

Research Article

LEGAL AID IN INDONESIA: PROBLEMS AND CHALLENGES

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In the 1945 Constitution of the Republic of Indonesia Article 28D Paragraph (1) it is stated that, "Everyone has the right to recognition, guarantee, protection and legal certainty that is just and equal treatment before the law." Legal aid is legal services provided by legal aid providers free of charge to legal aid recipients, namely people or groups of poor people to obtain justice. Legal Aid Providers are legal aid organizations or social organizations that provide Legal Aid services based on Law no. 16 of 2011 concerning Legal Aid. With free legal assistance, people who are unable, in this case at the economic level, who are involved in the judicial process will receive relief from obtaining legal advisors so that their rights can be protected and the judicial process can proceed properly.

Keywords: *Legal Aid; Justice; Law; Access to Justice*

I. INTRODUCTION

Legal Aid is a legal service provided by Legal Aid Providers free of charge to Legal Aid Recipients, namely poor people or groups of people

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to obtain justice. Legal Aid Provider is a legal aid institution or community organization that provides Legal Aid services based on Law no. 16 of 2011 concerning Legal Aid. With the existence of free legal aid, people who can't afford it, which in this case is meant at the economic level, who are involved in the judicial process will get relief from obtaining legal counsel so that their rights can be protected and the judicial process can take place properly. .

Legal aid can be used by everyone in order to claim their rights for treatment that is not in accordance with applicable legal rules. This is based on the importance of legal protection for every human being as a legal subject in order to ensure law enforcement. Legal aid is to defend the community regardless of background, ethnicity, origin, descent, skin color, ideology, political beliefs, rich and poor, religion, and the group of people it defends.

There is a financial inability of the community to claim their rights in accordance with legal procedures, demanding the holding of a policy so that they can file a civil case without being hit by costs, especially in civil cases, therefore a procedure is needed to file a case free of charge / not need to pay the case *panjer* (prodeo). So for those who are less capable, they can file a lawsuit for free which is called a prodeo litigation. This is in accordance with the trilogy of justice principles, namely fast, simple and inexpensive justice.¹

II. IMPLEMENTATION OF LEGAL AID IN INDONESIA

In the 1945 Constitution of the Republic of Indonesia Article 28D Paragraph (1) it is stated that, "*Everyone has the right to recognition, guarantee, protection and fair legal certainty and equal treatment before the law*".² This article has provided fair recognition, guarantee, protection and legal certainty for everyone regardless of ethnicity, religion or status of life. including people who are unable, to gain access to justice so that their rights to recognition, guarantee, protection and fair legal certainty and equal treatment before the law can be realized properly. The position

¹ Sudikno Mertokusumo. 1998. *Civil Procedure Code Fifth Edition*. Liberty: Yogyakarta, p. 16. Concerning to legal protection in various context, please also see Rasdi, R., & Masyhar, A. (2018). Perlindungan Hukum Guru dalam Kedinasan (Upaya Perlindungan Hukum bagi Guru-Guru MGMP PKn Kabupaten Rembang). *Jurnal Pengabdian Hukum Indonesia*, 1(01), 93-100; Sahlan, S., Suhadi, S., & Arifin, S. (2015). Kebutuhan Program Continuing Legal Education bagi Mahasiswa Fakultas Hukum. *Pandecta Research Law Journal*, 10(2), 233-247.

² See Article 28 D paragraph 1 of the Constitution. See also Suhadi, S., Baidhowi, B., & Wulandari, C. (2018). Pencegahan Meningkatnya Angka Pernikahan Dini dengan Inisiasi Pembentukan Kadarkum di Dusun Cemanggal Desa Munding Kecamatan Bergas. *Jurnal Pengabdian Hukum Indonesia*, 1(01), 31-40.

and position of a person before the law, becomes very important in realizing the order of the legal system and the sense of justice in our society. Guarantees for access to legal aid are also explicitly stated in Article 28G paragraph (1), which states that, "Everyone has the right to protect himself, his family, honor, dignity, and property under his control, and has the right to a sense of security and protection from the threat of fear to do something which is a human right". This is further strengthened in Article 28 H paragraph (2), which states that, "Everyone has the right to receive facilities and special treatment to obtain the same opportunities and benefits in order to achieve equality and justice". Substantively, from the above, we can understand that the guarantee of access to justice through legal aid is a firm order in our constitution.

