

# Legal Aid for Poor Community in Socio Legal Perspective: Case Study of Criminal Case Handlings Involving Poor Community Based on Justice Values

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## Abstract

The provision of legal aid to the poor is one of the actions of the noble profession of advocates and the moral movement that advocates for human rights, in fact, not all advocates are morally aware of their obligations. There are still many deviations found in the provision of legal aid for the poor. This condition is certainly contrary to the noble values of the advocate profession itself, in the presence of this matter, which shows still can be found deviations in practice. The problem studied in this research is why the advocate has not applied the value of justice in handling criminal case involving the poor, how the Advocate impact that has not yet applied the value of justice in handling criminal case which in this case involving the poor and how pattern / model of handling of criminal case against the poor by justice-based advocates. The method used in this research is with socio-legal research approach that comes from collecting data obtained from primary data and secondary data, then analyzed by qualitative analysis method. The results of this study ultimately provide an answer that Advocates who have not yet applied the value of justice in handling criminal cases involving the poor are due to legal substance, legal structure, and legal culture, Not yet applying the value of justice in handling criminal cases against the poor is like the emergence of mistrust of the law, besides the model of handling criminal cases against the poor by advocates based on the value of justice is the implementation of constructive strategies, such as: Legislation Planning, Policies and Activities Related to the Fulfilling Right to Legal Aid. Suggestions from this research are to Advocates regarding Integrity, morality, idealism, and professionalism of law enforcement officers should be further enhanced, in addition to the restrictions on the provision of legal aid in LBH should also be reviewed in order to enforce the principle of providing legal aid as widely and equality before the law.

**Keywords:** Criminal Case, Poor People, Advocates and Justice Values.

## 1. Introduction

Legal aid is one of the rights of individuals to defend the rights of the investigation level until the trial process. For people who are not able to be a State obligation to provide legal aid. Provision of legal aid funds by the government is an embodiment of the government's efforts to enforce the law in order to equalize the opportunity to obtain justice within the lawful state of the Republic of Indonesia, therefore a person charged with a crime shall be offered a defendant because according to the consideration of the Panel of Judges and KUHAP it is necessary A defender comes from the government (legal aid fund), so it is also expected that both lawyers and Legal Aid Institute (LBH) can participate in this government effort, albeit with a modest funding according to the country's financial capacity. Providing legal aid to the poor is an implementation effort of a legal country that recognizes, guarantees and protects human rights. Legal aid is also provided as an effort to meet the needs of access to justice and equality before the law. Legal aid also means trying to carry out legal reforms in order for the law to meet the needs of the people and to follow the change of circumstances even if the motivation or rational rather than the provision of legal aid to the community can not vary from time to time, but there is one thing that would not change, one common goal, namely the basis of humanity. Normatively, the objectives of the legal aid program in Indonesia are related to the following aspects:

1. Humanitarian Aspects. The purpose of this legal aid program is to alleviate the legal burdens that the poor have to endure before the courts, so that when the community is incapable of confronting the legal process in court, they still have the opportunity to obtain defense and legal protection .
2. Increased Legal Awareness. The objective aspect of legal awareness, it is expected that this legal aid program will spur the level of legal awareness of the community to a higher level. Thus, the public's

In the implementation of legal aid, an advocate as a person providing legal aid certainly has an enormous obligation and role in this regard. Ropaun Rambe states that the advocate profession is known as the noble profession, because it requires the defense of all people without distinction of race, color, religion, culture, socioeconomic, poor, political, gender, and ideological beliefs. Ropaun Rambe also stated that: Advocate profession is a respectable profession because of the professionalism in it. In addition, the advocate profession is not merely a livelihood, but there is an idealism (such as the value of justice and truth) and highly upheld morality.

