

Alms (Zakah) for Legal Aid for the Poor Facing Injustice in Indonesia

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Abstract: The abstract should summarize the contents of the paper and should contain at least 70 and at most 200 words. It should be set in 9-point font size, justified and should have a hanging indent of 2-centimeter. There should be a space before of 12-point and after of 30-point. The main problem of alms (zakah) for legal aid for the poor is that not many alms collecting organizations and alms payers realize the issue of legal assistance for the poor. In fiqh books, which is adopted by the fatwa of Indonesian Ulama Council, the recipients of the alms must be those within the eight categories, i.e. the poor (*al-fuqara*), the needy (*al-masakin*), alms administrators (*al-'amilin*), recent converts to Islam (*al-muallafatu qulubuhum*), those in bondage or slavery (*fi al-riqab*), those under debts (*al-gharimin*), those in the path of Allah (*fi sabillillah*), those in travel but cannot reach their destination without financial assistance (*ibn al- sabil*). The method used for collecting data for this paper was literature study, the data collected was followed with thematic analysis through which data are related to each other. The objective of this study is to find legal basis for giving legal aid for the poor, and to find the impact of this fatwa on the development of alms for legal aid for the poor. This paper found that the Quranic categories of recipients, especially the *fuqara*, *masakin*, *gharimin*, and *fi sabil Allah* are used as legal basis for giving legal aid for the poor. Another finding is that Dompot Dhuafa and the Indonesian Ulama Council have given birth to new interpretation of the categories of zakah recipients by allowing zakah distribution for legal aid and advocacy for the poor. Since the fatwa is relatively new, only the organization that asked for this fatwa, i.e. Dompot Dhuafa, that utilizes this fatwa. It may need time for the other alms collectors to initiate the program of alms for justice.

1 INTRODUCTION

Alms for legal aid is a relatively new issue in Indonesia and not yet found in the other Muslim world. It was Dompot Dhuafa who asked for the fatwa on alms funds for advocacy and legal aid for the poor for their confidence in working with advocacy and legal aid for the structurally poor people funded by alms funds.

The Fatwa Commission of the Indonesian Ulama Council held their sixth national meeting in Banjarmasin in May 2018. Among the issues that the fatwa commission discuss was the alms funds for legal aid for the poor and legal advocacy. The fatwa commission studied questions from the society as follows: 1) is it permissible to use the alms fund for legal aid? 2) is it permissible to take advantage of the property alms for advocacy of legal system in order for the legal system in accordance with shari'ah and justice?

The Fatwa Commission of the Indonesian Ulama Council issued a legal opinion (fatwa), which is followed by argumentation. The fatwa was that: 1) The distribution of alms funds for legal aid is permissible, on the following conditions that first, the recipients of the legal aid are Muslims; secondly, the recipients of the alms funds for legal aid are treated unjustly (*mazlum*); thirdly, such legal aid was not given to the cases against religion. 2) Distribution of the alms fund as intended in number 1) is because they are within the categories (*asnaf*) *fuqara*, *masakin*, and/or *gharimin* whose legal cases are being processed; 3) In cases of defending legal cases relating to the interests of Islam and Muslims, the distribution of alms can be to the group of *fi sabil Allah*;; 4) Distribution of alms funds for the sake of developing a just legal system is permissible, which is categorized as the group of *fi sabil Allah*; 5). Development of a just legal system that can be funded with the alms funds as intended by no. 4) has objectives as follows: a). guaranteeing the law in

accordance with Islam; b). guaranteeing the public good (*masalahah 'ammah*); c). guaranteeing the protection of religion, life, reason, posterity, and property; d). correcting the government policy that may be against religion.

The Indonesian Ulama Council's argumentations are normative and empirical. Normative argumentation posed by the Indonesian Ulama Council are first, Quran Surah 9:60 "indeed the shadaqat (interpreted as zakah (Kathir, n.d, 350-352.) are for the poor (*al-fuqara*), the needy (*al-masakin*), alms administrators (*al-'amilin*), recent converts to Islam (*al-muallafatu qulubuhum*), those in bondage or slavery (*fi al-riqab*), those under debts (*al-gharimin*), those in the path of Allah (*fi sabillillah*), those in travel but cannot reach their destination without financial assistance (*ibn al-sabil*)." Second normative argumentation is Surah 30: 39 "what you have given in the form of zakah for the sake of loving Allah are those who multiply (the rewards)."

