

The Pro Bono Publico Prodeo Legal Aid System Model for the Poor Society in Indonesia

Cahya Wulandari

Legal Aid Center, Faculty of Law, Universitas Negeri Semarang (UNNES), Indonesia

Email: cahyawulandari@mail.unnes.ac.id

Abstract—The poor people who are dealing with the law are guaranteed by the constitution to get free legal assistance. This followed up through several regulations that became the basis for legal aid providers to give legal assistance. However, from the provision of legal aid there is no uniformity in the model that causes legal aid recipients have difficulty, accessing legal assistance. This study discusses the legal aid model that can be accessed by the poor people. The problem of this research is how the pro bono publico prodeo legal aid system model for the poor people? The purpose of this research is to find a model of pro bono publico prodeo legal aid system that is easily accessible to the public.

Keywords—*Pro Bono Publico Legal Aid; Legal Aid; the Poor*

I. INTRODUCTION

Legal aid is a matter of every person who has guaranteed by the constitution. The efforts to uphold legal justice and to eliminate the obstacles must be carried out in a synergistic, proportional and contextual manner by eliminating constraints in the economic, political, social and cultural. In addition, the provision of legal assistance is not merely an attitude and an action of generosity but is an integral part of the framework of efforts to liberate Indonesian people from every form of oppression that negates the sense and appearance of a whole, civilized and humane justice. One form of government support is the enactment of Law Number 16 of 2011 about Legal Aid.

The legal assistance is given to poor people and requires assistance in accordance with the provisions of the Legal Aid Act. Furthermore, the prodeo probono publico legal aid system model will have a positive impact on the development of the nation and society, especially in the legal sector because basically legal assistance is part of human rights regulated in Law No. 39 of 1999 concerning Human Rights, including non-derogable rights that must fulfilled under any circumstances.

During this time the provision of legal assistance for the poor cannot be maximized because of the confusion regarding the procedure for obtaining legal assistance which can be done through 3 (three) ways namely Posbakum, legal aid agencies and advocates. There is no similarity in the model used between the three institutions, so that there is often overlap in the provision of legal aid pro bono publico prodeo. It also has an impact on the community which is difficult to obtain legal assistance information. Therefore it is necessary to do research about a structured system model can be a reference for the

three institutions in terms of providing legal assistance so that there is a firm model framework that is valid and known by the poor who need legal assistance.

II. RESEARCH METHOD

In this research the method used is normative legal research that refers to legal norms contained in the legislation. While the data collection used by researchers is study of documents or library material as the main data source. After the researcher obtained data from document study, the data was analyzed by the researcher using qualitative analysis by producing descriptive-analytical data which was stated both in writing and verbally.

III. RESULT AND DISCUSSION

A. *Legal Aid System Policy for the Poor Society*

In Law Number 18 of 2003 about Advocates as further regulated at in Government Regulation Number 42 of 2013 about Requirements and Procedures for Providing Legal Aid and Distribution of Legal Aid Funds, the provision of legal assistance for the justice seekers must be carried out as well as possible in accordance with the statutory regulations. Besides that, requesting legal assistance must attach several requirements for requesting legal assistance so that if it is complete, the legal aid provider can provide legal assistance with free of charge on legal issues (if the application is received).

Whereas in Law Number 16 of 2011 concerning Legal Aid to obtain legal assistance, the applicant must meet the requirements in accordance with the regulations

contained in Article 14 of Legal Aid Act. This provision is a juridical basis for legal aid institutions or community organizations to carry out their obligations, that is to provide legal assistance with free of charge to those who cannot afford justice. Their duties and obligations clearly stated in Chapter IV Article 8 to Article 11 of Legal Aid Act so that the provision of legal assistance to justice seekers must be carried out as well as possible in accordance with the mandate of the relevant legislation.

