

FULLFIL LEGAL LITERACY OF THE RIGHT OF LEGAL AID FOR THE SOCIETY

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Legal aid is the constitutional right of every citizen. The genesis of the Legal Aid act should be a tangible manifestation of the state's responsibility for the Legal Aid right as access to justice for all Indonesian people was mandated by the Undang-undang Dasar Negara Republik Indonesia year 1945, The Law Number 39 Year 1999 on Human Rights, Code of Criminal Law (Code of Criminal Procedure), The Universal Declaration of Human Rights, the International Covenant on Civil Rights and Political, which has been ratified by the Law Number 12 Year 2005, there is also full fill for everyone to get legal aid and services of Advocates (a right to have a legal counsel) for the poor. The Report of monitoring results of implementation the legal aid act on 2013 performed by the LBH Bandar Lampung, LBH Bandung and Yogyakarta illustrates clearly that the legal aid system needs improvement in the future to be very important and urgent. The results are propose changes to legal aid act by first perception and expectations of future changes in the legal aid act between the legal aid organizer, recipients and providers. Kemenkumham coordinate with other agencies that district/city governments and ministries villages, lags rural development and transmigration (PDT) in optimizing the village role to realize the Law Number 6 Year 2014 on The Village, one of which set up village funds, part of a study of the spread and equity on the findings that Location spread LBH / LKBH/CBOs unevenly. The extension of the poor meaning, not only because it cannot meet the basic rights properly and independently (absolute poverty), but also meaningful form other poverty that is relative poverty, structural and cultural, which if applied, it can be interpreted as a marginal group of social, political and culture, minorities and vulnerable groups as well as persons with disabilities. The administrative requirements and management structure that is not relevant for some LBH/CBOs because that are difficult to fulfill, so Kemenkumham should do in stages through bureaucratic reform, pending changes to legal aid act. Involvement of civil society are the application of legal aid programs through organizations, trade unions, involving companies in implementing Corporate Legal Responsibility (CLR),

involvement of students and lecturers of universities to play an active role in organizing legal aid programs and so forth.

Keyword : legal aid, poverty, civil society, kemenkumham.

INTRODUCTION

Legal aid is the constitutional right of every citizen. The genesis of the Legal Aid act should be a tangible manifestation of the state's responsibility for the Right to Legal Aid as access to justice for all Indonesian people, as was mandated by the Undang-undang Dasar Negara Republik Indonesia year 1945, The Law Number 39 Year 1999 on Human Rights, Code of Criminal Law (Code of Criminal Procedure), The Universal Declaration of Human Rights, Article 14 Paragraph (3) (d) of the International Covenant on Civil Rights and Political, which has been ratified by the Law Number 12 Year 2005, there is also full fill for everyone to get legal aid and services of Advocates (a right to have a legal counsel) for the poor. Meanwhile philosophical reasons in the law number 16 year 2011 on legal aid is the state guarantees the constitutional right of everyone to gain recognition, security, protection and legal certainty and equal treatment before the law (access to justice, fair trial and equality before the law) as a means of protecting human rights and the state is responsible for granting legal aid to the poor as the realization of access to justice should be oriented towards the realization of a just social change. The Law number 16 year 2011 on legal aid, which called the Legal Aid Act, states that legal aid is given by the legal aid provider by free of charge to the Legal Aid Recipients.

Right to legal aid itself is nonderogable rights, a right cannot be reduced and cannot be suspended under any circumstances. Conception of legal aid in the Law on Legal Aid is funding from the State aid for the poor against the law. Earlier, the State is not fulfilling the right to legal aid for the public. It is precisely the role of the beginning and continue to be independent and self-supporting by civil society pioneered by Indonesia legal aid institutional (YLBHI) - legal aid institutional (LBH) which continues to grow with the birth of civil society organizations engaged on the issue of legal aid such as the Association of Legal Aid and Human Rights of Indonesia (PBHI), Legal Aid Society, LBH Charmingly, LBH Pers, LBH Mawar Saron, LKBH Campus, Elsam, KontraS, WALHI and etc.

