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Fostering Constitutional Equality: Unveiling the Implementation of Legal Aid for Underprivileged Citizens in Karimun Regency

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ABSTRACT

The provision of legal aid is a manifestation of access to law and justice for the underprivileged, provided by the state under the mandate of the Constitution of the Republic of Indonesia. However, in Karimun Regency, there is a significant disparity between the number of underprivileged people and the availability of legal aid organizations. This study aims to investigate two key aspects: firstly, the application of legal aid for the underprivileged from the perspective of constitutional rights of Karimun Regency citizens; and secondly, strategies to optimize the provision of legal aid for the underprivileged in Karimun Regency. The research employs a normative-empirical legal research approach, utilizing legal, conceptual, and case analysis. Primary and secondary data sources are utilized. The findings reveal that the implementation of legal aid for the underprivileged in Karimun Regency has not been optimal due to various problems and factors, including the absence of regional regulations specifically addressing legal aid for the underprivileged, suboptimal performance of legal aid providers, imbalanced ratio of legal aid providers to recipients, and lack of legal knowledge and awareness among the underprivileged. To optimize the application of legal aid in Karimun Regency, several stages are suggested, such as immediate ratification of regional regulations addressing legal aid, enhanced supervision and strict sanctions for legal aid providers, and the verification of additional Legal Aid Organizations (OBH) in Karimun Regency by the Ministry of Law and Human Rights.

Keywords: *Legal Aid, Underprivileged People, Constitutional Rights of Citizens*



INTRODUCTION

Equality before the law is a legal principle that means every citizen has an equal position before the law¹. According to this principal Indonesia is a law-abiding country and the logical consequence of this law is that everyone has the right to be treated equally before the law including the underprivileged. Section 27(1) of the Constitution of 1945 provides for this.

Except Article 34 (1) of the Constitution of 1945 the provisions of law relating to underprivileged and/or disadvantaged regions shall take care of underprivileged and abandoned children. The designation is designed not only to meet the needs of food and clothing but also to provide equal access and justice to all before the law.²

With the necessity of equality before the law to the underprivileged, this is the basis for the birth of a regulation for justice seekers, especially the underprivileged, to get justice and access to law and justice through Law Number 16 of 2011 concerning Legal Aid (Law on Legal Aid). The substance of the Legal Aid Law requires law enforcers, especially advocates as legal aid providers, to provide free legal assistance to the underprivileged in Indonesia, moreover this obligation is a normative obligation for advocates as an *officium nobile* (noble profession) and mandated by Law Number 18 of 2003 concerning Advocates (Law of Advocates) to provide defense for everyone when in trouble with the law. Regardless of individual background, race, ethnicity, political beliefs, social strata, economics and gender³ so that it is in line with one of the objectives of access to

¹ A.V. Diecy, 2007 Introduction to the Study of The Law of the Constitution, translation *Introduction to the Study of The Law of the Constitution*, translator Nurhadi, M.A Nusamedia : Bandung, p. 251. See also Ahmad Ulil Aedi and FX Adji Samekto, "Reconstruction of the Principle of *Equality Before The Law*, *Journal of Law Reform*, Vol. 8 No. 2 Year 2013, UNDIP Master Program: Semarang, p. 2

² Deborah L. Rhode, *Access to Justice*, Oxford University Press : New York, 2004, p.3

³ Frans Hendra Winarta, 2009, *Pro Bono Publico*, The Constitutional Right of the Poor to Legal Aid, *Gramedia : Jakarta*, pp.1-2, see also in Frans Hendra Winarta, 2011, *Legal Aid*

law and justice, namely the right to obtain legal assistance for the underprivileged .

Normatively, the context of legal assistance to the underprivileged is not only contained in the Legal Aid Law and the Advocates Law, but also regulated in Government Regulation Number 42 of 2013 concerning terms & procedures for providing legal aid & distributing funds and Regulation of the Indonesian Advocates Association Number 1 of 2010 concerning Guidelines for the Implementation of Free legal aid All of them have clearly regulated and mentioned all matters related to the provision of legal aid to the underprivileged .

