

Provision of Legal Aid as Part of Public Services

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Abstract

This study aims to analyze the implementation of legal aid provision as a fundamental component of public services in Indonesia. Legal aid is a constitutional right and a manifestation of access to justice, particularly for the poor or disadvantaged groups who face barriers in the legal system. This study employs a normative legal research method with an analytical approach. Data sources consist of primary and secondary materials, collected through document and literature studies, and analyzed qualitatively with a descriptive presentation. The results indicate that legal aid is a legal service provided by advocates or legal aid institutions free of charge to recipients who meet certain criteria of financial inability. As a public service, the provision of legal aid is an effort by the state, through the Ministry of Law and Human Rights, to fulfill the basic rights and civil rights of citizens to obtain equality before the law. The study concludes that legal aid services must be people-oriented and integrated into the public service system to maintain public trust in the justice system, especially in remote areas. To enhance quality, the government must implement service improvements, open channels for public criticism, and ensure the effective allocation of budgets sourced from the State or Regional Revenue and Expenditure Budgets (APBN/APBD).

Keywords: Implementation, Legal Aid, Public Services

INTRODUCTION

Legal aid is a means of law enforcement, which aims to obtain justice and truth, as well as real legal certainty. The role of legal aid in a case process, both litigation and non-litigation, is highly expected and needed by the general public, especially the poor or disadvantaged, to ensure equal treatment before the law. The state guarantees the constitutional right of every person to receive recognition, guarantees, protection, and fair legal certainty, as well as equal treatment before the law as a means of protecting human rights. The state is responsible for providing legal aid to the poor as a manifestation of access to justice. Legal aid provided by the state must be oriented towards the realization of just social change.

In a state based on law, the Indonesian state recognizes and protects human rights for 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 state based on law that recognizes, protects, and guarantees the human rights of citizens regarding access to justice and equality before the law. The guarantee of these constitutional rights has not received adequate attention, so the establishment of the Legal Aid Law becomes the basis for the state to guarantee citizens, especially for poor people or groups, to obtain access to justice and equality before the law.

Pancasila is the source of all sources of national law, Pancasila as a way of life, the basis of the Indonesian State and the Ideology of the Indonesian Nation. In Pancasila there are five precepts which guide the lives of the Indonesian people, these five precepts are: The First Precept reads Belief in One Almighty God, with the symbol of a star; The Second Principle reads Just and Civilized Humanity, with the symbol of a chain; The Third Principle reads Indonesian Unity, with the symbol of a Banyan Tree; The Fourth Principle reads: Democracy Led by Wisdom in Representative Deliberations, with the symbol of a Bull's Head; and the Fifth Principle reads Social Justice for All Indonesian People, with the symbol of Rice and Cotton. In the Preamble to the fourth paragraph of the 1945 Constitution of the Republic of Indonesia, it is stated that "to protect the entire Indonesian nation and all of Indonesia's blood and to promote general welfare, educate the life of the nation, and participate in implementing world order based on freedom, eternal peace and social justice". It is clear that justice is one of the goals of the Indonesian state. Justice is a matter concerning attitudes and/or actions in interpersonal relationships that contain demands that they be treated according to their rights and obligations. Balanced treatment or recognition of rights and obligations is the essence of justice.

METHOD

This study employs a normative legal research method with an analytical approach to understand the provision of legal aid as part of public services. The data sources used in this study are primary and secondary sources. The data collection techniques employed in this study include document studies and literature studies. Data analysis utilizes qualitative analysis with descriptive presentation.

RESULTS AND DISCUSSION

Legal Aid

Legal aid is a legal service provided by a legal aid provider free of charge to a legal aid recipient. (Article 1 paragraph 1 of Law of the Republic of Indonesia Number 16 of 2011 concerning Legal Aid)

Legal aid is a legal service provided by an advocate free of charge to clients who cannot afford it. (Article 1 paragraph 9 of the Republic of Indonesia Law Number 18 of 2003 concerning Advocates).

