RIGHT TO LEGAL ASSISTANCE FOR COMMUNITIES UNABLE TO OBTAIN JUSTICE ACCORDING TO HUMAN RIGHTS PERSPECTIVE

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Submitted: Dec 01, 2023; Reviewed: Dec 07, 2023; Accepted: Dec 11, 2023

Article Info

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<td>Legal Aid, Justice, Human Rights.</td>
<td>The importance of legal aid in creating justice in the context of fulfilling human rights certainly makes the obligation to provide legal aid by both the central and regional governments is important to be implemented. In terms of practical aspect, it has so far shown that people, especially those who are unable to access justice, legal aid is still inadequate. Legal aid activities carried out by legal aid activists, from campus legal aid institutions, mass organizations, political parties, and non-governmental organizations are still not optimal, due to administrative problems and the legalization of legal aid practices. This research is very important, considering the enormous benefits that come with it are not only visible when the implementation of legal assistance to the community is unable to be carried out effectively, but also in the form of a new legal perspective and reform regarding equal distribution of justice.</td>
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DOI: 10.25041/lajil.v5i2.3258

A. Introduction

The concept of legal aid has basically been known since the Roman era where at that time legal aid was in the moral field and was considered more of a noble job and especially to help people without expecting or receiving compensation or honorarium.¹ Legal aid provided by advocates at the beginning of the Ancient Roman era emerged with orations and plea for

¹Bambang Sunggono and Aris Harianto, Legal Aid and Human Rights, Mandar Maju, Bandung, 2001, p. 11.
defending the incapacitated and legally illiterate people who were stricken by legal disasters as a result of accusations even though they were not necessarily guilty. It is in this context that advocates appear to defend because of the call of conscience so that people are highly respected and honored so that they are called officium nobilium or a noble profession. Access to legal aid is necessary to effective availability of legal counsel and thus to ensure the accused’s right to a fair trial. The right to legal assistance is of such fundamental importance that all, should it not be upheld, all other rights that are pertinent to the proper conduct of a fair trial may be rendered meaningless.

In Indonesia itself, the concept of legal aid began to emerge in the early 1970s along with the birth of Law No. 14 of 1970 concerning Principles of Judicial Power as amended by Law No. 35 of 1999 and amended again by Law no. 4 of 2004 concerning Judicial Power.

Departing from the provisions above, it can be said that Indonesia itself has constitutionally guaranteed the right of every citizen to equal treatment before the law, including the right to access justice through the provision of legal assistance. However, the judiciary is very bureaucratic, expensive, complicated (procedural), isoteric in nature (understandable only by legal people), causing not everyone to get equal access and treatment when dealing with the law, especially for people who can’t afford it. On the other hand, people who are rich and have power, easily access and get justice through the services of the lawyers they hire. This is not the case for groups of people who can’t afford it, they don’t have the ability to understand the law and can’t afford to pay for the services of a lawyer. This causes no equal treatment before the law to access justice. The basic problem that arises is that there is no expansion of equal access for every citizen to get equal treatment before the law, even though the doctrine of justice must be accessible to all citizens without exception (justice for all).

The issuance of Law no. 18 of 2003 concerning Advocates, as a law that regulates the Advocate profession, is also considered unable to maximize efforts to provide legal assistance to disadvantaged groups of people. The law does not provide for the widest possible expansion of access to the provision of free legal aid (pro-bono) for disadvantaged groups of people. Advocate profession, although it is recognized as a noble profession (omission Nobile), in reality it is actually a corporate, not a non-profit organization. The facts further strengthen this hypothesis considering the existing practice, advocate services are far from the reach of disadvantaged groups and vulnerable groups, commercialization and the elitist attitude of the advocate profession has increasingly provided a wide enough gap in the hope of realizing the principle of justice for all.

The Republic of Indonesia is a constitutional state, meaning that all regulations must be based on law in accordance with the principle of equality before the law (equality by fore the law) where everyone must obtain a professional defender. This becomes difficult for people...

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4 Charika Marasinghe. The Right to Legal Assistance In International Law, With Special Reference to the ICCPR, The ECHR and the ACHR. Asian Yearbook of International Law. 1995. p. 15.
who can't afford legal disputes. In this context, legal assistance for people who can't afford it becomes a state obligation to ensure these principles work.

