

ANALYSIS OF THE IMPLEMENTATION OF THE REGULATION OF THE MINISTER OF LAW AND HUMAN RIGHTS OF THE REPUBLIC OF INDONESIA NUMBER 4 OF 2021 CONCERNING LEGAL AID SERVICE STANDARDS

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Abstract

Legal aid is a service that must be provided by Indonesia as a nation is actually an organization created by humans (Human Creation), specifically, regarding the variety of relationships between individuals in social life activities that are configured in such a way as to complement interests and achieve common goals and objectives. The purpose of this study is to analyze how the legal aid service standards are implemented under the Minister of Justice and Human Rights Regulation No. 4 of 2021 No. 4 of 2021 on Legal Aid Service Standards in the Lampung District Office of the Ministry of Justice. and human rights, and what are the obstacles to implementing legal aid service standards in the Lampung Regional Office of the Ministry of Law and Human Rights? This study is descriptive and analytical in nature, using prescriptive legal approach methods and using primary, secondary and tertiary Sah sources. The implementation of Regulation No. 4 of the Republic of Indonesia Minister of Justice and Human Rights No. 4 of 2021 on Standards for Legal Assistance in the Lampung Regional Office of the Ministry of Justice and Human Rights has proceeded accordingly. However, in terms of providing legal aid services to the marginalized, it is still uneven; the legal structure has not been matched by an adequate amount of budget to provide the widest possible opportunity to Legal Aid Organizations in providing legal aid services, and Advocates have not carried out their obligations to the fullest and prioritize providing services to the well-off.

Keywords: *Legal Aid, Permenkumham, BANKUM Service Standards.*

Abstrak

Bantuan hukum merupakan pelayanan yang wajib diberikan oleh Negara, sebab negara sesungguhnya merupakan sebuah organisasi yang diciptakan oleh manusia (Human Creation) tentang ragam hubungan antar individu dalam aktifitas kehidupan bermasyarakat yang dikonfigurasi sedemikian rupa untuk maksud melengkapi kepentingan dan mencapai maksud dan tujuan Bersama. Bagaimanakah penerapan

standar layanan bantuan hukum berdasarkan Peraturan Menteri Hukum dan Hak Asasi Manusia Republik Indonesia Nomor 4 Tahun 2021 Tentang Standar Layanan Bantuan Hukum di Kantor Wilayah Kementerian Hukum dan Hak Asasi Manusia Lampung. dan faktor penghambat apa saja dalam dalam pelaksanaan standar layanan bantuan hukum pada Kantor Wilayah Kementerian Hukum dan Hak Asasi Manusia Lampung. Penelitian ini menggunakan metode pendekatan yuridis normatif dan bersifat dekriptif analitis dengan menggunakan bahan hukum primer, sekunder dan tersier. Implementasi pelaksanaan Peraturan Menteri Hukum dan Hak Asasi Manusia Republik Indonesia Nomor 4 Tahun 2021 Tentang Standar Layanan Bantuan Hukum pada Kantor Wilayah Kementerian Hukum dan Hak Asasi Manusia Lampung sudah berjalan dengan baik, namun dalam hal pemberian layanan bantuan hukum kepada kaum marjinal masih kurang merata, struktur hukumnya belum diimbangi dengan jumlah anggaran yang mencukupi guna memberikan kesempatan seluas-luasnya kepada Organisasi Bantuan Hukum dalam memberikan pelayanan bantuan hukum, Advokat belum menjalankan kewajibannya secara maksimal serta lebih mengutamakan memberikan jasanya kepada masyarakat mampu.

Kata Kunci: Bantuan Hukum, Permenkumham, Standar Layanan BANKUM.

INTRODUCTION

Background

In society and civil life, legal issues will often arise (Rosalina 2000) Legal aid is a service that must be provided by the government since a country is actually an organization created by humans (Human Creation) about the variety of relationships between individuals in the activities of social life that are configured in such a way as to complement interests and achieve common goals and objectives (Jimly Asshiddiqie. 2014). In a government, the state must ensure the strengthening of the implementation of the law and the achievement of an expectation, namely the purpose of the law. In law enforcement, there are three important elements that need attention, which are justice, expediency or impact, and legal clarity. (Soedikno Mertokusumo dan A. Pitlo 2013)

Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945) states that everyone is entitled to recognition, guarantees, protection, and certainty of a just law and equal treatment before the law. The guarantee of access to legal aid is explicitly mentioned in Article 28G paragraph (1), which states,

“Every person has the right to protection of self, family, honor, dignity, and property under his control, and is entitled to a sense of security and protection from threats of fear to do something that is a human right.”

