

Implementation of Legal Aid for the Underprivileged from an Islamic Law Perspective (Case Study at the Peradi Malang Legal Aid Center)

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Abstract. *This study aims to analyze the implementation of legal aid for the underprivileged from an Islamic law perspective at the Peradi Malang Legal Aid Center and what are the obstacles in the implementation of legal aid for the underprivileged at the Peradi Malang Legal Aid Center. The research method used is empirical legal research or sociological juridical research., namely studying the applicable legal provisions and what happens in reality in society. The first research results and discussion, that the implementation of legal aid for the underprivileged is very mandatory because it concerns the constitutional rights of every citizen. This is in accordance with Law No. 16 of 2011 concerning Legal Aid and which is also implemented by the Peradi Malang Law Office. The implementation of legal aid in Islam is of course based on the principles and principles of Islamic law which are sourced from the Qur'an and Sunnah, so legal aid and legal services in the process of enforcing Islamic law should be aimed at justice, goodness, and the welfare of humanity itself. Second, the implementation of legal aid for the poor has not been optimal so far. The implementation of legal aid through government legal aid programs still has limitations so that it cannot guarantee respect for the individual rights of the poor.*

Keywords: *Community; Legal; Islamic; Underprivileged.*

1. Introduction

Legal aid is legal services provided by Legal Aid Providers free of charge to Legal Aid Recipients. Legal aid is a medium that can be used by everyone to claim their rights against treatment that is not in accordance with applicable legal rules. Legal aid can be provided to everyone without distinguishing a person's social status. This is like what exists in a legal state where the state recognizes and protects the human rights of every individual. The state's recognition of individual rights is

implied in equality of standing before the law for all people. Article 28D paragraph (1) of the 1945 Constitution reads, "Everyone has the right to recognition, guarantees, protection and fair legal certainty as well as equal treatment before the law." Therefore, every individual is guaranteed by law to obtain legal assistance.¹

Efforts to protect society in law are very important because legal aid is a means that can be used by underprivileged citizens to claim rights that are not in line with the applicable legal norms. Legal aid is so basic, meaning that poor people also have the right to receive free legal aid (*Pro Bono Publico*) as a form of equal rights before the law. Because Indonesia is a country of law that upholds Human Rights (HAM) and democracy, every individual who needs legal aid has the right to receive equal treatment and protection before the law. Therefore, every crime or unlawful act that is accused of a suspect, they have the right to legal aid. The idea or concept of legal aid is generally the same everywhere, providing legal services to people who cannot afford a lawyer regardless of their religion, origin, ethnicity or political beliefs.²

The birth of Law No. 16 of 2011 concerning Legal Aid is based on the fact that the State guarantees the constitutional rights of every person to receive recognition, guarantee of protection, and certainty of fair law as well as equal treatment before the law as a means of protecting human rights. Because the state is responsible for providing legal aid for the poor as a manifestation of access to justice, this is also in accordance with what is stated in the Vision and Mission of the Supreme Court, one of which is to provide fair legal services. The establishment of Law Number 16 of 2011 concerning Legal Aid is the basis for the State to guarantee citizens, especially for some people or groups of poor people, to be able to obtain access to justice.³ Providing guarantees for citizens' rights to obtain legal aid, especially the poor, as a state's obligation. This is a form of real consequence of the state's recognition that all citizens are equal before the law and government and are required to uphold the law and government without exception.⁴ The Legal Aid Center or also known as the Legal Aid Institute (LBH) has an important role in the lives of the community, especially in the development of legal knowledge as its goal is to protect the underprivileged, encourage public legal awareness and play a critical role in state legal policies that are not biased and detrimental to the rights of the community, especially in the district court area through its involvement.⁵ The Legal Aid Center or LBH in providing free or no-cost legal aid in

¹Frans Hendra Winarta, *Legal Aid: A Human Right, Not Mercy*, Media Elite, Jakarta, 2000, p. 51

²Jakarta Legal Aid Institute (LBH) Module, p. 6

³Yususf Saefudin. *Implementation of Legal Aid Provision for the Poor in Central Java Based on Law Number 16 of 2011 Concerning Legal Aid*. *Jurnal Idea Hukum* 1, No 1, 2015, p. 26

