

RESEARCH ARTICLE

The Role of Advocates and Paralegals in the Implementation of Providing Legal Aid and Assistance to the Community

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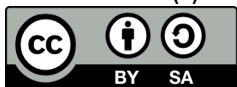
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Abstract

The principle of community and state life in a constitutional state certainly requires the participation of advocates as a free, independent, and responsible profession in terms of legal assistance in the context of criminal law enforcement, in addition to the role of judicial institutions and existing law enforcement agencies such as the police and judiciary. Legal aid is a legal service provided by legal aid providers to recipients of legal aid free of charge. Legal aid is a form of human rights to achieve access to justice, equality before the law, fair trial. With the provision of legal aid, it is hoped that it will be able to prevent the accused or suspect from arbitrary law enforcement in facing a legal case. This research aim to analyze the role of advocates and paralegal on providing justice through legal aid. This research confirmed that the law on legal aid now expands the definition of legal aid recipients so as to provide opportunities for PTN lecturers, paralegals and for law students who are members of LBH to carry out community service and also development of legal knowledge. The implementation of the guarantee of access to justice that can be done by LBH PTN can be carried out more optimally after the enactment of the Legal Aid Law, in providing legal assistance, it can be provided by litigation assistance, namely with funding assistance from the state.

Keywords: *Legal Aid, Role of Advocates, Paralegal, LBH*

1. INTRODUCTION

The 1945 Constitution of the Republic of Indonesia, Article 28 D Paragraph (1) explains that "*Everyone has the right to recognition, guarantee, protection, and legal certainty that is fair and gets equal treatment before the law*". This article provides an explanation that recognition, guarantee, protection and legal certainty are fair for everyone without discriminating against ethnicity, religion, or position in social life. Then before discussing further it is need and understand in advance what exactly is meant by legal aid, legal aid is a medium that can be used by everyone in order to claim their rights for treatment that is not in accordance with the legal rules laid down. apply. This underlies the importance of legal protection for every human being as a legal subject as a way of ensuring law enforcement. Therefore, that the implementation of legal aid is carried out by advocate and paralegal (Setyowati & Muchiningtias, 2018).

Advocate itself recognized as every person who in his profession provides legal services and his duty is to resolve the legal problems of his clients, either based on litigation or non-litigation. Then in its function, advocates are not only able to litigate in court but are more and more important with regard to representing the interests of citizens in their relationship with the government. In Indonesia itself, almost everyone who faces a legal problem tends to use the services of an advocate, ranging from large cases involving prominent people such as KKN cases (corruption, collusion, and nepotism), banking cases, artist cases to cases involving ordinary people such as cases of theft of chickens, eviction of residence almost all require the services of an advocate in handling. With the enactment of Law Number 18 of 2003 which contains only advocates who can provide legal services and also legal assistance inside and outside the court as emphasized on Article 1 Paragraph (1) (Sutrisni, 2015; Lasmadi, 2014), this paper examines advocates in terms of their assistance.

In the context of implementation of the provision of legal assistance is a process when the investigator notifies the suspect's right to obtain legal assistance at the beginning of the examination in accordance with Article 114 of the Criminal Procedure Code which explains that the right to obtain assistance and also in this case must be accompanied

by legal counsel as referred to in Article 56. According to Article 1 point 1 of Law no. 16 of 2011 concerning legal aid states that legal aid is a legal service provided by the legal aid provider free of charge to the legal aid recipient. Furthermore, based on Article 3 of Law Number 16 of 2011 it is stated that legal aid has the aim of realizing the constitutional rights of all citizens based on the principle of equality in law (Taufik, 2013; Sadewo, 2005).

Various studies have shown that the provision of legal aid is not only carried out by advocates but also paralegals. Both have a strategic role in ensuring the fulfillment of access to justice for the community, especially the poor (Rozi, 2017; Sihombing, 2019; Salamor, 2018; Gurusi, 2016, Toni, 2017).

2. METHOD

This study looks directly at the role of advocates and paralegals at the Ar-Rochman Legal Aid Institute, Indonesia, and analyzes them based on the relevant laws and regulations. This research has at least two important focuses, namely: *first* to find out the process of providing legal aid by legal aid institutions to the community, and *secondly* to analyze the role of legal aid institutions, namely advocates and paralegals in providing legal assistance to the community.

