

## Reconstruction of Regulation Legal Aid Service in District Court based on Justice Dignity

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**Abstract:** Poverty is a very complex problem, which is not only limited to economic issues but also related to issues in other fields. State policy (government) is needed in helping solve the problem related to poverty especially in the field of law that is by providing legal protection through the provision of legal aid to the citizens. It is an attempt to fulfill and at the same time be the implementation of a legal state that recognizes and protects and guarantees citizens' human rights on the need for access to justice and equality before the law and fair trial. Islamic values not only regulate the things that are private but also public policies and also constitutional so that the jurists make Islamic law as one of the primary references in establishing positive law in realizing the certainty of law and justice one of them through the fulfillment of the right to legal aid that is part of the legal system of the Pancasila Legal State. Judging from the perspective of dignified justice, the provision of legal aid to the underprivileged is one manifestation of humanizing humanity, that is the manifestation of respect for one's dignity and dignity. The policy of legal aid should be oriented to the legal philosophy of human beings. That is, the law, including the arrangement of legal aid for justice seekers who can not afford, must serve human beings.

**Keywords:** Reconstruction of Regulation, Legal Aid Post, Justice Dignity.

### INTRODUCTION

Referring to the 1945 Constitution of the Republic of Indonesia in Article 28D paragraph (1) it has been affirmed that, "Everyone is entitled to the equitable recognition, guarantee, protection and legal certainty and equal treatment before the law." Laws are rules that every human being must obey [1-3]. This Article has provided a fair recognition, guarantee, protection and legal certainty to everyone regardless of their ethnicity, religion or status of life. Obtaining legal aid for everyone is the realization of access to justice as the implementation of legal protection and equality guarantees before the law and in the context of bringing about a fair trial. Legal aid is a right that everyone has, especially people who can not afford to get justice. The guarantee of access to legal aid is also explicitly stated in Article 28G Paragraph (1), which states that, "Everyone is entitled to personal, family, honor, dignity, and property protection under his control, and is entitled to a sense of security and protection from the threat of fear to do something that is a human right ". It is further strengthened in Article 28 H paragraph (2), stating that, "Everyone shall have the right to special convenience and treatment to have equal opportunities and benefits to achieve equality and justice."

Substantively it can be interpreted that the guarantee of access to justice through legal aid is a strict order in the constitution. Through this principle, a person is entitled to be treated equally, including for the underprivileged who are in trouble with the law. The poor also have the same right to be accompanied by an advocate within the framework of legal aid if the rich can afford an advocate to accompany him in the judicial process. In addition to Article 34 paragraph (1) of the 1945 Constitution provides that the state keep the poor and neglected children. The word "nurtured" is given not only the needs of food and clothing but also access to justice in the form of legal aid.

Legal assistance constitutes the constitutional right of every citizen to guarantee legal protection and equality guarantee before the law, as a means of recognition of Human Rights. Obtaining legal aid for everyone is the realization of access to justice which is the implementation of legal protection, guarantee, and equality before the law. States understand this issue with the issuance of Law No. 16 of 2011 on Legal Aid as concrete action in protecting the equality of citizenship his country before the law. Law No. 16 of 2011 on Legal Aid covers the availability of legal aid

funds accessible to advocates who have provided legal assistance to the poor, as well as to legal aid organizations (LBH / OBH). It is hoped that with the existence of Law No. 16 of 2011 on Legal Aid, in access to justice can give more role for the creation of legal aid in Indonesia.