In accordance with the noble profession (*officium nobile*), the advocate must defend the community and its

clients without discrimination and differentiation of treatment in accordance with the principle of equality before the law. Advocates have an important position as a pillar in law enforcement, in the enforcement of human rights, and have a control function to keep the judiciary clean, honest and fair. Advocates in the criminal justice system are also part or sub-systems of criminal justice and are also law enforcers. Advocates have an important role in criminal justice. Ropaun Rambe also stated that, advocate profession is a respectable profession, however, the condition of the advocate profession today is quite apprehensive because of the occurrence of irregularities. Advocates are now more of a role as mere case brokers. This condition is certainly a serious problem, which is now faced by the criminal justice system in Indonesia. Now advocates have been shifting values. Today, advocates' professions are often perceived to be no longer a lofty profession that highlights truth and justice. The advocates who defend their clients by all means to achieve victory by bribery, evil deeds, and other negative ways, certainly raise assumptions toward pessimism and skepticism toward law enforcement in Indonesia. In fact, advocates are often regarded as judicial mafia or brokers of the case, which of course undermines the image of the noble profession of advocate itself.

The deviation and shift in advocate values is a serious matter, but, in the midst of pessimism, and skepticism of advocates, it is important to know that advocates have a very important role in achieving due process of law. The acts of irregularities committed by advocates who damage the image of the current profession of advocates, should not be a stumbling block that stops the implementation of the noble profession of advocate itself. It should be realized that the provision of legal aid for the poor person or group is one form of action from the profession of a very noble advocate and a moral movement that strives for human rights. In fact, not all advocates are morally aware of their obligations. There are still many deviations found in the provision of legal aid for the people or groups of the poor. This condition is certainly contrary to the noble values of the advocate profession itself, in the presence of this matter, which indicates that there can still be found deviations in practice, it is necessary to review the progress of the implementation of legal aid in Indonesia, especially to the poor who are involved in criminal cases.

In line with the above, it has been described in Article 1 point 1 of Law No. 16 of 2011 on Legal Aid stating that "Legal aid is a legal service provided by Legal Aid for free to the Legal Aidee". In addition Article 1 point 1 of Government Regulation no. 42 Year 2013 on Terms and Procedures for Legal aid and Distribution of Legal Aid Funds also provides the same definition of legal aid.

Based on this matter can be known and concluded that legal aid is a legal service provided free of charge. The definition of legal aid free of charge has also been explicitly regulated in Article 1 number 3 of Government Regulation Number 83 of 2008 on the Requirements and Procedures for Providing Legal aid free of charge stating that: "Free legal aid is a legal service Given advocates without receiving honorarium payments including providing legal consultations, exercising power, representing, accompanying, defending and taking other legal actions for the benefit of justice seekers who are not able".

## **2. Advocates Have Not Implemented Justice Values in Handling Criminal Cases Involving the Poor**

There are many problems that hamper the implementation and development of legal aid so that the realization of justice in criminal cases involving the poor has been discussed, as described below :

### **2.1 Lack of Important Information Associated with Legal Aid**

Legal aid is a reflection of the human rights movement. As a community movement needs to be given sufficient information, and done at the grassroots level. Legal aid will only effectively reach the target of poor and marginalized groups if based on the availability of the following information: (i) information on the number of poor people seeking justice; (ii) the amount of budget allocated for free legal aid and the amount actually accessible to the justice seeking community; (iii) the number of legal aid providers who actually provide free legal aid; And (iv) the number of advocates who provide free legal aid in judicial bodies. The Government through the Department of Justice and Human Rights is obliged to provide this information database.

The implementation of the administrative system of legal entities (Sisminbakum) which has been done Depkumham, can be adopted and applied in legal aid: legal aid administration system (Sisminbahu). Of course Depkumham need to work with legal institutions: MA, AGO, Police and advocate organizations. Currently the Supreme Court has issued Decree No. MA. 144 of 2007 on the disclosure of court information. Socialization of this rule needs to be done extensively to the justice seeker community. In addition, the Directorate General of the General Courts and the State Administrative Courts / Military Courts, in 2004 also published a guide book "Legal Aid for Underprivileged Groups. How and Where You Can Get Legal Aid Fund ". Unfortunately, this manual does not specify what people are often asked, among other things, who or what officials should be contacted to obtain information about legal aid? What is the average allocation of legal aid funds provided through the District Court and the State Administrative Court to advocates who provide free legal aid? What is the allocation of APBN funds Allocated to legal aid agencies? What is the average allocation of funds allocated to a case or case faced by the poor? How many advocates and legal aid agencies use the legal aid funds of the

