



IMPLEMENTATION OF PRO BONO IN THE ADVOCATE PROFESSION

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Abstract

Advocates in undergoing the litigation process get the title of officium nobile. The honourable title that advocates have is to see their role in guarding law enforcement. The expected law enforcement is the concern and role of advocates in helping underprivileged people. Legal aid to the underprivileged is known as pro bono. The study in this research uses a juridical-normative approach by referring to laws and books related to the implementation of pro bono for advocates. The process of applying for pro bono is by following the laws and regulations that have been in force in Indonesia. Adhering to Government Regulation No. 83/2008 and Law No. 16/2011.

Keywords: advocates, pro bono, legal aid

Introduction

The journey of social life certainly requires a rule that regulates the course of social life. Among them is the form of law. According to Utrecht quoted by Hanafi Arief, law is a set of living instructions that regulate order in a society and should be obeyed by members of the community concerned, because violation of the living instructions can lead to action from the government of the community.¹ The law is a rule that applies and is obeyed by the community where if there is a violation of the rule it causes a reaction from the government from the community. If the context is in Indonesia, if there is a violation of the law, law enforcers such as the police will act against the perpetrator of the violation. Performing their duties and authorities so as to help maintain order in society.

Implementing and enforcing laws that have been made in a society is certainly not easy. It always requires co-operation and integrity from all members of the community. The implementation of the law can be known as law enforcement. Laurensius Arliman by quoting the opinion of Jimly Asshiddiqie explained that law enforcement is an effort to uphold or

¹ Hanafi Arief, *Pengantar Hukum Indonesia dalam Tataran Historis, Tata Hukum dan Politik Hukum Nasional*, (Yogyakarta : LkiS Pelangi Aksara.2016).9.



function of legal norms in reality as a guide to behaviour in traffic or legal relations in the life of society and the state..² The people who enforce the law are called law enforcers. Laurensius further categorised several law enforcers, including: investigators (police and authorised civil servants), prosecutors, judiciary, advocates and correctional institutions. In law enforcement, it is also necessary to pay attention to legal certainty, benefit and justice. If law enforcement only pays attention to legal certainty, it can ignore the side of justice and its usefulness in society, and vice versa..³ So the implementation of law enforcement must be willing and balanced.

The justice is the last joint as the purpose of law. In order for justice to be achieved in accordance with the justice that exists in society, the laws created must be based on morals, because in fact the law includes morals, meaning that laws and all legal norms must be in accordance with moral norms..⁴ In the application of law, the ideal expectation is that there is no abuse or violation of existing laws. But in fact, violations of the law often occur. Whether it is violating the provisions of private law or violating the provisions of public law. Justice seekers can try and seek justice through the judiciary.

In the context of this country, justice seekers go through a fairly long mechanism. In the criminal field, starting from investigation, investigation, trial to execution, or in the civil field, starting to compile applications, lawsuits, evidentiary hearings to decisions from the court. There are justice seekers who directly know and personally manage their cases in court, but it is undeniable that many justice seekers do not know the procedures for resolving these cases. So in this case, justice seekers can request assistance by being accompanied by a legal representative.

So, to be supported by a legal representative (advocate) can be accessed by those who are economically able to provide honorarium to the legal representative. So what if the justice seekers come from people who are economically disadvantaged. Are those who are entitled to legal assistance only people who can afford it, even though the existence of law is to regulate all components of society regardless of economic ability. The law is known as the principle of equality before the law. This study will focus on how the process of obtaining

² Laurensius Arliman, *Penegakan Hukum Dan Kesadaran Masyarakat*, (Yogyakarta: Deepublish.2015).12.

³ David Kairupan, *Aspek Hukum Modal Asing Di Indonesia Edisi Pertama*, (Jakarta: Kencana.2013).4.

⁴ M. Agus Santoso, *Hukum, Moral dan Keadilan Sebuah Kajian Filsafat Hukum*, (Jakarta:Kencana.2012).5.



legal aid for the poor for free (pro bono) with the assistance of legal counsel, namely advocates to obtain justice.

