



Legal aid compliance for poor local community

PURWANTO*, CHARLYNA S. PURBA

^{1,2} Faculty of Law, Universitas Panca Bhakti, Pontianak, Indonesia

Abstract

Aim: This research aims to learn more about how effective legal aid is for low-income people in the area.

Methodology: This research linked law turn variables using the socio-legal method's interdisciplinary strategy.

Findings: The research used a socio-legal approach to conclude that legal aid was not yet very important for the low-income population in the area. Inadequate local legislation that regulates legal aid for low-income communities was identified as a root cause of the problem, as was the widespread belief that legal aid authority lies squarely within the purview of the central government. Legal aid for the poor in a community works best when it is coordinated between the federal government and local authorities (in this case, a local vertical official).

Implications/Novelty: The Ministry of Justice and Human Rights and the Local Government need to improve their coordination and synergy to maximize the delivery of legal aid to the poor in their communities.

Key Words: Rights, Legal Aid, Poor Community

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INTRODUCTION

Indonesia is a state law, as stated explicitly in Article 1, paragraph 3 of the 1945 Constitution of the Republic of Indonesia. When a piece of legislation is given the status of the law of the land, it assumes a commanding role in all aspects of state, national, and social life. Understanding state law necessitates a guarantee of equality before the law, with no special treatment for the poor who, historically, have been unable to afford and access justice. Article 34 of the 1945 Constitution of the Republic of Indonesia stated as follows:

1. The poor and displaced children are maintained by the state.
2. The state develops social security system for all the people and empowers and enables poor communities based on human dignity.
3. The state is responsible for providing health and decent public service facilities.
4. Further provision about the implementation of this article is regulated by law.

All citizens are equal before the law and government and shall abide by the law and government without exception," it says in Article 27 of the 1945 Constitution of the Republic of Indonesia. The first sentence of Article 28D states that "everyone has the rights on recognition, guarantee, protection, and fair legal certainty and equal treatment before the law." Then, the second paragraph of Article 28H rang out: "Everyone is entitled to get special treatment facilities and to obtain the same opportunity and benefits to achieve equality before the law and justice."

The International Covenant on Civil and Political Rights guarantees access to legal representation for all people (ICCPR). All rights have the right to equal protection under the law, as guaranteed in Article 16 and Article 26 of the ICCPR. While Article 14(3) of the ICCPR lays out the prerequisites for access to justice through legal aid, including a demonstrated interest in pursuing justice and an inability to afford legal representation. In addition, Act 8 of 1981, the Procedural Criminal Code Law, Act 39 of 1999, the Human Rights Act, Act 18 of 2003, the Advocate Act, Act 48 of 2009, the Juridical Power Act, and Act 16 of 2011 lay the legal groundwork for the protection of the law and the provision of legal aid. As a matter of fact, the utilization practice of legal aid as a component of constitutional rights has not received adequate attention. Even though the provision of legal aid has

* Corresponding author: Purwanto

† Email: purwantoupb@gmail.com

been regulated by international instruments and relevant national law, it has not yet reached many low-income individuals or communities. Based on the preceding, the formulation problem is "How is the legal aid fulfillment for the poor local community?"

LITERATURE REVIEW

Classic Ciceros expresses, *Ibi Societes, Ibi Ius* (There is no society without law, and no law without society). Substantially, this opinion can be used for law and society interdependence abstraction, law appears as a single system which has the authority to regulate the society towards the desired social order and law existence is contained in every single life (Abdurahman 1997). Law has a supremacy to regulate people's lives.

Related to Soemantri (1992) constitutional state concept cites four elements surrounding state law, namely:

1. the government should be based on law or regulation in carrying out their duties.
2. human rights guarantee.
3. state power authority.
4. judiciary supervision (*rechterlijke controle*).

A country can be said to be a state law when the state is giving reward and legal protection guarantee and legal aid to citizens, especially to the poor. Lubis (1999) formulated broader legal aid, namely Legal aid is one way to fulfill human rights especially for our poorest section people, legal aid purpose is not limited only to legal aid individual but also structural. Act 16 of 2011 on Legal Aid guarantees citizen rights to gain access to justice and legal aid includes legal aid for no affordable citizen. It also mandates that legal aid can be initiated and financed by Local Government through Local Act provision implementation in order that legal aid can reach poor people, family and community whome generally located in rural areas.

METHODOLOGY

This study used socio-legal method (Soemitro and Hanitijo 1988) with interdisciplinary approach to connect law turn variables. Riskiyono (2016) opined that socio-legal method used qualitative empirical and critical normative in a research/study. Thus, law study is not confined and becomes a wild non-legal research.

