

Equitable Fulfillment of Access to Justice for the Poor in Riau Province of Indonesia

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Abstract— The uneven distribution of Legal Aid Organizations in Riau Province is a problem that must be discussed regarding the obstacles and constraints. Whereas the Legal needs of the poor in Riau Province are very numerous. There are still a number of districts in Riau province where poor people get difficulties to find the legal aid providers who are willing to help them when experiencing legal cases. Riau province itself is facing difficulty regarding the prevalence of the spread of Legal Aid Organizations/legal aid agencies accredited since many Legal Aid Organizations are located in big cities. This circumstance makes the access to help the poor in the district difficult.

Keywords— *equitable access to justice, the poor*

I. INTRODUCTION

A. The Background of the Problems

Undang-undang No. 16 of 2011 which is concerning to Legal Aid can protect the constitutional rights of each individuals to obtain the legal assistance. Furthermore, it is expected to be able to accommodate the protection of disadvantaged people in facing legal cases in Riau Province. This recognition and guarantee of the principle of Equality before the Law is not only limited to political recognition. However, it prioritizes the concrete actions of the state. In providing guarantees to the community in gaining access to justice in order to fulfill the basic of human rights (HAM), even the actions must also be carried out to ensure the existence of this country's obligations. According to the Legal Aid Act, the provision of legal assistance is carried out by legal aid providers (legal aid organizations) that must fulfill the following requirements:

1. Legal entity;
2. Accredited;
3. Has a permanent office and secretariat;
4. Has people in charge;
5. Has a legal assistance program;
6. Has been certified.

Based on the Decree of the Minister of Law and Human Rights of the Republic of Indonesia Number M.HH-01.HN.03.03 of 2016 concerning Legal Aid Organizations/Institutions (OBH) that passed verification and accreditation as legal aid providers for

the period 2016-2018, there are 7 accredited OBH based on the results of verification of the national Legal Development Agency in Riau Province in 2015-2018, namely:

1. Faculty of Law Legal Aid, Lancang Kuning University; (located in the city of Pekanbaru)
2. Mahatva Legal Aid; (domicile in Rokan Hilir Regency)
3. Ananda Legal Aid; (located in Rokan Hilir Regency)
4. YLBHI Pekanbaru Legal Aid; (located in the city of Pekanbaru)
5. Riau KBH Legal Aid; (located in the city of Pekanbaru)
6. Paham Riau Legal Aid; (located in the city of Pekanbaru)
7. Indonesian Civil Society Forum Legal Aid; (located in the city of Pekanbaru)

The right to legal assistance itself is a non derogable right, a right that cannot be reduced and cannot be suspended under any circumstances. Therefore, legal assistance is the basic right of all people, which is not given by the state and is not the mercy of the state, but is also the responsibility of the state in realizing equality before the law, access to justice, and fair trial. The state's obligations are set out in legislation concerning legal assistance. As a price of democracy that must be paid for, of course the implementation of legal assistance must be escorted by all parties. Thus, access to justice for the poor can be fulfilled¹.

The number of poor people (population below the Poverty Line) in Riau in September 2017 amounted to 496.39 thousand people (7.41 percent)². From the data of the central statistical agency above, there are very many poor people in all districts in Riau. If the poor are in a legal case, what is expected is legal protection through a Government Program implemented by an accredited legal aid organization. In this case the policy of mapping the number of legal aid organizations is the authority of the Ministry of Justice and Human Rights of the Riau Regional Office. When viewed from the location of legal aid organizations, only Pekanbaru and

Rokan Hilir have accredited Legal Aid Organizations, whereas many poor people need these legal requirements. Districts that do not have a legal aid organization are as follows:

1. Bengkalis Regency, (no Accredited Legal Aid Organization).
2. Indragiri Hilir Regency, (no Accredited Legal Aid Organization).
3. Indragiri Hulu Regency, (no Accredited Legal Aid Organization).
4. Kepulauan Meranti Regency, (no Accredited Legal Aid Organization).
5. Kuantan Singingi Regency, (no Accredited Legal Aid Organization)
6. Dumai City, (no Accredited Legal Aid Organization).

The uneven mapping of Legal Aid Organizations in Riau Province is a problem that must be addressed regarding the obstacles and constraints, while the Legal needs of the poor in Riau Province are very many.

II. THEORETICAL FRAMEWORK

The definition of legal aid has characteristics in different terms. Legal aid is a national system regulated locally where Legal Aid is aimed at those who are less financially able and unable to pay for personal legal advisor. From this understanding it is clear that legal assistance can help those who are unable to hire legal advisory services. Legal assistance explains the meaning and purpose of wider legal assistance from legal aid. Legal assistance further describes the profession of legal counsel as a legal expert, so that in that sense as a legal expert, legal assistance can provide legal assistance services to anyone without exception. That is, the expertise of a legal expert in providing legal assistance is not limited to the poor, but also to those who are able to pay achievements.

