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The Role of Advocates in Helping Defendants in Criminal Justices Processes

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Abstract: Every criminal, civil, and state administrative justice system, including Indonesia's, recognises the importance of legal aid. Professionals with extensive knowledge of the law provide legal aid since the idea behind it is to ensure that everyone has the chance to exercise their rights. Those who give legal assistance do so because they are committed to high ideals, such as helping people achieve economic and social equality and defending their fundamental human rights.

Keyword: Advocate, Legal Aid, Human Rights.

INTRODUCTION

"Legal A Legal Aid Provider offers a free legal service to someone who needs it," reads Article 1, number 1, chapter I of Law Number 16 of 2011, which deals with legal aid. But here, a low-income individual or community is receiving legal aid. If they provide legal help services, a community group or legal aid institution can be regarded as a Legal Aid Provider according to Law Number 16 of 2011, which deals with legal assistance. According to Article 1 number 9 of Chapter I of Law Number 18 of 2003, "a legal service provided by an Advocate free of charge to a Client who cannot afford it" is the definition of legal aid."

Every criminal, civil, and state administrative justice system, including that of the Republic of Indonesia, recognises the rather significant role that legal assistance plays. Generalising about the goals of legal aid, we can say that it aims to help out different parts of society in the following ways: (1) making sure that people who receive it can actually get the justice they need; (3) ensuring that all citizens have access to affordable legal representation in accordance with the notion of equal protection under the law; (4) establishing and maintaining a system of justice that is fair, efficient, and subject to appropriate oversight.

The concept of legal aid is related to a person's rights to exercise those rights, therefore legal aid is carried out by legal experts and people who are experienced in order to carry out their profession. Legal aid is carried out by legal aid providers who are oriented towards noble values, namely the humanitarian aspect to fight for human rights to live prosperously and justly.

Anyone can receive legal help without regard to their socioeconomic situation. This is how it works in a legal state (rechtsstaat), when every citizen's human rights are recognised and protected. Equal protection under the law is an implicit declaration of a state's respect for individual rights. The right to fairness and equality before the law is guaranteed to all individuals according to Article 28 D paragraph (1) of the 1945 Constitution. Consequently, access to legal representation is a fundamental human right.

Advocates aren't the only people who can help those in need of legal representation; paralegals, professors, and students at law schools may all contribute to this noble cause. On the other hand, Advocates' roles as community legal aid providers are the primary emphasis of this study.

Problem Identification

1. How is the use of Advocate services in Indonesia as a form of legal aid?
2. How does the human rights perspective assess legal aid provided by Advocates?

METHOD

This study employs a qualitative descriptive approach and is based on library research, which includes data collection, scientific articles with an emphasis on research objects, data collection as it pertains to libraries, and problem-solving studies that rely heavily on critical and extensive reviews of pertinent library materials.

RESULTS AND DISCUSSION

Use of Advocate Services in Indonesia as a Form of Legal Aid

People are considered legal subjects, hence a society's level of legal knowledge greatly affects how the law is applied. On the other hand, society is dependent on and heavily influenced by the enforcement of laws by law enforcement officials, just as it is dependent on legal knowledge. Thus, many laws and regulations are ill-implemented due to a lack of understanding among law enforcement officials regarding their respective roles and responsibilities (Abdurrahman, 1980:14).

The only people who can help the poor with their legal matters are advocates who have registered with the high court in their area. One way to offer legal aid is through: Legal representation offered by advocates on an individual basis. The local Legal Aid Institution provides advocates with legal help, or defence. According to the terms of Law Number 18 of 2003 respecting Advocates, a person who satisfies the qualifications can practise law both inside and outside of court. Advocates represent their clients in court by giving advice, representing them in negotiations, draughting legal documents, taking depositions, and executing other legal acts on their behalf. The Minister of Justice consults the Supreme Court before appointing an Advocate, who is a lawyer. Any and all provinces in Indonesia are under an advocate's purview under the law.

- 1) The basis for providing legal aid for the underprivileged is based on the following provisions.
 - 1) Law Number 4 of 2004 concerning Judicial Power;
 - 2) Article 13 (1) concerning: Organization, administration, and finance of the Supreme Court and judicial bodies under the authority of the Supreme Court.
 - 3) Article 37 concerning: Everyone involved in a case has the right to obtain legal aid.
 - 4) Law Number 8 of 1981 concerning the Criminal Procedure Code:
 - 5) Article 56 (1) states that officials at all stages of the trial process must appoint legal counsel for any suspect or defendant facing a capital offence, a criminal sentence of fifteen years or more, or a threat of a sentence of five years or more without their own counsel.
 - 6) Article 56 (2) states that any advisor appointed to act in this capacity must provide their services at no cost to the defendant or suspect.