The Indonesia government itself has ratified the International Covenant on Civil and Political Rights (ICCPR) and it resulted Indonesian government issued Law Number 16 of 2011 regarding to Legal Aid stated that the state guarantees the constitutional rights of everyone to obtain recognition, guarantees, protection and fair legal certainty as well as equal legal treatment before the law as a means of protection of human rights. Moreover In Article 1 paragraph (3) of the 1945 Constitution it is emphasized that Indonesia is a constitutional state. As a consequence of a rule of law state, the right to obtain legal aid must be granted by the state as a form of guarantee for the protection of human rights (HAM). Therefore, the existence of Law Number 16 of 2011 concerning Legal Aid is expected to protect the constitutional rights of each individual to obtain legal assistance, besides that it is also expected to accommodate the protection of underprivileged people in dealing with legal cases.

As state of law Indonesia is responsible for organizing the provision of legal aid to all communities, especially to people or groups who are limited in their access to justice. Under Law Number 16 of 2011 concerning Legal Aid also regulates the obligations of advocates in providing legal assistance to people who cannot afford or, as stipulated in Article 10 letter e which states that the legal aid provider is obliged to provide legal assistance to the legal aid recipient based on the terms and conditions procedures stipulated in this law until the case is finished, unless there is a valid reason based on law. Based on the Regulation of the Indonesian Advocates Association Number 1 of 2010 concerning Guidelines for the Implementation of Providing Free Legal Assistance of 50 hours/year, these provisions clearly show that advocates are obliged to provide legal assistance to people who can't afford it.

Nowadays, public awareness of legal aid or access to law and justice tends to be apprehensive, based on data from a study stating that legal knowledge in Indonesia is still low and quantitative research has been carried out nationally showing that 56% of people cannot provide an example of a right that is they have. This figure increased dramatically for women (66%) and for respondents who had no formal education (97%).

Associated with efforts to promote and protect human rights (promotion and protection of human rights), legal aid is a constitutional right of every citizen to guaranteed legal protection and guaranteed equality before the law, as a means of recognizing human rights. Obtaining legal assistance for everyone is a manifestation of access to justice as an implementation of guarantees of legal protection, and guarantees of equality before the law.

Given the importance of legal aid in creating justice, upholding human rights and equality before the law, as well as in achieving a due process of law, the government has responsibility in the framework of fulfilling human rights, especially the rights of members of the public who are unable to obtain justice in the form of legal aid effectively. This research is

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very important, considering the huge benefits that will be obtained when the implementation of legal aid to the community is unable to be carried out effectively, besides that it also provides a form of legal reform in the aspect of equal distribution of justice.

B. Discussion

1. The Right of Poor Communities to Get Legal Assistance

Legal Aid is the service of providing legal advice to people who are incapable, poor and legally illiterate (illiterate or uneducated) or not dare to fight for their rights due to pressure on the rights due to the concept of natural law and divinity. Because human rights are a person’s basic right that exist and is a gift from God Almighty, therefore human rights cannot be violated or revoked by other human beings, fellow living beings. Regarding to the right to legal assistance, states are urged to offer free legal assistance in (non-criminal situations) to people who lack the resources to cover the cost of it. In some cases, state obliged to do so. Legal aid is generally known in 2 (two) main concepts, namely the concept of traditional legal aid and the concept of constitutional legal aid. The concept of traditional legal aid is legal services provided to the poor individually. This legal aid is passive and its approach is very formal-legal, in the sense of looking at all legal issues solely from the point of view of applicable law. The orientation and purpose of this kind of legal aid is to uphold justice according to applicable law, which will be carried out on the basis of a spirit of mercy.

The concept of constitutional legal aid is legal assistance for the poor which is carried out within the framework of a broader business and objective, such as making the poor people's rights aware as legal subjects, upholding and developing the values of human rights (HAM) as the main pillar for the upholding of the state. Law. The nature of constitutional legal aid of this kind is more active, where legal aid is provided not only individually but also to community groups collectively.

The more detailed substance of the community’s right to obtain legal aid in the framework of guaranteeing equal rights before the law is regulated in the Covenant International on Civil and Political Rights (ICCPR). Article 16 of the ICCPR reads:

“Everyone has the right to be recognized as a person before the law wherever he is.”

Furthermore, Article 26 reads:

11 Banbang Sunggono and Aries Harianto, Legal Aid and Human Rights, Mandar Maju, Bandung, 2009, Pg. 26
"All people are equal before the law and are entitled to the same legal protection without any discrimination. In this respect the law must prohibit any discrimination, and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status".

