary, religious courts, and state administrative courts.

Legal services as stipulated in article 1 point 6 of Perma No. 1 of 2014 are manifested in the form of cooperation between the Religious Court and the Legal Aid Foundation. One of the manifestations is the Foundation of the Legal Aid Institute for the Mandate of Humanitarian Care (YLBH-ALIM) with the Pasarwajo Religious Court. The legal services carried out by the Pasarwajo Religious Court with LBH ALIM are a manifestation of the implementation of Article 1 point 6 of Perma No. 1 of 2014 with the existence of YLBH ALIM which carries out its function, namely guaranteeing and fulfilling the right for Legal Aid Recipients to get access to justice and realize the constitutional rights of all citizens in accordance with the principle of equality of position in law (Essence of Article 3 of Law No. 16 of 2011). This cooperation is based on the number of legal cases received and decided by the pasarwajo religious court which received so many, namely in 2022 the number of remaining cases is July (23) cases, August 2022 (19) cases, September (20) cases, October (25) cases with case classification, namely civil lawsuits, civil applications, simple lawsuits, Jinayat, Pretrial Jinayat.

The classification of cases entered in the Pasarwajo Religious Court is a legal phenomenon that requires help from external parties in order to carry out a simple, fast and low-cost trial (Article 2 paragraph (2) of Perma No. 1 of 2014. Therefore, the collaboration between YLBH ALIM and the Pasarwajo Religious Court in opening the Legal Aid Postal Service (POSBAKUM) is an effort to assist the pasarwajo religious court in ensuring justice for access for the underprivileged community in litigating at the Pasarwajo Religious Court.

## **METHOD OF IMPLEMENTATION**

The community service activities carried out began in September 2022 at the Pasarwajo Religious Court. One of the forms of service carried out is by working between YLBH ALIM and the Pasarwajo Religious Court in the form of providing Legal Assistance Posts (POSBAKUM) in order to provide legal services in the form of making lawsuits (divorce, talak divorce, marriage certificate and marriage dispensation) to underprivileged communities. The legal aid post was formed to make it easier for underprivileged people to get legal assistance in making lawsuits for free (prodeo).

The existence of the Legal Aid Post is a form of cooperation between YLBH ALIM and the Pasarwajo Religious Court in realizing the same legal treatment to the poor in accessing legal services for free which is the implementation of Law No. 16 of 2011 and Perma Number 1 of 2014. In providing this legal aid postal service (POSBAKUM) YLBH ALIM does not charge fees to the community. POSBAKUM YLBH ALIM provides legal assistance in the form of legal consultation to the making of a lawsuit as applied by the incapacitated community.

## RESULTS AND DISCUSSION

### 1. Legal Aid Service Procedure by Posbakum Pasarwajo Religious Court.

The Constitution provides that every Person is recognized, assured, protected, fair legal certainty and equal treatment before the law as the protection of human rights. Therefore, the government has an obligation to provide legal assistance to the poor or class as a form of access to justice. (Ahyar, 2020).

Law No. 16 on Legal Aid was promulgated in 2011 to carry out the constitutional mandate. Where the requirements in this Law relate to the protection of opportunities for the rights of the people of the country who are undergoing legal proceedings. This legal aid is the embodiment of the protection of human rights for society. (Akhmaddhian et al., 2019) The right to legal aid is an essential right for every Indonesian citizen. (Ahyar, 2020) For the Act, legal aid is a legal service provided by the giver of legal encouragement to the recipient of the legal impulse free of charge. (Ahyar, 2020) The classification of recipients of legal encouragement refers to any person or group of poor people who cannot adequately and independently realize their basic rights. The right to legal encouragement is one of the rights, especially that of every citizen of the country, because in every legal process specifically in criminal law, usually each person who is identified as a suspect in a criminal matter, cannot defend himself in something legal process. Legal proceedings as well as legal review of it.