The Indonesian Ulama Council posed Imam al-Maraghi's interpretation in his work "Tafsir al-Maraghi" Volume IV Page 145, that: "*Sabil Allah* (literally God's path) is the path leading to the God's love and reward. The term God's path refers to people who wage war for the God's cause. In a narration, Imam Ahmad included pilgrimage to Mecca (*hajj*) as well as all efforts for public good into the term of God's path.

In addition, the Indonesian Ulama Council posed another argumentation that Imam ibn Taimiyah in his work *Majmu Fatawa* (25/82) permitted giving alms with that which has the same value if the value has utility for the recipients. In his words "giving the value of alms object because of needs, goodness, and justice is permissible, for example when those who have rights to the alms request that the alms be given to them in the form of its value because it will be more advantageous to them, then they should be given in accordance with their wishes. It is also the same when the alms administrator (*'amil*) is of the opinion that giving— in the form of value – is more advantageous to the poor "(Majelis Ulama Indonesia, 2018: 63-64.). That's the legal reasoning of the fatwa.

Social background of the fatwa was that although article 28 D verse (1) of the amended Indonesian Constitution dictates that "everybody has the rights to acknowledgement, guarantee, protection, and just legal certainty as well as equal

treatment before the law". Such a normative assurance sometimes is not the same as the social fact that legal services cost a lot of money, which is burdensome to the poor. For the poor facing a legal case, therefore, alms overcome their burden and help embody the principle of equality before the law.

Giving alms for legal aid is considered to be advantageous to the poor who are facing legal cases. Dompot Dhuafa as the largest alms collecting unit since 2015 has been giving legal aid and advocacy for poor Muslims facing legal cases. Muslim identity is highlighted here since the source of the fund for legal aid is alms, one of Islamic core tenet, called the pillar of Islam (*arkan al-Islam*).

2 DISCUSSION

Zakah (alms) is a religious obligation or obliged giving for Muslims, one of five core tenets of Islam. The others being testimony of faith to Allah as the only God and Muhammad as His messenger (*shahadah*), prayers five times a day (*salah*), fasting in Ramadan (*saum*), and pilgrimage to Mecca (*hajj*) in Zulhijjah.

The word "zakah" is an Arabic word that means purification or purity--to designate that zakah giving is to purify the zakah givers' wealth and heart—and to grow. Zakah purifies not only the zakah payers' wealth from the others' rights but also the human's heart from sinful sense of greedy, hedonistic, self-indulgent, ignorant of the others' rights (Jahar, 2017:1; Reksitas, N.D: 9). The Quran has informed that human beings are niggardly, that like to hoard wealth as much as they can. Allah says in Surah 17:100: "Say: If you control the Treasures of the Mercy of my Lord, you would withhold them, for fear of spending them: for man is ever niggardly!" Maslow's hierarchy of needs, love of wealth is quiet lower of human dignity, it is just above the lowest needs, i.e. breath (air), food, clothing, and shelter. After having been successful in achieving the survival level and security level, even at a higher level (self-esteem needs) human beings still need recognition and achievement, (Rivera, 2006: 303) that sometimes consist of recognition of being the wealthiest, i.e. hoarding wealth the most.

An ethnographic note reports that people pay zakah to protect their remaining wealth from being stolen, getting lost or going missing or unblessed wealth that brings about misfortune to the owner of the wealth (Reksitas, N.D: 9).

According to the Quran, zakah is also defined as growth. Quran gives a parable of a seed, when a

seed is planted it grows to a tree and yield fruits, not only a fruit—that contains much seeds—but also many fruits. Similarly, when one's wealth is distributed to rightful recipients, one's wealth does not lessen due to the giving but grows as reflected in the Surah 2:261: "Those who spend their wealth in the path of God is like a seed that grows seven fruits and within each fruit a hundred seeds. Allah multiplies (the reward) for whom He wishes..." That is the God's blessing for those who give that becomes the spirit for Muslims to give, one of them is through the institution of alms. Therefore, according to an ethnographic note, Muslims pay zakah not only as a form of worship, but also to get more rewards here and hereafter. People believe that here in the world rewards of zakah payment are like the addition of livestock, more harvest, more wealth; and more happiness; and in the hereafter on the judgment day, those who did not pay zakah (while they were well to do so) will meet face to face with their withheld wealth for their sins of not paying zakah (Reksitas:9).

