

EFFECTIVENESS OF SUPREME COURT REGULATION NO. 1 OF 2014 ON THE PROVISION OF LEGAL AID POSTS AT THE TULANG BAWANG RELIGIOUS COURT

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Abstract

Religious Courts in carrying out their main duties and functions are always based on laws and regulations. Religious Courts in implementing work programs always aim for the benefit of the justice-seeking community. Thus, Religious Courts are needed by the community. One form of work program for the justice-seeking community in the Religious Courts is legal aid services. Based on the contents of article 25 of Supreme Court Regulation (PERMA) Number 1 of 2014, explains the types of services at the Court Legal Aid Post. The effectiveness of PERMA Number 1 of 2014 concerning the provision of Legal Aid Posts, effectiveness factors in the application of PERMA Number 1 of 2014 at the Tulang Bawang Religious Court. The implementation of the Legal Aid Post at the Tulang Bawang Religious Court interprets the inability of the justice-seeking community, as a party who is unable to understand the procedures of the judicial process or is unable to make case submission files. The role of the Legal Aid Post at the Tulang Bawang Religious Court increases access to justice, increases public awareness and knowledge of the law.

Keywords: *Effectiveness, Legal Aid Post, Religious Court.*

Abstrak

Peradilan Agama dalam melaksanakan tugas pokok dan fungsinya selalu berlandaskan hukum dan perundang-undangan. Peradilan Agama dalam melaksanakan program kerja selalu bertujuan untuk kemaslahatan bagi masyarakat pencari keadilan. Dengan demikian, Peradilan Agama di butuhkan oleh masyarakat. Salah satu bentuk program kerja bagi masyarakat pencari keadilan di Peradilan Agama adalah pelayanan bantuan hukum. Berdasarkan isi **pasal 25** PERMA Nomor 1 Tahun 2014 menjelaskan jenis layanan di Pos Bantuan Hukum Pengadilan. Efektivitas PERMA Nomor 1 Tahun 2014 tentang penyediaan Pos Bantuan Hukum, faktor efektivitas dalam penerapan PERMA Nomor 1 Tahun 2014 di Pengadilan Agama Tulang Bawang. Penyelenggaraan Pos Bantuan Hukum di Pengadilan Agama Tulang Bawang memaknai ketidakmampuan masyarakat pencari keadilan, sebagai pihak yang tidak mampu memahami prosedur proses peradilan ataupun tidak mampu membuat berkas-berkas pengajuan perkara. Peran Pos Bantuan Hukum di Pengadilan Agama Tulang Bawang meningkatkan akses

terhadap keadilan, meningkatkan kesadaran dan pengetahuan masyarakat tentang hukum.

Kata Kunci: Efektivitas, Pos Bantuan Hukum, Pengadilan Agama.

INTRODUCTION

Background

Indonesia recognizes and protects the human rights of every individual, including the right to legal aid. Although legal aid is not expressly stated as the responsibility of the country, the content of Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia confirms that all aspects of social life, citizenship, and government must always be based on the law.

The implementation of the provision of legal aid to citizens is an effort to fulfill and at the same time, an implementation of the rule of law that recognizes and protects as well as guarantees and fulfills the human rights of citizens on the need for access to justice and equality before the law. As a State of Law, Indonesia's legal system is Civil Law. This legal system has binding legal force because it is set out in the form of laws that are compiled based on legal codification and systematically. This is done solely for legal certainty. Legal certainty can be realized if relationships and associations in society are regulated in written regulations.(Djamali 2010)

Legal aid activities have actually started centuries ago. In Roman times, the provision of legal aid by someone was only driven by the motivation to gain influence from the community. This situation relatively changed in medieval times when legal aid was provided for the generous attitude (charity) of a group of church elites towards their followers (Todung Mulya Lubis 1996).

Based on the contents of Article 1 paragraph (6) of PERMA Number 1 of 2014 Court Legal Aid Post is a service established by and available at each court of first instance to provide legal services in the form of information, consultation, and legal advice, as well as the preparation of legal documents required in accordance with the laws and regulations governing Judicial Power, General Courts, Religious Courts, and State Administrative Courts.

The Religious Courts in carrying out their main duties and functions are always based on laws and regulations. Religious Courts in implementing work programs always

aim for the benefit of the justice-seeking community. Thus, Religious Courts are needed by the community.