RESULT AND DISCUSSION

State Law Implementation Concept

Aside from the state law concept meaning being a state non-power, also implies the supremacy of law recognition and constitution principle. The espousing of separation and power limitation principle according to constitutional system is stipulated in 1945 Constitution of Republic of Indonesia, human rights guarantee, independence of judiciary and impartiality principle which guarantee citizens equality before the law and ensure justice for everyone, including authority abuse.

According to Mahfud (2006) states some of Indonesian law state characteristics called Pancasila state law, as follows:

A kinship state

There is a recognition of individual rights (including property rights), or human rights, but by prioritizing national interest (common interest) on individual interest in a kinship state. In Pancasila state law, there is harmony and balance achievement between individual interest and the national interest (the public) to give the possibility to the state to intervene to the extent necessary for creation of national and state governance in accordance with the Pancasila principles.

A state certainty and legal justice

State law Pancasila concept in lawless activities either in formations or processes implementation are done by various elements combined and contained in *rechtsstaat* concept and rule of law to combine legal certainty

principle with justice principle, as well as concept and other legal system, e.g., customary law system and religious law system which live in this archipelago. For creating a precondition, rule of law must be upheld in order to uphold society justice in accordance with the Pancasila principle.

Religious nation state

State law Pancasila concept is not adhered to secularism but it is also not a religious state as in theocracy and Islamic democracy concept, but country's concept believe in God, means national life in Indonesia is based on Almighty God. For that atheism and communism are prohibited because they had put aside belief in God Almighty. In a more macro and philosophical context (Yudi 2012), Pancasila is the nation's guiding star and a dynamic steer in achieving great civilization goal, such as the expression: "Pancasila is a source of identity, personality, morality, and nation safety bow. Each Pancasila principle has no justification of historicity, rationality and topicality. If it can be understood, lived, believed and practiced consistently, it will sustain a great civilization achievement of Indonesia".

Integrated law as a society engineering and law as a society culture mirror

Through combining these two state laws, Pancasila is trying to keep, and reflect living law and living law positivism to push and beam society development according to Pancasila principle.

Preparation and state law formation must be based on neutral and universal law principle

Preparation and state law formation must be based on neutral and universal law principle means that preparation and state law formation have to fulfill main requirements i.e., Pancasila is an adhesive and unifier; based on the value which can be accepted by all parties and does not favor a particular group or groups; gives priority to mutual cooperation principle and tolerance; and common vision, mission, purpose and mutual trust of same orientation accompany.

Wahyono (1989) stated more detail about the law system establishment in state law Pancasila orderly based on following:

1. The starting point is kinship and balance principle listed in 1945 Constitution of Republic of Indonesia because it prefers masses, but to human dignity remains respected.
2. The establishment of the state is not because of societal agreement from naturalist status to civil status (civil rights), but Almighty God's grace by noble desire to free nation's life, live independent, sovereign, united, fair and prosperous.
3. Democracy is in accordance with the state government system as Article 33 of the 1945 Constitution of Republic of Indonesia, and enforces human rights in accordance with fair and civilized Almighty God.

Prismatic characteristics of state law Pancasila are in line with ideology conception Pancasila as an open, dynamic and responsive to changing times without leaving the socio-cultural basis (Jimly Asshiddiqie, no year, 10). Thus, Pancasila ideology is not a conservative, but an open progressive and flexible ideology, able to adapt to the human mind development, and his age, and able to provide a critical fundamental thought that is not functional (Magnis-Suseno 1995). It means that national legal system development within Pancasila ideology framework is struggling in the process of dynamic or static arbitrate across the time, space and event without leaving the figure its identity (Prasetyo 2012).

State law means the guarantee requirement of equality before the law for all, no exception for poor people or group who could not reach or gain access to justice compared to other groups. Poor people who are meant here is an individual or a group of people whose social and economic conditions are below average to be able to live in dignity. It is usually the poor people who face difficulties in getting access to justice.

Access to justice has become a major theme in activities/reform movement both domestically and internationally. It is because common people should be able to lead their own lives without any involvement or intervention unnecessarily, and should be able to obtain justice when it is needed to continue increasing. There are so many obstacles to achieve this goal but the most important thing is society faced with legal issues on how to get good and proper advice. In fact, this problem is very common in many countries and legal systems. Increased awareness of the true law is an essential element to improve access to justice. The public is entitled to accurate information

about their legal problems. It is particularly focused on the poor and the marginalized society, which is normal to encounter all sorts of problems but always faces a shortage of means or limited capacity to solve the problem.