3. RESULT AND DISCUSSION

A. Implementation of Legal Aid: Problems and Challenges

The implementation of legal aid according to the legal aid law is carried out by legal aid institutions or social institutions, hereinafter abbreviated as LBH or Orkesmas. In connection with the implementation of legal assistance in Article 42 of the Law on the Supreme Court, it is also referred to as a defender. Then based on the law on judicial power, it is stated that there is an acknowledgment of the provision of legal aid based on Article 38 Paragraph 2 letter d of the General Court Law with the provisions of Article 68c where every District Court is established a legal aid post. The provision of legal aid according to UUBH is carried out by legal aid implementers who must have had a legal entity, are accredited, have offices, have administrators, have work programs, in terms of providing legal aid in accordance with article 8.

The activities of providing legal aid were then developed by means of public awareness and organizing, through campaigns and in collaboration with journalists, as well as seeking the participation of partners, adjudicating and analyzing cases that have not yet manifested, and relying on the cooperation of informal figures, both individually and collectively (Harman, Kusumah, Hendaridi, Irianto, Pranawa, & Tedjabayu, 1995: 7-9). Then the understanding of the Orkesmas itself is a community-based organization and there is no political purpose. Based on Article 1 Paragraph (1) of Law No. 17 of 2003, the existence of Orkesmas was established and formed by the community voluntarily based on the common will, aspirations, needs, interests, activities, and goals to participate in the progress of the Unitary State of the Republic of Indonesia (Pujiarto, Kalo, Putra, & Ikhsan, 2015). In carrying out the provision of legal aid, it can include advocates, paralegals, lecturers, and law faculty students who have met the requirements. Then the advocate itself is a person whose profession is to provide legal assistance both inside and outside the court based on the Law on Advocates, this is especially for underprivileged clients (Harpa, 2019; Afandi, 2013).

In addition to advocates as legal aid providers, there are also paralegals. A paralegal is someone who is neither a lawyer nor an advocate but has the ability and legal skills as evidenced by a certificate issued by a legal aid provider so that he or she can assist advocates and lawyers in providing legal aid services (Kelompok Kerja Paralegal Indonesia, 2014: 15-17). Then the lecturer who is someone who works as a professional educator, the involvement of law faculty lecturers in addition to providing assistance in the implementation of legal aid is also related to theoretical and argumentative aspects related to legal knowledge. As well as students from the law faculty who with their knowledge in terms of law are able to assist in handling cases, especially legal assistance. In its implementation, the provision of legal aid can be through several factors including legal assistance to community organizations, legal assistance to legal aid institutions or often referred to as LBH, legal assistance to advocate offices, and also the provision of legal assistance in general (Kurniawan, 2020; Nusantara, 2016).

B. The Role of Advocates and Paralegals in Providing Legal Assistance to the Community

According to Law no. 18 of 2003 concerning Advocates explains that an advocate is someone who has the profession of providing legal services both inside and outside the court based on the provisions of Law (Subekti, 1982: 13-15). The rights of advocates based on Law No. 18 of 2003, as follows:

1. The right to be recognized as a law enforcer.
Article 5 Paragraph 1 states that advocates have the status of law enforcers, free and independent which are guaranteed by law and legislation.
2. The right to handle cases throughout Indonesia.
This is regulated in Article 5 Paragraph (2) which states that the work area of an advocate covers all regions in Indonesia.
3. The right to freedom and independence of advocates.
This right is regulated in articles 14 and 15 of the Advocate Law. What is meant by freedom of expression is freedom without threats, pressures, and obstacles, without fear or treatment that is burdensome or demeans the dignity and dignity of the profession.
4. Immunity Rights
This right is regulated in Articles 16 and 18 Paragraph (2) of the Advocate Law. Article 16 explains that advocates cannot be prosecuted both civilly and criminally in carrying out their professional duties in terms of defending the interests of clients. Article 18 Paragraph (2) explains that advocates cannot be identified with their clients in defending cases by authorized parties or the public.
5. The right to request information.
This right is stated in Article 17 which explains that in carrying out their profession, advocates have the right to obtain information, data and documents related to these interests.
6. Right of denial
It is stated in article 19 which means that advocates have the right to file objections, make exceptions, defenses, and everything related to their professional duties for the legal interest of their clients.