The importance of upholding and complying with international law above, especially in guaranteeing equal rights before the law in the form of legal assistance for people who can't afford it, the Government of Indonesia has an important role in overcoming this problem. Indonesia as a rule of law country has made clear arrangements in the 1945 Constitution. Where the enforcement of human rights is absolutely necessary. As a rule of law it means that Indonesia relies on all its problems through legal channels. The mechanism of life for both individuals, community groups and the state is regulated by law. This means that all citizens have the same position before the law, demanding the attitude and behavior of the state apparatus so that they carry out general government and development tasks based on legal norms and provide services and protection to the community.

In Indonesia itself, the concept of legal aid being implemented at the moment is not something new. It can be said that this has existed since the establishment of the Indonesian Legal Aid Institute (LBH) on October 28, 1970 in Jakarta. The legal aid program provided is in a sense still very limited. Especially during the colonial era that Indonesian lawyers have been providing legal assistance ever since, but limited to the trial level. It is necessary for us to consult the text of Indonesian and relevant international law to ascertain whether the right to early access to legal assistance is a regulation that encourages compliance or a norm that could lead to contradictory behavior. In its development, the Legal Assistance Institute-Indonesian Legal Aid Foundation (LBH-YLBHI) introduced the concept of structural legal aid. According to M Zaidun, what is meant by structural legal aid is a type of legal aid that strives for a change in the pattern of legal relations that is equal in nature which is not oppressive or exploitative (equality and structural similarity) which reflects equality before the law, and equal access to economic resources. And politics. Structural legal aid is a concept of legal aid that is essentially based on a paradigm, vision and orientation that leads to empowering the people, capable of creating a pattern of just social relations.

In the humanitarian aspect, the aim of this legal aid program is to ease the legal burden (cost) that must be borne by the poor before the court and outside the court. Thus, when a group of people is unable to face legal proceedings in court, they still have the opportunity to obtain legal assistance and protection. From 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. Thus, people's appreciation of the law will appear through attitudes and actions that reflect their legal rights and obligations.

13 Article 1 paragraph (1) of the 1945 Constitution states that Indonesia is a country based on law.
15 M. Zadun, Structural Legal Assistance Movement in Indonesia, Airlangga University Postgraduate Program, Surabaya, 1996, Pg. 41
Technically, the criteria for the nature of legal aid in this case were carried out by the Supreme Court of the Republic of Indonesia, cq. The Directorate General of the General Judiciary Agency and through the Ministry of Law and Human Rights for people who are litigating (criminal and civil) before the courts are in the form of legal aid funds given to groups (criteria) of disadvantaged people who are litigating in court. The legal aid fund is not given directly to people who need it, but is given in the form of compensation for services to Advocates who have resolved cases/cases from the community concerned.

Poor people facing cases in court, in the interest of and defending their legal rights, can request information (information) from local agencies, for example:

a. District/High Court;
b. State/High Court;
c. Legal aid.

In order to obtain legal assistance provided by the Supreme Court of RI cq. The Directorate General of the General Courts and the Ministry of Law and Human Rights, the community is required to prepare:

a. Certificate of Disadvantage from the local village head/lurah; or
b. Declaration of Inability from the applicant and justified by the local District Court; or
c. Statement of Disability from the applicant and justified by the local Legal Aid Institute.

As a constitutional right to legal aid, it is regulated in Article 28 D, paragraph (1) of the 1945 Constitution, which states that: "everyone has the right to recognition, guarantees, protection and fair legal certainty and equal treatment before the law". Furthermore, the issue of legal aid is also regulated in various other laws, such as:

1. Article 18 paragraph (4) of Law no. 39 of 1999 concerning Human Rights, which states that: "everyone who is examined has the right to receive legal assistance from the time of investigation until there is a court decision that has permanent legal force"

2. Article 37, Law no. 4 of 2004 concerning Judicial Power, which states that: "everyone who is involved in a case has the right to obtain legal assistance".

3. Article 54, Law no. 8 of 1981 concerning the Criminal Procedure Code, which states that: "for the purposes of defence, a suspect or defendant has the right to receive legal assistance from one or more legal advisers during and at each examination, according to the procedures specified in this law".

In the criminal justice process, both concerning material and formal law, principles are known that aim to place the law in its proper place. For this reason, Law no. 4 of 2004 concerning Judicial Power which must be fulfilled when a person must be charged and sentenced through a court as stated in Article 6 paragraph (1) that: No one can be brought before a court other than what is determined by law”. Further stated in Article 6 paragraph (2):


"No one can be sentenced to a crime, except when the court, because of valid means of proof according to law, is convinced that someone who is considered to be responsible has been guilty of the act he is accused of."