One form of work program for the justice-seeking community in the Religious Courts is legal aid services. Based on the contents of article 25 of PERMA Number 1 of 2014, explains the types of services at the Court Legal Aid Post providing services in the form:

1. Provision of information, consultation, or legal advice.
2. Assistance in the preparation of required legal documents.
3. Provision of information on the list of Legal Aid Organizations as referred to in Law No. 16 of 2011 concerning Legal Aid or other legal aid organizations or advocates who can provide free legal aid.

Legal Aid Post or hereinafter referred to as Posbakum has a Public Service function, which functions to provide services to people who need legal assistance (Noor Thalish Cahyadi 2012). The legal assistance includes exercising power of attorney, accompanying, representing, defending, and/or taking other legal actions for the legal interests of legal aid recipients, which aims to: guarantee and fulfill the rights of legal aid recipients to obtain access to justice, realize the constitutional rights of all citizens in accordance with the principle of equality in law, ensure the certainty of the implementation of legal aid carried out equally throughout the territory of the State of Indonesia, realize an effective, efficient and accountable judiciary.

However, in its realization, the regulation is often ignored in its application resulting in ineffective regulations. The ineffectiveness of regulation is caused by vague or unclear regulations, inconsistent apparatus, and an unsupportive society. If the regulation is implemented properly, the regulation is said to be effective. It is said to be effective precisely because the regulation is clear and in its application, there is no need for interpretation, the apparatus enforces the law consistently and the community affected by the regulation supports it.

Juridically, one of the state court institutions referred to is the Religious Court which has been given the authority to serve the justice-seeking community in its capacity to serve the justice-seeking community in its capacity to obtain legal aid. This is regulated in the provisions of Article 60C paragraph (1) of Law Number 50 of 2009 concerning the second amendment to Law Number 7 of 1989 concerning Religious Courts. Article 60C

paragraph (1) states that in each Religious Court, a Legal Aid Post is established for justice seekers who are unable to obtain legal aid.

The Religious Court, which is the Court of First Instance, has the duty and authority to examine, decide and resolve cases at the first instance between people of the Muslim faith in the fields of marriage, inheritance, wills, and grants made under Islamic law, as well as waqf, sadaqah, and sharia economy as stipulated in Article 49 of Law Number 3 of 2006 concerning Religious Courts (Supreme Court of the Republic of Indonesia Directorate General of Religious Courts, 2014).

Sociologically, legal aid is a type of service that is urgently needed by justice seekers in Indonesia. The existence of legal aid is provided not only to people who are less able due to economic limitations but also because of the lack of understanding of the judicial process that requires the help of advocates to provide input or legal advice (Iskandar Syahputra Nasution 2011). In practice, a Legal Aid Post does not always run well, based on this, the researcher will make a scientific work which the researcher titles "The Effectiveness of Supreme Court Regulation Number 1 of 2014 concerning the Provision of Legal Aid Posts at the Tulang Bawang Religious Court".

RESEARCH METHOD

According to Soerjono Soekanto, research is a scientific activity related to analysis and construction which is carried out methodologically Normative Juridical Approach systematically, and consistently (Bambang waluyo 1996)

Research in accordance with its purpose can be defined as an effort to discover, develop, and test the truth of knowledge (Abdurrahman 2009). This study uses Normative and Empirical Juridical Methods.

RESULT AND DISCUSSION

Effectiveness of Supreme Court Regulation No. 1 of 2014 on the Provision of Legal Aid Posts

According to the legal system theory that serves as the analytical knife for this research, the purpose of the law is to provide protection for the community. The legal system is based on three elements, namely legal structure, legal substance, and legal culture. In the context of the provision of Legal Aid Posts in religious courts, it is the implementation of legal substance in the form of the application of cooperation between the Religious Courts and Legal Aid Posts by implementing standard operating procedures

for information services. The Religious Court is a legal institution that is a legal structure because it contains legal apparatus, namely clerks and officers at one-stop integrated services (PTSP) and Legal Aid Post officers.

Based on the results of an interview with Deska Pitrah, Clerk of the Tulang Bawang Religious Court, in the context of providing legal aid posts that refer to PERMA Number 1 of 2014, the public can obtain legal services and legal assistance through legal aid posts.