The Report of monitoring results of implementation the legal aid act on 2013¹ performed by the LBH Bandar Lampung, LBH Bandung

¹ Julius Ibrani. 2013. *The implementation Reports of Legal Aid Act*. YLBHI and the Foundation Tifa.

and Yogyakarta illustrates quite clearly the problems and the causes, so that the legal aid system needs improvement in the future to be very important and urgent. Here are the relevant recommendations as the solution of problems related to the implementation of the Legal Aid act are :

1. The importance of socialization Legal Aid act over the maximum. In addition to providing understanding and knowledge of the subject in the Legal Aid Act, as well as to synchronize with the provision of the local policy on legal aid act. Hopefully, the birth of a policy on legal aid at the regional level, so as to answer the question at this time the Legal Aid Act.
2. The improvement of the legal aid policy. Revision of the Legal Aid Act, legal aid needs to be accommodated experience has been conducted by an independent civil society before the birth of the Legal Aid Act. Restrictions on legal aid recipients are only poor people should be changed, in order to accommodate the needs of legal aid more widely. The requirements of the administrative and management structure that is not relevant for some LBH or Community Organization (CBOs) are difficult to fulfill. This has an impact on the issue of fairness, effectiveness and efficiency, accountability and accessibility of legal aid services. As well as distribution and reporting system as well as the amount of legal aid budget more proportionally.
3. The evaluation and strengthening of Legal Aid Organizer institutional are involving civil society, so that the facts on the ground can be addressed along with the plan future strategies.

Based on the recommendations of the report of monitoring implementation on legal aid act several regions in Indonesia, the monitoring results of the study on the recommendation of an interesting topic attracted the attention of writers was associated with literacy². Legal literacy is literacy in the law field. Literacy here means the basic knowledge and skills needed by all citizens and one of the foundations for mastering the skills of life to another. Legal literacy plays an important role in increasing one's understanding of the law, more specifically is to defend their rights in law. Another link is the legal fiction³ that can be interpreted that "everyone is supposed to know (regulatory) law" as well as Jeremy Bentham is associated with the statement that "through this publicity alone will justice be the mother of a sense of security".

² <http://habibiecenter.or.id/detilurl/id/188/discussion/literasi.media> was accessed June 12, 2014.

³ Van Apeeldorn. 1997. *Legal Studies*. Jakarta. Pradnya Paramita.

DISCUSSION

A review of the relevant recommendations as the solution of problems related to the implementation of the Legal Aid act can be described in four outline are :

The Perspective Of Legal Aid Organizer

Based on Article 1 item 6 in conjunction with Article 6 paragraph (2) of the legal aid act that the Minister is the minister who held government affairs in the legal field and human rights. So organizers of legal aid is the ministry of law and human rights, which shortened by Kemenkumham. On one of the units of the Kemenkumham is national law founding unit (BPHN) which is in the legal aid unit.

The first recommendation is to socialize the importance of Legal Aid Act over the maximum. In addition to providing understanding and knowledge of the subject in the Legal Aid Act, as well as to synchronize with the Legal Aid Act with a local policy on legal aid. Hopefully, the birth of a policy on legal aid at the regional level, so as to answer the question at this time Legal Aid Act.

The review of the recommendations that there is ignorance and unfamiliarity of the subjects obliged the implementation on Legal Aid act, ranging from the organizer, Provider and Legal Aid recipient. There are three parties involved in the implementation of legal aid and the vital is the Kemenkumham's role. When there is a need to revise on legal aid act, it must be done together to make the perception and expectations in realizing the optimal implementation and responsible, although obligations of socialization is a shared responsibility between the government and society.

The second review on the first recommendation is to synchronize the Legal Aid Act and local policy setting on legal aid. Hopefully, the birth of a policy on legal aid at the regional level, so as to answer the question at this time Legal Aid Act. This information is confirmed by the data for local policies undertaken East Java provincial government regulations by drafting Regulations Province Number 9 Year 2012 on Legal Aid to the Poor⁴. With hope for the Poor received legal aid for them. But in fact, there are many people disadvantaged in East Java that do not receive the benefits mandated by the regulation. Kemenkumham's commitment is still doubtful in their role as providers of legal aid, because it is based on the findings of the monitoring team

⁴ LBH Surabaya.

<http://www.hukumonline.com/berita/baca/lt54a626838d76c/lbh-surabaya--access-to-justice-pekerjaan-rumah-2015> was accessed on October 3, 2015.

turns BPHN together Kemenkumham Regional Office did not have an adequate understanding and knowledge to perform the verification, starting from the process, mechanism, and the documents are checked. follow-up is to reform the bureaucracy over the side's performance Kemenkumham.

