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Implementation of the Provision of Pro Bono Legal Assistance in Fulfilling the Rights of the Defendant in Karangayar State Court

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Abstract

The purpose of this study was to learn about the implementation of pro bono legal aid as a means of fulfilling the defendant's rights at the Karanganyar District Court. This study uses an empirical juridical approach. This study uses primary and secondary data sources. Primary data sources are obtained from interviews with judges and legal aid providers at the Karanganyar District Court and are supported by secondary data obtained through a library collection consisting of primary, secondary, and tertiary legal materials. The data set is then analyzed using a descriptive-qualitative approach with the process of reviewing the data set that has been obtained with the applicable legal rules, and then the results of the research will be obtained. This study obtained the result that Article 56 of the Criminal Procedure Code relating to the fulfillment of the right of the defendant to be given free legal assistance has basically been fulfilled by the Karanganyar District Court based on a cooperation agreement with a legal aid

organization that has been accredited by the Indonesian Ministry of Law and Human Rights, and then through the chief judge of the assembly, a letter of determination of the appointment of a legal adviser is issued and handed over to the legal adviser concerned. The obstacles faced by the Karanganyar District Court and legal advisers were related to communication and coordination with the defendant and difficulties in completing the defendant's administrative files. Islamic law also recognizes and supports the existence of legal advisers because of their role in providing legal assistance, so the Indonesian legal system and the Islamic legal system are aligned in their opinions about the importance of having legal advisers in providing legal assistance. So, the role of all police law enforcement officers, prosecutors, and judges is needed in order to realize the implementation of Article 56 of the Criminal Procedure Code.

Keywords: Legal Assistance, Prodeo, Defendant, Court, Karanganyar

1. Pendahuluan

Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, which has undergone three amendments, constitutes a statutory regulation, which states that Indonesia is a country based on law. For the sake of realizing or creating a rule of law state according to ideas or expectations, a division of powers is held to create control and balance among power holders. The division or separation is carried out in state institutions that have also been regulated in the Constitution, namely legislative power, which is exercised by the DPR and DPD. Executive power is exercised by the President; judicial power is exercised by the Supreme Court and the Constitutional Court.¹

Independence from judicial power is the goal of avoiding the practice of abuse of power by people who have power but do not have the correct orientation of responsibility. The formation of laws and regulations as a legal umbrella is the output as an instrument of law enforcement, a manifestation of the existence of judicial power, in order to realize legal certainty, legal justice, and legal benefits. In Indonesia, justice is administered through the formation of several regulations, one of which is Law Number 8 of 1981 concerning the Criminal Procedure Code.²

Speaking about criminal law, there must be victims of criminal acts as well as perpetrators of criminal acts. In criminal law, a person who is said to be a perpetrator of a crime still has legal rights that need to be defended against Law Number 48 of 2009 concerning Judicial Power Article 8 paragraph (1): "Everyone who is suspected, arrested, detained, prosecuted, and/or

¹ Haposan Siallagan, 2016, "Penerapan Prinsip Negara Hukum Di Indonesia", Sosiohumaniora, Vol. 18, No. 2, hal. 136.

² Kadri Husin dan Budi Rizki Husin, 2016, Sistem Peradilan Pidana di Indonesia, Bandar Lampung, Sinar Grafika, hal 7.

presented before the court must be considered innocent before a court decision states that he is guilty and has obtained permanent legal force." Everyone who is arrested, detained, or prosecuted before a trial because he is suspected or charged with committing a crime must be presumed innocent before the judge decides in *kracht van gewijsde* in the trial; thus, the rights of criminal perpetrators as human beings must be respected.³

Arrangements regarding the implementation of the judicial process in the general court environment, especially Indonesian criminal law, are regulated in the Criminal Procedure Code (KUHAP). The Criminal Procedure Code also regulates the rights of the accused to defend comprehensively; the right to defend the suspect or defendant is governed by Articles 51 to 57 of the Criminal Procedure Code.⁴

Based on the principle of equality before the law, one of the principles in criminal law makes it clear that the accused also has rights that should not be ignored. One of the defendant's rights, which is critical in its implementation, namely the provision of legal assistance in the form of defense or assistance to the suspect or defendant by an advocate or legal adviser during the trial process or outside the trial, has a limited classification or provision that has been regulated in the criminal law regulations contained in Article 56 of the Criminal Procedure Code, has a limited classification or provision that has been regulated in the criminal law regulations contained in Article 56 of the Criminal Procedure Code.⁵