Posbakum is a service center established by each court to provide legal services in the form of information, consultation, legal advice, and others, as well as produce the necessary legal documents. Frans Hendra Winarta said, "Legal aid is a special legal service provided to the poor who need free defense inside and outside the court, in the criminal, civil, and constitutional fields, by people who know the ins and outs of the defense. (Ni Nyoman Gabriella Christiawan Putri, Anak Agung Sagung Laksmi Dewi, & I Nyoman Sutarna, 2021) Law, legal principles and rules and human rights". Since the birth of Law Number 16 concerning Legal Aid in 2011, Posbakum has become a center for legal aid services, providing services in the form of information, advice, advice and filing lawsuits or applications in the Religious Court. Posbakum is one of the government's initiatives to provide legal services to the underprivileged (poor) and the consequences of the Indonesian legal system. The issuance of Law Number 16 of 2011

concerning Legal Aid is proof that the Government of Indonesia supports the implementation of access to legal services for the poor in accordance with human rights principles. As previously explained, the existence of Posbakum as a place of legal service in all courts. This is because Posbakum is the first legal aid service provider to improve poor people's access to law and justice. (Ni Nyoman Gabriella Christiawan Putri et al., 2021)

Article 28 d provides that the state guarantees, defends, and provides legal clarity and equality before the law. Article 27 paragraph 1 provides that the poor have a constitutional right to be represented and defended by the state through lawyers or public defenders (legal services), so that the guarantee of everyone getting equal treatment before the law as a reflection of the principle of equality. Protection has been issued by the state. (Ni Nyoman Gabriella Christiawan Putri et al., 2021) Article 1 of Law Number 16 of 2011 concerning Legal Aid Programs (UUBH) defines legal aid as free legal services provided by legal aid providers to legal aid users, who are poor people. In addition, Article 1 number 3 of SEMA Number 10 of 2010 concerning Legal Aid Guidelines explains that Legal Aid Posts (Posbakum) are spaces provided in every court, including the Denpasar Administrative Court, with the intention of helping and defending the poor so that they get justice. The presence of Posbakum is currently considered a significant breakthrough, namely the application of the concept of legal aid by the previous administration. Its presence is a manifestation of the obligations of the Indonesian government as a country of law. In providing legal aid services, the Supreme Court (MA) ensured the existence of Posbakum in every court of first instance. For the provision of legal assistance to be carried out in an orderly manner, especially for those who occupy posbakum in court, it should be carried out by qualified professionals. It is intended to achieve the goal of providing legal assistance to underprivileged communities.

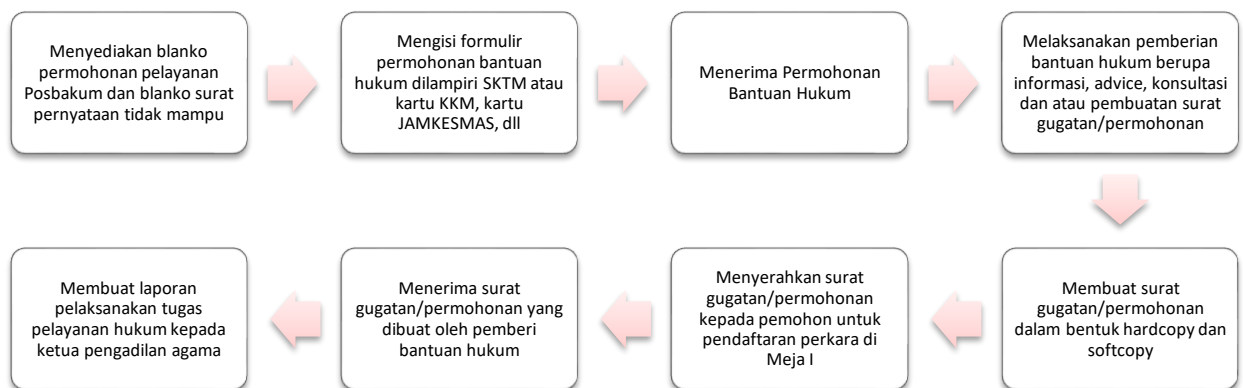
The Legal Aid Post at the Pasarwajo Religious Court in legal aid services uses maximum and professional legal services as stipulated in Perma Number 1 of 2014. Article 6 of Perma number 1 of 2014 stipulates that all costs for carrying out legal services for the incapacitated community in court are charged to the state through the budget of the Supreme Court of the Republic of Indonesia. He continued, the source of the budget in question came from other parties in accordance with the provisions of the applicable laws and regulations. This provision explains that in the administration of posbakum in the religious courts of pasarwajo all are charged by the State. Therefore, in implementing legal aid services-the foundation of the legal aid institution amanah peduli kemanusiaan (YLBH) in providing services to waive the cost of cases to underprivileged people who litigate in the Pasarwajo Religious Court.