Overall, the implementation of legal aid between the advocate regulation and the Legal Aid Act is same, because basically these regulations are still in line with the provisions of Government Regulation Number 42 of 2013 about Requirements and Procedures for Providing Legal Aid and Distribution of Legal Aid Funds.

Furthermore, there is a Supreme Court Regulation Number 1 of 2014 about Guidelines for Providing Legal Aid for the Poor in the Court which is a juridical basis for legal aid postal services or called as Posbakum in the District Courts to carry out their obligations that is providing legal assistance with free of charge to justice seekers. Their responsibilities and obligations are clearly stated in Chapter II, especially in Article 5 and Article 6 of Supreme Court Regulation, so that the provision of legal assistance to justice seekers who cannot afford it must be carried out as well as possible

Furthermore, it relates to the arrangement of providing legal assistance, as explained in Article 32 of Perma No. 1 of 2014 that requests for assistance should attach some requirements for legal aid so that when it is complete and examined all files completeness legal aid application requirements the legal aid giver can provide legal assistance with free of charge. In this case, Posbakum in the court will appoint a Legal Aid Organization or called as OBH or Advocates to provide legal assistance to those seeking justice based on Legal Aid Act.

B. Prodeo Publico Legal Aid Legal Model System In Indonesia

At present, the provision of legal assistance to the community can be done through 3 (three) ways including Advocates, Legal Aid Institutions or called as LBH and Court Legal Aid Posts or called as Posbakum.

Based on the results of the interview at Law Office, the Legal Service stated that there were several requirements for obtaining legal assistance by prodeo. If the requirements for legal assistance were complete, the Advocate would deliver it to the local court. Then at the Law & Justice Law Office in Semarang based on an interview with Rizka Abdurrahman, SH, M.H to get legal assistance from the Law & Justice Law Office in Semarang, both criminal and civil have the same mechanism through several stages.

Whereas the Legal Aid Institute or known as LBH and the NGO Coalition and Pengacara Penegak Hukum & Kebenaran Semarang stated that in providing legal assistance starting from criminal, civil case consultations, the principle is not only to directly deal with cases that the court delegates to its office (in the form of non-litigation), while in the form of litigation according to the informant,

only accepting an appointment from the court to accompany the defendant as in Article 56 paragraph (1) and paragraph (2) of the Criminal Code Procedure. The LBH only receives pro bono pro deo in criminal cases only, so that exclude criminal cases are not followed up.

Furthermore, Mawar Saron Legal Aid in Semarang provides legal assistance in 2 (two) ways, these are non-litigation and litigation. Based on its vision and mission, the LBH has 2 (two) models of providing legal assistance, the first by pro bono publico and the second by pro deo publico. But it should be understood that LBH Mawar Saron does not accept cases related to divorce (plaintiff's position) and cases related to credit.

While in the Legal Aid Post in the court or Posbakum, according to Article 1 number 6 of Perma No. 1 of 2014, Posbakum is services formed by and exist in every first level Court to provide legal services in the form of information, consultation and legal advice, as well as the creation of required legal documents in accordance with laws and regulations governing the Judicial Authority, General Courts, Religious Courts, and State Administrative Courts.

At the Posbakum, in the Semarang District Court already has the Semarang City Regional Regulation No. 1 of 2016 about the Implementation of Legal Assistance that specifically regulates the provision of legal assistance in the Semarang District Court. Whereas in Posbakum, the Ungaran District Court officially does not have a chart or plot regarding the submission of legal assistance.

In addition, the requirements requested by Posbakum PN Ungaran to justice seekers who are unable to apply for legal assistance for free are in accordance with the requirements stated in Article 5 of the Law on Legal Aid. These requirements are in the form of SKTM or the existence of a certificate of social benefits by the government.

C. Model of Legal Aid System Pro Bono Publico Prodeo for the Poor Society

The complex problems experienced by poor people in a large city often encourage them to act in violation of the rules made by the Government. In the position of a suspect or defendant, of course the poor have the right and obligation to obtain free legal assistance services, because basically legal assistance is a part of human rights stipulated in Law Number 39 of 1999 concerning Human Rights (hereinafter referred to as the Human Rights Law), which is a non-derogable right that must be fulfilled under any circumstances.

