

Socialization of Ranperda on Organization of Legal Aid to Poor Communities

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Abstract

Legal Aid is legal services provided by Legal Aid Providers free of charge to Legal Aid Recipients. The law is felt to be a frightening specter for underprivileged communities. Apart from general law with various complex problems, obtaining legal aid services is expensive. Because the profession of an advocate as a provider of legal services requires special education and expertise, the pay is also no joke. It is not surprising that many people still think twice when they want to ask for legal services, especially for economically disadvantaged people. Even though every person with problems with the law has the right to receive legal assistance from the time of investigation until a court decision has permanent legal force, providing legal assistance is part of human rights. Thus, through this socialization, it can help and provide understanding for the community, especially the less fortunate; when it comes to legal cases, they can find out that there is a plan to draft regional regulations regarding providing legal Aid for people experiencing poverty.

Keywords: Legal Aid, Poor Communities

1. Introduction

The right to legal representation, including access to an advocate or public defender, constitutes a fundamental human right, integral to the realization of justice for all individuals. Aristotle's philosophy underscores the state's responsibility in dispensing justice equitably among its citizens, with the law serving as the mechanism to ensure its universal reach. This principle mandates that in legal disputes, parties must be accorded equal treatment before the judiciary, regardless of their financial capability (Audi et al., 2021). It is imperative that the provision of legal defense extends beyond those with the means to afford private counsel, ensuring that individuals from economically disadvantaged backgrounds have access to pro bono publico services from public defenders. Such defense is imparted irrespective of the individual's religion, ancestry, race, ethnicity, political ideology, socio-economic status, skin color, or gender, epitomizing the essence of impartiality in legal representation.

Legal aid symbolizes a service rendered by legal aid organizations to recipients at no cost, embodying the principle of equality before the law. The implementation of legal aid, especially for the impoverished, is intricately linked to and contingent upon the prevailing legal and regulatory frameworks. From a juridical standpoint, the facilitation of legal assistance for the indigent or marginalized groups is encapsulated within various international and national legal instruments, affirming legal certainty and adhering to the principle of legality—a hallmark of the rule of law as articulated by Friedrich Julius Stahl, which emphasizes governance underpinned by established rules (Stahl, 1963). Despite the robust legal foundation supporting legal aid for the underprivileged, a closer examination and analysis reveal substantive gaps that necessitate refinement to enhance the efficacy of legal assistance delivery.

The foundation of legal aid is the manifestation of the principle of legal equality and human rights, thereby establishing it as a universal entitlement recognized, guaranteed, and facilitated across the global legal landscape. This entitlement is further delineated in numerous international legal frameworks, which serve as reference points for the structuring and execution of legal aid initiatives within Indonesia (International Covenant on Civil and Political Rights, 1966). The Criminal Procedure

Code, under Article 54, stipulates the provision and execution of legal assistance at every phase of the legal examination process, highlighting the pivotal role of legal aid during the investigative and court examination stages. Legal assistance can be proffered directly by advocates through Legal Aid Institutes (LBH) or community organizations, reinforcing the accessibility of legal services to those in need.

The promulgation of the Draft Regional Regulation on "Providing Legal Aid for the Poor" aims to encapsulate community aspirations within the legal framework, ensuring their consideration prior to enactment. Furthermore, this initiative seeks to elevate public awareness regarding the availability of legal assistance for the impoverished through this regional legislation, thereby facilitating their legal empowerment when confronted with legal challenges (Smith & Wesson, 2020).

2. Method

The research methodology to be employed in this study is the normative-empirical legal method, which is a hybrid approach integrating both normative and empirical analyses within the legal research framework. Normative legal research is grounded in the examination of legal norms, encompassing statutory law, comparative legal studies, universally accepted legal principles, and theoretical underpinnings of law (Hart, 2012). This aspect of the research is dedicated to exploring the doctrinal aspects of law, aiming to elucidate and interpret legal rules, their coherence, and systemic structure. On the other hand, empirical research is rooted in the observation and analysis of factual circumstances and actual occurrences within society (Sutherland & Cressey, 1978). This empirical component extends the study beyond theoretical speculation, facilitating an understanding of how legal norms are applied, perceived, and impact the real world.