## Supreme Court?

### 2.2 Prerequisites for Building Community Trust

There are at least six conditions of the western judicial system that make citizens willing and believe this system can provide justice. The six conditions are as follows: (i) the professionalism of law enforcement officers; (ii) an integrated information system that is easily accessible to the public; (iii) the existence of transparency in the body of law enforcement agencies; (iv) law enforcement officials exercise authority and service to the public responsibly; (v) place law enforcement officers in a noble profession; And (vi) the existence of professional protection and incentives for law enforcement. In Indonesia, the things mentioned above have not been fully realized. Law enforcement officers are often reduced and reduced themselves to a tool of power interests. In such situations legal aid faces difficulties in helping poor and marginalized people obtain justice from the formal justice system. Public confidence in the legal system and law enforcement officers is closely linked to the practice and implementation of legal aid in Indonesia. The poor and marginalized groups in the practice of avoiding and fearing the use of legal mechanisms, especially fighting for justice through the judiciary, are often the victims of judicial mafia practices.

### 2.3 Low Level of Political Sensitivity of the Government

This is a common problem that exists in government in developing countries. When society expresses criticism, aspiration or complaints of injustice, favoritism and favoritism, the government does not seek to improve and increase public confidence in the judicial system and institutions. Although there is some evidence to suggest that the government has encouraged the fulfillment of the rights of citizens and communities, including economic, social and cultural rights, which can help the realization of social capital of society. Similarly, the government's obligation to facilitate and allocate funds for the improvement and expansion of access to justice for the community needs to be improved.

### 2.4 The Political Will of Decision Makers

The rule of law and respect for the rights of all people in western countries is not without challenge. However, it can be realized because of systematic and serious efforts, led by people who really devote their attention, including philosophers and academics, who pay attention to the realization of the right to legal aid. Current law enforcement reform programs and law enforcement reforms cost millions of US dollars, such as prosecutorial reform programs, reform of the supreme court, reform of police institutions, including case management reforms, training and so on. However, without the firmness and strong will of any institutional leadership, such programs will not have much impact on improving access to justice for the community. Likewise in the right to legal aid, without any political will of the decision maker, the fulfillment of this right will be difficult to materialize. For example, there has been no Legal Aid Law pro-poor and marginalized.

### 2.5 The failure of the Law Reform

Many efforts have been made, but the legal reforms are still stumbling and the problems are still piling up. Why are law reforms that have been implemented or are running unsatisfactory? The scarcity of strong, hard and bold figures is therefore sought as the head of the judiciary, prosecutors, advocates, and the police and public figures who can be role models is one of the causes. Increased trust of the poor to law and justice in relation to the presence or absence of empowerment of legal rights to meet justice for them. Of course, to realize this requires a figure who has a strong commitment, firm and courageous. In other words, the leaders are pro-poor. Continuing 5 (five) points of explanation mentioned above, related to society in Semarang City has not received legal aid based on fair, Widodo confidently stressed that the factors that hinder the implementation of legal aid and not yet reached the value of justice which become the hope of poor society in particular, Many factors, partly because of the difficulty of accessing legal aid for the people of Semarang City, due to the lack of knowledge about legal aid so that in this case the poor who are involved in legal matters are more likely to surrender and not report, then the number of legal aid providers is also very Influential due to the lack of number of officers resulted in many cases that are less effective to be handled and the impact of not realizing the value of justice for the community.

