

## The Role of Legal Aid at the Muhammadiyah University of North Sumatra in Divorce Prevention

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### Abstract

Indonesia is a rule of law, which is contained in the 1945 Constitution (Yahman & Nurtin Tarigan, 2019: 16). In a rule of law, the state guarantees equality before the law and recognizes and protects human rights, so that all people have the right to be treated equally before the law (equality before the law). Equality before the law must also be accompanied by equal treatment, one form of equality of treatment is the provision of legal aid to the poor and illiterate to achieve equitable access to justice. The form of legal assistance is the existence of a defense or assistance from an advocate (access to legal counsel). Legal aid standards in litigation are implemented in case handling: (a) Criminal; (b) Civil Code; and (c) State Administration. Types of non-litigation Legal Aid activities carried out by Legal Aid Providers include: (a) Legal Counseling; (b) Legal Consultation; (c) Investigation of cases, both electronically and non-electronically; (d) Legal Research; (e) Mediation; (f) Negotiation; (g) Community Empowerment; (h) Outside court assistance; and (i) Drafting legal documents.

### Keywords:

Legal Aid, Prevention, Divorce

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### A. Introduction

Indonesia is a rule of law, which is contained in the 1945 Constitution.<sup>1</sup> In a constitutional state, the state guarantees equality before the law and recognizes and protects human rights, so that all people have the right to be treated equally before the law (equality before the law). Equality before the law must also be accompanied by equal treatment, one form of equality of treatment is the provision of legal aid to the poor and illiterate to achieve equitable access to justice. The form of legal assistance is the existence of a defense or assistance from an advocate (access to legal counsel). The idea and concept of legal aid in Indonesia is developing very broadly and rapidly. It can be said that the guarantee of the original Indonesian legal aid concept has been established. This stems from an idea proposed by Adnan Buyung Nasution at the Peradin congress in 1969, to establish a legal aid institution in the broadest sense possible in Indonesia<sup>2</sup>.

These ideas which were later poured out more concretely in the Articles of Association of LBH/YLBHI were: (a) Providing legal services to the poor; (b) Developing and increasing the legal awareness of the community, especially their rights as legal subjects, (c) Seeking legal changes and improvements to fill the new needs of developing societies. There are standards in providing legal assistance as stipulated in the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 10 of 2015 concerning Implementation Regulations of Government Regulation Number 42 of 2013 concerning Terms and Procedures for Providing Legal Aid and Distribution of Legal Aid Funds. Article 2 paragraph (2) The standard of providing legal aid is implemented for the handling of: (a) Legal Aid by litigation; and (b) non-litigation legal assistance. Legal aid standards in litigation are implemented in case handling: (a) Criminal; (b) Civil Code; and (c) State Administration. Types of non-litigation Legal Aid activities carried out by Legal Aid Providers include: (a) Legal Counseling; (b) Legal Consultation; (c) Investigation of cases, both electronically and non-electronically; (d) Legal Research; (e) Mediation; (f) Negotiation; (g) Community Empowerment; (h) Outside court assistance;

<sup>1</sup> Yahman, Nurdin Tarigan, *Peran Advokat Dalam Sistem Hukum Nasional*, Jakarta, Pranadamedia group, (2019), p-16

<sup>2</sup> Racmad Abduh, *Bantuan Hukum Untuk Rakyat Miskin*, Medan, Pustaka Prima, (2018), p-4

and (i) Drafting legal documents. Divorce (divorce) is an event of official separation between husband and wife, they are determined not to carry out their duties and obligations as husband and wife. They no longer live and live in the same house, because there is no official bond. For those who are divorced but do not have children, the separation does not have a traumatic psychological impact on the child. But for those who have children, divorce creates psycho-emotional problems for the child. On the other hand, there is a possibility that children born during life as husband and wife will be included with one of the parents, follow the father or mother.<sup>3</sup>

The definition of divorce is the divorce of life between married couples as a result of their failure to carry out their respective role bonds. In this case, divorce is seen as the end of an unstable marriage where the husband and wife then live separately and are officially recognized

by the applicable law. Divorce is a break in the family because one or both partners decide to leave each other so that they stop doing their obligations as husband and wife. Divorce in terms of fiqh experts is called "talak" or "furqah". As for the meaning of divorce is to open ties or cancel the Agreement. Meanwhile, "furqah" means divorce, which is the opposite of gathering. Divorce is a legal termination of the marriage bond. So, divorce is a break in the husband-wife relationship, where there is no longer the status of a legal partner.<sup>4</sup>