Related to the focus of research in this study, namely in Karimun Regency (Riau Islands Province), data from the Central Bureau of Statistics of Karimun Regency shows that the development of the underprivileged population in Karimun Regency in terms of percentage has increased compared to the previous year. In March 2022, the number of underprivileged people in Karimun Regency reached 16.44 thousand people (6.87 percent), an increase of 0.16 thousand people compared to March 2021 conditions of 16.28 thousand people (6.85 percent).⁴

Based on this, if it is related to the number of verified legal aid organizations, the Ministry of Law & Human Rights is only 2 (two) legal aid organizations in the Karimun Regency area,⁵ and in addition, based on Article 11 of the Indonesian Advocates Association (PERADI) Regulation No. 1 of 2010 concerning Guidelines for the Implementation of Free Legal Aid Provision, states "Advocates are encouraged to provide free legal assistance for at least 50 hours annually" so that this provision explicitly indicates that an advocate is encouraged to provide legal assistance to the underprivileged .

in Indonesia, Right to Be Accompanied by Legal Counsel for All Citizens, *Elex Media Komputindo : Jakarta*, p. 101.

⁴<https://karimunkab.bps.go.id/pressrelease/2021/12/20/144/profil-kemiskinan-kabupaten-karimun-maret-2021.html> Retrieved March 3, 2023.

⁵ <https://bphn.go.id/layanan/bantuan-hukum/obh> Retrieved March 3, 2023.

There is a fundamental question related to the description above, namely whether the role of the state in this case is the local government and advocates in providing legal assistance to the underprivileged in Karimun Regency has run effectively and optimally, especially by looking at the reality of the increasing index of underprivileged people every year in Karimun Regency. Therefore, the author formulates several problems for assessment and research First, how is the application of citizens' constitutional rights for the underprivileged in a legal perspective in the Karimun Regency area? Second, how to optimize the provision of legal aid for the underprivileged in Karimun Regency? The results of this study and research can be a solution to optimize the provision of legal assistance to realize Equality before the law for the underprivileged in Karimun Regency.

This research is a type of normative-empirical legal research (applied law research).⁶ The approach used in this study is the statutory approach, conceptual approach, and case approach. The data sources used are primary data and secondary data. Primary data uses the selection of samples or informants by purposive sampling, namely: the Government (Legal Section of the Regional Secretariat of Karimun Regency), advocate organizations (PERADI), and recipients of legal aid. The location of this research was conducted in Karimun district. The secondary data is in the form of legal materials, journals, books, and scientific study results that support the focus of research. For all data sources, qualitative analysis is carried out⁷ which has descriptive analytical specifications⁸ to solve the identification of the problems that have been posed.

⁶ Abdulkadir Muhammad, *Law and Legal Research*, Bandung: Citra Aditya Bakti, 2004, p. 134

⁷ Pupu Saeful Rahmat, "Qualitative Research", *Journal of Equilibrium*, Vol. 5 No. 9 January-June 2009 Edition, Universitas Muhammadiyah Makassar : Makassar, pp. 1-2

⁸ Soerjono Soekanto, *Introduction to Legal Research* ,Jakarta: University of Indonesia, 1996, p. 9

APPLICATION OF LEGAL AID FOR THE UNDERPRIVILEGED (CONSTITUTIONAL PERSPECTIVE OF RIGHTS OF CITIZENS)

Legal aid is a legal service specifically provided to the underprivileged who need free defense, both outside and inside the court, criminally, civilly and administratively, from someone who understands the ins and outs of legal defense, legal principles and rules, and human rights.⁹

In essence, in the implementation of legal aid, there are several methods, namely: 1) Traditional legal aid is legal services provided to the underprivileged privately and passively using the formal legal system. 2) Constitutional legal aid for the underprivileged is an important element in establishing the rule of law promoting awareness of the rights of the underprivileged including respect for the law promoting human rights values and promoting the rule of law. broad purpose of promotion.¹⁰ 3) Structural legal support is an activity aimed at creating conditions for the implementation of laws that transform unequal structures into equal structures that ensure the rule of law and its implementation in the legal and political spheres. The concept of structural legal aid is closely related to structural poverty.¹¹ 4) responsive legal assistance¹² is provided to the underprivileged free of charge and covers all areas of law and human rights and without distinction the defense of both individual and collective cases and Services provided in responsive legal aid can