Law Number 8 of 1981 concerning the Criminal Procedure Code or better known as the Criminal Procedure Code (KUHAP) explicitly regulates the provision of legal aid as explained in the provisions of Article 54, Article 55 and Article 56 of the Criminal Procedure Code. that the provision of legal aid starts from the preliminary examination stage at the investigation level to the examination in court. Article 56 states:

1. In the event that a suspect or defendant is suspected or charged with committing a criminal act which is punishable by death or a sentence of fifteen years or more or for those who are unable to be punished with a sentence of five years or more who do not have their own legal counsel, the official concerned at all level of examination in the judicial process is obliged to appoint legal counsel for them.
2. Every legal adviser appointed to act as referred to in paragraph (1) shall provide his assistance free of charge. Whereas in the explanation it is stated: Realizing the principle of justice which must be carried out simply, quickly and at low cost and with the consideration that those who are threatened with a sentence of less than five years are not subject to detention, except for the crime referred to in Article 21 paragraph (4) letter b, then Therefore, for those who are threatened with a sentence of five years or more, but less than fifteen years, the appointment of a legal adviser is adjusted to the development and condition of the availability of legal advisors at that location.

In Law Number 39 of 1999 concerning Human Rights, there are also several articles that are related to the concept of legal aid.³ The articles are as follows:

Article 5:

(1) Everyone is recognized as an individual human being who has the right to demand and receive the same treatment and

³http://www.m2sconsulting.com/webs/index.php?option=com_content&view=article&id=27:obligation-providing-legal-aid-by-advokat-dalam-keunjukkannya-as-officium-nobile-&catid=38:law&Itemid=25 accessed 29 April 2020 at 20.13 WIB

protection in accordance with his human dignity before the law.

(2) Everyone has the right to fair assistance and protection from an objective and impartial court.

(3) Everyone belonging to a vulnerable group of people has the right to receive more treatment and protection with respect to their specificity.

Article 6:

(1) In the context of enforcing human rights, the differences and needs in customary law communities must be considered and protected by the law, the community, and the government.

Article 18 :

(1) Everyone who is arrested, detained, and prosecuted because he is suspected of committing a criminal act has the right to be considered innocent, until his guilt is legally proven in a court session and all legal guarantees are provided for his defense, in accordance with the provisions of the legislation.

(4) Every person being examined has the right to obtain legal assistance from the time of the investigation until a court decision has permanent legal force.

Meanwhile, the definition of legal aid which is somewhat in scope is the defense obtained by a defendant from a legal adviser when his case is examined during a preliminary examination or in the process of examining his case before a court.⁴ Legal aid whose scope of activity is quite broad was also determined by the 1978 National Legal Aid Workshop which stated that legal aid is a legal service activity provided to the poor (poor) both individually and collectively to underprivileged community groups. Its scope of activities includes defence, representation both outside and inside the court, education, research, and dissemination of ideas.

Legal Aid is implemented based on the principles of justice, equality before the law, transparency, efficiency, effectiveness; and accountability. The implementation of Legal Aid aims to:

1. Guarantee and fulfill the rights of Legal Aid Recipients to get access to justice;
2. Realizing the constitutional rights of all citizens in accordance with the principle of equality in law;
3. Ensuring certainty that the implementation of Legal Aid is carried out evenly throughout the territory of the Republic of Indonesia; and

⁴ Bambang Sunggono and Aries Harianto. 2009. *Legal Aid and Human Rights*. Bandung: CV. Mandar Maju. p. 9. See also Setyowati, H., & Muchiningtias, N. (2018). Peran Advokat Dalam Memberikan Bantuan Hukum Kepada Masyarakat Dalam Perspektif Hak Asasi Manusia. *Lex Scientia Law Review*, 2(2), 155-168.

4. Realizing an effective, efficient and accountable judiciary.

Legal aid programs in developing countries such as Indonesia generally take on the same meaning and purpose as in the West, which basically consists of two objectives, including:

1. That effective legal aid is an essential condition for the proper functioning and integrity of the court;
2. That legal aid is a demand from a sense of humanity.⁵

Barry Metzger adds several other goals of legal aid programs in developing countries, including:

1. To build a unified national legal system;
2. To foster a greater sense of responsibility from government officials or the bureaucracy to the community;
3. To foster a broader sense of community participation in the governance process;
4. To strengthen the legal profession.⁶