It is still the policy of the province and has not discussed the policy on legal aid at district/city. Kemenkumham as the person in charge of the legal aid providers should work with district/city governments in setting policy administration Legal Aid district/city was associated with the condition of the district/city respectively. Information that supports at least the role of the district/city on legal aid policy is data 38 districts/cities in East Java⁵, only three districts/cities that make local regulations for legal aid for the citizens. Three districts/cities are Probolinggo, Jombang and Banyuwangi,

Follow-up is Kemenkumham coordinate with other agencies that district/city governments and ministries villages, lags rural development and transmigration (PDT) in optimizing the village role to help in providing legal aid to citizens in the region, namely in order to realize the Law number 6 year 2014 on the village, one of which set up village funds. The realization for the provision of budgetary funds amounting to one billion, so it can be initiated by program for the provision of legal aid. The above also as part of a study of the spread and equity on the findings that Location spread LBH / LKBH / CBOs unevenly. In the Bandar Lampung and Yogyakarta are mostly located in the city, almost no in the village. While in Bandung, just no LBH/CBOs that pass the verification that more outside the city of Bandung. Some OBH that pass the verification in Bandung it cannot aid litigation in court.

The Perspective Of Legal Aid Recipient

The second recommendation on monitoring results are an improvement on legal aid policy. Revision of the Legal Aid Act that legal aid needs to be accommodated experience that has been conducted by an independent civil society before the birth of the Legal Aid Act. Restrictions on legal aid recipients are only poor people, should be changed to accommodate the needs of legal aid more widely. It is based on article 1 paragraph 2 in conjunction with Article 5 of legal aid act that the Legal Aid Recipients include any person or group of poor people who can ot meet the basic rights properly and independently. Basic rights

⁵ <http://jakarta.kemenkumham.go.id/berita-hukum-dan-ham/399-mewujudkan-law-center-di-seluruh-kanwil-kemenkumham> was accessed October 3, 2015

include the right to food, clothing, health care, education, work and effort, and/or housing.

Those norm may be considered after the experience of legal aid that has been done by the civil society on their own before the birth of Legal Aid act is not accommodated interest of legal aid for marginalized groups social, political and cultural, minorities and vulnerable groups, and persons with disabilities who are the majority of recipients the benefits of legal aid by the Legal Aid/CBOs. So that requires the discovery of the concrete norm to be applied to the relevant legal facts. The steps⁶ include: statute approach, identifying norms, legal provisions that are in a section that contains the norm. Explaining the norm should be preceded by a conceptual approach. The third step is a step *rechtvindend*. This is done with the interpretation technique. The author uses the interpretation technique, in accordance with the Satjipto Rahardjo's opinion, that law will not run without interpretation. Therefore, the law requires further purport to be fair and grounded. Creating law is one thing and interpret the law is the next requirement⁷. The interpretation method is a method of understanding toward a normative text that unclear to be applied in the concrete act. The interpretation of the text provision still stick to sound rules. The correct interpretation of the legal text must always relate to the content (rule of law) either express or implied, or between sound law and spirit of the law⁸.

An outline there are four methods of interpretation are common and frequently used. First, teleological or sociological interpretation, this interpretation is to interpret the law in accordance with the objectives of the legislators than the sounds of the words of act⁹. Teleological interpretation must also take into considering the context of actual social reality¹⁰. Second, the historical interpretation is the interpretation of the meaning of act according to the occurrence of the provision history, the

⁶ Philip M. Hadjon. Tatiek Sri Djatmiati. 2008. *The Legal Argument*. Yogyakarta. Gajah Mada University Press. P. 42.

⁷ Satjipto Rahardjo. *Progressive Legal interpretation*. Into Anthon Freddy Susanto. 2005. *Semiotics Law: From Deconstruction Text Progression towards Meaning*, Refika Aditama. Bandung. P. 9.

⁸ Jazim Hamidi. 2005. *Legal Hermeneutics*. Yogyakarta. UII Press. P. 52.

⁹ Sudikno Mertokusumo. 2001. *Legal discovery. An In trodution*. Yogyakarta. Liberty. P. 58.

¹⁰ J.a. Pontier. 2008. *Legal Discovery*. Translators is B. Arief Sidharta. Jendela Pustaka Mas. Bandung into Eddy O.S. Hiarij. 2009. *The Principle of Legality and Invention Law in Criminal Law*. Jakarta. Erlangga. p. 45.

historical interpretation also includes legal history¹¹. Third, grammatical interpretation (by language), which is the meaning of a statutory provision that is interpreted with decompose according to the common language¹².

