

The Role Of Advocacy In The Implementation Of Probono For The Poor Community Of Lampung Province On The Perspective Of National Law Development

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Abstract: An advocate is a very noble profession so that it has a significant role in law enforcement in Indonesia, occupies a position in legal issues that are professional and professional in order to assist judges in determining the sentence that will be given. The provision of legal aid is one of the government's steps to guarantee constitutional rights for every citizen in obtaining a sense of justice (access to justice) and equality before the law (equality before the law). Legal aid is the most important tool in the Criminal Justice System because there is protection of Human Rights (HAM) for every Indonesian citizen, including the right to obtain legal assistance. The rights obtained in the legal aid provided are the most important rights inherent in every Indonesian citizen. In the criminal law process in particular, the defendants cannot defend themselves in court. So in this case, the government has made a regulation regarding legal aid that is provided free of charge (Probono) and (Prodeo). pro deo is a series of legal action activities from probono, where all costs in each prodeo legal activity are borne directly by the state based on the provisions of the Budget of the Supreme Court of the Republic of Indonesia. The advocate profession as law enforcement has the duty to provide legal counseling for legal aid recipients who still do not understand all legal regulations. Starting from cases that are resolved, advocates must devote themselves to the community so that they demand to do work in the field of social and community activities. So that an advocate or legal advisor gives a lot of time, gives energy, and thoughts if you want to be assisted in solving the required case for free (Prodeo).

Keywords: Legal Aid, Probono, and Prodeo.

1. Introduction

The legal system in Indonesia states that the 1945 Constitution has guaranteed equality before the law. Then it was reaffirmed in Article 27 paragraph (1) of the 1945 Constitution "that every Indonesian citizen has equality or equal position before the law and the government without any exceptions. Several efforts have been made to realize justice or equality before the law, namely by providing legal assistance for every Indonesian citizen who has legal problems. According to Soejono Soekanto, in providing legal assistance by legal institutions or

community organizations that provide legal aid services for poor people who need assistance in order to realize their rights and guarantee legal protection.¹

The most basic thing to become a unified whole in a state of law requires recognition of the principle of equality before the law (equality before the law). In this principle it means that Indonesian citizens have the same rights to get a sense of justice without having to look at their background. The Indonesian state, in its constitution, gives recognition to the principle as stated in Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia, which states that every Indonesian citizen has the right or recognition, gets guarantees, provides protection, and provides legal certainty with a sense of justice and equality upfront. law. This rule means that every citizen should be treated equally before the law without having to discriminate against ethnicity, race, and skin color in other words without any exceptions.²

In his position as an advocate or legal advisor is a very noble profession (*officium nobile*), then in providing legal assistance it has become an obligation that is attached directly to every advocate. The provision of legal aid services by an advocate or legal advisor is not only assessed for obligations but as a form of contribution and the role of social responsibility (social contribution and social liability) in accordance with its role as an official advocate or legal advisor. The advocate profession as law enforcement has the duty to provide legal counseling for legal aid recipients who still do not understand all legal regulations. Starting from cases that are resolved, advocates must devote themselves to the community so that they demand to do work in the field of social and community activities. So that an advocate or legal advisor gives a lot of time, gives energy, and thoughts if you want to be assisted in solving the required case for free (*Prodeo*).

The provision of guarantees in constitutional rights has still not been considered thoroughly so that Law Number 16 of 2011 concerning Legal Aid is formed as a legal umbrella to provide guarantees for every Indonesian citizen, especially individuals or groups of poor people in order to protect justice and guarantee equality before the law.³ Then, in Law Number 18 of 2003 concerning Advocates, it is stated that in carrying out their obligations an advocate or legal advisor is obliged to assist clients by providing legal assistance to the poor for free or free (*Probono*) with the provisions stipulated in the Act. If an advocate

¹ Widyadharma, IGN. Ridwan. (2010). *Profesional Hukum Dalam Pemberian Bantuan Hukum*. Semarang : Badan Penerbit Universitas Diponegoro. p.26.

