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Reconstruction of legal aid policy for community in Indonesia based on justice value

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Abstract
Provision of legal aid for the community that has been running in Indonesia is still not effective in realizing justice based on Pancasila values. This Happen because they have not touched all elements of society who are vulnerable and lack of legal knowledge. Therefore, in order to produce a policy of legal aid to the community based on the value of justice, a reconstruction is needed and this is what urge the author to study it further in a research where the main problem discussed are what problems arise in the implementation of the legal aid policy to the public based on Law Number 16 of 2011 concerning Legal Aid in Indonesia and how to reconstruct an ideal legal aid policy to the people in Indonesia based on the justice value. The study was conducted in the perspective of the Constructivism paradigm with the type of socio-legal research and qualitative approach methods. Data used in this research are from interviews and questionnaires supported by literature, legislation and various public documents, while the data analysis was carried out by the method of qualitative critical analysis. The results showed that the problems of legal aid policy to the community include access to justice in legal aid policies which are still not optimal because they are still shackled with administrative requirements related to the meaning of poverty in the administration of legal aid and the problem of centralization of authority by the government which results in imbalance of authority between the center and the government. Regions in providing legal aid. The reconstruction of legal aid policies for the poor that is based on the value of justice is to optimize access to justice in legal aid policies for the community by redefining the requirements for legal aid recipients that were originally only for the poor to become people with minimal legal knowledge and a balance of authority between the central and regional governments in providing legal aid to the public by making changes to Article 1 Paragraph (1) and Paragraph (2) of Law Number 16 Year 2011.

Keywords: reconstruction, legal aid, justice value

Introduction

Based on 2019 data of the number of Legal Aid organizations that have passed verification and accreditation in Indonesia, there are only 405 Legal Aid Organizations exist and not all of them are in districts / cities. Of the 516 districts / cities, 127 districts / cities have legal aid organizations. This means that around 75% of districts / cities in Indonesia do not have an accredited Legal Aid Organization that provides legal aid services to the poor. Meanwhile, the number of poor people in Indonesia in 2019 was 28.60 million or 11.46% of the total population, and in 2019 (data for March 2019) there were 28.28 million people or 11.25%. Of the 310 legal aid organizations recorded in 2019, only a few have specific capabilities to provide legal assistance to vulnerable and marginalized groups. A few of these organizations are legal aid organizations that work in the field of women and children and there are no one in the field of disabilities and LGBT groups [1].

Public accessibility to legal aid is important. When viewed from its distribution, the existence of legal aid organizations at the district / city level is only in 25% of all districts / cities in Indonesia. With such distribution conditions, it can be concluded that public access, which amounts to 28 million people, is limited due to the uneven availability of legal aid.

The minimal number of lawyers owned by Legal Aid Organizations and the reach of legal aid organizations that do not cover all areas has made the accessibility and quality of legal aid services for the poor need to be improved. However, in implementing Legal Aid services, Legal Aid Organizations have the right to recruit lawyers, paralegals, lecturers and law faculty students. If viewed from the type of Legal Aid services which are divided into litigation and non-litigation, then the provision of litigation Legal Aid services is the domain of an advocate. Meanwhile, non-litigation legal aid can be carried out either by lawyers or non-lawyers, which consists of paralegals, lecturers and law faculty students for legal aid institutions established by universities or campuses.

The role of local government is very important in realizing legal aid for the community, especially in establishing regional regulations on legal aid for the community, the

[1] BPHN.go.id, (2018), Verifikasi dan Akreditasi Organisasi Bantuan Hukum Periode 2019 - 2021 Resmi dibuka, https://bphn.go.id/news/2018073106235062/Verifikasi-dan-Akreditasi-Organisasi-Bantuan-Hukum-Periode-2019-2021-Resmi-dibuka, retrieved on august 2020.

mandate of Article 19 of Law Number 16 of 2011 should be an obligation of local governments in realizing justice which is manifested in the stipulation of regional regulations as legal umbrella legal aid in each area.

After the enactment of Law Number 16 Year 2011, it turns out that legal aid has not been able to reach all people who are dealing with the law. Lack of legal knowledge, most people are unable to protect their rights in solving legal problems. The culture of paying expensive lawyers to solve legal problems is very strong, because this culture is so entrenched and difficult to just erase it.

