

STRENGTHENING THE AGENCY CONSULTATION, MEDIATION AND LEGAL ASSISTANCE THROUGH DIRECT AND VIRTUAL CONSULTATION IN HIGHER EDUCATION IN THE EFFORT TO HELP PEOPLE CAN NOT AFFORD THE PERSPECTIVE OF DIGNIFIED JUSTICE

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Abstract

Legal issues in the community are quite haunting, especially for specters. ordinary people who have no or less knowledge related to legal provisions. This ignorance is not without impact. Ignorance of legal provisions and readiness to deal with legal issues can reduce people's readiness in dealing with the law, or even create new legal problems, if because of ignorance it makes people who do not understand the law violate the law. This is what then drives the number of legal aid institutions ready to serve and provide legal assistance. Higher education legal aid institutions become laboratories that can, in real terms, utilize expertise in the field of law to disadvantaged communities in the realization of dignified justice. Besides that students can also practice becoming paralegals, and also can develop themselves in the field of legal assistance. The process of providing legal aid services can be done by assisting both litigation and non-litigation. So the need for strengthening the role of universities in providing legal assistance through legal aid agencies or institutions to help poor people.

Keywords: Mediation and Legal Aid Consultation Board, Direct, Virtual.

INTRODUCTION

Indonesia is a state of law listed in Article 1 paragraph (2) of the 1945 Constitution which has the obligation to protect and recognize the human rights of each individual or its citizens. This determination is followed by a statement that every citizen has the same position before the law, known as the principle of equality before the law as stipulated in Article 27 paragraph (1) of the 1945 Constitution.

Legal issues in society are a haunting specter, especially for ordinary people who do

not have or have lack of knowledge related to legal provisions. This ignorance is not without impact. Ignorance of legal provisions and readiness to deal with legal issues can reduce people's readiness in dealing with the law, or even create new legal problems, if because of ignorance it makes people who do not understand the law violate the law. This is what then drives the number of legal aid institutions ready to serve and provide legal assistance.

This form of assistance is a form of protection of human rights, which provides

guarantees and protections so that everyone has the same position before the law with no exceptions. The existence of guarantees and protections gives a clue to the importance of legal assistance to ensure that each person can be protected from discriminatory legal actions so that what is the goal of the state to create equality before the law can be realized because of the functioning of the legal aid.¹

There are two forms or types of legal assistance, namely Legal Aid and Legal Assistance. Legal Aid is a term for legal aid for poor people (the *Dhuafa*) who cannot afford lawyers who gave birth to the concept of the Legal Aid Institute (LBH), and the like is called a legal aid worker (public defender), while Legal Assistance for people who are able to pay lawyer. Both of these terms were born from developed countries and in Indonesia itself were introduced during the Dutch East Indies in Article 250 *Het Herziene Inlands Reglement* (HIR) as formal law in criminal and civil cases.

The article mentioned that the Advocate provided legal assistance if there was a request from the person accused and threatened with the death sentence. After Indonesia gained its independence, HIR remained in force based on the transitional

provisions in the pre-amendment of the 1945 Constitution and subsequently became invalid in the area of criminal law in line with the enactment of Law No. 8 of 1981 concerning the Criminal Code (KUHP), and Law No. 4 of 2004 concerning Judicial Power.²

The Government of Indonesia issued a regulation to realize these principles and objectives through Law 16 of 2011 on Legal Aid (hereinafter referred to as the Law on Legal Aid). The substance of the regulation requires that law enforcers, especially advocates as legal aid providers, provide free legal assistance to the poor people of Indonesia. The application of legal aid for the poor is not yet effective and optimal, so it is necessary to strengthen the Consultation, Mediation and Legal Aid Agency Through Direct and Consultation in Higher Education in an effort to help the poor.

In Law Number 12 Year 2012 concerning Higher Education Article 1 number 9, it is stated that one of the elements of the *tri darma* of higher education is to carry out community service. Community Service is an academic community activity that utilizes Science and Technology to advance community welfare and educate the nation's life. In this context, the presence of a

¹ Bagir Manan, 2001, *Perkembangan Pemikiran dan Pengaturan Hak Asasi Manusia di Indonesia*, Bandung: Alumni, p. 59.