Article 56 of the Criminal Procedure Code is an attempt or effort to guarantee the rights of the accused in terms of legal assistance in terms of fulfilling the rights of the accused. There are no or few regulations governing sanctions for distortion of the obligation to appoint an advocate or legal adviser to the accused in the trial process, so it depends on the perspective of initiative law from the officials concerned. The highest state court, namely the Supreme Court, oversees the general court environment and provides alternatives in the form of several jurisprudential decisions, namely as follows:

1. Decision of the Supreme Court of the Republic of Indonesia, Number 1565K/Pid/1991, dated September 16, 1993, with the statement: "In the judicial process, if there is disregard or distortion, as there is in this case, because no advocate or legal adviser is appointed to accompany or defend a defendant with a charge of 5 years or more in accordance with the provisions of Article 56 of the Criminal Procedure Code, the court's decision can be null and void and the defendant must be acquitted."

³ Farhan Ridhwan Shiddiq, 2017-2018, "Perlindungan Hukum atas Hak Terdakwa untuk Didampingi Penasehat Hukum dalam Memenuhi Hak Hak Terdakwa", *Prosiding Ilmu Hukum*, Vol. 4, No. 2, hal 697.

⁴ M. Yahya Harahap, 2017, *PEMBAHASAN PERMASALAHAN DAN PENERAPAN KUHAP Penyidikan dan Penuntutan (Edisi Kedua)*, Jakarta: Sinar Grafika, hal 332.

⁵ Bilryan Lumempouw, 2013, "Hak Terdakwa Melakukan Upaya Hukum dalam Proses Peradilan Pidana", *Lex Crimen*, Vol. 2, No. 3, hal 187.

2. Decision of the Supreme Court of the Republic of Indonesia, Number 367 K/Pid/1998, dated May 29, 1998, with the statement "The investigation and public prosecutor's investigation report are null and void, so the demands of the public prosecutor cannot be accepted even when the trial examination is accompanied by a legal adviser, that is because at the investigative level, they are not accompanied by a legal adviser."
3. Decision of the Supreme Court of the Republic of Indonesia, Number 545/K/Pid.Sus/2011: "The indictment of the public prosecutor is invalid because during the examination the defendant was not accompanied by legal counsel."

This jurisprudence has been applied in several District Court decisions, including Tegal District Court Decision Number 34/Pid, B/1995/PN.Tgl on June 26, 1995, and Jember District Court Decision Number 1102/Pid, B/2008/PN.Jr on February 4, 2009. Jurisprudence is not required to be applied, so it does not have binding legal force on the consideration of the judge's decision at the District Court.⁶ Fulfillment of the rights of the accused in realizing the mandate of the constitution in the implementation of settlement of litigation cases through the judicial process is sometimes not fully implemented by law enforcement officials or officials concerned. The law enforcement apparatus or official concerned should pay attention to the phrase, "The official concerned at all levels of examination in the judicial process is obliged to appoint legal advisers for them." Article 56 of the Criminal Procedure Code contains a mandatory phrase, meaning that there is a burden that should be carried out by the law enforcement apparatus or official concerned. In practice, incidents occur in the judicial process regarding the formalities of assistance carried out by advocates or legal advisers, and the appointment of an advocate or legal adviser against the defendant is not made because the defendant has not been notified of the right to obtain legal assistance. In practice, the refusal of a suspect or defendant to be accompanied by an advocate or legal adviser has never been thoroughly investigated by the Public Prosecutor or the Court.⁷

Based on the description of the background above, the author will formulate the essence of what will be examined so that it fits the subject matter to be discussed and makes it easier for the reader to understand it, then as follows, (1) How is the implementation of pro bono legal aid as the right of the defendant at the Karanganyar District Court? (2) What are the constraints and obstacles faced in the implementation of pro bono legal aid as the right of the defendant at the Karanganyar District Court? (3) What is the role of an advocate or legal adviser in providing legal assistance to the accused in terms of Islamic law?

⁶ Alifatul Fikriyah, 2017, "Implikasi Hukum Dan Upaya Preventif Terhadap Penyimpangan Ketentuan Pasal 56 KUHAP Dalam Proses Peradilan Pidana", *Jurnal Verstek*, Vol. 6, No. 1, hal 95.

⁷ ICJR, "Penerapan Prinsip yang Adil dalam Sistem Peradilan Pidana", 21 Januari 2018, <https://icjr.or.id/penerapan-prinsip-yang-adil-dalam-sistem-peradilan-pidana/> diunduh 26 Juni 2022, pukul 10.05 WIB.

