

The Essence of Legal Aid is Only for People's Affordable in Criminal Cases

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The Essence of Legal Aid is Only for People's Affordable in Criminal Cases

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ABSTRACT

The research objective is to analyze the Nature of Legal Aid Free of Charge for Poor People in Criminal Cases. This type of research is included in empirical legal research. The results of the research show that the essence of legal aid is free of charge for poor people in criminal cases to guarantee the human rights of each individual to receive recognition and protection, so that all people have the right to be treated equally before the law. One of the efforts to realize the implementation of legal aid Free of Charge for Poor People in Criminal Cases in order to achieve justice or equality before the law, namely by providing access to justice, in the form of providing legal assistance to everyone involved in legal matters. The implementation of the essence of legal aid is free for people with disabilities in a criminal case does not escape the knowledge of justice seekers or suspects or defendants regarding the existence of free legal aid services that have been prepared by the government through legal aid organizations that have been accredited by accreditation by the Ministry of Law and Human Rights.

KEYWORDS: Legal Aid; Public; Criminal Case

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I. INTRODUCTION

Legal aid for the poor is a form of action by a very noble profession of advocate, and is a moral movement that fights for human rights. However, in reality, not all advocates are morally aware of this obligation.^[1] There are still many irregularities in the practice of providing legal aid to people or groups of people who are poor or poor.^[2] This reality, of course, is very contrary to the noble values of the advocate profession itself.

The provision of legal assistance to people who are poor or poor has been regulated in various provisions of laws and regulations.^[3] In addition, legal aid in its manifestation is a struggle for human rights guaranteed in the constitution. Thus, legal aid is a constitutional right of Indonesian citizens. Constitution of the Republic of Indonesia^[4] and this is stated in the provisions of 1945 which are the basis for the provision of legal aid, and the principle of equality before the law, including Article 27 paragraph (1), Article 28 D paragraph (1), Article 28 I paragraph (2) and Article 34 paragraph (1) of the 1945 Constitution of the Republic of Indonesia in development since the enactment of Law No. 18 Year 2003 concerning Advocates, has determined that one of the requirements to be appointed as an advocate,^[5] is not a civil servant or a State official, therefore, lecturers who are members of legal aid bureaus in the Law faculties of State Universities, are no longer able to be advocates providing legal assistance. This policy causes the implementation of legal aid to decrease in quantity in terms of advocates who provide legal assistance.

Previously, the government had not allocated adequate legal aid funds, but with the enactment of RI Law Number 16 of 2011 concerning Legal Aid, legal aid funds have been allocated as regulated in Article 17 paragraph (1) that, "The government is obliged to allocate funds for the administration of Legal Aid in State budget". Even so, in fact, there are still advocates who are reluctant to provide legal assistance to the poor or disadvantaged people, so it is still difficult to get legal assistance. Because of that, many are still found in the implementation of legal aid that is contrary to statutory regulations, both at the stage of examining suspects at the investigation level,

examining the accused in court, and at the Legal Aid Institution. In fact, the provision of legal aid to poor people in Indonesia has not been implemented properly.^[6] Likewise with the condition of the provision of legal aid in South Sulawesi Province, which apparently has not been able to provide guarantee for the poor, to get free legal assistance, because in its implementation it does not provide certainty about the right to obtain legal assistance. Free of charge, especially in criminal cases.

South Sulawesi Province as an autonomous region has the right to regulate and manage its household in accordance with statutory regulations. One of the obligations that must be carried out by the South Sulawesi

Provincial Government, is to create justice and equal opportunities to fight for their interests, especially in terms of providing legal aid services for poor or underprivileged members of the community. The current condition shows that there are still many members of the community who cannot adequately fight for their rights, due to the inability of the economy to pay for their cases. Therefore, considering the importance of legal aid in creating justice, upholding human rights, and equality before the law, as well as in achieving due process of law, it certainly makes the obligation to provide legal aid an important thing to be implemented effectively.

II. RESEARCH METHOD

This type of research is included in empirical legal research, because it views law as a phenomenon *socioempirical* observed in experience. For this reason, law is not only studied from its normative aspects, but also law as in its social context or reality. This research was conducted in South Sulawesi Province, with a sample area, namely Makassar City, Jeneponto Regency, Takalar Regency, Sidenreng Rappang City and Wajo Regency. The consideration of choosing these areas as research locations is based on the reason that there has been a significant increase in legal cases, and many community members who are involved in criminal cases are underprivileged, or do not receive legal assistance.

