

Reconstruction of Legal Protection for Legal Assistance Institutions in Providing Legal Assistance to the Community Based on Justice

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Abstract

The purpose of this study is to analyze and examine the weaknesses of legal protection construction arrangements for legal aid institutions in providing legal assistance to the community at this time to then construct gnats that can fulfill the value of justice using the constructivism paradigm. The approach method used is sociological juridical, with the research specification is descriptive analysis. The data used are primary data and secondary data, which are then analyzed qualitatively. The results show that the weaknesses of the legal protection of Legal Aid Institutions in providing legal assistance to the community, namely the Legal Aid Institutions have not been specifically formulated in the Legal Aid Law and the legal aid needs of vulnerable groups such as children, women, the community adat and persons with disabilities have not been regulated in the Legal Aid Law, the APBN / APBD is limited, and doubts over the central-regional authority to issue Legal Aid Regional Law (*Perda*) is still low; as well as a lack of public awareness of legal methods and the importance of legal aid. To overcome this, it is necessary to reconstruct the legal protection of Legal Aid Institutions in providing legal assistance to the community so that it can fulfill the value of justice, namely to the specific formulation of the definition of legal aid institutions in the Legal Aid Law, and additional provisions of legal aid to vulnerable groups, affirming that legal aid is the authority of the central and regional governments, and strengthening regional authority to issue a Legal Aid *Perda*; as well as fostering and counseling public legal awareness of the importance of legal aid.

Keywords: Legal Protection, Legal Institution, Community, Justice.

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INTRODUCTION

The existence of legal aid institutions is very important in society considering the principle of equality before the law. So, it is not wrong if legal aid institutions are considered as a safety valve, a damper for the social upheaval that may arise in society, especially in developing countries, where the gap between the rich and the poor is still wide.

Historically, the legal aid agency was founded on October 28, 1970, by Peradin based on a proposal put forward by Adnan Buyung Nasution at the 1969 Peradin Congress in Jakarta [1]. The agency is intended to serve as a pilot project and, if successful, will serve as a model for the development of legal aid throughout Indonesia. To strengthen the establishment of a legal aid agency, the Peradin requested approval from the regional government specifically for the capital city of Jakarta. So at the request of the central leadership

council of Peradin to the Governor of the special region of the capital city of Jakarta, a decree No.1.b.3/I/31/70 was released by the government. The decree contains, among other things, an affirmation of the establishment of a legal aid agency in the DKI Jakarta area, which is accompanied by the provision of subsidies. On April 1, 1971, the legal aid agency became a reality and began to work effectively. The purpose of establishing this legal aid agency is:

1. Providing free legal assistance to the poor at large,
2. Cultivate, develop and enhance the legal awareness of the general public and in particular the awareness of their rights as legal subjects,
3. Advancing law and law enforcement according to the times (modernization).

The problem of legal aid is actually a classic problem, the poor have long hoped for a fair trial process that can be accessed by every citizen, with the

existence of arrangements regarding the provision of legal aid in a concrete manner, which can accommodate the interests of the rights of the suspect/ defendant in the process. Criminal examination. However, the only rules that are born are weak rules and enforcement so that they do not have an important meaning in realizing the fulfillment of the human rights of citizens/ suspects in order to obtain a fair trial and access to justice; such things are like the proverb "de Bergen baren, een belachelijk muisje wordtgeboran" (mountains give birth, so a cute little mouse is born)[2].

The cases that appear are probably only a small part of the number of human rights violations of suspects that have occurred during the criminal case investigation process, which has escaped our attention, as well as in civil law issues where there are often cases of civil deprived rights committed by authorities arbitrarily deprives citizens of civil rights. The presence of the Legal Aid Institute (LBH) and regulations regarding legal aid have not done much to help fulfill the human rights of citizens, especially the suspects, this is evident from the fact that there are still many criminal cases that are processed without the assistance of legal advisors/ advocates, so it is not uncommon for many people to surrender when their rights are suppressed and given an unfair decision by the judiciary.

