

Pekanbaru Religious Court's Policy on the Implementation of Legal Litigation Legal Rights Besides Advocates

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ABSTRACT

Regulations set by the Government provide guidance in formulating a policy in the Religious Court of Pekanbaru, in the implementation there is a policy that is felt beyond the regulations that may complicate the Legal Aid providers. Specific targets of this research are to provide suggestions for the Supreme Court in order to formulate the regulation of the Rights of Legal Aid Specialist in the Religious Court of Pekanbaru. The type of research is sociological law research. In the data collection used nonstructural interview, observation, and literature review. In this case, the result of Pekanbaru Religious Court Policy on the Implementation of Legal Litigation Legal Rights Besides Advocate as well as a policy on the rights that an advocate obtains when dealing with a professional case in a religious court. However, although legal aid providers other than advocates have been accepted and admitted to the newborn religious court, no legal aid providers other than advocates have come as good legal aid providers it's from paralegals, lecturers, or law faculty students who come to accompany the poor. The lack of socialization of legislation by the government on society has made people unaware that there are legal aid providers other than advocates. When filing a lawsuit / petition in a newbie religious court has additional rules regarding the filing of case registration as there are additional letters to be completed, namely letter of advocate appointment by LBH, letter of willingness of advocate, and letter of attendance of first session.

Keywords: Policy , Legal Aid In addition to advocates.

1. Preliminary

Article 27 Paragraph (1) of the Constitution of the Unitary State of the Republic of Indonesia Know n 1945 affirms all citizens at the same time in law, this provision is commonly known as *equality before the law* or equality before the law . *Equality before the law* means that everyone has the right to be treated equally before the law. Equal treatment before the law applies to everyone without discriminating ethnic, religious, economic or hereditary background, to obtain justice through the judiciary.¹

The issuance of Law Number 16 Year 2011 regarding Legal Aid is expected to protect the constitutional rights of each individual to obtain legal aid but it is also expected to accommodate the protection of the less fortunate in facing legal cases. The recognition and guarantees of the *Equality Before the Law* principle are not just limited to political recognition. However , more emphasis on the concrete actions of the state. In providing guarantees to the public in

gaining access to justice for the fulfillment of basic human rights, even its actions must also be taken to ensure the fulfillment of the obligations of this country. In law No. 16 of 2011 on legal aid, the legal aid providers are not only advocates, but paralegals, faculty, and law faculty students also include legal aid providers.

The existence of paralegals, lecturers, and students of the Law Faculty of Legal Aid Institute, non-governmental organizations and legal academics and even law faculty students in providing legal advice or assistance to the community are still recognized Legal Aid Act. The Constitutional Court Justices of the Constitutional Court chaired by Hamdan Zoelva decided to reject the Advocate Lawsuit in 2012 for the Constitutional Court to nullify some of the articles in the Act recognizing existence. The refusal was stated in the decision number 88 / PUU-X / 2012 declared rejected the Lawsuit. A number of advocates such as Suhardi Somomoelyono, Umar Tuasikal, Dominggus Maurits Luitnan and Malkam Bouw sued Law No. 16 of 2011 on Legal Aid to the Constitutional Court. The articles being sued are Article 1 paragraph (1), (3), (5), (6); Article 4 paragraph (1), (3); Article 6 paragraph (2), (3) letter a, b; Article

¹ Eka Susylawati, Implementation Case Prodeo B agi M asyarakat Poor Pamekasan in the Religious *Organizations Nuansa*, Vol ume 10, Nomor 1, January - June 2013 , pp. 125.

7; Article 8 paragraph (1), (2) letter a, b; Article 9; Article 10 letter a, c; Article 11; Article 15 paragraph (5); and Article 22. The articles according to the advocates contained the vagueness of the intentions of those who provided free legal aid, the formulation of legal aid phrases and advocates' words were also considered to give rise to multiple interpretations. According to the plaintiffs, legal aid can only be provided by advocates since the enactment of Article 56 paragraph 2 of the Criminal Procedure Code where the term lawyer and legal counsel is merged into the term advocate. Therefore advocates feel aggrieved by the existence of especially Article 9 letter a juncto Article 1 Paragraph 3 of the Legal Aid Law which calls for the provision of legal assistance to be made by legal aid agencies or community organizations (NGOs) entitled to recruit advocates, paralegals, lecturers and students faculty of Law.

In the view of advocates who sued, lecturers, law faculty students, NGOs and CSOs are not law enforcers and have no right to provide legal assistance. It's just that the opinion was countered by the judges of the Constitutional Court who argued that the articles that have sued the law set clear boundaries and direction about legal aid, legal aid, legal aid standards, and code of ethics advocate that does not contain conflict with the 1945 Constitution. argues paralegals, faculty, and law faculty students can provide legal assistance. While the obligation of advocates in providing free legal assistance is not limited, not reduced and not eliminated by the Act.