In a modern constitutional state the main task of the state lies not only in the implementation of the law, but also to achieve social justice (*sociale gerechtiheid*) [2] for all the people, protection of the law and law is enforced in accordance with the culture of the local community. The provision of legal assistance has actually been in effect for the people of Indonesia. However, the legal fact states that the provision of legal aid is only to the poor, where this appears and is regulated in Law Number 16 of 2011 concerning Legal Aid.

Provision of legal aid to the community that has been running in Indonesia is still not effective in realizing justice based on Pancasila values. Because they have not touched all elements of society who are vulnerable and lack legal knowledge. So that in order to produce a policy of legal aid to the community based on the value of justice, a reconstruction is needed to further broadening the definition between the poor economically to a society with minimal legal knowledge. The problem as mentioned above are what urges the author to study the matter deeply in a research with the main problem as follows:

1. What problem arise in the implementation of the legal aid policy to the community based on Law Number 16 of 2011 concerning Legal Aid in Indonesia?
2. How is the ideal reconstruction of legal aid for the community in Indonesia based on the justice value?

Method of Research

The paradigm that is used in the research this is the paradigm of constructivism which is the antithesis of the understanding that lay observation and objectivity in finding a reality or science knowledge [3]. Paradigm also looked at the science of social as an analysis of systematic against *Socially Meaningful Action* through observation directly and in detail to the problem analyzed.

The research type used in writing this paper is a qualitative research. Writing aims to provide a description of a society or a certain group of people or a description of a symptom or between two or more symptoms.

Approach Method used in this research is the approach *of Normative-Juridical* [4], which is based on the norms of law and the theory of the existing legal enforceability of a law viewpoint as interpretation.

As for the source of research used in this study are

1. Primary Data, is data obtained from literature review derived from the existing regulation, credible news and data obtained from interested parties.
2. Secondary Data, is an indirect source that is able to provide additional and reinforcement of research data. Sources of secondary data in the form of: Primary Legal Material and Secondary Legal Materials and Tertiary Legal Material.

In this study, researchers uses data collection techniques, namely literature study, interviews and documentation. In this study, the researcher is a key instrument that is the researcher himself who plans, collects, and interprets the data [5].

Research result and discussion

1. Problem that rose in the implementation of the legal aid policy to the community based on law number 16 of 2011 concerning legal aid in Indonesia

Theoretically, the effectiveness of the implementation of Law Number 16 Year 2011 concerning Legal Aid is influenced by internal factors, namely factors of legal regulations and law enforcement as well as external factors, namely community culture and problems of interpreting poverty as well as budgeting and managing Legal Aid Agency (LBH).

In its development, the implementation of Law Number 16 Year 2011 has various problems. Cornelius Gea as coordinator of advocacy in the field of LBH Central Java stated that in fact the provisions of Article 19 of Law Number 16 Year 2011 were not implemented properly because not all discussions on regional revenue and expenditure budgets includes a special budget for financing legal aid and LBH development costs in the regions [6].

The government, in trying to overcome the problem of lawyers' reluctance to help the poor because of the absence of economic benefits from providing legal aid issues Law no. 16 of 2011 concerning Legal Aid. Through this law, the state provides funds for advocates who provide legal assistance for the poor. The law does not state whether the fund is an honorarium or other costs / fees required to provide legal assistance, but by referring to the above interpretation, the funds should be allocated for an honorarium as well as other costs / fees. However, this government move also raises new problems, especially with requirements that are not easily met by lawyers as individuals or who are members of legal aid institutions or organizations.

The first problem is that there are administrative requirements that must be met for obtaining legal aid funds. legal aid agency (LBH) as an organization not an individual advocate. If the funds are aimed at financing legal aid provided by advocates to the poor, why should an institutional accreditation mechanism be established and not aimed at advocates as individuals.

The second problem is, although members of LBH consist of lawyers, by placing the institution as a recipient of legal aid funds, this limits advocates (as individuals or who practice independently or on the appointment of judges) from accessing the legal aid funds. The second problem is

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[2] W., Widodo. (2017). the Diversion Based Philosophy of Restorative Justice Indonesia Version. 30. 1-12.

[3] Faisal, (2010), Menerobos Positivisme Hukum, Rangkang Education, Yogyakarta.

[4] Johnny Ibrahim, (2005), Teori dan Metodologi Penelitian Hukum Normatif, Bayumedia, Surabaya.

[5] L. Moleong, (2002), Metode Penelitian Kualitatif, PT Remaja Rosdakarya, Bandung.

