

The Role of Regional Government in Managing Legal Aid for the Poor

ABSTRACT

Economic limitations often prevent poor people from getting legal aid when facing legal problems, a social injustice. This paper examines the responsibility of regional government in providing legal aid to this community group. The research method used is a normative legal approach, relying on data from legal literature studies. The conclusion of the study shows that legal aid has a positive impact in increasing the understanding of rights for poor people, especially in the economic field, facilitating access to justice, and encouraging social change towards better welfare in various aspects for all Indonesian people.

Keyword: Regional Government, poor people, legal aid, regional regulations, supremacy of law

INTRODUCTION

It is very difficult for the poor to obtain justice without intervention and assistance from the state. They are vulnerable to having their rights ignored, which makes them experience injustice and discrimination. Moreover, in legal matters, the poor tend not to get equal access to the law. In fact, the poor should also receive guarantees from the state, especially in legal matters. Differences in the social structure of society are not an obstacle to obtaining the rights they should have.

The principle of universal law states that everyone must receive equal treatment in the eyes of the law. Then, everyone must have the same opportunity to obtain justice (Erasmus AT Napitupulu and Pascalis Jiwandono, 2014:8). However, in practice, many poor people cannot easily obtain justice and equality before the law.

As a law state, Indonesia must prioritize law above all else. According to article 27 paragraph (1), "all citizens have the same legal standing; therefore, they are

obliged to uphold the law and government without exception.” The rights of citizens to “obtain recognition, protection, guarantees, and fair legal certainty” are also stated in Article 28D.

As a country of law, law must be above all (Supremacy of Law). The consequence of law state is human rights became the main issue. The presence of the state related to the existence of social disparities in society aims to open up opportunities for vulnerable groups to obtain justice. According to article 34 of 1945 Constitution, “the poor and neglected children must be cared for by the state”. Based on this, legal aid for the poor is mandatory. If the poor are unable to bring in an advocate to accompany them in a legal case, the state is obliged to organize a system that guarantees the poor to obtain free legal aid. However, this practice has not been fully implemented. This article discusses the extent to which regional government provides legal aid to the poor.

RESEARCH METHOD

This study uses a normative legal approach as a problem-solving method, namely how to collect data from legal literature sources (Supranto, 2003:2). This method applies normative case studies to analyze legal behavior problems systematically so that a general understanding of the legal issues being studied is obtained. The legal material collection technique used is a literature study, by studying various literature or written data that is relevant to the research problem, which is then processed into legal materials. Legal data obtained from the literature study is analyzed qualitatively.

RESULTS AND DISCUSSION

Legal Aid Concept

Every underprivileged individual has the right for legal aid. Fulfillment of this right is an integral part of right for fair and impartial trial, and is a fundamental human right. Legal aid has now developed beyond defending victims of political rights violations, becoming a method to advance and defend social, economic, and cultural rights (Adnan Buyung Nasution, 2007: xi-xii).

Everyone has the right to legal protection without discrimination based on race, skin color, gender, language, religion, political views, origin, wealth, birth, or other status (A Patra M. Zen and Daniel Hutagalung, 2006:47). Various legal literature emphasizes that guaranteeing human rights is one of the prerequisites of a law state. The concept of law state always places protection of human rights as its main characteristic. Protection is not only a normative requirement, but must also be implemented in real terms (Ni'matul Huda & Sri Hastuti Puspitasari, 2007:5).

Providing legal aid for poor people is an effort to encourage state's responsibility as an implementation of law state that recognizes, protects, and guarantees the basic rights of every citizen to obtain equal standing before the law. According to Law Number 16 of 2011, legal aid is “financial support from the state for underprivileged people who are facing legal problems so that they can access justice”. Thus, free legal aid is presented to strengthen the principle of a law state. The guarantee of the right to legal aid was confirmed by the Constitutional Court through Decision Number 006/PUU-II/2004 which encouraged regional government to “allocate legal aid budgets through the APBD”.

Legal Aid in Indonesia

Although 1945 Constitution of Republic of Indonesia does not explicitly state that the provision of legal aid is state responsibility, Indonesia's status as a law state implies that this right is a fundamental right of every citizen. This basic right emphasizes the obligation of every individual to obtain justice without discrimination.

Therefore, right to legal aid is rooted in the constitution. “The state guarantees and ensures the protection of this right, especially for the less fortunate”, as stated in Article 1 paragraph (3) and Article 27 of the 1945 Constitution and reinforced by the Constitutional Court Decision Number 006/PUU-II/2004.

In Constitutional Court decision, constitutional judges emphasized that Article 1 paragraph (3) of 1945 Constitution clearly states that “Indonesia is a law state”. Consequently, the right to obtain legal aid, as part of human rights, must be recognized as a constitutional right of citizens. This principle has been regulated in Article 28D paragraph (1) of 1945 Constitution.

Bagir Manan (2001:59) argues that the existence of this guarantee and protection shows how important legal aid is in ensuring the right of every person to defend themselves from arbitrary and discriminatory legal actions. Thus, the state's goal of realizing equality before the law can be achieved through the availability of legal aid.