Discussion

1. Litigating with the assistance of a Legal Representative

Resolving a problem can be done in litigation (in court) or non-litigation. And also, the settlement of the problem can be resolved alone or with the help of a lawyer. Settlement with a legal representative is an option for people who have not mastered the law itself. because basically it provides a guarantee to get legal assistance. Article 123 HIR states that if the litigants wish, each may be assisted or represented by a person who has been given a special power of attorney. What is meant by granting power of attorney is an agreement by which one person gives power (authority) to another person, who accepts it for and on behalf of conducting affairs. The person who has been granted the power of attorney performs legal acts "on behalf of" the person granting the power of attorney or he represents the person granting the power of attorney.⁵

The meaning of a special power of attorney explained by Yahya Harahap in his book, that article 1795 of the Civil Code states that the granting of power can be done specifically, namely regarding one or more specific interests. This form is the basis for granting power of attorney to act before the court to represent the interests of the authoriser as the principal party..⁶ In order to bring a case before the court, a special power of attorney is required. This special power of attorney refers to the requirement to name the party being sued and the case. This special power of attorney is also granted to advocates to represent (in civil cases) or accompany (in criminal cases) the party authorising them in a case, both inside and outside the court..⁷

Bambang Sugeng and Sujayadi explained that the granting of power of attorney has legal consequences for both the grantor and the grantee. In more detail, it is explained

⁵ Syamsul Arifin, *Analisis Yuridis Terhadap Pembatalan Putusan Pengadilan Agama Sumenep No:590/pdt.g/2013/PA.SMP Oleh Pengadilan Tinggi Agama Surabaya No:469/Pdt.g/2013.PTA.SBY Tentang Cerai Talak*. (UIN Surabaya:Skripsi.2015).25.

⁶ M. Yahya Harahap, *Hukum Acara Perdata; Tentang Gugatan, Persidangan, Penyitaan, Pembuktian, dan Putusan Pengadilan*, Edisi Ke II, (Jakarta: Sinar Grafika,2017).7.

⁷ Lukman Santoso Az. *Anti Bingung Beracara Di Pengadilan Dan Membuat Surat Kuasa*, (Yogyakarta:Laksana.2017).42.



that the recipient of the power of attorney has obligations including: a) carry out and complete the affairs authorised to him properly, b) provide periodic reports to the power of attorney regarding the affairs authorised, c) be responsible for actions that he does outside the authorised or arising from his negligence, and d) be responsible for the implementation of affairs carried out by the person he appoints as a substitute power of attorney, while he is not authorised to do so.⁸ The grantor of a power of attorney has the obligation to :a) fulfil the obligations made by the recipient of the power of attorney in the context of the exercise of the power of attorney, b) provide reimbursement for all costs or losses incurred by the recipient of the power of attorney in the context of the exercise of the power of attorney, and c) pay the wages of the recipient of the power of attorney if a wage is agreed upon.

2. The Advocate's role in doing Pro Bono for the community.

An advocate, when based on the Latin-Indonesian dictionary, can be traced from Latin, namely advocates, which means, among others, one who helps someone in a case, a witness who mitigates. According to Viswandro, Maria Matilda and Bayu Saputra who refer to the English Language Dictionary, an advocate is a lawyer who speaks on behalf of someone or defends them in court. The definition shows that the scope of an advocate's work can include court-related work and work outside the court.⁹ Advocates come from the Dutch word *advocaat* which means a person whose profession is to provide legal services. These services are provided inside or outside the courtroom.¹⁰ In another definition, an advocate is a person who represents his client to take legal action based on a power of attorney granted for defence or prosecution at a trial in court or outside the court.¹¹

Under Law No. 18 of 2003 Article 1 paragraph 1 an advocate is a person whose profession is to provide legal services, both inside and outside the court who fulfils the

⁸ Bambang Sugeng dan Sujayadi, *Pengantar Hukum Acara Perdata Dan Contoh Dokumen Litigasi ed. Pertama.* (Jakarta:Kencana.2012).12-13.