According to Adnan Buyung Nasution, there are two important aspects related to legal aid in its broadest sense. First, it is a movement to increase public legal awareness so that they

will realize their rights and obligations as human beings and citizens of the Republic of Indonesia. Second, legal aid also means efforts to make legal improvements so that the law can meet the needs of the people and adapt to changing circumstances. (2016:3)

According to Febri Handayani, legal aid in its broadest sense can be interpreted as an effort to assist disadvantaged groups in the legal field. (2016:1)

Legal aid is any form of legal assistance (either in the form of providing legal advice or acting as a power of attorney for a person in a case) provided to people who are economically disadvantaged, so that they cannot pay the fees (honorarium) to a defender or lawyer. (Muchlisin Riadi, Understanding and History of Legal Aid, 2016. via <https://www.kajianpustaka.com-pengertian-dan-sejarah-bantuan-hukum>. August 18, 2021, 20:00)

Clarence J. Dias, what is meant by legal aid is all forms of service provided by the legal profession to the public in society with the aim of ensuring that no one in society is deprived of their right to obtain legal advice simply because they do not have sufficient financial resources. (2009:10)

Legal aid is a legal service provided by a legal aid provider free of charge to a legal aid recipient. This legal aid covers criminal, civil, and state administrative matters, both through litigation and non-litigation. Legal aid is provided until the legal matter is resolved and/or the case has permanent legal force, as long as the legal aid recipient does not revoke the special power of attorney. (2017:17)

Legal aid is assistance provided in the legal field provided by advocates or legal aid institutions to people who need it in seeking justice, provided that the person is included in the category of people who are unable to afford it, with the aim of obtaining justice either through litigation or non-litigation in various problems such as criminal law problems, civil law problems or state administrative law problems.

Public service

Public services are activities or a series of activities in order to fulfill service needs in accordance with statutory regulations for every citizen and resident for goods, services, and/or administrative services provided by public service providers. (Article 1 paragraph 1 of Law Number 25 of 2009 concerning Public Services).

The provision of public services is the state's effort to fulfill the basic needs and civil rights of every citizen to goods, services, and administrative services provided by public service providers. The basis for the provision of public services in Indonesia is stipulated in the 1945 Constitution, which mandates the state to fulfill the basic needs of every citizen for their welfare. Therefore, the effectiveness of a government system is largely determined by the quality of public service delivery. Public service providers in Indonesia are all state organs, such as the Central Government and Regional Governments. This is expressly stated in the preamble to the 1945 Constitution, which states that "one of the objectives of the founding of the Republic of Indonesia is to advance public welfare and improve the intellectual life of the nation." (2020:101)

Public service is a series of activities in order to fulfill the service needs in accordance with the laws and regulations for every citizen and resident for goods, services, and administrative services provided by public service providers, namely every state institution, corporation, independent institution established by law for public service activities and other legal entities established solely for public service activities. These activities are carried out by officials, employees, officers, and everyone who works within the organizing organization whose task is to carry out actions or a series of public service actions. (2022:40-41)

The concept of public service in Indonesia is formulated in Law Number 25 of 2009 concerning Public Services. The development of public services must be oriented towards the

people. The interests of society as a whole must be placed as the main consideration in developing the public service system. (2018:39) This also includes legal aid services, which must be oriented towards those (the community or poor residents) who cannot afford legal services in dealing with their legal problems so that the legal aid service system still gains public (community) trust in seeking and/or obtaining justice based on Pancasila and with dignity in the benefits of law not only at the center but also in the regions, especially in remote or isolated areas. (2024:78)

According to Philipus Ngorang, public service is defined as any effort made by individuals or organizations to meet the needs of the community. This can be done by the private sector, but the state, through its state apparatus, plays the most important role in meeting the people's needs. However, when public service provides opportunities for profit, the practice of public service by state officials, which was originally solely aimed at serving the needs of the community, gradually shifts to seeking profit, a profit enjoyed by the state apparatus itself. This gives rise to the practice of abuse of power by state officials for their own interests. Such public service practices by state officials should be eliminated or at least reduced so that the image of public service in this country appears good and brings prosperity, justice, and solidarity to the community. Therefore, public service ethics are expected to provide concrete solutions to poor public service. (2021:4)

The quality orientation of civil service performance remains weak. Service orientation should be based on the public interest or community needs. The primary basis for service delivery is the service objective. The emphasis on the importance of service orientation is that the orientation built into the system will influence the delivery process. The service process will certainly influence the outcome of the service itself. If the service orientation is for the public interest, then the process and objectives align with what the public expects. Furthermore, the delivery of public services requires performance flexibility with values of creativity and innovation to support improved service quality. (2017:4-5)

