

Formula of Local Regulation on Legal Aid for the Poor as an Effort to Fulfillment of Equality Before the Law Rights

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Abstract

Right for being treated equally before the law is human rights guaranteed by UUD 1945. Such guarantee can be materialized if there is a space, chance, and equal power to access the law and it is institutions upon the poor. In that case, Local Government must be present with applying regulation which stand upon the poor to acquire legal aid. The purpose of this script is to explain the formula of Local Regulation on Legal Aid for The Poor which capable to realizing guarantee in accordance to the legislation. Used doctrinal approach and legislation theory along with concepts of "hukumpengayoman" and "hukumprogresif", produce the formula of Local regulation as follows : 1). Local Regulation on Legal Aid for The Poor must moved from the real problems which in general occur in a region based on it's formation upon philosophy, sociology and juridical aspects; 2). Roles of local government, business sector and college along with the legal aid institution must given space to arrangement with the result that can be configuration to realizing legal aid for the poor; 3). Give space access extensively along with facilitations upon the poor who need the legal aid. With such formula being expected to give equality before the law which guarantee in UUD 1945 can be realized.

Keywords: Poor, aid, legal, compliance, human rights, local regulation.

1. Introduction

One of the amendment matters of the UUD 1945 is the existence of guarantee toward human rights and constitutional rights of the citizen. Such amendment can be seen as consciousness manifestation about the importance of human rights and the citizen constitutional rights protection, which arise and become the spirit of reformation. Similar guarantee also has been formulated in TAP MPR No. XVII/MPR/1998 of Human Rights which afterwards the contents become the matters of UU No. 39 1999 of Human Rights, before poured into the amendments of UUD 1945.

Citizen's Constitutional Rights that guaranteed by UUD 1945 covered various aspects of life, whether civil, politics, economy, or social. In legal aspects, citizen's constitutional rights covered:

- 1) Equality before the law that guaranteed in Section 27 Subsection (1): "Every Citizens have the equality of they're status before the law and governance and must respects such law and governance without exception."
- 2) The Rights upon admittance, guarantee, protection, and legal assurance which fair, also the rights to be equal before the law, prescribed in Section 28D subsection (1): "Everyone have the rights upon admittance, guarantee, protection, and legal assurance which fair also the equal treatment before the law."
- 3) The rights to protect their self individual which prescribed in Section 28D subsection (1): "Everyone have the rights upon self individual, their family, honour, status and property under their's thumb, also the rights upon secureness and protection from the threat of fear to act or doesn't act something which are the human rights."

Section 28I subsection (1) UUD 1945 moreover placed "the rights for being admit as an individual before the law", is one of the rights which can't be reduce in any condition. Grounded on the provision of UUD 1945 can be seen that the right of equality before the law or the rights upon equal treatment before the law is a constitutional rights of the citizens. The equal treatment before the law can also be mean that every citizen must be admitted as a law subject that own the rights and obligation that owned freedom and responsibility to do a legal act.

Right as a legal personal is the right that can't be reduced in any condition. Such matter can be materialized if there is a space, chance, and the equal power to access the law and it's institutions. But, still social reality point out that the equality before the law and legal protection is not easy to be materialized because the capability possessed by every citizens. Such difference is not only on the level of law enforcement for access to justice but started since the making of law which often only to represent the interest of the elites people.

Thus also upon the level of implementation and law enforcement, the reality point out that the equal treatment before the law can't itself be realizing eventhough has been guaranteed by UUD 1945. There are so many factors that be the caused, started from the complecity of national law system which need self knowledge to comprehend until the implementation and law enforcement which have the characters that elites and discriminative.

For example, judicature institution as a place for the people to seeking justice in the reality are not easy to access by the people who searched justice. To access this judicature institution, it is required cost that not few and enough knowledge, which in the reality today there are so many peoples who doesn't have it. And the consequence, is the access toward justice is blocked and arising difference of status and legal protection. Adriaan Bedner explained that one of the obstacles which often happen on the effort to fighting for access toward justice is a problem of power relations (Adriaan Bedner, 2012). The effect is occurred the irony of law enforcement which more focused upon the aspect of legal assurance ignored profit and justice aspects. Dreamed by the peoples who seeking justice.