It is further stated in Article 8 that: "Everyone who is suspected of being arrested, detained, and/or presented before a court must be presumed innocent before there is a court decision stating his guilt and having obtained permanent legal force". Likewise in Article 37 it is stated that: "Every person who is involved in a case has the right to obtain legal assistance".

In connection with Article 56 of the Criminal Procedure Code, there is a provision regarding the obligation to accompany legal advisors to perpetrators of criminal acts which are punishable by a sentence of up to five years. Based on these provisions, of course, every perpetrator of a crime that is punishable by a sentence of more than five years must be accompanied by a legal adviser. If the perpetrator of the crime is unable to pay for a legal advisor, of course the court is obliged to appoint a legal advisor to assist the perpetrator of the crime. Given that not everyone is economically able to use an advocate/legal advisor in obtaining legal aid, the Criminal Procedure Code states that those who cannot afford to pay for a legal advisor to accompany them should they commit a criminal act which is punishable by a criminal penalty of 5 (five) years or more. This is regulated in the provisions of Article 56 paragraph (1) of the Criminal Procedure Code.

In the process of civil justice, both concerning material and formal law, principles are known that aim to protect the legal interests of the parties (plaintiff and defendant) who are in court proceedings. The legal principles are:

1. Whereas Law Number 4 Year 2004 concerning Judicial Power adheres to the principle of low-cost justice and the principle of equality of treatment of parties to a case, namely:
   a. Courts judge according to law without discriminating between people (Article 5 paragraph (1)).
   b. Courts assist justice seekers and try to overcome all obstacles and obstacles in order to achieve a trial that is simple, fast and low cost (Article 5 paragraph (2)).

2. Whereas the Civil Procedure Code (HIR/RBG) adheres to several principles concerning the civil interests of the litigants, namely:
   a. The parties in a civil case (plaintiff and defendant) can choose one of the efforts to resolve civil disputes, namely efforts made through the court or efforts made outside the court (through peace efforts).
   b. In the event that dispute resolution is carried out through court:
      A. The litigants can face the trial process themselves or seek legal assistance from an Advocate (Article 18 HIR / 142 RBG).
      B. The head of the District Court gives advice and assistance to the person who is suing or to his representative regarding the matter of submitting his claim (Article 119 HIR / 143 RBG).
      C. If the person who is suing is not good at writing, then the claim may be made orally to the Chairperson of the District Court. The chairman records the claim or orders it to be recorded (Article 120 HIR / 144 RBG).
D. Before examining a case in the first trial, the Chairperson of the Session Council or the Judge who is present at the trial is required to seek to achieve a settlement between the litigants (Article 130 HIR / 154 RBG).

E. In the event that the plaintiff or defendant cannot afford the costs of the case, they can obtain permission to hear the case free of charge (Article 237 HIR / 273 RBG).

Based on the above civil law principles, in particular the principles contained in Article 237 HIR / 1273 RBG, the Legal Aid Program for Disabled Communities has an important meaning for the implementation and maintenance of legal principles in civil justice processes.

2. The Government’s Responsibility in Providing Legal Assistance for Poor Communities

In Article 18 of the 1945 Constitution of the Republic of Indonesia and Law Number 23 of 2014 concerning Regional Government, basically bear responsibility for the state's obligations in guaranteeing and protecting citizens' constitutional rights. So far, the provision of legal aid has not touched many people or groups of people who are economically disadvantaged, so they have difficulty accessing justice because they are hampered by their inability to realize their constitutional rights. In order to guarantee constitutional rights for every citizen which includes legal protection, legal certainty, equality before the law, and protection of human rights, on October 4, 2011 the Government and the DPR have jointly approved a law that regulates legal aid namely, Law Number 16 of 2011 concerning Legal Aid. The presence of this Legal Aid Law at least answers the high expectations of the public, for the resolution of legal aid issues in Indonesia, where until now there are still many Indonesian people who do not get access to legal aid.\(^{18}\) The presence of the Law on Legal Aid resulted in the consequence of imposing obligations on the Government to allocate funds for administering legal aid in the State Budget. Funding for the implementation of legal aid is allocated to the budget of the ministry that administers government affairs in the field of law and human rights, in this case the Ministry of Law and Human Rights of the Republic of Indonesia.

