



THE ROLE OF THE COURTS IN PROVIDING LEGAL AID SERVICES TO THE POOR BASED ON LAW NUMBER 16 OF 2011 ABOUT LEGAL AID

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ABSTRACT

The implementation of the Legal Aid Post (Posbakum) by the District Court includes 3 (three) scopes of legal services in accordance with the provisions contained in Perma No. 1 of 2014. These 3 things are the service of waiving case fees, and holding trials outside the court building as well as Providing Court Posbakum. In relation to the implementation of Posbakum, the District Court only provides Posbakum room facilities for three accredited Legal Aid Providers or advocate organizations. Meanwhile, regarding legal aid funds for handling each case, it will be submitted by the Court through the Regional Office of the Ministry of Law and Human Rights. However, this does not mean that the function of this facilitator can be simply ignored, considering that the Posbakum is housed in the Court, it is worth noting that there is a special mandate from the State Administrators to the Court to be able to make legal services successful free of charge for the poor, of course. In this way, it can also be hoped that the presence of Posbakum in the Court environment will be able to erode the negative and frightening stigma about the Court for the general public.

Keywords: Role of the Court, Legal Aid, Poor People

INTRODUCTION

Indonesia was idealized and envisioned by the founding fathers as a rule of law (Rechtsstaat/The Rule of Law). Article 1 paragraph (3) of the 1945 Constitution emphasizes that "the Indonesian state is a state of law". There is only sectoral development of the legal sector. Therefore, law should be understood and developed as a unified system. Moreover, the state is to be understood as a legal concept, namely as a rule of law. In law as a unified system there are (1) institutional elements (institutional elements), (2) elements of regulatory norms (instrumental elements), and (3) behavioral elements of legal subjects who bear the rights and obligations determined by the regulatory norms (elements subjective and cultural). The three elements of the legal system include (a) law making activities, (b) law implementation or implementation activities (law administering), and (c) judicial activities for violations of the law (law adjudicating). Usually, the last activity is also commonly referred to as law enforcement activities in the narrow sense (law enforcement), which in the criminal field involves the role of the police, prosecutors, advocates and judges or in the civil field involves the role of advocates (lawyers) and District Court Judges. Apart from that, there are also other activities that people often forget, namely: (d) socialization and legal education (law socialization and law education)

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in the broadest sense which are also related to (e) management of legal information (law information management) as a supporting activity. These five activities are usually divided into three areas of state power functions, namely (i) legislative and regulatory functions, (ii) executive and administrative functions, and (iii) judicial or judicial functions.

The legislative organ is the parliamentary institution, the executive organ is the government bureaucracy, while the judicial organ is the bureaucracy of the law enforcement apparatus which includes the police, prosecutors and courts. All of this must also be connected to their respective hierarchies starting from the highest to the lowest organs, namely those related to central level apparatus, provincial level apparatus and district/city level apparatus. In all the elements, components, hierarchies and aspects which are systemic and interrelated with each other,³ is included in the understanding of the legal system which must be developed within the framework of the Indonesian Legal State based on the 1945 Constitution. If the dynamics relate to all aspects, elements, hierarchies and these components do not work in a balanced and synergistic manner, then the law as a unified system cannot be expected to be upheld as it should be. For example, because our nation inherited the Continental European legal tradition (civil law), we tend to devote a lot of attention to law-making activities, but not as much attention to law enforcement activities (law enforcing). In fact, we simply adhere to the paradigm and doctrine of thinking that is common in the civil law system, namely the application of the theory of fiction which assumes that once a legal norm is established, then at that time everyone is considered to know the law. A person's ignorance of the law cannot exempt that person from legal action. This theory is also justified by a principle that is also universally recognized, namely equality before the law. Rich people in Jakarta must be treated the same by law as poor people in remote areas in Mentawai (West Sumatra), in the Baliem Valley (Papua), the Kubu tribe on the Jambi-South Sumatra border, or remote tribes on small islands throughout the archipelago. Law enforcement in a broad sense includes activities to implement and apply the law as well as taking legal action against any violations or legal deviations committed by legal subjects, either through judicial procedures or through arbitration procedures and other dispute resolution mechanisms (alternative disputes or conflicts resolution). In fact, in a broader sense, law enforcement activities also include all activities intended so that the law as a set of normative rules that regulate and bind legal subjects in all aspects of social and state life are truly obeyed and truly carried out as they should.