Human rights

Human rights are a set of rights inherent in the nature and existence of human beings as creatures of God Almighty and are His gifts that must be respected, upheld and protected by the state, the government, and every person for the sake of honor and protection of human dignity. (Article 1 paragraph 1 of Law Number 39 of 1999 concerning Human Rights)

Human Rights are the basic or fundamental rights of every human being, according to Prof. Mahfudz MD, Human Rights are rights that already exist and are inherent in the dignity of every human being, where these rights have been brought since birth into the world so that basically these rights are natural. Meanwhile, according to Prof. Muladi, Human Rights are all basic rights or basic rights that are inherent in humans in their lives. Meanwhile, according to Prof. Miriam Budiarjo, Human Rights are rights owned by every person who is brought since he was born into the world and also according to him these rights are universal (comprehensive) because they are owned without any differences in race, gender, religion, ethnicity, culture, and others. According to Prof. Oemar Seno Adji, Human Rights are rights that are inherent in the dignity of every human being as a creature of God Almighty who has the nature of not being violated by anyone. (2016:2-3)

Human Rights are absolute rights inherent in the nature and existence of human beings that must be respected, upheld, and protected by the state, law, government, and every person. This means that these rights are fundamental rights that are absolutely inherent in every human individual, cannot be revoked, and may not be violated by anyone. As fundamental rights, Human Rights are inherently inherent in every human individual, consequently, every human individual has equality, equity, and equity. This also means that Human Rights are universal and eternal in nature, regardless of race, skin color, gender, language, religion or belief, political

opinion, nationality, or ethnicity. In addition, these basic rights are highly correlated with each other, so they cannot be separated or divided. (2019:62)

The understanding of human rights refers to rights that humans possess not because they are granted to them by society, and therefore not based on applicable positive law, but rather on their dignity as human beings. Humans possess them because they are human. The concept of human rights includes the notion that these rights cannot be removed or declared invalid by the state. The state may not recognize these rights. Therefore, these rights cannot be claimed before a judge. However, and that is what is decisive, these rights remain. And therefore, these rights should be recognized. Not recognizing the rights that humans possess as human beings indicates that human dignity has not been fully recognized in that state. That is the concept of human rights. (2022:70)

It is believed that the concept of human rights has a philosophical basis in a number of existing religions, for example, Islam, Christianity, Hinduism, and Buddhism. These religions acknowledge that God created humans as equals without any distinction between one human being and another. In fact, religions generally emphasize the limitations of individual freedom rather than obligations. Religious teachings provide equality and justice as God's commandments, so the existence of human rights in this concept is metaphysical. Locke viewed the existence of humanity as natural, meaning that men and women have the freedom to determine their actions and also equality in the sense that each person is not subject to the will and power of others. Therefore, to avoid the dangers of human nature, each individual enters into a social contract through mutual agreement to form a society and its political order. Individuals in this case still have natural rights, such as the right to life, liberty, and property. The state and government are obliged to protect these natural rights, and if they neglect this obligation, the government loses its legitimacy. Natural law theory was a value that drove the movement to challenge absolutism in the 18th century. This was stated in the French Declaration of the Rights of Man and the US Declaration of Independence, as well as in several constitutions of many countries formed after the colonial period. Natural law theory made a very important contribution to human rights. The problem that arises from this theory is how to determine a norm as part of natural law. In Locke's view, everything related to the essence of human life, such as life and liberty, is an absolute right. Thus, natural law theory contains a priori propositions derived from higher norms. Positivism views human rights as determined by the legal system and its sanctions. The essence of positivism is to negate moral philosophy as the basis for human rights. (2018:21-24)

The right to legal aid is a fundamental human right, particularly the most important aspect of realizing equality before the law. The right to equality before the law embodies the recognition that Indonesia is a nation governed by the rule of law. (2016:99-100)

Guaranteeing human rights, particularly the right to legal aid, is an obligation of the government, legal aid institutions, or community organizations that provide legal aid services under the law. (2022:52-53)