According to Abdurrahman, there is still a commonality of thought between the West and the East regarding the real purpose and purpose and function of legal aid, even though it is possible for developing countries that a legal aid program has its own unique meaning and value. This must include two important aspects, namely legal assistance in relation to the law enforcement process and legal assistance in relation to reforming the structure of society, especially in relation to improving the living standards of the poor to a well-off society. The purpose of the legal aid program in Indonesia is actually not that different from what has been formulated in the Lawasia Conference, which is to provide services to citizens who need them,⁷

Lawasia Conference III (1973) has formulated the existence of 3 functions of legal aid in developing countries, including Indonesia, namely:

1. The service function: serving the poor to obtain legal redress on equal terms with other members of society. (Service function: serve the poor to obtain legal compensation on an equal basis with other members of the community).
2. The informative function: making the general public more aware of their legal rights. (Informative function: make the general public more aware of their legal rights).
3. The reform function: legal aid, if properly and responsibility conducted, can play a useful rule in the law reform process.

⁵ Kunarto. 1996. *Overview of the Implementation of Human Rights in Law Enforcement*. Jakarta: Cipta Manunggal. p. 147.

⁶ Frans Hendra Winata, *Pro Bono Publico: The Constitutional Right of the Poor to Obtain Legal Aid*. p.26.

⁷ Abdurrahman. 1983. *Aspects of Legal Aid in Indonesia*. Jakarta: Cendana Press. Pp. 26-28.

(Function of reform: legal aid, if properly and responsibly exercised, can play a useful role in the legal reform process).

Regarding legal services for the poor through an organized basis, according to James L. Magavern includes the following stages.

1. Assignment of counsel to defendants accused of serious crimes; (Assignment of advice to defendants accused of serious crimes)
2. Formation of small-scale legal clinics as private charitable operations, serving clients with private-law problems in such areas as domestic relations, a wage claims, and poverty disputes; (The establishment of a small-scale legal clinic as a private charitable operation, serving clients with private legal issues in areas such as domestic relations, wage claims, and poverty disputes)
3. Staff representation of potential beneficiaries of social reform programs in areas such as agrarian and industrial labor realtions; (Staff representation of potential beneficiaries of social reform programs in areas such as agrarian and industrial labor realtions)
4. Government or other institutional sponsorship of general legal aid programs designed to enforce existing legal rights and to seek to inform, motivate, and defend the poor against the abusive exercise of both private power and official authority; and (Government or other institutional sponsor of a general legal aid program designed to enforce existing legal rights and seeking to inform, motivate, and defend the poor against the abusive exercise of both personal power and official authority; and)
5. Attempts through legal representation, to employ legal and political processes to organize the poor to create and give effect to new legal rights to the poor. (Efforts through legal representation, to employ legal and political processes to regulate the poor to create and give effect to new legal rights for the poor).⁸

This concept is different from the concept proposed by Schuyt, Groenendijk, and Sloot, which distinguishes 5 (five) types of legal aid, including:

1. Preventive legal assistance: providing legal information and counseling to the public so that they understand their rights and obligations as citizens;
2. Diagnostic legal assistance: providing legal advice or known as legal consultation.
3. Legal aid in conflict control: actively address concrete legal problems that occur in the community;
4. Legal assistance in the formation of laws: to provoke a more firm, precise, clear and correct jurisprudence;

⁸ <http://repo.iain-tulungagung.ac.id/9445/5/BAB%20II.pdf> accessed 30 April 2020 at 11.51 WIB

5. Legal assistance for legal reform: to carry out legal reforms, either through judges or legislators (in a material sense).⁹

Legal Aid Providers have the right to:

1. Recruiting lawyers, paralegals, lecturers, and law faculty students;
2. Performing Legal Aid services;
3. Organizing legal counseling, legal consultation, and other program activities related to the implementation of Legal Aid;
4. Receive budget from the state to implement Legal Aid based on this Law;
5. Issue an opinion or statement in defense of a case for which it is responsible in a court session in accordance with the provisions of the legislation;
6. Obtain information and other data from the government or other agencies, for the purpose of defending cases; and obtaining guarantees of legal protection, security, and safety during the provision of Legal Aid.

Legal Aid Providers are obliged to:

1. Report to the Minister about the Legal Aid program;
2. Report any use of the state budget used for the provision of Legal Aid under this Law;
3. Organizing legal aid education and training for lawyers, paralegals, lecturers, law faculty students who are recruited as referred to in Article 9 letter a;
4. Maintain the confidentiality of data, information, and/or information obtained from Legal Aid Recipients in relation to the case being handled, unless otherwise stipulated by law; and
5. Providing Legal Aid to Legal Aid Recipients based on the terms and procedures specified in this Law until the case is completed, unless there is a legally valid reason.