In a narrow sense, law enforcement involves taking action against every violation or deviation from statutory regulations, especially more narrowly through the criminal justice process which involves the role of police officers, prosecutors, advocates or lawyers, and judicial bodies. ⁴ Therefore, In a narrow sense, the main actors whose roles are very prominent in the law enforcement process are the police, prosecutors, lawyers and judges. These law enforcers can be seen first of all as people or human elements with their own qualities, qualifications and work culture. In this sense, the issue of law enforcement depends on the actors, perpetrators, officials or law enforcement officers themselves.

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Second, law enforcement can also be seen as an institution, agency or organization with its own bureaucratic qualities.

In this regard, we see law enforcement from an institutional perspective which, in fact, has not been institutionalized rationally and impersonally (institutionalized). However, these two perspectives need to be understood comprehensively by looking at their relationship to each other as well as their relationship to various factors and elements related to the law itself as a rational system. One important aspect in the context of law enforcement is the process of acculturation, socialization and legal education (law socialization and law education). Without being supported by awareness, knowledge and understanding by legal subjects in society, it is impossible to expect a legal norm to be upheld and obeyed. Therefore, the agenda for civilisation, correction and legal education needs to be developed separately in order to realize the idea of a rule of law in the future. Several factors related to this matter are (a) development and management of legal information systems and infrastructure based on information technology; (b) increasing Publication, Communication and Legal Socialization Efforts; (c) development of legal education and training; and (d) promoting the image and examples in the legal field.

LITERATURE REVIEW

Based on the background above, the problem in this paper can be formulated as follows, namely: What is the mechanism for providing legal aid as mandated by Law Number 16 of 2011 concerning Legal Aid?

METHOD

This research activity is an activity carried out as an effort to understand and solve problems scientifically, regularly and logically (makes sense). A research was initiated because there was a gap between *das sollen* and *das sein*, namely between the existing theory and the reality that occurs in the field, so the approach method used in this research is a normative juridical approach considering that the problems being researched and studied are in addition to adhering to the juridical aspect, namely based on norms, regulations, legal theories. In other words, this research does not only refer to applicable legal products but is also based on the reality that occurs in the field. The specifications used in this research are analytical descriptive because this research is expected to obtain a clear, detailed and systematic picture, while it is said to be analytical because the data obtained will be analyzed to solve problems in accordance with applicable legal provisions. The aim of the research is to use analytical descriptive specifications. to provide an objective picture of the reality of the object being studied.

RESULTS AND DISCUSSION

1. Mechanism for Providing Legal Aid Mandated by Law Number 16 of 2011 concerning Legal Aid

- a. Requirements for Providing Legal Aid To obtain Legal Aid, Legal Aid Applicants must meet the following requirements:
 - 1) Submit a written application containing at least the identity of the Legal Aid Applicant and a brief description of the main issue for which Legal Aid is requested
 - 2) Submit documents relating to the Case; And
 - 3) Attach a certificate of poverty from the Village Head, Village Head, or official at the same level where the Legal Aid Applicant lives. Providing Legal Aid is carried out by the Legal Aid Provider, who must meet the following requirements:
 - a) Incorporated;
 - b) Accredited;
 - c) Having a permanent office or secretariat;
 - d) Have administrators; And
 - e) Has a Legal Aid program.
- b. Procedures for Providing Legal Aid Legal Aid Applicants submit a written request for Legal Aid to the Legal Aid Provider which must contain at least:
 - 1) The identity of the Legal Aid Applicant is proven by an identity card and/or other documents issued by the authorized agency. In the event that 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 authorized agency according to the Legal Aid Provider's domicile.
 - 2) A brief description of the main issue for which Legal Assistance is requested. The application for Legal Assistance as intended must include:
 - a) Poor certificate from the Village Head, Village Head, or official of the same level where the Legal Aid Applicant lives. In the event that the Legal Aid Applicant does not have a poverty certificate, the Legal Aid Applicant can attach a Public Health Insurance Card, Direct Cash Assistance, Poor Rice Card, or other documents as a substitute for a poverty certificate.
 - b) Documents relating to the case. In the event that the Legal Aid Applicant does not have the requirements as referred to above, the Legal Aid Provider will assist the Legal Aid Applicant in obtaining these requirements. The authorized agency according to the domicile of the Legal Aid Provider is obliged to issue a temporary address certificate and/or other documents for the purposes of receiving Legal Aid.