Therefore, for the sake of equality and same treatment before the law, legal aid absolutely needful. Without legal aid, constitutional rights of the citizen can't be compliance. Moreover, justice which become the purpose of law can't be established without the legal aid. When justice can't be established, at the same time there is no human rights and constitutional right of the citizen that can protected and complianced.

Act No. 16 2011 of Legal Aid which give legal umbrella upon region who need to allocated budget of legal aid in APBD. Section 19 insist that region can allocate it's budget of legal aid in APBD. But such allocation must be poured in Local Regulation. Nowadays, more and more of the regions which endeavor to allocating budget of legal aid upon the poor peoples. According to the description above, be a necessity of the law nowadays to made a regulation of legal aid used to accomodated the needs of the peoples in a region. This script will explained further about the formula of Local Regulation on Legal Aid that can be reference by Local Government.

2. Research Method

This research did with the corridor of normative legal research (*doctrinal research*) which only used secondary data. The model of it's legal research is comprehensive and analitical study towards legal primary and legal secondary materials. The approach of the issue used statute approach and conceptual approach (Peter Mahmud, 2005). Data being analysis in qualitative manner with describing the data resulted from the research into an explanation form systematically so can acquired a clear view about the issued which being researched, and the result of analysis data concluded deductively.

3. Discussion

3.1 Conceptual Framework of Legal Aid

Implementation of giving legal aid to the citizen is an effort to compliance and all at once as implementation of 'negara hukum' which recognize and protect along with guarantee the human rights of citizen upon the needs of an access toward justice (*access to justice*) and equality before the law. Guarantee of such constitutional rights are not gotten enough attention, thats why the formed of Legal Aid Act shall be basis by the state to guaranteed the citizen specially upon people or a group of the poor to get the fair access and equality before the law. Up till now, the giving of Legal Aid is not affected people or group of the poor, thats why they have difficulty to have fair access caused by their inability to create their constitutional rights (Explanation of Act No. 16 2011 on Legal Aid).

Fair access as one of the fundamental right which universal nature, cause of it the experienced from various states on giving legal aid upon the poor or inability citizen are relevan in creating the democratical 'negara hukum'. This thing absolutely applied to the State of Republic Indonesia which also a democratical 'negara hukum'.

Empirical fact in Indonesia showed that in society has various legal aid institutions whether the institution of self-supporting society or organized by faculty of law in a college which has been gave concrete proof and enormous contribution upon the poor or inability citizen of Indonesia to get fair access. Else, there are thousands of advocate according to Act No. 18 2003 on Advocate, obligated to give free legal aid for the inability peoples. But also, considering the huge amount of the peoples in Indonesia that reached 220 million peoples along with the poor peoples that reached 32 million people and the huge territory of Indonesia, the fair acces upon them which categorized in the poor or inability still further from the ideal level. In quantitative, the ratio between the advocate and peoples of Indonesia nowadays still unbalanced. According to formal note in Mahkamah Agung of The Republic Indonesia, the amount of advocate in 2005 is less than 30.000 people, compared to the amount of Indonesia's citizen which reached 220 million peoples.

Implementation of legal aid clearly related with constitutionalism. Constitutionalism is an idea about limitation power of the governance, supported by constitution, the existence of democratic representative institution, freedom of the citizen, and equality before the law. Equality before the law means there is a chance or equal right upon everyone to get fairness. This thing reflected in some section from UUD 1945, which give a message (constitution) that legal aid implemented by the state is a certainly.