⁹ Frans Hendra Winarta, Op.Cit, p. 23

¹⁰ YLBHI, 2014, *Guide to Legal Aid in Indonesia*, Yayasan Obor Indonesia: Jakarta, p. 462

¹¹ Suradji, 2008, *Ethics and Enforcement of the Code of Ethics of the Legal Profession (Advocates)*, National Legal Development Agency Ministry of Law and Human Rights of the Republic of Indonesia : Jakarta, p. 77

¹² Frans Hendra Winarta, Op.Cit, p. 12

be in the form of legal counseling to the underprivileged so that there is public understanding / awareness of the law.

In addition, to measure the effectiveness of legal aid to the underprivileged, according to Soerjono Soekanto, the effectiveness or failure of a law is determined by 5 (five) factors, namely:¹³

1. Legal Factors;
2. Law Enforcement Factors;
3. Legal Facilities and Facilities Factors;
4. Community Factors; and
5. Cultural factors as a result of human creation, taste, and charities in social life.

These five factors are the basis for measuring the effectiveness of legal aid to the underprivileged in Karimun Regency. Based on the results of research conducted by the author, there are problems that hinder the implementation of legal aid for the underprivileged in the Karimun Regency area, namely:

- 1) There is no regulation related to legal assistance to the underprivileged in the form of regional regulations

The birth of the Law on Legal Aid burdened the central government with the responsibility to allocate funds for administering legal aid in the State Revenue and Expenditure Budget (APBN). The fund is allocated in the budget of the Ministry of Law and Human Rights of the Republic of Indonesia which is responsible for law and human rights-related activities. However, the framers of the legal aid law realized that the funds allocated in the State Budget would not be able to meet all legal aid requests in all regions. For this reason, through the provisions of Article 19 of the legal aid law, it provides space for regions to allocate funds for the implementation of

¹³ Soerjono Soekanto, *Factors Affecting Law Enforcement*, PT. Raja Grafindo Persada, Jakarta, 2007, p. 5

legal aid in the regional budget (APBD). The legal aid Law does want to impose an obligation for each region to allocate funds for the implementation of legal aid, because in the provisions of Article 19 paragraph (1) it uses the phrase "may", so that there is a choice for regions whether to regulate it or not. However, it should be understood that if the region wants to allocate legal aid funds in the regional budget, then the regional government and DPRD must regulate it in a Regional Regulation (Perda).

Until now, Karimun Regency does not have a Regional Regulation that specifically guarantees the implementation of the constitutional rights of these citizens. This becomes very sad, especially when related to the poverty line, number, and percentage of underprivileged people in Karimun Regency which is quite high. This can be seen in the table below:¹⁴

Year	Poverty Line	Sum (Thousand inhabitants)	Percentage
2018	360.087	15.92	6.90
2019	376.853	15.36	6.61
2020	411.052	15.99	6.83
2021	422.961	16.28	6.85
2022	446,856	16.44	6.87

Table 1.0 poverty line, number, and percentage of Underprivileged People

¹⁴ <https://karimunkab.bps.go.id/pressrelease/2021/12/20/144/profil-kemiskinan-kabupaten-karimun-maret-2021.html> Retrieved March 3, 2023.

Year	Poverty Depth Index	Poverty Severity Index
2018	0.7	0.13
2019	0.6	0.11
2020	0.59	0.08
2021	1.14	0.34
2022	0.78	0.13

Table 2.0. Depth Index and Poverty Severity Index

If referring to Table 1.0, in 2022, the number of underprivileged people in Karimun Regency reached 16.44 thousand people (6.87 percent), an increase of 0.16 thousand people compared to the conditions in 2021 which amounted to 16.28 thousand people (6.85 percent). Similarly, Table 2 shows that the poverty depth index & poverty severity index are increasing from year to year.