⁴Ning Herlina and Yanuar Syam Putra. *Legal Aid for Convicts and Victims*. Palembang: Noefikri, 2017, p. 94

⁵Diding Rahmat, *The Existence of the Cirebon Legal Aid Institute (LBH) in Assistance Criminal cases in Cirebon District Court*, *Unification Journal*, Vol.03, 01, 2016, p. 89

criminal and civil cases for those who are unable in the economic sector or other sectors in order to uphold justice is very important because every person or group of people are equal before the law and have the opportunity to obtain justice, which is emphasized in the 1945 Constitution of the Republic of Indonesia Article 27 paragraph (1) which states that all citizens have the same status before the law and government and are obliged to uphold the law and government without exception.

The granting of legal power or representation in the legal field emphasizes the appointment of a person to carry out an obligation. In the legal field in a narrow sense, representation aims to give power to another person to complete (wakalah, representative; muwakil, who represents; representative who represents legal matters).

In Islam, a person is allowed to delegate a certain action to another person, where the other person acts on behalf of the grantor or representative as long as the delegated activity is permitted by religion. In addition, in the concept of Islamic law, humans have the same position before the law and are entitled to receive guarantees of justice. From this concept, the fulfillment of legal rights and obligations is the goal of legal justice. However, what needs to be underlined is that the absolute authority of the law maker is in the hands of Allah SWT, while the ruler and the people are given the mandate to resolve public affairs based on revelation and the rest is determined by humans themselves through ijtihad based on the principle of deliberation. The legal basis for the granting of legal power in litigation is included in the general legal basis for representation, including in QS an-nisa' verse 58:

🕌 **prayer** **إِلَىٰ أَهْلِهَا** troop

God willing God willing

Meaning: "Indeed, Allah orders you to convey the message to those who are entitled to receive it, and (orders you) when determining law between people, so that you determine it fairly. Indeed, Allah will give you the best teaching. Indeed, Allah is All-Hearing, All-Seeing." (QS an-nisa' verse 58).

The current problem is whether the regulations regarding legal aid for the underprivileged are being implemented in the community and whether in practice all these provisions have been implemented properly and what obstacles or barriers have been encountered. One of the basic rights of citizens mandated by the constitution is equality before the law and the right to obtain fair legal certainty (access to justice).⁶ This applies to every citizen. There is a growing perspective in society, namely the high cost of handling legal proceedings. This mindset that is built then influences actions, especially in the underprivileged

⁶Ombudsman.go.id, accessed on April 1, 2024, at 12.42 Wib

community. So that if they have legal problems, they are reluctant to go through the court process and just accept the unfair treatment without doing anything. They do not know where else to fight for their rights. In other situations, unfair treatment is responded to with violence, so that they become victims. Finally, access to justice is considered unable to reach the lower levels of society. This study aims to analyze the implementation of legal aid for underprivileged communities from an Islamic law perspective at the Peradi Malang Legal Aid Center and what are the obstacles in the implementation of legal aid for underprivileged communities at the Peradi Malang Legal Aid Center.

2. Research methods

The method of approaching the problem in this research, namely sociological juridical, is one that studies "law as it is in society", which is based on the view that law is a pattern of institutionalized social behavior and exists as an empirical social variable, using a sociological juridical/sociology of law research approach, namely a research approach that studies the influence of society on law, to what extent the symptoms that exist in society can influence law. The type of research in writing this thesis is empirical legal research, also known as empirical research. sociological juridical.⁷ Data collection techniques in empirical legal research there are 3 (three) techniques used, either alone or separately or used together at once. The three techniques are interviews, questionnaires and observations, and this study uses a data analysis method, namely the Qualitative Descriptive Method.