According to the mandate from section 28I subsection (4) UUD 1945, that protection, advancement, enforcement and compliance of human rights is the responsibility of a state, obviously the government. Local

government as a part from governance structural also take this responsibility on creating equality before the law, which prominent by doing through role of local on giving the legal aid upon the poor peoples. So it doesn't make the poor be shoved aside from development euphoria caused by challenging on legal issue.

3.2 Formula of Local Regulation on Legal Aid for The Poor as an effort to Compliance Human Rights of Equality Before The Law

According to Adolf Merkl, which it's opinion refferenced by Maria Farida Indrati Soeprapto and Ni'matul Huda, said that such legal norm always have two faces (*das Doppelte Rechtsantlitz*) (Ni'matul Huda, 2011). Such opinion being cleared by Hans Kelsen, in his opini, Law is valid if made by the institution or authority which have competence to make and considering the higher norm so that in this case the inferior norm can be made by the higher of the superior norm, and such law made a levels and in layers creating hierarchy, where a inferior norm are occured, sourced, and grounded on the superior norm (Hans Kelsen, 1973). Beside focused upon validity side according by Kelsen, legal norm/statutes on it's formation must observes various aspects and principles.

According to Van der Vlies, in general there are two distinct category of the statutes enactment principles which proper (*algemene beginselen van behoorlijk regelgeving*), that is formal and material principles (Maria Farida Indrati S, 2007). Local Regulation on Legal Aid for The Poor as one of type from Statutes in it's enactment also doesn't rid of from such formal and material principles.

According to Jimly Asshidiqie, the enactment of a good regulation must based on the aspects of philosophy, sociological, juridical, political and administrative and it's applying must reflecting in philosophical, sociological, juridical, and political manners (Jimly Asshidiqie, 2006).

Philosophically, the enactment of Local Regulation on Legal Aid for The Poor must refference upon the vision of *Hukum Pancasila*. Arief Sidharta explained that the vision of hukum pancasila which rooted in life perspective of Pancasila, automatically will reflecting the purpose of the state and fundamental values which formally prescribed on preamble, specially in formula of five pillars on the national philosophy, and furtherly described in the sections of the UUD 1945 body. The purpose achieved with governance implementation by government for the prosperity of it's citizen (Arif Sidharta, 2010).

Sociologically, Local Regulation on Legal Aid for The Poor said to have sociological basis if the provisions appropriate with general faith or legal consciousness of the society. Mochtar Kusumaatmadja said, as follows: "good law is a law which appropriate with the living law on a society, that absolutely also appropriate or constitute a reflection from the applied values from such society" (Mochtar Kusumaatmadja, 1986). According to Syaekani and Thohari, if such law constitute upon inappropriate basis with the structural of people's spiritual, it is surely the resistance from society toward such law shall be strong (Imam Syaekani dan Ahsin Thohari, 2008). Hart explained the existence of a legal system is social phenomenon which always presented in two aspects, that must be we observes so that our observation about it become realistic (HLA Hart, 2009). Juridically, Local Regulation on Legal Aid for The Poor is an effort to fulfilled the empty space of law on the needs of Legal Aid for The Poor also with legal solution upon the problematic of Legal Aid for The Poor that we faced of. So that on the enactment of it must pay attention the aspect of synchronization with the existed regulation above it, like on the table one.