For the poor, the law is expensive goods and they also feel they do not have the need to feel that their rights are guaranteed by law. The poor are the exception to the law which they say is often unfair and closes their opportunity to improve their standard of living. This situation happens almost in developing and poor countries in the world.

The concept of legal assistance in the Legal Aid Law Number 16 of 2011 is funding assistance from the State for the poor who are dealing with the law. Previously, the state did not fulfill the right to legal assistance for the community. It is precisely this role that began and continues to be carried out independently by civil society pioneered by for example YLBHI-LBH (legal aid foundation) Office which develop constantly with the creation of civil society organizations engaged in legal assistance such as the Indonesian Legal and Human Rights Assistance Association (PBHI), LBH Masyarakat, LBH Apik, LBH Pers, LBH Mawar Saron, LKBH Kampus, Elsam,

kontras, Walhi, etc. The formation of the Legal Aid Law has been advocated since 1998 by legal aid activists. In 2004 a draft Legal Aid Act was made. In 2009 this Law entered the National Legislation Program. It was only on November 2, 2011 that Law Number 16 of 2011 concerning Legal Aid was promulgated (annual report of the Indonesian Ministry of Law and Human Rights, 2013).

In Law No. 16 of 2011 concerning Legal Aid, it is said that legal aid providers are legal aid organizations or community organizations that provide legal aid services. Legal services provided to recipients of free legal assistance, in the sense that they do not receive wages from those assisted, but the government will provide assistance for each case handled. The amount of which is adjusted to the type of case. The donation will indeed not be given to all OBH, but only to OBH that have fulfilled the requirements in accordance with the Legal Aid Act³.

A. Relevant Research

There are some previous studies carried out in Indonesia that examined several issues regarding to legal aid for the poor. Pujiono, discussing the Legal Aid in the Perspective of State Responsibility as well as Siddid Ahmad conducted a study of the responsibilities of Advocate organizations in providing Legal assistance to the poor.

III. DISCUSSION

Access to Justice for the poor who face legal cases in Riau Province in the implementation is not maximal because there are still several municipal districts in Riau Province in which the poor people get difficulty to find the legal aid providers that are willing to help them when facing litigation and non-litigation law⁴. There are some obstacles regarding this issue. The first is District and City in Riau Province has not yet completed the Regional Regulation on Legal Aid. To overcome this, the Governments of District and City should prioritize the discussion of Regional Regulations on Legal Aid so that the legal aid programs can be implemented well. The second is the absence of technical instructions regarding to the standardization of prices for the implementation of legal assistance in the Regency / City Region. To address this, the regional office of the Ministry of Justice has employees in the Legal Drafter to assist in the preparation of Regional Regulations on Legal Aid. The third is the uneven distribution of Legal Aid Organizations (OBH) / accredited legal aid agencies in Riau Province. Many of the Legal Aid Organizations are situated in big cities, so access to help the poor in the district becomes difficult. Therefore, the Government through the Ministry of Law and Human Rights conducts the verification process of the Assistance Organization accreditation prioritizing Regencies or Cities that do

not yet have a Legal Aid Organization / accredited legal aid organization then conducts the OBH accreditation process at least once a year.

In the Social Justice workshop that was held on Monday, April 8, 2019 at the Witz Hotel Pekanbaru, the authors were also invited to the event which was attended by all Chairmen and administrators of Legal Aid Organizations in Riau Province, Head of the Provincial Legal Bureau of Riau, Head of the Legal Bureau Districts of Riau Province, Head of Regional Office of the Ministry of Law and Human Rights, Representative of the Legal Services Division of the Regional Office of the Ministry of Law and Human Rights. In this event, the authors asked this issue directly to all the respondents / invitees who were present to the event.

An interview with Mr. Edison Manik from the Ministry of Law and Human Rights Office of Riau⁵ said the Equitable Implementation of Access to Justice for the Poor in Riau Province Based on Law Number 16 Year 2011 concerning Legal Aid has actually been attempted to achieve equal distribution of access to Justice with the presence of Legal Aid Organizations in regions where there is no legal aid organization. The regional office can only propose to continue the final decision at the Republic of Indonesia National Law Development Agency. Furthermore, according to Mr. Edison Manik, the following are the names of legal aid organizations accredited in 2019-2021 as follows: There are 10 OBH that have been accredited based on the results of the National Legal Development Agency verification of Riau Province in 2019, namely:

1. Mahatva Legal Aid (located in Rokan Hilir Regency).
2. Ananda Legal Aid (located in Rokan Hilir Regency).
3. YLBHI Pekanbaru Legal Aid (located in Pekanbaru).
4. Posbakummadin Siak Legal Aid (located in Siak Regency).
5. Paham Riau Legal Aid (located in Pekanbaru).
6. Forum Masyarakat Madani Indonesia Legal Aid (located in Pekanbaru).
7. Faculty of Law Legal Aid, Lancang Kuning University (located in Pekanbaru).
8. Tuah Negeri Nusantara Legal Aid (located in Pekanbaru).
9. Paham Riau Legal Aid (located in Pekanbaru).
10. Rokan Hulu Legal Aid (located of Rokan Hulu Regency).

