

## EXISTENCE OF LEGAL AID INSTITUTION IN ASSISTING POOR PEOPLE DEALING WITH LAW

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### ABSTRACT

*The recipients of legal aid for poor people facing the law, particularly in civil cases, do not automatically get legal assistance. The legal aid providers must be accredited in providing free legal assistance to the poor and the legal aid recipients must first submit an application to a legal aid agency. Legal aid providers must be accountable for their finances after carrying out their duties according to Government Regulation Number 42 of 2013 concerning Terms and Procedures for Providing Assistance and Distribution of Legal Aid Funds and Supreme Court Regulation Number 1 of 2014 concerning Guidelines for Providing Legal Services for Poor Communities in Courts.*

**Keywords:** Legal aid, Poor people, facing the law

### INTRODUCTION

Everyone certainly does not want to have problems that end up dealing with the law in both civil and criminal aspects. Every person who faces the law in court in a civil case can be faced alone or represented by another person, in this case using the help of a lawyer.

Although the right to legal aid is not expressly stated as the responsibility of the State, the provisions of Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia affirms that "the State of Indonesia is a constitutional state".

In the rule of law, the State recognizes and protects the human rights of every individual, including the right to legal aid. The provision of legal aid to citizens is an effort to fulfill and at the same time implement a rule of law that recognizes and protects and guarantees the human rights of citizens for the need for *access to justice* and *equality before the law* as mandated constitution in Article 28D paragraph (1) and Article 28H paragraph (2) of the 1945 Constitution of the Republic of Indonesia. The guarantee of these constitutional rights has not received adequate attention, so the formation of this Law on Legal Aid is the basis for the state to guarantee citizens, especially for people or groups of poor people, to get access to justice and equality before the law. Therefore, the responsibility of the State is implemented through the formation of the Legal Aid Law as regulated in the Republic of Indonesia Law No. 16 of 2011.

In this Law on Legal Aid, it is only intended for the poor who are faced with the law as the General Stipulation of Article 1 point 2 that the recipient of legal aid is a person or group of poor people and legal aid is provided by the provider of legal aid free of charge to recipients of legal aid. Article 1 point 1. Law No. 16 of 2011.

While in SEMA No. 10/2010 concerning Guidelines for Providing Legal Aid, Article 27 states that those who are entitled to services from Legal Aid Posts are people who are unable to pay for advocate services, especially women and children as well as persons with disabilities, in accordance with applicable laws and regulations. The legal aid includes exercising power of attorney, accompanying, representing, defending, and / or taking other legal actions for the legal interests of Legal Aid Recipients.

The provision of legal assistance that has been carried out so far has not touched many people or groups of poor people, so they have difficulty accessing justice because they are hampered by their inability to realize their constitutional rights.

Every poor community seeking justice has the right to legal aid through Legal Aid Institutions (LBH). However, not all Legal Aid Institutions can provide legal assistance and obtain legal aid funds that are used to advocate for the poor, but only Legal Aid Institutions that have passed verification / accreditation by the Ministry of Law and Human Rights of the Republic of Indonesia can provide legal assistance and receive funds. legal aid. Therefore, after being verified / accredited by the Ministry of Law and Human Rights of the Republic of Indonesia, after being verified / accredited by the Ministry of Law and Human Rights of the Republic of Indonesia as Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 3 of 2013 concerning Procedures for Verification and Accreditation of Legal Aid Institutions or Community Organizations Decree of the Minister of Law and Human Rights of the Republic of Indonesia Number M.HH-02.HN.03.03 after passing verification / accreditation, the legal aid agency can get funds from the Ministry of Law and Human Rights of the Republic of Indonesia, so that the activities of the Legal Aid Institute can provide legal assistance to the poor according to the mandate of the Law on Legal Aid.

Not all legal aid institutions throughout Indonesia are accredited, so legal aid funds for the poor from the Ministry of Law and Human Rights cannot be given to aid agencies and this is a problem in providing assistance to all poor communities in some areas that are in conflict with the law. in court, especially in civil cases. Therefore, it is interesting to discuss in this paper relating to the existence of legal aid agencies in helping the poor, and how legal aid agencies carry out their activities after being badly provided with legal aid to the poor.

## DISCUSSION

### A. Definition and Regulations of Legal Aid

The definition of legal aid from the public has often been heard, however, for the community to obtain legal aid from aid agencies free of charge, they must use a mechanism in accordance with the provisions of laws and regulations. In English literature, the term legal assistance is known as *legal aid* or *legal assistance*. The term *legal aid* is usually used to denote legal aid in the narrow sense of providing legal services to someone involved in a case for free or pro bono, especially for those who are poor or poor. Meanwhile, the term *legal assistance* is used to indicate the definition of legal assistance to those who cannot afford it, or the provision of legal assistance by lawyers and / or lawyers who use honoraria.<sup>1</sup>

Historically, the formulation of the definition of legal aid has also been influenced by perceptions formed in society according to the time and place where the concept of legal aid was implemented. In the early history of legal aid, it has been shown that the implementation of legal aid started from the generosity (*charity*) of a group of church elites towards their followers. This generous relationship is also formed between traditional leaders and the residents who live around them. Therefore it can be seen that a very clear patron-client relationship has been formed in this regard.