However, there is a lack of uniformity in the flow of legal aid arrangements which can be seen in the two Advocates' offices which are the object of research by researchers. As that in the Dilaga Law Office is applied for the flow of requests for legal assistance beginning with the request of the legal aid applicant who comes to the Advocate's office, after which the lawyer meets the suspect and is accepted, the legal aid applicant attaches the requirements for legal assistance and advocates provide legal assistance based on the contract.

This is slightly different from the Law & Justice Law Office in Semarang, the flow of requests for legal assistance begins with the request of legal aid applicants who come to the Advocate's office and the determination of the court by bringing the requirements for legal assistance request, after which the requirements are considered complete and their application is accepted. Advocates provide legal assistance based on the contract until the decision have legally binding.

Another difference is that in Dilaga Law Office is not affiliated with government or private institutions to provide legal assistance so that each defend a legal aid case, does not get subsidies from other parties such as pro deo, the office implements a pro bono system, if there are clients unable to pay, then use operations from the office without operational assistance or replacement from other parties.

Whereas in Law & Justice Law Office in Semarang has been affiliated with government agencies to provide legal assistance so that each defends a legal aid case, obtains subsidies from other parties such as pro deo, besides that the office also implements a pro bono system, if any the client is unable to pay, then uses the operation from the office without operational assistance or replacement from the other party.

Regarding the flow of free legal assistance for civil cases, between the Dilaga Law Office and the Law & Justice Law Office in Semarang applies the same path as criminal cases. Correspondence between the Advocate Law with the level of its implications carried by each office Advocate in Semarang in fact broadly correct, it is according to a study by researchers at the offices of the Dilaga Law Office and Law and Justice in Semarang.

The requirements and procedures for the implementation of pro bono pro deo publico legal assistance services are actually good and relatively easy through the Advocate's office. But the note here is that Advocates who handle pro bono pro deo publico legal assistance cases are often obtained not through the Posbakum Court but independently the prospective clients come directly to the Advocate's office, so that if the Advocate's office there is no request for legal assistance then the Advocate it does not provide its services.

Of course this is not in accordance with the duties and obligations of the Advocate regarding the provision of free legal assistance services as stated in Article 22 paragraph (1) of the Advocate Law. The given of legal assistance to those seeking justice who are not able to be implemented as well as possible in accordance with the mandate of the legislation relating to them.

Even though many poor people are experiencing legal problems that do not get legal assistance, one of them is due to ignorance of prospective legal aid applicants regarding the existence of free legal assistance services provided by Advocates, another factor that is also the reason for the absence of legal aid services from the Posbakum to Advocates' offices evenly so that it is often the case that only Advocates' offices are registered with Posbakum Court who only get poor clients while the unregistered Advocates' offices do not get poor clients. It

is said that the implementation of the provision of pro bono pro deo publico legal assistance services for poor society or justice seekers at the level of implication has not been fully implemented, whereas the confirmation of the pro bono pro deo publico legal services by Advocates has been firmly stated in the Advocate Law and Legal Aid Act.

The existence of statutory provisions that give mandate to an advocate to provide legal assistance with free of charge to justice seekers, namely the poor to obtain legal assistance (pro bono publico or prodeo) means that an advocate is responsible for participating in upholding the rights for justice for the community, especially the poor and legal blind. As a note that the provision of legal aid is not intended as an attitude of mercy from an advocate, but as a moral movement that fights for human rights, especially the poor.

In addition to the Advocate's Office as a Provider of legal assistance, with the duties and functions of pro bono publico or pro deo publico, Legal Aid Institutions also play an important role in the equity of justice so that both the rich and poor can get the same defense and equal treatment before the law. LBH is often regarded as an alternative to deal with problems of social unrest and social inequality due to gaps in society. For this reason the researchers conducted research at LBH and NGO Coalition.