Advocate

An advocate is a person whose profession is to provide legal services, both inside and outside the court, who meets the requirements set out in the law. (Article 1 of Law of the Republic of Indonesia Number 18 of 2003 concerning Advocates)

Lawyers act as a mouthpiece for their clients, presenting arguments and seeking legal loopholes to ensure their clients receive true justice. The cases handled by lawyers are not limited by fees. (2020:10)

Advocates are a free, independent, and responsible profession for ensuring fair and just trials and ensuring legal certainty for all justice seekers in upholding the law, truth, justice, and human rights. (2018:1)

To be appointed as an advocate, one must meet the following requirements: Citizen of the Republic of Indonesia; Residing in Indonesia; Not having the status of a civil servant or state official; Aged at least 25 (twenty five) years; Hold a bachelor's degree with a background in higher education in law; Pass the exam held by the Advocates Organization; Internship for at least 2 (two) years continuously at a law firm; Never been convicted of a crime punishable by imprisonment of 5 (five) years or more; and Be well-behaved, honest, responsible, fair, and have high integrity. (Article 3 paragraph 1 of Law of the Republic of Indonesia Number 18 of 2003 concerning Advocates)

Advocates, in carrying out their professional duties, are prohibited from discriminating against clients based on gender, religion, political affiliation, race, or social and cultural background. (Article 18 paragraph 1 of Law of the Republic of Indonesia Number 18 of 2003 concerning Advocates)

Legal Aid Providers and Recipients

Legal aid providers are legal aid institutions or community organizations that provide legal aid services based on the law. (Article 1 paragraph 3 of Law of the Republic of Indonesia Number 16 of 2011 concerning Legal Aid)

Legal Aid Organizations or Legal Aid Institutions can play a very important role in defending and/or protecting the rights of legal aid recipients to obtain a fair and more humane legal process, especially in the legal process.

With the presence of Legal Aid Organizations or Legal Aid Institutions, it is hoped that the recipients of legal aid or suspects will truly receive a fair legal process and humane treatment as a form of respect for Human Rights. Usually, Legal Aid Organizations or Legal Aid Institutions become a hope for recipients of legal aid who generally come from lower or disadvantaged or poor families who cannot afford professional legal services.

Legal aid providers are prohibited from accepting or requesting payment from legal aid recipients and/or other parties related to the case being handled by the legal aid provider. (Article 20 of Law of the Republic of Indonesia Number 16 of 2011 concerning Legal Aid). Legal aid providers are required to provide legal aid to legal aid recipients based on the terms and procedures stipulated in statutory regulations until the case is resolved, unless there is a legally valid reason.

Any legal aid provider who is proven to have received or requested payment from a legal aid recipient and/or other party related to a case being handled shall be subject to a maximum imprisonment of one year or a maximum fine of fifty million rupiah. (Article 21 of Law of the Republic of Indonesia Number 16 of 2011 concerning Legal Aid)

Legal aid providers have the right to: Recruit advocates, paralegals, lecturers, and law faculty students; Provide legal aid services, organize legal counseling, legal consultations, and other activity programs related to the provision of legal aid; Receive a budget from the State to implement legal aid based on the Law; Issue opinions or statements in defending cases that are their responsibility in court proceedings in accordance with statutory regulations; Receive information and other data from the Government or other agencies, for the purposes of defending cases; and Receive guarantees of legal protection, security, and safety while providing legal aid. (Article 9 of Law of the Republic of Indonesia Number 16 of 2011 concerning Legal Aid)

Legal aid providers cannot be sued civilly or criminally for providing legal aid which is their responsibility and is carried out in good faith inside or outside the courtroom in accordance with legal aid standards based on statutory regulations and/or the advocate's code of ethics. (Article 11 of Law of the Republic of Indonesia Number 16 of 2011 concerning Legal Aid)

Legal aid providers provide 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. (Article 26 of Government Regulation of the Republic of Indonesia Number 42 of 2013 concerning the Terms and Procedures for Providing Legal Aid and Disbursing Legal Aid Funds)

Legal aid providers are required to report the realization of the implementation of the legal aid budget to the Minister on a quarterly, semi-annual, and annual basis. In the case of legal aid providers receiving funding sources other than the State Budget, the legal aid provider must report the realization of the receipt and use of these funds to the Minister, the report being reported separately from the report on the realization of the budget implementation from the State Budget. (Article 30 of Government Regulation of the Republic of Indonesia Number 42 of 2013 concerning the Terms and Procedures for the Provision of Legal Aid and the Distribution of Legal Aid Funds)