This is further emphasized in article 28H(2), where everyone has the right to facilities and special treatment, in order to achieve equality and justice, to receive equal opportunities and benefits. It says it will. In principle, access to legal advice is a human right. The right to obtain defense from an advocate or public defender is an important element in efforts to ensure that everyone obtains justice (Yazid 2020).

The guarantee, protection, and right of everyone to obtain convenience and equality of justice are then implemented, one of which is the provision of legal aid by the state by issuing Law Number 16 of 2011 concerning Legal Aid. In addition, there is also Law Number 18 of 2003 concerning Advocates as implied in Article 22, which requires an advocate or legal advisor to provide legal assistance to underprivileged people free of charge or without charge based on the conditions stipulated in the law. Basically, the right to obtain defense from an advocate or public defender (access to legal counsel) is a human right of every person and is one of the elements to obtain justice for everyone (Ahyar 2020).

In the State of Law, the government recognizes and protects the human rights of every individual, including the right to legal aid. The implementation of the provision of Legal Aid to citizens is an effort to fulfill and at the same time, the implementation the rule of law that recognizes and protects, and guarantees the human rights of citizens for the need for access to justice and equality before the law (Mosgan Situmorang 2013).

The importance of a standardized legal aid service needs to be managed responsibly, accountably, transparently, and professionally, the implementation of which at the Ministry of Law and Human Rights has been regulated through the Regulation of the Minister of Law and Human Rights (Permenkumham) of the Republic of Indonesia Number 4 of 2021 concerning Legal Aid Service Standards, which will be a reference for legal aid service activities through the Regional Office in each province.

Theoretical frameworks are concepts that are actually abstractions of the results of thoughts or frameworks and references that basically aim to make conclusions about dimensions. Every research is always accompanied by theoretical thoughts, in this case, because of the close reciprocal relationship between theory and collection, processing, analysis, and construction activities (Lexy J. Moleong 2017). As an analysis tool to solve the problems and problem formulations of this research, the author uses 2 (two)

theoretical foundations, namely the Theory of Law as a Means of Change Roscoe Pound and Lawrence M. Friedman's Legal System Theory.

Roscoe Pound's Theory of Law as a Means of Change

Roscoe Pound was the first jurist to analyze the laws and methodologies of the social sciences. By then, philosophy had been accused of offering no such theory for centuries, and the functioning of logic as a means of thinking was further undermined by the efforts of Langdel and his German colleagues. Pound argued that law is the primary institution for exercising social control.

His theory of social change as it relates to the legal realm is one of the great theories of jurisprudence. The relationship between social change and jurisdiction is an interaction relationship in the sense that social change affects jurisdictional change, but legal change also affects social change. Legal changes that can affect social change are consistent with one of the functions of law: as a means of social change or as a means of shaping society (social engineering). Thus, a law is a tool of social engineering, a term first coined by the famous American jurist Roscoe Pound(Fuadi 2013).

Roscoe Pound is one of many sociological jurisprudence scholars who focus more on "legal reality" than on the place and function of law in society. Legal reality is basically public will, not just law in the legal sense of the book. Sociological Jurisprudence shows a careful compromise between written law as a need for the legal society for the creation of legal certainty (positivism law) and living law as a form of appreciation for the importance of the role of society in law formation and legal orientation .

Pound also recognized another function of the law as a means of social engineering. Justice is not an ideal social relationship or a form of virtue. It is to direct these relationships and actions so that the good, the tool that humans have to satisfy their desires to do, emerges. in the concept of Roscoe Pound, giving his opinion on the law emphasizing disciplinary law, states his theory: "Law as a tool of social engineering" (that law is a tool to innovate or shape society). To be able to fulfill its role Roscoe Pound then made a classification of the interests that must be protected by the law itself, to be as follows(Andro Meda 2014):

1. Public Interest
 - a. The interests of the country as a legal entity
 - b. The interests of the country as the guardian of the interests of society

2. Social Interest
 - a. The interest in peace and order
 - b. Protection of social institutions
 - c. Prevention of moral degeneration
 - d. Prevention of rights violations
 - e. Social welfare
3. Private Interest
 - a. Individual interest
 - b. Family interest
 - c. Property interests.

