

Providing Legal Assistance For Defendants In Examination Of Criminal Cases In State Courts

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ABSTRACT

Legal assistance is carried out through the courts. One of the providers of assistance is the Legal Aid Institute, which is a legal aid program provided in order to lighten the burden and is also useful for creating justice and legal protection for the general public. The problem in this research is how to provide legal assistance in criminal cases and the factors that inhibit the implementation of providing legal assistance to defendants in criminal cases. This research is a descriptive-analytical type of research. The method used here is a normative juridical approach. Data collection techniques were carried out using general literature study research, reviewing regulations, journals, textbooks and articles and field studies via the internet by opening sites or websites available on the internet. Data obtained from the research system is collected based on problems and then carried out qualitative analysis, namely carrying out an analysis of laws and regulations relating to Legal Protection. Based on the results of research regarding the analysis of the implementation of providing legal assistance to defendants in criminal cases, the implementation of providing legal assistance can be done through the courts, and the Legal Aid Institute and can also be done with the direct initiative of an advocate who volunteers to accompany him. Factors delaying the provision of legal aid to defendants in criminal cases include; law enforcement factors, community factors, cultural factors, infrastructure and facilities factors.

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INTRODUCTION

Indonesia is a rule of law country, which is stated in the 1945 Constitution. In a rule of law state, the state guarantees equality before the law and recognizes and protects human rights, so that everyone has the right to be treated equally before the law. As the principle states that Equality Before the Law is a form of legal guarantee and provides certainty that everyone is equal before the law without making any distinctions, apart from that there is also the right to recognition and protection (Explanation of Law No. 18 of 2008 concerning Advocate).

Legal assistance is an important instrument in the Criminal Justice System because it is part of the protection of Human Rights (HAM) for every individual, including the right to legal assistance. The issue of human rights has become a global issue, in fact it has become a demand that really needs serious attention for the State to respect, protect, defend and guarantee the human rights of citizens and residents without discrimination. The right to legal aid is one of the most important rights every citizen has. Because in every legal process, especially criminal law, it is generally impossible for every person who is named a defendant in a criminal case to be able to defend himself in a legal process and in a legal examination of him. Thus, it is impossible for a

suspect in a criminal act to defend himself in a legal process of self-examination while he is a suspect in a criminal act that he is accused of. Therefore the suspect/accused has the right to obtain legal assistance.

One of the human rights that is part of the right to obtain justice in Article 18 Paragraph (1) of Law no. 39 of 1999 concerning Human Rights Article 11 Paragraph (1) states "Every person who is arrested, detained and tried because he is suspected of committing a criminal offense has the right to be considered innocent until legally proven guilty in a court hearing and given all legal guarantees necessary for his defence, in accordance with the provisions of the laws and regulations". However, in reality, there are still many people who cannot afford the services of legal advisors to assist them in their cases. Even though he had facts and evidence that could be used to alleviate or show the truth in the case, their case did not go to court. Even though legal aid is a right of poor people that can be obtained without paying (*pro bono publico*).

The existence of the community's financial inability to claim their rights in accordance with legal procedures, demands that a policy be implemented so that they can file a civil case without being hampered by costs, especially in civil cases, therefore a procedure is needed to file cases free of charge. need to pay the case manager (*pro deo*). So, parties who are less fortunate can file a lawsuit for free, which is known as *pro deo* litigation. This is in accordance with the principles of the trilogy of justice, namely fast, simple and cheap justice.

Winarta stated that often poor parties, because they do not know their rights as defendants, are treated unfairly or have their right to be accompanied by an advocate hampered. This is of course very detrimental to the party who is demanding his rights and who will later be processed in court. To prevent this from happening, we need a legal institution or organization that fights for justice and law enforcement, such as the Legal Aid Institute (LBH) which accompanies clients or parties whose rights have been harmed, provided that the client or party whose case will be accompanied is economically or financially weak. This is also regulated in Article 1 paragraph (1) and (2) of Law Number 16 of 2011 concerning Legal Aid which states that Legal Aid is legal services provided by Legal Aid Providers free of charge to Legal Aid Recipients and Legal Aid Recipients. This is a person or group of poor people.