Indeed, equality before the law will only be meaningful and can be enjoyed as with an equal chance to obtain justice. Equality before the law should be coupled with the ease and equal opportunities also for the poor to get justice. A country can be said to be a state of law for the country's rewarding and legal protection to its citizens. It just has to be recognized that not all members of society, especially the poor and marginalized who generally live in the countryside, get legal protection. In everyday life we can still find poor people who do not know their rights. In this impoverished relationship, society members need access to be able to get help from lawyers or academic and legal experts.

A Brief History of Legal Aid

Legal aid history track record has already started since centuries ago. It can be seen from one of studies conducted by Levis (2002) he said that legal aid term has been known for a long time since Roman era (at the time was known as Patron). Patron term came from Patronus word. Patronus is a public figure believed and valued by era community as a complaint and asking for help in terms of economic, marital, social and other aspects. In Roman times, legal aid provided through a person was only driven by getting society's influence motivation. In the Middle Ages, legal aid term was known by charity, and is an impulse for human being to compete doles and assistance.

The situation is relatively changed in medieval times where legal aid was given because of generous attitude (charity) of elite group of church against their followers. At that time there was no clear legal aid concept. Legal aid has not been interpreted as a right that must be accepted by everyone. Legal aid provision is more dependent on the patron concept. Then the view shifted, the original concept of legal aid based on the generosity of the patrons turned out to be the rights of all people. Since going on the French and American revolutions, the concept of all legal aid increasingly expanded and reinforced. The provision of legal aid is not solely based on charity to people who are not capable, but often linked to political rights.

Until now, legal aid concept development is always associated with the ideals of the welfare state, where the government has the obligation to provide society welfare. Legal aid is included as one of the social welfare programs improving, especially social, political and legal fields. Legal aid has become a social movement. These conditions occur not only in developed countries but also in developing countries.

Welfare state is a manifestation of a modern state, where a country is not only in charge of taking care of security and order only, but also has tasks in the field of organizing the general welfare. The welfare state is a modern country whose interest is the welfare of all people. Edi (2008) stated an example, that ...stands for a developed ideal in which welfare is provided comprehensively by the state to the best possible standard.

The concept of legal aid is experiencing a shift from an individual to the structural nature of legal aid. Of the term, legal aid is experiencing growth of legal terms into legal aid assistance. The term legal aid is always associated with the poor who can not afford a lawyer, while legal aid are legal services to the community of advocates capable and incapable. For the context of the Legal Aid Institute (LBH) is the appropriate term because it's legal aid work LBH is always associated with the poor economic and blind legal (Kurniawati 2012).

In the Dutch East Indies reign, legal aid term was known in Article 250 Het Herziene Inlands Reglement (HIR). According to this article, advocate requested for legal assistance if there is a request from the accused and threatened with death. Thus Article 250 HIR does not require lawyers to provide legal assistance to persons accused or faced with the death penalty. Article 250 HIR is also addressed to those who diversify European citizenship/Netherland. This article is loaded with color element of racial discrimination.

After colonialism era, some positive legal provisions started to introduce the term and legal aid meaning such as Act 8 of 1981 on Criminal Procedure Code Law (Criminal Code), Act 39 of 1999 on Human Rights, Act 18 of 2003 on Advocate, Act 48 of 2009 on Judicial Power and the Act 16 of 2011 on Legal Aid. Under the draft set of legal aid in article 54 to article 56 in Act 39 of 1999 set of legal aid in Article 3 paragraph (2) and (3), Article 5, paragraph (2), Article 17 and Article 18 paragraph (4). In Act 18 of 2003 governs the legal aid in Article 22 paragraph (1).

Article 56 of the Act 48 of 2009 stated that every person who lodged the case is entitled to legal aid. Article

57 states, that the legal aid and legal aid post referred to in Article 56 are implemented in accordance with legislation provisions. In the course of legal aid implementation has been set in the legislation specifically as stated in Act 16 of 2011 on Legal Aid.

Comparison of Legal Aid in Some Countries

Legal aid in Afrika selatan

Elimination of Abolition apartheid in South Africa turned out to be a positive influence on the recognition of the state of access to justice for the poor and vulnerable. This is evident with expressly stated that legal aid is a constitutional right and listed in South Africa constitution. It also means that access to justice existence requires a pre requisite from the society and democratic government system. South Africa was established in 1969 by apartheid government who recognized providing legal aid importance to the community. This institution began operations in 1971. Legal aid law has actually been around since 1969, but amended in 1996 and adapted to post-apartheid political condition. Under the Act the legal aid then formed the Legal Aid Board (LAB), which is an independent state commission in charge of legal aid. LAB's mission is to give access to justice to the poor and vulnerable. LAB members, are appointed by the justice minister and with the approval of the body called Constitutional Development.

