



Legal Assistance For The Poor

Oleh

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Abstrak

Memberikan bantuan hukum kepada masyarakat menjadi hal penting bagi beberapa negara, dalam pemenuhan hak asasi manusia dan sebagai indikator negara hukum sekaligus. Pemberian Bantuan Hukum telah diatur dalam konstitusi atau Konvensi Internasional lainnya, selain dari sektor Hukum yang juga perlu diwujudkan, mencapai Keadilan Sosial dan perlindungan bagi setiap masyarakat di Indonesia. Ada banyak masyarakat miskin, pemahaman dan kesadaran hukum yang buruk dan menjadi hal penting untuk memiliki lembaga yang memberikan bantuan hukum kepada masyarakat.

Efektivitas pemberian bantuan hukum kepada orang-orang yang tidak mampu (orang miskin) sebelum diberlakukannya Undang-Undang Nomor 16 Tahun 2011 tentang Bantuan Hukum masih belum berjalan dengan baik. Hal ini disebabkan oleh faktor struktur hukum (kurangnya kesadaran advokat / pengacara hukum) dan faktor-faktor dalam hukum substantif (regulasi bantuan hukum yang tidak memadai). Namun, dengan diberlakukannya UU No. 16 Tahun 2011 Tentang UU tersebut terungkap jaminan hukum yang lebih kuat untuk pemberian bantuan hukum kepada mereka yang tidak mampu (orang miskin), walaupun pada kenyataannya mereka menemukan beberapa pengacara atau pengacara yang tidak bermoral yang masih enggan memberikan bantuan hukum kepada orang-orang yang tidak mampu.

Keywords:

Legal Assistance,
Foor

Abstract

Giving the Legal aid to Society become the important things for some Nations, in fulfillment of the human rights and as the Indicator of Legal Countries at once. Giving Legal Aid have regulate in constitution or other International Convention, apart from the Legal sector it also need to realize, achieved the Social Justice and the protection for every society in Indonesia. There are many poor society, bad understanding and awareness about Law and it became the important things to have the institution that giving the legal aid to the society.

The effectiveness of the provision of legal assistance to people who can not afford (the poor) before the enactment of Law No. 16 Year 2011 on Legal Aid is still not going well. This is due to the legal structure factors (lack of awareness of legal advocates / lawyers) and factor in the substantive law (inadequate regulation of legal aid). However, with the enactment of Law No. 16 Year 2011 About the Law indicates the legal guarantees more strongly to the provision of legal aid to those who can not afford (the poor), although in fact they found some unscrupulous lawyers or lawyers who were still reluctant to provide legal assistance to people who unable.

Introduction

This latter term apparently experienced legal assistance vagueness of meaning. Both at the level of meaning, concept, and execution. For example, according the findings of the Supreme Audit Agency (BPK), there is a fund of Rupiah 96.25 billion, which is used to pay for legal assistance services for officials or former BI officials dragged the case of Bank Indonesia Liquidity Assistance (BLBI). Not to mention the matter is completed, followed the plot of Indonesian Civil Servants Corps (KORPRI) - a corps consisting of 4 million civil servants in Indonesia- to form Consultation and Legal Aid (LKBH). In countries where legal aid system is not arranged neatly, such as Indonesia, the impact of the abuse or the meaning of the term, could end up clutter. Supposedly, the concept of legal aid is to the poor, who actually outnumber civil servants or officials BI. Indonesia is a country of law. It is strictly regulated in the constitution of our country, in the Constitution of the Republic of Indonesia Year 1945 (hereinafter abbreviated NRI Constitution of 1945), in particular Article 1 (3). NRI Constitution of 1945 already contained the baseline state of law through several articles, namely Article 24 and Article 27 paragraph (1). Article 24 recognizes the existence of the judicial power is carried out by a Supreme Court and judicial bodies underneath, as well as Article 27 paragraph (1) states that "all citizens are equal before the law and government and shall uphold the law and the government with no exception ". Of these provisions it is clear that all citizens have equal rights and equal status before the law (equality before the law) and every citizen must uphold the law, so that it can be said that the state has guaranteed the rights and obligations of citizens of applicable laws in Indonesia.