Based on the results of the author's research in the form of interviews with respondents that the provision of legal aid carried out in Karimun Regency has not touched many people or groups of underprivileged people because legal aid recipients are increasing every year and the limited number of legal aid providers so that legal aid recipients find it difficult to obtain their constitutional rights related to legal aid.¹⁵ In fact, the regulation regarding the provision of legal assistance to the underprivileged in Regional Regulations is a guarantee of the constitutional rights of underprivileged people or groups of people.

Although basically, currently (in 2023) the draft Regional Regulation on legal aid has been proposed from the government's initiative through the Legal Section of the Regional Secretariat of Karimun Regency with the Karimun Regency DPRD, but it has not yet entered the ratification stage because there is still debate regarding the benchmark for the underprivileged category, after completion it will be seaborne with ratification and socialization related to the

¹⁵ Interview with Dp. Agus Rosita (Chairman of Dpc Peradi Tanjung Balai Karimun), dated March 10, 2023 at the secretariat of Dpc Peradi Tanjung Balai Karimun

¹⁶regional regulation . The establishment of this legal aid regional regulation is very important as a legal basis for regions to fulfill the rights of the underprivileged in accessing justice and equal treatment before the law.

2) Legal Aid Providers do not Work optimally

If you read about legal aid for the underprivileged the meaning of providing legal aid in the legal aid Act is different from that of free legal aid in the Advocates Act. The legal aid law regulates the provision of legal assistance provided by the state to underprivileged people or groups of people, while the provision of free legal assistance by advocates is a form of service required by the Advocates Law to advocates for indigent clients. The way the state provides legal aid is by providing funds to legal aid providers, namely legal aid organizations, community organizations, universities, and others as determined by the legal aid law. Conceptually, legal aid is part of the state's obligation, the state can also determine the conditions for the giver and recipient of legal aid, including advocates as legal aid providers according to the legal aid law. If the advocate provides legal assistance as described below, the provision of legal aid is the implementation of legal assistance by the state regulated in the legal aid law, not the advocate's service by providing free legal assistance as stipulated in the Advocates Law or its implementing regulations.

Satjipto Rahardjo said "The law that was created and never implemented has essentially ceased to be law".¹⁷ Normatively regarding the provision of legal aid at the practical level, especially in the constituents of the regulation, namely the underprivileged are still not optimally carried out by advocates / legal aid institutions as legal aid providers because not all advocates want to join the legal aid

¹⁶ Interview with Rusmawar Dewi (Head of Legal Section of Karimun Regency Regional Secretariat) Dated March 15, 2023 at Tanjung Balai Karimun.

¹⁷ Satjipto Rahardjo, *Law and Social Change*, Genta Publishing : Yogyakarta, 2009, p. 69

organization or personally tap their conscience in defending the underprivileged but some of them have also tried to carry out their duties as well as possible. The duty of the profession considers this part of worship because it helps people in difficulty selflessly.¹⁸

There are three things about the behavior of lawyers in solving the problem of helping the underprivileged namely avoiding taking cases on the condition that they attract the media to raise the quality of lawyers for various reasons. It is not very fond of nutrition.¹⁹

These reasons are a deviation from the ideal legal framework to provide legal aid because legal aid is usually given without knowing the legal problem to be solved and who will be protected but the right of the underprivileged to have access to law and justice. People have problems with the law.

Talking about the principle of equality before the law, access to law and justice and human rights is easy and fun in theory. However, in the practical setting of reality in society, it will be a "slap" because it is not at all what legal aid lawmakers expect. This is almost not done, ignored and even violated blatantly both from the government, law enforcement and even to justice seekers so that there are still many underprivileged people who have not received justice and may be due to lack of knowledge / information related to legal aid programs carried out by the government and advocates as law enforcers.