Recipients of Legal Aid are entitled to:

1. Obtain Legal Aid until the legal problem is resolved and/or the case has permanent legal force, as long as the relevant Legal Aid Recipient does not revoke the power of attorney;
2. Obtain Legal Assistance in accordance with Legal Aid Standards and/or Advocate Code of Ethics; and
3. Obtain information and documents related to the implementation of the provision of Legal Aid in accordance with the provisions of the legislation.

Recipients of Legal Aid must:

1. Submit evidence, information, and/or case information correctly to the Legal Aid Provider;
2. Assisting the smooth provision of Legal Aid.

⁹ *Ibid*

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Then what are the terms and conditions for getting legal assistance? To get legal aid, applicants for legal aid must meet the following requirements:

1. Submit a written application which contains at least the identity of the applicant and a brief description of the subject matter for which Legal Aid is requested;
2. Submit documents relating to the case;
3. Attach a poverty certificate from the lurah, village head, or an official at the same level as the Legal Aid applicant's place of residence;
4. In the event that the Legal Aid applicant is unable to prepare a written application, the application can be submitted orally;
5. Legal Aid Providers within a maximum period of 3 (three) working days after the application for Legal Aid is declared complete must provide an answer to accept or reject the application for Legal Aid;
6. In the event that the application for Legal Aid is received, the Legal Aid Provider provides Legal Aid based on a special power of attorney from the Legal Aid Recipient;
7. In the event that the application for Legal Aid is rejected, the Legal Aid Provider shall state the reasons for the refusal; and
8. Further provisions regarding the terms and procedures for the provision of Legal Aid shall be regulated by a Government Regulation.

Funding for Legal Aid needed and used for the implementation of Legal Aid shall be borne by the State Revenue and Expenditure Budget. In addition to the funding as intended, the source of funding for Legal Aid may come from grants or donations and/or other legal and non-binding sources of funding. The government is obliged to allocate funds for the implementation of Legal Aid in the State Revenue and Expenditure Budget. Funding for the implementation of Legal Aid is allocated to the budget of the ministry that carries out government affairs in the fields of law and human rights. Regions can also allocate budget for the implementation of Legal Aid in the Regional Revenue and Expenditure Budget.

Legal Aid Providers who are proven to have received or requested payments from Legal Aid Recipients and/or other parties related to the case being handled as referred to in Article 20, shall be sentenced to a maximum imprisonment of 1 (one) year or a maximum fine of Rp. 50,000,000. 00 (fifty million rupiah).¹⁰

III. CONCLUSION

¹⁰ Article 21 of Law No. 16 Year 2011

Legal Aid is a legal service provided by Legal Aid Providers free of charge to Legal Aid Recipients, namely poor people or groups of people to obtain justice. Legal Aid Provider is a legal aid institution or community organization that provides Legal Aid services based on Law no. 16 of 2011 concerning Legal Aid. With the existence of free legal aid, people who can't afford it, which in this case is meant at the economic level, who are involved in the judicial process will get relief from obtaining legal counsel so that their rights can be protected and the judicial process can take place properly. Legal Aid is implemented based on the principles of justice, equality before the law, transparency, efficiency, effectiveness; and accountability. The implementation of Legal Aid aims to: Guarantee and fulfill the rights of Legal Aid Recipients to get access to justice; Realizing the constitutional rights of all citizens in accordance with the principle of equality in law; Ensuring certainty that the implementation of Legal Aid is carried out evenly throughout the territory of the Republic of Indonesia; and Realizing an effective, efficient and accountable judiciary. Each recipient and provider of legal aid has their respective rights and obligations, the funds of which are charged to the State Revenue and Expenditure Budget. In addition to the funding as intended, the source of funding for Legal Aid may come from grants or donations and/or other legal and non-binding sources of funding. The government is obliged to allocate funds for the implementation of Legal Aid in the State Revenue and Expenditure Budget. Funding for the implementation of Legal Aid is allocated to the budget of the ministry that carries out government affairs in the fields of law and human rights. Regions can also allocate budget for the implementation of Legal Aid in the Regional Revenue and Expenditure Budget.

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