One important element in a country's law (*rechtstaat*) that is the legal protection of human rights. In countries that embrace democratic system, every citizen has the right to justice (access to justice) and the right to a fair trial and impartial (fair trial), including

through the right legal assistance. Therefore, the right to legal aid becomes an important indicator in the fulfillment of the right to justice and a fair trial in every country. In Indonesia, the right to legal assistance is not expressly stated in the constitution. However, Indonesia as a state law that adheres to the principle of equality before the law, the right to make legal aid as a constitutional right.

In the context of legal aid, human rights in question are rights of a suspect or defendant who was dealing with the law. A suspect / accused shall be presumed innocent until he obtained a legally binding verdict (presumption of innocence), and be eligible to receive proper legal assistance in accordance with the legislation in force. Undeniably legal aid is an important component for the suspect / defendant. As one subsystem of criminal justice, legal aid can contribute to achieving a fair trial or due process of law. Due process of law should be defined as the protection of the freedom of a citizen who made a suspect and defendant, which changed its legal status when he was arrested or detained, but their rights as citizens is not lost (Winarta, 2000).

Method

The type of research used is normative research with a problem approach in the form of a statute approach, a conceptual approach and a case approach. Statute approach is carried out by examining all laws and regulations relating to the legal issues being handled. The legislative approach is used to study the consistency of laws with the 1945 Constitution of the Republic of Indonesia and other laws and regulations as well as address legal issues. Case approach is used by examining cases relating to the issues at hand that have become court decisions that have permanent legal force. The legislative approach is carried out by analyzing various laws and regulations relating to legal aid for the poor. To support the assessment to be more comprehensive, the concept approach is carried out by studying various views, doctrines, concepts, and legal principles in order to be able to build a legal argument in solving the issues faced in relation to efforts to provide legal assistance to the poor.

Results and Discussion

1. Legality of Legal Aid for the Poor

Regarding the legal basis of the provision of legal aid in Indonesia, arranged in several provisions of the legislation as follows:

- a. Criminal Procedure Code (Article 56).
- b. UU no. 16 Year 2011 on Legal Aid.
- c. UU no. 18 Year 2003 concerning Advocates.
- d. PP No. 83 Year 2008 on Terms and Procedures for Granting Legal Assistance Free of Charge.
- e. PP No. 42 Year 2013 About Terms and Procedures for Granting Legal Aid and Legal Aid Fund distribution.
- f. Indonesian Advocates Association Regulation No. 1 of 2010 Concerning Implementation Guidelines for Providing Legal Assistance Free of Charge.

Legal assistance in terms of social reality can be seen in the three concepts of legal aid, namely the concept of traditional legal aid, legal assistance constitutional concept, and the concept of structural legal aid. The explanation is as follows:

- a. The concept of traditional legal aid

The concept of traditional legal aid is granted legal services to poor people individually. The nature of legal aid is passive and his approach is very formal-legal. This concept also means seeing all the problems of the poor law solely from the point of law, which is called by Selznick¹ is a normative concept. Orientation in this concept is to uphold justice for the poor under the applicable law, which is based on the spirit to gain influence in society. This concept is basically the provision of legal assistance to the poor who are unable to resolve the dispute in court (Selznick, 1978)

- b. The concept of constitutional legal aid

The concept of legal assistance with constitutional legal aid to the poor is done in the framework of the efforts and the broader goals such as awareness rights of the poor as subjects of law, enforcement and development of the values of human rights as the main joints for the enforcement of state law. The nature and type of legal aid in this concept is the more active means of legal aid is given to community groups collectively.

- c. The concept of structural legal aid

The concept of the Legal Aid Structural activities aimed at creating conditions for the realization of the law is able to change the structure of the structural imbalance of moving towards a fairer, where the rule of law and implementation can ensure

equality both in the field of law or politics. The concept of structural legal aid is closely related to structural poverty. Any activity of judicial assistance in this concept is solely to defend the interests of society or the legal rights of the poor people in the judicial process (Hariyanto, 2014)

At present, an agreement on legal assistance in Indonesia has been specifically regulated in Law Number 16 Year 2011 on Legal Aid (hereinafter referred to as Law No. 16 of 2011 on Legal Aid). Previously, the legal aid has actually been set up in some legislation, but not in detail. Legislation in question is the Code of Criminal Procedure (hereinafter referred to as the Criminal Procedure Code), particularly in Article 54, and Law Number 18 Year 2003 concerning Advocates (hereinafter referred to as Law No. 18 of 2003 on Advocate).