In establishing legal aid posts, the court can collaborate with institutions. Based on the contents of article 26 of PERMA Number 1 of 2014, these institutions can be:

1. Civil society organizations providing legal advocacy; and/or,
2. Legal advocacy work unit at the Advocate Professional Organization; and/or,
3. Higher Education Consultation and Legal Aid Institution.

Legal system theory sees law as one of the factors in the social system that can determine and be determined, such as the application of social science to legal science, the approach of social science to legal science, the attitude of the discipline to study legal science in the perspective of social science or social law.

Rikardo Simarmata concluded that the legal reform movement was carried out both by theoretical law bearers and practical law bearers. Renewal by theoretical law bearers aims to question and improve legal thinking. Meanwhile, reform by practical law bearers aims to bring the usefulness or benefits of the law into everyday life through law formation activities, legal discovery, and legal aid (Rikardo Siamarmata 2007).

In line with Rikardo Simarmata, based on the results of an interview with Deska Pitrah, Clerk of the Tulang Bawang Religious Court about the position of legal aid in the Religious Court. The establishment of a legal aid program through PERMA Number 1 of 2014 is a form of legal reform that aims to develop theory and aims to realize legal objectives in everyday life.

Legal systems theory is another name for the term law and societies studies. The legal system is a generic term to name all social sciences that study law. Within legal systems theory are a number of social sciences such as legal sociology, legal anthropology, legal history, legal politics, and legal psychology. In other terms, legal systems theory is also considered a generic term for any social perspective approach to law.

Legal systems theory is a social phenomenon located in social space and therefore cannot be separated from the social context. Law is not a completely separate entity and is not part of other social elements. The law will not be able to work by relying on its own ability even though it is equipped with tools, principles, norms, and institutions.

In the context of the legal aid post-program, the existing policy is technically based on the contents of article 23 of PERMA Number 1 of 2014, which is applied through a cooperation agreement between the Legal Aid Post organizing agency and the organization or institution that handles it on a technical basis, although the agreement must also refer to PERMA Number 1 of 2014, especially in article 1 of PERMA Number 1 of 2014.

Based on the results of interviews with Idawati, a legal aid post officer, the Tulang Bawang Religious Court collaborates with the Indonesian Advocate Legal Aid Post or commonly abbreviated as POSBAKUMADIN based on a work contract with number: W8-A7/162/PL.01/1/2022 dated January 31, 2022. POSBAKUMADIN in providing services to the community is in accordance with the contents of article 25 of PERMA Number 1 of 2014 by providing services in the form of:

1. Provision of information, consultation, or legal advice.
2. Assistance in the preparation of required legal documents.
3. Provision of information on the list of Legal Aid Organizations as referred to in Law No. 16 of 2011 concerning Legal Aid or other legal aid organizations or advocates who can provide free legal aid.

POSBAKUMADIN has been running this type of legal service in handling procedures for providing information, consultation, or legal advice up to the making of legal documents, one of which serves people who are unable to make a lawsuit/application letter.

People facing legal problems have to face the fact that their socio-political conditions have made them unable to access the legal assistance they need. In addition, the law is now considered commercialized, making some people unable to obtain justice. The existence of a legal mafia at almost every level of legal institutions plus the image of advocates who are considered expensive with rates that some people will not be able to pay.

Based on the results of an interview with Nur Amrilia Maulidasari, a One-Stop Integrated Service (PTSP) officer who handles information and complaints, the Tulang Bawang Religious Court has provided a special place for Legal Aid Post services located in the one-door-based service room, adjacent to the lawsuit/application registration place, making it easier for justice seekers to get services at the Legal Aid Post. Getting legal services at the Tulang Bawang Religious Court is also very easy. Service applicants come to the Religious Court to meet the service ambassador, and the service ambassador directs them to the information officer. It is this information officer who directs about the existence of legal services at the Bone Bawang Religious Court, services that can be provided by Legal Aid Post officers as based on the contents of article 25 of PERMA Number 1 of 2014. The applicant for legal aid services then faces the Legal Aid Post officer to get assistance in making the required legal documents in the form of a lawsuit/application letter.

Based on the results of interviews with Deska Pitrah, Clerk of the Tulang Bawang Religious Court, and also Idawati, a POSBAKUMADIN officer, not only people who are economically disadvantaged can use the services of the Legal Aid Post. People who are economically capable may also obtain legal assistance as not all people who are capable and educated understand and know about the law, let alone about the procedures of litigation in the Religious Court.

