

Free Legal Aid Policy: The Role and Challenges of Legal Aid Organizations to the Poor

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Abstract

The Ministry of Law and Human Rights of the Republic of Indonesia makes a policy for legal aid organizations to carry out legal aid on a pro bono basis to get the legal aid budget ceiling for the following year. The purposes of this study are to analyze the role of legal aid organizations in realizing pro bono legal aid to implement access to justice for the poor; and to analyze their challenges in fulfilling The Ministry of Law and Human Rights policy of implementing pro bono legal aid to get the legal aid budget ceiling for the following year. This research using empirical juridical research methods, with a sociological, statutory and a conceptual approach. Primary and secondary data obtained through interview techniques, observations, and literature studies, then analyzed qualitatively. The results of this study show that legal aid organizations play a preventive role in the form of legal counseling activities to the community and actively serve consultations to legal aid both inside and outside the trial for the poor; The challenge they encountered was in the form of rivalry between fellow legal aid organizations which were then required to innovatively get closer to the need for free legal aid for the underprivileged.

Keywords: Access to justice, Legal aid organizations, Legal aid policy, The poor.

Introduction

The right to obtain legal aid is a manifestation of the principle of justice and the principle of equality guaranteed in international law and national law (Indonesia). The recognition of international law contained in the Universal Declaration of Human Rights of 1948, Articles 10 and 11 essentially states that everyone has the right to a fair trial and that the accused have the right to defend themselves by all necessary means. Furthermore, in the 1966 International Covenant on Civil and Political Rights, Article 14 affirms that every individual has the right to legal aid in the face of judicial proceedings, especially for those who are financially incapacitated, which is technically reinforced in the 2012 UN Principles and Guidelines on Access to Legal Aid in the Criminal Justice System.

From the perspective of Indonesian law, the principle of equality before the law in the form of the right to legal aid is guaranteed in the constitution as part of the protection of human rights, contained in Article 28D paragraph (1) and Article 28G paragraph (1).² In 2011, Law Number 16 of 2011 concerning Legal Aid (Law 16/2011) was issued which provides a legal basis for the right to free legal aid, to realize the constitutional rights of citizens and ensure access to justice.

The implementation of the provision of legal aid as referred to in Law 16/2011, is carried out by legal aid institutions/organizations, one of which is the Legal Aid and Consultation Institute of the Faculty of Law, Universitas Islam Indonesia (LACI UII). As a legal aid institution/organization based in Yogyakarta City, LACI UII serves the community in the aspects of legal consultation, legal aid, and legal counseling to the

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² Monika Suhayati, 'Pemberian Bantuan Hukum Cuma-Cuma Oleh Advokat Berdasarkan Undang-Undang No. 18 Tahun 2003 Tentang Advokat' (2012) 3 Negara Hukum 227.

community. The target of these services is not only given to the community in general, but also to the poor.³

With the enactment of Law 16/2011, in 2012 this institution has received accreditation four times in a row from the Ministry of Law and Human Rights as one of the actors providing free legal aid for the poor until now. Furthermore, the Minister of Law and Human Rights of The Republic of Indonesia has stipulated the Regulation of the Minister of Law and Human Rights Number 3 of 2013 concerning Procedures for Verification and Accreditation of Legal Aid Institutions or Community Organizations (RMLH 3/2013) as a regulation for providing verification and accreditation to legal aid institutions/organizations.

Furthermore, on November 7, 2023, the National Legal Development Agency issued an Implementation Directive on Procedures for Verification, Accreditation, and Extension of Certification for Prospective Legal Aid Providers with Number: PHN-HN.04.03-812. In the policy, it is stated in Chapter VII number 8, the extension of certification is carried out by considering things, one of which is in letter g, namely the handling of free legal aid cases (*pro bono* legal aid). The implementation of such case handling not only affects the accessibility of legal aid institutions/organizations to be able to receive legal aid funds in the following year/next period by government, but also affects the result of the certification extension: the accreditation is increased, or the accreditation status is fixed, or the accreditation is actually downgraded.

Based on the laws and regulations and policies of the government of the Republic of Indonesia, the commitment of the government of the Republic of Indonesia in implementing the provision of Free Legal Aid can be said to be good. Thus, legal aid institutions/organizations play a very vital and strategic role in the implementation of the policy.

Nevertheless, the challenges faced by legal aid institutions/organizations in serving the poor, are still faced; For example, the limitations of human resources, budgets, and even government regulations or policies themselves at the regional/local level.⁴ Therefore, this study is important to analyze the role of LACI UII and identify the challenges they face in realizing access to justice for the poor.