The genesis of Law No. 16 Year 2011 on Legal Assistance important meaning for the development of law and human rights in Indonesia. During this time the rules regarding legal aid do not stand alone and elaboration of mechanisms of its implementation is still in the form of regulations and / or to the ministerial decree. It can be said that the birth of the Law on Legal Aid Law 16 The year 2011 is not out of legal reform agenda. In Article 1 paragraph 1 of Law No. 16 Year 2011 About Law states that "legal aid is given by the legal services Legal Aid for free to Beneficiaries Legal Aid". Then in Article 1 paragraph 1 Indonesian Government Regulation No. 42 Year 2013 About Terms and Procedures for Granting Legal Aid Fund distribution Legal Aid (hereinafter referred to as Regulation No. 42 Year 2013 About Terms and Procedures for Granting Legal Aid Fund distribution Legal Aid) also provide the same definition of the legal aid. Based on this it can be seen that, legal aid is granted legal services free of charge. Definition of legal aid free of charge as well as expressly provided in Article 1 point 3 of Government Regulation No. 83 Year 2008 on Terms and Procedures for Granting Legal Assistance Free of Charge (hereinafter abbreviated as PP No. 83 Year 2008 on Terms and Procedures for Granting Assistance Legal free of charge) which states that "legal aid free of charge is a legal services provided advocate without receiving payment of honorarium include providing legal advice, exercise the power, represent, assist, defend, and perform other legal actions in the interests of justice seekers who unable".

Based on the understanding of legal aid in the above, the legal aid was in essence a legal services provided free of charge to the recipient of legal aid in this case is the suspect / defendant can not afford. Such developments show that Indonesia actually improves

guarantee the constitutional right of every citizen to obtain proper legal protection in accordance with the proportion of each. However, Law No. 16 The year 2011 has not been set up in detail about the terms or categories of groups who can not afford, and only mentioned that legal assistance is given free of charge by the legal aid provider, so there is still a lack of clarity norm (norm blurred) in the law.

Currently, advocates have an important role in the criminal justice system. Enactment of an advocate as a subsystem of criminal justice (law enforcement) showed that Advocate has an important position as a pillar of the rule of law and human rights as well as having a control function to keep really created a fair legal process (due process of law). However, in reality some unscrupulous lawyers as legal aid providers in their duties frequent irregularities, such as what is proposed by Ropaun Rambe stating that, Advocate profession is a respectable profession, however, the conditions of Advocate profession today is quite alarming because of irregularities. Advocates are now more of a role as middlemen case only (Rambe, 2001).

The number of irregularities committed by the Advocate is inseparable from the desire or the interests of the client who always wanted to get favorable rulings themselves. With the shift in value thus, causing advocate profession is often considered no longer a noble profession that upholds the truth and justice. Some elements advocate who defended his client to do everything to reach a verdict in favor of his clients with bribery, removal of evidence, deflecting testimony, and other negative ways. It certainly raises the negative stigma and distrust of the advocate profession, as evidenced by the frequent advocate regarded as the Mafia or brokers of the case, which is of course damaging to the image of the noble profession of advocate itself. In addition, some advocates are still not fully aware of its responsibility in defending the interests of suspects / defendants who can not afford. Most of the lawyers are still reluctant and still reluctant to provide legal services to groups who can not afford, and defending the interests of wealthy clients only. There are no criminal sanctions for Advocates who deviate in terms of providing legal aid in the legislation. Thus, this condition worsens Advocate provesi image in Indonesia, because the real legal aid for groups that can not afford an embodiment of the protection of human rights and a constitutional right (Rambe, 2001).