According to legal system theory, synchronization between legal structure, substance, and legal culture must be in line with the legal aid program in the Religious Courts. Legal aid services through the provision of Legal Aid Posts, and the existence of PTSP officers who provide information as well as complaint services are the result of programs from the Tulang Bawang Religious Court which in legal systems theory falls into the legal structure category. PERMA Number 1 of 2014 and work contracts with POSBAKUMADIN are legal substances that are guidelines in implementing legal aid programs. Meanwhile, legal culture is exemplified by public awareness to make a letter of claim/application as one of the requirements for litigating at the Tulang Bawang Religious Court along with adhering to all regulations set by the judicial institution.

Effectiveness factors in the application of PERMA Number 1 of 2014 at the Tulang Bawang Religious Court

Etymologically, the word effectiveness comes from the word effective in English "*effective*", which has intervened into Indonesian which has the meaning "*successful*" and in Dutch "*effektief*" means "*successful use*". The purpose of the law is certainty, justice, and usefulness. These three elements are constructed as legal objectives and become important elements that must be fulfilled in law enforcement efforts.

In practice, if legal certainty is associated with legal justice, it will often be inconsistent with each other. This is due to the fact that on the one hand legal certainty often ignores the principles of legal justice, and on the other hand legal justice often ignores the principles of legal certainty. If in practice there is a conflict between legal certainty and legal justice, then legal justice must be prioritized. The reason is that legal justice is generally born from the conscience of the giver of justice, while legal certainty is born from something concrete.

In the context of Gustav Radbruch's theory, the position of the concept of usefulness or legal expediency is quite urgent in presenting law as a living and integral part of society. When law enforcement only adheres to the value of justice, then as a value it will shift the value of certainty and usefulness, as the value of justice is not bound to legal certainty or the value of usefulness which is due to the fact that something that is perceived as fair is not necessarily in accordance with the value of usefulness and legal certainty.

Gustav Radbruch's idea about the purpose of the law that must achieve legal certainty, justice, and legal usefulness by making justice the mainstream is still quite relevant and possible to implement in the current context. This is a moderate choice rather than denying one of the three, such as the positivistic school that prioritizes legal certainty. Gustav Radbruch's moderation is seen when justice, expediency, and legal certainty face each other, then justice must be prioritized, then expediency, and finally legal certainty. Likewise, when faced with expediency and legal certainty, expediency takes precedence (Army 2020).

In PERMA Number 1 of 2014, it is interpreted that the objectives of legal aid are:

1. Helping people seeking justice who are unable to make a lawsuit/application;
2. Increase access to justice;
3. Increase public awareness and knowledge of the law through, respect, fulfillment, and legal protection of their rights and obligations; and

4. Provide excellent service to the justice-seeking community.

Based on the results of an interview with Deska Pitrah, Registrar of the Tulang Bawang Religious Court, based on the contents of article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia which emphasizes that the state provides guarantees, recognition, protection, and certainty of fair law and guarantees equal treatment before the law for everyone. In addition to containing the basic value of legal certainty in the case that the protection of human rights of citizens must be clearly formulated, the certainty of the formulation must also provide justice, so that fair legal certainty is born. This is what underlies the formation of laws and regulations in Indonesia. The basic values of the purpose of the law by Gustav Radbruch are transformed into the principles of the formation of laws and regulations that are expected to underlie the enactment of legal products that provide certainty, benefit, and justice for the community. While at the level of application related to the implementing officer, the Legal Aid Post at the Tulang Bawang Religious Court has made a good effort to choose an organization or institution that does have sufficient human resources, both in quantity and quality of capacity for legal aid providers who provide legal services to people who need them.

Justice is the primary virtue of social institutions. However, benevolence for the entire community cannot override or challenge the sense of justice of every person who has obtained a sense of justice. Especially the weak justice-seeking people. Specifically, John Rawls developed the idea of the principles of justice by fully utilizing his concept known as the "original position" and the veil of ignorance. Rawls' view positions the existence of an equal and equal situation for each individual in society. There is no distinction of status, position, or having a higher position between one and the other in order for one party to make a balanced agreement, which is Rawls' view as an "original position" which rests on the notion of reflective equilibrium based on the characteristics of rationality, freedom, and equality to regulate the basic structure of society (Muhammad Saleh. 2018).