Disputes in the household are the dynamics of life in a family, so that if a problem occurs like this, guidance and guidance on breaking the marriage bond is given before proceeding to the end of divorce or divorce. Legal consultation is a way of resolving disputes outside the court (non-litigation) to prevent divorce, the legal consultation settlement process is carried out by legal aid providers, in this case, lawyers, paralegals, law faculty students who have experience in their fields. One of the duties and obligations that can provide legal assistance outside the court is the Legal Aid Organization (OBH), one of which is the UMSU Legal Aid Bureau, which includes Advocates, Paralegals, and Law Faculty Students. Before arriving at a divorce suit in court, preventive measures requested by the recipient of legal aid must be made, and the OBH provides advice to both husband and wife in the form of legal consultation to solve the problems that occur.

## **B. Discussion**

### **1. The Model of Providing Legal Consultation in Divorce Prevention by the UMSU Legal Aid Bureau**

He state of Indonesia as a rule of law guarantees that all citizens without exception receive equal guarantees before the law (equality before the law), that their human rights are recognized and protected, where everyone has the right to be treated equally before the law. In a modern national life that aspires to a democratic life, what is called "equality" often exists in ideals and/or in a normative realm, which in reality is often not the case. The idea and principle of law that everybody is equal before the law is proven that in reality it cannot always be realized. The facts of life show clearly how this society has been running without basing itself on equality so that inequality occurs.

The 1945 Constitution has guaranteed equality before the law, as well as the right to be accompanied by a lawyer is guaranteed by the Indonesian legal system. Legal aid for the poor has a close relationship with equality before the law and access to legal counsel which guarantees justice for everyone (justice for all). Therefore, legal aid apart from being a human right is also a constitutional movement. The constitutional mandate regarding the legal rights of citizens can be found in Article 28D, "Everyone has the right to recognition, guarantees, protection and certainty of just law and equal treatment before the law." Article 27 also states, "All citizens shall have equal position in law and government and are obliged to uphold the law and government without exception.

<sup>3</sup> Robby Darwis Nasution, *Upaya Pemerintah Dalam Penanggulangan Perceraian Di Kabupaten Ponorogo* (2019)Jurnal Penelitian Kesejahteraan Sosial Vol.18 No.1

<sup>4</sup> Zainuddin Ali, *Hukum Perdata Islam di Indonesia*, Jakarta, Sinar Grafika (2012), p-32

The 1945 Constitution, the right to legal aid is not expressly stated, but as a rule of law, the principle of equality before the law makes the right to legal aid a constitutional right, so that the state has the obligation to implement legal aid, especially for people who cannot afford it. . In fact, in society there are still many underprivileged people who are separated from access to justice (access to justice). This fact is as expressed by a senior advocate, founder of the Indonesian Legal Aid Foundation, Adnan Buyung Nasution, The poor, submissive, stupid, and trampled on in order to rise up as the society we aspire to. A socially just, just and prosperous society which is based on law. That motivates us to struggle, how to lift this poor, poor, persecuted little person can be raised in rank.<sup>5</sup> Legal aid is actually nothing new in Indonesia. Legal aid has been developing for a long time, especially for legal observers. The issue of legal aid is still considered relevant to be used as study material among other legal themes. This is quite reasonable because legal aid always develops along with the development of the law itself. Legal aid returned to the fore at the same time as the issuance of Law number 16 of 2011 concerning Legal Aid.

This law was created in order to guarantee constitutional rights for every citizen which includes legal protection, legal certainty, equality before the law, and protection of human rights. The birth of this Legal Aid Law has an impact on efforts to fulfill the legal rights of citizens, this can be seen in the weighing clause in this Law which states: a. That the state is responsible for providing legal aid for the poor as a manifestation of access to justice, b. That the state is responsible for providing legal aid for the poor as a manifestation of access to justice. (Law No. 16 of 2011). In addition, referring to the general provisions of the Legal Aid Law, what is meant by Legal Aid is the service provided by Legal Aid Providers free of charge to Legal Aid Recipients. Legal aid recipients are people or groups of poor people. This Legal Aid Law then becomes a source of reference for the practice of law enforcement, protection and services for the poor. Legal aid is an important instrument in the Criminal Justice System because it is part of the protection of human rights for every individual, including the right to legal aid. The right to legal aid is one of the most important rights that every citizen has. Because in every legal process, especially criminal law, in general every person who is determined to be an accused in a criminal case, it is impossible to do his own defense in a legal process and in a legal examination against him.<sup>6</sup> Prior to the existence of the Legal Aid Law, the practice of legal aid was regulated in Advocate Law Number 18 of 2003. Regarding Advocates, Article 22 Paragraph 1 reads: Advocates are required to provide legal assistance free of charge to incapable justice seekers. " From the provisions of Article 22, it is very clear that the law-making politics of the law, namely Advocates are "obliged" to provide legal aid free of charge to incapable justice seekers. The word obligatory contains the imperative norm, where juridically such a formula is not implemented and there will be sanctions. If previously the provision of legal aid by Advocates was solely a social obligation and responsibility, then based on Article 22, the Advocate's obligation to provide legal assistance free of charge becomes a legal obligation or responsibility.<sup>7</sup>