Pious Muslims have to pay zakah because their wealth belong to God. According to the Quran Surah 3: 109 and 2: 284 everything in the sky and on the earth belongs to God. As the wealth belongs to God, the wealth must be spent (in God's path) according to Surah 2:267: "O believers, spend a part of the good things of your earnings and a part of what We produced from the earth for you. Do not choose the bad things to spend from while you yourself do not want to take it except by one eye..."

Therefore good Muslims may enjoy "the God's wealth" sufficient to meet his/her needs only, and return the rest to God through giving the wealth to rightful recipients, i.e. the poor (*al-fuqara*), the needy (*al-masakin*), alms administrators (*al-'amilin*), recent converts to Islam (*al-muallafatu qulubuhum*), those in bondage or slavery or, according to al-Qaradawy, the colonized people (*fi al-riqab*), those burdened by debts (*al-gharimin*), those in the path of Allah (*fi sabillillah*), those in travel but cannot reach their destination without financial assistance (*ibn al-sabil*).

So far, discussions on zakah payment and transfer have been discussed with perspectives of obligation, moral, and rights. From the Quranic order to spend the wealth from human earnings and the earth's production, and from the hadith saying that zakah is one of five pillars of Islam, comes the obligation perspective. Most traditional scholarships discuss zakah from the obligation perspective, in the sense that the well to do Muslims are obliged to pay zakah on their property. The moral perspective lies in Surah 3: 109 and 2: 284 that says that everything

in the sky and on the earth belongs to God. As everything in the world belongs to God, it is morally suggested that human beings in general, and believers in particular, distribute the God's wealth for the other human beings that need assistance. The perspective of rights comes from the Quran Surah 9:60 that dictates the categories of rightful recipients of zakah (*asnaf*); and Surah 51:19 that states: "within their wealth exists the rights (*haqqun*) of those who ask for it and those who do not ask for it." Na'im and Halim discuss the perspective of rights in zakah. According to Naim, rights based approach to zakah and the other Islamic philanthropic funds is important for the promotion and protection of philanthropy for social justice goals (Na'im and Halim, 2006: 4). Rights-based approach to zakah is the approach that stresses the strong moral and social entitlement of the poor and disadvantaged segments of society to assistance and support from the well to do segments of society as a right, rather than as condescending pity (Na'im and Halim, 2006: 11). The recipients of zakah have rights to receive assistance with respect to their dignity as human beings. Having the feeling of respect as a human being, rather than condescending pity is important to embody social justice. The feeling of pity to the poor and the other disadvantaged segments of society is condescending and unproductive for social justice projects that try to realize equality (Na'im and Halim, 2006: 12).

Na'im and Halim are aware from the outset that there would be tensions in society of this approach, which is actually based on interpretation of the Quran Surah 70: 24-25 "and the people who within their wealth are known rights (*haqqun*) of the poor who ask for it and who do not ask for it." (Na'im and Halim, 2006: 4, 13).

The Indonesian national zakah collecting organization, BAZNAS, shows that the payment of alms (zakah) reaches the amount of \$270 million per annum. So far BAZNAS distributes the alms fund for various programs: education and scholarship, charity and disaster response, health services, micro financing, zakah community development, and strategic analysis. The zakah community development includes: economic, education, and health empowerment, environment conservation, community based *da'wah*, and disaster ready villages (Noor and Pickup, 2017: 10-11). Thus from the programs of BAZNAS, there is no program for legal justice issues.

Dompot Dhuafa. as the first and the largest zakah, *infaq* (endowment), *sadaqah* (gift) collecting unit that is managed professionally and transparently

has long been distributing the alms, *infaq*, and *sadadah* to economic, educational and scholarship, health, and disaster and conflict sectors. In 2015 Dompét Dhuafa started to also work on legal justice. The Center for Legal Aid of Dompét Dhuafa was established in 2015 after the many demands from the poor for legal aid.