Harahap put forward on the definition of legal aid has characteristics in different terms, namely:

a. Legal aid

Legal aid, national system arranged locally where legal aid is intended for those who are less financially and unable to afford private legal counsel. From this sense, it is clear that legal aid can help those who are not able to hire the services of legal counsel. Thus, legal aid means the provision of services in the field of law to a person involved in a case or a criminal case which in this case:

- 1) The provision of legal aid services performed free of charge.
- 2) Aid legal services in more specialized legal aid for those who can not afford poor in society.
- 3) Thus, the main motivation in the field of legal aid is to enforce the law by way of different interests and the rights of ordinary people who do not have and legally blind.

b. Legal assistance

Understanding legal assistance explain the meaning and purpose of the broader legal assistance from legal aid. Legal assistance is explained profession of lawyers as a legal expert, so in that sense it as a legal expert, legal assistance can provide legal aid services to everyone without exception. That is, the expertise of a lawyer to provide legal aid is not limited to the poor people.

c. Legal service

The definition of legal service more comprehensive understanding of legal aid and legal assistance. If freely translated, legal service means service law, so in terms of legal service, legal aid is meant as symptomatic form of the provision of services by the legal profession to the public in a society with a view to ensure that no one in society who are deprived of their rights to obtain legal aid (Harahap, 2002).

Regarding human rights specifically regulated in Law Number 39 Year 1999 on Human Rights (hereinafter referred to as Law No. 39 of 1999 on Human Rights). In Article 1 paragraph 1 of Law No. 39 of 1999 stated that the definition of human rights is a set of rights attached to nature and human existence as a creature of God Almighty and it is His grace that must be respected, upheld and protected by the state, law, government, and every people for the respect and protection of human dignity. In addition, in the 1945 NRI Constitution particularly in Section 28 (28A-28J) also regulates human rights. The development of next-generation human rights are divided into three generations, namely:

- a. Representing the first generation of civil rights and political human rights that is classic. In the conception of this first generation, the basic elements of the conception of human rights principles that include the issue of human integrity principles, basic human needs, and the principles of civil and political freedoms.
- b. The second generation which represents the economic, social and cultural rights, including the right to education, the right to determine their political status, the right to enjoy a variety of scientific discoveries, and so forth.
- c. The third generation of the concept of human rights which include the right to development sense. Or for development rights to include equal rights or opportunities to advance that apply to all nations, and including the right of every person to live as a part of the life of the nation.

2. The Development Of Regulations On Legal Aid In Indonesian Positive Law

In general, legal aid can be defined as the provision of legal services to people who can't afford usually measured economically. It can also be interpreted, the provision of financial assistance for people who can not afford the cost of legal proceedings (Collins Essential English Dictionary, 2006). Because legal aid was attached as a right, then there are two essences of legal aid: rights to legal representation and access to justice. The rights to legal representation means a person's right to be represented or assisted by a lawyer during the trial. Access to justice dimension, more broadly, that is not only interpreted as the fulfillment of an individual's access to courts or legal representation, but must provide assurance that the law and the end result is decent, and fair.

The history of legal aid has existed since ancient Roman times as a part of political patronage, but only after the French Revolution to provide legal aid to be part of the legal proceedings, although the notion of legal aid in this case is the citizens who must appear alone to defend their rights. The provision of legal aid in the form of the right to be accompanied by legal counsel not appear until the 20th century. Indonesia about new legal aid as legal institutions when Indonesia began to currently operate Western law that began in 1848 when in the Netherlands there is a major change in his legal history. Based on the principle of concordance, then by word of the king on May 16, 1848 No. 1, new legislation in the Netherlands also applied to Indonesia, among others on the Composition of Justice and Wisdom Justice (*Reglement op de rechterlijke organisatie et het beleid der Justitie*) commonly known as RO stands (Stb, jo 1847-23, 1848-58). Institutions advocate

can be estimated only started in the years around it, and around 1923, Advocate office first opened in Tegal and Semarang.

Legal aid is a fundamental right of every person. The rights refers to the requirement of each person to get justice, whether he is rich or poor. Article 27 paragraph (1) of the 1945 Constitution states, every citizens are equal before the law and government, and must uphold the law and the government with no exceptions. Law politics during the reign of the Dutch East Indies before World War II, where in Indonesia imposed IS (*Indische Straatsregeling*) in particular in Article 163 paragraph (1) which distinguish the Indonesian population into three groups, namely:

- a. Group Europe: the Netherlands, and everyone is not the Netherlands, which originated in Europe, the Japanese people, people who do not come from the Netherlands, but in his country adheres to the law of familial nature and pattern together with the Netherlands.
- b. Group *Bumi Putera*: everyone Indonesia is native of Indonesia.
- c. Foreign Eastern Group: Everyone who is not the European and / or not a person *Bumi Putera* (Chinese, Indian, Arab, Pakistani, and others).