² Uli Parulian Sihombing, "Perkembangan Bantuan Hukum dan Tanggungjawab negara, www.Hukumonline.com accessed November 23rd 2019.

university legal aid body or institution is a tangible manifestation of the *dharma* of the tertiary institution in devoting its knowledge for the benefit of the community. Institutions or higher education legal aid agencies in carrying out legal aid activities can take the role of providing legal aid services in the form of litigation and non-litigation activities.

Law enforcement through the judiciary is not discriminatory. Which means that everyone, both capable and unable to be socially and economically capable, is entitled to a legal defense before a court of law. Based on these considerations, it is hoped that the free defense provided by the Legal Aid Institute within the tertiary institution in both criminal and civil cases is not seen from the aspect of one's dignity or self-esteem, but is seen as a form of respect for law and humanity that is merely eyes are intended for the purpose of alleviating the legal burden for the poor.

DISCUSSION

The Ideal Legal Aid Agency Or Institution Model Established At The University In Assisting Disadvantaged Communities.

Access to justice is defined as the community's ability to seek and obtain drugs through formal or informal institutions of justice for complaints in accordance with

human rights standards.³ In the opinion of Adnan Buyung Nasution, legal aid is specifically legal aid for low income earners or in poor popular languages, the measure of poverty is still a difficult problem to solve, not only for developing countries and even countries that have already Even though it still remains a problem.⁴

So that there needs to be an idea that can solve the problem in the application of providing legal assistance to the poor, legal aid is one of human rights, especially for the poorest strata of society. The constitution guarantees the right of every citizen to be treated equally before the law, including the right to access justice through the provision of legal assistance.

The poor who are currently facing legal issues cannot access the legal assistance they need. Sometimes what happens to poor people because of lack of education and knowledge makes them unaware of the rights they can get. So that people are unable to experience difficulties in trying to access justice because it is hampered by their inability to realize their constitutional rights. So the need for strengthening the role of

³ United Nations Development Program (UNDP), 2005, *"Programming for Justice: Access for All: A Practitioner's Guide to a Human Rights-Based Approach to Access to Justice"*, Thailand, p. 3

⁴ Adnan Buyung Nasution, 2007, *Bantuan Hukum di Indonesia, Bantuan Hukum dan Politik Pembangunan*, Jakarta: LP3ES, p. 1.

universities in providing legal assistance through legal aid agencies or institutions to help poor people.

In the environment of students in the formulation of public policy there are a number of models. Thomas R. Dye formulate nine models fully in policy formulation, namely:

- a. Institutional Model. Policy formulation institutional model simply means that the task of making public policy is the task of the government. So anything the government makes in any way is public policy.
- b. Process Model. In this model the followers accept the assumption that the public is an activity that has a process for it.
- c. Group model. Model policy making model presupposes policy as a balance point as the core balance point of the idea is that interaction within the group produces balance and balance is the best.
- d. Elite Model. The elite theory model develops from the political theory of the mass elite which is based on the assumption that in every society there must be two groups, namely the holder of power or the masses.
- e. Rational Model. Model This model puts forward the idea that public policy as a maximum social gain which means the government as a policy maker must

choose policies that provide optimum benefits for the community.

- f. Incremental Model. This model sees that public policy is a variation or continuation of past policies.
- g. Game Theory Model. Game theory models are very abstract and deductive in policy formulation.
- h. The Public Choice Model. Policy this model sees policy as a process of formulating collective decisions of individuals with an interest in those decisions.
- i. Systems Model. In this approach three groups are known, namely input, process and output.

Legal aid institutions in Higher Education also collaborate with the Courts through legal aid posts intended for justice seekers both individuals or groups who are economically unable. The direction of developing a legal aid program for the community is not capable, besides empowering the existence and equality of law for all levels of society, it also aims to raise awareness and legal compliance of the community through the use of rights provided by the state in terms of defending its legal interests before the court.