Furthermore, at the LBH Office of the NGO Coalition, the provision of legal assistance began with criminal, civil case consultations so that the principle was not only to deal directly with cases that the court handed over to the office (in the form of non-litigation), while in the form of litigation according to sources only accept appointment from the court to accompany the defendant as in Article 56 paragraph (1) and paragraph (2) CCP. In addition, the LBH and NGO Coalition only received pro bono pro deo assistance services in criminal cases, so that exclude the criminal cases they did not follow up with the criminal offense.

The same goes for the Mawar Saron Semarang Legal Aid Institute, based on the results of interviews conducted that LBH provides legal assistance in 2 (two) ways, namely in the field of non-litigation and litigation. Based on its vision and mission, the LBH has 2 (two) models of providing legal assistance, namely by way of pro bono publico and pro deo publico.

Furthermore, based on the data and facts that the researchers have explained and described above obtained from research at the offices of the LBH, NGO Coalition and law offices in Semarang, access to assistance services for justice seekers who cannot afford the poor it's good to be done in the level of implications.

This can be seen from the distribution of pro bono pro deo publico legal assistance services for justice seekers namely the poor by the Posbakum Court to each Legal Aid Institute (LBH) in Semarang City, in accordance with the meaning in Article 1 Number 1 Law No. 16 of 2011 about Legal Assistance that legal assistance is a legal service provided by legal aid providers with free of charge to legal aid recipients.

In connection with the channeling of the provision of legal aid, there is a correspondence between the Law on Legal Aid and the implementation at the level of implication, namely at the LBH and NGO Coalition so that the matter will have a good impact on the justice seekers who unable to improve their rights in the form of legal assistance assistance.

The implementation of *pro bono pro deo publico* legal assistance services between the Advocates' Office and Legal Aid Institution (LBH) is different, as Advocates who are in a Law Office only receive a maximum of 2 (two) legal aid requests per year, and even then the Petitioners Legal assistance independently came directly to the Advocate's office, for example in the Law Office office of the "Legal Service" Semarang, which more often received requests from legal aid applicants who immediately came to his office, without going through appointment from the Posbakum.

But different things were seen in the LBH office as they often got the petitioners *pro legal aid pro-deo publico* from the appointment of the Posbakum Court. Of course this needs to be addressed that Advocates who come from the Advocate's office also have the same duties and obligations from Advocates who come from LBH regarding the provision of free legal assistance to those who cannot afford justice, namely the poor, which has been amended by the Advocate Law and Legal aid law so that distribution of petitioners for legal assistance for the poor from the Posbakum Court must be more evenly distributed in each Advocate's office, it aims to carry out the duties and obligations of the Advocates in accordance with the Advocate Law.

In addition to the Advocates' Office and Legal Aid Institution (LBH) as the Provider of legal assistance, with the duties and functions of *pro bono publico* or *pro deo publico*, it is equally important that a Posbakum Court also has an important role in the appointment and distribution of the provision of legal aid to the poor to Advocates. According to Article 1 number 6 of Perma No. 1 of 2014, Posbakum Court is a service that is formed by and exists in every first level court to provide legal services in the form of information, consultation, and legal advice, as well as the creation of legal documents needed in accordance with the laws and regulations governing the Judicial Authority, Justice General, Religious Courts, and State Administrative Courts. For this reason researchers conducted research in Posbakum Semarang District Courts and Posbakum Ungaran District Courts.

Based on the results of research conducted at the Posbakum of the Ungaran District Court, the two Posbakum were jointly run by the Legal Aid Center or PBH, DPC Peradi Semarang. The arrangement of legal aid in Posbakum Semarang District Court is clearer and more official, there are guidelines for its implementation, making it easier for prospective applicants for legal assistance, while in Posbakum, Ungaran District Court has no official guidelines for legal assistance.