3) Unbalanced Number of Legal Aid Providers and legal Aid recipients

If you refer to Table 1.0 data, the number of underprivileged people in Karimun Regency in 2022 has reached 16.44 thousand people, while the Poverty Depth Index (P1) and Poverty Severity Index (P2) if you look at the data in Table II show a downward trend,

¹⁸*Op.Cit.* Interview with Dp. Agus Rosita (Chairman of Dpc Peradi Tanjung Balai Karimun)

¹⁹ Marudut Tampubolon, *Dissecting the Advocate Profession, Social Science Perspectives on Advocate-Client Interaction*, Student Library: Yogyakarta, 2014, pp. 133-134.

thus indicating that the average expenditure of underprivileged people tends to get closer to the Poverty Line and the inequality of underprivileged people's expenditure is also narrowing.

Seeing this, indirectly in the context of legal aid, the recipients of legal aid are increasing every year so that it must be in line with the number of human resources from legal aid providers. In Karimun Regency there are only 27 advocates and has 2 legal aid organizations accredited and verified by the Ministry of Law and Human Rights.²⁰

This certainly affects the level of legal services for the people in Karimun Regency. Although the existence and quality of legal services for the community is not the only measure from the comparison of the population with the number of advocates, the availability of adequate human resources has an inseparable correlation in efforts to improve legal services and development in Karimun Regency.

4) Lack of Legal Knowledge and Awareness for the underprivileged

A person who does not understand the law can lead someone to be deceived by unscrupulous people or surrounded by some wicked person and the most surprising thing is that these people are usually law enforcement or government. As John Rawls put it,²¹ "all legal systems fail unless they are encouraged by justice *as fairness* in society."²² Based on this opinion if it contradicts the implementation of legal aid for the underprivileged then in practice the underprivileged still lack legal awareness and knowledge of the importance of legal aid. Sometimes underprivileged people do not

²⁰ *Op.Cit.* Interview with Dp. Agus Rosita (Chairman of Dpc Peradi Tanjung Balai Karimun)

²¹ Muhadi Zainuddin, "The Role of Socialization of the Advocate Law in Empowering Community Legal Awareness". *Al-Mawarid Journal* No. 12 of 2004, Faculty of Religious Sciences UII : Yogyakarta, p. 93

²² Theo Huijbers, *Legal Philosophy in Linstas Histori*, Canisius : Yogyakarta, 2013, pp. 193-202

want to use legal aid by advocates because the mindset of the community using legal aid services is paid with a large nominal²³ so they do not want to seek information and cannot get knowledge related to legal aid provided by advocates / government as providers of free legal aid for the underprivileged , then the provision of legal aid will not function optimally.

OPTIMIZATION OF THE IMPLEMENTATION OF LEGAL AID FOR THE UNDERPRIVILEGED IN KARIMUN REGENCY

If you look at the discussion above the actual implementation of legal aid in Cremont Regency is not socially good because it still has all sorts of systemic issues that affect underprivileged people from having access to law and justice. Therefore, an idea is needed that can solve the problem in the application of providing legal assistance to the underprivileged , so that *access to law and justice* is realized so that it is not just a myth or sweet promise made by the state. Referring to the definition and strategy for realizing *access to law and justice*, there are several efforts to optimize the implementation of legal aid for the underprivileged as follows:

1. Local regulations related to legal aid will soon be ratified

Through this regional regulation on the implementation of legal aid, the Karimun Regency government has the basis to provide legal aid implementation that has legal problems. The existence of this Regional Regulation also fulfills the pillars of legal aid in accordance with international practices, which are as follows:²⁴

²³ Interview with Legal Aid Beneficiaries, Dated March 12, 2023 at Tanjung Balai Karimun

²⁴ Ministry of Law and Human Rights of the Republic of Indonesia, 2013, *Implementation of Law Number 16 of 2011 concerning Legal Aid*, Annual Report

- a. Accessible, legal aid must be easily accessible;
- b. Affordability, where legal aid is financed by the state;
- c. Sustainable, namely legal aid must continue to exist and not depend on donors so that the state must budget it in the State Budget;
- d. Credibility in which legal aid must be credible and provide confidence that it is provided in the framework of an impartial judiciary (also when they face cases against the state, there is no doubt about that); and
- e. Accountability where the legal aid provider must be able to provide financial accountability to the central body and then the central body must account to parliament.