The provision of legal assistance services by POSBAKUM officers of the Pasarwajo Religious Court is based on the Circular Letter of the Director General of Badilag No. 0508.a/DjA/HK.00/III/2014 concerning Technical Guidelines for the Implementation of Perma No. 1 of 2014 and book II of the Supreme Court. The stages of



assistance for legal aid services posbakum of the Pasarwajo Religious Court are illustrated in the cycle below:

**Figure I.**  
**Stages of Providing Legal Assistance to the Pasarwajo Religious Court Posbakum**



**Source: Processed from Primary Data in 2022**

Figure I show that the stages of providing legal aid posbakum Pasarwajo Religious Court show each stage very clearly what the beneficiaries and legal aid providers should prepare. Each stage has a foundation of requirements and documents that must be prepared by the Legal Aid Provider. Even in supporting legal certainty, the acceleration of the provision of legal assistance services posbakum PA Pasarwajo professional in the Circular Letter of the Director General of Badilag No. 0508.a / DjA / HK.00 / III / 2014 concerning Technical Guidelines for the Implementation of Perma No. 1 of 2014 requires that the services of Phase I to Phase 8 of the completion time be regulated for 90 (Ninety minutes). The guarantee of legal certainty over the legal service time of the Pasarwajo Religious Court Posbakum is basically based on the principle of fast, cheap and low-cost judicial law. The legal principle is also contained in Article 3 point 2 of Law No. 11 of 2016 which regulates the purpose of providing legal aid is to create an effective, efficient, and accountable judiciary. The same thing as stipulated in Article 3 of Perma No. 1 of 2014 which regulates the purpose of legal services of the incapacitated community in court is to provide excellent service to the justice-seeking community.

The provisions of the law seem to be that the chairman of the Pasarwajo Religious Court embodies in the vision and mission of the pasarwajo religious court, namely "The Realization of the Great Pasarwajo Religious Court" in accordance with the authority according to the applicable laws and regulations". While the missions carried out are:

- a. Maintaining the Independence of the Pasarwajo Religious Court;
- b. Providing Equitable Legal Services to Justice Seekers;
- c. Improving Leadership Qualities in the Pasarwajo Religious Court;

d. Increasing the Credibility and Transparency of the Pasarwajo Religious Court.

The vision and mission of the Pasarwajo Religious Court which is recorded and affirmed as a supreme court whose one of the missions is fair legal service to justice seekers has been established on the side of the rule of law that applies in the Pasarwajo Religious Court Posbakum (Circular Letter of the Director General of Badilag No. 0508.a / DjA / HK.00 / III / 2014 concerning Technical Guidelines for the Implementation of Perma No. 1 of 2014) jo. SOP of Legal Aid Post Service (POSBAKUM) Pasarwajo Religious Court No: SOP/AS/02 dated January 2, 2019 and was carried out professionally by officers of the Pasarwajo Religious Court Posbakum.

## 2. Posbakum's role in providing legal assistance at the Pasarwajo Religious Court

The purpose of Legal Aid deals with the humanitarian dimension and legal awareness. The purpose of this legal aid program is to ease the legal burden (costs) that must be borne by the poor in front of the courts; Article 28 d provides that the state guarantees, defends, and provides legal clarity and equality before the law. Article 27 paragraph (1) provides that the poor have a constitutional right to be represented and defended by the state through advocates or public defenders (legal services). As a reflection of the same principle of protection before the law, the state has issued Law Number 16 of 2011 tentang Legal Aid Program (UUBH). (Ni Nyoman Gabriella Christiawan Putri et al., 2021)

