
The Right to Obtain Free Assistance and Legal Protection for The Indigent People Through Legal Assistance Organizations

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Abstract

The purpose of this study is to analyze the right to obtain free legal assistance and protection for indigent people through legal aid organizations in Gorontalo city. This research was conducted using an empirical juridical approach. The legal issues continue to occur in big cities and other provinces, such as Gorontalo province, as the 32nd province in Indonesia. Legal issues that are increasingly happening from both the upper and lower classes are still a problem in the jurisdiction of the Gorontalo district court. However, sometimes the problems that afflict the indigent people have minimal legal protection, even though they have constitutional rights as citizens to obtain legal assistance for the indigent people in the constitution. Act number 16 of 2011 concerning Legal Aid, even the Gorontalo government has issued Gorontalo Provincial Regulation Number 10 of 2015 concerning the implementation of Legal Aid for the indigent people. With the aim that all people have the right to obtain legal assistance for free or free of charge.

1. Introduction

The state as an organization of power has occupied a central position in the collective life of modern humans, the state is no longer seen as an absolute entity, where all stakeholders supporting the existence of the state must submit absolutely to (the rulers) without reserve but on the contrary, the state must follow the real rhythm of all elements forming the state, especially the people or citizens of the country concerned.¹

As the largest archipelagic country globally, Indonesia has a variety of cultures. Traditions passed down from generation to generation, nature, uniqueness, and the diversity of each region and various races, ethnicities, religions, and languages make Indonesia a pluralistic nation. But this plurality also sometimes makes the Indonesian nation often hit by social conflicts whose causes are differences and the insistence of the interests of each individual in society.

The community's interests are diverse, and urban and rural communities are also triggers for problems; sometimes, problems in the community ultimately make them have to deal with the law. Of course, a legal conflict is not difficult for people who have power or material wealth because it is so easy to access lawyers in the legal cases they face. However, unlike the indigent people who have to deal with the law, the fear is great because they do not have legal knowledge, and it is even difficult to get legal assistance from lawyers because there are no fees.²

The legal issues continue to occur in big capital cities and other provinces, one of which is Gorontalo province as the 32nd provincial capital. Legal issues that are increasingly occurring from both the upper and lower community are still a problem in the jurisdiction of the Gorontalo District Court. However, sometimes the problems afflict indigent people are lack of legal protection.

¹ J. H. A. Logemann. "*Tentang Teori suatu Hukum Tata Negara Positif*" (Terjemahan: Makatutu dan J.C Pangkagero). Jakarta: Ichitiar Baru-van Hoeve. p .95.

² Interviewed with Tri Astuti Handayani "Legal aid for the unable in the perspective of the theory of justice". Bojonegoro Advocate, Jawa Timur. Correspondence by: handayani.astuti61@yahoo.com.

2. Problem Statement

Recognition of human rights contained in the contents of the constitution which is the initial foundation for the fulfillment of the rights of every citizen, namely one of which guarantees the right of every citizen to receive equal treatment before the law (equality before the law) as regulated in Article 28D paragraph (1) The 1945 Constitution of the Republic of Indonesia which guarantees the recognition, protection and legal certainty that is fair and equal treatment for everyone, then Law no. 16 of 2011 concerning Legal Aid, and the Gorontalo government has also provided legal product support through the Gorontalo Province regional regulation Number 10 of 2015 concerning the implementation of Legal Aid for the indigent people. So it is ironic and unfair if there are still people who have litigation up to the legal realm without being accompanied by legal experts, who incidentally have to deal with the police and prosecutors who are quite proficient in their legal control.

3. Methods

This research is juridical-empirical, which conducts a study on the implementation of normative laws regarding the organization of legal institution assistance in fulfilling the rights of the indigent people to obtain legal assistance and protection for the cases they face. This study uses primary data obtained directly from the research object (field research). In addition to primary data, this study also uses secondary data in the literature related to the problems to be studied (library research). Furthermore, the data will be analyzed using a descriptive-analytical approach to conclude

4. Discussion

4.1. The right to obtain Legal Assistance and Protection for the Indigent people Through Legal Aid Organizations in Gorontalo City

It is almost certain that countries in the world, in general in regulating state life, always refer to the constitution in that country. A country that adheres to a legal state system and people's sovereignty in government uses a constitution.³ Or the constitution as the highest norm in addition to other legal norms.