The DD's innovation of establishing the center for legal aid may result from the fact personally the head of the center for legal aid of Dompét Dhuafa once worked as a lawyer at LBHI (the Indonesian Institute for Legal Aid). The LBHI's concept of legal aid and legal advocacy for the poor is adopted by Dompét Dhuafa in cooperation with LBHI. For funding of the legal aid and legal advocacy for the poor, Dompét Dhuafa is funded with alms funds. Three years later, after the MUI issued a fatwa on the permissibility of distributing alms funds for legal aid and advocacy for the poor, as a reply to the question raised by Dompét Dhuafa, DD becomes firm and confident with their chores. So far the cases that the DD tackle include litigation and non-litigation cases, ranging from accompaniment for the labors against their employer, the poor's control of land rights, legal consultation for the poor, legal assistance at detention house for the poor who have no pro bono lawyers yet, legal advocacy in labor unions and in *majlis taklims*, consumers' rights, etc. (www.dompethuafa.org).

The issue of legal justice—in the form of giving legal aid and advocacy—for the poor has long been the core task of LBHI. LBHI go beyond the conventional scheme of legal aid and develops Public Interest Litigation with its legal aid for structural poor (Saleh, 2007: 19-20). LBHI used to help the structurally poor people facing law and advocate them to have knowledge and power to help themselves face the law and the state. The concept of Legal aid for the poor started at the Roman age. At those times giving legal aid were for moral, political, and philosophical reasons. Legal aid was for gaining social support to the king. At the middle age, the motivation changed to charity, and along with it grew nobility and chivalry that people adore. Since the French and American Revolutions till modern age, motivations of giving legal aid were not only charity or humanitarian but also political rights which were guaranteed constitutionally. Recently, the concept of legal aid is related to the ideal of welfare state so that governments help the program of legal aid as a part of the governments' missions of welfare and social justice (Nasution, 2007:4).

Again, legal aid is related to social justice. Although the concept of social justice in the world of philanthropy was known for the first time in the USA as helping NGOs that have core works on

structural change and capacitation for poor societies in economic, social, and political areas and try to eradicate the root causes of social injustice and offers sustainable efforts for the poor to help themselves (Fernandez, 2009: 27-28), social justice has been known much earlier in Islamic tenet and scholarship. The tenet of zakah contains social justice by which the Muslim have distribute their certain amount of wealth for their Muslim brothers and sisters who are in certain situations. *Fuqara* (sing. *faqir*), according to the schools of Shafiite and Hanbalite are the people who cannot meet even a half of their primary needs. According to Hanafite school of law, the standard of faqr is having less than one *nisab* of wealth in any forms to meet their primary needs. According to Malikite and Imamite, the term refers to the people who cannot provide the primary needs of their families for a year. *Masakin* (sing. *miskin*), according to Hanafite, Malikite, and Imamite, are those whose economy is better than the *fuqara*, at least the *masakin* are able to meet a half of their primary needs. Alms administrators (*'amilin*) are those whose works are collecting the alms, their right to alms is a form of reward or payment of their works. *Ruqab* (sing. *riqab*) are those who buy a slave or slaves in order to set them free. Zakah is a mechanism to eradicate slavery. Although according to the schools of Islamic law there is no slavery anymore today (Mughniyah, n.d.: 282-289), Qaradawi is of the opinion that colonization is similar to slavery. Thus, alms may be distributed to Muslims being colonized, however, the term may not be loosely extended, living in colonized is indeed unbearable, thus they can be included into the recipients of alms, but not in the category of *fi al-riqab*, but *fi sabil Allah* (Qaradawi, n.d.: 47). The other extension of interpretation of the *asnaf* are those suffering from HIV for their medical treatment, as HIV medical treatment cost a lot of money that may make their families fall into destitute—*fuqara* or *masakin* or *gharimin* (Ebrahim, 2014: 52). The same extension of the interpretation of *fi sabil Allah* is setting women free from trafficking, thus alms fund can be used to set women free from trafficking.

