

Right of Litigation Legal Aid Providers Other than Advocates in Pekanbaru Religious Court

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Abstract The main objective of this article is to provide advice to the Supreme Court of the Republic of Indonesia in the framework of drafting the right regulation of litigation Legal Aid Providers other than advocates specifically in Pekanbaru Religious Court. Pekanbaru Religious Court, which has the right to proceed and take part in the trial in assisting the disadvantaged community in the litigation process, only involves an advocate who has been sworn, whereas in Law Number 16 of 2011 concerning Legal Aid of Legal Aid Providers to implement the Government Program actually also involves paralegals, lecturers, and Faculty of Law students. This is confirmed by the Constitutional Court Decision Number 88 / PUU-X / 2012. But in practice only advocates are allowed to proceed. The existence of litigation legal aid providers other than advocates in the Pekanbaru Religious Court needs to be better regulated because the rights of legal aid providers other than advocates are the same as the right of an advocate when handling professional cases in a religious court, namely the right to be appointed as legal counsel based on a special letter of authority, as representative or power of attorney in a lawsuit, as a representative or power of attorney in the lawsuit if filed verbally or in writing, as a prosecutor or defendant as power of attorney or representative in the trial, registered as an advocate/legal aid provider in an accredited legal aid organization, to obtain a case fee, and to accompany clients at the mediation level.

Keywords: Right, Legal Aid Provider Other than Advocate.

1. Introduction

The emergence of Law Number 16 of 2011 concerning Legal Aid is expected to protect the constitutional rights of every individual to get legal assistance. Furthermore, it is expected to accommodate the protection of people who are less able to deal with legal cases. This recognition and guarantee of the principle of Equality before the Law is not only limited to political recognition, but also more to prioritize the concrete actions of the state. The state actions should provide guarantees to the public in gaining access to justice in order to fulfill basic human rights (HAM), even their actions must also be taken to ensure the fulfillment of the obligations of this country. In Law No. 16 of 2011 concerning legal assistance, the legal aid providers are not only an advocate, but also paralegals, lecturers and Faculty of Law students.

The existence of paralegals, lecturers, and Faculty of Law students in Legal Aid Institutions, non-governmental organizations and legal academics even Law Faculty students in providing legal advice or assistance to the community is still recognized by the Legal Aid Act. The Constitutional Court Panel of Judges chaired by Hamdan Zoelva decided to reject the Advocates' Lawsuits in 2012 so that the Constitutional Court overturned several articles in the Law that recognized its existence. The refusal is stated in the decision number 88 / PUU-X / 2012 stating that the claim is refused.

In the view of advocates who sued, lecturers, students of Law Faculty, NGOs, and mass organizations were not law enforcers and were not entitled to provide legal assistance. The opinion was countered by the Constitutional Court's judges who argued that the articles that were sued had set clear boundaries and directions regarding legal assistance, legal aid providers, legal aid standards, and advocate codes of conduct that did not contradict the 1945 Constitution. The judges argued that paralegals, lecturers and Law Faculty students could provide legal assistance. While the advocate's obligation to provide legal assistance free of charge is not limited, not reduced and not eliminated by the Act.

The results of the initial observations of the authors from 2016 to 2017 in Pekanbaru Religious Court reveal that only lawyers who have been sworn have the right to proceed and take part in the trial in assisting the underprivileged in the Pekanbaru Religion Court. This contradicts with Law No. 16 of 2011 concerning Legal Aid for Legal Aid Providers to implement the government program which clearly states that not only advocates who can take part in such activity, but also paralegals, lecturers, and Faculty of Law students. This is confirmed by the Constitutional Court Decision Number 88 / PUU-X / 2012. In practice, however, only advocates are allowed to proceed.

2. Research Method

2.1. Type of Research

This type of research is sociological legal research, carried out by an empirical approach by examining the formulation of the problem as well as providing an overview and analysis of the implementation of the rights of legal aid providers other than advocates.