3. Research Results and Discussion

3.1. Referral for Legal Aid for the Underprivileged at the Peradi Malang Legal Aid Center

There are several references for providing legal aid to the underprivileged, namely:

- 1) Advocate Law Chapter I, General Provisions, Article 1: Legal Aid is a legal service provided by an Advocate free of charge to Clients who cannot afford it. CHAPTER VI, Free Legal Aid, Article 22: "(1) Advocates are required to provide free legal aid to justice seekers who cannot afford it. (2) Provisions regarding the requirements and procedures for providing free legal aid as referred to in paragraph (1) are further regulated by Government Regulation."
- 2) Government Regulation Article 2: Advocates are required to provide free legal assistance to those seeking justice.

⁷Mukti Fajar and Yulianto Achmad, *Dualism of Empirical and Normative Legal Research*, Jakarta: Pustaka Pelajar, 2010, p. 200

3) Indonesian Advocates Code of Ethics

4) Peradi Regulations in Article 1 and Article 11. Article 1: “(1) Advocates are required to provide Free Legal Aid to Justice Seekers who are Poor, (2) Free Legal Aid provided by Advocates must be treated equally with legal aid provided with an honorarium payment.” Article 11: “Advocates are encouraged to provide Free Legal Aid for at least 50 (fifty) working hours each year.”

3.2. Scope of Providing Legal Aid for the Underprivileged at the Peradi Malang Legal Aid Center

Pro bono activities cover all areas of activity, this is based on data taken from an interview conducted by researchers with one of the Advocates at Peradi Malang who explained that it is not only limited to representing the interests of clients in the judicial process, but legal assistance for the underprivileged (pro bono) covers all areas where the law works, starting from legal research, legal education, legal legislation or legal empowerment. In this case, pro bono advocates can take their roles from upstream to downstream, as long as the law itself works. So far, the public generally thinks that pro bono advocates only work in court. However, if we look at Article 6 of the Peradi Regulation, pro bono can be done through providing legal assistance in court and providing legal assistance outside the court.

3.3. Criteria for Recipients of Underprivileged People Who Receive Legal Aid at the Peradi Malang Legal Aid Center (Pro Bono)

Pro bono is given to Indigent Justice Seekers. The question is, Who are the Indigent Justice Seekers? The Peradi Regulation states: “Indigent Justice Seekers are individuals or groups of people who are economically incapable. Included in the category of Indigent Justice Seekers are people or groups who are socio-politically weak, so that their opportunities to obtain legal aid are not the same as other members of society.”. This is different from the concept of legal aid, where 'incapable' is interpreted as financial or economic inability. The concept of 'incapable justice seekers' is regulated more broadly in the Peradi Regulation.

There are several criteria for providing legal aid at Peradi Malang, namely:

Individuals who are incapable; or

- 1) A group of people or community, in this case pro bono can be done through or in collaboration with communities, legal aid organizations or legal aid institutions, non-governmental organizations, people's organizations (such as labor unions, fishermen, farmers, etc.), where they work for the public interest or the wider community, justice, human rights.
- 2) People or groups who may be financially capable, but socio-politically weak or groups of people with special needs who have less access to justice and legal aid, such as women, children, migrant workers, indigenous peoples, victims of gross

human rights violations and so on. Pro bono assistance to those who are unable or in a socio-politically weak state or vulnerable groups can also be provided to Foreign Citizens with certain circumstances such as Asylum Seekers. The government and/or state institutions cannot accept pro bono assistance.

In providing legal aid, in order to be right on target, become a well-organized movement, and be neatly recorded in PERADI, procedures or mechanisms are needed that are fully supervised and well-recorded. This is important in order to fulfill the implementation of pro bono 50 hours / number of cases per year.

3.4. Islamic Law Analysis of the Role of Legal Aid Institutions

The concept of legal aid in Islam teaches its adherents to protect the legal rights of every individual, that everyone is equal before the law and that there is an obligation to uphold the law and justice for every individual. Islamic legal aid in Islamic legal literature is known as *al-mahamy*. In essence, the basis for the application of legal aid in Islam is the principles of Islamic law, namely the principle of mutual assistance and justice or equality. Fiqh experts in the past few centuries have discussed legal aid which is grouped into the chapter of *wakalah*. The term legal aid whose meaning is close to advocates, lawyers, arbitrators, consultants or legal advisors who play a role in providing legal services can also be interpreted as representatives, representing (*wakalah*), clearly statements through representatives are not clearly distinguished from representatives.