With the enactment of Law No. 16 of 2011 on Legal Aid add to the list of laws containing legal aid, although indeed lex specialize legislation already exists after the coming into effect of this law. Constraints on the implementation of legislation that occurred before the birth of Law No. 16 of 2011 on Legal Aid is not able to provide guarantees for the poor as Legal Assistance to obtain a good defense or assistance and totality by the Legal Aid. The Legal Aid Post is a container that provides legal aid services established by and in each of the first tribunals of the General Courts, Religious Courts and State Administrative Courts. It provides legal services in the form of information, consultation and legal advice, and the preparation of required legal documents by applicable laws and regulations governing the practice of judicial proceedings. The District Court is part of the scope of the General Courts, which is one of the judicial executive exercises, has conducted activities in the form of legal aid services through Legal Aid Post. Solving legal problems in criminal cases and civil cases assisted by Posbakum in the District Court. It brings many advantages and benefits, including open access for the poor to obtain information and legal advice useful to the lawyer and obtain information. They also obtain litigation free of charge to defend civil rights in civil cases, in addition to assisting in the realization and use of their rights through the assistance of legal counsel while serving as the defendant in a criminal case.

The legal jurisdiction of legal aid services by Posbakum to the District Court is regulated in Article 56 and Article 57 of Law Number 48 Year 2009 on Judicial Power, Article 68 B and Article 68 C of Law Number 49 Year 2009 concerning Second Amendment of Act Number 2 Year 1986 on General Court. The Supreme Court of the Republic of Indonesia as one of the state institutions that organizes state power in the judicial field has issued Supreme Court Circular No. 10 of 2010 concerning Guidance on Providing Legal Assistance and enhanced through Supreme Court Regulation (PERMA) No. 1 of 2014 on Guidance of Giving Legal Services for Disadvantaged People in the Court with reference to and based on Law Number 16 Year 2011 regarding Legal Aid.

In view of the importance of the administration of Posbakum services to the District Court as an effort to ensure access to justice and fair trial in order to create justice and uphold human rights as a form of legal reform and reconstruction effort injustice for all aspect, the implementation must be done effectively in

solve the solution to the problems or disputes faced by the poor people, both in the process of settling criminal proceedings and civil cases. The existence of Posbakum in the District Court is an effort in realizing access to justice and ensuring fair trial through the fulfillment of the right to legal aid to the poor.

## **RESULTS AND DISCUSSION**

### **Reflection on the Fulfillment of Legal Aid at the District Court Legal Aid Post**

The rule of law system that demands equality of citizens before the law is sometimes less appreciated by the citizens themselves, especially for the small people who stumble over legal cases. Most of them are more sincere or will their rights are thrown away because they argue that fighting for their rights in legal cases will actually harm them in the perspective of the matter. It is because they witnessed the rise of news circulating in various mass media which indicate that stumbling law case have to expense that not less and worse even emerged assumption that law can be bought. It is where a question arises, how far the role of organizers and implementers of legal aid in access to justice in the form of providing legal aid services for the poor. The judiciary as the organizer of state duty in the field of judicative is obliged to provide excellent service to every citizen and resident of Indonesia [4]. It is because the state is obliged to serve every citizen and its citizens to fulfill their fundamental rights and needs within the framework of public service which is the mandate of the 1945 Constitution [5]. Poverty is a very complex problem, which is not only limited to economic problems but also related to problems in other fields. State policy (government) is needed in helping solve poverty-related problems in other areas, for example in this field of law. However, when poverty intersects with the field of law, the meaning of poverty contains a meaning that is not only limited to the material side but also related to the limitations of society to get access to justice (fairness) and the implementation of a fair trial that existed during this does not fit the meaning of the term itself.

Legal assistance constitutes the constitutional right of every citizen to guarantee legal protection and equality guarantee before the law, as a means of recognition of human rights. Obtaining legal aid for everyone is the realization of access to justice that is the implementation of legal protection, and the guarantee of equality before the law. The State understands this issue with the issuance of Law No. 16 of 2011 on Legal Aid (Legal Assistance Act) as a concrete measure in protecting the equality of its citizens before the law. This Legal Aid Law includes the availability of legal aid funds accessible to advocates who have provided legal aid to the poor, as well as to legal aid agencies. So it is hoped that the existence of the Law of Justice Assistance can give more role for the creation of legal aid in Indonesia. With the enactment of the Legal Aid

Law, there are at least two meanings: Firstly, through this law everyone, mainly citizens, can not afford the legal aid and the state is responsible for fulfilling that right by providing an adequate budget. The right to legal aid is the fundamental right of every citizen who is equal to other rights such as health, work, clothing and food, and so on. Secondly, the state is responsible for managing the legal aid program in an accountable manner, so that the implementation of legal aid programs can be beneficial by the community by receiving professional legal assistance, responsible and fulfilling justice seekers' justice [6].

