

E-PROSIDING

DISKUSI
SYARIAH DAN UNDANG-UNDANG
Siri I 2019



Fakulti Syariah dan Undang-undang [FSU]
Universiti Sains Islam Malaysia [USIM]

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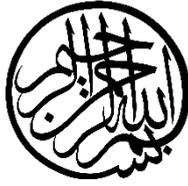
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PRAKATA

Dengan nama Allah Yang Maha Pemurah, lagi Maha Penyayang.

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THE IMPLEMENTATION OF LEGAL AID MODEL FOR MARGINAL COMMUNITY IN SURABAYA CITY BASED ON JUSTICE

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ABSTRACT

The implementation of providing legal aid for marginalized community in Surabaya city has not been maximized. It is felt only by a small number of people or poor people and have not touched all levels of marginal society who are facing the legal problem and needing the free legal assistance. The purpose of this study was to determine the implementation of a model of providing legal aid to marginalized community in Surabaya in order to get an equal legal aid. This socio legal research used the research and development approach in the community who got the soft loan beneficiaries nurtured by the Women's Social division of the Ummul Mu'minin Mosque in Surabaya. The result showed that the model of providing legal assistance for personal legal networks (*jalepo*) was a suitable model of providing legal assistance since it can be applied effectively to anyone who did not have an affidavit of inability (SKTM) and at the same time facing the civil and criminal law and state administration problem to get an equal justice. Based on the fact that the implementation of Local Regulation Number 3 of 2019 concerning legal aid for the poor issued by Surabaya City Government in providing legal assistance that has been far from the reality and still has some deficiencies so that the recommendations are needed to evaluate and revise this regulation in terms of the criteria of the subject, object and procedure in providing legal aid.

Keywords: legal aid, marginal, poor, equal.

BACKGROUND

Legal aid is a part of human rights realization of access to justice and equality (Thomas, 2012) before the law guaranteed in the constitution. To realize access to justice and equality before the law requires a serious effort from all elements of the country. Human rights principally consist of three things, namely rights to life, freedom and security of person.¹ These three basic human rights are further elaborated in two master conventions namely the International Convenience of Civil Political Rights / ICCPR and the International Convenience of Social, Economic, Culture Rights / ICSECR. These two conventions are further elaborated in the legal rules of civilized countries.

Indonesia as a state of law has also provided constitutional and statutory protection (Tjandraningsih, 2013). The state has made laws and regulations related to legal aid, ranging from the constitution to regional regulations.

The provision of legal assistance is the implementation of the provisions of Article 28 D paragraph (1) of the 1945 Constitution, namely that every person has the right to recognition, guarantees, protection and legal certainty that is fair and the same treatment before the law. Protection in this constitution is further implemented in Law Number 16 of 2011 concerning Legal Aid (State Gazette of the Republic of Indonesia of 2011 Number 104, Supplement to the State Gazette of the Republic of Indonesia Number 5246) has been enacted. Implementation of Law 16/2011 has not been effective. In East Java, the existence of Law 16/2011 has been outlined in the East Java Regional Regulation 9/2012 in conjunction with the East Java Province 3/2015 jo.

¹ See article 3 The Universal Declaration of Human Rights.

East Java Governor Regulation 83/2015. Governor Regulation No. 83/2015 jo. Surabaya City Regulation Number 3 of 2019 concerning legal aid for the poor.

The implementation of providing legal aid for marginalized people in the city of Surabaya has not been maximized. Can only be felt by a small number of people or poor groups (who have not yet touched all levels of marginal society) who are in trouble with the law and need free legal assistance. The ineffectiveness of a rule of law can be seen from its formation or implementation in society (Krygier, 2018). Incorrect legal rules for instance can cause multiple interpretations will have a negative impact on enforcement. The legal rules related to legal aid for the poor still have multiple interpretations or unclear article formulation.(Wijayanti, Hidayat, Hariri, Sudarto, & Sholahuddin, 2017)

A specific effort is needed so that the provision of legal assistance can be effective in the society (Londra, Wallach, & Zhao, 2014). The legal aids model of personal legal network ("Jalepo") is expected to be able to provide benefits for marginalized communities to be able to enjoy legal aids. From the description above, the problem arises, namely how to implement a model of providing legal assistance to marginalized people in the city of Surabaya in order to be felt fairly by the recipients of legal aid.(Wijayanti, Hidayat, Unggul, & Hariri, 2017)