⁹ Viswandro, Maria Matilda dan Bayu Saputra, *Mengenal Profesi Penegak Hukum.* (Yogyakarta:Medpress Digital.2015).103.

¹⁰ Ishaq, *Pendidikan Keadvokatan.* (Jakarta:Sinar Grafika.2010).2.

¹¹ Yudha Pandhu, *Klien dan Penasehat Hukum dalam Perspektif Masa Kini.* (Jakarta: Abadi Jaya.2001).11.



requirements under the provisions of this law. Paragraph 2 of Article 1 explains that what is meant by legal services are services provided by advocates in the form of providing legal consultation, legal assistance, exercising power of attorney, representing, accompanying, defending, and taking other legal actions for other legal interests.¹² From all of the above definitions of advocates, an advocate is a profession that provides legal services to clients to help litigate both in court and outside of court.

Advocacy is a profession. A profession is a permanent job for a long period of time based on special expertise obtained from certain educational results in accordance with the profession pursued, in pursuing this work carried out with full responsibility whose purpose is to earn income. People who do a profession are called professionals.¹³ not everyone can become an advocate, but must follow special education and certain requirements. Advocates are included in the category of legal professions, in addition to doctors, architects, accountants, and so on. The legal profession is defined as a job that is done professionally and related to the law. Where in obtaining a licence to carry out the legal profession, you must take special education in accordance with the major or concentration of the legal profession of interest.¹⁴

Aradila Caesar Ifmaini Idris et al by referring to The Law Dictionary provide an understanding that pro bono means services provided free of charge to protect the public interest. Definitions in various countries can differ from one another but still focus on legal aid services provided to disadvantaged and marginalised groups where these groups are difficult to obtain legal aid..¹⁵ Legal aid is the service of providing legal assistance by acting either as a defender of a person involved in a criminal case or as a lawyer in a civil or state business case before the court and or providing legal advice outside the court.¹⁶ In English literacy, the term of legal aid is known as legal aid or legal assistance. The term legal aid is usually used to indicate the notion of legal aid in the narrow sense of

¹² Salinan Undang-undang Nomor 18 Tahun 2003 tentang Advokat.

¹³ Serlika Aprita, *Etika Profesi Hukum*. (Bandung: PT. Refika Aditama. 2020). 13.

¹⁴ Aprita, *Etika*... 15.

¹⁵ Aradila Caesar Ifmaini Idris. Pro Bono: Prinsip Dan Praktik Di Indonesia. (Depok: Badan Penerbit Fakultas Hukum Universitas Indonesia (BPFHUI)..1. <http://mappifhui.org/wp-content/uploads/2019/06/Buku-Pro-Bono.pdf>.

¹⁶ Imam Mahdi, dkk, *Pemberian Bantuan Hukum Terhadap Masyarakat Miskin Studi Pada LKBH IAIN Bengkulu*, (Bengkulu: CV. Zigie Utama. 2019). 33.



providing legal services to a person involved in a case free of charge or pro bono, especially for those who are unable or poor..¹⁷

The state of Indonesia is based on the rule of law. Based on the 1945 Constitution. Placing the law as a guideline for living the life of the nation and state, the principle of equality before the law is something that must be implemented. Article 28 D paragraph (1) of the 1945 Constitution explains that "Everyone has the right to recognition, guarantees, protection, and certainty of a just law and equal treatment before the law". This article has provided fair recognition, guarantees, protection and legal certainty for everyone regardless of ethnicity, religion or station in life. Including people who are unable, to get access to justice so that their rights to recognition, guarantees, protection and certainty of a just law and equal treatment before the law can be properly realised..¹⁸

The provision of legal aid is the duty and responsibility of the state and is a constitutional right of every citizen. Without legal aid, the constitutional rights of citizens to obtain justice will be very difficult to fulfil, even justice which is the purpose of law will also not be easily enforced.¹⁹ The legal aid is a breath of fresh air for justice seekers who are economically disadvantaged.