The results of the author's initial observation in 2016 to 2017 At the Pekanbaru Religious Courts are eligible to conduct a trial and in the trial in the community assistance can not afford in the court of Religion Pekanbaru is only a sworn advocate, whereas in Law No. 16 of 2011 on Legal Aid Legal Aid to implement government programs not only advocates namely paralegals, lecturers, faculty of law students. This is reinforced by the Decision of the Constitutional Court Number 88 / PUU-X / 2012, but in practice only lawyers are allowed to lawy.

In Riau Province stated that the implementation of legal aid is organized by accredited Legal aid organizations in Riau Province. Based on the Decree of the Minister of Justice and Human Rights of the Republic of Indonesia Number M.HH-01.HN.03.03 Year 2016 concerning Organization / Legal Aid Institution which passed the verification and accreditation as the Legal Aid for the period of 2016-2018. There are 7 (seven) Legal

Aid Organizations that are accredited based on the verification result of National Legal Development Board in Riau Province :

1. LBH Faculty of Law University of Lancang Kuning;
2. LBH Mahatva;
3. LBH Ananda;
4. LBH YLBHI Pekanbaru;
5. LBH KBH Riau;
6. LBH Understand Riau;
7. LBH Forum Masyarakat Madani Indonesia.

(Decree of the Minister of Justice and Human Rights of the Republic of Indonesia No. M.HH-01.HN.03.03)²

All legal aid organizations above are entitled to recruit legal aid executors consisting of advocates, lecturers, paralegals and law faculty students to run government programs with the birth of a law of legal aid, but when the right of legal aid providers is restricted, the program of this government is restricted in the Religious Courts Pekanbaru and not running maximally because of free legal aid is the right of poor people that must be fulfilled.

Based on the above information the authors are interested in conducting research entitled Implementation of Legal Litigation Legal Rights Besides Advocate in Religious Court of Pekanbaru Based on Law Number 16 of 2011 on Legal Aid .

2. Research methods

Type of research

The type of this research is sociological law research , done by empirical approach by examining the formulation of the problem yang to be researched as well as provide description and analysis on the Implementation of Legal Aid Rights Besides Advocates .

Location

This research was conducted in the Religious Court of Pekanbaru, while consideration of the author in opting to this location with regard to the phenomenon, namely the tendency to non-fulfillment e kecend rights legal aid providers in the Religious Court of Pekanbaru and lack of socialization with such rights.

Population and sa mpel

Population

The population associated with this research are: Chairman of LBH FH Unilak,

² Decree of the Minister of Justice and Human Rights of the Republic of Indonesia Number M.HH-01.HN.03.03

Head of Legal Services Division Kanwilumham Riau, Postal Service Post of Religious Court of Pekanbaru.

Sample

The number of each population above as much as 1 (one) person then the overall census writer set to be a sample. The condition of the population and sample of this study can be seen in the following table:

Table
Population and Sample

No.	Population	Population	Sample	Percentage (%)
1	Posbaku m Officer of Pekanbaru Religious Court	1	1	100
2	Chairman of LBH Pekanbaru	1	1	100
3	Chairman of LBH FH Unilak	1	1	100

Data source

- Primary data
Data primary and compiled through information obtained from the samples directly, on matters related to the problems examined.
- Secondary data
Secondary data obtained through the library that supports primary data.
- Tertiary data
Tertiary data are obtained through encyclopedias and the like which serve to support primary data and secondary data.

Data collection technique

- Observation
This technique is possible by means of a direct observation of the problem investigated.
- Interview
Interviews are conducted in a structured, ie question and answer between the authors with the sample

to a list of questions that have been prepared in accordance with the direction of the problems studied.

c. Library study

This data collection method is done through the active role of the author to read the literature that has a correlation with the problems studied.