The right to a fair trial is a right to obtain protection from arbitrary restrictions on rights or deprivation of human rights and freedoms. The right to get a fair trial is entitled to obtain by the suspect/ accused since the beginning of the handling/ examination process by the police on the allegations against the suspect until a court decision has permanent legal force as the rights to a fair trial on a criminal charge is considered to start running not only upon the formal lodging of a charge but rather on the date on which states activities substantially affect the situation of the person concerned.

Every citizen has the right to obtain his rights in a judicial process, which aims to protect individual citizens against arbitrariness and deprivation of basic human rights. In order to create such a goal, the existence of a concrete arrangement regarding the provision of legal aid is something that cannot be negotiated. This rule can be made into a complete special chapter in the Indonesian Criminal Procedure Code.

Concrete legal aid is not legal aid which is limited or limited in nature, but is a legal aid that is unlimited and complete (*ad infinitum*), which can be accessed and provided to every citizen, especially the poor who are carrying out the investigation process in a criminal or civil case. This is what urges the author to study the problem further in a research where the

discussion of this problem will be divided in to 2 main problems as follows:

1. What Are The Weaknesses Of The Legal Protection Of Legal Aid Institutions In Providing Legal Aid To The Community Currently?
2. How Is The Reconstruction Of Legal Protection For Legal Aid Institutions In Providing Legal Aid To Communities Based On Justice Values?

METHOD OF RESEARCH

This study uses a constructivist legal research paradigm approach. The constructivism paradigm in social science is a critique of the positivist paradigm. According to the constructivism paradigm of social reality that is observed by a person cannot be generalized to everyone, as positivists usually do.

This research uses descriptive-analytical research. Analytical descriptive research is a type of a non-doctrinal research that seeks to describe and seek answers fundamentally about cause and effect by analyzing the factors that cause the occurrence and appearance of a particular phenomenon or event.

The method of approach in research using the method (Socio-Legal Approach). The sociological juridical approach (Socio-Legal Approach) is intended to study and examine the reciprocal relationship that is associated in real terms with other social variables [3].

Sources of data used include primary data and secondary data. Primary data is data obtained from field observations and interviews with sources; While Secondary Data is data consisting of:

1. Primary legal materials, namely binding legal materials in the form of prevailing laws and regulations and have something to do with the issues discussed [4].
2. Secondary legal material, namely legal material whose nature provides an explanation of the primary legal material.
3. Tertiary legal materials are legal materials that provide further information on primary and secondary legal materials.

Research that is associated with the socio-legal approach is research that analyzes problems that are carried out by combining legal materials (which are secondary data) with primary data obtained in the field, supported by prior to secondary legal materials, in the form of writings of experts and existing legal policies [5].

RESEARCH RESULT AND DISCUSSION

1. Weaknesses of The Legal Protection of Legal Aid Institutions in Providing Legal Aid to The Community Currently

The handling of legal aid to the poor should be carried out by professional personnel, namely those who are not only educated with a law degree but also they who are engaged in providing legal aid as their

main daily job. This is ideally more than a legal aid program for the poor. However, the reality shows that professional personnel as described above are not many in number and their distribution is not evenly distributed from one place to another. Thus, those who have to hold the main position in this relationship are Advocates, not only Advocates who are under the auspices of the Legal Aid Institute (LBH).

In its development, the Medan Legal Aid Institute and Legal Aid Institute Trisila utilized paralegals to assist in solving cases. The term paralegal is applied to people who are not only advocates but also to those who have knowledge in the field of law (material) and procedural law, with the supervision of advocates or legal aid organizations, which play a role in helping people seeking justice. In daily practice, the role of paralegals is very important to become a bridge for the justice-seeking community with advocates and other law enforcement officials to resolve legal problems experienced by individuals and community groups [6].

The Law on Legal Aid currently only provides legal assistance to poor groups of people as evidenced by the existence of a Poor Certificate and the like (in accordance with Article 14 paragraph (1) letter c of Law 16/2011 concerning Legal Aid), while on the other hand, there is a need for legal assistance also from vulnerable groups such as children, women, indigenous peoples and persons with disabilities regardless of their economic conditions.