The classification of such consequences in law, because each group turned out to have its own laws. Because of the procedural law used is HIR, then the difficulties that arise are many legal provisions that guarantee legal aid did not participate in the provisions inherited HIR which was very poor guarantee provisions on legal aid. Of course it is perceived unfair by class *Bumi Putera*. Other difficulties that arise are still scarce Advocate or in other words the number of Advocates practice relatively few, so eventually that more of a role is shyster (Rengka, 1992)

In 1927, shyster-lawyer making organization called the Association of Indonesian Lawyers (PERPI). News is that even though the number of the Indonesian Advocates bit, but most of them are people movement. Viewed from this perspective, of course, very beneficial for the quality of their defense is much better. At that point it can be said the inception of legal aid for groups that can not afford. It is easy to understand because at that time the Indonesian people can not afford the advocates Dutch expensive. In the days of Japan, there is no significant change, although the rules on legal aid Dutch colonial heritage still remain in place. Attention to legal aid can be said to be less so, because of all the attention at that time was focused on the problem of how to maintain the independence physically and politically. In the ordinances of justice are taken not by the

Raad van Justitie laden with legal aid arrangements, but rather taken is the procedure of justice based *Landrand*.

Selection procedures for this trial as a consequence of the procedural law applicable. Justice *Raad van Justitie use Rechtsvordering* as procedural law which regulate many legal provisions that guarantee legal assistance, while judicial *Landrad* that use procedural law HIR actually very poor with provisions on legal aid. Then, after Indonesia's independence government of the Republic of Indonesia has issued a wide range of legislation relating to the profession of advocate, especially in this case on legal aid before the court is as follows:

- a. Law No. 1 of 1946 (hereinafter referred to as Act No. 1 of 1946), where this year the government of the Republic of Indonesia issued Law No. 1 Year 1946 About the Law of Criminal Code. The law set forth therein on the status of lawyers and prosecutor and those who gave the legal aid.
- b. Law Number 1 Year 1950 About the Supreme Court, where in particular Article 42 gives the term "legal aid" with the word "Defender".
- c. Emergency Law No. 1 of 1951 (hereinafter referred to Drt Law No. 1 of 1951), which determines the law *Drt* re-enactment HIR (*Staatsblad* 1941 No. 44) in the Republic of Indonesia at that time was used as a guide in Law Civil Procedure Code.
- d. *Herzien Inlandsch Reglement* (HIR), which in conjunction with the duties and obligations of lawyers, Prosecutor, and the legal aid in court under Article 83 H paragraph 6, RSV Article 120, Article 250 paragraph (5) HIR, Article 254 paragraph (1) HIR, Article 123 HIR
- e. Law Number 19 Year 1964 About the Principal Provisions of Judicial Authority (hereinafter referred to as Law No. 19 of 1964), particularly in Article 26, which stipulates that the rights of every person who has a case for legal aid shall be regulated by law.

The provision of legal assistance since the time of independence is still being done by advocates and Prosecutor. Implementation of legal aid course is based on legislation that is specifically in this case is HIR are still applicable under Article II of the Transitional Provisions of the 1945 Constitution just to provide legal aid when it is not well-organized, in the sense that in the form of an institution specifically for it. The role of an advocate at that time for the struggle for national independence is quite widely known and is a pioneer of independence. After Indonesia achieved recognition that

sovereignty in 1950 until mid-1959, pluralism in the judicial abolished, so that there is only one system of justice for the entire population (District Court, High Court and Supreme Court). Nevertheless, the period 1950 to 1959 should be recognized as a still better than the later periods in legal aid. In the period 1959 through to 1965 or popularly known as the "Old Order", and also professional legal aid lawyers in Indonesia experienced a decline remarkable, because at that time no longer free but justice has been mixed and consciously influenced by the executive.

Then on August 30, 1964, established a new bar association called the Association of Indonesian Advocates (PERADIN) originally named PAI. Then on knowledge in 1970 promulgated Law No. 14 Year 1970 concerning Judicial Authority (hereinafter referred to as Law No. 14 of 1970). With this law, freedom and justice back guaranteed all interventions into the affairs of the Court by the parties outside, outside the judicial authorities banned. Even for legal assistance in this law regulated in a special chapter is Chapter VII, Article 35-38. Therefore, it can be said that this law is the history of legal aid in the new order of government.