The word 'poor' is based on a teleological interpretation or sociological have expressed the Suryawati¹³ opinion can divided into four forms, namely:

- a. Absolute poverty, a condition where a person has income below the poverty line or are not sufficient to meet the needs of food, clothing, shelter, health, housing, and education needed to be able to live and work.
- b. Relative poverty, poor condition because of the influence of development policies that have not reached all society, resulting in inequality in income.
- c. Cultural poverty, based on the issue of the person attitude or society caused by cultural factors, such as unwilling trying to improve the standard of living, lazy, spendthrift, not creative even though no outside aid.
- d. Structural poverty, poor situation is caused by lack of access to resources that occur in a social system and the socio-political culture that does not support the liberation of poverty, but often lead to the proliferation of poverty.

Based on article 1 paragraph 2 in conjunction with Article 5 of Legal Aid act that the word 'poor' means cannot meet the basic rights properly and independently. Basic rights include the right to food, clothing, health care, education, work and effort, and/or housing, and it only meets shapes absolute poverty, but there are poverty forms which is another that relative poverty, structural and cultural, which if applied to can be interpreted as a marginal group of social, political and cultural, minorities and vulnerable groups, and persons with disabilities who are the majority of the legal aid provider by the Legal Aid/CBOs before the birth of the Legal Aid Act.

Perspective Of Legal Aid Provider

Another recommendation is the administrative requirements and management structure that is not relevant for some LBH/CBOs because that are difficult to fulfill. This has an impact on the issue of fairness, effectiveness and efficiency, accountability and accessibility of legal aid services, include distribution and reporting system and the amount of

¹¹ Sudikno Mertokusumo. Op.cit. p. 60.

¹² Ibid. p. 57.

¹³ Juju Suryawati. 2005. *Sociology*. Jakarta. Gelora Aksara Pratama.

legal aid budget more proportionally. Meanwhile, according legal aid act that Legal Aid is community organizations that provide legal aid services. With conditions include: a. incorporated, b. accredited, c. have a fixed office or secretariat, d. have administrators, and e. has a Legal Aid program.

Follow-up can be given in respect of the State's commitment through Kemenkumham that the right to legal aid can be done in stages through bureaucratic reform, pending changes to legal aid act. Bureaucratic reform¹⁴ in essence an attempt to reform and fundamental changes to the governance system, especially concerning institutional (organization) aspects, management and human resources of state official with the aim of achieving public services effectively and efficiently. Bureaucratic reforms implemented in order to realize good governance and adapted to the dynamic of community demands. Therefore, it should take steps immediately that fundamental, comprehensive, and systematic, so that the objectives and targets can be achieved effectively and efficiently. Bureaucratic reform is a significant change in the bureaucracy elements among other institutions, human resources of state official, management, personnel accountability, oversight, and public services. With the key to successful implementation of bureaucratic reform lies in the following: national commitment to achieve a better bureaucracy, Drive Reforms, the quality of Payload bureaucratic Reforms, purposeful and rational and bureaucratic reform process that running smoothly.

The Perspective Of Participation Of Civil Society

The third recommendation is the evaluation and institutional strengthening of Legal Aid Organizers involving civil society, so that the facts can be addressed along with the plan future strategies. Article 9 C states that the right of legal aid provider is conducting legal counseling, legal advice, and other activity programs related to the implementation of the Legal Aid. In the explanation of Article 9 C that what is meant by "other activity programs related to the implementation of the Legal Aid" is the program: the cases investigation, legal documentation, legal research, mediation, negotiation, and community empowerment.

Implementation of legal education is the making of legal education policy in East Kalimantan¹⁵ suggests that inhibiting factors to the

¹⁴ Agus Dwianto. 2007. *Reform of Public Bureaucracy in Indonesia*. Yogyakarta. Gajah Mada University Press.

¹⁵ Umi Laili. *On the Legal Education Policy*. Office of the Ministry of Justice and Human Rights in East Kalimantan into [www. ejurnal.untag-](http://www.ejurnal.untag-)

realization of the implementation of quality legal education quality is the lack of facilities and infrastructure to support legal education, the lack of quantity of extension staff law, decreasing the legal culture of society, the public demand for extension quality and geographic location are difficult to reach. Based on the report¹⁶ that the Legal Education Cooperation Team for the implementation of legal counseling effective and efficient in the future, need to be implemented in an integrated legal counseling, both implementation aspect, personnel, material aspect to the public, and to create legal counseling well-planned, integrated and sustainable, needs the cooperation conducted with the involvement of agencies-institutional Government (central and local), Universities (Public and Private), and NGOs (Nongovernment organization) together in a single organizing of legal counseling.