There are four functions carried out through the provision of legal assistance, among others, such as [7]:

- With the help of the law will be realized equality before the law. Fair and impartial legal process will only occur if the parties to the dispute have a balanced position and strength, especially in terms of legal knowledge and skills;
- If legal proceedings are fair and impartial, all material truths can be revealed. Given a balanced position and strength, manipulation and hegemony over fact and truth can be prevented. Thus, legal aid serves to strengthen the effort to enforce substantial justice through fair and impartial legal processes;
- Legal aid provides an interaction space between experts and the legal profession in this case an advocate with the general public. That interaction will foster understanding and awareness of how to position a rule of law in the life of nation and state. Law is a set of rules that must be obeyed. If there are problems to be resolved through legal channels, including when there are rules that impair the constitutional rights of citizens must also be resolved through legal mechanisms. Legal aid serves to build a culture of legal compliance as one of the main characteristics of a civilized society;
- Compliance with the law will only develop when society understands the position and material of the rule of law. Such understanding will automatically enhance the legal empowerment of the indispensable community, whether to conduct legal relationships, undergo legal procedures, even to criticize law enforcement materials and practices.

Previously various regulations have poured the state's obligation to provide legal aid for the underprivileged and currently regulated in Law No. 16 Year 2011 on Legal Aid. It was mentioned earlier that the District Court as part of the General Courts has an active principle of providing assistance and this principle stipulated in the provision of Article 68 letter B of the Law of the Republic of Indonesia Number 49 of 2009 concerning the second amendment to Law of the Republic of Indonesia Number 2 of 1986 concerning the General Court, in paragraph (1) reads

"Everyone who is caught in the case is entitled to legal aid and paragraph (2) reads "The State shall bear the cost of the case for the justice seeker who is unable".

In order to realize the fulfillment of the right to legal aid of the Supreme Court of the Republic of Indonesia as a state institution in charge of the judicial authority overseeing the lower courts including the general court has issued Regulation of the Supreme Court of the Republic of Indonesia Number 1 of 2014 concerning Guidelines for Providing Legal Services for Society No Able in Court. This Regulation of the Supreme Court of the Republic of Indonesia (Perma) is a follow-up effort to equalize perceptions and in the context of unification and centralization of arrangements on legal aid as set forth in Law No. 16 of 2011 on Legal Aid.

Based on Perma Number 1 Year 2014 on Guidelines for the Provision of Legal Services for Disadvantaged People in the Court, as mentioned in Chapter II on Principles, Objectives, and Scope, Article 2 states that the provision of Legal Services for the community is incapable based on 1. Justice; 2.Simple, fast, and low cost; 3. Non-discriminatory; 4.Transparency; 5.Activity; 6. Effectiveness and efficiency; 7. Responsible; and 8. Professional.

With the enactment of Perma Number 1 Year 2014 since the date of promulgation of January 16, 2014, the provision of legal aid for the community cannot afford in the Courts previously arranged and realized based on Circular Letter of the Supreme Court of the Republic of Indonesia (SEMA) Number 10 Year 2010 on Legal Assistance in The court declared invalid. Implementation of Legal Services for Disadvantaged People held by Courts based on Perma Number 1 Year 2014 includes 3 (three) scopes of legal services by the provisions contained in Perma Number 1 Year 2014 on Guidelines for the Provision of Legal Services for Disadvantaged People in the Court.

The three things are [8]:

- Court fee waiver service;
- Implementation of court proceedings outside the courthouse (zitting plaats);
- Provision of Legal Aid Post (Posbakum) Court.