The results of Interview with Ms. Fitri, the Chairperson of LBH Ananda Rokan Hilir show that when viewed from the spread of Legal Aid Institutions in Riau Province from the years 2019-2021 are as follows:

- a. Bengkalis Regency, (no Accredited Legal Aid Organization).

- b. Indragiri Hilir Regency, (no Accredited Legal Aid Organization).
- c. Indragiri Hulu Regency, (no Accredited Legal Aid Organization).
- d. Kepulauan Meranti Regency, (no Accredited Legal Aid Organization).
- e. Kuantan Singingi Regency, (no Accredited Legal Aid Organization).
- f. Dumai City, (no Accredited Legal Aid Organization).

There is uneven distribution of accredited Legal Aid Organizations in Riau Province. There are still 7 Districts in Riau Province that do not have accredited Legal Aid Institutions / legal aid organizations.

The results of an Interview with Mr Adit from LBH Pekanbaru during the Social Justice workshop, which was attended by most of the Regency and City law bureaus in Riau Province, reveal that if we look at to the districts or cities that already have Regional Regulations on Legal Aid for the poor are:

1. Pekanbaru city (already has the regional regulations on Legal Aid).
2. Bengkalis Regency (no Regional Regulation on Legal Aid yet).
3. Rokan Hulu Regency (already has the Regional Regulation on Legal Aid).
4. Indragiri Hilir Regency (no Regional Regulation on Legal Aid yet).
5. Indragiri Hulu Regency (no Regional Regulation on Legal Aid yet).
6. Meranti Islands Regency (no Regional Regulation on Legal Aid yet).
7. Kuantan Singingi Regency (no Regional Regulation on Legal Aid yet).
8. Pelalawan Regency (no Regional Regulation on Accredited Legal Aid yet).
9. Siak Regency (already has the Regional Regulation on Legal Aid).
10. Dumai City (already has the Regional Regulation on Legal Aid).
11. Rokan Hilir Regency (already has the Regional Regulation on Legal Aid).
12. Siak Regency (already has the Regional Regulation on Legal Aid).

In creating the regulations of law concerning legal assistance, it must be carried out based on the principles of the establishment of good laws and regulations, including clarity of objectives, institutions or appropriate forming officials and conformity between types, hierarchies and workable material content and usefulness and usability, clarity of formulation and openness. In addition, the content material contained in the laws and regulations must reflect the principles of guardianship, humanity and nationality as well as kinship, mediation, Unity in Diversity (*bhinneka tunggal ika*), justice and equality of position in law and government, law and order and balance, and harmony. The principles of establishing

legislation above reflect the good form of legislation. If it is applied in a statutory regulation, a good legislation will be formed in accordance with the principles stated in the law without abandoning the principles of justice.

The establishment of good Indonesian legislation must prioritize the ideals of Indonesian law in taking ideas for the realization of equitable certainty. In addition, the principle of the state based on law is the proper basis for the creation of good legislation. As a legal state that has a legal level, it must prioritize the hierarchy of legislation in the formation of legislation, especially the constitution as the highest law.

The Results of an Interview with Ms. Aldis, the Head of the Legal Bureau of Riau Province, said that in Law 16 of 2011 concerning in Legal Aid there is no obligation for the Regions to make Regional regulations on Legal Aid, in the law using the words 'can be'. It means that Regions could make local government regulation about Legal Aid. Actually the words 'can be' written in Law 16 of 2011 concerning legal assistance indirectly provides opportunities to the Region to help people who are not able to litigate the Law.

Regional law products beside Provincial Regional Regulations and Regency / City Regional Regulations also include regulations stipulated by the Provincial Regional Representative Council, Governor, Regency / City Regional Representative Council, Regent / Mayor, Village Chief or equivalent. The Regional Regulation can also be revoked regulated in Law Number 12 of 2011 concerning the Establishment of Legislation, the mechanism of revocation / cancellation of Regional Regulations, Regional Head Regulations, and the Decision of the Regional Head that is problematic is regulated in Law Number 23 of 2014 regarding Regional Government as last amended by Law Number 9 of 2015 concerning the Second Amendment to Law

Number 23 Year 2014 concerning Regional Government.

IV. CONCLUSION

Equitable Implementation of Fulfillment of Access to Justice for the Poor in Riau Province is based on Law Number 16 Year 2011 concerning in Legal Aid. The access of Justice for the poor who have litigation in Riau Province in the implementation has not been optimal, because there are still several municipal districts in Riau Province where the poor people got difficulties to find the legal aid providers who are willing to help them when encountering legal cases.

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