The decision to adopt a normative-empirical approach stems from the recognition that a comprehensive understanding of legal phenomena necessitates an exploration that spans both the theoretical constructs of law and its practical implications and outcomes in societal contexts (Tamanaha, 2001). By incorporating empirical elements into the traditionally normative legal study, this method allows for a nuanced examination of law's functionality, effectiveness, and societal reception, providing insights into the dynamics between legal prescriptions and social practices (Cotterrell, 2006). This methodological choice reflects an integrated approach to legal research, aiming to bridge the gap between legal theory and empirical reality, thus offering a holistic view of legal phenomena as they unfold within the fabric of society (Pound, 1948).

3. Result and Discussions

The law is considered to be a frightening prospect for underprivileged communities. Apart from general law with various complex problems, the cost of obtaining legal aid services is relatively high. Because the profession of an advocate as a provider of legal services requires special education and expertise, the pay is also no joke. It is not surprising that many people still think twice when they want to ask for legal services, especially for economically disadvantaged people.

The constitution mandates that every person receive fair legal recognition, guarantees, protection, and certainty, as well as equal treatment before the law as the protection of human rights. Therefore, the government is responsible for providing legal assistance to poor people or groups of people as a manifestation of access to justice. This mandate from the constitution was followed up with Law Number 16 of 2011 issuance concerning Legal Aid. In this law, the opportunities for citizens are regulated by provisions for protecting the right to undergo legal processes.

According to this law, legal aid is legal services provided to legal aid recipients free of charge by legal aid providers. The classification of legal aid recipients is every person or group of poor people who cannot fulfill their fundamental rights properly and independently. The right to legal assistance is one of the most important rights that every citizen has because in every legal process, especially criminal law, in general, every person who is named as a defendant in a criminal case, it is impossible to defend themselves in a legal process and the legal examination of him.

Legal Aid or Legal Aid is legal services provided by Legal Aid Providers free of charge to Legal Aid Recipients. As explained and regulated in Law Number 16 of 2011 concerning Legal Aid. Based on

Article 4 of Law No. 16 of 2011, legal assistance is provided to legal aid recipients who face legal problems, including civil, criminal, and state administration, in litigation and non-litigation. Legal aid services include exercising power of attorney, accompanying, representing, defending, and carrying out other legal actions for the legal interests of Legal Aid Recipients.

Based on Article 6 of Law No. 16 of 2011, the provision of free legal aid is organized by the Minister. Its implementation is regulated in Article 8, which explains that the implementation of Legal Aid is carried out by Legal Aid Providers who have fulfilled the requirements under this law. The requirements for providing legal aid are further explained in Article 8, Paragraph 1 of Law No. 16 of 2011. The conditions referred to are:

1. Legal entity;
2. Accredited based on this law;
3. Have a permanent office or secretariat;
4. Have administrators; And
5. Have a legal aid program.

If observed, free legal aid is provided by legal aid institutions or other organizations with legal entities whose implementation is supervised by the Minister, in this case, the Minister of Law and Human Rights (Menkumham).

The qualification requirements for people entitled to free legal aid are regulated in Article 14 of Law No. 16 of 2011. To obtain Legal Aid, Legal Aid applicants must meet the following requirements:

1. Submit a written application containing at least the applicant's identity and a brief description of the subject matter for which Legal Assistance is requested;
2. Submit documents relating to the case; And
3. Attach a certificate of poverty from the village head, village head, or official of the same level where the Legal Aid applicant lives.

Applications can be submitted orally if the applicant cannot submit in writing.

Thus, it is impossible for a suspect in a criminal act to defend himself in the legal process of examining himself while he is a suspect in a criminal act of which he is accused. Therefore, the defendant has the right to obtain legal assistance⁹. Legal assistance to poor people or groups of people who face legal problems is provided by institutions accredited by the Ministry of Law and Human Rights. The scope of legal issues that can be provided with legal assistance in civil, criminal, and state administrative law, as regulated in Law Number 16 of 2011 concerning Legal Aid Article 4 Paragraph (2), states that legal aid, as in Paragraph (1) covers problems civil law, criminal law, state administration, both litigation and litigation.