- 7) According to Article 237 of the Civil Procedure Code (HIR/RBG), in the event that a plaintiff or defendant cannot afford the expenses of litigation, they are entitled to request authorisation to litigate without payment..
8. Guidelines for the Implementation of Legal Aid Programs for the Underprivileged via Legal Aid Institutions, Instruction of the Minister of Justice of the Republic of Indonesia No. M 01-UM.08.10 of 1996.
- 9) Instruction from the Indonesian Minister of Justice No. M 03-UM.06.02 of 1999, which outlines procedures for providing low-income individuals with access to legal representation in district and state administrative courts.
- 10) May 12, 1998 Circular of the Director General of the General Courts and State Administrative Courts No. D.Um.08.10.10 on GUIDANCE for the Implementation of Legal Aid for the Underprivileged via LBH.

Funds for legal assistance do not come straight out of the budget, but rather go towards compensating advocates who have successfully handled community matters.

One of the responsibilities of advocates is outlined in Law 18 of 2003, which states that they must:

- 1) It is against the law to treat clients unfairly because of their gender, race, religion, politics, descent, or any other protected characteristic in the course of performing one's professional obligations.
- 2) Unless required to do so by law, must maintain the confidentiality of any information learnt or gained from customers in the course of their professional services.
1. 3. Must ensure that those seeking justice who cannot afford it have access to free legal representation.
- 3) Keep the Advocate profession's respect and honour high.
- 4) Adhere to and follow the Advocate Organization's Honorary Council regulations and professional code of conduct.
- 1) The duties and responsibilities carried out by advocates and must be considered in handling a case are as follows (Arto, 2001:133-134):
- 2) 1) Upholding the code of ethics of his profession;
- 3) 2) Defending his clients from evildoers both here and in the hereafter while exploring all possible avenues of truth in a way that is consistent with their religious, moral, and legal beliefs;
- 4) 3) Assisting in the creation of a simple, fast and low-cost judicial process, and achieving a final settlement of the case;
- 5) 4) Respecting judicial institutions and the judicial process in accordance with legal, religious and moral norms;
- 6) 5) Protecting his clients from injustice by other parties and protecting them from committing injustice to other parties;
- 7) 6) Upholding the mandate given by his clients with full responsibility both towards his clients, himself, the law and morals, and towards God Almighty;
- 8) 7) Keeping his clients apprised of his progress and answering their questions on a regular basis on the assignments given to him;
9. Not engaging in any kind of underhanded blackmail against their clients; 10. Showing empathy for their clients' plights and putting their needs before their own;
- 11) In order to ensure that both the client and the attorney or advocate are safe, there has to be an atmosphere of trust and confidence between them;
- 12) In the course of providing legal services, behaving in an ethical, just, and responsible manner in accordance with the law and justice;
- 13) Advocates are also compelled to provide free legal help to clients who cannot afford it, in accordance with Supreme Court Decision No. 5/KMA/1972 about organisations that are required to provide legal aid.

All advocates are required to adhere to a code of ethics that is based on their core values. An advocate's duties as a lawyer, counsellor, or law enforcement official must adhere to a code of ethics, as stated in Article 26 of Law No. 18 of 2003 Regarding Advocates. (Supriadi, 2006:87): A code of ethics for advocate organisations and the advocate profession is prepared to ensure the honour and dignity of the profession. Consequently, advocates must adhere to the advocate profession's code of ethics as well as the requirements pertaining to the Advocate Organization's Honorary Council.

The personal code of ethics that an advocate follows when providing legal services, particularly (Supriadi, 2006:87):

- 1) If an advocate feels that helping someone who requires legal services or aid goes against his or her morals or is outside of their area of competence, the advocate might decline to do so.
- 2) Upholding the law, truth, and justice takes precedence above acquiring worldly possessions as he carries out his obligations;
- 3) He must stand out for human rights while doing his trade without interference from anybody;
- 4) Providing free legal representation to anybody in need, regardless of their race, religion, nationality, national origin, or political leanings;
 1. The freedom, standing, and dignity of advocates must not be compromised by engaging in any other activity;
- 5) Maintain the utmost respect for the legal profession at all times;
- 6) A former advocate who accepts a position with the state cannot simultaneously launch a private practice in the same field.