Wakalah can be interpreted as the delegation of power by someone as the first party to another person as the second party in matters that are represented (in this case the second party) only carries out something limited to the power or authority given as required, then the risk and responsibility for carrying out the order are entirely the first party or the grantor of power. Legal aid in the Qur'an is not clearly stated, but basically Islamic law has issued thoughts on legal aid and applied it in the implementation of Islamic law. In the study of fiqh books, many mention the issue of justice (*al-qadhal*), but the material does not mention legal aid. Legal aid in Islam is very clear that it aims for the benefit, justice and mutual assistance is highly recommended in society. The absence of awareness in society, lack of concern, and lack of responsibility in implementing existing policies make everything in vain.

Islamic teachings on legal arrangements provide an overview of how Islam has actually arranged human life with established laws. The theory of teachings on legal arrangements according to the Islamic perspective comes from Allah as the creator of sharia in the form of revelation, namely the Qur'an. The Islamic view on the position of legal aid positions the legal aid provider as equal to law enforcers, namely judges. This is in accordance with Law Number 18 of 2003 on Advocates, Article 5, which states that the position of advocates is equal to other law enforcers. The implementation of legal aid in Islam is of course based on the principles and principles of Islamic law which are sourced from the Qur'an and

Sunnah, so legal aid and legal services in the process of enforcing Islamic law should be aimed at justice, goodness, and the welfare of humanity itself.

Looking from the Islamic perspective regarding the position of legal aid, the emphasis in the legislation should be on how to tighten the process of appointing an advocate or legal aid provider. Islam teaches us to always improve the moral quality of every human being in order to create a harmonious order of life. The principles of justice and equality, mutual assistance, are the basis and purpose of legal aid in Islam. Every human being is required to help each other in goodness, so that the provision of legal aid is expected to be able to help fellow human beings, especially for the underprivileged in resolving cases. The principle of justice is also the main thing in the role of LBH as a provider of legal aid services in Islam. While in the form of an agreement or agreement between the provider of legal aid services and the recipient of legal aid, in Islam it is called wakalah. Everything explained in the Law on Legal Aid is that the position legal aid and legal aid institutions are in accordance with the principles of Islamic law, where the aim of legal aid is to help resolve cases fairly, realizing the welfare of society

3.5. Obstacles in the Implementation of Legal Aid for the Underprivileged at the Peradi Malang Legal Aid Center

The structural components are the moving parts in a mechanism such as a court. The substantive components are the actual results issued by the legal system and also include unwritten legal rules. While the structural components of values and attitudes that bind the legal system together and will produce a form of legal administration in the culture of society as a whole that adheres to a system of justice, legal certainty and aspects of benefit. In terms of the success of law enforcement, it is not solely based on legislation, there are other factors that influence it. There are positive factors but there are also many negative factors which are in fact factors that inhibit the legal aid guarantee program.

The inhibiting factors in law enforcement efforts include the following:

- a) The legal factor itself is related to laws and regulations that clearly regulate its implementation.
- b) Law enforcement factors, namely parties who assist or implement the law, in this case law enforcers have not dared to make breakthroughs and in terms of quality are inadequate.
- c) Factors of facilities or infrastructure that support law enforcement can be operational and so on.
- d) Social factors, namely the environment in which the law applies or is implemented, are adjusted to the factors that influence it.
- e) Cultural factors, namely as a result of work, creativity and feeling which are

based on human will in social life.⁸

Law enforcement officers will certainly encounter obstacles or constraints in law enforcement efforts as well as in the implementation of free legal aid for the less fortunate. So in this case there can be several inhibiting factors. According to Satjipto Rahardjo, as a process, law enforcement is essentially a variable that has correlation and interdependence with other factors. There are several related factors that determine the law enforcement process as expressed by Lawrence M. Friedman, namely the substance, structure and cultural components. Some of these components include the scope of the law as a system. These factors will greatly determine the law enforcement process and failure in one component will have an impact on other factors..⁹

