



# Provision of Legal Assistance to the Poor by Legal Assistance Institutions by Free Way in Demak Regency

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## ABSTRACT

The provisions of legal aid for the poor who are in conflict with the law by the Legal Aid Institute had been regulated by the provisions of Government Regulation Number 42 of 2013 concerning Terms and Procedures for Providing Legal Aid and Distribution of Legal Aid Funds, the Regulation of the Minister of Law and Human Rights Number 3 of 2013 concerning Procedures for Verification and Accreditation of Legal Aid Institutions, and the Decree of the Ministry of Law and Human Rights of the Republic of Indonesia Number M.HH-03.HN. 03.03 of 2013 concerning the Amount of Litigation and Non-Litigation Legal Aid Fees. Legal aid for the poor with this free system has conditions that must be met. They are really incapable, and there is a certificate from the local/village head that the person concerned is really incapable which is in accordance with the law. There was a problem occurred in Jepara Regency that there were still few accredited Legal Aid Institutions, and there were quite a lot of poor people who were in conflict with the law so that there was an imbalance between legal aid service personnel and the cases at hand. From the data obtained after being analyzed that in Jepara Regency, the legal aids for the people who were in conflict with the law for free were still not evenly distributed because legal aid assistants were not proportional to the number of cases faced by the people who were in conflict with the law. There were very few aid accredited by the Ministry of Law and Human Rights. Furthermore, if the community deals with unaccredited legal assistance, in this case, they will not receive financial assistance from the State in providing assistance.

**Keywords:** Legal Aid, Poor Community, Prodeo System, Jepara Regency

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## INTRODUCTION

Legal Aid is not explicitly stated as the responsibility of the state but the provisions of Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia confirms that “the State of Indonesia is a state of law”. In a state of law, the 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 of law that recognizes and protects and guarantees the human rights of citizens regarding the need for access to justice and equality before the law as mandated by the law. the constitution in Article 28D paragraph (1) and Article 28H paragraph (2) of the 1945 Constitution of the Republic of Indonesia.

The guarantee of constitutional rights has not received adequate attention, so that the establishment of the Law on Legal Aid is the basis for the state to guarantee citizens, especially for poor people or groups of people, to get access to justice and equality before the law. Therefore, the responsibility of the State is implemented through the establishment of the Law on Legal Aid. The provision of legal aid 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.

The provision of legal aid 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. Sarmidi’s case is just one that has emerged to the public, a factory worker, a resident of Babadan RT. 5 RW. 5 Sayung Village, Demak District, was acquitted by the Supreme Court

of being accused of being a drug courier. Sarmidi's freedom could not be separated from the persistent efforts of his father who repeatedly visited the Central Java Regional Police, the Regional Representative Council of Central Java Province, the Indonesian People's Representative Council, and Supreme Court to release his son from the snares of the law. Kasdi, Sarmidi's father, had to pay a high price for seeking justice up to the cassation level because he was forced to sell all his possessions such as motorbikes, onthel bicycles, tin nets, debts to banks, debts to relatives, and selling his house for Rp. 30,000,000.00 (thirty million rupiah).

Taking into account the Sarmidi case above, with the existence of Law Number 16 of 2011 concerning Legal Aid, it should not need to happen because the Law on Legal Aid was made in order to realize access to justice for everyone, especially the poor or underprivileged. in order to obtain guarantees in the fulfillment of their rights to legal assistance. The government as a state administrator has the responsibility to fulfill the right to legal aid as a constitutional right of citizens. The legal problems that ensnare many poor people or groups are currently increasingly complex, thus requiring the Government to immediately pay attention and regulate them in a planned, systematic, sustainable manner and manage them professionally. Based on these considerations, it is juridically urgent for the existence of the Law on Legal Aid.

This Law on Legal Aid is a form of state awareness, in this case the government to implement its responsibilities to its citizens for recognition and protection as well as guaranteeing citizens' human rights to the need for access to justice and equality before the law. In the Law on Legal Aid, what is meant by legal aid is legal services provided by legal aid providers free of charge to legal aid recipients. Legal aid is provided by legal aid institutions or community organizations that provide legal aid services, which include exercising power of attorney, assisting, representing, defending, and/or taking other legal actions for the legal interests of legal aid recipients. Therefore, the objectives of implementing community service are as follows:

1. To provide an understanding to the public about the mechanism for the implementation of providing legal assistance for people who are dealing with the law, especially in dealing with criminal cases.
2. Optimizing Legal Aid Institutions in Demak Regency in providing free legal aid for the Poor.