When reflecting on the 5 (five) pillars of legal aid described above, the main focus is related to the responsibility carried out by the Karimun Regency Government to provide legal assistance to the community. With the establishment of the Karimun Regency Regional Regulation on the Implementation of Legal Aid, it can become a legal basis for the Karimun Regency Government to play an active role in providing legal assistance for the underprivileged and ensuring the implementation of Human Rights properly. This is because the Government in organizing bureaucratic life must be for the welfare of the community as much as possible, including providing legal assistance for the benefit of citizens who face legal problems in the defense of rights, both inside and outside the court²⁵.

2. Supervision and Strict Sanctions Against Legal Aid Providers for the Implementation of Legal Aid.

The context of providing legal aid by Legal Aid Organizations in terms of its implementation must have strict sanctions with the intention that when legal aid organizations that have been verified by the Ministry of Law and Human Rights, providing assistance must be

²⁵ Article 17 paragraph (1) of Law Number 11 of 2009 concerning Social Welfare

right on target and accompany the rights of the underprivileged to the maximum so that there is no more discrimination / a formality in terms of accompanying the underprivileged in the investigation stage, prosecution and trial.

In the event that supervision of the provision of legal aid is carried out by the Regional Supervisory Team of Legal Aid established by the Regional Office of the Ministry of Law and Human Rights only in the form of supervision of administrative matters, but does not reach very important substantive issues such as the quality of legal aid services provided by Legal Aid Organizations, as well as weak supervision carried out by the Regional Supervisory Team on service standards legal aid because only the Regional Office of the Ministry of Law and Human Rights supervises the provision of legal aid.

The provision of legal aid carried out by Advocates is also the same, in the case of its implementation there must be strict sanctions against Advocates who do not carry out in the Advocates Law and do not even regulate any sanctions for advocates who do not carry out this obligation. Sanctions for advocates who refuse requests for free legal assistance are regulated in Article 14 of PP Number 83 of 2008, namely in the form of oral reprimands, written reprimands, temporary suspension from their profession for 3 (three) to 12 (twelve) consecutive months; or permanent dismissal from the profession. The same sanction is also given to advocates who in providing free legal assistance receive or request gifts in any form from Justice Seekers.

3. Addition of Legal Aid Organization (OBH) in Karimun Regency verified by the Ministry of Law and Human Rights

Looking at the number of legal aid organizations verified by the Ministry of Law and Human Rights, there are only 2 legal aid organizations in the Karimun Regency area while the number of

underprivileged people based on Table I, above is relatively high, so it is necessary to add OBH and efficient procedural verification so that the more OBH verified, the more people in Karimun Regency will get free legal assistance. This happens because the ratio of givers and recipients of legal aid is not balanced and also advocates as legal aid providers entrusted by the profession to provide free legal assistance to the community must be implemented so that at least with the support of the number of existing advocates so that they can maximize the provision of legal aid to underprivileged people in Karimun Regency.

CONCLUSION

The results of the study show: the implementation of legal aid for the underprivileged in Karimun Regency has not been implemented optimally. This happens because of various problems or factors including, 1) the absence of regulations related to legal assistance to the underprivileged in the form of regional regulations; 2) Legal Aid Providers Do Not Work optimally; 3) The unbalanced number of Legal Aid Providers and Legal Aid recipients; and 4) Lack of legal knowledge and awareness for the underprivileged. To optimize the application of legal aid to the underprivileged in Karimun Regency can be done through several stages including, 1) Regional Regulations related to legal aid are immediately ratified; 2) Supervision and Strict Sanctions Against Legal Aid Providers for the Implementation of Legal Aid; and 4) The addition of Legal Aid Organizations (OBH) in Karimun Regency verified by the Ministry of Law and Human Rights. Based on the above conclusions, the author suggests that local governments and legal aid organizations provide adequate facilitation of legal aid to the underprivileged because legal aid is an obligation that must be organized. This facilitation needs to be realized through the right policy framework from local governments and consistency of legal aid organizations in providing

legal assistance to communities without having to distinguish social strata.

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