Based on these conditions, the formulation of the definition of legal aid at that time was very unclear, so it has led to the perception that legal aid is interpreted as assistance in all matters such as economic, social, religious and customary. The formulation of the definition of legal aid here is strongly influenced by the interest of the patron to protect his clients.

In a broader sense, the definition of legal aid is defined as an effort to help disadvantaged groups of people in the field of law. According to Adnan Buyung Nasution, it was explained that the efforts referred to in the definition have three interrelated aspects, namely as follows:<sup>2</sup>

1. Aspects of formulating legal rules
2. Aspects of supervision of mechanisms to maintain these rules to be obeyed and obeyed;
3. Aspects of public education so that these rules are understood.

In connection with the first aspect, the effort made within the framework of legal aid is to review a set of legal rules in the form of improvements or additions that are adjusted to sociological values. This is so that the legal rules are able to accommodate and adjust the dynamics and sense of justice in society. Meanwhile, the second aspect still lacks attention in legal aid activities. This is based on the reason for the lack of facilities owned by legal aid organizations in the form of funds and experts. Such conditions certainly have consequences in which legal aid organizations must carry out research collaborations with other institutions to conduct research, especially those related to regulatory effectiveness.

Furthermore, the definition of legal aid has also been formulated in the Symposium of Legal Professional Contact Bodies in Lampung in 1976 which provides a definition of legal aid as an activity of providing assistance to an incapable justice seeker who is facing difficulties in the legal field both outside and inside the court without any compensation for services. . Furthermore, in the National Legal Aid Workshop in 1978, it was explained that legal aid is a legal service activity provided to the poor or underprivileged, either individually or collectively to disadvantaged groups of people.<sup>3</sup>

The legal aid includes the following activities:

1. Defense.
2. Representatives both outside and inside the court.
3. Education.
4. Research.
5. Spread of ideas or ideas.

In contrast to the opinion of B. Arief Sidharta, <sup>4</sup>providing a definition of legal aid is the matter of providing certain services in an expert and organized manner by experts in problematic situations and / or conflict situations, which can be handled by the application of legal rules with or without making use of juridical procedures. Legal aid as referred to in this definition includes legal aid in formal conflict resolution in court (judicial process), and legal assistance outside the judicial process.

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<sup>1</sup> Sr. Mauro Cappelletti, Earl Johnson Jr. and James Gord Ley, 1975, *Towards Equal Justice, A Comparative Study of Legal Aid in Modern Societies*. Dobbes Ferry. New York, p. 109.

<sup>2</sup> Adnan Buyung Nasution, 2007, *Bantuan Hukum Di Indonesia (Legal Aid in Indonesia)*, LP3ES Indonesia, Jakarta, p.45..

<sup>3</sup> Asfinawati, 2007, *Bantuan Hukum Cuma-Cuma Versus Komersialisasi* " dalam *Bantuan Hukum : Akses Masyarakat Marjinal Terhadap Keadilan : Tinjauan Sejarah, Konsep, Kebijakan, Penerapan dan Perbandingan Di Berbagai Negara (Free Legal Aid Versus Commercialization "in Legal Aid: Marginalized Community Access to Justice: Historical Review, Concepts, Policies, Applications and Comparisons Across Different Countries)*, ed. Gatot and Virza Roy Hizal, LBH Jakarta, Jakarta, p. 21.

<sup>4</sup>Arief Sidharta, 24 February 2006, *Sebuah Catatan Tentang Bantuan Hukum*, " Makalah disampaikan pada Dialog Interaktif Menyikapi Putusan Mahkamah Konstitusi Atas Judicial Review Pasal 31 UU Advokat (A Note on Legal Aid, "Paper presented at the Interactive Dialogue Responding to the Constitutional Court Decision on the Judicial Review of Article 31 of the Advocate Law), Bandung

What is meant by legal assistance outside the judicial process includes efforts to prevent conflict in the form of providing legal opinions or legal opinions, informal conflict resolution in the form of negotiation or mediation and application of law outside of conflict. The provision of legal assistance is of course provided by people who have certain abilities and expertise. So far, the provision of legal aid has been provided by lawyers and people who are not advocates but have the same expertise as lawyers. The difference is only limited to the problem of the presence or absence of legitimacy granted by certain bodies authorized to grant a license to practice.