RESEARCH METHOD

This socio legal research (Singhal & Malik, 2012) uses the research and development approach in the community who got the soft loan beneficiaries nurtured by the Women's Social division of the Ummul Mu'minin Mosque Surabaya based on higher education networks (UM Surabaya Legal Service Institute), accredited OBH (LPPA Bina Annisa), Legal aid of Pusura and Infest. The main objective provides an overview of the application of the development of a model of legal aid for marginalized community in the city of Surabaya. The study uses data collection techniques through interviews, in addition to observation and documentation. The data analysis process begins with a review of all available data from various sources such as interviews, observations that have been written in field notes, personal documents, photos, pictures and so on. Data analysis techniques used generally in the form data collection, data preparation, data tabulation, data application and conclusions.(Maxwell & Reybold, 2015)

LITERATURE REVIEW

Legal aid is legal services provided by legal aid providers for free to legal aid recipients.² Legal aid is carried out based on the principle of justice, equality in the law, openness, efficiency, effectiveness, which means determining the achievement of the objectives of providing legal assistance appropriately and accountability³. The purpose of holding legal aid is to help resolve legal problems faced by legal aid recipients⁴The issue of article No 16 of 2011 is expected to be able to provide legal protection for the people for easy access to legal assistance although its implementation has not been maximized.(Wijayanti, Hidayat, Unggul, et al., 2017)

There are two contributing factors, namely the legal formation factor (the existence of multiple interpretations of the formulation of the substance and procedure of the Law 16/2011) and the factor of the low law enforcement (cannot yet be felt equally by marginal groups). The substance of the first Legal Aid is a legal subject, divided into three, namely: legal aid providers, legal aid recipients and legal aid providers. Providers of legal assistance are legal aid institutions or social organizations that provide legal aid services.⁵ Requirements for legal aid providers are legal entities, accredited, have a permanent office or secretariat, management and legal assistance programs.⁶ Providers of legal assistance who have fulfilled the requirements have rights and

² See Article 1 of Law 16 of 2011

³ See Article 2 of Law 16 of 2011 along with its explanation.

⁴ See (Article 6 paragraph (1) of Law 16/2011

⁵ See Article 1 number 3 of Law 16/2011.

⁶ See Article 8 of Law 16/2011.

obligations. Rights of legal aid providers are mentioned in Article 9 of Law 16/2011. Obligations of legal aid providers are specified in Article 10 of Law 16/2011. Providers of legal aid are prohibited from receiving or requesting payment from legal aid recipients and or other parties related to the case handled. Criminal threats can be given to violating legal aid providers, i.e. can be sentenced to a maximum of 1 (one) year imprisonment or a maximum fine of Rp. 50,000,000.00 (fifty million rupiah).⁷

Legal Aid Providers are prohibited from receiving or requesting payment from Legal Aid Beneficiaries and / or other parties related to cases being handled by Legal Aid Providers; and or receive legal aid funds from the Government, Provincial Governments or Regional Governments simultaneously on the same case. Provision of legal aid funds is carried out: on cases that have permanent legal force; or to activities that have been completed. There is a threat of violation of this provision, namely administrative sanctions in the form of written warning; return of all Legal Aid funds received from the Regional Budget; and or inclusion in the black list of the implementation of the provision of legal aid for 3 (three) consecutive years.⁸

Legal aid recipients are people or groups of poor people. Legal Aid recipients are entitled to get Legal Aid until the legal problem is resolved and or the case has permanent legal force, as long as the Legal Aid Recipient in question does not revoke the power of attorney; get legal assistance in accordance with Legal Aid Standards and or Advocate Code of Ethics; obtain information and documents relating to the implementation of providing Legal Aid in accordance with statutory provisions. Legal Aid recipients must: submit evidence, information and or case information correctly to the Legal Aid Provider; and help smooth the provision of Legal Aid.⁹

The object of legal aid is divided into three areas, namely civil, criminal, and state administration legal matters both litigation and non-litigation. Legal assistance provided includes exercising power of attorney, accompanying, representing, defending, and or carrying out other legal actions for the legal benefit of the Legal Aid Recipient.¹⁰ Providing litigation legal assistance including assistance and or exercising power of attorneys starting from the level of investigation and prosecution; assistance and or exercise power of attorney in the trial process; or assistance and or exercising power of attorney for Legal Aid Recipients in the Court.. Provision of non-litigation legal assistance includes legal counseling,¹¹ legal consultation, case investigation, both electronically and non-electronically, legal research, mediation, negotiation, community empowerment, out-of-court assistance and / or drafting of legal documents. Providing Legal Aid by Legal Aid Providers to Legal Aid Recipients is given until the legal problem is resolved and or the Case has permanent legal force, as long as the Legal Aid Recipient does not revoke the power of attorney.¹²

Procedure for providing legal aid can be implemented after the recipient of legal assistance can prove that he belongs to a poor person or group or poor people.(Nasution, 2018). An affidavit of inability is a certificate of incapacity (SKTM); certificate of other social benefits and a statement of not being able to pay for advocate services made and signed by the applicant of the Court legal aid service and approved by the Court legal aid officer, if the applicant for the Court legal aid service does not have the document.¹³

Request for legal aid submitted by attaching the identity of the prospective legal aid recipient; a brief description of the subject matter being requested for Legal Aid; submit

⁷ See Article 16 jo Article 19 jo. Article 21 of Law 16/2011.