In Articles 17 and 18 of Law Number 23 of the Year 2002 concerning Child Protection, it is stated that every child who is deprived of his/ her freedom or becomes a victim or perpetrator of a criminal act, is entitled to legal assistance. This is further reinforced in Article 23 paragraph (1) of Law Number 11 of 2012 concerning the Criminal Justice System for Children which states that: "At every level of examination, children must be given legal assistance and be accompanied by a social advisor or other companions in accordance with the provisions of laws and regulations". The right to legal aid for persons with disabilities is expressly regulated in Article 29 of Law no. 8 of 2016 concerning Persons with Disabilities, and specifically obliges the Government and Local Governments to provide legal assistance to Persons with Disabilities in every examination at every law enforcement agency in civil and/ or criminal matters in accordance with the provisions of laws and regulations.

On the one hand, the need for an increase in the quantity and quality of legal aid services for the poor is quite large on the one hand, and the various limitations that the central government has in providing legal aid services, necessitating the participation of local governments in legal aid services. The role of the regional government is mainly related to the

administration and budgeting of legal aid so as to further expand the reach of legal aid. The awareness of local governments to participate in fulfilling the constitutional rights of citizens in obtaining legal aid already exists in at least 16 provinces and 61 districts/cities through the formation of the Legal Aid Perda. In general, these Regional Law still fully refer to the legal aid mechanism regulated by the Law on Legal Aid and have not addressed broader needs in increasing the capacity and quality of legal aid services.

Then, regarding the allocation of the APBD for legal assistance, it really depends on the initiative of the regional head and the allocation from the APBD is very uncertain. Although the APBD is reported to have touched Legal Aid Institute in the regions, resistance to receiving these funds often appears within the Legal Aid Institute itself. This resistance arose in relation to the independence of the Legal Aid Institute concerned. If one can allocate funds from the APBD, the fear is that Legal Aid Institute will no longer be independent, he said informing the debate that often occurs in the regions. In addition, matters concerning the law in regional autonomy are still under the authority of the center. Thus, legal aid still expects disbursement from the state budget because law is the responsibility of the central government.

In Indonesia, legal aid institutions have been spreading as of late, and it is their duty to defend disadvantaged people. However, it is the funding problem in Legal Aid Institute that causes access to justice for the community, such as the incident above.

The provision of legal aid to the poor is an effort to fulfill the responsibility of the state as an implementation of a rule of law that recognizes and protects and guarantees the human rights of every citizen to have an equal position before the law (equality before the law). In this case, the Legal Aid Law was born which provides space for local governments as part of the principle of regional autonomy based on Law Number 23 of 2014 concerning Regional Government. Where the authority for concurrent affairs of the regional government with the location, use, benefits, or impact as well as its resources is seen from the efficiency of the region in accordance with the needs and interests of each region. However, in its implementation, it is necessary to conduct an in-depth study of the implementation of legal aid by the Regional Government, especially in terms of budgeting, because in the current principle of financial management there is no "Double Account", namely the APBN and APBD to finance the same activities[7].

There are many doubts and confusion in the local government when they want to form or implement a law on legal aid. One of the fundamental issues that had emerged was the perception that legal aid was the

central authority, referring to Article 10 of Law Number 23 of 2014 concerning Regional Government. This article states that justice affairs are absolute governmental affairs, meaning that justice affairs are under the authority of the central government and not at all regional authorities. In the elucidation section of Law Number 23 of 2014 it is stated that what is meant by "judicial affairs", for example, establishing a judiciary, appointing judges and prosecutors, establishing a penitentiary, stipulating policies on law and immigration, granting clemency, amnesty, abolition, formulating laws, government regulations in lieu of laws, government regulations, and other regulations on a national scale.