² Sihombing, Eka N.A.M. (2019). *Eksistensi Paralegal Dalam Pemberian Bantuan Hukum Bagi Masyarakat Miskin*. Jurnal Ilmiah Penegakan Hukum, 6(1). p.71.

³ Saefudin, Yusuf. (2015). *Implementasi Pemberian Bantuan Hukum Bagi Masyarakat Miskin Berdasarkan Undang-Undang Nomor 16 Tahun 2011 Tentang Bantuan Hukum*. Jurnal Idea hukum, 1(1), p.65-66.

or legal advisor does not carry out his obligations to provide legal assistance to the poor, then an advocate or legal advisor can be given sanctions as stipulated in the applicable provisions.⁴

The role of advocates in resolving criminal and civil cases is an effort for the benefit of law enforcement in the community through courts or outside the court to act as legal advisors. An advocate or legal advisor is not a civil servant, or an employee in an agency, but a private worker who fights for the rights of a suspect or defendant. Advocates or legal advisors do not receive salaries from the government, so in this case the honorarium as compensation for services that have been provided comes from the recipient of legal aid services (clients) that are incidental. And an advocate is not allowed to receive a doubled profit honorarium. An activity in the profession of an advocate is not allowed to prioritize material interests but rather loyalty to devoting himself as a law enforcer.⁵

In the legal system in our country there is a guarantee of equality before the law (equality before the law) which is conceptually stated in the 1945 Constitution article 27 paragraph 1 which reads: "All citizens have the same position in law and government without there are exceptions". Therefore, for everyone who needs legal aid (legal aid), besides being a human right, it is also a movement guaranteed by the constitution. In addition, it is also a very important principle that a person affected by a case has the right to obtain legal assistance (the principle of legal assistance), so this is where the position of the Advocate profession in judicial power in the context of providing legal assistance to the community has a very important meaning.

The advocate profession as law enforcement has the duty to provide legal counseling for legal aid recipients who still do not understand all legal regulations. Starting from cases that are resolved, advocates must devote themselves to the community so that they demand to do work in the field of social and community activities. So that an advocate or legal advisor gives a lot of time, gives energy, and thoughts if you want to be assisted in solving the required case for free (Prodeo). Even though in practice an advocate settles his case only as the recipient of the power of attorney from a defendant or suspect (as an attorney) in order to assist the settlement, provide a defense related to his rights both in court and outside the court, in granting the power of attorney given is only trust by the suspect or defendant to a person. advocate.

⁴ Arifin, Ridwan, (2018). *Penerapan Bantuan Hukum Bagi Masyarakat Kurang Mampu di Indonesia. Diversi Jurnal Hukum*, 4(2), p.221.

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Wlas, Lasdin. (1989). *Cakrawala Advokat Indonesia*. Yogyakarta : Liberty. p.7.

The advocate profession as law enforcement has the duty to provide legal counseling for legal aid recipients who still do not understand all legal regulations. Starting from cases that are resolved, advocates must devote themselves to the community so that they demand to do work in the field of social and community activities. So that an advocate or legal advisor gives a lot of time, gives energy, and thoughts if you want to be assisted in solving the required case for free (Prodeo).

Community organizations that provide legal aid services or legal aid institutions are an important principle contained in the Criminal Procedure Code (KUHAP), namely the accusatoir principle which means that the defendant in the trial process is not an object, but only as a subject. The accusatoir principle is an examination process that is open, meaning that the examination can be attended or witnessed by the examination process directly. A defendant has the same rights as a public prosecutor, while a judge is one level above the two in order to settle criminal cases according to the applicable criminal law.