[6] LPMDIMENSI, (2020), Konsolidasi Akbar Tolak Omnibus Law Menuju Aksi 11 Maret Mendatang, http://www.lpmdimensi.com/2020/03/konsolidasi-akbar-tolak-omnibus-law-menuju-aksi-11-maret-mendatang/, retrieved on August 2020.

related to contradiction between two laws, namely between Law no. 18 of 2003 (Article 22 paragraph (1) and Law No. 16 of 2011 concerning Legal Aid. Providing legal assistance to poor people (poor people), is an obligation given by law (Law No. 18 of 2003) to advocates. This law does not mention advocates who practice independently or are members of the LBH, in other words this obligation is attached to the holders of the advocate profession. Law No. 16 of 2011 overturns the provisions in the advocate law, because the provision of legal assistance to the poor are associated with funds or money that will be received by lawyers as providers of legal aid.

The orientation of providing legal aid by advocates as the responsibility of the profession which is *officium nobile* and *pro bono publico* [7], is directed by the government towards the commercialization of the provision of legal aid funds.

The third problem is, until now there are still many court judges who appoint an advocate to provide legal assistance to the poor to advocates who are not part of the accredited LBH. This appointment is in accordance with the law, in the sense that in certain cases requiring the parties to be accompanied by an advocate while one or both parties are not accompanied by an advocate, the court will appoint an existing lawyer to accompany him. If this appointment is not lured by access to legal aid funds, of course this is an implementation of an advocate's obligations as mandated in the law. However, if later the orientation changes, in the form of access to legal aid funds (both provided by the government through the Regional Office of Law and Human Rights and budgeted by the Supreme Court), then the second question above will re-emerge.

The fourth problem relates to the government bureaucracy in accessing and disbursing legal aid funds. The accredited LBH who is given the authority to provide legal assistance to the poor even though it has been given training or tutorials by the local Regional Office of Law and Human Rights, is not someone who usually deals with the bureaucracy in disbursing government funds, especially now using the online system. Data obtained by the author in Surakarta shows that access to funds is quite difficult, so it takes a long time to disburse, even though these funds (although the amount is not large) are sufficient to help the running of the organization. Therefore, progressive steps are needed so that the submission of funds and disbursements can be carried out in a not too long period of time. Based on the above discussion, the issuance of regulations does not necessarily solve problems that exist in society, instead it creates new problems that may not have been previously thought by legislators. If what is meant by law is only what is written (positive law), the problem will not appear to arise, but if the law is as implemented, then problems will arise along with the inherent weaknesses that exist in the law.

However, law enforcement officials should not make laws as holy books that cannot be violated if the people's interests are harmed. If it is deemed necessary and for the benefit of humans, the law may be set aside, because - as the idiom in progressive law states that law is for humans, not humans for law - humans should be central in law enforcement. This is a dilemma for the government, between implementing the law, carrying out the obligation to "maintain" the poor and applying the principle of equality before the law as a consequence of the rule of law, the obligation to pay for services provided by advocates who have provided legal aid, and the desire to spend state finances.

Since the enactment of Law no. 16 of 2011 concerning Legal Aid, the Ministry of Law and Human Rights as a Legal Aid Provider through the National Law Development Agency (BPHN) has accredited 405 Legal Aid Organizations (OBH) spread across 34 provinces and 167 districts / cities in the 2015-2018 period. Of the 405 OBHs, there are 2,070 lawyers and 2,130 paralegals. The government allocates a budget from the APBN of approximately 45 billion Rupiahs. The number of Legal Aid Recipients in 2017 was recorded at almost 50,000 people. The Indonesian Ministry of Law and Human Rights realizes that the budget and the amount of services provided are still far from sufficient to meet the needs of legal aid in Indonesia. From the results of research conducted by HiiL in 2014, as many as 16% of Indonesia's population experienced legal problems in the last 4 years. If the data is projected only on the poor then there are at least 4.5 million poor people who have experienced legal problems in the last 4 years. The low level of legal awareness makes the majority (71%) of those who experience legal problems do nothing, including even seeking further information about the problems they face. Their reasons for not doing anything are that they don't think the problem is serious enough, are not sure that they will be able to get a positive result, worry that they will damage the relationship with the other party, or simply don't know what to do [8].

