



PARALEGAL EXISTENCE IN PROVIDING ACCESS TO JUSTICE FOR THE POOR IN CENTRAL JAVA

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Abstract

The lack of Legal Aid Implementers compared to Legal Aid Recipients is expected to hamper access to justice for the poor. Therefore this research aims to provide space for Paralegals especially in the Law Faculty of UNNES to be able to provide free legal assistance outside the court of the poor in Central Java. This research will at least discuss two issues, namely 1) How is the existence of the Law Faculty UNNES Paralegal in a juridical and institutional manner in providing Legal Aid? and 2) What is the role of the Paralegal Faculty of Law at UNNES in providing Legal Aid to the poor in Central Java ?. The method used in this research is sociological juridical with a qualitative approach. The results of this study indicate that currently Paralegals can only carry out non-litigation Legal Aid. This happened because the Supreme Court based on Decision Number 22 P / HUM / 2018 had canceled the Paralegal's role in litigation. The role of Paralegals from UNNES Law Faculty students is as a facilitator or intermediary in accommodating complaints of cases and consultation from Legal Aid recipients to be conveyed to Legal Aid Providers namely lecturers who are members of the Center for Legal Aid Study, while the role of Paralegals from UNNES Law Faculty alumni is as an assistant or who helps Advocates in carrying out non-litigation Legal Assistance such as mediation, consultation, negotiation, advocating cases outside the court and making trial files. The provision of legal aid by the Paralegal is considered to be very helpful for Lecturers and Advocates in fulfilling access to justice for the poor.

Keyword: Legal Aid, Paralegals, Poor Communities

INTRODUCTION

Legal aid is a constitutional right for everyone who has been guaranteed by law. One of these rights is contained in Article 28D of the 1945 Constitution as the basis for the principle of equality before the law. In line with these provisions, not only capable

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people can hire an Advocate to defend their interests before the law, but those who cannot afford are also entitled to free Legal Aid as guaranteed by the issuance of Law Number 16 of 2011 concerning Legal Aid (hereinafter referred to as the Legal Aid Law).

Although there is already a guarantee that the poor will get free Legal Aid as stipulated in the Law on Legal Aid, but in fact there are still some poor people who have not had access to justice from an Advocate. This is due to the fact that the number of Advocates as Implementers of Legal Aid at Legal Aid Institutions (hereinafter referred to as LBH) is not comparable with their Legal Aid Recipients. Based on the statement from the Semarang LBH Director, there were only 5 Advocates and 6 Assistant Advocates working at LBH Semarang, whereas based on the Annual LBH Semarang Note in 2018 there were 118 legal case complaints from justice seekers in Central Java. This condition can certainly result in the provision of access to justice in Central Java is not well accommodated. Moreover, in Central Java there are 1,931 justice seekers who if one day requires Legal Aid must also be handled by the Legal Aid Implementers (Arifin, et.al., 2018: 10-12).

In line with the above problems, the Law Faculty of Semarang State University through its Legal Studies and Legal Aid Center (PKBH FH UNNES) has provided assistance to the Faculty Paralegals to be able to assist the implementation of Legal Aid outside the court, especially for the poor in Central Java. As stated in the Law on Legal Aid and strengthened by the Constitutional Court Decision Number 88 / PUU-X / 2012 states that the Implementers of Legal Aid can consist of Advocates, Paralegals, Lecturers, and Students of the Faculty of Law. Based on this, it is interesting to elaborate further related to the existence of a paralegal in providing legal assistance to the poor in Central Java.

METHOD

This study uses a type of sociological juridical research that is research conducted on the real state of society or the community environment with the intent and purpose of finding facts (facts-finding), then identifying the problem (problem-identification) and ultimately towards the solution of the problem (problem-solution). This research was conducted at the Law Faculty of UNNES and several Law Firms in Semarang with the object of Paralegal research from students and alumni of the Faculty of Law UNNES itself.

RESULT AND DISCUSSION

1. The Legal And Institutional Existence of a Paralegal in Providing Legal Aid

Although there are rules that discuss technically about the Paralegal namely Permenkumham Number 1 of 2018 about the Paralegal in Providing Legal Aid, to date there are still a number of opinions regarding the understanding of the Paralegal. This happens because there is no written norm in the legislation that discusses the understanding of Paralegal. However regarding the definition of a Paralegal basically Article 4 Permenkumham Number 01 of 2018 has required that a Paralegal does not have to be a person with a law degree or a legal education, but everyone can become a Paralegal provided that they are Indonesian citizens, at least 18 (eighteen) years, having knowledge about community advocacy and/or meeting other conditions determined by the Legal Aid Provider.