The Republic of Indonesia is a legal state (resistant), not a power state (*machstaat*). This means that the highest sovereignty or power in the state is based on law, in the

³ Russel F. Moore. "Modern Constitutions", Quoted in Taufiqurrohma syahuri. "Hukum Konstitusi". p.14.

sense of legal ideals (*rechtsidee*), which contains the noble ideals of the Indonesian nation. Article 1 paragraph (2) of the 1945 Constitution states that Indonesia is a sovereign state of the people, reflecting that Indonesia is a democratic country because it includes its people in policy-making.⁴

The principle of legal protection for government actions rests and originates from the concept of recognition and protection of human rights. According to history from the west, the birth of the concepts of recognition and protection of human rights was directed to restrictions and lay down human rights. Responsibilities of society and government.⁵

Social life will always be colored by a dichotomy, including in the economic and social sectors; namely, there is a class division or group between rich and indigent people. According to the World Bank, indigent people are categorized as having an income that can be earned less than \$1.90 per day. If calculated in Indonesian currency with an average exchange rate of Rp. 13,500, - for the rupiah against the US dollar, the indigent people are those whose income is not more than Rp. 26,650, - per day.⁶

What usually happens is the problem of the level of facilities that can be enjoyed, those who are included in the rich category can usually access various facilities, education, technology, even in terms of legal issues, they do not have to worry about it because only by using the legal services of an Advocate, their affairs will be resolved. It can be resolved, while with the indigent people, legal issues are one of the most frightening problems because of the lack of knowledge of the law and the difficulty of hiring lawyers. Sometimes, it is not easy to get access to justice.

The problem that has become an assumption in the community is the high cost of handling cases involving legal services. This creates an understanding of the reluctance of the indigent people to involve lawyers in the problems they face so that in the litigation process, they will have difficulty obtaining justice. Factually in court,

⁴ Article 1 paragraph (2) Indonesian constitution of 1945

⁵ Ray Pratama. "Theory of Legal Protection". Retrieved from <http://raypratama.blogspot.co.id/2015/04/teori-perlindungan-hukum.html>. Accessed on June 10, 2020

⁶ Anonymous. "The Gap Between the Rich and Poor is Widening". Retrieved from <https://www.simulasikredit.com/mengapa-kesenjangan-antara-kaya-dengan-miskin-semakin-lebar/>. Accessed on June 10, 2020

they must be opposed to people with extensive legal knowledge, lawyers, prosecutors, or judges.

In terms of legal protection for the people, it relates to the formulation which in the Dutch decision reads *rechtsbescherming van de burgers tegen de overheid* and in the English literature legal protection of the individual concerning acts of administrative authorities.

In the formulation of legal protection for the people, it is intentionally not stated against the government or government actions with the following considerations and reasons:

- The term people already contain the meaning as opposed to the term government. The term people essentially mean the governed (*geregeerde*).⁷ Thus, the term people contain a more specific meaning than terms in foreign languages, such as *volks*, *people*, *people*.
- The inclusion of "against the government" or "against government action" can give the impression that there is a confrontation between the people as the governed and the government as the ruler. Such a view is, of course, contrary to the philosophy of life of our country, which views the people and the government as partners to realize the ideals of living as a state.⁸

Several experts, namely Satjipto Raharjo, conveyed thoughts about protection. Protection is to protect human rights that others have harmed, and this protection is given to the community so that they can enjoy all the rights granted by law. In contrast, according to Philipus M. Hadjon, legal protection protects human rights owned by legal subjects based on legal provisions from arbitrariness.⁹

Based on the position of the principle of equality before the law, the concept of legal aid is a basic right or constitutional right of every citizen to guarantee legal protection and guarantee equality before the law as a means of recognizing human rights. Getting legal aid for everyone is the embodiment of access to justice as the

⁷ W. J. S. Poerwadarminta. *The Great Dictionary of Indonesian* describes the meaning of the entire population of a country (as a government balance). p. 793

⁸ *Ibid.*, p. 740

⁹ Philipus M. Hadjon. (2010). *"Perlindungan Bagi Rakyat Di Indonesia"*. Surabaya: PT. Bina Ilmu. p. 1-2

implementation of guaranteed legal protection and guarantees of equality before the law. This follows the concept of legal aid, which is linked to the ideals of the welfare state. So that legal aid is the constitutional right of every citizen to guarantee legal protection and guarantee equality before the law, especially for the indigent people.