## **3. Impacts of Advocates Who Have Not Implemented Justice Values in Handling Criminal Cases Involving the Poor**

The role and responsibility of lawyers in law enforcement is in fact not optimal, it is because of a conflict of interest between advocates as law enforcement who must uphold justice and truth and advocate as legal profession that is lawyer acting as power or representative of client (party lecturer ). So advocates should be in the defense of the client must act as a code of ethics advocate who served to uphold justice for his clients and all. As well as assisting the judge in discovering the truth so that it is not justified if he staunchly defends the client's fault, what is sought is broad justice, not just the interest of winning the case in the Court. In connection with the

impact of an Advocate who has not yet realized the value of justice for the poor who are eligible to receive legal aid, this is due to the long-standing upsurge or inconsistency of law enforcement in Indonesia, so that for the Indonesian people this is a public secret, a law made different from the law Which is run, the closest example to the environment is, the driver's driver's rejection in violation of traffic rules. Those who violate the rules of traffic do not often want to make peace in the place or corrupt the law, then the law enforcers should be able to win the law in force in Indonesia, but not infrequently law enforcers are actually taking the opportunity that is not commendable to add pundi- Money coffers.

Therefore, the consequences / effects that result from the problem of legal deviation are, that is:

### 3.1 Unbelief of society on the law

Law-abiding people do a lot of harm to them, even more so about the matter so they try to avoid it. Because they believe that it is money that speaks, and can ease their punishment, the facts are played back with material ready for law enforcement. The cases of corruption in Indonesia are not resolved completely because the officials involved in the State to play the law by bribing here and there so that the case is not revealed, consequently the community's belief faded.

### 3.2 Resolving violent conflict

Conflict resolution with violence for example is a thieves chickens beaten by citizens, thieves who judged sandals citizens. Conflict that occurred in a group of people in Indonesia many are resolved by violence, such as cases of brawl between students, inter-tribal clashes fighting over territory, or there is one of the tribe that hurt so violent reply. They do not heed the rules of governance, with the problem geographically, they are. This proves that Indonesian society is not lawful, it should be a problem like slipper or chicken thief can be handled by the authorities, not judged in the same way, can even eliminate a person's life.

### 3.3 Utilization of Law Enforcement Inconsistencies for Personal Interests

From several cases in Indonesia, many Indonesian citizens are taking advantage of inconsistencies of law enforcement for personal gain. An example is a lawyer who bribes police or judges to relieve the defendant, while police and judges who should be intermediaries for both parties involved in legal cases may be more inclined to banayknya material that Provided by one of the parties involved in the legal case.

### 3.4 The Use of Foreign Pressure in the Judicial Process

In this case we can take the example of environmental destruction caused by a foreign company that opened its business in Indonesia, they will ask for assistance from their country to make efforts to approach Indonesia, so that they will not get severe punishment, or revoked the permission to produce it in Indonesia.

In relation to the four impacts mentioned above, Widodo describes his experience related to the impact of the advocate if not even did not realize the value of justice to the poor involved in legal matters. Widodo explained that because community-related people do not easily come to the Legal Aid Posts in Semarang City to ask for help when they are in trouble with the law. This is because the level of their legal awareness is still lacking and they are still unsure of the performance of advocates they understand so far that advocates are professions that are identical with money. The poor can not fully understand the nature of the establishment of the Legal Aid Foundation itself, to assist them in obtaining justice. Halm this impact on cultural factors that developed in the middle of society that akhrynya wrong. Then according Widodo should be the task of advocates in order to correct the culture of the wrong society. The poor need to persuade the public that advocates can fully assist them in solving legal problems without asking for compensation.

## 4. Patterns And Model of Crime Case Handling of the Poor By Justice-Based Advocates

The poor and marginalized need a legal development that can balance the legal function of providing justice and benefit in addition to certainty. In this direction, within the next five years, there should be reforms in the field of law and justice that include: (i) a paradigm shift and direction of legal development that can balance the functions of certainty, justice and legal benefit for the community; (Ii) improving the legal process to a process that is able to actively involve the community in the formulation of laws and regulations; (Iii) a thorough reform of the performance of law enforcement agencies in order to be able to provide access for the poor and marginalized in obtaining substantial justice and recovering their basic rights that are violated by the state as well as community groups and other citizens; And (iv) legal empowerment of poor and marginalized groups. The biggest legal and judicial reform issues in Indonesia are the inadequate quality of legislation and law enforcement as well as the legal norms inherent in opening up opportunities for justice for the community. This condition is related to the paradigm and direction of legal development that is now used, the politics of legislation implemented and the weak integrity and performance of law enforcement.