Based on the things that have been described, the legal issues discussed are as follows:

- a. What is the role of legal aid organizations in realizing *pro bono* legal aid to implement justice for the poor?
- b. How are their challenges in fulfilling The Ministry of Law and Human Right's policy of implementing *pro bono* legal aid to get the legal aid budget ceiling for the following year?

³ Fauzan, Fadly Somar, Megawati Barthos and Indah, Kusuma Wardhani, 'Efektivitas Pelaksanaan Bantuan Hukum Bagi Masyarakat Kurang Mampu Oleh Lembaga Bantuan Hukum Jakarta' (2023) 1 Jurnal Multidisiplin Borobudur-100 Jurnal Multidisiplin Borobudur 100.

⁴ Aurelia Colombi Ciacchi and Dietmar von der Pfordten, 'Exploring the Relationship between Law and Governance: A Proposal' (2023) 11 Theory and Practice of Legislation 151 <<https://doi.org/10.1080/20508840.2023.2215657>>.

Based on the search of existing scientific works and literature that have little similarity with this research, it can be conveyed as follows:

Author's name and title of paper	Summary of the content	Comparison with this study
Bambang Sutyoso, et.al., <i>Peran Dan Tanggung Jawab Organisasi Bantuan Hukum Dalam Memberikan Akses Keadilan Secara Prodeo Di Daerah Istimewa Yogyakarta</i> , Jurnal Hukum Ius Quia Iustum, Vol. 30, Issue 1, 2023. ⁵	This paper examines the roles and obstacles experienced by legal aid organizations in pro deo legal aid.	Although both use similar research methods and problem formulations, the emphasis of this research is on the provision of pro bono legal aid based on the new government policy.
I Kadek Juliana, et.al., <i>Peran Bantuan Hukum Dalam Memberikan Bantuan Hukum Terhadap Masyarakat Miskin Dan Marginal</i> , Jurnal Jis Siwirabuda, Vol. 1, Issue 2, 2023. ⁶	This paper discusses the role of advocates as member of legal aid organizations in legal aid services for the poor in handling criminal cases.	In contrast to this study, which focuses on the role of legal aid organizations institutionally and the discussion is in general legal aid services.
Ahmad Dasan, et.al., <i>Peran Lembaga Konsultasi dan Bantuan Hukum dalam Memberikan Pendampingan Hukum Bagi Masyarakat Tidak Mampu</i> , Al-Imarah: Jurnal, Pemerintahan dan Politik Islam, Vol. 7, Issue 1, 2022. ⁷	This paper examines the role of the Legal Consultation and Aid Institute of the University of Muhammadiyah Bengkulu in providing Free Legal Aid.	Although both examine the role of legal aid institutions/organizations under campus supervision, this scientific work has differences in research locations and the use of new government policies in its research variables.

Thus, it can be concluded that this research is different from the existing and previous literature and has a novelty, namely the analysis of the policy Number: PHN-HN.04.03-812 of handling cases independently/pro bono as the basis for accessing legal aid funds in the coming period/year by accredited legal aid institutions/organizations.

⁵ Bambang Sutyoso, Atqo Darmawan Aji and Guntar Mahendro, 'Peran Dan Tanggung Jawab Organisasi Bantuan Hukum Dalam Memberikan Akses Keadilan Secara Prodeo Di Daerah Istimewa Yogyakarta' (2023) 30 Jurnal Hukum Ius Quia Iustum 200.

⁶ I Kadek Juliana, Kadel Mery Hewawati and I Gusti Ngurah Aristiawan, 'Peran Bantuan Hukum Dalam Memberikan Bantuan Hukum Terhadap Masyarakat Miskin Dan Marginal' (2023) 1 Jurnal Jis Siwirabuda 137 <<https://s.id/JISSiWirabuda>>.

⁷ Ahmad Dasan and others, 'Peran Lembaga Konsultasi Dan Bantuan Hukum Dalam Memberikan Pendampingan Hukum Bagi Masyarakat Tidak Mampu' (2022) 7 Al Imarah : Jurnal Pemerintahan Dan Politik Islam 114.

The type of this study is empirical legal research or commonly known as sociological-juridical research (non-doctrinal legal research).⁸ To answer the problem formulation above, the author highlighted the sociological, statutory, and conceptual approach.

To obtain primary data, the author uses interview techniques with subjects including and not limited to administrators of legal aid institutions/organizations (LACI UII), advocates, and observers of free legal aid policies. Meanwhile, secondary data is obtained through document study; it is the main data collection technique because the proof of the basic assumptions (hypotheses) of the research is based on positive legal norms, legal doctrines, or teachings, as well as the results of academic research, as well as court decisions. All of them are based on written documents.⁹

The legal materials obtained will be analyzed in a qualitative descriptive way, namely by analyzing the existing data to be further studied and interpreted by the researcher to get the expected conclusion. Especially on the relationship between the implementation of The Ministry of Law and Human Right's policy in providing free legal aid and the role of legal aid institutions/organizations in implementing pro bono legal aid to create access to justice for the poor.