Law Number 16 of 2011 concerning legal aid mandates the authority to budget legal aid by the regions in Article 19 paragraph (1), namely that the regions can allocate a budget for the administration of legal aid in the Regional Revenue and Expenditure Budget. Meanwhile, further Provisions regarding the administration of Legal Aid as referred to in paragraph (1) shall be regulated by Regional Regulations. Because what is regulated is only the allocation of the budget, the implementation of the provision of legal aid by the regions is subject to the Regime Implementing Regulations of Law 16/2011. There are doubts from the Local Government as to whether the Legal Aid Budget is a Grant or Social Assistance. This has been answered by the existence of a legal aid budget arrangement in Permendagri Number 31 of 2016 and Permendagri Number 33 of 2017 concerning Guidelines for Regional Revenue and Expenditure Budget Formulation. With this regulation, there should be no more doubts about the authority of local governments in legal aid services. In some regions that already have legal aid regulations, there have also been obstacles at the implementation level, which are basically caused by concerns in the management and distribution of the legal aid budget. The regulation on legal aid has stopped only at the regional regulation level and is not followed by more technical regulations in the form of regulations/ decrees of regional heads [8]. According to them, there need to be technical guidelines at the national level for budgeting legal assistance in the regions to be included in the Permendagri on Guidelines for Regional Revenue and Expenditure Budget Formulation.

Law and society are basically related to each other. The enactment of the law is to regulate the social order of the people. If there is friction between the interests of one community member and another, the law will act. In this case, the law is enforced to resolve conflicts that occur in society.

Law enforcement inconsistencies can occur, either due to objective or subjective motivations. Changes that occur quickly, sometimes are not able to be matched by other elements of society, including law enforcement institutions. This imbalance will result in

inconsistencies in various fields, including law enforcement.

Law enforcement in society is not an easy thing. Society continues to develop following the flow of globalization, and along with technological advances, types of lawlessness also undergo evolution, which makes their modus operandi more sophisticated, but the existing laws have not kept up with the changes.

The problem of legal protection for legal aid institutions in providing legal aid to the community is caused by the lack of legal awareness of the community to obtain legal aid rights when experiencing legal problems, and the lack of awareness of law enforcers in protecting the rights of legal aid recipients against the poor.

People who do not care about law enforcement will not have an effective deterrent to prevent law enforcement that is not in line with the sense of justice that lives in the heart of society. Even if they are left solely to law enforcers, it is possible that good legal rules become merely a means to achieve certain subjective goals, not a means of realizing justice and peace in society.

The law cannot be enforced in all things, as long as there are other effective means. Laws should be used at the last level when other means are no longer able to solve the problem. As for matters relating to public awareness of the law, namely:

1. Regular legal counseling;
2. Providing a good role model for officers in compliance with the law and respect for the law;
3. Institutionalization that is planned and directed.

In every effort to realize development goals, the legal system can play a role as a supporter and supporter. An ineffective legal system will certainly hinder the realization of the objectives to be achieved. The legal system can be said to be effective if human behavior in society is in accordance with what has been determined in the applicable legal rules.

2. Reconstruction Of Legal Protection For Legal Aid Institutions In Providing Legal Aid To Communities Based On Justice Values

The Legal Aid Law is not a guarantee for the poor to get access to appeal, cessation, or review. This is because, at the level of practice in the community, the application of legal aid is only provided as a formality by some lawyer's and Legal Aid Institute. Part of the provision of legal aid is made up to the first instance courts only. From the point of view of an advocate /Legal Aid Institute, this is done at the request of the client (the poor), but from the point of view of the poor, the request (no appeal, cassation, reconsideration) is based on submission and has no cost to access it.

The problem is quite severe as where the Legal Aid Law requires providing legal assistance for the poor free of charge, which comes from the APBN and APBD and Perma No. 1/2014 sourced from the local court budget, normatively free legal aid, without any other costs, but this is inconsistent in the world of practice in society, where the poor are still charged fees such as photocopying fees, summoning witnesses and experts, as well as transport costs, are borne by the poor in receiving legal aid.