Legal and judicial reform will be able to contribute to improving people's access to justice if the law is



based on paradigms that balance the functions of justice, benefit and certainty. This legal paradigm should be reflected in the formation, implementation and enforcement of the law. The current legal paradigm still puts legal certainty on top of it, without questioning whether existing laws have referred to moral principles and justice. The supremacy of law, as an important principle in the state The law is finally pursued into the supremacy of legal procedures which in many ways often do not conform to the sense of community justice and pluralist reality of Indonesian society. This paradigm, commonly known as the positivistic paradigm, directs the legal apparatus and law enforcers to interpret the law rigidly and textually without being able to relate it to the social context or interpret it progressively in order to achieve justice for the poor and marginalized. This ultimately creates despair for the poor and marginalized of the legal system and the formal justice system. At the stage of legal formation, the positivistic paradigm can be recognized by looking at the way lawmakers set priorities. At the national level can be traced for example through the National Legislation Program (Prolegnas). In addition, this paradigm can also be known by assessing whether the legislation that has been created has reflected the values of democracy and social justice. The process of public participation in the formulation of legislation also becomes another mirror of this paradigm. While the legal paradigm in law enforcement stage can be seen from the tendency of judges to interpret the law on its decisions (see further on the political part of legislation and law enforcement).

Factors that are not less important in the agenda of legal and judicial reform is the role of legal professional institutions, especially advocates. There are at least three important issues related to the advocate profession, namely integrity, the quality of legal services and the provision of legal aid for free. Problems arise when advocates actually interpret the judiciary as a container to win the case, not a container to test the truth and find justice. As a result, many ways are contrary to the code of conduct of advocates conducted. Although advocate organizations already have mechanisms to enforce the code of ethics, many advocates fail to respect the mechanism.<sup>32</sup> To maintain the quality of advocates, Also provided a special education mechanism advocates and apprentices, but the results are not quite encouraging.

Another problem is the low sensitivity and awareness of advocates towards the poor and marginalized. Although the law on advocates obliges lawyers to provide free legal aid and there is a legal aid post in court, but in practice this does not work out. In the free legal aid, honorariums for the legal profession are waived but the cost of the case remains to be paid. In addition, in legal aid provided by advocates there is often no element of legal education to clients. Free legal aid is mostly done by advocates working in NGOs (legal aid agencies-LBH). The prodeo cases are often delegated to LBH or NGOs concerned with legal aid. Meanwhile, the government does not subsidize advocates or institutions that provide free legal aid (see access to justice in the field of legal aid).

## 5. Conclusions

- 5.1 Advocates who have not yet applied the value of justice in handling criminal cases involving the poor are due to 3 factors namely legal substance, legal structure and legal culture. Factors of legal substance that have not realized the value of justice one of them is a deficiency or weakness in the substance of Article 56 paragraph (1) Criminal Procedure Code regulating the restriction of legal aid recipient based on the qualification of punishment threat. Factors of legal structure that have not realized the value of justice that is, law enforcement factors in terms of internal and external which also includes facilities or facilities. Internal law enforcement factors that impose fairness values such as lack of integrity, morality, idealism and professionalism of advocates. External law enforcement factors and inhibiting facilities such as lack of funding or budgets, lack of control and oversight, mechanisms and systems to obtain complex budgets that LBH has to pass. Factors of legal culture that have not realized the value of justice by the Advocate to the poor include the factors of legal culture or cultural factors and factors of society. Factors of legal or cultural culture in this case include the legal or cultural cultural factors of the community and law enforcers (investigators and advocates). Like, the lack of public understanding of the right to legal aid refers to distrust, pessimism, and skepticism about the implementation of legal aid, and the elements of attitudes, values, ways of acting and thinking of advocates and investigators, which occur repeatedly, leading to Attitude or acts of distortion. Community factors that include negative public outlook on the implementation of legal aid and concerns about using legal aid.
- 5.2 Advocates' impacts that have not yet applied the value of justice in handling criminal cases which in this case involve the poor are such as 1) the mistrust of the people in the law, because the law-abiding society harms them a lot, even more so of the matter so that they seek to avoid it. Because they (the poor) believe that it is money that speaks, and can alleviate their punishment, the facts are played back with material ready for law enforcement. The cases of corruption in Indonesia are not resolved completely because the officials involved in the State to play the law by bribing here and there so that the case is not revealed, consequently the community's belief faded. 2) Resolving conflicts with violence, resolving violent conflict