The other groups of zakah recipients are *gharimin*, *fi sabil Allah*, and *ibn sabil*. For those who are under debts (*gharimin*), zakah fund may be used to pay their debts. Debts for personal reasons, such as debts by those hit by natural disaster that have destroyed their assets and force to have debts in order to meet their basic needs (Qaradawi, vol. 2. N.d.: 49), or debts for financing their cases settlement in courts while they do not have assets to get them rid of their debts, can be paid from zakah funds. Likewise, those who work for social activities that force them to be in debt, such as reconciling two

persons in dispute, may be given zakah (Qaradawi, n.d.: 52). *Fi sabil Allah* (literally means on the path of God, or in the other word for the cause of God) is the people who work for public good, such as those who wage war for God, those who keep mosques, teachers who teach unpaid or underpaid, and many other positive activities for social good are grouped into on the path of God (Mughniyah, N.D: 287). Lawyers who go to police detention and to court to defend the poor facing legal cases can be considered on the path of God. Therefore, they deserve the alms for their transportation and courts' administration costs. According to Hanafite school, those work on the path of God (social work) deserve the alms for transportation and expenses needed by the "social work" otherwise their social work will be impeded or deterred (Qaradawi, n.d.: 57). Whereas *ibn sabil* is somebody who travels to the other place and does not have any money to reach the destination.

Distributing alms for the poor facing legal cases, so far as they are poor Muslims and being treated unjustly, are permissible under the categories of alms recipients of fuqara, masakin, gharimin, and fi sabil Allah. Questions are raised regarding the prerequisite of religion (Muslims). Is that against the principle of social justice or discriminating against non-Muslims who are also poor and facing legal cases? According to traditional view, the prerequisite of religion is because the source of fund is from zakah fund, which is a core tenet of Islam. The eight categories of the zakah recipients is the rule for zakah distribution. Traditional interpretation of the ruling is that zakah distribution is limited to Muslims only, it is not permissible to non-Muslims. It is in line with this view that the Indonesian Ulama Council when issued a fatwa on zakah funds for legal aid to the poor requires religion (Muslims) as prerequisite for receiving the alms funds. The poor, the needy, the wayfarer must be Muslims in order for being eligible as recipients of zakah funds. However, according to Fauzia, many Islamic philanthropy organizations put humanity first in philanthropy by utilizing infaq and shadaqoh (gift) institutions. Thus, they play safely, in one hand while complying with fiqh on the other hand also put humanity first regardless of the recipients' religions (Fauzia, 2018: 10-13). Thus giving legal aid for non-Muslims is permissible by utilizing non-zakah funds. By non-discriminating such philanthropy finds its social justice basis.

In fact, social justice is not alien to Muslims and Indonesians. Islam has much earlier introduced the concept of social justice as in Surah 4:58: "should you try among human beings you try them justly" Surah 57:25: "we sent down messengers with clear signs and sent down with them the Book and measure in order to establish justice among the

people." There are many other Quranic surahs and verses that order justice, for the believers, justice is close to fear and submission to God.

The concept of social justice was written by Sayyid Qutb in his book, *al-Adalah al-Ijtima'iyah fi al-Islam*, which was published for the first time in 1949. According to Qutb, justice does not mean similarity of possessions and social status. Human beings may vary in their wealth as Islam does not demand equality of wealth among Muslims, variation is even natural (*sunnatullah*), but human beings have mutual responsibility in which the rich help the poor and vice versa because human beings have love, mercy, and mutual responsibility among themselves. Among the methods of social justice in Islam, according to Qutb, lies in the forms of worship, i.e. zakah and shadaqoh (endowment) (Qutb, 1995: 28-30, 65-67). A hadits says: "... Allah has made it obligatory for them to pay zakat which will be taken from the rich among them and given to the poor among them..." The social stratification that separates the rich from the poor is bridged with zakah. The good relation between the two classes of society is important in making the society intact.

According to Qutb, establishing justice is the duty of all human beings irrespective of their beliefs, sexes, colors, etc. Qutb's definition of justice is following God's way. Only God's way that is just to all human beings since it is neither influenced by human desire nor biased because God's justice is free from human desire and interest (Rahman, 2000: 105, 108). If it is analyzed, electing recipients of zakah funds may be biased if it based on human's desire. Since God has already dictated the eight asnaf as requirement to be eligible as recipients of zakah fund, then Muslim administrators of alms fund comply with that ruling.

In the same line, Ibnu Khaldun said that justice is the application of shariah law to human affairs. Al-Afghani was also of the opinion that justice may be established and maintained in the society who has higher religion. Islam is viewed as the religion of justice (Rahman, 2000: 106-108). Interestingly, by interpreting Surah 57:25: "We sent down messengers with clear signs and sent them down with them the Book and measure in order to establish justice among the people", Qutb was of the view that justice is the goal of all the scriptures (Rahman, 2000: 109).