The legal basis for providing free legal aid for the poor is as follows:²⁰

- a) The 1945 Constitution
- b) Law No. 18 of 2003 on Advocates
- c) Government Regulation No. 83 of 2008 on Requirements and Procedures for Providing Free Legal Aid
- d) Law No. 16 of 2011 on Legal Aid
- e) Supreme Court Regulation No. 1 of 2014 on Guidelines for the Provision of Legal Services for the Poor in Court
- f) Minister of Law and Human Rights Regulation No. 3 of 2021 concerning paralegals in providing legal aid

¹⁷ La Gurusi. "Analisis Hukum Pelaksanaan Peran Advokat Dalam Pemberian Bantuan Hukum Secara Cuma-Cuma." *Jurnal Hukum Volkgeist* 1(1) 2019: 39. DOI.10.35326/volkgeist.v1i1.80

¹⁸ Mahdi, dkk, *Pemberian...*48.

¹⁹ Budi Sastra Panjaitan, *Dari Advokat Untuk Keadilan Sosial*, (Yogyakarta:Deepublish.2021).7

²⁰ Lukman Santoso, *Taktis Pendampingan Hukum Dari Layanan Administrasi Hingga Advokasi*, (Yogyakarta: Q-Media.2021).17-18.



Referring to Yahman and Nurtin Tarigan, explaining the position of advocates as a noble profession or better known as officium nobile, advocates based on Law Number 18 of 2003 concerning advocates, also have an obligation to carry out legal aid for the poor. Ideally, legal aid is the social responsibility of advocates. Therefore, advocates are obliged to allocate their time and resources to the poor who need free or pro bono legal aid.²¹ This is consistent with the provisions of Article 34 of the 1945 Constitution which states that the poor are the responsibility of the state. Moreover, the principle of equality before the law and the right to be defended by an advocate are human rights that need to be guaranteed in order to achieve the alleviation of Indonesian society from poverty, especially in the field of law..²²

Based on Abdul Salam in his book, the obligation of advocates to defend and provide legal assistance for poor people or groups is in line with the principles of justice for all and equality before the law and the right to be accompanied by an advocate without exception. Defence for them is needed in an atmosphere of a criminal law system that has not yet reached the point of integration (integrated criminal justice system). In addition, it is important to apply due process of law (fair legal process) that takes into account the rights of the suspect or defendant. Abdul Salam further explained that the importance of the principle of due process of law in realising the principle of justice for all, legal aid is an absolute right or inherent human right in every individual human being. So advocates are the most instrumental both from competence and authority in carrying out these legal functions.²³

Frans Hendra Winata explained the obligation of advocates to provide legal aid to the poor in accordance with the roles and functions of advocates. The roles and functions of the advocate include:²⁴

- 1) the guardian of constitution and human rights
- 2) to fight for human rights in the Indonesian rule of law,
- 3) to implement the code of ethics of Indonesian advocates,

²¹ Yahman dan Nurtin Tarigan, *Peran Advokat Dalam Sistem Hukum Nasional*.(Jakarta:Kencana.2019).7.

²² Yahman, *Peran...*41.

²³ Abdul Salam, *Advokat Mandiri Dan Keadilan*, (Surabaya :Jakad Media Publishing.2022).131.

²⁴ Frans H Winarta, *Suara Rakyat Hukum Tertinggi*. (Jakarta: Penerbit Buku Kompas.2009).18-20.