Based on the issue of constitutional rights as citizens to obtain legal assistance for the indigent people to access justice, Act Number 16 of 2011 concerning Legal Aid was issued. The aim is that all people have the right to get or obtain legal assistance for free or free of charge. This is the footing of the problems experienced by the indigent people when they have to go to court so that there is no impression that only certain people can enjoy justice, so the need for complete assistance and protection as a form of fulfillment of constitutional rights for every citizen following the purpose of legal assistance.

Legal assistance or legal aid has several objectives, such as:¹⁰:

1. Easing the burden of costs borne by community members, both suspects and defendants who cannot afford it in court. Incapable of being brought to trial, what is meant is that the defendant is indeed economically and legally unable to handle the problems he is experiencing.
2. Increasing access to justice, the justice in question is the principle of legal justice, namely "Equality Before the Law," equal before the law. No one is higher or treated differently from the perspective of the law.
3. Providing equal opportunities to the public, both suspects and defendants in court who cannot obtain a defense, assistance, or legal protection when dealing with the judicial process, both during the investigation and court process.
4. Increase awareness and knowledge to the public through respect, fulfillment, and protection of the rights and obligations of advocates or legal advisors.

The explanation of the purpose of the assistance above is certainly a process of

¹⁰ Bambang Sunggono and Aries Harianto. (2014). *"Bantuan Hukum dan Hak Asasi Manusia"*. Bandung: CV. Mandar Maju. p. 11

alleviating the burden that must be borne by every citizen for the problems they face. Because the law provides space for the public in dealing with the legal problems they face, they can involve lawyers/advocates for free until the legal process has permanent force. In one of the journals quoted by the author, explaining the protection and recognition of human rights of every individual or citizen is an obligation for the state as a logical consequence of its stipulation as a state of law.¹¹

As a consequence of the principle of equality before the law, a person has the right to be treated equally, including indigent people facing legal problems. Moreover, the Indonesian state constitutionally in Article 34 (1) of the 1945 Constitution states that indigent people and neglected children are cared for by the state. The phrase "maintained" complements food and clothing and the need for access to law and justice. Law and justice system.¹²

The above is in line with several legal foundations or footholds to obtain legal aid for the indigent people, such as:

1. Article 56 of Law No. 48 of 2009 concerning Judicial Powers explains that "everyone involved in a case has the right to obtain legal assistance and the state bears the costs of the case for justice seekers who cannot afford it"¹³.
2. Article 57 and Article 60 of Law No. 48 of 2009 concerning Judicial Power stipulate that "in every court, a Legal Aid Post is established for justice seekers who cannot obtain legal aid and legal aid is provided free of charge at all levels the judiciary. Until the decision on the case has obtained permanent legal force.
3. Circular Letter of the Supreme Court (SEMA) No. 10 of 2010 regulates the guidelines for providing legal assistance, especially in making lawsuits/requests and jinayat cases, do cases.
4. Act Number 16 of 2011 concerning Legal Aid and Government Regulation 42 of 2013 which contains more clearly the existence of legal aid institutions and

¹¹ Suyogi Imam Fauji and Inge Puspita Ningtya. (2018). "Optimalisasi Pemberian Bantuan Hukum, Demi Terwujudnya Acces to Law and Justice Bagi Rakyat Miskin". *Jurnal Konstitusi* 15 (1). P. 51-52

¹² Deborah Rhode. (2004). *Access to Justice*. New York: Oxford University Press. p. 3.