Table1. The Statutes Related on Legal Aid for The Poor

No.	Related Statutes on Legal Aid for The Poor
1.	Section 18 subsection (6) The Constitution Of The Republic Indonesia 1945.
2.	Act No. 12 of 2011 concerning The Enactment of The Statutes (State Gazette of the Republic of Indonesia Number 82 of 2011, Supplement to the State Gazette of the Republic of Indonesia Number 5234);
3.	Act No. 39 of 1999 concerning Human Rights (State Gazette of the Republic of Indonesia Number 165 of 1999, Supplement to the State Gazette of the Republic of Indonesia Number 3886);
4.	Act No. 18 of 2003 concerning Advocate (State Gazette of the Republic Indonesia Number 49 of 2003, Supplement to the State Gazette of the Republic Indonesia Number 4288);
5.	Act No. 16 of 2011 concerning Legal Aid (State Gazette of the Republic of Indonesia Number 104 of 2011, Supplement to the State Gazette of the Republic Indonesia Number 5248);
6.	Act No. 23 of 2014 concerning Local Governance (State Gazette of the Republic Indonesia Number 244 of 2014, Supplement to the State Gazette of the Republic Indonesia Number 5587) as has been change for some times with Act No. 9 of 2015 concerning Second Change of Act No. 23 of 2014 concerning Local Governance (State Gazette of the Republic Indonesia Number 58 of 2015, Supplement to the State Gazette of the Republic Indonesia Number 5679);
7.	Regulation of Government No. 42 of 2013 concerning Requirement and Procedure of Giving Legal Aid and Supplying Legal Aid Fund (State Gazette of the Republic Indonesia Number 98 of 2013, Supplement to the State Gazette of the Republic Indonesia Number 5421);
8.	Regulation of Human Rights and Law Minister of Republic Indonesia No. 3 of 2013 concerning The Procedure of Verification and Accreditation of Legal Aid Institution or Societies Organization;
9.	Regulation of Domestic Minister No.80 of 2015 concerning The Enactment of Local Law Product.

Local Regulation on Legal Aid for The Poor must started from the view to achieved 'pengayoman' for society and it's enactment must be means progressively for society's common goods (Daniel S. Lev, 1965). According Arief Sidharta, Pancasila as a legal purposed to achieving 'pengayoman' upon human, that is protecting human passively with preventing of without compunction act, and actively with creating societies condition which make possible the process of societies last properly so that each human fairly get a wide chance and equal for developing all of the human potential wholly (Arif Sidharta, 2013).

In such a way with the ideas of 'hukum progresif', according to Satjipto Rahardjo the idea of *hukum progresif* started from philosophical basic assumption that law is for human, not the opposite (Satjipto Rahardjo, 2002). Thus, the existence of law is to served and protect human, not the opposite. Law deemed as institution purposed to bring human toward fair life, welfare and make human happy. *Hukum progresif* followed ideology of law which pro-justice and law which pro-society (Satjipto Rahardjo, 2009). The character of *hukum progresif* which intend the present of the law related with the utilizing as social purpose, which caused *hukum progresif* also close with *sosial engineering* by Roscoe Pound (Bernard L Tanya, 2010).

Grounded on the description of the previous theoretical framework, Local Regulation on Legal Aid for The Poor must capable to presenting justice upon the poor based on the synergy of various elements. Such thing can be achieved with rest the enactment on synergy formula, as follows:

- 1) Local Regulation have role in implementing programs and policy which pro toward legal aid effort for the poor through legality framework that appropriate with real requirement in it's region.
- 2) Business world roled as a partner of Local Government in supplying budget allocation, so that it will give good feedback upon the continuity of Legal Aid for The Poor in a region.
- 3) College and legal aid institution expected to give input and suggestion on the effort of Legal Aid for The Poor along with straight descend doing legal protection in the context of a college which have jurisprudence study program.

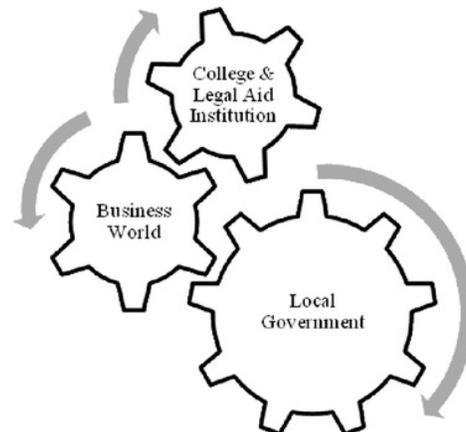


Figure 1. The Configuration of SynergySubstances
Local Regulation Plan on Legal Aid for The Poor

With the formula of local regulation arrangement which merging some of such elements, it is expected will capable to complianc the right and give protection upon the Poor that difficulty challenging the legal problems.

