

Probono's Legal Assistance As a National and Poverty Alleviation Approach in Indonesia

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Abstract

This study aims to determine the role of the Government and Advocates in carrying out the professional legal obligations to provide Probono legal assistance as an effort to alleviate poverty in Indonesia. The method used in this study is an empirical theoretical method with the types of primary and secondary data arranged by using qualitative analysis. The results of the study show that the concept of Probono's legal assistance to protect the constitutional rights of the poor has been set in Laws, Government Regulations and PERADI Regulation No. 1 of 2010 which are implemented in the spirit of nationality.

Keywords: Legal Assistance, Nationality Approach, Poor People

Introduction

Starting from the crisis in Indonesia (McKay & Lawson, 2003; Ravallion, 2009), poverty is a major issue characterized by a significant increase in poverty. If improvements in human resource capabilities and accumulation of public funds are not distributed to the real sector, particularly supporting micro or economic enterprises of the people (Sumodiningrat, 2008), so growth cannot reduce the number of poor people and contribute significantly to poverty reduction.

Although the problem of poverty faced by countries in the world with different characteristics or economic growth is necessary but not sufficient (Bhorat, 2006), but the number of poor people in Indonesia have increased more than the population compared to Southeast Asian countries. The gap between resources and community needs can cause poverty (phenomenon failure) so that it requires government intervention, both through a program approach to 27,770,000 poor people in Indonesia and regulation (political will) because poverty reduction efforts are part of government administration tasks, development implementation and public services.

Nowadays the synergy of various elements of the nation (both central and regional) is needed as an effort to alleviate poverty because the growth of the poor marks the vulnerability of the people in the lower layers to political, social and economic upheavals that affect nationalism. As stated by Diamond and Plattner (1994), the nationalists / nationalism (Smith, 2013) third world typically use anti-colonialism and anti-imperialism rhetoric (Himka, 2010; Liu, 2013; Bossacoma & Bofill, 2016). The nationalists believe that commonalities of ideals can be realized in a political identity or shared interests in the form of a nation. Nation is an association of people who have similar beliefs

and similarities such as race, ethnicity, religion, language, and culture that gather in a container (Mayer, 2012; Stavenhagen 2016).

Nationalism is an understanding which was originally the main elements of nationalism consisting of ancestry, ethnicity, place of residence, religion, language and culture, then changed with the inclusion of two elements namely equality of rights and interests for everyone in society (Sumodiningrat, 2008). However, limited resources have caused the government to be unable to handle all aspects of poverty alleviation through public policy so that it requires the contribution of elements of society.

Various efforts have been made in alleviating poverty through sectoral and regional approaches that spend large budget. The poverty budget was budgeted in the State Budget (APBN) and Amended State Revenue and Expenditure Budget (APBN-P) has increased in five years (since 2011-2015). The figure below shows a Chart of Increased Poverty Budget in Indonesia:

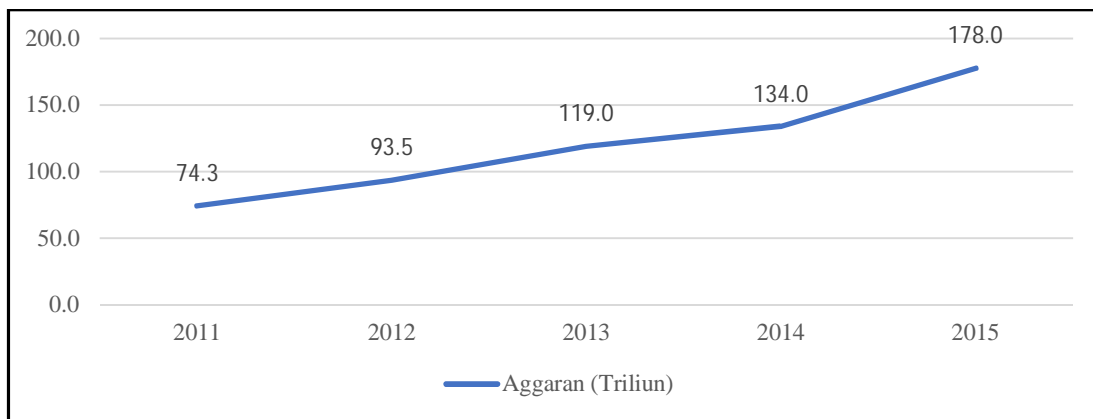


Figure 1. The Increasing of Poverty Budget in Indonesia
Source: Directorate General of Budget Ministry of Finance, 2015