III. DISCUSSION

The Nature of Free Legal Aid for People in Criminal Cases Legal

Poor aid is the right of the poor which can be obtained without payment (*pro bono publico*) as a description of equal rights before the law.^[7] This is in accordance with the provisions of Article 34 of the 1945 Constitution in which it is emphasized that the poor are the responsibility of the state. Moreover, the principle of equality before the law and the right to be defended by advocates (*access to legal counsel*) are human rights that need to be guaranteed in order to achieve alleviation of the Indonesian people from poverty, especially in the field of law. The position of humans in law is closely related to the human rights possessed by humans themselves. Human Rights (HAM) are basic rights or basic rights of the gift of God Almighty.^[8] Humans as beings of God Almighty are naturally gifted. Every citizen regardless of ethnicity, skin color, social status, beliefs, and political views has the right to get access to justice. Indonesia's rule of law guarantees equality for its citizens before the law on the basis of the state and its constitution. The Second Principle of the Pancasila "Social justice for all Indonesian people" and the Fifth Precept of the Pancasila "Social justice for all Indonesian people" recognize and respect the right of Indonesian citizens to this justice. The 1945 Constitution affirms that everyone has the right to recognition, guarantees, protection and legal certainty that exists as well as equal treatment before the law and every citizen has the right to equal opportunities in government. The 1945 Constitution also recognizes the right of every person to be free from discriminatory treatment, on any basis and is entitled to protection against such discriminatory treatment. This human right forms the basis of other rights and obligations. The responsibility of the state in providing protection of human rights must be implemented through constitutional efforts in the legislative, judicial and executive domains.

Legal aid is the human right of all people, which is not provided by the state and is not a mercy from the state, this is important because often legal aid is interpreted as compassion for the poor.^[9] Apart from helping the poor, legal aid is also a moral movement that fights for human rights. This right cannot be reduced, limited or even taken away, because it is a necessity.

This can be interpreted that the right to legal aid as part of human rights must be considered a constitutional right. Even though it is not explicitly regulated and stated in the 1945 Constitution, the State is still obliged to fulfill it because access to justice in order to fulfill the right to be tried fairly is one of the characteristics of the rule of law. This means that the State is obliged to protect all community rights related to the law, including obtaining guarantees for legal aid. The State's obligation to socialize in providing guarantees for legal aid is not without basis. Article 27 Paragraph (1) of the 1945 Constitution states that all citizens have the same position in law and government and respect the law and government without exception. This means that every citizen has the right to be defended (*access to legal counsel*), the right is enforced equally before the law (*equality before of the law*) and the right to get justice (*access to justice*).

Legal Aid Institutions are non-profit. It was specially established to provide the best possible service for free to those who need legal assistance but are unable, or are blind to the law, or are oppressed by the cases they are facing. Therefore, Free Legal Aid Service Providers must provide an explanation to every Justice seeker, suspect or defendant as recipients of legal aid when consulting for the first time. From the Research Results The authors from several District Courts where the applicant wrote obtained data that someone who is entitled to services from a legal aid post is a person who is unable to pay for advocacy services, especially women and children as well as persons with disabilities, in accordance with applicable laws and regulations.

Through this legal service it is hoped that the community will find it easier to seek justice as fairly as possible.^[10] Especially now that more and more legal aid agencies have been established in court offices or posts in the community. Legal Aid Institutions are arrangements (guidelines, rules, regulations) made to regulate.

Meanwhile, legal regulation is a principle which states that the superiority of law restricts state officials from exercising their power. Meanwhile, the term "institution" is termed "institution" which is a set of relationships of real norms, beliefs, and values, which are centered on social needs and a series of important and repetitive actions. Legal aid that is developing in Indonesia is essentially related to the development of legal aid in developed countries. So it can be concluded that legal aid is an instrument to help parties who feel they need assistance, in this case it is legal assistance. According to Article 1 of Law No. 16 of 2011 concerning Legal Aid, it states that legal aid is a legal service provided by legal aid providers free of charge to legal aid recipients. Legal aid recipients are people or groups of poor people. Legal Aid Providers are legal aid organizations or social organizations that provide Legal Aid services based on this Law.