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The Village Head, Village Head, or official of the same level according to the domicile of the Legal Aid Provider is obliged to issue a poverty certificate and/or other documents as a substitute for a poverty certificate for the purposes of receiving Legal Aid. Legal Aid applicants who are unable to prepare a written application can submit an oral application. In the event that a request for Legal Aid is submitted orally, the Legal Aid Provider shall provide it in written form. The application is signed or thumbprinted by the Legal Aid Applicant. Legal Aid Providers are obliged to check the completeness of the requirements as intended in Article 6 within a maximum of 1 (one) working day after receiving the Legal Aid application file. In the event that the application for Legal Aid meets the requirements, the Legal Aid Provider is obliged to convey written willingness or rejection of the application within a maximum of 3 (three) working days from the time the application is declared complete. If the Legal Aid Provider expresses willingness, the Legal Aid Provider provides Legal Aid based on a special power of attorney from the Legal Aid Recipient. In the event that an application for Legal Aid is rejected, the Legal Aid Provider is obliged to provide reasons for the rejection in writing within a maximum of 3 (three) working days from the time the application is declared complete. Providing Legal Aid by the Legal Aid Provider to the Legal Aid Recipient is provided until the legal problem 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. Providing Legal Assistance in Litigation is carried out by Advocates who have the status as administrators of Legal Aid Providers and/or Advocates recruited by Legal Aid Providers. c. Implementation of the Legal Aid Budget Legal Aid Providers carry out Litigation and Non-litigation Legal Aid in accordance with the provisions stipulated in the Legal Aid implementation agreement and the provisions of the laws and regulations. Distribution of Litigation Legal Aid funds is carried out after the Legal Aid Provider completes the case at each stage of the proceeding process and the Legal Aid Provider submits a report accompanied by supporting evidence. The distribution of Legal Aid funds is calculated based on a certain percentage of the rate per case according to the standard costs for implementing Litigation Legal Aid as intended in Article 21 PP 42/2013. The distribution of Legal Aid funds at each stage of the proceeding 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 stages of the procedural process are the stages of case handling in: 1. Criminal cases, including investigation and trial at the first level court, appeal level trial, cassation level trial, and judicial review; 2. Civil cases, including peace efforts or first level court decisions, appeal court decisions, cassation court decisions, and judicial review; and 3. State administration cases, including preliminary examinations and decisions of the first level court, appeal court decisions, cassation level court decisions, and judicial review. Distribution of Non-litigation

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Legal Aid funds is carried out after the Legal Aid Provider completes at least 1 (one) activity in the Non-litigation activity package as intended in Article 23 paragraph (3) PP 42/2013 and submits a report accompanied by supporting evidence. The distribution of Legal Aid funds is calculated based on the rate per activity in accordance with the standard costs for implementing Non-litigation Legal Aid as intended in Article 21 PP No. 42/2013. The Minister has the authority to test the veracity of bills for the completion of the implementation of Legal Aid as a basis for distributing funds for Litigation and Non-litigation Legal Aid as intended in Article 27 and Article 28 of PP 42/2013. Further provisions regarding the procedures for implementing the distribution of the Legal Aid Budget are regulated by a Ministerial Regulation. d. Accountability 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 event that the Legal Aid Provider receives funding sources other than the APBN, the Legal Aid Provider reports the realization of receipt and use of these funds to the Minister. The report on the realization of receipt and use of funds other than the APBN is reported separately from the report on the realization of the implementation of the Legal Aid Budget as intended in Article 30 paragraph (1) PP. 42/2013 . For Litigation Cases, the realization report as intended in Article 30 must include at least: 1. A copy of the case decision which has permanent legal force; and 2. Case developments that are in the process of being resolved. For non-litigation activities, the realization report as intended in Article 30 PP No. 42/2013, must attach a report of activities that have been carried out. Further provisions regarding procedures for reporting on the implementation of the Legal Aid Budget are regulated by Ministerial Regulations. The Legal Aid Provider manages the financial administration of the Legal Aid implementation separately and separately from the financial administration of the Legal Aid Providing organization or other financial administration. The Minister prepares and submits a report on the realization of the implementation of Legal Aid to the House of Representatives at the end of each fiscal year. e. Supervision The Minister supervises the provision of Legal Aid and the distribution of Legal Aid funds. Supervision by the Minister is carried out by work units whose duties and functions are related to providing Legal Aid to the Ministry. The work unit in carrying out supervision as intended in Article 34 paragraph (2) PP 42/2013 has the following duties: 1. Supervise the provision of Legal Aid and distribution of Legal Aid funds; 2. Receive monitoring reports carried out by the regional supervisory committee; 3. Receive reports from the public regarding alleged irregularities in the provision of Legal Aid and distribution of Legal Aid funds; 4. Clarifying allegations of irregularities in the provision of Legal Aid and distribution of Legal Aid funds reported by the regional supervisory committee and/or the community; 5. Propose sanctions to the Minister for irregularities in the provision of Legal Aid and/or distribution of Legal Aid funds;