Problems regarding the provision of legal aid for people who have an upper-class economy can directly appoint legal aid agencies or advocates if they need a defense for their interests, while for the lower class people do not have the material capabilities so they cannot appoint legal aid agencies or advocates like the upper class people do. materially capable. By providing legal aid guarantees, especially for the lower class or underprivileged communities, it is the state's obligation. Article 27 paragraph (1) of the 1945 Constitution states that "every Indonesian citizen has an equal position before the law and the government is obliged to protect his rights without any exceptions". Then it is also stated in Article 34 paragraph (11) of the 1945 Constitution which states that "people who fall into the category of being unable or poor and neglected children are cared for by the State". So in the future, it can be interpreted that the state must provide accountability by providing protection guarantees and providing recognition of the rights of the poor or disadvantaged.⁶

The provision of free or free legal aid services (Prodeo) to the community indirectly illustrates as if there is a legal awareness of the community that legal empowerment for the underprivileged or poor, in particular, must be highly considered by the social situation and conditions. Legal aid provided must have a high legal standing and is quite important for the criminal justice system, civil and state administration in Indonesia. In this context, it is directly related to the rights of a defendant or suspect in order to resolve the issue of these rights. Therefore the service of providing legal aid is carried out by legal experts and

⁶ Winarta, Frans Hendra. (2007). *Hak Konstitusional Masyarakat Kurang Mampu atau miskin guna memperoleh Bantuan Hukum dalam Rangka Pembangunan Hukum Nasional*. Semarang : Universitas Padjajaran. p.79.

someone who has experience in carrying out professional activities. Legal assistance is carried out by a defendant or suspect whose orientation is towards social values or nobility, namely on the humanitarian aspect in order to make efforts to protect their rights as human beings in providing a prosperous and just life.⁷

Based on the above background, the authors are interested in researching the role of advocates in implementing probono against the poor in Lampung province from the perspective of national law development, with the scope of the problems, namely:

- a. What is the role of advocates in implementing probono for the poor in Lampung province from the perspective of national law development?
- b. How is the prodeo implementation in the Class IA Tanjung Karang District Court?

2. Method

The research method used in this study is a normative research method, namely legal research that puts the law as a building norm system, namely regarding legal principles, norms, rules of legislation, court decisions, agreements and doctrines.⁸ The research was conducted by examining legal issues using existing library materials.⁹

This study will analyze the role of advocates in the implementation of probono against the poor in Lampung province from the perspective of national law development and the implementation of prodeo in the Class IA Tanjung Karang District Court.

3. The Role Of Advocate In The Implementation Of Probono For The Poor Community Of Lampung Province On The Perspective Of National Law Development

An advocate is a person who has a profession to provide legal services both inside and outside the Court.¹⁰ In carrying out its role, advocates are required to be able to provide free legal aid (Probono) to people who are classified as underprivileged by providing the same treatment as the provision of legal aid that makes payments. The provision of legal aid to people who are classified as

⁷ Setyowati, Hering. (2018.) *Peran Advokat Dalam Memberikan Bantuan Hukum Kepada Masyarakat Dalam Perspektif Hak Asasi Manusia*. Jurnal Universitas Negeri Semarang, 2(2), p.89.

⁸ ND, Mukti Fajar & Achmad, Yulianto. (2017). *Dualisme Penelitian Hukum Normatif dan Empiris*. Yogyakarta : Pustaka Pelajar. p. 34.

⁹ Soekanto, Soerjono. 2009. *Penelitian Hukum Normatif Suatu Tinjauan Singkat*. Jakarta : Raja Grafindo Persada. p.13.

¹⁰ Taufik, Ade Irawan. (2013). *Sinergisitas Peran dan Tanggungjawab Advokat dan Negara Dalam Pemberian Bantuan Hukum Cuma-Cuma*. Jurnal Rechts Vinding : Media Pembinaan hukum, 2(1), p.59.

underprivileged can only be done by advocates who already have a permit or are registered with the High Court in the jurisdiction where the jurisdiction is. In making efforts to provide legal aid, it can be through an individual lawyer or an advocate in the Legal Aid Institute in their respective areas.¹¹

Advocates in carrying out probono in communities who are not able to realize the development of national law as a whole, have a role, one of which is to fight for human rights within the jurisdiction of Indonesia by implementing based on the code of ethics for advocates that have been regulated in law. The implementation of legal aid that is provided free of charge (probono) by not receiving any payment by an advocate, is obliged to provide legal consultation, represent or exercise on behalf of the power as well as assist and defend to carry out legal actions for the benefit of the attorney who is classified as incapable. With this, it is hoped that the people who are within the jurisdiction of Indonesia will feel helped by the implementation of the provision of legal aid made by the government. So that the objectives of the development of national law can be evenly and comprehensively.