Legal aid in a broader sense is increasingly finding its relevance in this situation. Legal aid, which is not only legal representation in court (legal representation), but has a role as a provider of legal information, education, knowledge and of course legal advice, will be able to provide hope to the community, encourage change, eradicate poverty and improve welfare.

In addition to providing legal services to the community according to Law no. 16 of 2011 legal aid also has a broader objective to guarantee and fulfill access to justice and to improve the justice system. Currently, the implementation of the Legal Aid Law is still very limited to providing legal services to the poor. The two bigger goals above also require an increase in the quality of legal aid providers, both organizationally and personally.

The current national legal aid program scheme only allocates funds of up to IDR 8 million for each legal aid case / activity carried out by the LBH. For LBH, funds of this size are deemed insufficient for the needs of legal assistance per case, especially when the case reaches the appeal stage to Cassation or Review. Thus, the cost requirements for LBH operations and the increase in the number of advocates and paralegals will not be fulfilled from the allocation of legal aid funds.

The Law on Legal Aid currently only provides legal assistance to poor community groups as evidenced by the existence of a Poor Certificate and the like (in accordance with Article 14 paragraph (1) point c of Law 16/2011 on Legal Aid). Meanwhile, on the other hand, there is also a

[7] Pasaribu, Parlindungan. (2017). Hakekat Profesi Advokat Sebagai Penegak Hukum. Yuriska: Jurnal Ilmiah Hukum. 4. 25. 10.24903/yrs.v4i1.161.

[8] Arifin, Ridwan. (2020). Legal Services and Advocacy in the Industrial Revolution 4.0: Challenges and Problems in Indonesia. Indonesian Journal of Advocacy and Legal Services. 1. 159-162. 10.15294/ijals.v1i2.36488.

need for legal assistance from vulnerable groups such as children, women, indigenous peoples and persons with disabilities regardless of their economic conditions.

In Article 17 and 18 of Law Number 23 of 2002 concerning Child Protection it is stated that every child who being deprived of their liberty or being victims or perpetrators of criminal acts, are entitled to legal assistance. This is further reinforced in Article 23 paragraph (1) of Law Number 11 of 2012 concerning the Criminal Justice System for Children which states that:

"*At each level of examination, children must be provided with legal assistance and accompanied by a social advisor or other companion in accordance with the provisions of the legislation*".

The right to legal aid for persons with disabilities is expressly regulated in Article 29 of Law no. 8 of 2016 concerning Persons with Disabilities, and specifically obliges the Government and Local Governments to provide legal assistance to Persons with Disabilities in every examination at every law enforcement agency in civil and / or criminal matters in accordance with the provisions of laws and regulations.

The need for an increase in the quantity and quality of legal aid services for the poor is quite large on the one hand, and the various limitations that the central government has in providing legal aid services, necessitating the participation of local governments in legal aid services. The role of the regional government is mainly related to the administration and budgeting of legal aid so as to further expand the reach of legal aid. The awareness of local governments to participate in fulfilling the constitutional rights of citizens in obtaining legal aid already exists in at least 16 provinces and 61 districts / cities through the formation of the Legal Aid's Regional Regulation. In general, these Regional Regulation still fully refer to the legal aid mechanism regulated by the Law on Legal Aid, and have not addressed broader needs in increasing the capacity and quality of legal aid services. On the other hand, there are many doubts and confusion in the local government when they want to form or implement a law on legal aid. One of the fundamental issues that had emerged was the perception that legal aid is the central authority, referring to Article 10 of Law Number 23 of 2014 concerning Regional Government. This article states that the affair are absolute governmental affairs, meaning that justice affairs are under the authority of the central government and not at all regional authorities. In the elucidation section of Law Number 23 of 2014 it is stated that what is meant by "*judicial affairs*", for example establishing a judiciary, appointing judges and prosecutors, establishing a correctional institution, establishing judicial and immigration policies, granting clemency, amnesty, abolition, forming laws, regulations government in lieu of laws, government regulations, and other regulations on a national scale.

Law Number 16 of 2011 concerning legal aid mandates the authority to budget legal aid by the Regions in Article 19 paragraph (1), namely that the Regions can allocate a budget for the implementation of legal aid in the Regional Revenue and Expenditure Budget. Meanwhile, further Provisions regarding the implementation of Legal Aid as referred to in paragraph (1) shall be regulated by Regional Regulations. Because what is regulated is only the allocation of the budget, the implementation of the provision of legal aid by the regions is subject to the Regime Implementing Regulations of Law 16/2011.