Based on the findings of the data and research facts obtained by the researchers, it can be concluded that access to justice for the poor has not been carried out

evenly, because of the lack of a clear implementation channel to facilitate the poor to get legal assistance.

Actually, in the Advocate Law, the Law on Legal Aid and Perma No. 1 of 2014 has explicitly stated that Advocates are obliged to provide free legal assistance services to the poor. But at the level of its implications, the distribution of legal aid services is not evenly obtained by the Giver and Applicant for legal assistance. In addition, it has also been clearly stated in Chapter IV Article 8 to Article 11 of the Law on Legal Aid, so that the provision of legal assistance to inadequate justice seekers must be carried out as well as possible in accordance with the mandate of the relevant legislation.

Posbakum Court in this case as a legal service provider institution in accordance with Article 25 of Perma No. 1 of 2014 provides services in the form of information, legal advice and advice to justice seekers who are unable to be seen as being less active in implementing legal aid services. Supposedly, Posbakum Court can be a place for the poor to fulfill their rights in the form of free legal assistance and also as a place for Advocates to fulfill their duties and obligations in providing legal aid services.

Furthermore, individual rights to be accompanied by advocates (access to legal counsel) are imperative in order to achieve a fair legal process, with the presence of Advocates can be prevented unfair treatment by police, prosecutors, and judges in the process of interrogation, investigation, examination, detention, trial and punishment (Winarta, 2011: 117). Through this basis, the Court can appoint Advocates from LBH.

Public ignorance about the manner and grooves or even the existence of a convoluted plot to get legal help often resulting in poor communities who are experiencing legal problems do not get the assistance until the end of the case is completed. In connection with the implementation of the *pro bono pro deo publico* legal assistance process, Auria Patria Dilaga added that information and education accompanied by advocacy to the poor need to be improved, seriousness of the agency that carries out, and the integrity of advocates or public defenders who are concerned with legal assistance.

The disparity in the flow of organizing requests for legal assistance is also one of the reasons behind the problem of inequality in providing legal assistance to the poor. So that the researcher argues that there needs to be uniformity regarding the flow of legal aid arrangements between the Office of Advocates, Legal Aid Foundation and Posbakum Court so that the distribution of legal aid can be more equitable, effective and efficient.

In terms of this uniformity, resource person Auria Patria Dilaga assessed that for general conditions such as SKTM may be the same, but for other matters such as types of cases, assessment of cases, impact of cases and operational cases, the advocate office must be distinguished because the advocate's office is profit-making so that the assessment for a case must be prioritized. Unlike posbakum or LBH, the two institutions are concerned about free legal assistance and the institution also receives financial assistance from other agencies. Whereas according to the researchers, uniformity

aims to fulfill the right in the form of legal assistance for the community and to carry out their duties and obligations as a free legal aid provider.

Thus, the legal aid system model that is considered the most appropriate is the alignment of the mechanism and flow of legal aid arrangements between the Office of Advocates, Legal Aid Institutions and Posbakum Courts which lead to the Posbakum Court to process and collect data on inadequate justice seekers connected to data regarding the dissemination of the existence of Advocates and LBH offices in Central Java that must be integrated or integrated into one database that is stored and processed that is carried out in an integrated manner with Posbakum Court services, because in this case the Posbakum Court is as a legal service provider institution in the form of information, consultation and legal advice to justice seekers who cannot afford it. That way, the poor who are experiencing legal problems will be able to get their rights in the form of assistance until the decision is legally binding (*inkracht*). Another positive impact is that each advocate office will get a quota of applicants for legal assistance to carry out their duties and obligations so that the Advocate Office and LBH does not happen any more inequality regarding the acceptance and implementation of legal aid for the poor. For the government, it will also have a systemic impact in terms of fulfilling rights services in the form of legal assistance for the poor.