## **METHOD**

The method of implementing community service is carried out in Sayung Village, Sayung District, Demak Regency by delivering material directly to the community by means of lectures related to legal aid, procedures for submission and conditions for people who are in conflict with the law and continued question and answer directly with the community. In addition, it invites the community to always be in harmony and peace and avoid criminal acts so that they will not face the law.

## **RESULT AND DISCUSSION**

### **1. Implementation Mechanisms for Providing Legal Aid for the Poor in Demak Regency**

Legal Aid Institutions in carrying out their role in providing legal services to the poor in criminal or civil cases, there are mechanisms or procedures that must be carried out by Legal Aid Institutions before handling a case that afflicts the poor. In carrying out its role in providing legal services to the poor in criminal cases, there is a mechanism or procedure that must be carried out by the Legal Aid Institute before handling a case against 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 aid, because Legal Aid Institutions as legal aid providers must also follow the procedures and procedures for providing legal aid.

The stages in providing legal aid 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 Legal Aid and Distribution of Funds and Regulation of the Supreme Court Number 1 of 2014 concerning Guidelines Providing Legal Services for the Poor in Courts. But the implementation of the stages in providing legal aid that runs in the community 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 Number 1

of 2014 concerning Guidelines Providing Legal Services for the Poor in Courts. In this service, the stages in providing legal assistance by the Legal Aid Institute are already running in the Demak Regency.

Legal Aid Institute, information was obtained that the stages in providing legal aid in Demak Regency are essentially the same as other regions because they apply the Law of the Republic of Indonesia Number 16 of 2011 concerning Legal Aid and Government Regulation of the Republic of Indonesia Number 42 of 2013 Regarding the Terms and Procedures for Providing Legal Aid 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.

The First Stage, Requirements for Legal Aid Applicants and Legal Aid Providers:

1. Requirements that must be met by applicants for legal aid

To obtain Legal Aid, Legal Aid Applicants must meet the following requirements:

- a. The Legal Aid Applicant submits a written application containing at least the identity of the Legal Aid Applicant and a brief description of the subject matter for which Legal Aid is requested.
- b. Submit documents related to the case.
- c. Attach a certificate of poverty from the Lurah, Village Head, or an official at the same level at the place of residence of the Legal Aid Applicant.

What is meant by the criteria for poor people is the head of the family who does not have an income of at least Rp. 1,000,000.00/month. Or it can be said that the criteria for poor people are (a) adults who do not have jobs (b) adults whose income is below the Jepara Regency Minimum Wage.

2. Requirements that must be met by legal aid providers

Provision of Legal Aid is carried out by Legal Aid Providers, who must meet the following requirements:

- a. Incorporated.
- b. Accredited.
- c. Have a permanent office or secretariat.
- d. Have a manager.
- e. Have a Legal Aid program.

3. The Second Stage, The Process of Providing Legal Aid

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

1. Applicants for legal aid shall apply for legal aid in writing at least containing 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/she can submit the 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 is meant by the Identity of the Applicant for Legal Aid is in the form of an identity card and/or other documents issued by the authorized agency. 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. Applicants for legal aid must complete the requirements as attachments, including: a certificate of poverty from the Lurah, Village Head, or an official at the same level as the Legal Aid Applicant's residence; and documents related to the case.

Criteria for poor people are people who earn a maximum of Rp. 1,000,000.00/month and electricity bills of 450 watts.

If the Legal Aid Applicant does not have a poverty certificate, the Legal Aid Applicant can attach: Community Health Insurance Card, Cash Direct 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 legal

aid application requirements within 1 (one) working day after receiving the legal aid application file. If the application for Legal Aid has met the requirements, the Legal Aid Provider is required to submit written acceptance or rejection of the application within a maximum of 3 (three) working days from the date 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, the Legal Aid Provider is required to provide the reasons for the refusal in writing within 3 (three) working days from the date the application is declared complete.

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

The provision of legal aid in litigation in criminal cases includes assistance in the process of investigation, investigation, prosecution, and the examination process at the trial of the court of first instance, appeal, cassation, and review. While the provision of legal aid in litigation in criminal cases includes assisting in the investigation process in the police, the prosecutor's office, the trial in court in filing exceptions to the prosecution's indictment, submitting a plea at the court of first instance, filing a memorandum of appeal, a memorandum of cassation, and a memorandum of reconsideration (Naskah Akademik, 2010).