The Advocate Profession's Code of Ethics includes both an individual code of ethics and a code of ethics pertaining to the advocate's client relationship (Article 4 of the Code of Ethics of Advocates), namely:

- 1) Advocates must prioritize peaceful resolution;
- 2) Giving clients false information or promising them a victory in a matter is completely unacceptable;
- 3) In determining the advocate's honorarium, it must be based on the client's ability and it is not permissible to burden the client with unnecessary costs;
- 4) Must maintain client confidentiality even until the end of the relationship between the advocate and the client;
- 5) Prioritize the client's interests above his personal interests.

When it comes to the ethics of the job, particularly when it comes to managing cases, an advocate has a duty to keep hidden any information pertaining to the client's case (Ishaq, 2012:53-56).

The presumption of innocence (the belief that their clients are right given the facts and information given to them) and the guarantee of equality before the law (Equality before the Law) are two concepts that advocates must uphold while defending their clients. This idea is put into action to make sure that an Advocate may confidently practise his work and perform a good job.

There are services accessible to low-income persons who are involved in judicial processes. Legal aid institutions, district attorneys' offices, high prosecutor's offices, and district courts are all examples of local entities that fall under this category. They need to supply at least one of the following to be eligible: the local village head or laurah's certificate of inability; the local district court's confirmation of the applicant's statement of inability; or the local legal aid institute's confirmation of the applicant's statement of inability (Anonymous, 2016).

Human Rights Perspective Assessing Legal Assistance Provided by Advocates.

According to the Constitution of 1945, Article 28 D paragraph (1), every person has the right to be acknowledged, guaranteed, protected, and treated fairly under the law.

In order to implement the requirements of Article 28D, paragraph 1, of the Constitution of 1945, it is vital to respect the rule of law as the highest authority. For everything to work in a systematic and rule-abiding manner, the law is there to provide regulation. But the thing is, the law here is like a blade with two sides. Class distinctions: blunt for the well-to-do and acute for the working class.

People in the upper class and those with a lot of money are practically immune to the rule of law. Officials at the state level are responsible for the widespread corruption in Indonesia, which has serious consequences for both the country and its citizens, but seldom results in severe punishment. Prison time is an option for the lower class for those who commit little offences.

The lack of access to legal representation makes it very likely that the impoverished and the legally uneducated will be unable to get justice in court. As a provider of legal representation, it is not the advocate's responsibility to defend a client who has been found guilty. Nevertheless, they stand by their clients and make sure they get justice, whether it's in or out of court. Aside from the Constitution of 1945, several other legal instruments have governed the right to receive legal assurances. As stated in Chapter II, Article 3 paragraph (2) of Law No. 39 of 1999 respecting Human Rights, everyone has the right to be recognised, guaranteed, protected, and treated fairly by the law, as well as to get legal certainty in accordance with the letter of the law. Then, Article 5's initial two paragraphs (2).

Universal Declaration of Human Rights, Article 10 (Article 10): "Everyone, in full equality, has the right to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him." Presidential Decree of the Republic of Indonesia Number 50 of 1993 Concerning the National Human Rights Commission, in Chapter II, Article 5, letter c states, "Monitor and investigate the implementation of human rights and provide opinions, considerations and suggestions to state government bodies regarding the implementation of human rights" which in this context refers to the provision of legal aid to the underprivileged/poor.

Previously, Article 4 regulated the objectives of the National Commission, namely:

a. In order to accomplish national development goals, such as empowering every Indonesian and improving society as a whole, it is necessary to a) foster an atmosphere where human rights can be fully realised in accordance with Pancasila, the 1945 Constitution, the UN Charter, and the Universal Declaration of Human Rights, and b) reinforce protections for human rights.

There have been highs and lows in the fight for human rights in Indonesia throughout the country's history. On one occasion, their endeavours were won, while on another, power interests triumphed over them. At the national and state levels, it is acknowledged that a life without human rights respect, enforcement, and protection leads to community injustice and does not establish a firm foundation for long-term political, social, economic, and cultural progress. According to Julianso et al. (2005), a number of countries have established National Commissions for Human Rights and other measures to ensure they comply with international human rights standards. As discussed in Chapter XA on Human Rights, Indonesia's commitment to human rights advocacy and preservation was further cemented in the second amendment to the 1945 Constitution, which included important provisions from international agreements. This change has been sustained thus far.