The role of law as a tool to change society has actually been trumpeted by many scholars, especially by sociological legal scholars. For example, Roscoe Pound with his popular term "law as a means of engineering society" or other familiar terms, such as law as an agent of change or social planning.

Finally, it can be underlined that the teachings of Roscoe Pound's Theory move in 3 (three) main scopes or dimensions: (Deden Kusdinard 2014)

1. That the law really functions as a tool to organize and manage society with;
2. Balanced by the fulfillment of the needs or interests of society, and;
3. The existence of supervision in order to maintain and continue human civilization.

Also, consider Roscoe Pound's concept of law as a tool for social engineering. Here, law as a tool of social engineering is a theory put forward by Roscoe Pound that law is a tool of renewal/engineering in society and is expected by society. A long period of time in which laws play a role in changing the social values of a society. Subsequently, the concept of 'law as a tool of social engineering' was developed in Indonesia by adapting it to the Indonesian situation and conditions.

From the description of the theory above, "the implementation of legal aid is" closely related to the effectiveness and validity of public and private interests in the implementation of legal aid, and social relations that occur between recipients or providers of legal aid funded by the state. In this regard, the public can find out about "legal aid services provided by the state free of charge to" a suspect/defendant with predetermined conditions, through regulations and legislation.

Lawrence M. Friedman's "Legal System Theory"

Lawrence M. Friedman argues that the effectiveness and success of law enforcement depend on three elements of the legal system, specifically the structure of the law, the substance of the law, and legal culture. Legal structure concerns law enforcement officials, legal substance includes legislation and legal culture is a living law adopted in society. About the legal structure, Friedman explains:

"To begin with, the legal system has the structure of a legal system consisting of elements of this kind: the number and size of courts; their jurisdiction ...Structure also means how the legislature is organized ...what procedures the police department follows, and so on. Structure, in a way, is a kind of cross-section of the legal system...a kind of still photographs, which freezes the action."

The structure of the legal system consists of the following elements: The number and size of courts, their jurisdiction (including the types of cases they have jurisdiction over), and court-to-court appeals procedures. Structure also means how Congress is organized, what the president can and cannot do, the procedures followed by the police, and so on. The structure (legal structure) therefore consists of existing legal bodies designed to carry out existing legal instruments.

Structure is the pattern of how the law is carried out according to its formal provisions. This structure shows how the courts, lawmakers, and legal bodies as well as processes run and run (Marzuki 2005). In Indonesia, for example, if we talk about the structure of the Indonesian legal system, includes the structure of law enforcement institutions such as the police, prosecutors, and courts (Gazali 2022).

The substance of law according to Friedman is:

"Another aspect of the legal system is its substance. By this, it meant the actual rules, norms, and behavioral patterns of people inside the system ...the stress here is on living law, not just rules in law books."

Another aspect of the legal system is its substance, which means the actual rules, norms, and behavioral patterns of people within the system. Hence, the substance of the law concerns the applicable laws and regulations that have binding force and serve as guidelines for law enforcement officials. As for legal culture, Friedman argues:

“The third component of the legal system, of legal culture. By this, we mean people's attitudes toward law and legal systems and their belief ... in other words, is the climate of social thought and social force that determines how the law is used, avoided, or abused.”

Legal culture is about legal culture. H. Human attitudes towards law and legal systems (including the legal culture of law enforcement officers). No matter how well the legal structure is structured to enforce the prescribed legal rules, no matter how well the quality of the legal substance is established, the support of the legal culture by those involved in the system and society. Without it, there would be no law enforcement. Works effectively.

Law and social engineering as tools to change society are just ideas that law wants to realize. To ensure the achievement of the function of law as community engineering towards a better direction, it is not only necessary to have the availability of law in the sense of rules or regulations but also a guarantee of the realization of these legal rules into legal practice, or in other words, a guarantee of good law enforcement. Thus, the operation of law is not only a function of legislation but also the activities of the implementing bureaucracy.(Achmad Ali 2002)

The purpose of this study is to understand and find out how legal aid standards are implemented in Lampung Province based on Law and Human Rights Minister Regulation No. 4 of 2021 No. 4 of the Republic of Indonesia on Legal Aid Standards. That's it. To understand and identify impediments to the implementation of legal aid standards in the Ministry of Law and Human Rights Regional Offices and the Ministry of Law and Human Rights Lampung Regional Offices..