Normatively, Indonesian citizens have the right to obtain legal aid, which has been regulated in various laws and regulations (Trimedya Panjaitan, 2007:98; Frans Hendra Winarta, 2009:172). These regulations include the Reglement Op De Rechtsvordering (Rv), the Civil Code, the Criminal Procedure Code, the Law on Judicial Power, the Law on Human Rights, the Law on Advocates, and the Law on Legal Aid.

A number of these provisions mandate constitutional responsibility to the Central and Regional Governments to provide legal aid as a form of fulfilling citizens' rights to equality. In addition to free legal aid, efforts to increase legal knowledge

and awareness of the poor are also carried out so that they understand their legal rights as individuals and citizens.

Law Number 16 of 2011 concerning Legal Aid regulates various important aspects, including the definition of legal aid, recipients and providers of legal aid, rights and obligations of recipients, requirements and procedures for submission, funding, prohibitions, and criminal provisions. Article 1 of Law No. 16 of 2011 defines legal aid “as free legal services from legal aid providers to legal aid recipients, who are poor people or groups”. Legal aid providers are legal aid institutions or community organizations that provide these services based on this law.

Funding for legal aid from State pocket is considered insufficient to meet needs of providing legal aid for all poor people in Indonesia. Although the main responsibility is given to the relevant ministry, Law No. 16 of 2011 also give opportunities for Regional Governments to budget legal aid funds in the Regional Budget as an effort to expand access to justice. Therefore, Article 19 of Law No. 16 of 2011 states that “Regions can allocate a budget for legal aid in the Regional Budget, and further provisions will be regulated through Regional Regulations”.

Role of Regional Government

Regional Government plays a crucial role in state governance. Regional Government implements the principle of decentralization to be managed autonomously by the Regions. Regional Government has the flexibility to regulate its own territory within the framework of regional autonomy. Regional Government basically has the opportunity to pursue legal aid programs through the authority.

The presence of the Legal Aid Law is expected to answer the community's need for access to justice. Until now, many Indonesians still have difficulty obtaining legal aid. The Legal Aid Law carries the consequence of an obligation for the

Government to allocate budget for legal aid in state pocket, which is allocated through the relevant ministries.

As an integral part of Republic of Indonesia, Regional Government also bears state responsibility in guaranteeing and protecting the constitutional rights of citizens. Legal aid has not reached the wider community or low-income groups, so they have difficulty accessing justice due to financial limitations in realizing their constitutional rights.

Although main responsibility for providing legal aid lies with Indonesian Ministry of Law and Human Rights, the makers of the Legal Aid Law are aware of the limitations of the APBN in fulfilling all requests for legal aid in various regions. Therefore, Article 19 of the Legal Aid Law provides space for regions to allocate legal aid funds in the APBD.

However, the Legal Aid Law does not require regions to allocate these funds, because Article 19 paragraph (1) uses the word "can," giving regions the choice to regulate it or not. However, if a region has the will to allocate legal aid funds to guarantee the constitutional rights of citizens to legal protection, legal certainty, equality before the law, and protection of human rights through the APBD, then regional government and DPRD are required to regulate it in a Regional Regulation.

The formation of a Regional Regulation on Legal Aid is an urgent step as a manifestation of the commitment and political will of each Regional Government towards the underprivileged community in its region. This Regional Regulation basically aims to guarantee public services in the legal field provided by regional government to its people, confirming the types of services, how to access them, and the clarity of regional government's obligations.

This Regional Regulation outlines the fundamental principles for ensuring and safeguarding the entitlement to legal aid as an integral component of public services for the region's inhabitants. Consequently, the creation of a Regional Regulation concerning the Provision of Legal Aid is critically important, not only to secure the right to legal assistance and thereby enhance public services but also

to uphold the constitutional entitlements of regional residents in their pursuit of well-being.

Regional government's engagement in the legal aid program falls under concurrent governmental responsibilities that are obligatory and linked to essential services, particularly community safeguarding (Article 12 paragraph (1) letter e of Law No. 23 of 2014). The significant necessity to augment both the quantity and quality of legal aid services for low-income individuals, coupled with the Central Government's constraints, necessitates the involvement of regional government, especially in the organization and funding of legal aid, to broaden its accessibility.

Additional stipulations regarding the delivery of Legal Aid financed by the Regional Budget represent a form of regional government's contribution to this program. By possessing the authority to allocate funds for legal aid through the Regional Budget, regional government assumes an active role in the implementation of legal aid utilizing regional financial resources. This is also stipulated in "Permendagri No. 64 of 2020, point 51, which permits Regional Governments to budget for the Implementation of Legal Aid in the 2021 Fiscal Year Regional Budget", in accordance with Article 19 of Law No. 16 of 2011 concerning Legal Aid. Nevertheless, in the execution of legal aid, regional government is obligated.

CONCLUSION

Law Number 16 of 2011 empowers Regional Governments to establish regional regulations pertaining to the implementation of legal aid. These regional regulations serve as a mechanism for regional government to aid and facilitate individuals who require legal support in resolving legal matters. The establishment of Regional Regulations on the Implementation of Legal Aid at the regional level seeks to provide legal certainty in the provision of such assistance within the area, with the expectation of fostering a sense of justice and legal clarity for the region's low-income residents.

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