Juridically the term Paralegal was first normalized in Law Number 16 of 2011

concerning Legal Aid. Although it has been normalized, the Law on Legal Aid never mentions the role of the Paralegal in relation to the provision of Legal Aid. The role of the new Paralegal appears in Government Regulation Number 42 of 2013 concerning Terms and Procedures for Providing Legal Aid and Distribution of Legal Aid Funds, which explains that Paralegals can also contribute in providing Legal Aid both in litigation and non-litigation. The existence of this Paralegal appears in Article 13 and Article 16 PP Number 42 of 2013. Based on the two Articles, the role of the Paralegal is to provide Legal Aid both litigation and non-litigation. The implementation of legal aid in litigation by the Paralegal is necessary if the number of lawyers gathered in the Legal Aid Provider container is inadequate with the large number of Legal Aid Recipients. In addition Article 13 PP No. 42 of 2013 also stipulates that the implementation of litigation legal assistance by Paralegals, lecturers, and students of the Faculty of Law can be done if it has attached written evidence of assistance from Advocates.

More about Paralegals, in 2018 the Government issued Permenkumham Number 01 of 2018 concerning Paralegals in Providing Legal Aid. This Permenkumham regulates explicitly the existence of Paralegals in the provision of Legal Aid. Paralegals here are also referred to as implementing Legal Aid and must be registered with the Legal Aid Provider. Related to the role of the Paralegal in terms of litigation and non-litigation, Permenkumham Number 01 of 2018 has essentially been tested materially by the Supreme Court and led to the Supreme Court Decision Number 22 P / HUM / 2018 which essentially prohibits the Paralegal to provide legal assistance in litigation because it is contrary to the Law No. 18 of 2003 concerning Advocates. As a result, the Paralegal can only carry out non-litigation roles.

To become a Paralegal besides fulfilling the requirements as stated in Article 4 Permenkumham Number 01 of 2018, Paralegal also requires training which consists of basic and advanced level training. This Paralegal Training aims to improve Paralegal qualifications in providing Legal Aid. After conducting training, the Paralegal is entitled to obtain a certificate issued by the organizer of the Paralegal training. This Paralegal training can be organized by:

- a. Legal Aid Provider;
- b. College
- c. Non-Governmental Organizations that provide Legal Aid; and / or
- d. Government Institutions that carry out their functions in the field of law.

The UNNES Faculty of Law Paralegal consists of two parties: first: sixth semester students and above who have participated in Paralegal training and also attended procedural law education, and second: UNNES Law Faculty alumni who become Paralegals in several law firms or LBH.

Institutionally, the role of the Paralegal from UNNES Law Faculty students is as a facilitator in carrying out non-litigation Legal Aid. The facilitator in this case is as an intermediary in accommodating complaints of cases and consultations from Legal Aid recipients, namely the poor of Central Java to be submitted to the Legal Aid Provider, namely lecturers who are members of PKBH Faculty of Law, UNNES. Aside from being a Paralegal facilitator from UNNES Faculty of Law students, he also functions as a teaching assistant at PKBH. Called an assistant because this student also helps lecturers by making legal opinions, analyzing PKBH client cases, helping to find related articles and as lecturer minutes in helping to make legal facts. Because of this, the function of the Paralegal who came from the UNNES Law Faculty Student was considered to be very helpful to the UNNES Law Faculty lecturers who were members of the PKBH management. This was also explained by Cahya Wulandari, S.H., M.Hum., As the Chairperson of PKBH UNNES Faculty of Law.

Furthermore, the functions of Paralegals from UNNES Law Faculty alumni who work in law firms are as assistants or who assist Advocates in carrying out non-litigation Legal Aid to Legal Aid Recipients in Central Java. This was revealed by Paralegal Desi Windia Wati, S.H., Rezkqiyah BW, S.H., and Muhammad Hafidz Habibie, S.H., in the questionnaire questions that the authors proposed.