Entering the order of reform, a lot of legislation that was renewed and emerging laws and new legislation such as Law No. 18 Year 2003 concerning Advocates and ultimately legal aid is specifically regulated in Law No. 16 Year 2011 on Legal Aid more detailed set of legal assistance free of charge to those who can not afford or people who are poor. So, therefore it can be said that the development of regulations concerning legal aid in Indonesia has been going well, according to what is stated in the theoretical foundation of the theory of harmonization, which is where the law will be created either when there is alignment between the goals, objectives and interests of the authorities (government) with society, so that the law on the legal aid formed with based on the consideration of the philosophical, sociological, and juridical in Indonesia today.

3. The Effectiveness of Legal Aid Effectiveness Against People Who Are Not Able (Group of the Poor) as the embodiment of Human Rights Protection in Indonesia

Adnan Buyung Nasution gives three main points of access to justice, namely, the right to use and / or benefit from the legal and judicial system in order to obtain justice and truth material, warranty and availability of the system as well as a means of fulfilling the right (law) for the poor and the method or procedure that can expand access to justice for the poor (Nasution & M. Zen, 2006). Indonesia, do not have a legal aid system that is

regulated by law. As a result, arguably, the provision of legal assistance, especially for poor people, performed odd jobs. That, too little supported by the State, both in terms of practice and financing. Which ZDA precisely, the inclusion of legal aid funds allocated posts in government agencies, as enshrined in the state budget. According to the 2008 budget, the Supreme Court (MA) get a total fund allocation service improvement programs and legal assistance amounting to Rupiah 6.454 trillion, the Attorney General of Rupiah 2 trillion, the General Election Commission (KPU) amounting to Rupiah 793.9 billion, and the Ministry of Law and Human Rights Rupiah 4.846 trillion.

However, in practice, the use of these funds seem to be internal. Drawn to the agency / field in their respective agencies. If there were distributed to the public, usually only in the form of campaign programs, publications, and consulting lightning. A few are used to perform direct assistance to poor people whose right to justice are taken for dealing with the law.

4. Poor People's Rights

There are two things that need to be highlighted if we are really serious attention to the fulfillment of the rights of the poor get justice, in terms of providing legal assistance. First, purify the role of advocate and commitment. Second, concrete steps to restructure the state legal aid system which is guaranteed by law. For the first point, advocates need to understand his position as a person with a noble and honorable profession. Article 22 paragraph (1) of Law Number 18 Year 2003 concerning Advocates said the lawyer shall provide legal assistance free of charge to the justice seekers who can't be afford.

This verse means that liabilities that advocate latent within advocates as a consequence of the glory of his profession. What does it mean? Every advocate must give everything in his power, cost, and effort to truly provide legal aid to the poor. On the other hand, for the second point, the state also needs to ensure the right to legal aid for poor people in a law. Guarantee in legislation will provide certainty and clarity and financing mechanisms for providing legal aid for the poor. This is evidence of the seriousness of the country side of justice and the poor. In other countries, the cost of providing legal aid borne by the state (state budget) and is allocated annually. Australia Legal Aid Commission (2003-2004) had a total funding of \$ AU 337.757 million, The Taiwan Legal Aid Foundation (2003-2004) amounted to NT \$ 217.97, in South Africa (2006-2007) US \$ 77.7 million. Legal aid budgets in many countries almost always increases every year.

Their allocation of funds does not mean the completion of all legal aid issue. In practice need all sincerity, seriousness, and cleanliness of each supporting element, so that funding and the efforts targeted to the poor who need justice. South Africa, for example, felt the need to form a committee / independent association which oversees legal aid, legal aid workers distribute to, supervise, and report back to the parliament as a form of public accountability.

Legal assistance, once again, very closely related to the justice of the people. Closely related to human rights. Therefore the state has an obligation to protect and fulfill. Protecting human rights is already an obligation of the state, law, and government. Protection of human rights in the field of law can be found in the provisions of Article 5, which states as follows:

- a. Every person is recognized as a human person entitled to sue and obtain equal treatment and protection in accordance with the dignity of humanity in front of the law.
- b. Everyone has the right to have a fair and protection of the courts objectively and impartially.
- c. Any person, including the most vulnerable population right to receive treatment and protection with regard to particulars.