- 4) to uphold the advocate oath in order to uphold the law, justice and truth
- 5) to uphold and prioritise idealism and morality
- 6) to uphold the image of the advocate profession as an honourable profession,
- 7) to protect and maintain the independence, freedom, degree and dignity of advocates
- 8) to maintain and improve the quality of advocate services to the community,
- 9) to handle cases in accordance with the advocate code of ethics,
- 10) to prevent misuse of expertise and knowledge that is detrimental to society,
- 11) to maintain the advocate's personality,
- 12) to maintain good relations with clients and peers,
- 13) to maintain the unity of advocates in accordance with the aims and objectives of the advocate organisation.
- 14) to providing legal services,
- 15) to give legal advice
- 16) providing legal consultation,
- 17) providing legal opinion,
- 18) drafting contracts (legal drafting),
- 19) providing legal information,
- 20) defending the interests of clients (litigation) and representing clients before the court (legal representation),
- 21) provide legal assistance free of charge to the weak and incapable (implementing pro bono public).

The explanation of the implementation of free legal aid is regulated in Law Number 18 Year 2003 concerning advocates. Article 22 paragraph 1 states that advocates are obliged to provide legal aid free of charge to poor justice seekers. Paragraph 2 explains that provisions regarding the requirements and procedures for providing free legal aid as referred to in paragraph (1) shall be further regulated by government regulation. In Law Number 16 of 2011 article 14 explains the requirements and procedures for providing



legal aid. Applicants for legal aid to obtain legal aid must fulfil several conditions, including:²⁵

- a. Submit a written application containing at least the identity of the applicant and a brief description of the subject matter for which legal aid is requested.
- b. Submit documents relating to the case
- c. Attach a certificate of poverty from the lurah, village head, or equivalent official at the place of residence of the applicant for legal aid.

From the content of the above article, the way to get free legal aid for the poor is very easy and open. And the existence of this law provides guarantees to the poor to fight for justice. Government Regulation No. 83/2008 also explains how to obtain free legal aid from an advocate. This is explained in articles 4, 5 and 6. Article 4 paragraph 1 reads:

“To receive free legal aid, a justice seeker submits a written request addressed directly to an advocate or through an advocate organisation or through a legal aid institution.”.

According to this paragraph, to obtain assistance, applicants for assistance, whether individuals or groups, can directly write letters and address them to advocates who wish to become legal aid providers. Or the justice seeker does not go directly to the advocate, but sends a letter to the advocate organisation in the justice seeker's area. Justice seekers can apply for assistance to legal aid organisation, which will then appoint an advocate who will provide legal aid.

Article 4 paragraph 2 of Government Regulation No. 83 Year 2008 explains: “Application as referred to in paragraph (1)

at least contains: (a) the name, address and occupation of the applicant and (b) a brief description of the subject matter for which legal aid is requested.”.

Based on the above explanation, in submitting an application for legal aid to an advocate, a letter of application is made by explaining the identity of the parties. The identity at least explains the name of the applicant, the address of the applicant and the occupation of the applicant for legal aid. In addition to the identity of the applicant, the application letter also briefly explains the matter or issue for which legal aid will be

²⁵ Salinan Undang-Undang Nomor 16 Tahun 2011 pdf.



requested. Then after the application letter is made, it is attached with a certificate of incapacity issued by an authorised official. This is stated in Article 4 paragraph 3:

“in the application as referred to in paragraph (2), the justice seeker must attach a statement of indigence made by an authorised official.”

The article above describes the making of a petition where the justice seeker is able to make the petition himself/herself. If the justice seeker is unable to make a written request, then the justice seeker can submit the request to the advocate orally. Article 6 paragraphs 1-3 explain that applicants who are unable to prepare an oral application letter. The oral request is put in writing and signed by the applicant and the advocate or officer of the advocate organisation or legal aid institution assigned to it.

Conclusion

Pro bono is the process of litigating in court at no cost by being accompanied by a legal advocate. Pro bono or free legal aid implementation refers to Government Regulation No. 83 of 2008 on Requirements and Procedures for Providing Legal Aid Only and Law No. 16 of 2011 on Legal Aid.

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