3. Discussion

Pekanbaru Religious Court's Policy on the Implementation of Legal Litigation Legal Rights Besides Advocates

Of the 1945 Constitution of the State of the Republic of Indonesia in Article 24 paragraph (1) affirms that judicial power is an independent power to administer justice in order to enforce the law and justice. Article 24 paragraph (2) of the 1945 Constitution of the State of the Republic of Indonesia determines that judicial power is exercised by a Supreme Court and its subordinate courts within the general courts, the jurisdiction of the judiciary, the military court environment, the administrative court of the state, and by a Constitutional Court. Law Number 7 Year 1989 on Religious Courts as amended by Act Number 3 of 2006 on Religious Courts is basically to realize the implementation of free judicial power and clean and authoritative judiciary, which is done through the arrangement of an integrated judicial system (*integrated justice system*), especially the religious court constitutionally constituted a judicial body under the Supreme Court.³

Based on Article 4 Paragraphs (2) and 3 of Law Number 16 Year 2011, it is determined that legal assistance provided by legal aid providers to legal aid beneficiaries covers civil, criminal, and state administrative matters, both litigation and non-litigation. Such legal assistance includes exercising power, accompanying, representing, defending and / or taking other legal actions for the beneficiaries' legal entity law.⁴ Besides legal

³ Elucidation of Law Number 50 Year 2009 regarding the Second Amendment to Law Number 7 Year 1989 on Religious Courts.

⁴ Cynthia Wirawan, Implementation Providing Legal Assistance Free of Charge (*Pro Bono Publico*) In Criminal Case di Medan Ditinjau Berdasarkan Undang-undang Law No. 16 of 2011 on Aid Hukum (Studies in Legal Aid Medan), *Journals Mahupiki*, Volume 2, Number 1, Year 2014, p. 286.

aid lawyer is, paralegal, teachers, and students of the faculty of hukum.

The existence of a Legal Aid has an important meaning in providing a solution to the problems faced by poor people seeking legal assistance, especially those practicing in the Religious Courts, which are courts of jurisdiction in charge of examining, deciding, and resolving certain civil cases is regulated in Article 49 of Law No mor 7 of 1989 paragraph (1) and among certain people, namely people who are Muslims based on Islamic law. Along with so many areas of marriage that must be handled by the religious court, the opportunity lawmakers in addition to advocates as well as advocates the same opportunities with judiciary in handling cases filed by the client to him.

With the enactment of Law No mor 18 Year 2003 on advocates, So Advocates who practice in Religious Courts have the same authority with advocates who practice in other jurisdictions. However, the difference is about the types of cases that the authority of the judiciary itself, kewenangan handle civil cases for the Moslems is one of the judicial authority of religion. Advocate Beracara hence in the religious court does not act as legal counsel but as a special power, because only a victory in civil matters rather than criminal. Meanwhile, to be able to practice in Religious Court, an advocate / lawyer besides advocate must fulfill requirement normatively / have rights, that is:

1. Must have a power of attorney special ;
2. Appointed as a representative or authorization in the letter lawsuit ;
3. Appointed as representative or proxy in the record of the lawsuit if filed orally writing.
4. Appointed as a plaintiff or defendant as a proxy or representative in the proceedings
5. It's listed as advocate / legal aid provider to an accredited legal aid organization.
6. Designated by letter of appointment of legal aid providers by an accredited legal aid agency
7. Make a statement of willingness to provide free assistance
8. Making a statement will be present at the first hearing.

All the above requirements must be attached in the filing of a Claim or petition in the Religious Court of Pekanbaru.⁵

Furthermore, the role of legal aid providers in addition to advocates in the Religious Courts is as follows:

1. Accelerate the settlement of administrative cases, either divorce or divorce petition for the smoothness of the trial in court.
2. Helps present the parties in court in accordance with the schedule trial .
3. provide legal understanding relating to the sitting of the case and its position, to the parties in submitting a petition or claim or accepting a court decision religion.

One of the Legal Aid Offenders besides advocates is that Paralegal currently plays a strategic and important function in the legal empowerment movement in the community. Paralegals function as mediators or bridges of justice seekers. As intermediaries paralegals play an important role in the defense of the rights and interests of the community as legal aid organizations are the main access to providing legal assistance to the poor. The strategic role of paralegals is needed in the field of protection of the rights of people who are dealing with the law either through litigation or non litigation process. Legal aid organizations have very little human resources to fight for the rights of people who are dealing with the law, to conduct litigation activities for those who have not had the news of the oath will be expelled by the judges. Whereas already existing law number 16 of 2011 on legal aid that allows paralegals in the courts. And reinforced by the mechanism permenkumham number 1 of 2018 about paralegal in the provision of legal aid⁶.

Legal aid is the constitutional right of every citizen as access to justice, as mandated by the Constitution of the State Republik Indonesia 1945. In accordance praktik Internationally, there are five (5) pillars on legal aid:

1. Accesible, legal aid should be easily accessible.
2. Affordability, the tire of law is financed by the state.
3. Sustainable, legal aid must be continuous and independent on the donor countries rus mengangarkannya

⁵ The author is the implementer of legal aid in the Religious Court of Pekanbaru from 2015.