In the decree of the minister of justice No.M.01.UM08.10. 1981 dated 13 October 1981 regarding implementation guidelines, project consultations and legal assistance through the public law faculty. In Article 2 it is explained that:

"Legal assistance is provided to clients for criminal and civil cases filed at a judicial body or other bodies that provide justice, from the very beginning until a decision is obtained that has obtained definite legal force and through representative activities, clients as special powers before the judiciary. "

Legal aid is also a legal service provided by legal advisors in an effort to provide legal protection and defense of the suspect's / defendant's human rights from the time he is detained until a court decision is obtained from when he is arrested / detained until a permanent court decision is obtained. What is defended and given legal protection is not the suspect's / defendant's fault but the suspect's / defendant's human rights to avoid treatment and disgraceful actions or arbitrary actions by law enforcement officials.^[11]

The result of author interviews with several advocates who are members of the Legal Aid Organization who have passed the Accreditation Certification by the Ministry of Law and Human Rights were obtained, namely YLBH-Keadilan Nusantara and the Indonesian Muslim University (LKAH-UMI) Institute for Research, Advocacy and Legal Aid regarding Free legal assistance-It just explains that legal aid is a legal service provided by advocates free of charge to clients who cannot afford it.

In addition to providing legal aid services to people who need it, legal aid also plays a role in educating the public in the broadest sense with the aim of fostering and fostering awareness of rights as legal subjects and also participating in carrying out legal reform and improving the implementation of law in all fields. Therefore, legal aid is defined as legal aid (either in the form of providing legal advice or in the form of a power of attorney from a legal aid organization where public defenders receive complaints from the public.

Public defenders are individuals, both law graduates and advocates, closely related to the profession of advocate for the function of legal aid is one aspect of the advocate profession. in accordance with the *principle of presumption of innocent* then the accused must be treated in accordance with their dignity as human beings and over have not proven his guilt to be presumed innocent. Therefore, he must be allowed to have contact with his family or legal advisers, especially since he was arrested/detained. However, this relationship by itself should not be detrimental to the interests of an examination that begins with the investigation. In the criminal procedure law KUHP.¹²

It is concluded that what is meant by legal aid is legal services provided by legal advisors in an effort to provide legal protection and defense of the suspect's / defendant's human rights from the time he is arrested / detained until a court decision is obtained which has permanent legal force. Meanwhile, an institution is an agency or organization that aims to carry out a scientific investigation or conduct business. Thus it can be said that the scope of legal aid includes the provision of legal services, providing guidance and development of legal education as well as reforming and improving the implementation of law which ultimately aims to increase legal awareness of citizens so that they realize their rights as humans as citizens.

The Advocate Law defines legal aid as legal services provided by advocates free of charge to clients who cannot afford it. Provision of legal aid is an obligation for Advocates, namely based on Article 22 paragraph 18: Advocates are obliged to provide legal assistance free of charge to incapable justice seekers. However, the obligation to provide legal assistance by Advocates in the Advocate Law is not further explained in terms of its scope and proportions.

Advocate Law and Government Regulation No. 83/2008 do not contain sanctions provisions aimed at ensuring Advocates carry out their obligation to provide legal aid free of charge to incapable justice seekers.¹⁵

Providing free legal assistance from Advocates in the law is just a confirmation of the form of the advocate's professional code of ethics. Even if the Advocate does not carry out their obligation to provide free legal assistance, the Advocate can only be given administrative sanctions as regulated in Article 14 Paragraph 35 of Government Regulation No. 83 Year 2008, namely:

- a. verbal warning.
- b. written warning
- c. temporary dismissal from the profession for 3 (three) to 12 (twelve) consecutive months or
- d. permanent discharge from the profession.

Apart from these administrative sanctions, other sanctions¹³ only be imposed by Advocate organizations based on the Advocate Code of Ethics. Before the issuance of Law no. 16 of 2011 concerning Legal Aid, the implementation of Legal Aid is fully the dominant group of independent people called Advocates (Advocate Organizations), both Advocates who work in law firms and those who work at LBH-LBH.

In this case, the government does not regulate the implementation of Legal Aid which is organized¹⁸ by Advocates. Because the implementation of Legal Aid is completely dominant as Advocates as regulated in Law No. 18 of 2003 concerning Advocates. In fact, to strengthen the position of Advocates in the provision of Legal Aid, it is strengthened by Government Regulation No. 83 of 2008 concerning Requirements and Procedures for Providing Free Legal¹³, and SEMA RI No. 10 of 2010 concerning Guidelines for Legal²id.