In an effort to realize the principles of a rule of law in the life of society and the state, the role of advocates and the function of advocates as a free, independent and responsible profession is very important, accompanied by judicial institutions and other law enforcement agencies such as the police and prosecutors. Through the legal services provided, Advocates carry out their professional duties to uphold justice based on the law for the justice-seeking community, including efforts to empower people to realize their fundamental rights before the law. Advocates as an element of the judicial system are one of the pillars in upholding the supremacy of law and human rights. Based on the Regulation of the

<sup>5</sup> Adnan Buyung Nasution, *Bantuan Hukum Di Indonesia*, LP3S, Jakarta, (2007) p- 46.

<sup>6</sup> Frans Hendra Winata, *Pembahasan RUU Advokat dan Agenda Perbaikan Profesi Advokat*, Makalah (2003), p- 45

<sup>7</sup> *Ibid.*

Minister of Law and Human Rights of the Republic of Indonesia Number 10 of 2015 concerning Implementation Regulations of Government Regulation Number 42 of 2013 concerning Terms and Procedures for Providing Legal Aid and Distribution of Legal Aid Funds Article 12 paragraph (3) requests for legal consultation are submitted by recipients of legal aid to providers legal assistance by attaching a certificate of poverty.

The Legal Aid Bureau of the Muhammadiyah University of North Sumatra (BBH UMSU) as a Legal Aid Organization (OBH) that provides free legal assistance to people who are unable to provide legal services, one of which is Legal Consultation. In a divorce case, a client who comes to the UMSU Legal Aid Bureau and tells the problem of the cause of the dispute between the parties, and after telling stories related to the problem that occurs usually asks to file a lawsuit at the Religious Court The UMSU Legal Aid Bureau, prior to arriving at the lawsuit at the Religious Courts, conducted legal consultation first. In divorce cases and / or wanting to divorce, the UMSU Legal Aid Bureau will summon both of them after a legal consultation request is submitted by the legal aid recipient to the legal aid provider by attaching a certificate of poverty, and supporting data such as a National Identity Card (KTP) or a Driving License (SIM). Recipients of legal aid fill out a form provided by the UMSU Legal Aid Bureau which consists of:

- a. Applicant Identity / Data;
- b. Implementation of Legal Consultation;
- c. Brief Description of the Problem and Its Background;
- d. Advice given by Konsultas includes its juridical aspects;
- e. Consultation End Result;
- f. Signature of the applicant / client and; g. Legal Consultant Name and signature.

Routine tasks carried out by the Legal Aid Bureau at the Muhammadiyah University of North Sumatra are to provide legal advice, act as a companion for the poor and legally blind, both in litigation and non-litigation. Furthermore, who can provide legal assistance and provide legal advice? In principle, everyone can provide legal assistance if he has expertise in the field of law. However, for the sake of orderly implementation of legal aid, there are limitations and requirements in various regulations. The aid providers can be classified as follows.<sup>8</sup>

- a. Advocates who are members of an Advocate organization and are also members of the Legal Aid Institute (LBH);
- b. Advocates who are members of an Advocate organization and are not members of the Legal Aid Institute (LBH);
- c. Advocates who act as legal advisors for a company;
- d. Advocates who are not members of any association;
- e. Practice Lawyer or Pokrol;
- f. Law graduates who work in law firms / government agencies;
- g. Faculty of Law lecturers and students;
- h. Legal consultants.