Legal aid can also be interpreted as all kinds of assistance or provision of services relating to legal matters provided by someone who has legal expertise to those involved in the case, either directly or indirectly, by prioritizing those who are unable to do so. In a rule of law, the state guarantees equality before the law and recognizes and protects human rights, so that everyone has the right to be treated equally before the law (equality before the law). Equality before the law must also be accompanied by equal treatment. One form of equal treatment is by providing legal assistance to poor people, where not only well-off people can get defence from advocates or public defenders, but poor people can also get legal assistance (*access to justice*). Poor people are poor people who are very deprived, poor people have the meaning of people who are very needy, people who are very poor, people who deliberately make themselves suffer from deprivation in order to achieve inner perfection. Poor means having no possessions, everything lacking, very low income.

The legal assistance provided to suspects or defendants is essentially to defend legal regulations and also the protection provided so that their rights are protected for the suspect or defendant. Legal assistance for suspects or defendants is not merely about defending the interests of suspects or defendants to be free from all charges, but the aim of defence in criminal cases is essentially to defend legal regulations so that these legal regulations are wrong or unfairly applied in a case. Thus, the aim of defence in criminal cases in every procedural process is the provision of legal assistance to law enforcement officers or enforcers in making or deciding on a fair and correct decision according to the applicable legal regulations. So the duty of the defence attorney is not to

desperately defend the guilt of the suspect or defendant, but rather to uphold law and justice in society.

Based on the contents of the 1945 Constitution, the State guarantees legal assistance for its people, this is based on Article 28D Paragraph (1) which provides recognition, guarantees, protection and legal certainty that is fair to every citizen without distinction of ethnicity, religion or position. The degree of life, this can be interpreted that the right to obtain legal assistance as part of human rights must be considered as a constitutional right of Indonesian citizens, apart from that in Article 27 Paragraph (1) it is stated that all citizens have the same position in law and government and is obliged to uphold the law and its government without precedent, meaning that every Indonesian citizen has the right to be defended, the right to be treated equally before the law and the right to obtain justice. Apart from the Constitution, the provision that the State must provide legal assistance to the public, especially in criminal cases, is also regulated in Law Number 8 of 1981 concerning Criminal Procedure Law or the Criminal Procedure Code (KUHP) contained in Article 54 which states that In the interest of defence, the suspect or murderer can obtain legal assistance from one or more legal advisors during the time and at each level of the investigation.

Article 56 Paragraph (1) states that in the case of a suspect or defendant who is suspected or charged with committing a criminal offense which is punishable by the death penalty or a sentence of fifteen years or more or for those who are incapacitated who are threatened with a sentence of five years or more who do not have their own legal advisors, the officials concerned at each level of examination in the judicial process are obliged to appoint their own legal advisors, Paragraph (2) explains that every legal advisor appointed to act as intended in Paragraph (1), provides free legal assistance, Apart from that, Article 114 also states that in the event that a person is suspected of committing a criminal act before the investigation begins, the investigator is obliged to notify him of his right to obtain legal assistance or he must be accompanied in the case by a legal advisor as intended in Article 56.

Based on the above definition, the provision of free legal aid is often referred to as legal aid, that is, legal aid is a legal service specifically provided to the poor who need free defence both outside and inside the court in criminal, civil, and criminal cases. state administration from someone who understands legal defence, legal rules, and human rights. In Government Regulation Number 83 of 2008 concerning Requirements and Procedures for Providing Free Legal Assistance, Article 1 defines free legal assistance as legal services provided Advocates without receiving honorarium payments include providing legal consultations, exercising power of attorney, representing, assisting, defending, and carrying out other legal actions for the benefit of those seeking justice who are unable. The definition of an incapacitated justice seeker is an individual or group of economically disadvantaged people who require legal services to handle and resolve their legal problems. Based on the Instruction of the Minister of Justice of the Republic of Indonesia Number: M.03-UM.06.02 of 1999, underprivileged people are people who have a very small income, so that their income is not enough to finance their case in court. This condition of incapacity is determined by the Chairperson. The District Court based on the statement of the Village Head.

So that legal assistance to indigent justice seekers can be implemented properly and fulfil the principles of the rule of law, the government issued Law Number 48 of 2009 concerning Judicial Power, where the issue of legal assistance is regulated separately in Chapter XI Article 56 and Article 57, as well as in Law Number 49 of 2009 concerning General Courts which are discussed in Article 68B and Article 68C, which states that every person in a case receives legal assistance, the State bears the costs of the case, parties who cannot afford it must protect the certificate incapacitated from the sub-district where the domicile in question is, as well as every District

Court so that in the form of a legal aid post for justice seekers who are unable to obtain free legal assistance at all levels of the judiciary until the decision on the case has permanent legal force. Based on the description above, it can be concluded that every defendant who undergoes examination in court has the right to receive legal assistance or be accompanied by a legal advisor.