In supporting the realization of access to justice, LAB has some justice centers (legal aid provider directly under and financed by LAB). Every year LAB receives funding of US \$120 million from the state budget (the state budget), or less than five percent of the State Budget (APBN) of South Africa. The budget is used to finance the justice centers, cooperation with the provision of legal aid lawyers' organization, and with non-governmental organization. Actually legal aid model in South Africa is very expensive, because there must be a regular budget to finance the office running for justice center as front line legal aid provider.

Legal assistance in the South African legal aid system is not perfect. However, there are some matters that need to be considered in the legal aid system in particular commitment to the country, and also the relationship between legal aid actor provider and finally how the beneficiary of legal aid actually receives effective legal assistance.

Legal aid in Australia

Australia has a federal government system and legal aid responsibility is divided among commonwealth, state and territory. There are eight legal aid commissions in Australia. Mission of legal aid commission is to provide access to justice for the citizens of Australia who are marginalized and economically disadvantaged.

Legal aid commission is an independent body set up under State and Territory Act. The commission is funded by the State Government, especially criminal law part. In Australian country development, the government has reformed its legal aid funding policy that would give legal aid commission greater flexibility in the allocation of federal government fund for the provision of legal aid services. In addition, legal aid implementation is also implemented by, an independent, a nonprofit community law center managed by care community providing a series of legal aid and the problems associated with low-income people with special needs.

To support the implementation of legal aid, in Australia there is a scheme of financial assistance available to organizations and individuals in case where legal aid is not available from the commission legal aid and where legal service pro-bono is not available, and where circumstances menimulkan special interest of federal government. For supporting the implementation of pro bono, private practitioners are offering pro bono legal assistance in some circumstances in which the individual does not qualify for legal aid but is unable to hire a private lawyer. This pro bono scheme is governed by some organizations including the Public Interest Law Clearing House (PILCH) or state and territory legal community.

Legal aid in Belanda

In 1983, legal aid became a guaranteed rights in Dutch constitution. This system originated from the movement among some universities graduates with a young lawyer in 1970 and developed on an agreement between groups, the Advocate Association and the Ministry of Justice regulate Statute Law of 1993.

Legal aid is based on the Legal Aid Act (Wet op de rechtbijstand, short WRB of Dec. 13, 1993, subsequently amended in 1999 and last amended in 2009). Legal assistance for unable groups is guaranteed in Article 18, 2 of the Constitution for all that nobody else is subject to Netherland authority under Dutch law.

Legal aid is carried out by Legal Aid Board (Raad voor Rechtsbijstand, RvR). This agency is an institution under the Ministry of Dutch law, but in the organization and administration is entirely run by the Legal Aid Board independently. All costs used in the Legal Aid Board shall be certified by the Ministry of Justice. Although so, legal aid basically is provided by the state, it was for the applicants would still be required to make payments but costs are predefined and considered very affordable for the country. Citizen funding is meant to encourage citizens carefully consider the advantages and disadvantages wisely he gets when bringing the dispute to court. Thus, minor cases themselves are also filtered out and do not get into court. However, the lion's share of financing legal aid still is financed by the State through the law ministry.

Legal aid in China

On September 1, 2003 there was regulation in China which stated that Government is responsible to provide legal aid. There are two criteria to determine citizen's requirement which can obtain legal aid, namely financial support and law problem. Main legal aid funding is government financial appropriation and cost allocation for legal aid included in the Government budget every year. The allocated fund should be used exclusively for intended purpose, mainly to cover case management cost and workers subsidies.

Social institutions are encouraged to participate in legal aid. China has established five legal aid foundations, including Legal Aid Beijing Law Foundation to receive and manage grants from home and abroad to support legal aid organizations.

Regulations on Legal Aid stated that the Ministry of Justice and justice administration organs at all levels are responsible for the supervision and legal aid management. The Ministry of Justice has established the Legal Aid Department and the Center for Legal Aid to guide and inspect the enforcement of law, regulation and policy on legal aid, to map out an entire cause of legal aid, to oversee and manage the legal aid organization and workers, to guide social institution and volunteer to carry out legal assistance, to wage a publicity campaign's legal assistance, to organize legal aid training program, to evaluate legal aid quality, to organize and carry out international exchange and cooperation matter of legal aid and to conduct relevant theoretical research.

Over the years, legal aid implementation in China has made progress. However, there are still many difficulties and challenges. Some examples of the difficulties and challenges are:

1. Urban and rural area development is not balanced.
2. Legal aid financial input.
3. The amount and legal aid workers' quality still can not meet the demand for legal aid.
4. Society's law knowledge and legal aid visibility need to be leveled and public legal education should be strengthened further.