The increasing in central and regional government spending are not followed by the improvements in development indicators adequately. Analysis of the Budget can be compared with Akyuwen's Research (2008), the increase in central government spending in 23 years (1985-2007) averaged 101.9% per year, while an increase in regional government spending averaged 216.5% per year. poverty reduction increased from Rp. 18 trillion in 2004 to Rp. 81 trillion in 2008, or increased by an average of 70% per year. But the increase in the budget is not followed by a reduction in the number of poor people so that there are indications of government spending to reduce poverty less effectively (Sumodiningrat, 2008).

Various efforts and cooperation have been carried out to overcome the poverty sector. The Indonesian Advocates Association (PERADI) as a state organ that has as many as 45,000 advocates in various regions (consisting of 102 Branch Leadership Councils and 52 PBH) who are ready to provide legal assistance in Probono according to their professional position as law enforcer.

Theoretical study

The term Probono (Rosas, 2001; Rhode, 2003; Cummmgs, 2004; Granfield, 2007; Granfield & Mather, 2009; Carpenter, 2010; Prisco, 2014) is a legal service from professional lawyers for the public interest (for those who are capable or incapable to financially pay honorarium). A financially incapable word can be analogous as an indicator of poverty (Piazza, 2006; Headey, 2008; Cantillon, 2011; Hagenaaars, 2017)

There are various debates regarding the definition and categories of poverty. According to Gordon (2005), the United Nations (UN) poverty is a denial of choices and opportunities, a violation of human dignity. It means lack of basic capacity to participate effectively in society. It means not having enough to feed and cloth a family, not having a school or clinic to go to, not having a land to grow one 's food or not having access to credit. It means insecurity, powerlessness and exclusion of individuals, households and communities. It means susceptibility to violence, and it often implies living on marginal or fragile environments, without access to clean water or sanitation”(UN Statement, June 1998 - signed by the heads of all UN agencies).

Some researchers interpret poverty as an inability to fulfill food, shelter, education, access to health, employment, credit, clean water or sanitation, poverty is not only related to economic problems and fulfillment of living needs, but also concerns about political, social and cultural issues (Misturelli & Heffernan, 2010; Yoshikawa, Aber & Beardslee, 2012; Rakodi, 2014; Hagenaaars, 2017; Holtyn, Jarvis & Silverman, 2017). The World Bank and the Millennium Development Goals set a poor standard with income conditions below \$ 1 per day.

The researchers argue that Indonesia's sense of nationality in the course of history has been completed with the inclusion of two new components, namely the value of legal rights equality and the right to fight for the interests of everyone so that the nationality value entitles the poor to constitutional rights to receive free legal assistance (Probono) from an advocate or corporate lawyer in carrying out the obligations of professional law. Because for the poor, the value of equality before the law has become a unity in nationalism. Therefore, it is necessary to limit the scope of the work of Probono legal assistance to the poor in Indonesia whose numbers have exceeded the number of countries in the world, as a comparison with the structural understanding of the poor in Indonesia.

The description of poverty can be said to be structural poverty (Matters, 2008; Cellini., McKernan, & Ratcliffe, 2008; Mosse, 2010; Ibáñez & Moya, 2010; Hickey & Du Toit, 2013) whose scope is understandable. Poverty cannot be measured by per capita income because it could have exceeded the poverty limit but structurally far from the production's goods, the decision-making process, alienated from the possibility of participation (Lubis, 1986).