The Ideal Model Of Direct And Virtual Consultation In The Consultation, Mediation And Legal Aid Agency (BKMBH) In The Perspective Of A Dignified Justice.

Law creating a dignified society is the law including in this case the regulation of Legal Aid for those who are unable to humanize humans. That is, that the law treats and upholds human values according to their nature and purpose in life. This is because humans are noble creatures as the creation of God Almighty as stated in the second principle of Pancasila, namely humanity that is just and civilized, which has the value of recognition of human dignity with all its rights and obligations as well as getting fair treatment towards humans, towards yourself, the world around and towards God.⁵

The urgency of legal aid agencies or institutions in tertiary institutions is very strategic, which is part of the learning process of legal aid institutions which will become a place for students to develop their skills in the field of law and their competency expertise. Other benefits are also a forum for advocacy, assistance and coaching to the community who become clients.

⁵ Tri Astuti Handayani, 2015, *Pengaturan Bantuan Hukum dalam Perkara Pidana sebagai Upaya Memenuhi Hak Tersangka atau Terdakwa yang Tidak Mampu*, (Disertasi, Program Doktor Ilmu Hukum Fakultas Hukum Universitas Tujuh Belas Agustus), p. 112

The role of a higher education institution or legal aid institution in detail based on experience can be divided into several activities, namely:⁶

1. Legal Services Sector

- a) Assisting and assisting parties and potential litigants especially those from the poor / unable group to obtain legal information, legal services and free legal consultation;
- b) Providing legal services in the form of litigation assistance in religious courts, preparing lawsuit, requests, answers and exceptions for litigants;
- c) Providing legal information services in the form of activities to enrich legal awareness to the parties, potential parties who come to the bureau;
- d) Providing legal information services through PHONE SERVICE to obtain legal assistance and legal consultation during working hours with consultants;
- e) Providing guidance services to amil and the public who come to the Legal Aid Agency or Institution regarding the importance of the community having a legal identity (marriage certificate and divorce);

2. Legal Consultation

⁶ Ramdani Wahyu, in <http://as.uinsgd.ac.id/wp-content/uploads/2015/05/Kedempat-Dan-Peran-Lembaga-Hantu-Hukum-Perguruan-Tinggi-Ramdani-Wahyu-S.pdf> accessed November 17th 2019.

- a. Providing consultation to parties and potential litigants especially those from the poor / unable group to obtain legal information from legal consultants free of charge;
 - b. Providing legal consultation within the scope of absolute authority.
3. Field of Study and Research
- a. Conduct joint research policy with the court and related institutions in the context of evaluating and finding solutions for clean judicial administration;
 - b. Conduct academic research to develop justice science teaching materials;
4. Field of advocacy
- a. Providing legal assistance to community members litigating in court;
 - b. Members of the community who are unable to be freed from court fees;
 - c. With this kind of real role, universities have given dharma to the community. In addition, the involvement of tertiary institutions providing legal assistance to the community shows that tertiary institutions truly benefit the presence of the community, especially those who are dealing with law. The college's

presence becomes relevant to the needs of the community.⁷

Higher education legal aid institutions become laboratories that can, in real terms, utilize expertise in the field of law to disadvantaged communities in the realization of dignified justice. Besides that students can also practice becoming paralegals, and also can develop themselves in the field of legal assistance. The process of providing legal aid services can be done by assisting both litigation and non-litigation.