2. Method

This study uses an empirical juridical approach. This study uses primary and secondary data sources. Primary data sources were obtained from interviews with judges and legal aid providers at the Karanganyar District Court and supported by secondary data obtained through a library collection consisting of primary, secondary, and tertiary legal materials. The data set is then analyzed using a descriptive-qualitative approach with the process of reviewing the data set that has been obtained with the applicable legal rules, and then the results of the research will be obtained.

3. Result and Discussion

3.1 Implementation of pro bono legal aid as the right of the defendant at the Karanganyar District Court

In resolving criminal cases, enforcement always strives to create a fair legal process (due process of law) and avoid the criminal justice process from abuse of power, so criminal procedural law is always based on the principle of equality before the law, whose existence is very important and can be used as a benchmark for justice because equality between everyone is upheld and rejects discrimination before the law in the sense of not discriminating bet.

The implementation of the rights of the accused in obtaining legal assistance is still primarily based on procedural law and statutory regulations. The implementation of the provision of legal aid in the form of accompaniment in the trial of defendants at the Karanganyar District Court in providing facilities to each defendant who is indeed unable or poor refers to Article 56 of the Criminal Procedure Code, namely that the official concerned at all levels of examination in the judicial process is obliged to appoint legal advisers for them (the defendant). Failure to appoint an advocate or legal adviser in accordance with jurisprudence can render the court's decision null and void, as well as the defendant's required acquittal.

The Karanganyar District Court's practice of providing facilities to the accused for the benefit of their defense in the form of legal assistance before the trial in order to implement Article 56 of the Criminal Procedure Code is, indeed, the parameter seen from the criminal threat contained in the public prosecutor's indictment. In the process of examination at trial, at the first trial stage, when the defendant was presented before the court in a free condition, he was asked for his identity and also asked whether he was in good health and willing to be examined before the trial. Then the defendant is asked whether he will be accompanied by a legal adviser, and if he is accompanied, whether he will bring or appoint himself. At this stage, if the defendant does not bring or is unable to appoint his own legal adviser, a legal adviser will be appointed by the Karanganyar District Court through the chief judge assembly if, in accordance with the provisions of Article 56 of the Criminal Procedure Code, the defendant carries a sentence of 5 years or more.

The Karanganyar District Court bases its decision on several specific criteria, including:

1. There has been an institutional cooperation agreement between the District Court and Legal Aid Organizations (legal advisors) in the jurisdiction of the District Court, which was then written and agreed upon in the cooperation agreement regarding the provision of services to appoint legal counsel at the Karanganyar

District Court;

2. Legal Aid Organizations (legal advisors) have received accreditation from the Ministry of Law and Human Rights of the Republic of Indonesia.

Based on the criteria mentioned above, the Karanganyar District Court, in order to realize the implementation of Article 56 of the Criminal Procedure Code and fulfill the defendant's right to be given legal assistance in the form of legal assistance before the trial, is currently working with one of the Legal Aid Organizations, namely the Central Java PAHAM Legal Aid Organization.

The implementation at the Karanganyar District Court of the process of providing legal assistance by legal advisers is based on the cooperation agreement, then providing legal assistance to the defendant first by issuing a letter of determination of the appointment of legal advisors by the head judge of the District Court assembly in Karanganyar, which is given or addressed to the Central Java PAHAM Legal Aid Organization as a legal adviser to provide legal assistance during the trial process for defendants who meet the requirements of a sentence of 5 years or more in accordance with Article 56 of the Criminal Procedure Code, then The Karanganyar District Court acts as an intermediary in providing facilities to the accused, if indeed there is a defendant who needs to be provided with legal counsel. In practice, the Karanganyar District Court directly appoints a legal adviser for the Central Java PAHAM Legal Aid Organization. Then, regarding the conditions that must be met by the defendant for legal assistance, in practice, he dealt directly with the appointed legal adviser.

The next stage is the relationship between the legal adviser and the defendant. The defendant attaches several administrative documents, including a Certificate of Disadvantage (SKTM) issued by the village head or village head or an official of the same level at the residence of the defendant or the applicant for legal aid, and the official identity of the resident as self-proof as a citizen of the Unitary State of the Republic of Indonesia from the defendant, such as an Identity Card (KTP) or family identity card (KK) used for administrative purposes from the Central Java PAHAM Legal Aid Organization, including a Certificate of Disadvantage The Central Java PAHAM Legal Aid Organization does not have any additional special requirements that the defendant must meet when providing legal assistance to people who are unable or poor.