In practice, although there are constitutional principles and guarantees, that "everyone is equal before the law", the implementation is not necessarily the same. In many cases, treatment is often different because of the "access" issue of each person who is different from one another. One of the relevant accesses discussed is everyone's access to legal aid. Access to legal aid means a guarantee of availability and the ability to obtain legal assistance. People or someone who is economically low or

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<sup>8</sup> Abdurrahman, *Aspek –Aspek Bantuan Hukum di Indonesia*, Jakarta, Cendanan Press, (1983, P-295

poor, often get unfair treatment, including because they do not have access to legal assistance from advocates. Access to legal aid has a scope of meaning, there is a guarantee for everyone to enjoy and use available legal remedies, including legal remedies that can be taken in the law enforcement process. The absence of an Advocate or a companion, causes a person to automatically lose access to legal services which include access to legal advice, legal assistance, being represented, assisted and legally defended by the Advocate, as their legal attorney. The lack of access to the poor is being defended by Advocates, not only because of the problem. Advocates do not provide free legal assistance. However, there is also the problem of the availability of Advocates who are very small in number compared to the number of justice seekers.

## **2. Barriers to Providing Legal Consultation in Divorce Prevention by the UMSU Legal Aid Bureau**

The Legal Aid Act comes as an effect of the growing demands for the state to meet the people's needs for legal justice and human rights. Talking about law, human rights, and a rule of law in the context of Indonesia as a rule of law is important, meaning that in building a rule of law there are inherent basic characteristics, namely:

1. Recognition and protection of human rights that contain equality in the political, legal, social, cultural and educational fields.
2. Free and impartial judiciary, not influenced by any other power.
3. Legality in the meaning of law in all its forms, so that a state is not considered a rule of law if the country concerned does not provide appreciation and guarantees for protection of society in the context of legal justice and human rights.

Adnan Buyung Nasution also argued that conceptually legal aid is an effort to help the less fortunate in the legal field, this effort has three interrelated aspects, namely: <sup>9</sup>

- a. Aspects of the formulation of legal rules,
- b. Aspects of oversight of mechanisms to keep rules adhered to,
- c. Aspects of public education so that these rules are lived up to.

Problems in the household often occur, and have indeed become part of the twists and turns of life in the household, and from this it can be seen that cases of "divorce" which are often problems in the household. Basically, the factors that cause divorce are very unique and complex and each family is different from one another. As for the factors that lead to divorce in the household, the authors can point out that the first is Economic Factors. The level of economic need today forces both partners to work to meet the economic needs of the family, so that often the difference in income or salary makes each couple at odds, especially if the husband does not have a job.

The result is too concerned with high ego, without knowing the impact of the divorce. Children who are always victims of divorce are children. For children, the family is a safe place of refuge, because there are mothers and fathers who receive love, attention, hope, and so on. If a divorce occurs in a safe family, the children will lose their safe place of life, which can hinder their growth, either directly or indirectly. The summoning of the parties to the office of the Legal Aid Bureau at the Muhammadiyah University of North Sumatra became an obstacle, because there were also some parties who did not want to come when called, because one of the parties had made up his mind to divorce at the Religious Court.

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<sup>9</sup> Adnan Buyung Nasution, *Bantuan Hukum Di Indonesia*, LP3ES,(1981),p- 35.

### C. Conclusion

The model of providing legal consultation in divorce prevention by the UMSU Legal Aid Bureau was given before it came to a lawsuit at the Religious Court. The action taken is that after the legal aid applicant has filled out the form provided, the UMSU Legal Aid Bureau will summon husband and wife. In certain circumstances, an advocate or paralegal on duty will visit the residence of a legal aid recipient. The problem of legal aid has been known since Roman times. In every era, the meaning, role and purpose of providing legal aid are closely related to prevailing moral, political views and legal philosophy. In Indonesia, the legal aid program has existed since the Dutch colonial era, until now. The current concept of legal aid is no longer just an advocate's social responsibility but more than that, the definition of legal aid is broader. Not only providing legal assistance in court, but also providing education and legal awareness for the community.

When viewed from the existing laws and regulations, it shows the government's concern for legal aid. It can be seen from the issuance of Law Number 18 of 2003 concerning Advocates which in Article 22 obliges Advocates to provide free legal assistance to incapable justice seekers. Five years later the issuance of Government Regulation Number 83 of 2008 concerning Procedures for Providing Legal Aid which is the implementation of Article 22 of Law Number 18 Tahun 2003 concerning Advocates. In 2011, Law number 11 of 2011 concerning Legal Aid was passed. This law explains that the provision of free legal aid is not only a monopoly of Advocates. Free legal assistance can be provided by paralegals. The obstacle in providing legal consultation in preventing divorce by the UMSU Legal Aid Bureau is the summoning of the parties to the office of the Muhammadiyah University of North Sumatra Legal Aid Bureau is an obstacle, because there are also some parties who do not want to come when called, because one of the parties has made up his mind to divorce at the Religious Court

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