Based on Law Number 16 of 2011 concerning Legal Aid, in Article 1 point 1 it is stated that Legal Aid is legal services provided by Legal Aid Providers free of charge to Legal Aid Recipients. The implementation of Legal Aid aims to:

a. guarantee and fulfill the rights of legal aid recipients to get access to justice;

b. realizing the constitutional rights of all citizens in accordance with the principle of equality before the law;

c. ensure certainty that the implementation of Legal Aid is carried out evenly throughout the territory of the Republic of Indonesia, and

d. realizing an effective, efficient, and accountable judiciary.

Furthermore, Article 6 paragraph (1) of Law Number 16 of 2011 Concerning Legal Aid, states that legal aid is organized to help resolve legal problems faced by legal aid recipients. Furthermore, in paragraph (2) it is explained that the provision of legal aid to recipients of legal aid is organized by the Minister and implemented by legal aid providers based on the Legal Aid Law.

It must be admitted that the implementation of legal aid funds from the state budget is not sufficient to guarantee the implementation of legal aid for the poor throughout Indonesia. Therefore, later in Law Number 16 of 2011 in Article 19 it is stated that the Regions can allocate budgets for the implementation of Legal Aid in the Regional Revenue and Expenditure Budget and further provisions regarding the implementation of Legal Aid are regulated by Regional Regulations. These provisions certainly open up opportunities for Regional Governments to participate in realizing the state's constitutional obligation to provide legal aid for the poor. The participation of the Regional Government is expected to make a major contribution in supporting legal aid programs for the poor.

Regional Government is an important institution in the implementation of state life. In accordance with Indonesian laws and regulations, the Regional Government is the executor of the principle of decentralization in which the Central Government hands over some of its affairs to the Regions to be managed independently. In this context the Regional Government is given the freedom to regulate itself in the context of implementing regional autonomy. Through the authority they have, basically the Regional Government has the opportunity to implement legal aid activities, especially for the poor.

Law Number 16 of the Year 2011 concerning Legal Aid mandate budgeting authority legal aid by the Regions in Article 19 paragraph (1) namely Regions can allocate budget for administering Legal Aid in the Regional Revenue and Expenditure Budget. While further provisions regarding the administration of Legal Aid as referred to in paragraph (1) is regulated with Regional Regulations. Because that's set is just a budget allocation, then the implementation of the provision of Legal Aid by the Regions is subject to the regulatory regime executor of Law Number 16 of 2011. There are doubts from the Government Region regarding whether the Legal Aid Budget is a Grant or Aid Socially, this has been answered with the aid budget setting law in Permendagri Number 33 of 2019 and Permendagri Number 64 of 2019 2020 concerning Guidelines for the Preparation of the Regional Revenue and Expenditure Budget Year 2020 and Year 2021. With this rule, there should be no need for it anymore doubts regarding the authority of the Regional Government in legal aid services.

Budget allocation from this APBD is a way for the involvement of the Regional Government in the administration Legal Assistance. With the authority of the Regional Government in allocating the budget for organizing legal aid with the regional budget so that Regional Government has a role in the implementation of legal aid using the budget from the regional budget. This is also regulated in the Regulation of the Minister of Internal Affairs Affairs Number 64 of 2020 concerning Guidelines for Compiling the Revenue Budget and Regional Expenditures for the 2021 Fiscal Year in point 51, states that Regional Governments can allocate budgets for the Implementation of Legal Aid in the 2021 Fiscal Year APBD by referring to Article 19 of the Law Number 16 of 2011 concerning Legal Aid. But in maintenance legal assistance, the Regional Government is obliged to follow the policies and standards that are determined by the Central Government.

Central government affairs and The area actually has a purpose same, with the President as the holder ultimate responsibility. Because of the country responsible for giving legal aid for the poor as embodiment of access to justice, then this responsibility is attached to the Government Central and Local Government.
With authority Regional Government in allocating the legal aid budget through APBD, then the Regional Government also has a role as well as responsibility in administering assistance laws that use the APBD budget.

**C. Conclusion**

Legal aid is a form of Human Rights (HAM) which constitutionally requires that the state is obliged to guarantee and administer it as stipulated in various laws and regulations which affirm that legal aid must be given to those who meet the criteria of an underprivileged community.

Provision of Legal Aid in the regions as mandated by Law Number 11 of 2011 concerning Legal Aid specifically Article 19 paragraph (1) namely the Regions can allocate budgets for organizing legal aid in the regional Revenue and Expenditure budget is a form of implementation of the responsibility of the local government, especially in Palu City to create legal certainty in implementation regional legal assistance. It is hoped that by providing legal assistance in Palu City, give a sense of justice to poor people too provide legal certainty to the people who are dealing with law.
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