The structural poverty is the external side of the poor. Structural poverty is related to the failure of the political system, government institutions, elite structures and the power bureaucracy, as well as various "people-oriented development" policies. On the one hand, the government is trying to fight poverty (the poverty alleviation) because of structural, cultural and natural factors, but then trapped in the poverty trap itself. In the sense that when the government tries to answer the

question of economic poverty and the problem of social backwardness, it turns out that in the answers many questions remain. This is what is known as "antagonistic developmentalism" (Karbyanto, 2012). Based on this explanation, it is known as structural poverty which is an action or policy that causes people to be trapped in poverty, for example: forced evictions, eviction of street vendors, tightening access health services, the transfer of coastal functions that cover the access of fishermen, etc. Other argument states that all poverty and oppression of the poor people are due to the political system that takes the rights of the city from the urban community, so that it needs a change in the political system that gives power to community to make choices in city development (not just policy).

In the view of structural poverty, who can be categorized as poor? The answers are street children, truck drivers, laborers, scavengers, homeless people, evict victims, environmental pollution victims, street vendors, low-income people, and other marginalized groups who are trapped in impoverished policies. However, the number of poor people is uncertain (especially in urban communities), currently an estimated about one billion people live in areas that do not meet the standards of eligibility (slums). If the condition is not changed, UN-Habitat (Magrinyà, 2005) estimates that in 2030 there will be two billion people living in areas that do not meet the standards (slums).

Research Methodology

The method used in this study is an empirical theoretical method (Chui, 2007; Schlegel, 1995). Empirical juridical research as a legal research that implements normative legal provisions (in action) towards all legal events in the community towards problem solving (Abdulkadir, 2004; Arikunto, 2002; Waluyo, 2002).

This study uses the type of primary data obtained from field research related to Probono legal assistance. In addition, researchers also used secondary data obtained from library research such as laws, reference books, scientific journals and research results relevant to this study. After all data was collected, identified and inventoried. Then the data was processed and arranged systematically by using qualitative analysis (Amirudin, et.al, 2006) to facilitate interpretation.

Discussion

Advocate Professional Obligations and Probono Legal Assistance

The characteristic of the law country is that the state guarantees the right of all people, both from the capable and incapable to be treated equally against the law. The equality of rights as a new value that has entered into Indonesian nationality and implies the equality of treatment (the provision of legal assistance to the poor must be accessible and ascertained).

Indonesia as a country that upholds the law, the nature and concept of legal assistance that can protect the constitutional rights of the poor is a response to constitutional rights without differences between the rich or poor, as Article 28 D paragraph (1), "Everyone has the right for the recognition, guarantee, protection and fair legal certainty as well as equal treatment before law and government without distinguishing social, cultural, economic and religious status, as has been confirmed in

article 34 paragraph (1) of the 1945 Constitution ", constitutional rights of the poor and neglected children are maintained by the state ", this affirmation implies that legal assistance for the poor is a duty and responsibility of the state if it is connected with Article 17 paragraph (1) of the 1945 Constitution," All citizens are simultaneously in law and government and must uphold the law and government with nothing exception".

The constitutional guarantee is regulated organically both national and international then ratified into Law No. 39 of 1999, Law No. 12 of 2005 and more specifically regulated by Law No. 16 of 2011, the constitutional aspect becomes the right of the poor to get Probono legal assistance from lawyers who are given the authority by the state as law enforcement. Probono's Legal Assistance is known to be a form of strategy to provide legal assistance to defend public interests, in addition to legal assistance which is defined as a very range of legal work that is performed voluntarily and free of charge to be underrepresented and vulnerable segments of society (Maulana, 2012)

PERADI translates significantly into the action program through Legal Assistance Services (PBH) that can help the poor to get access to free understanding of law, human rights, civil, political, social, cultural and economic rights. Probono Legal Assistance is not different from the service of the rights of Professional Legal Services supervised by the Advocate's Code of Ethics. Probono Legal Assistance is the duty of Indonesian lawyers stated in Law No.18 of 2003, article 22 paragraph (1) "Advocates are obliged to provide legal assistance free of charge to an inadequate justice seeker", see also Government Regulation No. 83 of 2008 and PERADI Regulation No. 1 of 2010 that in carrying out the duties of service to clients, it is still supervised by the Advocate's Code of Ethics.