Paralegals from UNNES Law Faculty Alumni who work in law offices do not run Paralegal training. Because basically they work at a profit law firm not a Legal Aid Institute so the point of view is also different. This was conveyed by Auria Patria Dilaga, S.H., M.H., CLA., As an Advocate owner of the Law Office Dilaga Legal Service. Then for UNNES Law Faculty Alumni who work at LBH with the Structural Legal Aid system also do not run Paralegal training, LBH Semarang, for example, names members who have a Bachelor of Laws as Public Lawyers' Assistance, and the requirements to be Public Lawyers' Assistance must follow the Legal Aid Training Work (KALABAHU) first. Besides that for LBH Semarang Paralegal is a Community Paralegal that functions as a facilitator for the community in solving problems. Paralegal This community must receive legal education or Paralegal training because in reality it is just an ordinary community who has no legal education background but has a spirit of partiality and a strong desire to defend the rights of the poor in his community.

Even though they did not attend the Paralegal training because they came from a legal education background and had already taken a law degree, the Paralegal Alumni of the Faculty of Law UNNES also carried out Special Advocate Professional Education (PKPA) as the beginning of his career as a Paralegal and Advocate candidate. In addition, the Paralegal Faculty of Law at UNNES in carrying out its work is always supervised by lawyers and lecturers who accompany it. Supervision can be in the form of corrections to the file that is done, the presence or absence of complaints from recipients of Legal Aid, and performance evaluation.

The obstacle that was experienced by the Paralegal Faculty of Law at UNNES in providing legal assistance was the Supreme Court's Decision Number 22 P/HUM/2018 which canceled the Paralegal's role in litigation so that they were not given permission to sit in the Court because they did not yet have an Advocate card and minutes of Advocate oath. Besides the difficulty of cooperation and cooperation of clients in a case makes Paralegal must be patient to control the client and be careful in analyzing his case. Then the lack of public recognition of Paralegals and the lack of expertise of Paralegal Legal Assistance are also reasons that hamper Paralegal performance. The Paralegal Faculty of Law, UNNES also stated that the shortcomings of Permenkumham Number 01 of 2018 existed in the definition of a Paralegal that exceeds the limits of its authority. While the advantage is that the reach of providing Paralegal Legal Aid is broader so that access to justice for the problems of the poor can be reached and realized.

Basically, the problem of the existence of a Paralegal that is developing at this time indeed originated from the existence of Permenkumham Number 01 of 2018 concerning Paralegal in Providing Legal Aid. As a result of the issuance of these regulations, several lawyers filed a material test of Article 4, Article 7, Article 11 and Article 12 of the Permenkumham. The result came the Supreme Court Decision Number 22 P / HUM / 2018 which canceled Article 11 and Article 12 regarding the role of the Paralegal in the field of litigation. Some opinions emerged which stated that the Paralegal requirements in Permenkumham Number 01 of 2018 were not comparable with their authority which was considered to be very broad and not in accordance with their capacity. The imbalance of authority is between the requirements

to become a paralegal who does not have to be educated in law, namely at least eighteen years of age and his role that is allowed to go to court.

This problem then makes the term Paralegal among practices divided into two, namely between Conventional Paralegals and Community Paralegals. Based on the research Conventional Paralegal Writer is someone who is educated in law or a law degree and is able to help Advocates to carry out legal tasks. Usually these Conventional Paralegals work in law offices and are Advocate candidates. Whereas Paralegal Communities are non-legal people who come from communities who are trained in legal education or Paralegal training to provide Legal Aid to their communities. Usually this Community Paralegal is adopted by the Indonesian Legal Aid Foundation (YLBHI) or other LBH. Based on this, the Paralegals from UNNES Faculty of Law alumni are Conventional Paralegals and therefore do not need Paralegal training.

If viewed from the perspective of dignified justice giving Legal Aid by the Paralegal Faculty of Law UNNES to the poor is one of the manifestations of humanizing human beings, namely the embodiment of respect for one's dignity and dignity. Even though the person is not able to still have to be fulfilled their rights in accordance with their dignity and human dignity. One form of that right is obtaining legal defense and assistance (Handayani, 2015). This is a form of equality before the law. On the other hand, in addition to obtaining legal aid rights as mentioned in Article 12 of Law Number 16 Year 2011 Regarding Legal Aid, Legal Aid Recipients also must:

- a. Deliver evidence, information, and/or case skills correctly to the Legal Aid Provider;
- b. Help smooth the provision of Legal Aid.