Promoting and safeguarding human rights at the national and state levels is an important national priority for Indonesia. Thus, Indonesia has committed to upholding human rights by ratifying many international treaties, such as the Economic, Social, and Cultural Rights Covenant and the International Covenant on Civil and Political Rights. The right to exist, the

right to procreate and carry on one's ancestry, the right to personal growth and development, the right to be free from discrimination, the right to express oneself, the right to be safe from harm, and the right to social protection are some of the fundamental human rights outlined in Decree XVII/MPR/1998 of the People's Consultative Assembly of the Republic of Indonesia, which pertains to human rights. Section II, Chapter IV of the Charter of Human Rights, which deals with the Right to Justice, governs individual legal rights, namely Articles 7 and 8.

All individuals have the right to "recognition, guarantee, protection, and fair legal treatment," as stated in Article 7. A person's right to know his or her legal status and to be treated equally before the law are upheld under Article 8. In addition, according to Article 37, certain human rights, such as the right to life, freedom from torture, religion, thought and conscience, non-enslavement, recognition as an individual before the law, and protection from prosecution based on retroactive laws, are non-negotiable. This is a non-derogable right, meaning that no one can ever take it away from you.

Children and the poor, who are among society's most vulnerable citizens, should have additional protections for their human rights. Governments have a primary responsibility to safeguard, promote, enforce, and actualise human rights. One way to reinvigorate human rights, according to Ron Dudai, is to link them to the fights of social movements taking place in the streets. In order to be most successful, human rights (as concepts, principles, methodologies, legislation, and institutional machinery) should not be used in a vacuum but rather in tandem with and in support of particular initiatives. *Journal of Human Rights Practice*, volume 9, issue 18, (Dudai, 2017)

Komnasham data shows that local administrations in Indonesia pose a danger to human rights enforcement. Indeed, it is the responsibility of local governments to uphold, implement, and defend human rights in Indonesia, as they are the regional representatives of the central government. (Mulyana, *Jurnal HAM Komnas HAM*, 8, 2016: 151) In theory, the purpose of law enforcement should be to serve the public good. The community also looks on law enforcement to bring about justice. As a result, it's obvious that what's fair isn't always practical, and what's practical isn't always fair to the community. Members of the community often poke fun at the police, public order officials, and Kamtibmas personnel who are on the front lines of law enforcement and have the most contact with the people. Violence, in many forms and manifestations, is an inevitable part of law enforcement, and human rights are intrinsic to this process. [Rusydi, *Pandecta*, 2014, Vol. 9, No. 2] (227)

"The poor and neglected children are cared for by the state" (Article 34, paragraph 1), as stated in the 1945 Constitution. The state acknowledges the cultural, social, economic, civil, and political rights of the impoverished in accordance with the stipulations of Article 34 paragraph (1) of the 1945 Constitution. Taking all of this into account, it is only fair that the impoverished, like the well-off, have access to legal representation, both in and out of court. Legal assistance for low-income individuals is both a constitutional right and a public responsibility, according to the affirmation derived from Article 34 paragraph (1) of the 1945 Constitution.

Legal aid organisations play a crucial role in developing nations like Indonesia, particularly in assisting the impoverished with their legal matters. This is because these organisations lessen the likelihood that the impoverished will go without legal representation when they face legal challenges, whether in or out of court. Legal aid agencies have a responsibility to educate the poor about their human rights, which include civil and political rights, social and cultural rights, economic rights, and legal knowledge, among others. With Law No. 12 of 2005, Indonesia ratified the International Covenant on Civil and Political Rights (ICCPR), and with Law No. 1 of 2005, it ratified the International Covenant on Economic, Social, and Cultural Rights (ICESCR). These treaties bolster the state's duty to assist the impoverished in securing their political, social, and economic rights, as well as legal assistance.

The right to legal representation for low-income persons in legal problems is regulated to ensure a fair trial and equality before the law. Law 12 of 2005 ratified and incorporated the International Covenant on Civil and Political Rights (ICCPR), which encompasses this notion. Law 8 of 1981 KUHAP, Law 9 of 1999 concerning human rights, Law 3 of 1997 concerning juvenile courts and Child Protection, Law 23 of 2003 concerning child protection, Law 13 of 2006 concerning protection of witnesses and victims, Law 48 of 2009 concerning judicial power, and the Basic Principles of Fair Trial and Minimum Procedure Guarantees make up the ICCPR's three main categories of principles.