For the provision of legal assistance in non-litigation, the Government through the Ministry of Law and Human Rights of the Republic of Indonesia budgeted Rp. 12,390,000.00 (Twelve million three hundred and ninety thousand million rupiah). Funds for the provision of Legal Aid in Non-litigation are allocated to the following activities:

- a. Legal counseling of Rp. 3,740,000.00.
- b. Legal consultation of Rp. 700,000.00.
- c. Case investigation, both electronically and non-electronically amounting to Rp. 1,450,000.00.
- d. Legal research of Rp. 2,500,000.00.
- e. Mediation of Rp. 500,000.00.
- f. Negotiation of Rp. 500,000.00.
- g. Community empowerment of Rp. 2,000,000.00.
- h. Assistance outside the court of Rp. 500,000.00.
- i. Drafting legal documents of Rp. 500,000.00.

### 3. Legal Aid Fund Disbursement Process

The Legal Aid Provider after completing the Litigation and Non-litigation Legal Aid in accordance with the provisions stipulated in the Legal Aid implementation agreement and the provisions of the legislation, 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 stages of the criminal case assistance process.

The distribution of Legal Aid funds is calculated based on a certain percentage of the case rate according to the standard cost of implementing Litigation Legal Aid. If until the end of the fiscal year, the criminal case being accompanied only reaches the P21 stage, then the legal aid provider can only apply for a payment of Rp. 2,000,000.00 (Two million rupiah). The distribution of Legal Aid funds at each stage of the litigation process does not eliminate the obligation of the Legal Aid Provider to provide Legal Aid until the case being handled is completed or has permanent legal force.

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 cost of implementing Non-litigation Legal Aid.

## 2. Optimizing Legal Aid Institutions related to the implementation of legal aid to the poor in a free way

Considering that the Legal Aid/Advocacy Institution as a noble profession or *officium nobile* has freedom in carrying out their duties, it means that advocates are not bound to the bureaucratic hierarchy, and are also not state apparatus so that advocates are expected to be able to side with the interests of the community or the public interest. Therefore, in relation to optimizing the implementation of legal aid for the poor, the social position of such advocates has also created a moral responsibility for advocates who not only act as defenders of the constitution but also act as defenders of human rights, especially those related to the rights of the poor (Srats et al., 2004). As a result of the moral responsibility attached to their professional status, advocates have five dimensions of ideal struggle to optimize the implementation of legal aid for the poor, namely as follows:

- a. The humanitarian dimension, which means that although Legal Aid Institutions do not receive compensation from applicants for legal assistance in carrying out their work, basically advocates must still be guided and respect human values, especially in defending the poor. In defending it must be based on the motivation of the human aspect.
- b. The dimension of moral responsibility, which means that advocates in defending the poor must always look at and consider two main things, namely the existence of legal provisions that form the basis for defending and the existence of moral and ethical grounds. In this regard, the legal rights or interests of the poor who are defended must not conflict with general morality or professional ethics which must be upheld.
- c. The dimensions of freedom, independence and professional independence, this means that advocates are challenged to always fight for the establishment of an independent, free and independent profession from power intervention in defending the poor. Therefore, to support the third dimension, a strong advocate organization is needed and has a code of ethics including having the capability to foster and maintain the discipline of members of the profession.
- d. The dimension of the rule of law development, which means that the advocate profession can be implemented ideally if the law enforcement process has also been running ideally. In other words, that advocates have interests for the sake of their legal profession and for the interests of the poor. Therefore, it is necessary to build the essence of an ideal legal state.
- e. The dimension of democracy development, which means that a state of law as described in the fourth dimension can only be implemented in harmony with democratic development. Like a currency, the development of law and the development of democracy can have a mutual relationship. Democracy can only be enforced if it is supported by a state based on law in terms of upholding the rule of law. Democracy will turn into anarchy if it is not supported by law. On the other hand, a state of law without democracy will create a state that is typical of oppressors.

With regard to optimizing the provision of legal aid to the poor, the moral responsibility of advocates and in their position as one of the pillars or buffers of the implementation of a fair and balanced judicial system (fair trial), the researcher agrees with (Nasution, 1982)'s opinion which states that advocates have a role not only as defenders of the constitution but also as defenders of human rights, especially the poor. Therefore, advocates have a social function in carrying out their duties. One of these social functions is to provide free legal aid, especially to the poor and the blind as part of human rights protected by law.