The fees are collected on the basis of supporting the work of an advocate or Legal Aid Institute. Whereas collecting fees in legal aid is prohibited with a maximum imprisonment of 1 year and a fine of fifty million rupiahs (Article 20 in conjunction with Article 21 of the Law on Legal Aid). This is a dilemma in the application of legal aid for the poor.

Legal aid is not an act of mercy given by the State, but rather a human right of every individual and is the State's responsibility to protect the poor. Because human rights reside in every human being. The public must be convinced that legal aid is a human right and not just an act of mercy. Legal aid is the responsibility of the State, government, society, community organizations, and all parties in society such as lawyers, prosecutors, judges as law enforcers, and other community leaders, especially in Indonesian society which is known as *zakat* (obligation) in Islamic teachings that require for people who are more able to help the poor, the concept of legal aid is easier for the community to accept.

It is necessary to emphasize the definition of legal aid in Article 1 number 1 of Law Number 16 of 2011, namely: "Legal assistance is legal services provided by legal aid providers free of charge to legal aid recipients", thus: "Legal aid is legal services provided by Legal Aid Providers in a professional and free manner to Legal Aid Recipients without any discrimination at all levels of judicial examination".

The definition of Legal Aid Institutions is reinforced by adding numbers to Article 1 of Law Number 16 of 2011 concerning the meaning of Legal Aid Institutions, namely: "Legal Aid Institutions are: Institutions that provide legal aid in a professional manner and without discrimination to justice seekers without payment of honoraria".

Then in Article 20 of Law Number 16 of the Year 2011, reconstruction was also carried out, which originally said: "Legal Aid Providers are prohibited from receiving or requesting payments from Legal Aid Recipients and/ or other parties related to cases being handled by Legal Aid Providers", was reconstructed becomes: "Legal Aid Providers are prohibited from accepting or requesting payments from Legal Aid Recipients and/ or other parties related to a case being

handled by the Legal Aid Provider, unless given voluntarily or without coercion".

In fact, legal aid can answer the social jealousy of the poor towards the rich by defending their fate in the field of law. People who are less able to become satisfied and indirectly create a more capable and productive workforce, which in turn prevents the tendency to sympathize with communism, thus the conclusion can be drawn that the human rights of the less fortunate must be defended and legal aid is a human right. every human. Legal aid is also often seen as a safety valve to prevent social unrest that reduces the gap between rich and poor. The gap between rich and poor has always been a threat to social justice and democratic life in Indonesia.

The orientation of this legal aid movement is no longer just upholding justice for the poor according to the applicable law but has shifted into the embodiment of a rule of law based on the principles of democracy and human rights. Legal aid for the poor is seen as a legal subject who has the same rights as other groups of society. Law is a product of social processes that occur in society. A society with an unequal relationship pattern is unlikely to produce fair laws for everyone. In the 1945 Constitution, it is stated that the poor and neglected children are cared for by the state and this means that the State act as the starting point. Whereas then, advocates have a social responsibility to allocate their time and resources for the poor is an ideal thing, but the normative stage is certainly not as absolute as what the 1945 Constitution imposes on the State. Legal assistance provided by lawyers is more directed at the social function of the advocate profession. Advocates or lawyers as a profession that is directly related to this free legal aid, are even ordered by Law Number 18 of 2003 concerning Advocates, to provide legal assistance to underprivileged people [9]. Unfortunately, however, this access is not clearly regulated as the responsibility of the State. Article 22 paragraph (1) in this law clearly states that: "Advocates are obliged to provide legal assistance free of charge to incapable justice seekers". And this obligation is attached to anyone who is an advocate, wherever he is. In the context of elaborating this article, the government has also issued Government Regulation Number 83 of 2008 concerning Requirements and Procedures for Providing Free Legal Aid.

Provision of legal aid for poor people is very much needed, and it is hoped that there will be an increase or intensity of the implementation of legal aid from year to year, especially for vulnerable groups such as children, women, indigenous peoples, and persons with disabilities regardless of their economic conditions. Providing legal assistance to them is very important in order to provide justice based on a sense of humanity and justice for social welfare.