Posbakum District Court is a legal aid service in the form of giving information, consultation, advice and making a lawsuit or petition in the District Court which actually existed since the enactment of the provisions of Law Number 49 Year 2009 on the Second Amendment of Law of the Republic of Indonesia Number 2 Year 1986 regarding General Court. The provisions of Article 68 Sub-article C of the law mandate that: (1) At each district court a legal aid post is provided for justice seekers who are unable to obtain legal assistance. Legal assistance as referred to in

paragraph (2) shall be provided free of charge to all levels of the judiciary until the decision on the case obtains a permanent legal force, (3) Legal aid and legal aid post referred to paragraph (1) and paragraph (2) with laws and regulations. Posbakum is one form of "Justice for All" aims to provide services in the form of providing legal advice, counseling, and lawsuit for those who do not know about legal issues and can not afford the services of lawyers/legal counsel to solve the legal problems being faced. It can be concluded that the understanding or definition of Posbakum District Court is a service established by and existed in every District Court to provide legal services in the form of information, consultation and legal advice, as well as the preparation of required legal documents by laws regulating the Judicial and Judicial Power General.

Stages of legal services in the form of legal aid held by Posbakum District Court first held a memorandum of understanding and continued cooperation agreement between the District Court with individual advocates and advocacy organizations that have been registered and verified and accredited by the Ministry of Justice and Human Rights. Many benefits are obtained from the existence of Posbakum in the District Court. The community, especially the poor, can get a complete understanding of the legal process that will be passed in the court especially the District Court. Also, they can also save money, time and energy with the help of Posbakum. The District Court is undoubtedly greatly helped by the legal aid. One of them is to facilitate the duty of State Court officials in explaining the procedure of law in criminal and civil cases. The people who come to the court already have and prepare the required documents, so the process of litigation can be more smoothly so that the simple, fast and light cost principle can be fulfilled. However, on the other hand, raises several obstacles or constraints such as the following [9]:

- Posbakum activity is basically the addition of workload, especially in the provision of some facilities and infrastructure and administrative management, but the addition of the workload is also not accompanied by additional funds in DIPA for the procurement of facilities and infrastructure, mainly for the provision of workspace and furniture, air conditioning and adequate IT (information and technology) equipment.
- In practice, it often happens that the legal aid providers are less careful in making a lawsuit or petition in civil cases so that it can result in obscure libel, especially in formulating "posita" and "petitum."
- Open opportunities for service providers to take advantage of opportunities to serve the community to make it a client. In one of two cases, the complaint occurred because the community felt relatively high withdrawal from the mistaken assumption that he had been charged a high court

fee by the District Court apparatus (because he considered Posbakum officers as officers or District Court Officials).

- Requirements for obtaining Posbakum services for non-poor communities is relatively easy (just by making a statement unable to pay advocate fees), is considered too light, because there is no apparent limit on the cost of advocates (there are cheap there are expensive), thus allowing people who are actually capable of, claiming to be unable to afford an advocate.
- In some cases, the plaintiff/petitioner (a non-poor case) who have received service from Posbakum (by making a state unable to pay the advocate), turns out that when his case is in court, the law hires the advocate. Using his actions it can be seen that he has withdrawn his statement cannot afford the advocate, so the logical consequence, he must return the cost to the state, because then he becomes unqualified to get the service of Posbakum.
- The public interest is not able to obtain Posbakum service until now is high enough. Therefore when referring to the Law of the Republic of Indonesia Number 16 of 2011 on Legal Aid stating that the budget for legal aid transferred to Kemenkumham there will be a delay in the allocation of funds Posbakum if not carefully managed, then it means down the level of Posbakum services for the poor, resulting in the image/impression that the State, in this case, the Government is inconsistent/not seriously assisting the community cannot afford in litigation in the district court.

The role of Posbakum District Court is a manifestation of the implementation of "access to justice" and in the framework of the implementation of "fair trial" for the achievement of "justice for all" is conducted through the provision of services in the form of legal advice or legal consultation and the making of legal documents such as memo/pledoi in a criminal case as well as a petition or a lawsuit in a civil case as well as the provision of information about the mechanism of waiving the court fee for the disabled people who do not have the knowledge and information about how the court proceedings relating to the legal issues being faced as well as references to mentoring as legal counsel in a case which requires a legal counsel to be advocated by OBH / LBH who has cooperated in the framework of the implementation of legal aid services.