From the meaning described above, hereinafter the Provisions *HIR (Herziene Indische Reglement)* or the updated civil procedure law, legal aid has been regulated in several articles which are part of legal service activities. Legal aid arrangements have been specifically mentioned in relation to legal services for disadvantaged groups of people, in the sense that they are unable to pay court fees and honoraria for lawyers as regulated in Article 237 HIR to Article 242 HIR and Article 250 HIR. Articles 237 HIR to Article 242 HIR regulate applications to litigate in court without paying court fees. Then in the provisions of Law number 18 of 2003 in Article 1 point 1 the definition of legal assistance is legal services provided by advocates to clients by means of free or free, then in Article 22 Advocates are required to provide legal assistance free of charge.

Furthermore, regarding assistance regulated in Law Number 16 of 2011 concerning Legal Aid in Article 1 point 1, what is meant by Legal Aid is legal services provided by legal aid providers free of charge to legal aid recipients. Whereas Legal Aid Recipients are people or groups of poor people Article 1 point 2.

## **B. Provision of Legal Aid for the Poor**

Legal Aid is given to Legal Aid Recipients who are facing legal problems. Legal aid covers civil, criminal and state administrative law issues, both litigation and non-litigation. Legal Aid includes exercising power of attorney, accompanying, representing, defending, and / or taking other legal actions for the legal interests of Legal Aid Recipients.

Legal aid recipients include every person or group of poor people who are unable to fulfill their basic rights properly and independently. Legal aid recipients according to Article 5 of Law Number 16 Year 2011 are poor people or groups of poor people, namely those who cannot fulfill basic rights properly and independently.<sup>5</sup> The basic rights referred to are such as: the right to food, clothing, health services, education services, work and business, and / or housing.

In carrying out its role of providing legal assistance to the poor in civil cases, the Legal Aid Institution has a mechanism or procedure that must be carried out by the Legal Aid Institution before handling a case that affects the poor. For this reason, Legal Aid Institutions as legal aid providers in carrying out their roles must know and understand the stages in providing legal assistance, because Legal Aid Institutions as legal aid providers must also follow the procedures and procedures for providing legal aid.

The stages in providing legal assistance are regulated in Law of the Republic of Indonesia Number 16 of 2011 concerning Legal Aid and Government Regulation Number 42 of 2013 concerning Terms and Procedures for Providing Assistance and Distribution of Legal Aid Funds and Regulation of the Supreme Court Number 1 of 2014 concerning Guidelines Provision of Legal Services for the Poor in Court. But the implementation of the stages in providing legal aid that runs in the community environment needs to be analyzed whether it is in accordance with the Law of the Republic of Indonesia Number 16 of 2011 concerning Legal Aid and Government Regulation Number 42 of 2013 and Supreme Court Regulation Noor 1 of 2014 concerning Guidelines Provision of Legal Services for the Poor in Court.

## **C. Stages of Providing Legal Aid to the Poor.**

### **First Stage, Requirements for Legal Aid Applicants**

- 1) Requirements that must by a legal aid applicant.  
be metTo obtain legal aid, a legal aid applicant must meet the following requirements: a
- a) legal aid applicant must submit a written application containing at least the identity of the legal aid applicant and a brief description of the subject matter being requested Legal Aid.
- b) Submit documents relating to the Case.
- c) Attach a poverty certificate from the village head, village head, or an official at the same level as the legal aid applicant's residence.

### **Second Stage**

The provision of legal assistance includes civil law issues, criminal law issues, and state administrative law issues, both in litigation and non-litigation. And the process of providing legal aid can be explained as follows:

- 1) legal aid applicant submits a written application for legal aid containing at least an identity and a brief description of the subject matter for which legal assistance is requested.

If the Legal Aid Applicant is unable to compile a written application, he can submit an application orally, then the Legal Aid Provider shall put it in written form. The Legal Aid Application is signed or thumbprinted by the Legal Aid Applicant. What

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<sup>5</sup> Center for Legal Counseling, *op.cit.* p. 3.

is meant by the identity of the Legal Aid Applicant is a poor person listed on the identity card and / or other documents issued by the competent authority. And if the Legal Aid Applicant does not have an identity, the Legal Aid Provider assists the Legal Aid Applicant in obtaining a temporary address certificate and / or other documents from the competent authority according to the domicile of the Legal Aid Provider.

- 2) The legal aid applicant must complete the requirements as an attachment, among others: a poverty certificate from the village head, village head, or an official at the same level as the legal aid applicant's residence; and documents relating to the Case.

For poor people are people who earn a maximum of Rp. 1,000,000.00 / month and an electricity bill of 450 watts.

If the Legal Aid Applicant does not have a certificate of poverty, the Legal Aid Applicant can attach: Community Health Insurance Card, Direct Cash Assistance, Poor Rice Card, or other documents in lieu of a poverty certificate. And if the Legal Aid Applicant does not have these requirements, the Legal Aid Provider can assist the Legal Aid Applicant in obtaining these requirements.