UU no. 39 Year 1999 has set out clear and detailed regarding the protection of the rights of every person before the law, so as a means to protect human rights is manifested in the form of legal assistance. The development of legal assistance free of charge to those who can not afford or groups of poor people (legal aid) is one form of equitable access to justice. However, legal aid is often associated by the public as a mercy for the poor or those who can not afford. Legal aid ought not be seen in the strict sense but also in a broad sense. In addition to helping the poor, legal aid is also a moral movement for human rights.

In the theory of human rights, previously mentioned that human rights are natural rights possessed by every human being, wherever and whenever. The consequences of this theory that every human being has rights that are universal. So that no legal aid is a right for everyone, without exception, including for those who can not afford or poor. The provision of legal aid it is the responsibility to advocate or legal counsel as law enforcement agencies to fight for the rights of each suspect / defendant in order to create a fair legal process (due process of law). In addition, the right of the suspect / accused to

legal aid is a consequence of the application of the presumption of innocence (presumption of innocence) that the suspect / accused has the right to defend through an advocate or legal counsel until he obtained permanent legal force that pleading guilty or not.

Right to be accompanied and defended by an advocate or legal counsel (access to legal council) and treated equally before the law (equality before the law) in order to obtain equal justice (access to justice) is a human right for all people, including indigent poor or justice for all. Legal assistance related or relevant to equality before the law (equality before the law) is guaranteed in the Constitution NRI 1945 and international instruments such as the Universal Declaration of Human Rights (UDHR), so it can be said that the legal assistance to the poor or those who can not afford to have close relationship * with the principle of equality before the law and the principle of access to legal council that ensures justice for all (justice for all). But often the poor or who are unable to be treated unfairly and underestimated in terms of providing legal assistance. In this regard, the thesis prepared by Diah Ratnasari Hariyanto (Program Master of Law Udayana University 2014) mentioned that Amir Syamsuddin said that relates to the lawyer, money and power unconsciously categorize lawyers in groups according to their behavior in handling a case.

Firstly, the idealistic lawyer who never want to use money and power in the handling of a case or cases. That is, they do not want to approach in an effort to win a case or benefit its clients by means of bribery. Second, a group of lawyers who do not want to approach money and power, but let his client do themselves. Included in this group of lawyers who perform passive means, will approach the money and power only when required client. A third group of lawyers who make a living from work using money and power. For this group, money and the power is more important than the plea or legal arguments on paper.

Passive state in providing legal assistance to the poor can be seen from the case that shocked the public in 2009, namely the theft of three cacao grandmother Minah. Minah an old woman who was accused of stealing three pieces of cocoa plantations owned by the company, following the process of the trial court without accompanied by an attorney or legal counsel and forced to issue its own money for the cost of transport from their homes to the Court that exceeds the daily income. Minah not admitted to reporters that he was not represented by a lawyer or lawyers for lawyers do not know what it was.

Moreover, as the villagers are illiterate, this grandmother is not familiar with Article 21 and Article 47 of Law Number 18 Year 2004 about his alleged plantation, and there is no legal aid offered by the state to the grandmother Minah at the time. In addition, in 2002, the murder case that happened Risman and Rostin in Gorontalo, where in 2002 they were sentenced to three years in prison in the murder of their son who turns out the girl is still alive.

While Risman and Rostin had undergone imprisonment for three years by the District Court Tilamuta Gorontalo. Risman is a farmer who daily express can not accept the various torments in every stage of the examination. Until the inspection in the District Court, they demanded three years in prison by the Public Prosecutor and the Attorney petition is granted by judges who hear cases Risman and Rostin, and the two are not accompanied by a legal advisor for not being able to pay. In addition, the case of Amir Mahmud in 2009 in Jakarta and was sentenced to four years in prison by the West Jakarta District Court, where he proved to have an ecstasy. Amir does not have a chance to defend himself and to face the legal process because they do not have the money to pay for legal services, so there is no one else with her lawyer in court.