Kemenkumham offices in 2010¹⁷ with at least 14 the regional office kemenkumham which has been unveiled as the law center by Menkumham. Namely, the regional office kemenkumham Yogyakarta, Banten, Riau, West Java, Central Java, Jakarta, North Sumatra, West Sumatra, East Nusa Tenggara, East Java, Jambi, North Maluku, Central Sulawesi and Aceh. The whole the regional office kemenkumham required to run two major programs in each region. Namely, establish law centers and conduct coordination meetings with the state prosecutor, the high court and regional police, as a follow-up meeting of the Coordination of Law Enforcer, that is the Supreme Court, Ministry of Justice, Attorney General and the National Police (Mahkumjakpol) are also suspected to many local regulations are canceled by the central government as opposed to the system of regulations is higher. Law Center Office of Kemenkumham formed with the purpose of facilitating infrastructure to support coordination with the provincial governments and district/city in order to design the local laws making in each region. Then providing infrastructure services and information and provide legal consultancy, legal services and human rights quickly, precisely and accurately to the public. The presence of law center at the regional office kemenkumham is very helpful to create synergies in legal services,

smd.ac.id/index.php/dd/article/download/623/829 was accessed on September 25, 2015.

¹⁶ Kemenkumham Indonesia. 2010. *The Report of Legal Education Cooperation Team*. into <http://www.tu.bphn.go.id/substantif/data/isi%20kegiatan%20tahun%202005/kerjasama%20pusluh.pdf> was accessed September 21, 2015

¹⁷ <http://jakarta.kemenkumham.go.id/berita-hukum-dan-ham/399-mewujudkan-law-center-di-seluruh-kanwil-kemenkumham> was accessed October 3, 2015

especially in the establishment and harmonization of regulations and legal counseling on various regulations.

Conclusion on implementing legal aid material above, so need evaluation and institutional strengthening the Legal Aid Organizers involving civil society, the planning strategies will be more effective legal aid with the bottom up pattern. Follow-up on the involvement of civil society, especially in the legal aid program in the form of legal consultation is the application of legal aid programs through organizations, trade unions, involving companies in implementing Corporate Legal Responsibility (CLR) to implement the legal program, involvement of students and lecturers of universities to play an active role in organizing legal aid programs and so forth..

CONCLUSION

Based Monitoring Report on the implementation of the Legal Aid act in 2013 illustrate the problems and the causes for the improvement of the legal aid system becomes important. A review of the relevant recommendations as a solution can be viewed in three perspectives, namely the legal aid organizers perspective, recipients, providers as well as the involvement of civil society perspective are:

- a. propose changes to legal aid act by first perception and expectations of future changes in the legal aid act between the legal aid organizer, recipients and providers.
- b. review of legal aid organizer is Kemenkumham coordinate with other agencies that district/city governments and ministries villages, lags rural development and transmigration (PDT) in optimizing the village role to help in providing legal aid to citizens in the region, namely in order to realize the Law number 6 year 2014 on the village, one of which set up village funds. The realization for the provision of budgetary funds amounting to one billion, so it can be initiated by program for the provision of legal aid also as part of a study of the spread and equity on the findings that Location spread LBH / LKBH / CBOs unevenly.
- c. review of legal aid recipient is The extension of the poor meaning, not only because it cannot meet the basic rights properly and independently (absolute poverty), but also meaningful form other poverty that is relative poverty, structural and cultural, which if applied, it can be interpreted as a marginal group of social, political and culture, minorities and vulnerable groups as well as persons with disabilities.
- d. review of legal aid provider is the administrative requirements and management structure that is not relevant for some LBH/CBOs because that are difficult to fulfill so the State's commitment through

Kemenkumham that the right to legal aid can be done in stages through bureaucratic reform, pending changes to legal aid act. Bureaucratic reform¹⁸ in essence an attempt to reform and fundamental changes to the governance system, especially concerning institutional (organization) aspects, management and human resources of state official with the aim of achieving public services effectively and efficiently.

- e. review of involvement of civil society is especially in the legal aid program in the form of legal consultation is the application of legal aid programs through organizations, trade unions, involving companies in implementing Corporate Legal Responsibility (CLR), involvement of students and lecturers of universities to play an active role in organizing legal aid programs and so forth..

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¹⁸ Agus Dwianto. 2007. *Reform of Public Bureaucracy in Indonesia*. Yogyakarta. Gajah Mada University Press.

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