The Malang Peradi legal aid institution certainly also experiences several obstacles in providing legal aid to people who are classified as underprivileged. This can be seen from the respondents' statements. The obstacles found in the field in implementing legal aid for underprivileged people at the Malang Peradi legal aid center are:

a) Legal Substance

Advocates at Peradi Malang stated that the Law regulating legal aid, one of which is Law Number 16 of 2011 concerning Legal Aid, still contains weaknesses. In this Law, recipients of legal aid which are only intended for poor people or groups, need to be developed further. In addition, it is necessary to clarify again regarding paralegals, lecturers, law faculty students who in this Law are involved in the implementation of legal aid. The regulation regarding funding in this Law also needs to be reviewed. The reporting mechanism that must be carried out to obtain a legal aid budget (funding) is also difficult, having to go through verification, accreditation, and others which go through a long process that is less efficient.

b) Legal Structure

According to an Advocate at Peradi Malang, another inhibiting factor is the law enforcement factor, in this case, Advocates from an external perspective show that many advocates have never provided legal assistance on the grounds that there has been no summons or no one has contacted the advocate concerned from investigators at the police or from the court, as per the applicable legal assistance provision procedure.

c) Legal Culture

⁸Soerjono Soekanto and Sri Mamuji, *Normative Legal Research: A Brief Review*, (Jakarta: CV. Rajawali, 1986), p. 15

⁹Satjipto Rahardjo, *Law Enforcement: A Sociological Review*, (Jakarta: Genta Publishing, 2009), p. 215

There are still some underprivileged people who do not know about the provision of free legal aid carried out by the Malang City Peradi legal aid institution. Lack of knowledge about community law and about the existence and role of LBH. The community still assumes that if legal aid is given, it is always paid so they do not ask for legal aid. Furthermore, the constraints are in the scope of LBH itself, such as LBH Peradi Malang still has limited human resources. The government must also provide support to LBH who want to provide legal aid to the community because the orientation is free, so funding should come from the government. LBH Peradi Malang has not been accredited, so it has not received financial assistance from the government, so the funds used in LBH Peradi Malang become personal funds. Sometimes there are people who falsify certificates of poverty which are used as the main requirement in obtaining this free/free legal aid. Initially, they came to the LBH Peradi Malang office and consulted with the advocates at LBH Peradi Malang by appearing as if they looked like underprivileged people. Advocates should not easily believe it, so a team is needed to go directly to observe prospective clients so that later it will be known which people deliberately use this facility and which people really need free legal assistance. However, in reality, this is often not done by advocates in providing free legal assistance to the poor. Sometimes with the existence of a certificate of poverty, the advocate can immediately believe that the community is truly poor without conducting observations first.

Based on the results of interviews with respondents, it can be seen that the Peradi Malang legal aid institution in providing legal aid experiences several obstacles, namely the lack of public knowledge about legal aid institutions, the public's perception of paid legal aid institutions, the lack of government support for legal aid institutions that have not been accredited, and the use of personal funds in handling cases from justice seekers..

Efforts made to overcome obstacles in the implementation of providing legal aid to poor communities are:

- 1) Allocating funds for the implementation of legal aid for the poor Regional Governments need to pay special attention to the implementation of legal aid in accordance with Law Number 16 of 2011 concerning Legal Aid. Things that are done include submitting appropriate allocation funds to finance legal aid, so that legal aid providers can accompany suspects who are unable (poor) for free in accordance with Article 56 paragraph (2) of the Criminal Procedure Code. Because in reality, in accordance with Article 19 of Law Number 16 of 2011, funds to provide legal aid are not required to be provided to each region, so that the Regional Government has the right to provide legal aid funds or not. This makes the regions less committed to allocating legal aid funds. This commitment is what the Regional Government should do to require the Legal Aid budget to be included in the Regional Revenue and Expenditure Budget (APBD). Thus, the allocation of legal aid funds can be met for the poor who are seeking justice.