⁸ See Article 21 jo Article 22 jo Article 25 of the Surabaya City Regulation 3/2019.

⁹ See Article 1 number 5 Jo Article 17 jo Article 18 Surabaya City Regulation No 3/2019.

¹⁰ See Article 4 of Law 16/2011

¹¹ See Article 6 paragraph (1) letter a of Surabaya City Regulation 3/2019.

¹² See Article 9 of the Surabaya City Regulation 3/2019.

¹³ See Article 22 paragraph (2) Perma 1/2014.

documents relating to the case; and attach a certificate of poverty issued by the authorized official.¹⁴

The substance and procedure for providing legal aid need to be implemented in a community through the legal aid model. The personal legal network (Jalepo) legal aid model can be an alternative solution for providing legal aid to be effective in the community.

The model of legal aid through personal legal network assistance can be provided in the form of non-litigation and litigation. Provision of non-litigation legal assistance includes legal counseling, legal consultation, case investigation, both electronically and non-electronically, legal research, mediation, negotiation, community empowerment, out-of-court assistance and or drafting of legal documents. Providing litigation legal assistance covering criminal cases, including investigations, and trials in courts level I, trials of appeal, trials of cassation, and reconsideration; Civil cases, including peace efforts or decisions of the court of first instance, court decisions of appeal, court decisions of appeal, and reconsideration; and State administration cases, including preliminary hearings and decisions of the court of first instance, court decisions of appeal, court decisions of appeal, and reconsideration.

Legal assistance will be easily realized through assistance. Accompaniment is a scientific method carried out by a vocal point (companion) to achieve practical goals in assisting recipients of legal assistance when facing legal problems based on appropriate legal mapping in person or network.

Personal network-based facilitation can be carried out optimally by involving socio-economic potential, community potential through empowering community forums, and fully supported and implemented by all relevant community members.

The Personal Network Based Assistance Model consists of 4 elements, namely mentoring substance related subject matter, mentoring substance related problem objects, endorsing formal procedures related problems, and mentoring personal procedures related problems.

Mentoring substance related subject matter is a scientific method carried out by vocal points (assistant) to help and assist recipients of legal aid when facing legal problems based on proper legal mapping in the analysis of related legal subjects (actors). The perpetrators are essentially legal aid providers, legal aid recipients and legal aid providers. A practical guide or module is needed for legal aid providers who will provide advocacy to legal aid recipients.

Assistance of the substance of the object of the related problem is a scientific method carried out by the vocal point (assistant) to help and assist the recipient of legal assistance when facing legal problems based on proper legal mapping in the analysis of the related legal object. Assistance that bases on formal objects includes administrative and technical protection (access to information, quality improvement, social security, facilitation for the promotion of individual rights)

Accompaniment of formal procedural problems is a scientific method carried out by a vocal point (assistant) to help and assist recipients of legal assistance when facing legal problems based on proper legal mapping in the analysis of the relevant legal substance. Proper mapping can be done through the stages of gathering facts, to find the initial truth; classifying the nature of legal issues; identify and select relevant legal issues; make legal discoveries relating to legal issues and apply law.

Accompaniment of formal procedural problems is a scientific method carried out by a vocal point (assistant) to assist and assist the recipients of legal assistance when facing legal

¹⁴ See Article 13 paragraph (2) of the Surabaya City Regulation 3/2019.

problems Assistance of personal procedures can be done by applying the principle of local wisdom related to dispute resolution efforts.

The legal aid model can be done by networking using a "tiered accompaniment" pattern. Starting from the smallest or lowest level of the region (e.g community groups), towards a larger or highest region, namely the center. Every legal case is handled first by the legal persons / coordinator / vocal point of the community group with the aim of the smallest group who knows more about the exact issue. If the small group level cannot finish, it will proceed to the legal aid organization that houses the legal persons.