Legal Aid Essence

Legal aid is very essential in creating a fair life and protect human rights to avoid any kind of action that could be endangered by law enforcement officer's and Government officer arbitrary action. It does not depend on litigation only, but also in giving legal aid in non litigation, or legal aid in broader sense. Article 3 Act 16 Act 16 of 2011 on Legal Aid stated that legal aid implementation's purpose is to:

1. Guarantee and fulfill recipient's legal aid rights to obtain access to justice.
2. Realize the constitutional rights for all citizens according to equality before the law principle.
3. Guarantee the certainty of legal aid implementation in the entire Republic of Indonesian territory.
4. Realize effective, efficient, and accountable justice.

Legal aid aims to provide aid, and intensify and develop society's awareness for their rights as a legal subject. There are two aspects of legal aid aims, namely:

Humanitarian aspects

In humanitarian aspect, legal aid purpose is to lighten the law cost for the unable community in front of the Court. Thus, when people are not able to deal with the legal process in court, they still have the opportunity to acquire the defense and protection of the law.

Legal awareness improving

In the aspect of legal awareness, it is expected that legal aid program will spur the level of public awareness to a higher level again. Thus, the public appreciation of the law will be performing through the attitude and action reflecting the rights and obligations under the law.

Legal Aid Practice Implementation for Local Poor

Although existing international instruments and national law basis are related to legal aid, the guarantee of constitutional rights is not getting the attention adequately. Legal aid provision is not yet touched by many people or groups of poor people, so they are difficult to access justice because it is hampered by their inability to realize their constitutional rights. It is because the state is more often absent to run its legal obligation as a human rights responsibility holder in compliance to fulfill legal aid rights of the poor.

Oliver Goldsmith's expression has got a justification when he argued that, "Laws grind the poor and rich men rule the law". This expression arised because the rich with their thick pocket are accompanied by a lawyer to defend his rights and interests. But a weak, blind legal and poor lonely is fend for himself without any assistance. Law hits the child and the poor but the rich dominate and master the law. Law and justice is something 'lux' for the poor because it is difficult to reach and get. In fact, the tragedy could happen because of poverty and ignorance used by those who are not responsible as a new 'commodity'.

Legal aid implementation to citizens is an attempt to meet the implementation of state law that recognizes, protects and guarantees the rights of the need for access to justice and equality before the law. In this connection, Act 16 of 2011 on Legal Aid became the basis for the state to guarantee citizens, especially people or poor groups of people in getting access to justice and equality before the law.

Poor people lack legal aid because they do not have access to power and are unable to pay the cost needed to fight for their rights and get protection and legal certainty, treatment to obtain same opportunity and benefit in order to achieve equality before the law.

Observing that Government has made various efforts to give attention to Indonesian citizen legal protection issues are enshrined in 1945 Constitution of Republic of Indonesia, likely contained in Act 8 of 1981, Act 39 of 1999, Act 18 of 2003, Act 48 of 2009 and Act 16 of 2011. However, problem may arise when legal aid program has not been able to reach poor people especially those located in rural areas.

In order to implement legal aid providing policy for the poor or unable in the rural area, the Government must allocate legal aid cost in the State Budget as stipulated in Article 17 of Act 16 of 2011. The implementation of legal aid policy is not done by the Government through the Ministry of Justice and Human Rights, but also the Local Government. Even before the Act 16 of 2011 on Legal Aid passed, there were some areas in Indonesia that regulated legal aid for the poor in a Local Act and Head Local Act including East Java Province, West Java Province, Asahan Regent, Palembang City, Musi Banyu Asin Regent, and others.

Through Local Act on legal aid for poor local community, it is expected to ensure that each poor (who are unable) gets legal assistance, and is not constrained to have access to justice and legal protection as well as get cost in resolving legal issues faced, free from pressure and intimidation. Furthermore, the recipient of legal aid can be ensured to not find barriers to legal assistance, especially in the poor and remote areas.

CONCLUSION, RECOMMENDATIONS AND IMPLICATIONS

A country can be said to be a state of law, when the country gives the rewarding and legal protection and legal aid to all citizens, no exception for the poor who have not been getting inadequate access to justice compared to other groups. Furthermore, the implementation of legal aid compliance is not only done by government through Ministry of Justice and Human Rights, but also by the Local Government.

In order to optimize the fulfillment of legal aid implementation for local poor, it needs to streamline coordination and synergy inter-agency between the Ministry of Justice and Human Rights and Local Government.

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