⁶ Interview with Fahmi from LBH FH Unilak on April 24, 2018 at 15.00 WIB.

ha in nggaran P endapatan A and B elanja N egara (APBN).

4. Credibility, legal aid must be trustworthy and provide confidence that what is given is in the framework of impartial courts (also when they face cases against the state, there is no doubt about it).
5. Accountability, legal aid providers must be able to provide financial accountability to the central body and then the central body must be accountable to parliament.

In Law No. 16 of 2011 on Legal Aid it is said that legal aid providers are legal aid agencies or community organizations providing legal aid services. Legal services provided to beneficiaries are free of charge, in the sense that they are not paid for by the parties to which they are assisted, but the government will provide grants for each case handled which is adjusted according to the type of case. The grants will not be given to all OBHs, but only to OBHs that are eligible under the Law of Assistance Law⁷.

Thus, prime Frame legal aid in Indonesia organized by the Legal Aid Organization (OBH) which is registered and accredited. To carry out the registration and accreditation is granted to an arbitrary on Kement e Rian Hukum and Human R epublik I ndonesia through by the Office of the W territory in the province local . Facilities obtained by the recipient of legal aid, which is provided by law counseled by advocates incorporated in OBH until the case is over. Although without a true OBH lawyers are required to provide legal assistance for people or poor groups, in realizing the principles of legal state, the profession. However, on its obligation kenyataa n advocates in providing legal assistance free of charge there are many obstacles in practice. Therefore, according to Ade Irawan Taufik required state intervention. The problem is how the conception of legal aid has been happening and how the synergy of the direction of legal aid is pro-poor and how the synergy of the state and advocate role in the provision of free legal aid for the poor or the poor.⁸

Legal aid is not solely *pro bono publico work* , but it is an obligation of advocate (duty or obligation). The poor are entitled to the defense of an advocate or public defender working for legal aid organizations. In recognition of individual *rights* , the principle of *equality befor the law* is guaranteed in the legal system of Indonesia. This equation does not recognize exceptions.⁹

The legal aid providers of litigation other than advocates in the newborn religious court shall have the same rights as a professional advocate having a law in court namely:

- a. Obtain a power of attorney / authorization from the client in this case the people can not afford and register the Power of Attorney at the court of religious court Pekanbaru In the new religious court of Pekanbaru, in 2017 only ad vocate who memiki card advocate signs and the sworn affidavit that may register a power of attorney in court, for legal aid providers in addition to advocate can not but in 2018 can be with the addition of several letters namely Designated based a letter of appointment of a legal aid provider by an accredited legal aid agency , Making a statement of willingness to provide free assistance , Making a statement will be present at the first hearing.
- b. Accompanying in the mediation process if all parties are present at the first hearing, Mediation in the newborn religious court, has a habit that only the parties who can enter advocates let alone legal aid providers in addition to advocates should not enter the mediation room.
- c. Accompanying the first trial, In the religious court of Pekanbaru the legal aid providers are obliged to make a statement of attendance at the first hearing and in the absence of the panel of judges to adjourn the day of the hearing, and if it is not present, the case may not be continued, whereas in the provisions of the power of attorney may be replaced or the inperson comes alone.

⁷ Mosgan Situmorang, Building Accountability for Legal Aid Organizations, *Journal of Recthsvinding Media National Legal Development* , Volume 2, Number 1, April 2013, hlm. 1 0 7.

⁸ Ade Irawan Taufik, Synergicity of Roles and Responsibilities of Advocates and States in Providing Free Legal Assistance, *Journal of*

Recthsvinding Media National Legal Development , Volume 2, Number 1, April 2013, hlm. 47.

⁹ Iwan Setiawan and Adawiyah Nasution, Processes Bantua n Law In Prodeo Against Perpetrators of Crime By Advocate, *Kultura Journal*, Volume 15 Number 1, September 2014, p. 4404.

d. Accompanying clients at follow-up sessions (court hearings, answers, replications, verification, conclusions)

In handling cases in the Religious Courts of Pekanbaru in particular the case of divorce there are some roles performed by advocates / legal aid providers in addition to advocates for the role of advocate is manifested properly, providing legal services, provide legal advice, defend client interests, and represent the client in advance court :

1) Give service Law

The role of legal aid providers in addition to advocates in the case of divorce is apparent in every case process. legal aid providers in addition to advocates do best to give advice (service) to his client well. In providing his services, this legal aid provider first asks who caused his wish to file for a divorce. As a first step, legal aid providers in addition to advocates also provides an alternative way of peace that is possible so that the problems faced by his client can get a settlement without having to be forward to court. Although eventually the case that happened to his client also entered at the court table.