1) In Article 6 Paragraph (2) of Law No. 16 of 2011 states: "Providing Legal Aid to Recipients of Legal Aid is administered by the Minister and carried out by Legal Aid Providers based on this Law". In the Elucidation of Article 6 Paragraph (2) states: "This provision does not reduce the obligation of the Advocate profession to provide Legal Aid based on the Law on Advocates". This means that the Government must be involved in providing legal aid for people who cannot afford it without reducing the role of Advocates in the administration of Legal Aid organized by Advocates²⁴ on Law no. 18 of 2003.

2) Article 22 of Law No. 18 of 2003 stipulates that Advocates are obliged to provide free legal assistance to incapable justice seekers. Provisions regarding the requirements and procedures for the provision of free legal aid are further regulated by Government Regulations. The government regulation in question is PP No. 83 of 2008 concerning Requirements and Procedures for Providing Legal Aid Free of Charge. With the provisions of Paragraph (2), it turns out that the makers of the Advocate Law are actually still fully providing arrangements for the provision of legal aid to the government. The provision of paragraph (2) does not need to exist because the obligation to provide free assistance to incapacitated persons is an inherent part of every person who has a profession as an Advocate and this does not need to ask the government for assistance to be regulated. Advocates and Government Regulation No. 83 / 2008 do not regulate at all the provisions of criminal sanctions or fines which aim to ensure that Advocates carry out their obligations of free legal assistance to incapable justice seekers. If the Advocate does not carry²⁵ out their obligation to provide free legal assistance, the Advocate will only be given administrative sanctions as regulated in Article 14 Paragraph (2) of Government Regulation No. 83 / 2008.

In addition, the administrative sanction¹⁵ only be carried out by an advocate organization based on the Advocate Code of Ethics. Article 4 Letter f 37 of the Advocate Code of Ethics states, Advocates in handling free cases must pay the same attention to cases for which they receive service fees. With the word "must", the standard measure is moral. It means that giving free assistance is not the duty of every lawyer but a moral demand of every lawyer.

So, therefore, the Advocate cannot be given sanctions for not carrying out the "must", except when the Advocate carries out the requirement, it is proven that he has asked for service fees from an incapable client. Although proven, the nature of the sanctions is administrative and the government cannot intervene in every administrative sanction decision made by an advocate organization. The moral nature of free legal aid is reinforced by Article 3 letter A of the Advocate Code of Ethics, that Advocates can refuse to provide legal¹⁰ ice and assistance to anyone who needs legal services and / or assistance on the basis of consideration because it is not in accordance with their expertise and is contrary to their expertise, conscience, but cannot refuse on the grounds of differences in religion, belief, ethnicity, descent, gender, political beliefs and social position.²⁴

It could be that an advocate refuses to provide legal assistance to incapable justice seekers on the grounds that it is "contrary to their conscience" or "not according to their expertise" or even "because there is no budget (prodeo / pro bono)". For example, there is a person who is unable to file a lawsuit or assistance. That person comes to a lawyer and the lawyer is unable to provide legal assistance simply because there are many cases that must be handled or are not in accordance with their expertise. If an incapacitated person comes to the Posbakum Court, the Advocate Piketposbakum District Court can provide Legal Consultation but this is not widely known by incapable Justice Seekers.

IV. CONCLUSION

Free legal assistance is given to the poor in criminal cases to basically guarantee legal protection for the accused and/or the suspect committed by the Legal Aid Foundation or Providers of Legal Aid for the poor, everyone must be treated¹⁷ equally in the eyes of the law (*equality before the law*), including people who are in economic difficulties. Article 34 Paragraph (1) of the 1945 Constitution itself states that caring for the poor and neglected children is a state obligation. This includes¹⁴ providing legal and justice facilities. In this case the Government issued a regulation, namely Law No. 16 of 2011 concerning Legal Aid. Free legal assistance is given to the poor in criminal cases basically to guarantee legal protection for the accused and / or the suspect carried out by the Legal Aid Foundation or Legal Aid Providers for the poor, everyone must be treated equally

in the eyes of the law (*equality before the law*), including people who are in economic difficulty. Article 34 Paragraph (1) of the 1945 Constitution itself states that caring for the poor and neglected children is a state obligation. This includes providing legal and justice facilities. In this case the Government issued a regulation, namely Law No. 16 of 2011 concerning Legal Aid.

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