In addition, the university's legal aid institution also strives to be a mediator capable of safeguarding the interests of the disputing parties fairly and equally, thereby fostering trust (trust) of the disputing parties. The principle of mediation is a way of resolving disputes outside the court through negotiations involving third parties that are neutral (non-intervention) and impartial (impartial) and accepted by the parties to the dispute.⁸

From the fact that there has been known that the applicable criminal system is not yet fully integrated to ensure fairness (integrated justice), namely justice for perpetrators, justice for the victims, and justice for the people. This

⁷ Anonimous, *Buku IV Panduan Pengisian Borang Akreditasi Program Studi Sarjana*, Departemen Pendidikan Nasional badan Akreditasi Nasional Perguruan Tinggi, December 2008, p. 4

⁸ Bambang Sutyoso, *Op.Cit.* p. 58.

is what drives forward the concept of "restorative justice" ' as stated by Bagir Manan in his writings describing the substance of "restorative justice" According to Bagir Manan "restorative justice" contains principles, among others⁹: "Building joint participation among actors. victims, and community groups complete a crime or a crime. Placing the perpetrators, victims, and the community as "stakeholders" working together and immediately trying to find a solution that is considered fair for all parties (win-win solutions).

Encourage the completion of an event or a criminal offense in more informal and personal ways, rather than in a formal (rigid) and impersonal manner of proceeding. A conceptual framework for restorative justice is required in order to understand what practices meet the demands of a restorative model. This paper is intended to develop just such a conceptual framework for restorative justice. The framework will articulate a definition of restorative justice, examine its relationship to other prevailing conceptions of justice, and identify the constitutive elements necessary for restorative justice practice.

Restorative justice is fundamentally concerned with restoring social relationships,

1 with establishing or re-establishing social equality in relationships. That is, relationships in each person's rights to equal dignity, concern and respect are satisfied. What practices are required to restore the relationship at issue will, then, be context-dependent and judged against this standard of restoration. As it is concerned with social equality, restorative justice inherently demands that one attend to the nature of relationships between individuals, groups and communities. Thus, in order to achieve restoration of relationships, restorative justice must be concerned both with the wrong discretion and its relevant context and causes.¹⁰

The Indonesian state has its concept of justice as contained in the principles of the

⁹ Bagir Manan, 2008, *Restorative Justice (Suatu Perkenalan)*, dalam *Refleksi Dinamika Hukum Rangkaian Pemikiran dalam Dekade Terakhir*, Perum Percetakan Ncgara RI, Jakarta, 2008. P. 9.

¹⁰ A conceptual framework for restorative justice is needed to understand what practices meet the demands of the restorative model. This paper is intended to develop such a conceptual framework for restorative justice. The framework will articulate the definition of restorative justice, examine its relationship with other applicable conceptions of justice, and identify the constitutive elements needed for restorative justice practices. Restorative justice is basically concerned with restoring social relations, by building or rebuilding social equality in relationships. That is, a relationship where everyone's rights are equal, dignity, care and respect are satisfied. What practice is needed to restore a problematic relationship, then, will depend on the context and be judged according to this standard of recovery. As it is concerned with social equality, restorative justice inherently demands that one attends the nature of the relationship between individuals, groups and communities. Thus, in order to achieve relationship recovery, restorative justice must pay attention to both with discrete errors and relevant contexts and causes. Jennifer J. Llewellyn , 1998 *Restorative Justice A Conceptua; Frame Work*. Prepared for the Law Commission of Canada, p. 1

Pancasila. The concept of Pancasila justice is a concept that contains human values, namely recognition of the existence of human dignity, fair treatment of fellow human beings, understanding of human beings who possess creative power, sense of initiative and belief and contain values of the embodiment of social justice in social life or community which covers all Indonesian people, justice in life especially covers all Indonesian people, justice in life mainly covers ideological, political, economic, social, cultural and defense and national security fields, the ideals of a just and prosperous material society that is evenly distributed for all Indonesian people as in the Second (II) and Fifth (V) precepts.

Meanwhile, the theory of dignified justice according to Teguh Prasetyo, Theory of Dignified Justice departs from the postulant system; work towards the goal, namely dignified justice. Justice that humanizes human (*nguwongke uwong*)."¹¹ Layers of law in the perspective of the theory of dignified justice work or function as a source or place where the law is found.

Dignified justice theory views that in a system there is no desire for conflict or conflict between the elements that exist in the

system. District justice theory as a system also adheres to the view that when a conflict is inevitable in the system, then conflict or discrepancy, conflict or overlapping between elements in the system can immediately be resolved by the system itself.