In principle, a defendant is someone who is charged, examined and tried in a court session. A defendant has violated other people's rights in violation of public order. The suspect or defendant must be held accountable for the actions they have committed against state institutions and state apparatus, namely judges, prosecutors, police as law enforcement officers. In accordance with the principle of the presumption of innocence, as someone who has not been found guilty, the defendant must receive a number of legal protections. The defendant's interests not to be treated arbitrarily have actually been protected by various regulations, including Article 117 of the Criminal Procedure Code, Article 33 and Article 34 of Law Number 39 of 1999 concerning Human Rights. Psychologically, a defendant will consider himself as an individual who must deal with institutions that have a strong bargaining position, in this case the State through law enforcement officials.

Criminals in Court Examinations of criminal cases in court must in principle be carried out openly to the public, unless there are regulations which determine otherwise based on special reasons due to the nature of the case or the condition of the person being examined. Arrangements for examining defendants at court hearings are regulated in Chapter XVI of the Criminal Procedure Code. The stages in which a person is examined at the District Court, after the District Court receives a letter of delegation of the case from the public prosecutor, the Chairman of the District Court examines whether the case falls within the authority of the court he leads. If the Chairman of the District Court is of the opinion that the case does not fall within the jurisdiction of the court he presides over, he will issue a letter of determination regarding the return of the case files to the public prosecutor.

METHOD

This research is a type of descriptive-analytical research. According to Soerjono Soekanto, it was said that: "Descriptive-analytical research is intended to provide data that is as accurate as possible about humans, certain conditions or symptoms. The aim is to confirm hypotheses, in order to expand old theories, or within the framework of developing new theories". Researchers use descriptive-analytical research because it describes and analyzes facts in accordance with systematic and factual problem identification regarding the role of legal protection. The method used in this is a normative juridical approach, according to Soerjono Soekanto, normative juridical approach, namely legal research carried out by examining library materials or secondary data as basic material for research by conducting searches on regulations and literature related to the problem being researched. The data collection technique was carried out using general literature study research methods, examining statutory regulations, journals, textbooks and articles and field studies via the internet by opening sites or websites available on the internet. Data obtained from the research system is grouped according to problems and then carried out qualitative analysis, namely analysing legislation related to Legal Protection.

RESULTS AND DISCUSSION

Providing Legal Assistance for People Who Are Unable to Fulfill Human Rights

Law in national and state life is divided into several groups, from the material side there is positive law, Islamic law and customary law. In terms of codified law, criminal law, civil law, commercial/business law, state administrative law and so on are further divided into. In terms of systems, there are those that use the statute law / continental European system, there are those

that are Anglo sexon / common law, there are those that are a mix between the two systems and Islamic law. Not all citizens' understanding of legal instruments can be generalized to the point that they already know, as in the slogan that citizens must know the law (legal fiction teachings). The principle of legal fiction states that every person is deemed to know that a law has been enacted. In other words, legal fiction assumes that everyone knows the law (presumptiio iures de iure).

Facts on the ground show that variations occur, both between those who know and are aware of the law and then comply, there are those who know and are aware of the legal rules but do not comply and deliberately violate them and there are those who really don't know. However, according to this teaching, people's ignorance of the law cannot be forgiven (ignorantia juris non excusat).

Legal fiction can be classified as a principle that contains justification for the State to provide signs to citizens that all citizens must know and obey the law. Law No. 24 of 2009 concerning Flags, Language and National Emblems has various variations, some are based on the fact that new complainants must be followed up, there are states that the motive must first be seen from the writing that is written on the flag, etc. The focus in the field of personal/civil law has provided signs as boundaries between the rights and obligations of citizens and other citizens or citizens and the State and so on.

Balance and proportional rights are a must for all citizens without exception, indeed the legal rights and obligations of citizens cannot be equalized. That is where, according to tradition, justice is seen as the maintenance or restoration of balance or proportion, and the main rule is often formulated as "treating similar things in a similar way", although it is necessary to add to it "and treating things different things in different ways".