2.2. Research Location

This research was conducted in the Pekanbaru Religious Court. The authors' consideration in making choices about this location was related to the phenomenon, namely the tendency of the rights of legal aid providers not to be fulfilled in the Pekanbaru Religious Court and the absence of socialization of these rights.

2.3. Population and Sample

The populations involved in this study are: Chairman of Legal Aid Institute of Faculty of Law Unilak, Head of Legal Services Division of Kanwilumham Riau, and Post Officers Legal Services of Pekanbaru Religious Court. All populations are used as samples.

3. Discussion

3.1. Right of Litigation Legal Aid Provider Other than Advocates in Pekanbaru Religious Court

With the enactment of Law Number 18 of 2003 concerning advocates, the advocates who practice in the Religious Courts have the same authority as advocates who practice in other court areas. The difference is only about the type of case under the authority of the judiciary itself. The authority to deal with civil cases for people who are Muslim is one of the authorities of the religious court. Therefore, advocates who proceed in religious courts do not act as legal counsel but as special authorities, because they only deal with civil rather than criminal matters. In order to be able to proceed in the Religious Court, an advocate/legal aid provider other than an advocate must fulfill the normative requirements/have rights, as follows:

1. Must have a special letter of authority;
2. Appointed as a representative or power of attorney in the claim;
3. Appointed as a representative or power of attorney in the claim if filed verbally or in writing.
4. Appointed as a prosecutor or defendant as power or representative in the trial
5. Has been registered as an advocate / legal aid provider in an accredited legal aid organization.
6. Appointed by letter of appointment of legal aid providers by an accredited legal aid agency
7. Makes a statement of willingness to provide free assistance
8. Makes a statement to be present at the first trial.

All of the above requirements must be attached to the filing of a lawsuit or application at the Pekanbaru Religious Court³.

Furthermore, the roles of legal aid providers other than advocates in the Religious Courts are as follows:

1. Accelerating the settlement of administrative cases, both divorce and divorce requests for the smooth trial in court.
2. Helping to bring the parties in court in accordance with the trial schedule.

3. Providing an understanding of the law relating to the sitting of the case and its position, to the parties in submitting an application or claim or accepting a religious court decision.

One of the Legal Aid Providers other than advocates is Paralegals who are currently playing a strategic and important function in the legal empowerment movement in the community. Paralegals function as intermediaries or bridges of justice seekers. Paralegal intermediaries play an important role in the defense of the rights and interests of the community, since legal aid organizations are the main access to providing legal assistance to the poor. Paralegal's strategic role is needed in the field of protecting the rights of people who are dealing with the law both through litigation and non-litigation. Legal aid organizations have very few human resources to fight for the rights of the people who are dealing with the law, to conduct litigation activities for those who do not have the news of the oath since they will be expelled by the panel of judges even though there is a law number 16 of 2011 concerning legal assistance that allows paralegals to proceed in court. This is strengthened by the Permenkumham mechanism number 1 of 2018 regarding paralegals in the provision of legal assistance.³

Legal aid is not merely pro bono publico work, but is an obligation of the advocate (duty or obligation). Poor people have the right to obtain a defense from advocates or public defenders who work for legal aid organizations. As an acknowledgment of individual rights (individual right), the principle of equality for the law is guaranteed in the Indonesian legal system. This equation knows no exceptions.³

Litigation legal aid providers other than advocates in the Pekanbaru religious court have the same rights as professional advocates who are on trial in the court, namely:

- a. Obtain a letter of authority from the client in this case the community from low income and register the letter to the cleric of the Pekanbaru Religious Court. In 2017 only lawyers who had an advocate sign card and an oath minutes that could register a power of attorney in Pekanbaru Religious Court. Legal aid providers other than advocates could not do it. But in 2018 it can be done with the addition of several letters namely Designated by letter of appointment of legal aid providers by an accredited legal aid agency, Making a statement of willingness to provide free assistance, and making a statement to be present at the first trial.
- b. Accompany in the mediation process if all parties are present at the first trial, Mediation in the Pekanbaru Religious Court has the custom that only parties who are allowed to go to lawyers especially those who provide legal assistance other than lawyers cannot enter the mediation room.
- c. Accompany in the first trial, At the Pekanbaru Religious Court, legal aid providers must make a statement of attendance at the first trial and if they are not present, the panel of judges postpones the trial day. If they are not present, the case may not be continued, even though the letter of authority states that the legal aid provider may be replaced or the person comes alone.
- d. Accompany the clients at a follow-up hearing (hearing the suit, answer, replication, verification, conclusion)