In the normative framework and legal system in Indonesia, policies regarding access to justice implicitly and explicitly set forth in various laws, including the constitution, the Constitution of 1945. The Constitution stipulates that every citizen has had equal position before the law, and treated equally without discrimination on any basis. The legal system in Indonesia allows Indonesian citizens to resolve their cases to formal or informal channels, using local customary or cultural institutions.

Constraints in the implementation of providing legal assistance through direct and virtual consultation at the Consultation, Mediation and Legal Aid Agency (BKMBH) in the perspective of dignified justice that is the lack of public knowledge about legal aid facilities provided to disadvantaged people.

CLOSING

Poor people who are facing legal issues are partially unable to access the legal assistance they need. Sometimes what happens to poor people because of lack of education and knowledge makes them unaware of the rights they can get. so that

¹¹ Teguh Prasetyo and Jeferson Kameo, *Possession and Ownership of Land Rights as Objects in Land Procurement Programe (The Dignified Justice Perspective)*, Surakarta Law And Society Journal, Vol. 1, No. 2, February 2019, p. 98.

people are unable to experience difficulties in trying to access justice because it is hampered by their inability to realize their constitutional rights. So the need for strengthening the role of universities in providing legal assistance through legal aid agencies or institutions to help poor people. Constraints in the implementation of providing legal assistance through direct and virtual consultation at the Consultation, Mediation and Legal Aid Agency (BKMBH) in the perspective of dignified justice that is the lack of public knowledge about legal aid facilities provided to disadvantaged people.

BIBLIOGRAPHY

- Adnan Buyung Nasution, 2007, *Bantuan Hukum di Indonesia, Bantuan Hukum dan Politik Pembangunan*, Jakarta: LP3ES.
- Anonimous, *Buku IV Panduan Pengisian Borang Akreditasi Program Studi Sarjana Departemen Pendidikan Nasional badan Akreditasi Nasional Perguruan Tinggi*, December 2008. Bagir Manan, 2001, *Perkembangan Pemikiran dan Pengaturan Hak Asasi Manusia di Indonesia*, Bandung: Alumni.
- Bagir Manan, 2008, Restorative Justice (Suatu Perkenalan), dalam Refleksi Dinamika Hukum Rangkaian Pemikiran dalam Dekade Terakhir, Perum Percetakan Ncgara RI, Jakarta, 2008.
- Erma Yanti, 2012, 'Gambaran Pengetahuan Remaja Putri Tentang Resiko Perkawinan Dini Dalam Kehamilan Di Kelurahan Tanjung Gusta Lingkungan li Kecamatan Medan Tahun 2012'.
- Jennifer J. Llewellyn, 1998, *Restorative Justice A Conceptua; Frame Work*. Prepared for the Law Commission of Canada.
- Ramdani Wahyu, in <http://as.uinsgd.ac.id/wp-content/uploads/2015/05/Kedempat-Dan-Peran-Lembaga-Hantu-Hukum-Perguruan-Tinggi-Ramdani-Wahyu-S.pdf> accessed November 17th 2019. Tri Astuti Handayani, 2015, *Pengaturan Bantuan Hukum dalam Perkara Pidana sebagai Upaya Memenuhi Hak Tersangka atau Terdakwa yang Tidak Mampu*, (Disertasi, Program Doktor Ilmu Hukum Fakultas Hukum Universitas Tujuh Belas Agustus.
- Teguh Prasetyo and Jeferson Kameo, *Possession and Ownership of Land Rights as Objects in Land Procurement Programe (The Dignified Justice Perspective)*, Surakarta Law And Society Journal, Vol. 1, No. 2, February 2019.
- Uli Parulian Sihombing, "Perkembangan Bantuan Hukum dan Tanggungjawab negara, www.Hukumonline.com accessed November 23rd 2019.
- United Nations Development Program, 2005, "Programming for Justice: Access for All: A Practitioner's Guide to a Human Rights-Based Approach to Access to Justice"; Thailand.