The state as a forum for citizens has a role in creating prosperity for its citizens, from a social perspective as well as from a legal perspective and welfare in various fields. Because of this obligation, the State creates legal instruments as a juridical basis so that the flow of carrying out its role is always on track, so that all regulations promulgated must be interpreted as the State's efforts to realize its role in providing protection and prosperity in various fields.

The legal system will run if it is supported by three elements, namely as mentioned below, running in harmony. Lawrence M. Friedman divides legal operations into three which in actual operation are a complex organism where structure, substance and culture interact. If understood simply, this structure concerns the institutional body consisting of judges and people associated with various types of courts. Substance is a legal instrument that is born from the various rules in which the institution is implemented, while culture is an element of attitudes and social values.

Distribution of power in Indonesia is divided into three; executive, legislative and judicial. Each of them has different roles and responsibilities, but they are still in the context of realizing prosperity and order in all fields. The executive's role is very broad, including ensuring that the rights of citizens are realized without exception, the legislature has the obligation to supervise and provide legal instruments together with the executive, while the judiciary is the final solution if the problem of the rights and obligations of citizens does not work as it should. Various sets of regulations have been provided to realize these noble ideals. It is up to the citizens of their own country to be responsive to their rights or not, whether because the sensitivity of their officials is less responsive; This must be investigated for the sake of constitutional demands, namely the welfare of the citizens of the country as a whole.

It is realized that not all legal instruments provided by the executive and legislative branches are able to respond to the interests of citizens, this is because the laws that have been created are only outline provisions. The task of explaining it in detail to citizens is the task of the judiciary with various interpretation rights. The synergy of the three institutions above shows that the role

of a State in providing justice is a non-negotiable necessity, so that whatever difficulties and complications a citizen may have, ensuring that their legal rights are fulfilled is the State's obligation to its citizens in various matters.

Equality before the law and equal access to justice is a universal legal principle which confirms that all people must receive equal treatment before the law and that all people must have the same opportunity to obtain justice. However, it is recognized that in social reality in society it cannot be ruled out that certain circumstances mean that not all groups in society can easily experience prosperity, including the opportunity to obtain justice (access to justice). The poor are an example of a group that is very vulnerable to experiencing injustice in society.

Empirical facts show that not all Indonesian citizens enjoy legal assistance facilities. Considering the large population of Indonesia which reaches 220 million people and the number of poor people which reaches 32 million people and the vast territory of Indonesia, access to justice for those who are classified as poor or unable is still far from the ideal level. The behavior of ignoring the rights of poor groups which results in unfair treatment, can not only occur in the process of daily social life, but can also occur in the judicial process.

At every stage of the criminal justice process, starting from the pre-trial stage to the adjudication stage, suspects and accused are often found not accompanied by a lawyer/advocate. During the investigation process, the rights of suspects are often ignored due to the absence of legal assistance. Likewise, at the trial examination stage, the defense made by the defendant is only based on what he did, even though there are many ways and arguments for the defendant to defend himself so that the judge's decision is not biased. Another thing is with a prisoner who is accompanied by a legal advisor, he can still explain the problem clearly and his legal advisor can provide an excuse before the trial that will lighten the judge's decision against him. Similarly, this reality is found in civil disputes. For plaintiffs or defendants who are accompanied by an advocate/attorney/public defender, they are more optimal in fighting for their client's rights, however, for those who do not have access to legal assistance, it is possible to be defeated in the civil dispute. Moreover, the law enforcement system in Indonesia is not yet operating as it should.

Another problem is the lack of public knowledge about Legal Aid as a right that must be fulfilled and also the lack of notification or outreach from authorized officials in order for suspects or defendants to know their rights, so that sometimes it seems to hinder the process of providing legal aid as a right. from the suspect or accused, in all examination processes and at all levels of justice. The Government must provide legal assistance to convicts as early as possible, this is to prevent any more convicts from having their rights deprived by law enforcement officials, for example, in many cases that are frequently encountered, many convicts have been detained beyond the period of punishment they should have served. Violence often appears in correctional institutions, and the intensity is very high, violence becomes ritual and crystallizes at every inspection. Violence ranges from specific, to forms of physical violence that can cause permanent disability. By looking at these various realities, it seems that equality before the law and legal protection cannot be easily achieved. Differences in ability, both economically and intellectually, make it difficult for justice seekers to access justice. Discrimination often occurs against marginalized communities, starting from making legal regulations, implementing them, to enforcing the law.