2) Provide advice law

The provision of legal advice to clients who are the responsibility of the legal aid providers in addition to the advocate is given since the first time he came face to face with the client. This legal advice is given so that the client has a legal awareness of the problems being faced. It is possible that with this early counsel he can reconcile and revoke his plan to file a lawsuit through the courts. In his advice the legal aid providers provide the view that the court is a supernatural alternative if forced to be pursued through legal channels.

3) Defend interests client

legal aid providers in addition to advocates have a role to defend the interests of the community and its clients. legal aid providers in addition to advocates is needed when a person faces a problem or problem in the legal field. The role of defending the client's interest in dealing with divorce cases in this case bear the sense that the defense is absolute. Represent client in advance court

Indeed, not everyone who filed a case in front of the Religious Court of Pekanbaru can attend every session of the trial. sometimes as a session followed by the parties who berpekara and some are not. This is where the role of legal aid providers in addition to advocates has important value. As the carrier of power of attorney from his

client, of course he has a big share in every trial procession. He acted as a representative in the trial. Formally he acts to defend his interests and fight for the rights of his clients.¹⁰

4) Right to get Case exemption

The Court fee waiver service is obtained by a Legal Aid provider other than an advocate after filing a Lawsuit or petition that the Applicant is a Disadvantaged Group based on a Certificate of Unsurpassable (SKTM) attached by the legal aid provider. For the legal aid organizations if the requirement of formal legal assistance is only based on SKTM, while SKTM is not selective or easy to obtain, the right to get legal aid is actually the right of the poor, but actually enjoyed by the rich. As long as there is no clear criteria and criteria for determining the poor criteria, it will be difficult for OBH to determine the poor criteria. If there is no solution then anyone applying for legal aid carries SKTM then it is formally considered poor. Against this phenomenon, it needs a solution or effort so that SKTM misuse as a condition of recipient of legal aid for free for the poor in Riau Province can be overcome.

According to the regional supervisory committee the efforts to be made by the regional supervisory committee should immediately formulate the regulation of material requirements determining the criteria of the poor who are entitled to obtain legal assistance free of charge from the state. Then disseminate it to all city / regency government in Riau Province so that it can be forwarded to village / village up to RT level. The Regional Supervisory Committee itself consists of the Legal Services Division of KanwilKumham Riau and the Riau Province Legal Bureau. In the newbie religious court after the Appeal Exemption fee is filed it will be reviewed and analyzed by the head of the religious court if the Prodeon is approved or not because it is related to the provision of appropriate legal aid funds targeted.¹¹

Conclusion

Pekanbaru Religious Court's Policy on the Implementation of Legal Litigation Legal Rights Besides Advocates as well as a policy

¹⁰ Interview with Winda Annisa, Selau Staff at Pos Law Services of the Religious Court of Pekanbaru, on 23 April 2018 at the Religious Court of Pekanbaru

¹¹ Interview with Helen from Legal Services Division of Riau Regional Office of the Ministry of Justice and Human Rights on 15 March 2018 at 15.00 Wib

on the rights that an advocate obtains when dealing with professional cases in a religious court, namely Right to be appointed as a legal assistant based on a power of attorney specifically, designated as a representative or authorization in the letter lawsuit, Appointed as representative or proxy in the record of the lawsuit if filed orally writing, Designated as a plaintiff or defendant as a power of attorney or representative in persidangan has been listed as lawyers / legal aid provider in the organisasi accredited legal assistance, the right to a fee waiver, Right to represent clients in mediation level. When filing a lawsuit / petition in a newbie religious court has additional regulations regarding the filing of case registration as there are additional letters that must be completed namely letter of appointment advocate by LBH, letter of willingness of advocate, and letter of attendance of first session.

However, although legal aid providers other than advocates have been accepted and admitted to the religious court Pekanbaru but there is no legal aid other than lawyers who come as a good legal aid from paralegals, lecturers, or law faculty students who come to accompany the community can not afford. The lack of socialization of legislation by the government on society makes people unaware that there are legal aid providers other than advocates.

Suggestion

1. To the Provincial Government of Riau, the Regional Supervisor of Kanwilcumham Riau and OBH should make a Program for socialization about the existence of legal aid providers who can carry out activities like advocates and it is free.
2. To the Religious Court Pekanbaru To facilitate the legal aid providers either advocates or paralegals, lecturers, law faculty students to not complicate the procedure in filing a case.
3. To the Supreme Court of the Republic of Indonesia In order to make the Regulation in the form of Supreme Court Regulation concerning the Right of Legal Aid Other than Advocate in Religious Court in order to have uniformity.

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