In the humanitarian aspect, the objective of this legal aid program is to ease the legal burden (costs) that must be borne by the poor in front of the Court. Thus, when group members are unable to face the legal process in court, they still have the opportunity to obtain legal defense and protection. In addition, in the aspect of legal awareness, it is hoped that this legal aid program will spur the level of public legal awareness to a higher level [10]. Thus, society's appreciation of the law will emerge through attitudes and actions that reflect their legal rights and obligations.

Thus, legal reconstruction or legal protection norms of Legal Aid Institutions in providing assistance to communities based on the value of justice are as follows:

1. Article 1 number 1 of Law Number 16 of the Year 2011 prior to reconstruction explains that legal aid is a legal service provided by legal aid providers free of charge to legal aid recipients. The weakness of this definition is that in providing legal assistance by lawyers / legal aid agencies, so far it seems that it is only for formality, and even in certain cases the suspect is not even accompanied by a legal advisor. In addition, legal aid for poor communities by lawyers / legal aid agencies is given in moderation, due to the lack of funds provided, so that aid providers do not really provide legal assistance, and usually, legal aid is only provided at the first court level. Therefore, the meaning of Legal Aid in Article 1 number 1 of Law Number 16 of the Year 2011 is reconstructed into Legal Aid, which is legal services provided by Legal Aid Providers in a professional and free manner to Legal Aid Recipients without any discrimination at any level of judicial examination. The addition to the meaning of Legal Aid Institutions in Article 1 of Law Number 16 of the Year 2011 explains that Legal Aid Institutions are institutions that provide legal assistance in a professional and non-discriminatory manner to justice seekers without receiving honorarium payments. The definition of legal aid institutions is not clear enough that it must include the definition of legal aid institutions in the Legal Aid Law. Meanwhile, Legal Aid Institute provides legal assistance in a professional manner, which means that it is taken seriously, not carelessly or only as a formality.
2. Article 20 of Law Number 16 of the Year 2011 prior to reconstruction explains that Legal Aid Providers are prohibited from receiving or requesting payments from Legal Aid Recipients and/ or other parties related to cases currently being handled by Legal Aid Providers. The weakness of this definition is that basically, the provision of legal aid is free of charge so that the legal aid provider does not ask for fees for the legal services he has done, but the prohibition to accept payment voluntarily from legal aid recipients is not a crime, this is as a tribute to all the hard work of the legal aid provider.

Therefore, after reconstruction, Article 20 of Law Number 16 of the Year 2011 explains that Legal Aid Providers are prohibited from receiving or requesting payments from Legal Aid Recipients and/ or other parties related to cases being handled by Legal Aid Providers, unless given voluntarily or without coercion.

CONCLUSION

1. The Weaknesses of the legal protection of Legal Aid Institutions in providing legal assistance to the public at this time, namely: (a) legal substance: (i) Legal Aid Institutions have not been specifically formulated in the Legal Aid Law and (ii) the need for legal assistance from vulnerable groups such as children, women, indigenous peoples and persons with disabilities not yet regulated in the Legal Aid Law; (b) in terms of legal structure: (i) limited APBN/ APBD, and (ii) doubts regarding central-regional authority to issue legal aid regulations which are still low; and (c) in terms of legal culture/ culture: lack of public awareness of legal methods and the importance of legal aid;
2. Reconstruction of legal protection for Legal Aid Institutions in providing legal aid to communities based on the value of justice, namely: (a) in terms of legal substance: (i) specifically formulating the definition of legal aid institutions in the Legal Aid Law, and (ii) additional provisions for the provision of legal assistance to vulnerable groups such as children, women, indigenous peoples and people with disabilities regardless of their economic conditions; (b) in terms of legal structure: (i) affirming that legal aid is the authority of the central and regional governments, and (ii) Strengthening regional authority to issue the Legal Aid Perda; and (c) in terms of legal culture: fostering and counseling public legal awareness of the importance of legal aid.

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