Efforts Made to Overcome Obstacles in Providing Legal Aid for Suspects

Efforts by police investigators to overcome obstacles in implementing legal aid for suspects are an effort to reduce obstacles that arise during the process of implementing legal aid. Even though these efforts have been carried out, they have not been fully implemented, so obstacles still exist. These efforts are outlined as follows:

1. Allocate funds to provide legal assistance for suspects.

The government needs to pay special attention to the implementation of legal aid in accordance with Law Number 16 of 2011 concerning Legal Aid. Things to do include proposing appropriate allocation funds to finance legal aid, so that legal aid providers can accompany suspects who are poor (poor). free of charge in accordance with Article 56 paragraph (2) KUHAP. In reality, according to Article 19 of Law Number 16 of 2011, funds to provide legal aid are not required to be given to every region, so the Regional Government has the right to provide legal aid funds or not. This means that regions have less commitment to allocate legal aid funds. This is the commitment that the Regional Government should make to require that the Legal Aid budget be included in the Regional Revenue and Expenditure Budget (APBD). In this way, the allocation of legal aid funds can be fulfilled for underprivileged people who are seeking justice. To overcome this obstacle, the efforts made by the Police are coordinating with Legal Aid Institutions and Regional Governments regarding Legal Aid funds so that regional governments can allocate their funds in terms of allocating legal aid funds.

2. Increase the availability of legal aid providers for suspects who cannot afford it. In order to increase the availability of legal aid providers for indigent (poor) suspects, namely, improving coordination between the police and Legal Aid Institutions. By carrying out this collaboration, the need for legal aid providers to accompany indigent (poor) suspects will be met and balanced. Improving coordination with Legal Aid Institutions has also been carried out by communicating about free legal aid for poor communities.

One way is to socialize Law Number 16 of 2011 concerning Legal Assistance to enforcement officers and legal advisors through POLMAS (Community Police). This program is held by the Police once a year along Jalan Zero Kilometer at the Malioboro intersection by setting up posts. The aim of establishing these posts is to collaborate with legal aid providers and people who wish to consult regarding legal aid can visit these posts. The socialization provided by the Community Police was about the importance of providing legal aid for suspects who are poor (poor) and explaining that poor people who are involved in criminal acts have the right to obtain justice, especially to obtain legal assistance. With legal assistance, the criminal case investigation process can take place in a balanced manner and suspects are no longer afraid when asked questions during an examination or investigation.

3. Improve Human Resources

In order to increase human resources, namely the professionalism of the investigating police to overcome the lack of understanding of the investigating police regarding the suspect's right to obtain legal assistance, efforts that can be made are involving 3 (three) investigating police in socialization or legal counseling regarding the legal assistance provided. Socialization is also carried out in collaboration between the Police Investigating Police and the Legal Aid Institute. This socialization aims to increase legal insight and knowledge for police investigators regarding the rights of indigent/poor suspects to receive legal assistance in accordance with Article 56 of the Criminal Procedure Code and Article 114 of the Criminal Procedure Code.

CONCLUSION

providing legal assistance. Basically, when viewed from a normative juridical perspective, the Criminal Procedure Code clearly regulates the guarantee of protection of human rights for suspects who are indicated to have committed criminal acts, especially in the implementation of providing legal assistance to suspects. The investigator's authority is quite large in providing legal assistance to suspects who are poor and are subject to imprisonment for 5 (five) years or more, namely when the investigator informs the suspect of their rights to receive legal assistance. The stages carried out are examining the suspect, providing legal assistance, providing legal assistance

communicating with the suspect, providing legal assistance by the legal assistance provider. Efforts made to provide legal aid for indigent/poor suspects: a) Allocate funds for the provision of legal aid for indigent suspects. Regional governments need to pay special attention to the implementation of legal assistance in accordance with Law Number 16 of 2011 concerning Legal Aid. b) In accordance with Article 19 of Law Number 16 of 2011, funds to provide legal aid are not required to be given to every region, c) Increasing the availability of Legal Aid Providers for poor communities. In order to increase the availability of Legal Aid Providers for the poor, that is, by establishing cooperation or coordination between the police and the Legal Aid Institute, so that there is a balance between suspects who are unable/poor and providing the necessary legal assistance.

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