Legal aid recipients are individuals or groups of poor people. This includes any individual or group of poor people who cannot adequately and independently fulfill their basic rights. These basic rights include the right to food, clothing, health care, education, employment and business, and/or housing. (Article 1 paragraph 2 and Article 5 paragraphs 1 and 2 of Law of the Republic of Indonesia Number 16 of 2011 concerning Legal Aid)

Recipients of legal aid have the right to: Receive legal aid until their legal problem is resolved and/or the case has permanent legal force, as long as the recipient of legal aid does not revoke their power of attorney; Receive legal aid in accordance with legal aid standards and/or the advocate's code of ethics; and Receive information and documents related to the implementation of the provision of legal aid in accordance with the provisions of laws and regulations. (Article 12 of the Republic of Indonesia Law Number 16 of 2011 concerning Legal Aid)

Recipients of legal aid are required to provide accurate evidence, information, and/or case statements to the legal aid provider and to assist in the smooth provision of legal aid. (Article 13 of Law of the Republic of Indonesia Number 16 of 2011 concerning Legal Aid)

Provision of Free Legal Aid Services for the Poor

The objectives of providing legal aid include: Guaranteeing and fulfilling the rights of legal aid recipients to access justice; Realizing the constitutional rights of all citizens in accordance with the principle of equality before the law; Guaranteeing the certainty that legal aid is provided evenly throughout the territory of the Republic of Indonesia; and Realizing effective, efficient, and accountable justice. (Article 3 of Law of the Republic of Indonesia Number 16 of 2011 concerning Legal Aid)

The enactment of Law No. 16 of 2011 concerning Legal Aid is a boon for the poor, providing them with some relief in the process of seeking justice, both in and out of court. Providing free legal aid services for the poor is expected to lessen the burden faced by those facing legal issues.

Frans Hendra Winarta, in his book entitled *Legal Aid in Indonesia: The Right to Legal Counsel for All Citizens*, writes that with legal aid, it is hoped that the legal process will be fair for suspects or defendants who are classified as poor, and they will be given the opportunity to defend themselves with legal counsel. Suspects or defendants often have their rights ignored and are treated unfairly, even tortured and their dignity as human beings degraded. Legal aid is expected to protect suspects or defendants who are classified as poor and cannot obtain professional legal services. Legal aid is expected to prevent unfair and inhumane treatment of suspects or defendants who are classified as poor. This is what is called a fair legal process. (2011:49)

CONCLUSION

The provision of legal aid is a form of public service provided or provided by the Ministry of Law and Human Rights which is presented to every citizen or resident of Indonesia who cannot afford to pay for legal services in legal matters, whether through litigation or non-litigation, which is carried out or carried out by institutions or organizations providing legal aid which are of course legal entities that have been registered with the Ministry of Law and Human Rights of the Republic of Indonesia.

The concept of public service in Indonesia is formulated in Law Number 25 of 2009 concerning Public Services. The development of public services must be oriented towards the people. The interests of society as a whole must be placed as a primary consideration in developing the public service system. This also includes legal aid services, which must be oriented towards those (the community or poor residents) who cannot afford legal services in dealing with their legal problems so that the legal aid service system still gains public trust (society) in seeking and/or obtaining justice based on Pancasila and dignity in the benefits of law not only at the center but also in the regions, especially in remote or isolated areas.

The provision of quality public services, especially legal aid services, can be carried out through several strategic steps, including: Implementing improvements to the quality of service; Providing and/or opening opportunities for the wider community to provide or submit suggestions and/or criticisms, even complaints, either directly or electronically; and Responding to suggestions and/or criticisms, even complaints, quickly and clearly.

Legal aid services are the provision of public services provided by the Ministry of Law and Human Rights for the poor, where they (the poor) no longer need to worry (be anxious) about the funds or payments that will be given or handed over to organizations or institutions providing legal aid because a budget has been provided for them (organizations or institutions providing legal aid) which is sourced from the State Revenue and Expenditure Budget and/or Regional Revenue and Expenditure Budget.

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