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 used Normative and Empirical Juridical Methods.

RESULT AND DISCUSSION

Implementation of Legal Aid Service Standards Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 4 of 2021 at the Regional Office of the Ministry of Law and Human Rights in Lampung

In the interview with the Head of the Legal Services and Human Rights Division, Mr. Alpius Sarumaha, he informed that legal aid service standards are guidelines for the implementation of legal aid services established by the Minister of Law and Human Rights as the organizer of the government affairs in the field of law and human rights while the provision of legal aid is carried out by community organizations or legal aid institutions based on Law Number 16 of 2011 concerning Legal Aid. The implementation of the legal aid law must be based on internationally recognized principles, which are the principle of the interests of justice, the principle of incapacity, the principle of the right to choose a lawyer/legal aid provider, the principle of the state providing access to legal aid at every examination, and the principle of the right to effective legal aid.

Which then in its implementation is implemented through the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 4 of 2021 concerning Legal Aid Service Standards in order to uniform the implementation of legal aid services, especially within the Ministry of Law and Human Rights both at the central and regional levels coordinated through the National Legal Development Agency (BPHN).

Therefore, based on the theory of Law as a Tool of Social Engineering is a theory put forward by Roscoe Pound, which means that law is a tool of reform in society. Under this term, the law is expected to play a role in changing social values in society, where people have begun to know that everyone who is dealing with legal problems and is threatened with a sentence of more than 5 years in prison, can receive legal aid.

From the description above, it can be analyzed that, the implementation of legal aid in Lampung Province has indeed gone well and has been in accordance with the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 4 of 2021.

Inhibiting Factors in the Implementation of Legal Aid Service Standards at the Regional Office of the Ministry of Law and Human Rights in Lampung

Through interviews with the resource person for legal aid management activities Mr. Doni Arianto Raharjo, S.H., M.H, as Head of the Legal Counseling, Legal Aid, & Legal Information Documentation Network, it was conveyed that in terms of providing legal aid services by PBH to the marginalized, there are still obstacles in the implementation of legal aid, especially in supervision, monitoring, and evaluation of the results achieved in the implementation of legal aid, which aims to determine the level of use of legal aid services for legal aid providers and recipients, especially in the use of the budget.

Legal aid is very important in the search for justice for the entire community, unfortunately currently, there is still an unmet number of Legal Aid Institutions (LBH)/Legal Aid Organizations (OBH) that are evenly distributed, however, the budget allocation for supervision, monitoring, and evaluation, as well as the legal aid service budget, is still limited.

From the description above, the author found several inhibiting factors in the implementation of the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 4 of 2021 concerning Legal Aid Standards, including the following:

1. Article 6 Point 1 of Permenkumham Number 4 of 2021 concerning Legal Aid Service Standards emphasizes the implementation of Law Number 16 of 2011 concerning Legal Aid. Nevertheless, the implementation of non-litigation assistance has not been fully implemented due to the lack of complete information regarding legal aid services to the extent that legal aid services provided by legal aid implementers such as Advocates, Paralegals, Lecturers, and/or Law Faculty Students who are registered as Legal Aid Providers are not maximized. This can hamper access to justice, especially for areas with minimal or even no OBH.
2. Along with the development of current conditions, it is possible that the poor are also dealing with other legal problems, such as filing judicial review at the Constitutional Court and the Supreme Court cases in special courts such as labor, and human rights courts, to name a few. In civil cases, the problem or issue of execution always encounters difficulties to be carried out, such as *aanmaaning*,

bail seizure, auction, and the like. In fact, legal aid providers have an obligation to assist until the legal case is completed. However, in the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 4 of 2021 concerning Legal Aid Standards, this has not been clearly regulated.

3. The lack of employees positioned in the management of legal aid and the minimum amount of costs in implementing supervision of legal aid providers due to the budget available in 1 (one) a year, only 1 (one) supervision.