Apart from that, the term Pro Bono is almost the same as Legal Aid, namely providing free legal assistance to people who cannot afford it. What makes the difference is the purpose of providing legal aid. According to the Chairman of the Indonesian Advocates Association (Peradi), "House with Advocates," Luhut M.P. Pangaribuan, they have explained that legal aid is a government donation or social welfare policy. Meanwhile, Pro Bono comes from the value system of advocates who must maintain the honor of their profession.

Pro Bono is regulated in Article 22 of Law No. 18 of 2003 concerning Advocates; according to Article 22, Advocates are obliged to provide free legal assistance to justice seekers who cannot afford it. For its implementation, it is further explained in PP Number 83 of 2008 concerning Requirements and Procedures for Providing Free Legal Assistance. The provision of legal aid services and the qualification requirements for people entitled to obtain Legal Aid are the same as Law No. 16 of 2011. However, here, the emphasis is placed on providing Pro Bono or free legal assistance to advocates as a form of implementation of Article 22 of Law No. 18 of 2003, as well as serving as an Advocate in carrying out his profession as an element of the justice system and one of the pillars in upholding the supremacy of law and human rights.

Apart from that, there is also something called Prodeo, which provides legal aid services for poor people in court. As explained in Article 1 of PERMA Number 1 of 2014 concerning Guidelines for Providing Legal Services for Disadvantaged People in Court, the services provided include court fee waiver

services, hearings outside the court building, and court costs in the General Court, Religious Court, and Administrative Courts. State Enterprise.

Based on Article 7 PERMA No. 1 of 2014, an incapacitated party can prove that they are hindered by showing:

1. Certificate of Inadequacy (SKTM) issued by the Village Head/Lurah/Head of the local area stating that it is true that the person concerned is unable to pay the court fees or
2. Certificate of other social benefits such as Poor Family Card (KKM), Community Health Insurance Card (Jamkesmas), Poor Rice Card (Raskin), Family Hope Program Card (PKH), Direct Cash Assistance Card (BLT), Social Protection Card (KPS), or other documents related to the list of poor people in the government's integrated database or issued by other agencies authorized to provide information on indigents.

Then, not all poor people receive maximum legal aid services. Law enforcement officers (police, prosecutors, and judges) have obligations outlined in the Criminal Procedure Code. Since the investigation, prosecution, and examination at trial, if a suspect is threatened with criminal charges of more than 15 years up to the death penalty, the suspect/defendant must be accompanied by a legal advisor. Likewise, if the suspect is threatened with a sentence of more than five years but the suspect is poor (poor), then during the investigation and examination in Court, he must be accompanied by a legal advisor.

Examining a suspect must be based on a standard mechanism, including providing legal assistance, where an investigator will inform the suspect of his rights, including the right to be accompanied by a legal advisor. The police asked the suspect whether, during the questioning process, the suspect had a lawyer or not. If legal counsel must accompany a suspect and he cannot present himself, the police will seek legal counsel free of charge. The police are not prepared to appoint an advocate/legal advisor/paralegal to accompany the suspect in the trial by Article 56 of the Criminal Code. To provide legal aid for people experiencing poverty in Court, a budget is available to provide legal aid services for people experiencing poverty.

The obstacle the Court faces in providing legal aid for people experiencing poverty is the limited space in the District Court Building to accommodate 3 (three) Legal Aid Institutions. Furthermore, according to respondents, several advocates provide assistance for free by responding to conditions such as legal advisors and coordinating with those willing to do so. The police are only limited to facilitating the availability of legal advice by statutory provisions.

4. Conclusion

There are still many poor people who have problems with the law who have not received justice through the provision of legal aid as intended by the establishment of Law Number 16 of 2011 and its implementing regulations due to the small budget per case given to Legal Aid Organizations (OBH), complicated mechanisms, procedures, lack of outreach and the absence of standard guidelines as a complete reference for parties involved in providing legal aid services for poor communities.

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