Discussion

In this part of the results of research and discussion, the author limits by choosing one of the legal aid organizations that have been accredited by the Ministry of Law and Human Rights in providing free legal aid for the Special Region of Yogyakarta. The legal aid organization is called LACI UII, which is located on Jalan Lawu 3 Kotabaru, Yogyakarta; is one of the legal aid institutions under the supervision of the campus, Faculty of Law, Islamic University of Indonesia.

LACI UII was de facto established in 1976, but it was de jure called on July 23, 1978 based on the decree of the Rector of the Islamic University of Indonesia. This institution is led by a head/director, who is also a lecturer at the campus, and has three fields, including: Case Handling, Community Education, and Internship. LACI UII has 15 (fifteen) advocates, including the head/director earlier, and is currently assisted by 7 (seven) active undergraduate students, as well as 5 (five) people in the secretariat section.

Every year they always organize legal training for students of the Faculty of Law, Islamic University of Indonesia, which serves in addition to providing knowledge and legal skills, also making the training a requirement for internships and careers at LACI UII when the students graduate. The training is called KARTIKUM (*Karya Latihan Hukum*). This is in accordance with the mandate of Law 16/2011 which states that every legal aid organization can recruit: advocates, lecturers, and even law students.

As stated in the previous section, LACI UII has been accredited as a legal aid organization by the Ministry of Law and Human Rights 4 (four) times in a row since 2012 and is currently applying for re-accreditation for the 2025-2027 period. Armed with this

⁸ M Syamsudin, *Operasionalisasi Penelitian Hukum* (1st edn, PT RajaGrafindo Persada 2007).

⁹ Soerjono Soekanto and Sri Mamudji, *Penelitian Hukum Normatif Suatu Tinjauan Singkat* (1st edn, Rajawali Pers 2012).

data, the author will present the results of the research and discussion in the following sub-chapter below.

A. The Role of Legal Aid Organizations in Realizing Pro Bono Legal Aid to Implement Justice for The Poor

Pro bono legal aid, or in the official nomenclature in part of the Regulation of the Minister of Law and Human Rights is called independent legal aid. The word pro bono (*pro bono publico*) comes from Latin, which means for the public good. In the International Declaration on Pro Bono initiated by the International BAR Association on October 16, 2008, it is stated that pro bono is derived from the Latin phrase *pro bono publico*, which refers to work or actions carried out for the public good. In other words, services, free or free giving for the public or public interest.¹⁰

The concept of pro bono is actually not far from the concept of *officium nobile* which is embedded in the profession of advocates, which is said to have a noble profession. The glory lies in the free service to the public, which means that pro bono is attached to the advocate; So that – in addition to advocates can carry out legal services by collecting fees, on the other hand advocates have an obligation to use their expertise in helping and serving the poor in relation to the law.¹¹

In Indonesia, pro bono is misunderstood when equating it with the concept of pro deo, which is the provision of legal aid by advocates to the poor, where the legal aid is financed by a third party, for example by the state (both in the central and regional governments), by companies through corporate social responsibility.¹² Thus, advocates who help the poor will get paid, although it is not like the rates of professional advocates in general.

The generalization is in the definition, for example in the Government Regulation of the Republic of Indonesia Number 83 of 2008 concerning Requirements and Procedures for the Provision of Free Legal Aid (GR 83/2008). It is said that free legal aid is legal services provided by advocates without receiving honorarium payments, including providing legal advice, exercising power, representing, accompanying, defending, and carrying out other legal actions for the benefit of justice seekers who are unable to afford it.¹³

LACI UII has implemented and is committed to serving pro bono legal assistance in various activities and programs. Based on the data submitted, in 2022 LACI UII will serve 175 legal consultations, in 2023 it will serve 155 legal consultations, and in 2024 when this research is carried out, it will serve 155 legal consultations. Legal consultation places are held in the consultation room in the office, as well as other places, for example: legal aid

¹⁰ Savira Nur Azalia, 'Peran Dan Efektivitas Lembaga Bantuan Hukum Asosiasi Perempuan Indonesia Untuk Keadilan Dalam Pendampingan Kasus Kekerasan Terhadap Perempuan' (2020) 1 The Digest: Journal of Jurisprudence and Legisprudence 79.