Based on the rights and obligations above, there will be a balance in the realization of the fulfillment of Legal Aid that is expected by the state and its citizens.

2. The Role of the UNNES Faculty of Law Paralegal in Providing Legal Aid to the Poor in Central Java

As explained in the formulation of the first problem that after the Supreme Court's Decision Number 22 P/HUM/2018, the role of the Paralegal at present is only to be able to provide Legal Aid on a non-litigation basis. Even this role is in line with the results of research conducted by the author of the UNNES Faculty of Law Paralegal. The results of research related to the role of the Paralegal Faculty of Law UNNES are as follows:

No	Name of Paralegal	Role that has been done
1	Rezqiyah BW, S.H.	<ul style="list-style-type: none"> - Has completed 11 legal cases including - Making Lawsuit Against the Law, Default Lawsuits, Criminal Files, and Divorce. These legal actions are accompanied by a Companion Advocate. - Legal consultation; - Case investigations, both electronic and non-electronic; - Legal research; - Assistance outside the court; and / or - Drafting of legal documents.
2	Aditya Wibowo, S.H.	<ul style="list-style-type: none"> - Consultation - provide legal opinion (inheritance case)
3	Desi Windia Wati, S.H.	<ul style="list-style-type: none"> - has completed 58 legal cases out of 75 cases

		<ul style="list-style-type: none"> received - helping Advocates prepare and prepare files that will be used in court trials - accepting divorce cases and inheritance disputes - legal consultation and making legal documents
4	Nofal Sebastian, S.H.	<ul style="list-style-type: none"> - There are 16 cases that have been handled - Case of prohibition on church construction - The case of Ahmadiyah groups - Cases of sexual assault - Client consultation - Online loan case - Handling such cases through mediation, negotiation, policy advocacy, and critical legal education
5	Muhammad Hafidz Habibie, S.H.,	<ul style="list-style-type: none"> - Already completed 12 cases - The non-litigation legal assistance that has ever been done to clients is Hearing and Counseling - Legal issues that are often accepted include civil, licensing and corporate disputes - Frequently filing drafting for cases that go to court such as making lawsuits, exceptions, replicas, duplicates and defense
6	Tria Monita (Student)	Assistance with cases of child molestation and sexual harassment of minors by participating in reporting to the police, providing reinforcement to the victim, assisting the signing of a power of attorney from the victim to the PKH FH UNNES Advocate, surveying the victim's house, interviewing, and helping to gather evidence.
7	Endang Nur Latifah (Student)	Defamation case facilitator
8	Ihda Zikra (Student)	Facilitator of debts and disputes with land collateral; Its activities are to provide consultation on legal issues of debt and debts to clients before being accompanied by PKBH and / or Advocates, help prepare evidence, and make a power of attorney
9	Mila Bunga (Student)	<ul style="list-style-type: none"> - Consultation related to land and divorce law cases - Helping clients check the status of land to Semarang BPN - Help make a power of attorney for clients - Helping clients prepare evidence documents for divorce

The data above shows that the Paralegal Faculty of Law at UNNES has only been implementing Legal Aid on a non-litigation basis. The role of the UNNES Faculty of Law Paralegal is also very useful in helping justice seekers in Central Java to get their rights. Based on the research of the author of the Paralegal Faculty of Law, UNNES acknowledges that there are several obstacles experienced by the poor to get the right to legal aid, including:

- a. There are too many commercial lawyers and the lack of available Legal Aid Lawyers so that they cannot reach all poor people especially in Central Java to get their rights;
- b. Lack of legal socialization that causes ignorance for the poor to get the right to legal assistance;
- c. The lack of an advocate's role in the Provision of Legal Aid (pro bono)

Based on the obstacles raised by the Paralegal Faculty of Law UNNES above, the efforts of the Paralegal in overcoming these obstacles is to provide legal socialization and legal consultation in collaboration with related parties so that all levels of the poor in Central Java know that they have the right to be given Legal Aid Free if there is a snare case. Paralegals from UNNES Law Faculty Alumni are also tasked with assisting lawyers in handling legal aid cases so that the fulfillment of legal aid for the poor can be realized. Indeed, the limited number of lawyers currently cannot reach the lower levels of society, both those with poor legal knowledge and the poor economy, therefore the PKBH UNNES Faculty of Law has an activity that is held once a year in the form of a Legal Aid Expo. This activity was carried out by PKN UNNES Faculty of Law by involving Paralegals from Law Faculty Students.