### **The Existence of Islamic Values in the Implementation of Legal Aid in Indonesia**

In the Qur'an there is no mention of the term legal aid, but Islamic law has basically excluded thinking about legal aid and applied it to the implementation of Islamic law. The fiqh scholars of the past few centuries have discussed the matter of legal aid grouped into wakalah chapters. Although among them

there has been a dispute, the form of legal aid, representing or delegating to legal action has been in talks at length even to the delegation in the handling of civil or criminal cases. As for the meaning of wakalah itself in the book of Fathul Mu'in, it is mentioned that "one gives up his affairs to others to deal with the things which the representatives can represent for the work done by the deputy while the wakalah is still alive.

The practice of legal aid in Islam occurred during the Caliphate of Umar bin Khattab (632-644 AD). At the time of Umar in power, he once provided legal assistance to the poor who stole. At that time Umar argued that the poor who stole did not need to be cut off hand as Allah's word stating that the man who stole and the woman who stole, cut off the hands of both (as) a retaliation for what they do and as punishment from God and Allah is the most wise [10]. In this case, Umar bin Khattab provides legal assistance to the perpetrators of theft by arguing that the thief should not be punished for hand cut. The reason for the legal argument submitted by Umar is that at this time our nation is hit by a disaster, called 'am al ramada (the long dry season which resulted in barren soil people find it difficult to find food). This case occurred before the 18th year of Hijrah, where the lands became arid like in Hijaz, Tihama, and Najd [11]. The act of Caliph Umar bin Khattab is what in Islamic law is intended as the legal aid. It is as one of the manifestations of fair and impartial justice. The question of justice is also contained in the passage of the letter of Umar Bin Khattab to Abdullah bin Qais or Abu Musa Al-Ash'ari on the subject of justice, mentioned:

*"Truly the judgment is the fardhu affirmed and the sunnah to be followed. Then, understand if the judgment is imposed on you, for it is not useful to speak the truth without exercising it. Let the rights of all people before you, in your judgment and in your majlsu so that people are respected. do not want your tendency to him and the weak do not despair of your justice....." [12]*

In essence, the basis for the application of legal aid is the principles of Islamic law itself, one of which is the principle of justice and equality and benefit. In the Qur'an, because of the importance of the position and function of the word "justice" is called more than 1000 times, mostly after Allah SWT and science. Many of the verses that tell people to justice and uphold justice [13].

In the legal system of Indonesia, known various sources of national law derived from the customary law, Islamic law and western law. The 1945 Constitution is very accommodating to the interests of citizens. One of the indicators is that the Indonesian Muslim community implements Islamic law by not contradicting the Constitution of the 1945 Constitution and the primary state of Pancasila as applied in the

jurisdiction of religious courts. Based on Perma Number 1 Year 2014, Posbakum is also mandated to be formed in the first level court which includes the Religious Court Postbakum in order to provide legal advice in the form of legal consultation and the making of legal documents relating to legal issues encountered in relation to jurisdiction and competence and authority in religious court .

Implementation of Islamic values in the provision of legal aid in the jurisdiction of the general court conducted by the District Court Postal Court. It is related to the handling of criminal cases as in the criminal justice system can also be easily realized because sociologically most of the people of Indonesia are Muslims, with no conflict with partial legal awareness of large society, because in fact, Islamic law is a law that lives in Indonesian society. The existence of Islamic principles or values not only regulates the things that are private but also public policies and also the constitution. The jurists make Islamic law as one of the primary references in establishing positive law in realizing the certainty of law and justice one of them through the fulfillment of the right to legal aid as part of the legal order within the legal system of the Pancasila Law State.