To integrate the mechanism and flow of the implementation of legal aid, the Court can coordinate with the Posbakum Service Provider Institution to collect data on the needs and coordination of the holding of trials in the Court which are integrated with the Posbakum. Provision of information on the list of Legal Aid Organizations (OBH) as referred to in Act Number 16 of 2011 concerning Legal Aid, or Legal Aid Organizations or other advocates who can provide free legal assistance.

Integration and coordination between the Office of Advocates, Legal Aid and Posbakum is coordinated for everyone who cannot afford to come to the Advocate's office while the quota of legal aid provision services is full, Posbakum as the institution coordinating legal aid services will hand over the incapable client This is to the other Advocates' offices or to LBH, in accordance with the availability of quota that is still available at each Advocate's office or LBH so that the distribution of legal assistance provided by the Advocates' and LBH's Office will be evenly distributed by the legal aid Applicants.

It is also based on Perma No. 3 of 2018 about Administrative Cases in Courts electronically. Through the Perma the court administration of case registration and calls to the parties as well as the issuance of decisions can be done electronically. This can also be applied to the model of *prodeo* legal assistance as explained. Through this model it is expected that legal aid providers can easily get legal assistance.

Furthermore, in brief the model of the Legal Aid System *Pro Bono Publico Pro Deo* for the Poor can be done online on the system through:

- a. Advocates' Offices or Law Offices and Legal Aid Institutions or LBH that register at the Posbakum

will automatically be integrated and integrated into a database processed by the Posbakum through an agreement;

- b. Sources of requests for legal assistance from the Determination of Courts and Applicants for legal assistance will be integrated and integrated into a database processed by the Posbakum in the Court;
- c. Posbakum conducts the collection and processing of data on the number of Legal Aid Organizations (OBH) and the number of Petitioners for legal assistance, so that there will be equal distribution of handling of legal aid *pro bono publico prodeo* for the poor by every Advocate;
- d. Distribution is carried out by the Posbakum Court to the Legal Aid Organization (OBH) to carry out legal assistance *pro bono publico prodeo*, so that the fulfillment of the right in the form of legal assistance for the poor is carried out in accordance with applicable laws and every Advocate can carry out his duties and obligations to provide legal services equally.

IV. CONCLUSION

There has been no uniformity models in the system of legal assistance with free of charge and the lack of good integration between providers of legal aid so that often cause difficulties for those seeking justice. The model of the Legal Aid System of *Pro Bono Publico Pro Deo* for the Poor can be carried out through integrated and coordinated in one database and processed online between the Office of Advocates, LBH and Posbakum Court.

There is coordination for everyone who is unable to be able to fill in the database and complete the requirements for free legal assistance online then by Posbakum as an institution that coordinates legal aid services will hand over the incapacitated client to other Advocates' offices or to LBH, according to the quota availability that still exists in each Advocate's office or LBH so that the distribution of legal aid provided by the Advocates' and LBH's Office will evenly received by applicants for legal assistance.

To integrate the mechanism and flow of legal aid implementation, the Court can coordinate with the Posbakum Service Provider Institution to collect data on the needs and coordination of the holding of trials in the Court which are integrated with the Posbakum. The provision of information on the list of Legal Aid Organizations (OBH) as referred to in Act Number 16 of 2011 concerning Legal Aid, or Legal Aid Organizations or other advocates who can provide free legal assistance.

V. REFERENCES

- [1] Law Number 16 of 2011 about Legal Aid.
- [2] Law Number 48 of 2009 about Judicial Power.
- [3] Law Number 39 of 1999 about Human Rights.
- [4] Law Number 8 of 1981 about the Criminal Code Procedure.

- [5] Perma Number 1 of 2014 concerning Guidelines for Providing Legal Aid.
- [6] Perma No. 3 of 2018 on Administrative Cases in Courts Electronically.
- [7] Decree of the Minister of Law and Human Rights No. HH-01.HN. 03.03 of 2015 concerning the Quantity of Litigation and Non-Litigation Legal Assistance Costs.