Normatively, the duties and obligations of advocates have been regulated by Laws and Government Regulations, only the coordination and budget policy (both from the source of the state's money and control of donations from donor countries) make more use of the report from mapping poverty in Indonesia for foreign interests. Likewise, the level of awareness of advocates who have not maximally responded to Probono's legal assistance service to the poor, although efforts to socialize to advocates continue to be made, for example PERADI has given National awards to activists of legal assistance in Indonesia (Probono Awards) and National awards by the Ministry of Justice in areas initiated by the Regional Government in the Independence Day.

Area and Limitation of Probono Legal Assistance

The Montreal Declaration which is the result of The World Conference of Independence of Justice said advocates have noble social duties and functions, namely: "It is the responsibility of lawyers to educate members of the public about the principles of the rule of law, the importance of the independence of the judiciary and the legal profession and to inform them about their rights and duties and the relevant and available remedies "(Winarta, 1995). However, advocates can have roles that go far beyond those social tasks and functions. Advocates have a strategic position in alleviating poverty because they have strong knowledge and position in the community system or

legal system. For example, the legal skills of advocates can block policies that impoverish the community. There are several possible roles of advocates in the advocacy of the urban poor (Alghiffari, 2018)

First, advocates can act as lawyers (individual or group cases). For example, to become a public attorney in the environmental pollution lawsuit by company A (Probono). There is no role in empowerment. Second, advocates become community supporters, such as providing logistical support, helping research, position papers, or becoming ghost lawyers. Third, become grassroots lawyers, namely to become actors directly with the community in social change and eradicating poverty. Advocates not only speak formal law and convene, but also engage in campaigns, research, empowerment and organizing of the community, even conducting demonstrations (if needed) in the context of rights to the city, the grassroots lawyer encourages reclaim of the city.

For example, lawfirm who plays a role in eradicating poverty is ReedSmith. ReedSmith is a lawfirm that has 24 offices in 11 countries in the world and is based in London. ReedSmith has the Probono program and Corporate Social Responsibility (CSR). The total Probono time provided by ReedSmith is around 60,000 hours per year. In addition, ReedSmith has community service programs, such as; distribution of food for AIDS victims, distribution of toys for disadvantaged children, volunteering to entertain homeless people, buying clothes and gifts for homeless people and low-income communities, repairing nursing homes, providing training, legal clinics, community empowerment, counseling and mentoring.

Normatively, the guarantee of the fulfillment of legal assistance rights for the poor has been sufficient but its implementation has not been maximized so that it does not synergize with the Law to provide access to justice (ensuring that the poor are not marginalized).

The Role of the State, Nationalism, PERADI in Alleviating Poverty

Factually, Advocates are the main actors and have a professional obligation to provide legal assistance services to the poor in accordance with Law No. 18 of 2003. The provision of legal assistance to the poor is known as the concept of Probono Publico. In its development, Probono became one of the movement's strategies to provide legal assistance (defending the public interest). Legal assistance in the concept of Probono includes four elements, namely: 1) Work assignments including the region and outside Indonesia; 2) Is a legal obligation; 3) Not paid; and 4) For under-represented and vulnerable communities. This obligation is a moral responsibility of the advocate as a respectable profession (*officium nobbile*) which does not distinguish the execution of work from the Client (paying or not being paid).

The obligation for free legal assistance (Probono Publico) is regulated in Law No.18 of 2003, Government Regulation No. 83 of 2008 and PERADI Regulation No. 1 of 2010 and an advocate's code of ethics. In its implementation, a work unit has been formed (called PBH PERADI). This provision becomes a system of providing legal assistance that is built by advocate organizations as part of the Probono movement.