Based on the results of interviews with Idawati, POSBAKUMADIN officers have carried out their role by providing services as information providers, Legal Aid Post service applicants who come to the Tulang Bawang Religious Court on average want to seek justice and yet do not understand the terms and procedures for registering cases and

procedures for litigation in the Religious Court. The Legal Aid Post Officer in this case acts as an information provider, this is motivated by the existence of people who have a low level of education and lack of knowledge about the law.

Based on the results of interviews with Idawati, POSBAKUMADIN officers first explain what the role of the Legal Aid Post is in the Tulang Bawang Religious Court. Furthermore, the applicant simply seeks information therefore the officer can clarify the procedures for filing a lawsuit/application as well as the requirements and procedural matters that will be faced. The officer explained that the Legal Aid Post cannot act as a companion advocate, however, it can only assist in making the required documents such as making a lawsuit/application letter. In divorce cases, the Legal Aid Post officer also suggested that mediation be conducted first before taking further action. If the party wishes to file a lawsuit, then the Legal Aid Post officer helps to make the lawsuit letter. Based on the results of the interview with Idawati, POSBAKUMADIN officers have carried out their role by providing consultation services, the applicant can consult with legal aid post officers regarding the problems faced free of charge or free to the community. If there are problems regarding inheritance, marriage, wills, and grants, to name a few, the officer can provide a solution to the problem and what steps the applicant can take.

Based on the results of the interview with Idawati, POSBAKUMADIN officers have carried out their role by providing advice on what things must be done by the plaintiff/applicant or defendant/applicant at the trial. Here the officer only helps to make it easier for the parties to face the trial due to unfamiliarity with the legal process in the religious court.

Based on the results of the interview with Idawati, POSBAKUMADIN officers can make legal service recipients at the Tulang Bawang Religious Court, the documents needed such as a lawsuit. The applicant here first tells the chronology of the problems faced until a lawsuit will be filed with the Religious Court. If the problem described by the applicant can be filed as a lawsuit to the Religious Court then the officer can help to make the lawsuit. In addition to the lawsuit, the officer can also assist the applicant to make other legal documents as well as those related to appeals, cassations, and judicial reviews.

Pursuant to observations made by the author in seeing firsthand that the services provided by POSBAKUMADIN officers whose services are based on one-door services which are relatively fast, one of the functions of the Legal Aid Post as a public service runs well and is beneficial to the people who need it.

The Legal Aid Post at the Tulang Bawang Religious Court contributes to improving services to people who need legal assistance for the purpose of implementing these rules in this case PERMA Number 1 of 2014 concerning the Provision of Legal Aid Posts provides benefits, certainty, and justice for people who need legal aid services. Thus, the legal system which is the theory in this study is really a tool to achieve legal goals.

CONCLUSION AND RECOMMENDATION

Conclusion

Referring to the results of the research and discussion, the conclusions in this study are as follows:

1. The implementation of the Legal Aid Post at the Tulang Bawang Religious Court can be factually said to be effective. The majority of the objectives of providing legal aid based on the contents of article 25 of PERMA Number 1 of 2014 can be fulfilled properly. The Legal Aid Post at the Tulang Bawang Religious Court interprets the inability of the justice-seeking community, as a party who is unable to understand the procedures of the judicial process or is unable to make case submission files.
2. The role of the Legal Aid Post at the Tulang Bawang Religious Court can run effectively, in the sense that the objectives of legal aid based on PERMA Number 1 of 2014, especially in terms of increasing access to justice, increasing public awareness and knowledge of the law through respect, fulfillment and legal protection of their rights and obligations, and providing excellent service to the justice-seeking community through the provision of Legal Aid Posts which are very helpful to the community by providing information, consultation and advice and assistance in making legal documents needed by people who are unable to make a lawsuit/application.

Recommendation

The provision of Legal Aid Posts under the Supreme Court, especially the Religious Courts, must represent a demonstration of how much the community craves the provision of free legal aid, some of the things that must be improved are only regulatory and technical issues that sometimes still open up opportunities for interpretation. There is a need for certainty in the interpretation of the meaning of the poor, whether it is only economically incapable, or broader, meaning that they are unable to understand the law, aka legal illiteracy, or are unable to make trial case files.

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