Based on case examples presented above, before the enactment of Law No. 16 Year 2011 on Legal Aid, it can be concluded that the effectiveness of the provision of legal assistance to people who can not afford or the poor has not gone well, although in some legislation such as the Criminal Procedure Code and Law No. 18 Year 2003 concerning Advocates have been arranged on judicial assistance free of charge to those who can not afford though not in great detail. Therefore, the ineffectiveness of legal aid to the poor lies in the legal structure factor and the substance of the law. Factor structure of the law in question is enforcement of the law itself specifically advocate / lawyer awareness of the law is still low in providing legal assistance to people who can not afford, while the factors of legal substance in question is inadequate legislation governing legal aid for the poor in Indonesia before the enactment of Law No. 16 Year 2011 on Legal Aid.

However, today the adoption of Act No. 16 In 2011 further strengthened the legal guarantee in terms of providing legal aid to the poor, so as to determine the effectiveness of legal aid in Indonesia after the adoption of a new Law on legal aid, it is necessary to conduct further research and in depth. For the writer, the government's efforts to protect the rights of citizens in the field of law was considered quite good, although the Law on legal aid is new there are still some drawbacks such as lack of clarity about the setting of

the category of the poor in terms of providing legal assistance and still found some unscrupulous advocate or half-hearted lawyer who provides legal aid to people who are poor.

Conclusion

The development of regulations on legal aid in Indonesian positive law was since the independence day of the Republic Indonesia, normatively has shown good growth compared to the previous period. Arrangements regarding legal aid in its development, is now better ensure and protect the rights of persons or groups of poor people who are entitled to legal aid. This is evidenced by the establishment of Law No. 16 Year 2011 on Legal Aid guarantee the existence of legal assistance free of charge to those who can't be afford (the poor). The effectiveness of the provision of legal assistance to people who can not afford (the poor) before the enactment of Law No. 16 Year 2011 on Legal Aid is still not going well. This is due to the legal structure factors (lack of awareness of legal advocates / lawyers) and factor in the substantive law (inadequate regulation of legal aid). However, with the enactment of Law No. 16 Year 2011 About the Law indicates the legal guarantees more strongly to the provision of legal aid to those who can not afford (the poor), although in fact they found some unscrupulous lawyers or lawyers who were still reluctant to provide legal assistance to people who unable.

References

- Ali, A. (2009) *Reveals Legal Theory (Legal Theory) and Theory of Justice (Judicialprudence), Including the Interpretation Act (Legisprudence)*. Jakarta: Kencana Prenanda Media
- Darmodihardjo, D. and Sidharta (2006) *Principles of Philosophy of Law (and How Philosophy of Law Indonesia)*. Jakarta: PT Gramedia Pustaka Utama
- Harahap, M. Y. (2002) *the Criminal Procedure Code Discussion and Application Problems*. Jakarta: Sinar Grafika
- Hariyanto, D. R. S. (2014) "Legal Aid Group For People Or The Poor In Criminal Case For the implementation of Legal Process Fair in New York City" (thesis) Master Program (S2) Postgraduate Legal Studies Udayana University, Denpasar.
- Law of the Republic of Indonesia Number 8 of 1981 on the Law of Criminal Procedure.

- Law of the Republic of Indonesia Number 16 Year 2011 on Legal Aid.
- Law of the Republic of Indonesia Number 18 Year 2003 concerning Advocates.
- Indonesian Government Regulation No. 83 Year 2008 on Terms and Procedures for Granting Legal Assistance Free of Charge.
- Indonesian Government Regulation No. 42 Year 2013 About Terms and Procedures for Granting Legal Aid and Legal Aid Fund distribution.
- Indonesian Advocates Association Regulation No. 1 of 2010 Concerning Implementation Guidelines for Providing Legal Assistance Free of Charge.
- Mukti ND, F. and Yulianto, A. (2007) *Dualism Legal Research*, Faculty of Law. Yogyakarta: University of Muhammadiyah
- Rahardjo, S. (2000) *Law*. Bandung: PT Citra Aditya Bakti
- Rambe, R. (2001) *Engineering Practice Advocate*. Jakarta: PT Gramedia Widiarsana Indonesia
- Rengka, F. J. (1992) "The Role of the Legal Aid in Criminal Justice Process A Case Study in LBH Jakarta" (dissertation) Graduate School of the University of Indonesia, Jakarta.
- Soekanto, S. (1985) *Effectiveness and Role of Legal Sanctions*. Jakarta: Remadja Karja.
- Winata, F. H. (2009) *Legal Aid: A Human Rights not Mercy*. Jakarta: PT Elex Media Gramedia Group Komputindo