The state of criminal cases at the Karanganyar District Court, which carry a sentence of 5 years or more, in a period of almost 1 year in 2022, totals 57 (fifty-seven) criminal cases, 49 (forty-nine) narcotics cases, and 8 (eight) child protection matters. Of the total criminal cases that were submitted to the Karanganyar District Court, it is true that overall not all defendants were able to appoint their own legal advisers in the examination process before the trial; a total of 26 (twenty-six) defendants received legal assistance in the form of legal assistance out of a total of 57 criminal cases.

In practice, the Karanganyar District Court always appoints legal advisers against defendants with criminal penalties of 5 years or more, but sometimes the defendant refuses because he does not want to be accompanied, even though the Karanganyar District Court, through the trial judge, has offered legal counsel or because the defendant has its own legal counsel. The application of providing legal assistance to defendants at the Karanganyar District Court has been

carried out by appointing legal advisers by the judge handling the case as mandated by Article 56 of the Criminal Procedure Code. Defendants who are required to obtain legal assistance in accordance with Article 56 of the Criminal Procedure Code are divided into two categories, namely:

1. If the suspect or defendant who is suspected or charged is threatened with a criminal offense punishable by death or imprisonment for fifteen years or more; and
2. The obligation for the official concerned to appoint a legal adviser for the accused is determined by the condition of being "unable" to provide his own legal adviser and the threat of five years or more,

The appointment of the chief judge of the panel to legal advisers to accompany him for defendants who are considered incapacitated is essentially an obligation that legal advisers must fulfill upon such appointment. Law No. 18 of 2003 concerning Advocates also explains that the act of refusing a client is a violation of the advocate's oath or promise. Whereas in the case of legal counsel appointed by the chief judge of the Karanganyar District Court, the legal adviser concerned can accept, refuse, or resign as the defendant's legal adviser, advocates are permitted or even required under certain circumstances to refuse to provide legal assistance to prospective clients, as stated in Article 3 letter a of the Advocate Code of Ethics.

Whereas regarding the provision of legal assistance in the form of legal assistance in the trial originating from the appointment of the chief judge of the Karanganyar District Court in the form of a determination letter as legal adviser, there was no budgetary fund provided by the Karanganyar District Court. Financial circulation for operational funds from the Central Java PAHAM Legal Aid Organization comes from Posbakum, located at the Karanganyar District Court, Kemenkumham, the Legal Bureau of the Central Java Provincial Government, Karanganyar Regency Government, and Surakarta City Government.

Regarding the regulation of the provision of free legal aid, in addition to being regulated and referred to in Article 56 of the Criminal Procedure Code, it is also regulated in various other laws and regulations, namely Law Number 48 of 2009 concerning judicial power, which replaced Law Number 4 of 2009; Law Number 4 of 2004 concerning judicial power; Perma Number 1 of 2014 concerning Guidelines for Providing Legal Services to Poor People in Court; Law Number 18 of 2003 concerning advocates; and Law Number 16 of 2011 concerning legal aid.

3.2 Constraints and Obstacles in the Implementation of Prodeo Legal Aid as a Right of the Defendant at the Karanganyar District Court

In general, there are no significant problems or obstacles in the provision of legal assistance to defendants at the Karanganyar District Court, although the small obstacles that are often experienced include communication and coordination with the defendant, namely when the Karanganyar District Court appoints a legal adviser to the defendant who was deemed to need the appointment of a legal adviser, but at the same time it turned out that the defendant also appointed his own legal adviser. This incident occurred due to several factors, firstly because when the trial took place online via video conferencing, problems often occurred related to the signal or connection of the defendant, which made the conversation unclear when

the judge gave questions related to the appointment of legal counsel or the discussion in the form of a judge's offer was clear but the defendant did not understand what was being discussed, and secondly because there was a possibility that the defendant would change his mind about who initially wanted to be accompanied but then brought or appointed his own legal counsel. So there was an incident during the trial examination at the Karanganyar District Court where two legal advisers were present who would provide legal assistance to the defendant. The two (two) legal advisers were present, one based on a letter of determination of appointment given from the Karanganyar District Court and the other because the defendant was appointed independently. In practice, this incident does not pose a serious problem because the legal adviser appointed by the panel's head judge usually resigns to become the defendant's legal adviser.

Implementation of Article 56 of the Criminal Procedure Code at the Karanganyar District Court revealed that, in essence, in general, from all aspects, there were no significant obstacles or obstacles that were experienced while serving as legal adviser on the appointment of the chief judge of the panel. In relation to legal assistance, the difficulties encountered by legal advisers, namely difficulties related to administrative documents, namely a Certificate of Inadequacy (SKTM) issued by the village head or to a village or equivalent official at the residence of the accused or applicant for legal assistance, identity official resident as proof of identity as a citizen of the Unitary State of the Republic of Indonesia from the accused, such as an identity card. This difficulty arose due to a variety of factors, including the client's residence being far from the Karanganyar area and his inability to locate the defendant's family because he had not lived with his family for a long time.