Law No. 18 of 2003, which establishes advocates as the primary topic of legal aid providers, further solidifies the right to legal assistance by regulating its provision. On the other hand, the lack of protections for the wealthy and the poor under the Criminal Procedure Code and the 1945 Constitution has been a stumbling block in the legislative process thus far. With the passage of Law No. 18 of 2003, the provision of legal assistance is now mandated by law rather than being an ethical or voluntary concern for each advocate. Free legal assistance for those who cannot otherwise afford it is a fundamental right guaranteed by advocates under Article 22, paragraph 1, of Law No. 18 of 2003.

For the community as a whole to reap the benefits of the legal aid program, it must be implemented fairly among the many existing law enforcement agencies, including courts, prosecutors, advocacy groups, and community groups working in the area of legal aid. Meeting the community's demand for advocate help in every legal procedure is just one aspect of providing legal aid to the community. Another important aspect is teaching the community about the law and giving them the tools to critique current legal processes.

Government aid for low-income people involved in legal matters would supposedly be available after the Law on Legal Aid (Law Number 16 of 2011 on Legal Aid) was adopted in the plenary session on October 4, 2011. Free legal assistance is available to low-income individuals through institutions like the Legal Aid Institute (LBH). A discovery was made by Priyambodo in 2011.

Anyone going to trial has the right to choose and retain an attorney of their choosing, as well as the right to use the services of other legal aid providers (such as advocates, consultants, or solicitors) under Criminal Procedure Law No. 8 of 1981. This section specifies that defendants or suspects have the right to have one or more legal advisers present throughout each stage of the examination in order to aid in their defence, as established by the processes outlined in this law.

The freedom to choose one's own legal counsel is subsequently guaranteed to suspects and defendants in Article 55. It is the responsibility of every advocate to offer legal aid to low-income individuals seeking justice. Providing free legal assistance is called "probono publico". There are four parts to the probono notion of legal assistance: 1) it must be available to all clients in the jurisdiction, 2) it must be voluntary, 3) it must not cost anything, and 4) it must be reserved for marginalised and vulnerable populations. Advocacy is a noble calling, and with it comes the moral imperative to do what is right. Law 18 of 2003, rules for pro bono publico legal assistance, and the advocate code of ethics are all codified in the appropriate regulations (Government Regulation Number 83 of 2008, Guidelines for the Implementation of Provision of Free Legal Aid, Peradi Regulation Number 1 of 2010). Finding advocates willing to offer pro bono legal help has become increasingly challenging. Solicitors are reluctant to immediately provide free legal aid for several reasons.

Some feel that they have done it before. There are also those who think it is better to provide their funds to LBH which focuses on pro bono efforts. The absence of incentives from the government is also considered to have an influence. For example, only law firms whose members have provided pro bono legal aid are allowed to participate in government tenders. The duty to offer free legal assistance is also unenforceable because the organisation has not used any coercive measures.

Several solutions exist that can be used to get past this obstacle. For example, providing legal aid to the poor as one of the requirements to obtain an advocate's license. Forming specialised pro bono or public services units inside big legal firms is another possibility.

Otto Hasibuan, general chairperson of DPN PERADI, brought out the significance of high-quality legal assistance for the impoverished at the RPP's public consultation on legal aid on April 24, 2012. It is also important to think about the service quality. The duty of advocates to offer pro bono legal assistance is something that PERADI fully supports. Not all advocates can pay factual and judicial expenses, thus management is concerned about how to regulate them..

If so, there will be a violation of human rights under the law to be able to obtain justice in the law, especially for people who are unable and legally illiterate.

CONCLUSION

According to Law No. 16 of 2011 about Legal Aid, "an individual may be eligible to receive free legal representation from a legal aid provider" (Article 1, number 1, Chapter I). Advocates, paralegals, faculty, and law school students can all serve as legal assistants.

Advocates, however, the primary one is by Advocates. Free legal representation in court cases is available to low-income and otherwise disadvantaged people through legal aid programs.

From a human rights standpoint, then, he has a fundamental right to acquire legal assistance so that he might seek justice. The guarantee of a fair trial and other legal protections is a human right enshrined in the Constitution of 1945. Legal assistance is still available to low-income Indonesian individuals who need it for court cases.

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