In fulfilling the obligation of an advocate's role to provide defense and legal assistance for the poor or underprivileged, it must be based on the principle of justice for all or equality before the law and have the right to provide assistance to legal aid recipients without discrimination. The provision of legal aid in the form of a defense for the underprivileged or poor requires a criminal law system so that it can achieve an integrated criminal justice system. Both the suspect and the defendant felt tortured because they were treated arbitrarily, thus hampering their rights to be protected by an advocate. Law enforcement officers have not fully implemented the principle of due process of law (implementation in a fair rule of law) by looking at their rights.¹²

Considering the urgent need to apply the principle of due process of law and the principle of equality before the law (equality before the law) in order to realize the principle of justice for all in question, the provision in the form of legal assistance is a human right that is owned by every citizen of Indonesia and throughout the world. so that it is the advocates who really have a role ranging from skills to authority for the implementation of the objectives of the legal aid provided. By looking at the role of advocates mentioned above, the state should give an obligation to advocates to apply legal aid to people who are poor or fall into the category of people who are economically disadvantaged.¹³

¹¹ *Ibid.* p. 40.

¹² Sutrisni, Ni Komang. (2015). *Tanggungjawab Negara dan Peranan Advokat Dalam Pemberian Bantuan Hukum Terhadap Masyarakat Tidak Mampu*. Jurnal Advokasi, 5(2), p.163.

¹³ *Ibid.* p. 165.

Implementation in terms of providing legal aid, there are conditions that must be met including attaching a certificate of incapacity by the suspect or defendant who has been approved by the competent authority based on the provisions of the regulations, or village officials in this case the sub-district head, and if there are obstacles in the form of difficulties, you can ask some questions that are known to the court and you can also attach a certificate issued by the head of the local district court explaining that the suspect or defendant is economically and financially incapable. An advocate in providing legal assistance is determined directly by the chairman of the local district court. These provisions are then stated in a letter of determination by the chairman of the panel of judges in the form of stipulations and giving to advocates who are deemed capable of providing legal services for free or free of charge (Probono).¹⁴

The provision of legal aid which is carried out free of charge or free (Probono) is given with the aim of being able to provide benefits to all Indonesian people, so that in carrying out it requires equal treatment by channeling it through law enforcement agencies such as advocate organizations, prosecutors, or courts. In providing legal assistance, it is not only helping the needs of the community but also in terms of providing assistance by an advocate in every legal activity, but rather providing legal understanding to the community and being able to analyze legal products.¹⁵

In Article 2 of Law Number 16 of 2011 which contains legal aid, it is stated that the application for providing legal aid is carried out by prioritizing several principles stated in the legislation, namely the principle of justice, the principle of equality before the law, the principle of openness, Principles of Efficiency, Principles of Effectiveness, and Principles of Accountability.

There are several forms of providing legal assistance provided by an advocate who is given directly to a defendant or suspect who is undergoing a legal process that is included in the category of people who are unable or poor, namely the threat of imprisonment for more than 5 (five) years or more, the death penalty, and The criminal penalty is less than 5 (five) years.

The interesting thing in the implementation of the probono is the obligation of advocates to provide free assistance, this is in accordance with the rules in Article 11 of PERADI Regulation which states that advocates are recommended to be able to provide free legal aid for a minimum of fifty hours per year. This statement means that an advocate is not obliged to provide legal assistance on a

¹⁴ Lasmadi, Sahuri. (2014). *Peran Advokat Dalam Pendampingan Hukum*. Jurnal Inovatif 7(2), p.59.

¹⁵ *Ibid.* p.68.

pro bono basis. This is one of the shortcomings in the implementation of probono in advocate organizations in Lampung Province.