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and 6. Make a report on the implementation of supervision to the Minister. In carrying out supervision in the regions, the Minister forms regional supervisory committees. The regional supervisory committee consists of representatives from: 1. Ministry Regional Office; and 2. Provincial regional government legal bureau. The regional supervisory committee has the following duties: 1. To supervise the provision of Legal Aid and the distribution of Legal Aid funds; 2. Make regular reports to the Minister through the work unit whose duties and functions are related to providing Legal Aid to the Ministry; and 3. Proposing sanctions to the Minister for irregularities in the provision of Legal Aid and/or distribution of Legal Aid funds through work units whose duties and functions are related to providing Legal Aid to the Ministry. The regional supervisory committee in making decisions prioritizes the principle of deliberation. In the event that deliberation is not reached, a decision is taken based on the majority vote. The Minister, on the recommendation of the supervisor, may forward findings of irregularities in the provision of Legal Aid and distribution of Legal Aid funds to the authorized agency for follow-up in accordance with the provisions of the laws and regulations. In the event that the Legal Aid Recipient does not receive their rights in accordance with the provisions of Article 12 of Law Number 16 of 2011 concerning Legal Aid, the Legal Aid Recipient can report the Legal Aid Provider to the Minister, the legal aid provider's parent organization, or to the authorized agency. In the event that the Advocate Providing Litigation Legal Aid does not carry out the provision of Legal Aid as intended in Article 13 until the case is completed or has permanent legal force, the Legal Aid Provider is obliged to find a replacement Advocate. If a violation is found in the provision of Legal Aid by a Legal Aid Provider to a Legal Aid Recipient, the Minister can: 1. Cancel the agreement to implement Legal Aid; 2. Stop providing the Legal Aid Budget; and/or 3. Not providing a Legal Aid Budget in the following fiscal year. In the event that the Minister cancels the agreement as intended in number 1 above, the Minister appoints another Legal Aid Provider to accompany or carry out the Recipient's powers. Clarifying alleged irregularities in the provision of Legal Aid and distribution of Legal Aid funds reported by the regional supervisory committee and/or the community; 5. Propose sanctions to the Minister for irregularities in the provision of Legal Aid and/or distribution of Legal Aid funds; and 6. Make a report on the implementation of supervision to the Minister. In carrying out supervision in the regions, the Minister forms regional supervisory committees. The regional supervisory committee consists of representatives from: 1. Ministry Regional Office; and 2. Provincial regional government legal bureau. The regional supervisory committee has the following duties: 1. To supervise the provision of Legal Aid and the distribution of Legal Aid funds; 2. Make regular reports to the Minister through the work unit whose duties and functions are related to providing Legal Aid to the Ministry; and 3. Proposing sanctions to the Minister for irregularities in the provision of Legal