4. Conclusion

The Formula of Local Regulation on Legal Aid for The Poor as an effort to achieved equality before the law with a way that the enactment must started from perspective to achieved 'pengayoman' upon society and it's enactment must means progressively for the profit of the society with complying such criteria as follows: 1). Local Regulation on Legal Aid for The Poor must started from real problem which generally occur in a region with basis on it's enactment upon philosophical, sociological, and juridical aspects (*problem based regulation*); 2). The role of Local Government, business world and college along with legal aid institutions shall given in space of arrangement so that can be related and configurated to achieved legal aid upon the poor; 3). Giving space acces widely along with facilities upon the poor who need the legal aid.

References

Adriaan Bedner (2012), dalam *Akses terhadap Keadilan: Perjuangan Masyarakat Miskin dan Kurang Beruntung*

- untuk Menuntut Hak di Indonesia*, (Access to Justice: The Struggle of the Poor and Less Fortunate to Demand Rights in Indonesia) Penerbit HuMa-Jakarta, Van Vollenhoven Institute-Leiden, KITLV-Jakarta, Epistema Institute-Jakarta.
- Bernard Arief Sidharta. (2010) *Ilmu Hukum Indonesia* (Indonesian Jurisprudence), Bandung: Fakultas Hukum Universitas Katolik Parahyangan.
- Bernard Arief Sidharta. (2013), *Ilmu Hukum Indonesia, Upaya Pengembangan Ilmu Hukum Sistemik Yang Responsif Terhadap Perubahan Masyarakat*, (Indonesian Jurisprudence, Systematic Systemic Law Development Efforts Responsive to Change Society) Genta Publishing, Yogyakarta.
- Bernard L. Tanya et all (2010). *Teori Hukum Strategi Tertib Manusia Lintas Ruang dan Generasi*, (Legal Theory of People's Ordered Strategy across Space and Generation), Genta Publishing, Yogyakarta.
- Daniel S. Lev, (1965), *The Lady and the Banyan Tree: Civil-Law Change in Indonesia*, *The American Journal of Comparative Law*, Vol. 14. No. 2 (spring).
- H.L.A. Hart. (2009), *Konsep Hukum* (The Concept Of Law). Bandung: Nusamedia.
- Hans Kelsen, (1973), *General Theory of Law and State*, Russel & Russel, New York.
- Imam Syaukani dan Ahsin Thohari, (2008), *Dasar-Dasar Politik Hukum* (The Basics of Political Law) Jakarta: Raja Grafindo Persada.
- Jimly Asshiddiqie. (2006), *Perihal Undang-Undang* (About the Law), Jakarta: Konstitusi Press.
- Maria Farida Indrati S. (2007), *Ilmu Perundang-undangan: Proses dan Teknik Pembentukannya*. (Science and Legislation: Process and Its Formation Techniques), Jld 2. Yogyakarta: Kanisius.
- Mochtar Kusumaatmadja, (1986), *Hukum, Masyarakat dan Pembinaan Hukum Nasional*, (Law, Society and National Law Development), Binacipta, Bandung.
- Ni'matul Huda dan R. Nazriyah, (2011), *Teori dan Pengujian Peraturan Perundang-Undangan*, (Theory and Testing of Legislation), Nusa Media, Bandung.
- Peter Mahmud, (2005), *Penelitian Hukum*, (Legal Research), Kencana Prenada, Jakarta.
- Satjipto Rahardjo, (2002), *pada harian Kompas dengan judul "Indonesia Membutuhkan Penegakan Hukum Progresif* (Indonesia Requires Progressive Law Enforcement)", tanggal 15 Juni.
- Satjipto Rahardjo. (2009), *"Hukum Progresif sebuah Sintesa Hukum Indonesia*, (Progressive Law of an Indonesian Law Synthesis), Genta Publishing, Yogyakarta.

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