¹³ Article 56 of the Law of the Republic of Indones Number 48 of 2009 concerning Judicial Power

in the regulation also regulates administrative elements and elements of operational regulations of legal aid institutions so that it can be expected that legal aid institutions can help criminal defendants to seek justice in court.

The good intentions of act Number 16 of 2011 concerning Legal Aid are not easy to implement. The number of indigent people in Indonesia is so large that as of September 2019, the number of indigent people in Indonesia amounted to 24.79 million people or 9.22% of the total population of Indonesia. In a position like this, the government as the holder of power must be responsible for providing top service to the entire community as an embodiment of responsibility for the basic rights of citizens as mandated by the constitution.

Meanwhile, in Gorontalo province itself, the number of poverty rates is still increasing, as of September 2019 data as many as 184,710 people. Suppose you look at the number of indigent people in the province of Gorontalo. In that case, it is certainly not easy for a Legal Aid Institute, which provides legal services for free if it has to handle a large number of community causes. The factor of human resources, which is still limited, will certainly be the initial factor in the ineffectiveness of providing free legal aid to the indigent people in the province of Gorontalo.

Currently, the Gorontalo Government, in realizing the fulfillment of the rights of the indigent people in Gorontalo province who are entangled in legal problems, has issued Gorontalo Provincial Regulation Number 10 of 2015 concerning the implementation of Legal Aid for the indigent people. Efforts made by the government in fulfilling the right to legal aid for the indigent people are certainly not all able to accommodate legal issues that afflict the indigent people; the article is that only certain OBH can be accessed by the indigent people in helping them in the cases they face.

Examining the function of legal protection is certainly an illustration of how a legal function works to realize legal goals, namely justice, expediency, and legal certainty, because protection is a form of protecting legal subjects following legal rules, both preventive (prevention) and repressive (coercive) forms, both written and unwritten in order to enforce the rule of law.

Head of the regional office of the Ministry of Law and Human Rights of Gorontalo Province, Bambang Plasara, said that now the people of Gorontalo no longer need to worry or be deceived by illegal LBHs roaming around because six Legal Aid Institutions have been recognized and accredited in Gorontalo Province, namely the University Legal Aid Institute, Gorontalo State, Gorontalo University Legal Aid Institute, Ichsan Legal Aid Institute, IAIN Legal Aid Institute, and YLBHI Legal Aid Institute. These Legal Aid Institutions will later be designated to provide legal escort for underprivileged communities in Gorontalo.¹⁴ The number of Legal Aid Institutions above illustrates that the process of fulfilling legal aid rights for the indigent people will not be maximized because the number of Legal Aid Institutions and the indigent people in Gorontalo province still tends to be too far away if they have to guard too many cases.

The Gorontalo City Court itself has built cooperation through an MOU with the Gorontalo University Legal Aid Office, which has become a cooperative partner providing and assisting legal aid in the Gorontalo City Court. The researcher interviewed one of the Gorontalo University Legal Aid Institute members, Mr. Abdul Haris as a lawyer, saying that the implementation of the Gorontalo City Court's legal aid post continues to be improved considering that public trust in the legal aid institution must be maintained. And it is hoped that all people who experience cases in the Gorontalo City court, especially the less fortunate, can be given legal assistance and protection free of charge because this is a right for every citizen guaranteed by law.¹⁵

Meanwhile, it was quoted from one of the online media that the government, in providing legal assistance to the community, has increased the budget from 48 billion to 53 billion for the 2019-2021 period. So that legal aid institutions that pass accreditation increase by about 25%, when compared to the number of legal aid institutions funded by the government in the 2016-2018 funding period, there is an increase in the number from 405 legal aid institutions to 524 legal aid institutions for the coming period. The head of the BPHN Legal Aid and Counseling Center, Djoko

¹⁴ <https://hargo.co.id/>

¹⁵ Interview with Member of POS BAKUM, University of Gorontalo, Mr. Abdul Haris as Lawyer/Advocate.