#### **Fulfillment of the Right to Legal Assistance in the Perspective of Fair Justice**

The Theory of Degrading Justice departs from the postulate system; work towards the goal, that is dignified justice, in this case, justice that humanizes man [14]. Judging from the perspective of dignified justice, the provision of legal aid to the underprivileged is one manifestation of humanizing humanity, that is the manifestation of respect for one's dignity and dignity. Although in a state of incapacity must get help and defense by advocates. It is also a manifestation of equality before the law to bring about justice. Consequences on the fulfillment of the right to legal aid, the legal aid recipient is entitled to legal assistance until the legal matter is resolved or the case has a permanent legal power as long as the beneficiary concerned does not revoke a power of attorney, and obtains legal assistance in accordance with legal aid standards and/or Advocate Code of Ethics and obtain information or documents relating to the implementation of legal aid in accordance with the provisions of legislation within the framework of access to justice.

The policy of legal aid should be oriented to the legal philosophy of human beings. That is, the law, including the arrangement of legal aid for justice seekers who can not afford, must serve human beings. Furthermore, based on the perspective of Theory of Degrading Justice, legal aid thus not the other way to bring human justice seekers who can not afford to be subdued to the legislation, such as Law No. 16 of 2011

on Legal Aid and Perma No. 1 of 2014 on Service Guidelines The Law for Communities Not Able in the Court, unless the law requires it. The quality of the law, in this case the legislation regulating the legal aid, especially Law Number 16 Year 2011 on Legal Assistance and the Number 1 Year 2014 on Legal Services Guidelines for Unfeasible People in Courts, is determined by the ability of those who understand the laws and regulations to be directed towards understanding the service of human welfare. Teguh Prasetyo as says that who created a dignified society is the law, including in this case the regulation of Legal Aid for those who cannot afford to humanize humans.

The need for affirmation in the regulation that regulates legal aid especially to the Law of Legal Aid and the Supreme Court Regulation on the obligation of giving legal aid to the settlement of dispute through litigation that is to the case which obliges to be accompanied by legal counsel especially by Posbakum District Court until the case has a permanent legal force. The legal aid service at the District Court, Legal Aid Center, includes also providing legal assistance to cases which by the provisions of legislation require the provision of legal assistance until the case has a permanent legal force.

In addition, the sailors implement the principles of public services in the form of (1) transparency; (2) accountability; (3) conditionally; (4) participatory; (5) equality of rights; (6) the balance of rights and obligations, in the implementation of legal aid services in the bureaucracy of the criminal justice system as well as civil courts in order to realize justice based on Belief in the Almighty which is executed in a fast, simple and low cost, as intended in Law Number 48 Year 2009 about the Judicial Power.

The provision of legal aid services to the community incapable of Court Posbakum at the first court within the scope of general, religious and administrative courts of the state, functioning as a means of access to justice is a manifestation of the fulfillment of the constitutional rights of every citizen especially the right of equality before the law and the right to legal protection as well as in bringing about a fair trial of the judicial system in Indonesia. So that when the community can feel the benefits of providing legal aid services, then justice and legal certainty will be realized by the objectives of the law itself.

## CONCLUSION

The provision of legal aid as a constitutional right is exercised against every citizen without exception, in the sense that legal assistance provided can at least be granted as a manifestation of humanity and justice within the Pancasila legal state. Therefore, the implementation of legal aid services can provide certainty, benefit, and justice for the citizens, especially

the poor people to achieve equality before the law and in reaching justice in the context of access to justice and the implementation of a fair trial in criminal justice as well as civil justice. Implementation of Islamic values in the provision of legal aid in the jurisdiction of the general court conducted by the District Court Postal Court related to the handling of criminal cases as in the criminal justice system can also be quickly realized. It is because sociologically most of the people of Indonesia are Muslims, with no conflict with partial legal awareness of large society, because in fact, Islamic law is a law that lives in Indonesian society. Judging from the perspective of dignified justice, the provision of legal aid to the underprivileged is one manifestation of humanizing humanity, that is the manifestation of respect for one's dignity and dignity. Although in a state of incapacity must obtain legal assistance in the form of defense by advocates/legal counsel. It is also a manifestation of access to justice and equality before the law to bring about a fair justice.

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