The PERADI Legal Aid Center in Lampung Province aims to provide legal assistance, arouse and raise awareness for advocates in providing probono services in Lampung Province. Since the formation of PBH Peradi, it is easy for justice seekers in Lampung Province who have no money or come from a low economy to get information and legal assistance for the problems they are suffering from.

The positive side that can be taken from the existence of the PERADI Legal Aid Center is the formulation of Standard Operating Procedures (SOP) in the implementation of probono, as regulated in PP Probono. This SOP contains a guide on receiving and implementing requests for legal assistance from the poor.

The existence of legal assistance on a pro bono basis is one of the efforts in building the province of Lampung to be more advanced and freeing the poor from legal cases for free. In addition, the existence of probono legal assistance provided by advocates in Lampung Province can open insight into the law for the poor.

4. Prodeo Implementation At The Class IA State Court, Tanjung Karang

A suspect or defendant or plaintiff/respondent is deemed necessary to be given legal assistance in the form of assistance by an advocate to settle his case at the Tanjung Karang District Court Class IA. Because a defendant or suspect will face the prosecutor and the police before the panel of judges, so that it is considered unbalanced.

Based on its understanding, pro deo is a series of legal action activities from probono, where all costs in each prodeo legal activity are borne directly by the state based on the provisions of the Budget of the Supreme Court of the Republic of Indonesia. In carrying out a series of prodeo legal activities, a defendant or suspect must be declared truly poor or economically and financially incapable. So in order to prove a suspect or defendant is unable to provide supporting documents as stated in the Regulation of the Supreme Court of the Republic of Indonesia Number 1 of 2014:

1. To declare a defendant or suspect incapacitated, he must provide a Certificate of Disability (SKTM) made by an official in the local area.
2. Attach other supporting documents such as population data of the poor that have been legalized by the authorized official.

In all processes of prodeo legal activities, filing of lawsuits/case requests for free or free of charge for suspects or defendants who are incapable or poor, it has previously been mentioned in Article 7 paragraph (2) of the Regulation of the Supreme Court of the Republic of Indonesia Number 1 of 2014 concerning Guidelines for Providing Assistance Law for the Poor in Courts.

The stages of the process of providing legal assistance for the waiver of court fees free of charge or free of charge to suspects or defendants who cannot afford:

1. In providing free or free legal aid (Prodeo) to a suspect or defendant who is incapable or economically or financially poor at the Tanjung Karang District Court Class IA, it can be proven by attaching a Certificate of Incapacity (SKTM) which was made and ratified. by a local official stating that the suspect or defendant is truly incapacitated or a Certificate of Social Benefits, namely the Poor Rice Card (Raskin), the Family Hope Program (PKH) and the Poor Family Card (KKM) and other supporting documents or can attach a statement letter of incapacity issued by the Head of the Tanjung Karang District Court Class IA.
2. The provision of legal aid free of charge or free (Prodeo) is carried out by several procedures, namely:
 - a) The submission of an application must be submitted in writing by the suspect or defendant as well as the Plaintiffs or Petitioners against the Head of the Tanjung Karang District Court Class IA through the clerk who provides attachments in the form of other supporting documents.
 - b) In the process of submitting an application by the plaintiffs or the respondent, the waiver of civil court fees is submitted before there is an answer to the claim of the respondent or the plaintiff.
 - c) If the files are complete and meet the requirements, then the head of the Tanjung Karang District Court Class I A provides a stipulation for the provision of free service for the case.
 - d) If the application is free of charge for a new case or for the first time at the level of appeal, cassation, or PK, then: the application is submitted to the Head of the Tanjungkarang District Court Class IA with a period of 14 (fourteen) days. Or the submission of an application at the PK level, then the grace period is as stated in the law on PK.