Pudjirahardjo, admitted that the budget provided was still very limited compared to the real conditions and needs in the field. With the limited budget from the center, he encouraged local governments also to allocate funds.¹⁶

Campus legal aid institutions are a step to make it easier for indigent people to obtain free legal assistance. To help the indigent people in the province of Gorontalo in the legal assistance process, 6 campus legal aid institutions are accredited and ready to help the indigent people in the province of Gorontalo. However, this number is still very low compared to the number of indigent people in Gorontalo, namely the September data. Two thousand nineteen as many as 184,710 people.¹⁷ The number of legal aid institutions when compared with the number of indigent people, of course, the legal aid process will not be optimal because handling cases requires much energy and thought.

In a researcher interview with a legal aid institution that has an MOU with the Gorontalo district court, namely Abdul Haris as a lawyer/advocate that the limited number of lawyers and budget are also still factors that hinder the effectiveness of legal assistance for the indigent people, because the number of cases entered is quite large and to handle one case only need a large fee, even though there is a replacement from the government, sometimes it is considered to be very small.¹⁸ Likewise, our interview with the secretary of the Legal Aid Institute of the State University of Gorontalo, Irlan Puluhulawa, said that not all cases entered into the Legal Aid Institute of the State University of Gorontalo were able to be accepted because the number of cases submitted was large. However, the number of lawyers was still limited. To overcome this, the Legal Aid Institute of the State University of Gorontalo plans to add lawyers but is still constrained by budget.¹⁹

¹⁶ Hukum Online. "Pemerintah Sediakan 53 milyar untuk Bantuan Hukum Masyarakat". Retrieved from <https://m.hukumonline.com/beita/baca/lt5c33123bb3929/pemerintah-sediakan-53-milyar-untuk-bantuan-hukum-masyarakat>. Accessed on 5 July 2020

¹⁷ Herum Fajarwati. (2020). "Penduduk Miskin di Gorontalo Ber Kurang". Kepala BPS Provinsi Gorontalo.

¹⁸ Interview with one/member of the Legal Aid Post of the Gorontalo District Court, Mr. Abdul Haris as a Lawyer/Advocate.

¹⁹ Interview with the secretary of LBH UNG, Mr. Irlan Puluhulawa.

The problem of protection conveyed by Philipus M. Hadjon, then the protection regarding the provision of free legal aid, is included in the Repressive legal protection, which is more aimed at resolving disputes. The form of protection provided by the government is an appreciation of the human rights of every citizen. This is in line with the thoughts conveyed by Satjipto Raharjo that legal protection is to protect human rights that are harmed by others. That protection is given to the community to enjoy the rights granted by law.

A just law in Indonesia is a law that is rooted in the personality and philosophy of life of the Indonesian nation, which is a law that reflects the sense of justice of the Indonesian nation that must be able to protect the personality and national unity, which is the survival of the nation and state and the struggle to pursue national ideals. This is clearly stated in the mandate of the Preamble to the 1945 Constitution that the state must be present at the forefront in protecting the entire Indonesian nation. Form of the fulfillment of rights as citizens.

The formulation of the principles of legal protection in Indonesia cannot be separated from the basis of Pancasila as the ideology and philosophy of the state. Conceptually, the legal protection granted to the Indonesian people implements the principle of recognition and protection of human dignity based on Pancasila and the principle of a legal state based on Pancasila. So that the issue of protection is an absolute obligation that the government must give as a stakeholder because the issue of legal aid is a matter of fundamental rights and guaranteed in the constitution or law. Whatever the legal issues that befall the community, there should be no community separated from the protection of legal aid in resolving cases in court, considering that it is unfair if they have to go against people or countries who are certainly very knowledgeable in legal matters.

5. Conclusion

The issue of legal protection is every citizen's constitutional right, which is guaranteed in the constitution. The state is firmly obligated to strive to fulfill these rights for every citizen. The provision of legal assistance and protection for the indigent people through legal aid organizations in the city of Gorontalo is certainly still very far from the maximum, considering that there are only 6 LBH campuses that

have been accredited and are ready to help the indigent people in Gorontalo province. However, of course, the number is still very low. Compared with the number of indigent people in Gorontalo, namely in September 2019 data as many as 184,710 people.

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