¹¹ Akhdiari Harpa, 'Analisis Yuridis Pemberian Bantuan Hukum Bagi Masyarakat Miskin Dalam Mewujudkan Akses Keadilan Terhadap Masyarakat Miskin' (2019) 3 Journal of Chemical Information and Modeling 113.

¹² Aldebaran Yudha and others, 'Peran Otoritas Organisasi Bantuan Hukum Dalam Proses' (2020) 19 Penegakan Hukum 1091.

¹³ I Gusti Ayu Stefani Ratna Maharani I Gede Angga Yuda, 'Peranan Lembaga Bantuan Hukum Dalam Membantu Masyarakat Kurang Mampu Demi Terwujudnya Access To Justice' (2024) 12 Jurnal Kertha Semaya 540.

posts in courts, prison/detention centers, or conducting one-stop services that combine legal counseling and opening legal consultation desks on site.

From this data, almost 30% (thirty percent) every year, is pro bono legal consultation, which is a form of pro bono legal assistance. The service was established from the first time the poor asked for legal consultation services, by showing official documents stating that the community was really incapable. Even through social media, the official website of LACI UII under the UII faculty of law, pro bono consulting services can be provided by conveying several requirements that need to be met before the consultation. Thus, the community can get ready and meet the requirements in advance, and there is no need to go back and forth between the LACI UII and the authority that can provide poor declarations.

In non-litigation legal assistance, this can be understood as preventive legal assistance in the form of legal consultation, legal counseling, and community empowerment. LACI UII carries out face-to-face legal counseling activities 13 (thirteen) times a year with an average counseling time of 2.5 (two and a half) hours. In addition, they opened face-to-face legal consultations in prison, as well as at exhibition activities attended by LACI UII. It does not stop there, the innovation carried out by LACI UII is by opening online legal consultations.

B. The Challenges in Fulfilling the Ministry of Law and Human Right's Policy of Implementing Pro Bono Legal Aid to Get the Legal Aid Budget Ceiling for The Following Year

The policy of the Ministry of Law and Human Rights related to the obligations of each accredited legal aid institution/organization, is contained in RMLH 3/2013 and its follow-up rules in the technical guidelines issued at the end of 2023. It is stated in the regulation that every legal aid institution/organization can increase its accreditation with the following provisions:

1. Accreditation B is upgraded to accreditation A, if on average in 1 (one) year of carrying out litigation independent legal aid at least 7 (seven) cases and non-litigation independent legal aid activities at least 5 (five) activities during the 3 (three) years of the accreditation period;
2. Accreditation C is upgraded to accreditation B, if on average in 1 (one) year of carrying out litigation independent legal aid at least 5 (five) cases and non-litigation independent legal aid activities at least 3 (three) activities during the 3 (three) years of the accreditation period.

The opposite is a decrease in the accreditation of legal aid institutions/organizations. This can happen if there are the following things:

1. Accreditation A is downgraded to accreditation B, if there is a shortage of cases handled (60 cases), a shortage of non-litigation activities (7 activities), the number of advocates owned by less than 10 people, and/or the number of paralegals owned by less than 10 people;
2. Accreditation B is downgraded to accreditation C, if there is a shortage of cases handled (30 cases), a shortage of non-litigation activities (5 activities), the number

of advocates owned by less than 5 people, and/or the number of paralegals owned by less than 5 people.

The consideration of the reduction in accreditation is also influenced by the case of independent legal aid carried out by the legal aid institution/organization. If it is less than what is required, the state will lower its accreditation, which will have an impact on reducing the budget value that can be used in the next accreditation period.

LACI UII in the fourth period has organized legal assistance for litigation and independent non-litigation activities reported by the Ministry of Law and Human Rights as follows:

YEARS	LITIGATION	NON-LITIGATION
2022	1	-
2023	6	7
2024	2	3

In 2022, LACI UII provided legal assistance for independent litigation in a narcotics abuse case at the Sleman District Court. Then in 2023, independent litigation legal assistance in the form of: applications for a change of year of birth, health crimes, and theft crimes at the Yogyakarta District Court; narcotics abuse at the Sleman District Court; and assistance in divorce lawsuits and resistance (*verzet*) at the Bantul Religious Court. Meanwhile, in 2024, there will be independent legal assistance at the investigation level at the Sleman Resort Police, and criminal acts of vandalism at the Sleman District Court.

Conclusion

Based on the things that have been described in the previous section, it can be concluded that LACI UII as legal aid organizations play a preventive role in the form of legal counseling activities to the community and actively serve consultations to legal aid both inside and outside the trial for the poor; The challenge they encountered was in the form of rivalry between fellow legal aid organizations which were then required to innovatively get closer to the need for free legal aid for the underprivileged.

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