Therefore, when aggrieved people are faced with legal procedures in court, they can still obtain legal defense and protection. This is also related to access to justice. Access to justice is not only a right, but also a primary means of benefiting from a number of other rights, including (1) service and fulfillment of basic rights, (2) access to justice and non-formal dispute resolution mechanisms, (3) legal aid, and (4) control, management, and utilization of land and natural resources. ((ILRC), 2018) Legal aid, both provided by the advocate profession (pro bono system) and the state, is one of the means to obtain justice (legal aid system). Indonesia has adopted Law Number 16 of 2011 concerning Legal Aid, which requires the state to provide legal assistance to individuals and/or groups in need. ((ILRC), 2018) The Legal Aid Act provides that the provider of legal aid is a Legal Aid Institute (OBH), which can employ Advocates, Lecturers, Students, and Paralegals to provide legal assistance. Advocates, lecturers, students, and paralegals who work at LBH / LKBH Campus are the backbone of providing legal assistance.

It is believed that this part of the legal awareness of legal aid programs will increase the degree of legal awareness among the general public. (Kurniawan Tri Wibowo, Elza Syarief, 2021) Thus, people's respect for the law will be realized through attitudes and behaviors that reflect legal rights and obligations. Legal aid is a human right, especially for suspects, especially for those belonging to poor or disadvantaged groups, and its denial is a violation of those rights. (Kurniawan Tri Wibowo, Elza Syarief, 2021)

The implementation of providing legal assistance to recipients of legal assistance is an effort to realize constitutional rights and realize a legal state that recognizes, protects, and secures people's rights to the need for access to justice and equality before the law. The provision of legal assistance by LBH has a significant role, namely to help its clients not to be treated arbitrarily by the authorities, as well as to defend materially, which is expected to result in a decision from the authorities. a court close to a sense of justice. (Angga & Arifin, 2019)

According to Bagir Manan, there are guarantees, and this protection shows the importance of legal aid in guaranteeing the right of everyone to defend their rights from arbitrary and discriminatory legal actions, so that the state's goal of enforcing equality before the law can be achieved. through the provision of legal aid. (Timon, 2021)

The existence of the role of the Pasarwajo Religious Court Posbakum must be very beneficial for those who will seek justice but they are unfamiliar with the law. That is where the role or performance of Posbakum will run. Therefore, every Religious Court was established a Legal Aid Post whose formation was carried out in stages. Because Posbakum must be owned by every Religious Court, the Religious Court must also provide rooms and facilities for the Posbakum itself.

Types of Legal Services in Posbakum are:

- a. Provision of Information.
- b. Consultation.
- c. Advis.
- d. Creation of a lawsuit letter.

Posbakum itself in carrying out these duties the Posbakum of the Religious Court also has an obligation to:

- a) Report on any use of the state budget used for the provision of Legal Aid under the Act
- b) Maintain the confidentiality of data, information, and/or information obtained from Legal Aid Recipients relating to the case being handled, unless otherwise provided by law.
- c) Providing Legal Aid to Recipients of Legal Aid under the terms and procedures prescribed in this Act until the case is settled, unless there is a legally valid reason.

In addition, the existence of Posbakum cannot be prosecuted civilly or criminally in providing Legal Aid for which it is responsible which is carried out in good faith both inside and outside the court hearing in accordance with Legal Aid Standards based on laws and regulations or the Advocate's Code of Ethics. There are several conditions to become the executor of the Posbakum program in the Religious Courts. Among them are:

- a) In the form of a Legal entity.
- b) Domiciled in the jurisdiction of the courts
- c) Have experience in handling cases.
- d) Have at least one advocate



- e) Have staff or members who will be employed at Posbakum, where the staff or members are at least graduates of sharia law.
- f) Pass the qualification test set by the court.
- g) Religious courts are also required to provide a room for the performance of the Posbakum even with reasonable means. So that they are seekers of justice more easily if they want to get access to Posbakum assistance.