RESULTS AND DISCUSSION

The "jalepo" legal aid model has been implemented in the pilot community which got the free interest soft loan program of the Ummul Mu'minin mosque in Surabaya. The interest-free soft loan program provided by the Women's division of the Ummul Mu'minin Mosque in Surabaya is a social reaction to the practice of *thithil* bank in providing loans to small traders in traditional markets since October 2, 2011. The target is for the traders of fruit, vegetable, food, soft drinks, palawija with small capital. The strategy used by *thithil* banks is to provide loans for any needs, with an interest of 30% per month. The amount of interest is applied with the profit sharing system. 10% for the financier and 20% for the distributor. This is the amount of interest presentation charged to the borrower by 30% (Bintari, 2019). This interest-free soft loan program is an embodiment of *da'wah bil Haal* (*da'wah* with real work / plunge into the field (Mu'minin, 2019).

As of October 2, 2011 until 12 February 2017, 238 donations have been collected from 119 worshipers with a total donation of Rp 159,399,000. This number has succeeded in freeing 449 small-scale real-sector merchants who are caught in *thithil* bank. As of 12 February 2017, 2,705 loans have been successfully realized with the accumulated transaction value of Rp. 1,844,850,000

The implementation of the legal aid model through the facilitation of personal legal networks in the participants who got the free interest soft loan from the Ummul Mu'minin Surabaya mosque has been carried out. The weak position of the community participating in free interest soft loans from the Ummul Mu'minin mosque in Surabaya allows for the need for legal assistance both non-litigation and litigation. Legal assistance can be provided by legal aid organizations (OBH) accredited by the Ministry of Law and Human Rights. On the other hand, Higher Education also has a legal service institution (Lembaga Layanan Hukum =LLH) that gets internal funding through the program of *tridharma* implementation in the field of community service. LLH UM Surabaya (under the Faculty of Law) is one of legal organisation which can also collaborate with an accredited OBH to obtain funding assistance in terms of providing legal aid for the members of free interest soft loans from the Ummul Mu'minin Surabaya mosque who need legal aid. In this case LPPA Bina An Nisa Mojokerto has been willing to facilitate financial assistance for providing legal aid to the poor.

UM Surabaya Labor Study Center has also established cooperation with professional associations (Association of Indonesian Labor Law Teachers and Practitioners / Perkumpulan Pengajar dan Praktisi Hukum Ketenagakerjaan Indonesia = P3HKI). Through the collaboration of networks between law faculty of UM Surabaya, LLH UM Surabaya, Pusura legal aid, Ferari DPC Surabaya, UM Surabaya Labor Study Center, P3HKI and LPPA Bina An Nisa Mojokerto in the role of providing legal aid to the recipients of free interest soft loans of Ummul Mu'minin mosque Surabaya can be implemented.

The implementation of legal aid is carried out by means of a person or from the participants of the recipients of free interest soft loans of Ummul Mu'minin mosque Surabaya who are facing legal problems before delivering the problem to the assistant coordinator. Mosques as one of the centers for fostering and developing Islamic societies occupy an important role in the

process of social change and support the acceleration of development in modern societies, especially in developing spiritual aspects (Utama, Fitrandasari, Arifin, & Muhtadi, 2018).

At present the main problem faced by the recipients of free interest soft loans (specifically for SMEs) of the Ummul Mu'minin Surabaya mosque is product legalization. Furthermore, the problem was forwarded to the coordinator who was the organizer of the Ummul Mu'minin mosque Surabaya. After a brief study by the management of the Ummul Mu'minin mosque together with the Law Faculty of UMSurabaya, a selection step was taken, namely whether the provision of personal legal aid was provided by the management of the Ummul Mu'minin mosque in charge of legal aid or carried out in a network. The provision of legal aid in a network will involve partners (LLH UM Surabaya, Pusura Legal Aid, Ferari DPC Surabaya, UM Surabaya Labor Study Center, P3HKI and LPPA Bina An Nisa Mojokerto).

Not all recipients of the free interest soft loans from Surabaya's Ummul Mu'minin mosque are poor people who have an affidavit of inability in accordance with Article 13 paragraph (2) of Surabaya City Regulation 3/2019. Ummul Mu'minin Surabaya has expanded the coverage of the poor to the marginalized.

CONCLUSION

The results of this study are a model of providing legal assistance for personal legal networks (jalepo) is an appropriate model of providing legal assistance because it can be applied to anyone (who has / does not have an affidavit of inability (Surat Keterangan Tidak Mampu = SKTM) who is in trouble with the law in the civil field, criminal law and state administration to get a sense of justice Implementation of policies from the Surabaya City Government in providing legal assistance that has been realized in Surabaya City Regulation Number 3 of 2019 concerning Legal Aid for the poor still has shortcomings.

Recommendation

It is necessary to evaluate and revise the Surabaya City Regulation 3/2019 in terms of limiting the criteria for receiving legal aid to the marginalized community not only limited to poor people who have an affidavit of poverty.

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