Indonesian constitution and principle also contain basis of social justice. Article 28 D verse (1) of Indonesian Constitution regulates that, "everyone has the right to acknowledgement, guarantee, protection, just legal certainty as well as equal treatment before the law". Thus, the concept of

social justice has been familiar to Indonesians. The Five Principles known as Pancasila reaffirms the concept of social justice in its fifth principle, social justice for all Indonesian people. All Indonesian people and social organizations must comply with the Indonesian constitution and principle in working on humanitarian work.

Dompot Dhuafa when distributing Islamic philanthropy fund try to comply with the constitution and the five principle since the founder and the head of its center for legal aid was a lawyer of the Indonesian Institute for Legal Aid (LBHI), as a non-discriminative organization. Due to the source of the fund for legal aid at Dompot Dhuafa's Center for Legal Aid is Islamic Philanthropy, they must comply with the fatwa of the Indonesian Ulama Council on zakah fund for legal aid for the poor that require Muslims as the basis of electing the possible recipients.

The Indonesian Ulama Council seems to be orthodox in this issue, especially when requiring religion as the prime basis of recipient of zakah fund. The orthodoxy of Indonesian Ulama Council is logical since they are the guardian of Islamic (Sunni) orthodoxy (Ichwan, 2012: 168). According to Ichwan, the Indonesian Ulama Council is a semi-official religious authority that has a character of puritanical moderate Islam that base their legal opinions (fatwa) on Sunni orthodoxy (Ichwan, 2013:61). Nevertheless, the fatwa provides many principles such as *fuqara*, *masakin*, *gharimin*, and *fi sabil Allah* that may be utilized for interpreting legal advocacy and giving legal aid for the poor.

The Indonesian Ulama Council has run its function of serving the Indonesian Muslims by providing fatwa. The Indonesian Ulama Council in responding questions from the Indonesian Muslims reflect that law must follow society and social changes. Changes within the society about recipients of zakah as well as form and methods of zakah distribution has made the Indonesian Ulama Council thought about the new interpretation and application of Islamic law on the categories of zakah recipients. In this case, the society and the Indonesian Ulama Council have given birth to new development of zakah distribution.

3 CONCLUSIONS

As a home to majority Muslim, Indonesia has potential for having much fund from Islamic philanthropic funds, especially zakah, which is obligatory to Muslims. The Quran, Hadith, fiqh, and fatwa have delivered the concept of zakah and its recipients, known as *asnaf* (categories of recipients)

Modern challenges to Islamic law about the eight *asnaf* have been raised. A literature in Saudi raised the issue of sufferer of HIV as possible recipient of the zakah fund. Previously, there was also a literature on an issue about the use of zakah fund for liberating sexual worker in the other country. Indonesia raised the issue of giving legal aid and advocacy from the zakah fund, which is permissible under the principles of *fuqara*, *masakin*, *gharimin*, and *fi sabil Allah*. New interpretation of the *asnaf* to the real situation needs confirmation from authoritative body such as the Indonesian Ulama Council.

The Quranic categories of recipients, especially the *fuqara*, *masakin*, *gharimin*, and *fi sabil Allah* are the text used as legal basis for new interpretation of recipients and distribution of zakah, whether giving legal aid for the poor is permissible by Islamic law. The fatwa is a legal opinion issued on questions from Muslim society that needs legal status of contemporary issues. Development needs law and development brings about new law. Dompot Dhuafa that worked on giving legal aid and advocacy for the poor help the birth of new law or legal opinion. From then on Dompot Dhuafa, LBHI, and the other organizations that work for social justice feel confident in utilizing zakah funds for legal aid and advocacy. Since the fatwa is relatively new and or most of the zakah collecting organizations are traditional, only apply the conventional interpretation of the eight *asnaf* only the organization that asked for this fatwa, i.e, Dompot Dhuafa, that has utilized this fatwa. However, this fatwa opens the door for the other zakah, infaq, and sadaqah collecting organizations to follow Dompot Dhuafa, so that social justice philanthropy develops better in Indonesia.

Following Na'im and Halim of the concept of rights based philanthropy, legal aid and advocacy for the poor are the rights of the poor. Recognizing their rights for legal aid and legal protection is a way to achieve social justice for all.

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