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of Article 12 of Law Number 16 of 2011 concerning Legal Aid, the Legal Aid Recipient can report the Legal Aid Provider to the Minister, the legal aid provider's parent organization, or to the authorized agency. In the event that the Advocate Providing Litigation Legal Aid does not carry out the provision of Legal Aid as intended in Article 13 until the case is completed or has permanent legal force, the Legal Aid Provider is obliged to find a replacement Advocate. If a violation is found in the provision of Legal Aid by a Legal Aid Provider to a Legal Aid Recipient, the Minister can: 1. Cancel the agreement to implement Legal Aid; 2. Stop providing the Legal Aid Budget; and/or 3. Not providing a Legal Aid Budget in the following fiscal year. In the event that the Minister cancels the agreement as referred to in number 1 above, the Minister appoints another Legal Aid Provider to accompany or carry out the Recipient's powers. Ministry Regional Offices; and 2. Provincial regional government legal bureau. The regional supervisory committee has the following duties: 1. To supervise the provision of Legal Aid and the distribution of Legal Aid funds; 2. Make regular reports to the Minister through the work unit whose duties and functions are related to providing Legal Aid to the Ministry; and 3. Proposing sanctions to the Minister for irregularities in the provision of Legal Aid and/or distribution of Legal Aid funds through work units whose duties and functions are related to providing Legal Aid to the Ministry. The regional supervisory committee in making decisions prioritizes the principle of deliberation. In the event that deliberation is not reached, a decision is taken based on the majority vote. The Minister, on the recommendation of the supervisor, may forward findings of irregularities in the provision of Legal Aid and distribution of Legal Aid funds to the authorized agency for follow-up in accordance with the provisions of the laws and regulations. In the event that the Legal Aid Recipient does not receive their rights in accordance with the provisions of Article 12 of Law Number 16 of 2011 concerning Legal Aid, the Legal Aid Recipient can report the Legal Aid Provider to the Minister, the legal aid provider's parent organization, or to the authorized agency. In the event that the Advocate Providing Litigation Legal Aid does not carry out the provision of Legal Aid as intended in Article 13 until the case is completed or has permanent legal force, the Legal Aid Provider is obliged to find a replacement Advocate. If a violation is found in the provision of Legal Aid by a Legal Aid Provider to a Legal Aid Recipient, the Minister can: 1. Cancel the agreement to implement Legal Aid; 2. Stop providing the Legal Aid Budget; and/or 3. Not providing a Legal Aid Budget in the following fiscal year. In the event that the Minister cancels the agreement as intended in number 1 above, the Minister appoints another Legal Aid Provider to accompany or carry out the Recipient's powers. Ministry Regional Offices; and 2. Provincial regional government legal bureau. The regional supervisory committee has the following duties: 1. To supervise the provision of Legal Aid and the distribution of Legal Aid funds; 2. Make regular reports to the Minister through the work unit whose duties and

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CLOSING

Conclusion

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

1. Submit a written application containing at least the identity of the Legal Aid Applicant and a brief description of the main issue for which Legal Aid is requested;
2. Submit documents relating to the Case; And
3. Attach a certificate of poverty from the Village Head, Village Head, or official at the same level where the Legal Aid Applicant lives. Providing Legal Aid is carried out by the Legal Aid Provider, who must meet the following requirements:
 - a. Incorporated;
 - b. Accredited;
 - c. Having a permanent office or secretariat;
 - d. Have administrators; And
 - e. Has a Legal Aid program. Procedures for providing assistance can be carried out by:
 1. The identity of the Legal Aid Applicant is proven by an identity card and/or other documents issued by the authorized agency. In the event that 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 authorized agency according to the Legal Aid Provider's domicile.
 2. A brief description of the main issue for which Legal Assistance is requested.
 - b. The implementation of Legal Aid Posts by the District Court includes 3 (three) scopes of legal services in accordance with the provisions contained in Perma No. 1 of 2014. These 3 things are 1. Case Fee Waiver Services, 2. Organizing trials outside the court building and 3. Provision of court legal aid posts (Posbakum). In relation to the implementation of the Legal Aid Post (Posbakum), the District Court only provides Posbakum room facilities for three accredited Legal Aid Providers or advocate organizations. Meanwhile, regarding legal aid funds for handling each case, it will be submitted by the Court through the Regional Office of the Ministry of Law and Human Rights. However, this does not mean that the function of this facilitator can be simply ignored, considering that this Legal Aid Post is located in the Court, it is worth noting that there is a special mandate from State

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Administrators to the Court to be able to make legal services successful free of charge for the poor, of course. In this way, it can also be hoped that the presence of Posbakun in the Court environment will be able to erode the negative and frightening stigma about the Court for the general public.

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