7. Right to get honorarium
This right is stated in article 21 which states that advocates are entitled to an honorarium or compensation for their legal services.
8. The right to subpoena.
A warning or reprimand so that the debtor excels at one time is specified in the summons.

Meanwhile, the obligation of advocates according to Law Number 18 of 2003 and the code of ethics for advocates (Sinaga, 2011: 84-85), as follows:

1. Advocates are obligated to keep secret everything they know related to their professional duties as regulated in Article 19 Paragraph (1) of the Advocates Law. Likewise in the code of ethics for the advocate profession, especially article 4 letter h which states that advocates are required to hold office secrets regarding matters notified by the client.
2. Article 26 of Law Number 18 Year 2003 concerning upholding the code of professional ethics, that an advocate is obliged to submit to and comply with the code of ethics of the advocate profession and the provisions concerning the honorary council of advocate organizations.

In addition to advocates, there are also paralegals, where a paralegal is a citizen who devotes himself to providing legal assistance to the community before the case is handled by an advocate. However, in Indonesia itself, the development of paralegals is now not only working for their respective communities, but they also provide assistance to underprivileged communities who have registered with legal aid organizations (Wirawan, 2011; Isman, 2019; Noni, Sugiantari, & Nistra, 2021).

Rights and obligations of paralegals based on the ministry of law and human rights Number 1 of 2018 concerning paralegals and the provision of legal assistance:

1. Paralegal rights are regulated in Article 2, Article 3, Article 5, Article 6, Article 10.
2. The obligation of paralegal is regulated in article 13 paragraph (3) of PP number 42 of 2013 and article 15 paragraph (3) of the Minister of Law and Human Rights No. 1 Year 2018.

The role of paralegals in legal aid activities (Kusumah, et.al, 1991):

1. Implement educational programs so that the disadvantaged community groups are aware of their basic rights.
2. Facilitate the formation of people's organizations so that they can demand and fight for their rights.
3. Assist in mediation and reconciliation in case of conflict.
4. Conduct preliminary investigations into cases that occur before being handled by lawyers.
5. Assist lawyers in making statements, gathering evidence alleged in other information relevant to the case at hand.

4. CONCLUSION

The laws and regulations governing legal aid are focused on Legal Aid Act and its derivatives (PP No. 4 of 2013, PERMEN 3 of 2013, PERMEN 22 of 2013) in these regulations support the implementation of legal aid for people or groups of poor people, these rules concern the rules general, scope, implementation and implementation standards, provision of legal aid, rights and obligations, terms and procedures, funding, prohibitions, and sanctions. The provision of legal aid originating from legal aid providers by the Ministry of Law and Human Rights and legal aid implementers by LBH and Orkesmas where in its implementation requires the role of legal aid providers such as advocates, paralegals, lecturers, and law faculty students. Implementation of the provision of legal aid that has been regulated in Law no. 16 of 2013 concerning legal aid, there are several factors that influence and also obstacles that must be faced.

The research provides several suggestions and inputs, namely: (1) *For the Government*, the Government in this case especially the president and the DPR must include all provisions regarding the existence of victims into the Criminal Code Bill clearly with mention of the rights and obligations of the victim. So that later the party who is in contact with the victim will not injure the victim because there are clear rules, (2) *for the legal aid provider*, the legal aid provider would be better able to understand and understand the position of the victim who receives legal aid

whose sense of justice was injured, so that the legal aid provider it is hoped that they will be able to provide assistance as much as possible and be able to guarantee the rights of victims who have been injured and be able to create justice that has become their rights, and (3) *for victims of legal aid recipients*, it is hoped that people who are affected by legal problems, especially victims, do not hesitate or are afraid to report or seek legal assistance. Victims should understand correctly about the rights they have, so that they hope to be able to take advantage of the legal assistance that has been provided by the government through legal aid agencies.

5. DECLARATION OF CONFLICTING INTERESTS

The authors state that there is no potential conflict of interest in the research, authorship, and/or publication of this article.

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