for example is a chicken thief that was beaten by citizens, thieves who were judged by citizens. Conflict that occurred in a group of people in Indonesia many are resolved by violence, such as cases of brawl between students, inter-tribal clashes fighting over territory, or there is one of the tribe that hurt so violent reply. They do not heed the rules of governance, with the problem geographically, they are. This proves that Indonesian society is not lawful, it should be a problem like slipper or chicken thief can be handled by the authorities, not judged in the same way, can even eliminate a person's life. And 3rd) Utilization of inconsistencies of law enforcement for personal gain, from several cases in Indonesia, many Indonesian citizens are taking advantage of inconsistencies of law enforcement for personal gain. An example is a lawyer who bribes police or judges to relieve the defendant, while police and judges who should be intermediaries for both parties involved in legal cases may be more inclined to banayknya material provided by one of the parties involved in the legal case.

- 5.3 Pattern / model of criminal case handling of the poor by advocates based on the value of justice is the implementation of constructive strategies, such as: Legislation Planning, Policy and Activities related to Legal Rights Fulfillment. This strategy is realized through the preparation of a comprehensive development plan on community rights for legal aid. This strategy aims to create a common perception of all development actors in particular to realize the right to legal aid, with principles and basic principles, the community is positioned as the subject of the development program, not merely the object of the program to be planned and implemented. In this context, community participation in development programs should be full and meaningful, so that the benefits of the development program are truly perceived by marginalized communities. In other words, development programs should provide an optimal space for the participation of the poor and marginalized so that the benefits of the development program they really feel. (2) Institutional capacity building and legal resources, (3) Development of funding for the development of access to legal aid, (4) the establishment of legal instruments to ensure access of the poor to legal aid; Development of paralegal, (5) Development of legal education that supports the implementation of legal aid, and (6) Provision of rewards for legal aid.

## 6. Recommendations

- 6.1. To Advocates handling criminal cases involving the poor so that legal aid through advocate assistance can be enjoyed by the suspect at the initial stage rather than during the supplementary examination and should the examination not be conducted prior to the advocate's presence. Integrity, morality, idealism, and professionalism of law enforcement officers should be further enhanced. There is a need to provide legal aid to suspects and defendants who are suspected and charged with a criminal offense under penalty under 5 (five) years. Limitations in the provision of legal aid at LBH should also be reviewed in order to enforce the principle of legal access to legal counsel and the equality before the law principle.
- 6.2. Number 16 of 2011 Law on Advocates, by the government should be more socialized to the public, especially the poor to know more about their rights to obtain equality with other communities, so that the principles of legal aid can be achieved properly, So equality before the law or justice for all is not just a myth that in practice many see and feel is the opposite. The government should also raise funds for legal aid programs so that more and more unemployed people get legal aid free of charge to obtain equal and equitable justice. As well as Advocates should be more active in assisting underprivileged communities, without having to distinguish race, class and position to achieve equitable justice for all people without exception.
- 6.3. Factors of legal substance need to be held further study to revise Article 56 paragraph (1) KUHAP and also other relevant legislation. The legal structural factor, namely internal law enforcers, needs to be enhanced by the integrity, morality, idealism and professionalism of advocates and investigators, as well as enhancing law enforcement capacity by training, professional education, and seminars. External factors and facilities or facilities that need to be addressed include providing adequate funding or budgets, it is advisable to set up a Legal Aid Post at the level of investigation, improve control and oversight, simplify mechanisms and systems for obtaining legal aid budgets. Factors of legal culture need to be instilled into the public understanding of the right to legal aid and increase awareness and legal compliance of the community and law enforcers (advocates and investigators), to form values, opinions / views, ways of acting and thinking that support the implementation Legal aid in a criminal case in Semarang City in particular through socialization and coaching or legal empowerment.

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