It is connected with the concept of legal assistance and refers to the understanding of legal services (legal assistance) that are financed or subsidized by the state (through APBN or APBD). The concept is used in the Legal Assistance Act. The idea of state-funded legal assistance was first discovered in the United Kingdom and the United States. After the end of the second world war, the British government formed the Rushcliff Committee with the aim of researching legal assistance needs in England and Wales. Based on reports from the Rushcliff Committee recommending that legal assistance must be financed by the state. Whereas, in the United States initially legal assistance was part of an anti-poverty program in 1964.

The government formed the Office of Economic Opportunity (OEO) institutions, which included funding legal assistance through the Judicare system, namely the Advocate or Bar Association providing legal assistance services to the poor, then legal assistance services funded by the state. This concept was born as a consequence of concept development Welfare state where the government has an obligation to provide welfare to its people.

Legal assistance is included as one of the programs to improve the welfare of the people, especially in the social political and legal fields. Thus, the Legal Assistance Act was designed as an effort to fulfill the responsibility of the State in providing legal assistance to its citizens. This can be seen in the explanation of the Law on Legal Assistance, which states as follows: "The implementation of providing legal assistance to citizens is an effort to fulfill and at the same time implement the rule of law that recognizes and protects and guarantees the human rights of citizens to access justice. (access to justice) and equality before the law. The guarantee of constitutional rights has not received adequate attention, so the establishment of the Law on Legal Assistance is the basis for the state to guarantee citizens especially for groups of poor people to get access to justice and equality against the law".(Maulana, 2012)

Professional obligations of Probono's Legal Assistance and Legal Aid are strategies to provide legal services for the poor and marginalized as a result of the growth and development of structural and cultural poverty. The Legal Aid concept that is the spirit of the Legal Aid Act is not to replace the Probono concept spearheaded by advocates, but to support the involvement of advocates as one of the free legal service providers by integrating the concept of state-subsidized legal assistance. Efforts to improve paralegal skills so that legal assistance services to the poor can be carried out and always supervised by the honor of the profession and monitoring from the government. This is in accordance with the opinion of Prof. Enny Nurbaningsih (Head of the National Law Development Agency (BPHN), Ministry of Law and Human Rights) in the activities of the Legal Aid Work Plan at Hotel JS. Luwansa Kuningan South Jakarta stated that as it is known in the 2015-2019 RPJMN, currently improving law enforcement is still a part of the Government of Indonesia's priority in Volume II's Revitalization of Law. Among them are through socialization strategies, strengthening institutions providing legal aid, strengthening legal aid providers, engaging local governments in the implementation of legal assistance, optimizing the implementation of circuit courts, utilizing prodeo funds for the poor and improving information services in the Courts and Attorney's Office.

Prof. Enny Nurbaningsih also focused on the benefits of the online remand center which is currently being heavily socialized. These benefits include more accurate mapping of poor prisoners (so far the assumption of 80% of detainees not receiving legal assistance) and mapping of legal assistance needs is more accurate (related to budgeting there is Inpassing to Legal Extension Functional Position). "I hope that the Civil Servants (PNS) throughout the country will join Inpassing to become legal counselors because of their heart's call". In the future, the Law Extension must be in every village in this country, with one village instructor, the socialization provided will be more effective and on target. That way every village must have at least one extension agent, one paralegal, and one Legal Aid Organization (OBH) so that the level of legal awareness of the community in Indonesia can be better than in previous years (Urbaningsih, 2017). Budget of Rp. 19.129.350.000, - only intended for litigation cases and non-litigation activities in 2017; and advanced cases in 2016 (stages that have been paid in advance in 2016 and still continuing / not inkracht). Danan Purnomo said "If the 2017 budget is not sufficient then it can use the 2017 APBN-P". The Secretary of BPHN since 2015 also added "Currently, it has been proposed to increase the legal assistance budget through the APBN-P mechanism, Fulfillment of National Priorities in the 2017 RKP is Rp. 49,699,000,000". Fulfillment of National Priorities in the 2017 RKP with the following details:

1. In the RKP Litigation, 7,919 cases, while the RKAKL 2017 the number of litigation was 1,851 cases, which required an additional litigation of 6,079 cases or Rp. 48,632,000,000;
2. In the RKP Non litigation 4,545 activities, while the 2017 RKAKL the number of non-litigation was 3,645 activities, so it needed an additional 900 activities or Rp 1,067,000,000, -

In the quarter of 2017, it is expected that all can improve the quality of the policy of implementing legal assistance to be even better with introspection and can immediately improve the system in the mechanism of implementing legal assistance to be more targeted and more optimal in its absorption. Ensuring the implementation of good legal assistance in accordance with the principles stated in the Law on Legal Assistance is a necessity, moreover legal assistance providers are the National Legal Development Agency (BPHN) who are well aware of how national legal development is.

Justice, Equalization in Law, Openness, Efficiency, Effectiveness and Accountability are principles in the implementation of legal assistance that has been and is being implemented by BPHN. "Implementation of legal assistance if seen graphically increases every year, starting from budget absorption, on target, to quality. BPHN is also implementing a Legal Aid Monitoring and Evaluation Application that is motivated because the results of monitoring and evaluation carried out by the Regional Oversight Committee have not been accessed by many parties, the performance of Legal Aid Organizations is not optimal for the implementation of Legal Aid and there is still limited public access to the implementation of Legal Aid Therefore, support together with the

reform of the mechanism for implementing this legal assistance, so that people feel the benefits more (Urbaningsih, 2017).

From the aspect of funding in 2017, the government only provides stimulants for the provision of legal assistance funds as an effort to empower the poor. The government is still managing funds whose distribution cannot be evaluated through monitoring. Therefore, the approach to legal assistance funding has not been considered as a claim to equality of legal rights that tends to make the poverty rate not solved by the nationalism approach so that vulnerable poverty tends to threaten the national life. The Ministry of Law & Human Rights has taken a strategic approach through cooperation with PERADI as outlined in an agreement between the National Legal Development Agency (BPHN) and PERADI to mobilize legal assistance movements in Indonesia.

In developing countries, legal assistance for the poor is not based on political motivation. This political motivation aims to develop the community so that people understand their rights, in addition to understanding their rights, they must be encouraged to develop moral courage to fight for and demand these rights for political education, cultural change is needed (Daniel, 1987).

The legal assistance movement for the poor is a professional awareness that is supported by the legal obligations of the advocate profession to change the structure of the poor and embody human rights. The Chairperson of the Indonesian MPR, Zulkifli argued that nationalism is not only socialized but more applied to behavior. The challenge now faced is not about differences and debates, ethnicity, religion, race and among groups, the most important one is about poverty and social inequality. Then poverty must be considered as the main problem that needs to be worked on by all components of the nation because it can damage the living order of the poverty sector that can threaten the state and society, especially the level of indecency and the quality of life in Indonesia. Advocates through Probono legal assistance will immediately allocate time work to share daily tasks to raise the main issues of the Indonesian people, namely to alleviate poverty.

Conclusion

Constitutionally, nationalism has provided guarantees to the poor to get equal rights against the law, poverty is the responsibility of the State that is implemented to the government through a legal assistance program funded from the APBN and APBD. In addition, the Law is available to guarantee the legal certainty of the poor structural and cultural, it is not done half-heartedly or limited to certain cases to resolve the eradication of the poor.

The development of the number of poor people in various sectors of life in Indonesia must be overcome with the spirit of nationality with the synergy of all elements of the nation (especially legal assistance services and legal services attached to professional positions of Advocates) to provide legal awareness so that it can alleviate poverty in Indonesia.

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