3.3 The Role of Legal Counsel or Advocate in Providing Legal Assistance to Defendants in Terms of Islamic Law

Advocates in the study of Islamic law can be equated with "al-mahamy," which in Arabic means "lawyer." The existence of legal advisors or advocates is important in Islamic law, according to the Al-Qur'an, Hadith, and Ijma' ulama. The advocate profession is also mentioned in the Qur'an, specifically in Q.S. al-Qashash [28]: 33-34, which means "He (Moses) said: "O my Lord, I have actually killed someone from their group, so I am afraid they will kill me; and my brother, Aaron, he is more eloquent in his tongue than I am, so send him with me as my helper to justify my sayings; truly, I'm afraid they will lie to In the verse above, we can all understand that regarding the concept of defense to reveal a fact about an incident that actually needs to be presented by people who are considered competent in that field, defenders of justice who are eloquent in speech really need their presence to reveal true facts so that no one is lied to. The story of Prophet Musa, who asked Allah SWT to bring help from Prophet Harun to be accompanied, defended, and protected, reveals a true fact. Because Prophet Musa thought Prophet Aaron's ability to express an opinion or make an argument was superior to his.⁸

The term "legal aid" is not clearly stated in the Qur'an. In the study of the book of fiqh, there are indeed many who

⁸ Arifin Rada, 2014, "Esensi Keberadaan Advokat Menurut Hukum Islam", Ahkam, Vol. 14, No. 1, hal 74.

discuss or allude to justice, but material about legal aid is not mentioned. The principles of Islamic law are indeed the basis for the application of legal aid, including the principle of justice, mutual assistance, and so on. The word "justice" is mentioned more than 1000 times in the Al-Qur'an because it is considered so important in its function and position, especially in order for humans to always act fairly and uphold justice, which is heavily emphasized in the verses of the Al-Qur'an. In the Qur'an, the mention of the word "justice" is the third most frequent after Allah and science.⁹ Providing legal assistance is a way for legal advisors or advocates to assist and defend anyone who has recently come into contact with the law in order to resolve the case. Legal assistance in the process of enforcing Islamic law also has several principles and principles that must be followed in practice. which principles are derived from the Al-Qur'an and As-Sunnah, namely, among others, the principle of Allah's oneness (at-tauhid), the principle of justice (al-'is), the principle of freedom (al-hurriyah), the principle of equality (al-musawat), the principle of calling for good and forbidding evil (amar ma'ruf nahi munkar), the principle of mutual help (al-ta'awun).¹⁰

4. Conclusion

Based on the results of the research and discussion of the subject matter above, the writer draws conclusions from what she has written so that the gist of it is conveyed to the reader. The following are the findings:

1. In order to facilitate the defendant's right to legal assistance during the trial process, the Karanganyar District Court, first, through the chairman of the panel of judges during the first trial to defendants whose criminal penalties are 5 years or more, they are always asked about legal counsel if the defendant is able to appoint his own legal adviser or if he is unable to, an adviser will be appointed law by the Karanganyar District Court, second, through the Karanganyar District Court
2. The obstacles faced were firstly communication and coordination with the defendant; sometimes the defendant, who had been given legal counsel from the Karanganyar District Court, brought or appointed his own legal adviser to accompany him at trial, and secondly, difficulties in completing the administration of the defendant, such as a Certificate of Inability (SKTM), Card Identity Card (KTP), and Family Card (KK).
3. Legal advisers, advocates, or defenders of justice have been known since ancient times, originating from the Al-Qur'an, Hadith, and Ijma'ulama. From the author's review, Islamic law already recognizes and supports the existence of legal advisers or advocates because, indeed, one of their duties is to provide legal assistance to people who need it in the process of law enforcement in order to achieve justice. The Indonesian legal system and the Islamic legal system are aligned in their opinion

about the importance of the existence of legal advisors or advocates in providing legal assistance.

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⁹ A.M Saefuddin dalam Mohammad Daud Ali, 2005, Hukum Islam: Pengantar Ilmu Hukum dalam Tata Hukum Islam di Indonesia, Jakarta: Raja Grafindo Persada, hal 128-129

¹⁰ Didi Kusnadi, 2012, Bantuan Hukum dalam Islam, Bandung: Pustaka Setia, hal 50.