In handling the cases in the Pekanbaru Religious Court specifically divorce cases, there are several roles performed by lawyers/legal aid providers other than advocates so that the role of advocates is well realized, namely providing legal services, providing legal advice, defending clients' interests, and representing clients in court:

1) Providing Legal Aid

The role of legal aid providers other than advocates in divorce cases is evident in every case process. Legal aid providers other than advocates make every effort to provide advice to their clients well. In providing its services, the legal aid providers first ask the cause of someone's desire to file a divorce. As a first step, legal aid providers other than advocates also provide an alternative way of reconciliation that is possible so that the problems faced by their clients can get a solution without having to go to court. Although finally the case that happens to the client also go to the court.

2) Providing Legal Advice

Providing legal advice to clients that is the responsibility of legal aid providers other than advocates is given since the first time they are confronted with a client. This legal advice is given so that the client has legal awareness of the problems at hand. It could be possible with this initial advice that he could reconcile and revoke his/her plan to file a lawsuit through the court. In such advice, the legal aid providers give the view that the court is the last alternative if forced to go through legal channels.

3) Defending client interest

Legal aid providers besides advocates have a role to defend the interests of the community and their clients. Legal aid providers other than advocates are needed when someone faces a legal problem. The role of defending the client's interests in dealing with divorce cases in this case means that defense is absolute to represent clients in court.

Indeed, not all people who file a case in Pekanbaru Religious Court can attend each session. Sometimes part of the session is followed by parties who face the case and sometimes not. In such situation, the role of legal aid providers other than advocates becomes really important. As the bearer of the power of attorney from the client, of course the aid providers play a very important role in every trial procession. They act as a representative in the trial. Formally they act to defend the interests and fight for their clients' rights.³

4) Right to obtain free case fees

Court fee waiver service is obtained by a legal aid provider other than an advocate after filing a lawsuit or an application stating that the applicant is from a low income family based on the Certificate of Inability (SKTM) attached by the legal aid provider. For legal aid organizations, if the requirements for formal legal assistance are only based on SKTM, while the SKTM is not selective or easily obtained, the right to legal assistance is actually the right of the poor, but it is enjoyed by the rich. As long as there are no clear terms and criteria that determine the criteria for poverty, OBH will find difficulty to determine criteria for poverty. If there is no solution, anyone who submits an application for legal assistance carries SKTM so it is formally considered poor. In order to address this phenomenon, a solution or effort is needed so that the misuse of SKTM as a requirement for recipients of free legal assistance for the poor in Riau Province can be overcome.

4. Conclusion

Right of Litigation Legal Aid Providers other than Advocates in Pekanbaru Religious Court is almost the same as the right of an advocate when handling professional cases in a religious court, namely the Right to be appointed as legal counsel based on a special letter of authority, as a representative or power of attorney in a lawsuit, as a representative or proxy in the record of the claim if it is submitted verbally or in writing, and as a prosecutor or defendant as the power of attorney or representative in the trial, the right to be registered as an advocate / legal aid provider in an accredited legal aid organization, the right to obtain a case fee, and the right to accompany the client at the mediation level. However, the reality is different in the Pekanbaru Religious Court. The legal aid providers of litigation other than the advocate do not get these rights.

5. Suggestions

1. Pekanbaru Religious Court is expected to facilitate the litigation legal aid providers other than advocates and not to complicate the procedures in filing a case.
2. The Supreme Court of the Republic of Indonesia is expected to make the Regulation in the form of a Supreme Court Regulation concerning the Rights of Legal Aid Providers Other Than Advocates in the Religious Courts so that there is uniformity.

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