The following steps have been taken by the legal aid manager of the Lampung Regional Office of the Ministry of Law and Human Rights from an interview with Sister Elmi Asrinengati as the legal aid manager of the Lampung Regional Office of the Ministry of Law and Human Rights, among others:

1. Optimizing the implementation of the assistance budget by conducting socialization through the official social media of the Lampung Regional Office of the Ministry of Law and Human Rights;
2. Establish good and intense communication with OBH to obtain information related to the implementation of legal aid in Lampung Province;
3. Submit an additional budget for supervision, monitoring, and evaluation of the implementation of legal aid;
4. Improve the ability of legal aid managers and regional supervisory committees through online and offline sharing and discussions with BPHN as the organizer of Legal Aid of the Ministry of Law and Human Rights of the Republic of Indonesia.

Referring to the inhibiting factors mentioned above and Lawrence M. Friedman's Legal System Theory, the existence of these obstacles is due to the weaknesses in the existing system, namely:

1. Legal Substance Regulations in the standard of assistance services regulated in the Regulation of the Minister of Law and Human Rights are appropriate, however, the legal structure has not been matched by an adequate amount of budget to provide the widest possible opportunity to Legal Aid Organizations in providing legal aid services, especially in terms of non-litigation legal aid services.
2. Legal Structure Advocates have not carried out their obligations optimally in providing legal aid services to the poor, and prioritize providing services to the

rich. Consequently, in the verification and accreditation assessment process, they received a C predicate, which affected the small amount of budget given by the state to the Regional Office of the Ministry of Law and Human Rights Lampung. Furthermore, legal counsel as the legal aid provider is passive due to waiting for an appointment or notification from the state (Investigator, Prosecutor, or judge) for suspects or defendants whose actions are punishable by a criminal threat of 5 (five) years or more.

Legal Culture There is no legal culture regarding the responsibility to carry out duties and functions by law enforcement officials, especially advocates and investigators in providing information about legal aid services provided by the state free of charge.

CONCLUSION

From the research results regarding the problem, it can be concluded as follows:

1. The implementation of Permenkumham Number 4 of 2021 concerning Legal Aid Service Standards at the Lampung Regional Office of the Ministry of Law and Human Rights has been going well. However, in terms of providing legal aid services to marginalized people, it is still uneven. There are still obstacles in the implementation of legal aid, especially in supervision, monitoring, and evaluation of the results achieved in the implementation of legal aid, which aims to determine the level of use of legal aid services for legal aid providers and recipients, especially in the use of the budget and verified OBHs in Lampung Province are still accredited C. Along with the development of current conditions, it is possible that the poor are also dealing with other legal problems, such as filing judicial reviews at the Constitutional Court and the Supreme Court cases in special courts such as labor, and human rights courts, among others. In addition, after the court decision is determined, the next process is execution (implementation of the court decision). In civil cases, the problem or issue of execution always encounters difficulties to be carried out, such as an maaning, bail seizure, auction, and so forth due to the fact that legal aid providers have an obligation to assist until the legal case is completed. However, in the Regulation of the Minister of Law and

Human Rights of the Republic of Indonesia Number 4 of 2021 concerning Legal Aid Standards, this has not been clearly regulated.”

2. The legal counsel as the party providing legal aid is passive because it waits for an appointment or notification from the state (Investigator, Prosecutor, or judge) for suspects or defendants whose actions are punishable by a criminal threat of 5 (five) years or more. Legal counsel as a party providing legal aid is passive due to waiting for an appointment or notification from the state (Investigator, Prosecutor, or judge) for suspects or defendants whose actions are punishable by a sentence of 5 (five) years or more. The lack of staff”positioned in the management of legal aid and the lack of funds in the implementation of supervision to legal aid providers since only 1 (one) supervision is available in 1 (one) year.”

Recommendation

On the basis of the research results and conclusions, the author tries to provide the following suggestions:

1. Increase the number of legal aid management personnel to facilitate”the implementation of legal aid.”
2. Propose education and training for legal aid managers in order to increase competence in dealing with problems that might occur.
3. Provide socialization and strengthening of duties and functions to legal aid providers in Lampung Province to encourage OBH”to be able to provide free legal aid services in”accordance with existing regulations and improve accreditation status, which will be a reference in increasing the legal aid budget.

Conduct socialization“of legal aid services at the Ministry of Law and Human Rights”through print media, electronic media, or social media

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