Legal Aid funding required and used for the implementation of Legal Aid in accordance with this Act is charged to the State Budget. Legal Aid Providers are prohibited from receiving or requesting payments from Legal Aid Recipients and/or other parties related to cases that are being handled by Legal Aid Providers. Because the operational costs of Posbakum are borne by the state, the mechanism of supervision and accountability of Posbakum is carried out by the Chief Justice together with legal aid service providers. (Imam Mahdi, Supardi, 2019) In addition, the Chief Justice of the Religious Court is responsible for the implementation of the provision of legal assistance, while the Clerk of the Religious Court creates a special registration book to control the implementation of the provision of legal assistance. The legal aid provider is required to provide a written report to the Chief Justice of the Religious Court. (Imam Mahdi, Supardi, 2019) Legal Aid Providers who are proven to have received or requested payment from Legal Aid Recipients and/or other parties related to the case being handled as referred to in Article 20, shall be punished with a maximum imprisonment of 1 (one) year or a maximum fine of Rp.50,000,000.00 (fifty million rupiah).

The existence of the Pasarwajo Religious Court Posbakum in collaboration between YLBH ALIM and the Pasarwajo Religious Court is very helpful in providing access to justice for the community. Pasarwajo Religious Court Posbakum officers are two officers who provide free legal assistance services to the poor. This posbakum officer carries out functions and duties in accordance with the Legal Service Standards that have been set by the chairman of the Pasarwajo Religious Court, namely the Circular Letter of the Director General of Badilag No. 0508.a / DjA / HK.00 / III / 2014 concerning Technical Guidelines for the Implementation of Perma No. 1 of 2014 jo. SOP of Legal Aid Postal Service (POSBAKUM) of the Pasarwajo Religious Court No: SOP / AS / 02 Dated January 2, 2019. In providing legal assistance services from phase I of the receipt of the application to the settlement of the lawsuit/application, it is carried out in accordance with the time set by the SOP.



Figure 2. Pasarwajo Religious Court Posbakum Assistance Service

Figure 2 shows the Legal Aid Service carried out by the Pasarwajo Religious Court Posbakum. In carrying out their duties, the Pasarwajo Religious Court Posbakum officers carry out their duties as stated in the SOP for the Legal Aid Postal Service (POSBAKUM) of the Pasarwajo Religious Court No: SOP / AS / 02 dated January 2, 2019. In addition, in the service of assisting the making of lawsuits / applications of the pasarwajo religious court officers always coordinate with the pasarwajo religious court case registration service section. This coordination aims to facilitate and speed up the process of making lawsuits/applications due to the initial screening (examination) of the requirements for documents that must be prepared by the recipients of legal aid have been checked by the registration section of the pasarwajo religious court which if it has passed the document examination stage, then the posbakum officer will check again that the recipient of legal aid is really a recipient who meets the requirements of Law No. 16 of 2016 concerning Legal Aid.

This legal aid service is also based on justice in favor of the recipient of legal aid. Kriterium of legal aid recipients as regulated by Article 7 of Perma Number 1 of 2014 so that the legal objectives of the establishment of this legal aid service can be achieved. Therefore, the role of this Posbakum from legal aid services that have been implemented is:

- a) Providing prodeo legal assistance according to Law 16 of 2016 and Perma No. 1 of 2014;
- b) Providing access to justice for underprivileged communities to court services;
- c) Implement the principle of fast, cheap and low-cost justice;
- d) Realizing the supreme court as a partner of the pasarwajo religious court.

The role of the Pasarwajo Religious Court Posbakum is basically based on the similarity and harmonization of work through the direction of the leadership of the Pasarwajo Religious Court so that the Posbakum of the Religious Court is realized in favor of providing legal assistance. This is a manifestation of the establishment of the Pasarwajo Religious Court Posbakum in realizing the legal objectives, namely justice based on legal aid providers.

## CONCLUSION

The Legal Aid Post at the Pasarwajo Religious Court in providing legal assistance services uses maximum and professional legal services as stipulated in Perma Number 1 of 2014 jo. SOP of Legal Aid Post Service (POSBAKUM) Pasarwajo Religious Court No: SOP / AS / 02 Date 2 while the role of the Pasarwajo Religious Court Posbakum is very essential (important) in realizing the implementation of fair legal assistance, there are at least 4 roles of the Pasarwajo Religious Court Posbakum, namely a) Providing legal assistance on a prodeo basis according to Law 16 of 2016 and Perma No. 1 of 2014; b) Provide access to justice for underprivileged communities to court services; c) Implement the principle of fast, cheap and low-cost justice; d) Establishing a supreme court as a partner of the pasarwajo religious court

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