2) Increasing the availability of legal aid providers for the poor In order to increase the availability of legal aid providers for suspects who are unable (poor), namely, increasing coordination between the police and the Legal Aid Institution. By carrying out this cooperation, the need for legal aid providers to accompany suspects who are unable (poor) is met and becomes balanced. Increasing coordination with the Legal Aid Institution has also been done by communicating about free Legal Aid for the poor. One way is to socialize Law Number 16 of 2011 concerning Legal Aid to law enforcement officers and legal advisors through POLMAS (Community Police). The socialization provided by the Community Police is about the importance of implementing legal aid for suspects who are unable (poor) and explaining that the poor (poor) who are caught in criminal, civil or other legal cases have the rights to obtain justice, especially obtaining legal aid. With the provision of legal aid, the legal process can take place in a balanced manner and suspects are no longer afraid when asked questions during examination or investigation.

3) Improving human resources In order to improve human resources, namely the professionalism of police investigators to overcome the lack of understanding of police investigators regarding the rights of suspects to obtain legal assistance, efforts that can be made include involving police investigators in socialization or legal counseling regarding legal assistance.

The purpose of providing legal aid for the underprivileged is to guarantee the rights of the poor to gain access to justice, realize the constitutional rights of citizens in accordance with the principle of equality before the law, guarantee the certainty of the implementation of legal aid implemented evenly throughout the territory of the Republic of Indonesia, realize effective, efficient and accountable justice. This is in accordance with Article 3 of Law Number 16 of 2011 concerning Legal Aid.¹⁰

In order to obtain legal aid, applicants for legal aid must meet the following requirements: first, submit a written application containing at least the applicant's identity and a brief description of the main issue for which legal aid is requested; second, submit documents relating to the case; and third, attach a Certificate of Poverty (SKM) from the Village Head, Village Chief, or an Official of the same level at the place of residence of the applicant for legal aid. Then, if the applicant for Legal Aid is unable to prepare a written application, the application can be submitted verbally. This is stated in Law No. 16 of 2011 concerning Legal Aid.

The provisions of Law No. 16 of 2011 outline that the provision of legal aid can be carried out by Advocates, Legal Para, Law Faculty Lecturers, and Law Faculty Students who are considered to understand the law and have the ability and experience in the legal field. The presence of the budget provided for the interests

¹⁰Ning Herlina and Yanuar Syam Putra, 2017. *Legal Aid for Convicts and Victims*, Palembang: Noerfikri, 2017, p. 94

of legal aid for the poor comes from the APBN (State Revenue and Expenditure Budget). In addition to the budget from the APBN, a number of regions in Indonesia, starting from the Government at the City/Regency level, to the Provincial Government have also attempted to provide legal aid through funds sourced from the APBD (Regional Revenue and Expenditure Budget). A number of regions run legal aid programs for their citizens with their own standards and provisions, which are stated through local public policies (PERDA).¹¹

The obligation of advocates or legal advisors to provide free legal assistance is contained in Article 22 of Law No. 18 of 2003 concerning advocates, which states: "(1) advocates are required to provide free legal assistance to justice seekers who cannot afford it; (2) provisions regarding the requirements and procedures for providing free legal assistance as referred to in paragraph (1) are further regulated by government regulations."

4. Conclusion

That the implementation of legal aid for the underprivileged is very mandatory because it concerns the constitutional rights of every citizen. This is in accordance with Law No. 16 of 2011 concerning Legal Aid and which is also implemented by the Peradi Malang Law Office, provided that they meet the requirements for obtaining legal aid, namely: a). Submit a written application containing at least the applicant's identity and a brief description of the main issue for which legal aid is requested, b) Submit documents relating to the case, and c) Attach a certificate of poverty from the village head, village head, or official of the same level in the place of residence of the applicant for legal aid. The implementation of legal aid in Islam is of course based on the principles and principles of Islamic law which are sourced from the Qur'an and Sunnah, so legal aid and legal services in the process of enforcing Islamic law should be aimed at justice, goodness, and the welfare of humanity itself. The implementation of Legal Aid for the underprivileged so far has not been optimal. The implementation of legal aid through the government's legal aid program still has limitations so that it cannot guarantee respect for the individual rights of the poor.

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