From the requirements submitted by the Legal Aid Applicant, the Legal Aid Provider then checks the completeness of the requirements for a legal aid application within 1 (one) working day after receiving the Legal Aid application file. If the application for Legal Aid meets the requirements, the Legal Aid Provider is obliged to submit written readiness or rejection of the application within 3 (three) working days from the time the application is declared complete.

If the requirements are complete, and the Legal Aid Provider states his willingness to provide legal assistance, the Legal Aid Provider provides Legal Aid based on a special power of attorney from the Legal Aid Recipient. However, if the application for Legal Aid is rejected, then the Legal Aid Provider is obliged to provide reasons for rejection in writing within 3 (three) working days after the application is declared complete.

- 3) Provision of Legal Aid by Providers of Legal Aid to Applicants of Legal Aid

Providing of Aid to Applicants of Legal Aid is given until the legal problem is resolved or the case has permanent legal force (*inkracht*), or as long as the Legal Aid Applicant does not revoke the special power of attorney. Provision of legal aid in litigation can be done in civil cases and to provide legal aid in litigation in civil cases budgeted by the Government through the Ministry of Law and Human Rights of the Republic of Indonesia in the amount of Rp. 5,000,000.00 (Five million rupiah).

Providing litigation legal assistance in civil cases includes representing in the process of submitting an application as a plaintiff / defendant, submitting a *replica*, submitting a *duplicate*, evidencing, a decision from the court of first instance, appeal, cassation, or reconsideration.

For the provision of legal aid on a non-litigation basis, the Government budgeted it through the Ministry of Law and Human Rights of the Republic of Indonesia in the amount of Rp. 12,390,000.00 (Twelve million three hundred and ninety thousand million rupiah). Non-litigation legal aid funds are allocated to the following activities:

- a) Legal counseling of IDR 3,740,000.00.
- b) Legal consultation of IDR. 700,000.00.
- c) Case investigations, both electronically and non-electronically with the amount to IDR. 1,450,000.00.
- d) Legal research of IDR. 2,500,000.00.
- e) Mediation of IDR. 500,000.00.
- f) Negotiation of IDR. 500,000.00.
- g) Community empowerment of IDR. 2,000,000.00.
- h) Out of court assistance of IDR. 500,000.00.
- i) *Drafting* legal documents of IDR. 500,000.00.

- 4) The Process of Disbursement of Legal Aid Funds for Legal Aid

Providers after completing the implementation of Litigation and Non-litigation Legal Aid in accordance with the provisions stipulated in the Legal Aid implementation agreement and the provisions of laws and regulations, then the legal aid provider submits a budget disbursement. Disbursement of Litigation Legal Aid funds is carried out by submitting a report accompanied by supporting evidence in the form of a civil case assistance process stage.

Legal aid fund disbursement is calculated based on a certain percentage of the rate per case according to the standard costs of implementing Litigation Legal Aid. If until the end of the fiscal year, the distribution of Non-litigation Legal Aid funds is carried out after the Legal Aid Provider has completed at least 1 (one) activity in the Non-litigation activity package and submits a report accompanied by supporting evidence. The distribution of Legal Aid funds is calculated based on the tariff per activity according to the standard costs of implementing Non-litigation Legal Aid.

5) Accountability

After completion of assistance and then disbursement of funds, the Legal Aid Provider is required to report the realization of the Legal Aid Budget to the Minister on a quarterly, semi-annual and annual basis. For Litigation Cases, the realization report, must attach at least a copy of the Case's decision which has permanent legal force and the progress of the Case which is in the process of being resolved. Meanwhile, for Non-litigation activities, realization reports, must attach reports of activities that have been carried out.

As the Republic of Indonesia Government Regulation Number 42 of 2013 concerning Terms and Procedures for Providing Legal Aid and Distribution of Legal Aid Funds came into effect May 23, 2013, the two parties of the Legal Aid Institute have never reported accountability, because the cases assisted have not been resolved or have the force of law remains (*inkracht*).

## CONCLUSION

The existence of legal aid institutions in helping the poor who are faced with the law, not all legal aid agencies are willing to assist in the legal process against the poor in a free manner. Recipients of legal aid for the poor who are faced with the law must be accredited in providing free legal assistance to the poor and recipients of legal aid must first submit an application to a legal aid agency.

Legal aid providers must be accountable for their finances after carrying out their duties as referred to in Government Regulation Number 42 2013 concerning Terms and Procedures for Providing Assistance and Distribution of Legal Aid Funds and Supreme Court Regulation Number 1 of 2014 concerning Guidelines for Providing Legal Services for the Poor in Courts.

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## Laws

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