The Legal Aid Expo activity conducted by the PKBH UNNES Faculty of Law team involving Paralegal aims to make the people of Central Java aware of their rights, so that the realization of access to justice for justice seekers who are unable to pay lawyers can be implemented. The United Nations Development Program (UNDP) also explains that there are at least six elements that underlie the realization of access to justice, namely guarantee legal protection, legal awareness, legal assistance, fair trial, law enforcement, and oversight of civil society and parliament (Yonesta, 2018: 4). The concept of access to justice in Indonesia rests on the goal of a legal system that can be accessed by all citizens and the goal that the legal system should be able to produce fair provisions or decisions for all citizens, both individuals and groups (Cappeletti, Mauro, & Garth, 2015: 1-7).

In terminology, the concept of access to justice has a goal of social justice (social justice) and can prevent poverty alleviation which is essentially an effort in affirmative action (Working Group on Access to Justice, *Kelompok Kerja Akses Terhadap Keadilan*, 2009: 5-6). Affirmative action is a policy that is taken and aims for certain groups (gender or profession) to get equal opportunities with other groups in the same field. Therefore, the Paralegal Faculty of Law, UNNES said that if the poor in Central Java want to get Legal Aid, there is some easy access that can be obtained through the Posbakum Court, Law Office and Legal Aid Organizations (*Organisasi Bantuan Hukum*, OBH)/Legal Aid Institutions (LBH).

The role of the Paralegal Faculty of Law UNNES who participated in carrying out Legal Aid in non-litigation as a law order and for the fulfillment of the rights of the poor was seen by the Dignified Justice Theory as part of humanizing humans, which was also based on the values of Pancasila especially the second principle namely the principle of humanity which is just and civilized. This is as said by Teguh Prasetyo that "The law of creating a dignified society is law - including in this case the regulation of legal aid for those who are unable - to humanize humans. That is, that the law treats and upholds human values according to their nature and purpose in life. This is because humans are noble creatures as the creation of God Almighty as stated in the second principle of Pancasila, namely humanity that is just and civilized, which has the value of recognition of human dignity with all its rights and obligations as well as getting fair treatment towards humans, towards yourself, the environment and God. (Handayani, 2015: 21).

Based on the role of the Paralegal Faculty of Law at UNNES above, the Paralegal cannot indeed provide legal aid in litigation. This has been limited by the Supreme Court Decree No. 22 P / HUM / 2018 which canceled the litigation's role of the Paralegal. Although there are restrictions, the existence of a Paralegal does not prevent him from continuing to provide Legal Aid in the form of non-litigation such as consultation, mediation, negotiation, out-of-court assistance, making court files for clients and so forth. The role of the non-litigation Paralegal is recognized as being very helpful for UNNES Law Faculty Advocates and Lecturers in handling the cases of the poor in Central Java, so it is expected that the role of the Paralegal will still exist to help fulfill Legal Aid for the poor.

CONCLUSION

Based on the discussion that the author has explained, it can be concluded that the existence of a legal paralegal has been regulated in Permenkumham Number 01 of 2018 concerning Paralegal in Providing Legal Aid. Although it has been regulated technically in the Permenkumham, the definition of Paralegal has not been normalized in any statutory regulation so that there is a dualism of Paralegal understanding in practice, namely Conventional Paralegal and Community Paralegal. In addition, the role of the Paralegal at present can only carry out non-litigation Legal Aid because after the Supreme Court's Decision Number 22 P / HUM / 2018 the role of the Paralegal by litigation has been canceled. The role of the UNNES Faculty of Law Paralegals in providing legal assistance to the poor in Central Java as well as conducting legal drafting related cases to be tried in court, legal consultations, case investigations, legal research, client assistance outside the court, providing legal opinion, mediation, and facilitator. The role of the aforementioned paralegal is always assisted by lawyers and / or lecturers who are implementing legal aid.

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