According to (Susanti et al., 2018)s, basically the implementation of the obligation to provide free legal aid, especially for the poor and the blind, has the following objectives:

- a. Part of the implementation of constitutional rights as regulated and guaranteed by the 1945 Constitution and its amendments. The right to legal aid is one of the human rights that must be recognized and protected. By referring to Article 27 paragraph (1) of the 1945 Constitution including the provisions of Article 28 Letter D paragraph (1) and Article 28 Letter I paragraph (1) of the 1945 Constitution which has been amended, the right to legal aid must be seen as an institution that must be owned and exists only in the rule of law system. The existence of the principle of sovereign law (supremacy of law) and the existence of guarantees for everyone suspected of being guilty to obtain a fair trial are conditions that must be guaranteed absolutely in a state of law.

- b. Part of the implementation of the principle that the law applies to everyone. Due to limited legal understanding and knowledge for individuals who are legally blind to understand the provisions written in the Act, it is necessary for the role and function of advocates to provide legal explanations and assistance.
- c. Part of the effort to standardize the implementation of the role and function of law enforcement from advocates.

Based on the consideration of social roles and functions above, the optimization carried out by advocates in providing legal assistance to the poor has been regulated explicitly in Article 22 paragraph (1) of Law Number 18 of 2003 concerning Advocates. In Article 22 paragraph (1) it is explained that advocates are obliged to provide free legal assistance to justice seekers who cannot afford. According to the researcher, an affirmative arrangement regarding the social obligation of advocates to provide free legal aid to the poor is something that should be appreciated. This is because in a developing country there are still many individuals or families who live in poverty, even below the poverty line. The legal aid provided by the advocate is of course guided by respect for human values, including respect for human rights. Furthermore, the obligation to provide legal assistance is expected to be able to provide awareness and knowledge, especially regarding the rights of the poor who are increasingly marginalized by development policies and processes.

Optimizing the provision of legal aid by Legal Aid/Advocacy Institutions has been explicitly regulated in Article 22 paragraph (1) of Law Number 18 of 2003 concerning Advocates. However, the Law of the Republic of Indonesia Number 16 of 2011 has not explicitly regulated sanctions for Legal Aid Institutions / Advocates who do not represent, optimally assist the poor. So efforts must be made regarding the lack of strictness of the Law of the Republic of Indonesia Number 16 of 2011, the government needs to make rules for the imposition of strict sanctions against Legal Aid / Advocates who do not carry out their obligations to provide free legal assistance for the poor.

Furthermore, the implementation of the obligation to provide legal assistance by advocates cannot be separated from the role of the advocate organization itself. This is due to the reason that the advocate organization functions to carry out supervision. This is as explained in Article 12 paragraph (1) of Law Number 18 of 2003 concerning Advocates which explains that the supervision of advocates is carried out by an advocate organization. Meanwhile, in Article 12 paragraph (1) of Law Number 18 of 2003 concerning Advocates which explains that the supervision is carried out with the aim that advocates always uphold the professional code of ethics and laws and regulations in carrying out their duties.

In connection with the implementation of the obligation to provide legal assistance by advocates, the supervision carried out by professional organizations has not been carried out optimally. As for the form of supervision that has been carried out by professional organizations, it is more likely that there are violations of the code of ethics that are not in the nature of not carrying out the obligation to provide free legal aid by advocates.

## CONCLUSION

1. The implementation of the obligation to provide legal assistance by advocates cannot be separated from the role of the advocate organization itself. This is due to the reason that the advocate organization functions to carry out supervision. This is as explained in Article 12 paragraph (1) of Law Number 18 of 2003 concerning Advocates which explains that the supervision of advocates is carried out by an advocate organization. Meanwhile, in Article 12 paragraph (1) of Law Number 18 of 2003 concerning Advocates which explains that the supervision is carried out with the aim that advocates always uphold the professional code of ethics and laws and regulations in carrying out their duties.
2. Optimizing the provision of legal aid by Legal Aid/Advocacy Institutions has been explicitly regulated in Article 22 paragraph (1) of Law Number 18 of 2003 concerning Advocates. However, in the Law of the Republic of Indonesia Number 16 of 2011 sanctions have not been explicitly regulated for Legal Aid Institutions / Advocates who do not represent, optimally assist the poor. So efforts must be made regarding the lack of strictness of the Law of the Republic of Indonesia Number 16 of 2011, the government needs to make rules for the imposition of strict

sanctions against Legal Aid / Advocates who do not carry out their obligations to provide free legal assistance for the poor.

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