Submission of an application for free or free court fees (Prodeo) in civil cases can be in the form of divorce cases, joint property claims, child guardianship, inheritance lawsuits and marriage certificates and so on. While criminal cases of murder, theft and extortion and so on. The provision of legal assistance through legal institutions or advocates seeking justice and truth is material (materiale waarheids) because it is a principle contained in criminal law in Indonesia that the truth or justice sought is material and objective. Which means that in handling problems that occur in individuals, criminal acts are not only seen in

juridical terms but also seen from the social aspect of a defendant or suspect who has a function to make it easier for law enforcers to reveal and understand a criminal act so that the punishment given by the panel of judges to a suspect or defendant can be objective.

As stated in Article 50 of the Criminal Procedure Code, a suspect or defendant has the right to obtain an investigator's examination so that he can then advance to the stage of the public prosecutor, has the right so that the case can be brought to court, and be tried in court. So in order to prepare a series of defenses, a defendant or suspect has the right to be notified using correct and correct Indonesian language so that it can be easily understood by him about all allegations or those charged with both at the level of the examination process by investigators, charges or charges by the public prosecutor and court proceedings by a panel of judges.

With the implementation of the provision of free legal aid (Prodeo) at the Tanjung Karang District Court Class IA, it is expected to be able to realize the objectives and functions of the implementation, namely: In order to make it easier for law enforcers to uncover problems or cases in order to create truth and punishment provided by the panel of judges can be more objective, Become a means as a guarantor of the protection of human rights for the poor or poor, Carry out activities of providing free legal aid (Prodeo) for the poor or underprivileged, Can develop and improve understanding of the law for the community related to their rights as Indonesian citizens, and Carrying out improvements to laws and regulations that are needed by the community.

The Legal Aid Institute (LBH) is a forum for an organization that fights for the rights of defendants or suspects in order to protect human rights as citizens. Legal Aid Institutions (LBH) have functions in carrying out their roles, namely: Public service, providing social education, improving legal order, updating law, increasing employment opportunities, Practical training. In terms of providing legal aid, there are several types of legal aid that exist in Indonesia, namely: conventional legal aid which is the professional responsibility for advocates to provide legal assistance by providing assistance and defense to the Court, providing constitutional legal aid that is oriented towards realizing the state. law based on the principle of human rights and protect democracy so that it is maintained, and the provision of structural legal assistance which is an act to provide economic, social, political and cultural liberation to the community.

5. Conclusion

In carrying out the Role of Advocates for the Implementation of Probono Against Poor Communities in Lampung Province In the Perspective of National Law Development that advocates are required to be able to provide free legal aid (Probono) to people who are classified as poor by providing the same

treatment as the provision of legal aid that makes payments . The provision of legal aid to people who are classified as underprivileged can only be done by advocates who already have a permit or are registered with the High Court in the jurisdiction where the jurisdiction is. In making efforts to provide legal aid, it can be through an individual lawyer or an advocate in the Legal Aid Institute in their respective areas. The implementation of legal aid that is provided free of charge (probono) by not receiving any payment by an advocate, is obliged to provide legal consultation, represent or exercise on behalf of the power as well as assist and defend to carry out legal actions for the benefit of the attorney who is classified as incapable. With this, it is hoped that the people who are within the jurisdiction of Indonesia will feel helped by the implementation of the provision of legal aid made by the government. So that the objectives of the development of national law can be evenly and comprehensively.

Implementation of Prodeo In the Class Ia Tanjung Karang District Court, a defendant or suspect must be declared truly poor or economically and financially incapable. So in order to prove a suspect or defendant is unable to provide supporting documents as stated in the Regulation of the Supreme Court of the Republic of Indonesia Number 1 of 2014: in the local area and Attach other supporting documents such as population data of the poor that have been legalized by the authorized official. Submission of an application for free or free court fees (Prodeo) in civil cases can be in the form of divorce cases, joint property claims, child guardianship, inheritance lawsuits and marriage certificates and so on. While criminal cases of murder, theft and extortion and so on. The provision of legal assistance through legal institutions or advocates seeking justice and truth is material (materiale waarheids) because it is a principle contained in criminal law in Indonesia that the truth or justice sought is material and objective.

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