There are doubts from the Local Government about whether the Legal Aid Budget is a Grant or Social Assistance. This has been answered by the existence of a legal aid budget arrangement in Minister of Home Affairs Regulation Number 31 of 2016 and Minister of Home Affairs Regulation Number 33 of 2017 concerning Guidelines for Regional Revenue and Expenditure Budget Formulation. With this regulation, there should be no more doubts about the authority of local governments in legal aid services.

In some regions that already have legal aid regulations, there have also been obstacles at the implementation level, which are basically caused by concerns in the management and distribution of the legal aid budget. The regulation of legal aid has stopped only at the Regional Regulation level, and is not followed by more technical regulations in the form of regulations/ decrees of regional heads as there needs to be technical guidance at the national level for budgeting legal assistance in the regions to be included in the Minister of Home Affairs Regulation on Guidelines for Regional Revenue and Expenditure Budget Formulation.

2. Ideal Reconstruction Of Legal Aid For The Community In Indonesia Based On The Justice Value

Based on the problem that rose as mentioned by the author above, the Law Number 16 of 2011 concerning Legal Aid needs reformulation, especially in the substance of the definition of legal aid recipients, the balance of authority between the Central and Regional Governments in providing Legal Aid, so that the optimization of the application and enforcement of law is in accordance with the objectives to be achieved, namely certainty and substantive justice based on Pancasila values.

According to Yudi Latif [9], based on Soekarno's speeches related to Pancasila, the value of mutual cooperation is the basis of all existing principles in Pancasila. Furthermore, Yudi Latif linked the values of mutual cooperation with the values contained in the five precepts in Pancasila. Namely as follows:

a. The Divine Principle, the Divine Principle which must be based on mutual cooperation, means the divine value which is also cultural, spacious and tolerant. So that the diversity of beliefs and beliefs in a religion can run in harmony without attacking each other and isolating one group from another. This principle is in line with the fifth principle of Soekarno's Pancasila concept which Soekarno named as a Cultural Godhead.
b. The principle of internationalism, the principle of internationalism which has the spirit of mutual cooperation, is the principle of internationalism which is humane and has justice. So that the existing principles of internationalism will always uphold peace and respect for human rights. This principle is in accordance with the second principle of Soekarno's Pancasila, which Soekarno named as the Principle of Internationalism and Humanity.
c. The principle of nationalism, the principle of nationalism that has the spirit of mutual cooperation, according to Yudi Latif, is a nationality capable of realizing unity from various differences in Indonesia or

[9] Yudi Latif,92011), Negara Paripurna, Historistas, Rasionalitas, Dan Aktualitas Pancasila, PT. Gramedia Pustaka Utama, Jakarta, p. 9-10

in other words, capable of realizing Unity in Diversity. This view is in accordance with the Principles of Internationalism or Humanity.

d. The principle of democracy, the principle of democracy with a spirit of mutual cooperation, according to Yudi Latif, is democracy based on deliberation to reach consensus. It is not a Western democracy that prioritizes the interests of the majority and the interests of the ruling-capitalist elite or the minocracy. This principle is in accordance with the principle of consensus or democracy in the concept of Pancasila
e. Principle of Welfare, the principle of welfare based on the value of mutual cooperation, according to Yudi Latif, is welfare that is realized through the development of participation and emancipation in the economic sector based on the spirit of the economy. So that the intended welfare is not welfare based on individualism-capitalism and etatism. This principle is in accordance with the Fourth principle in the Pancasila concept.

Based on the various explanations above, it can be seen clearly that the concept of Pancasila as a Philosophical *Grondslag* that was first initiated by Soekarno where in his initial concept Soekarno wanted a country that had National Values, Humane Values, Democratic Values, Social Welfare, and Divine Values. Soekarno combined these various values into mutual cooperation values, in other words Soekarno wanted a mutual cooperation state that was able to accommodate all the interests of the Indonesian people both in the context of individuals as well as the nation and state. Apart from this, based on various explanations related to the preparation of Pancasila as Philosophical *Grondslag*, it is clear that Pancasila can be the only Philosophical Grondslag in Indonesia on the grounds that the values of Pancasila have lived with the Indonesian nation long ago even before the formulation of Pancasila itself, so that It can also be concluded that Pancasila has become the identity, identity and philosophy of life of the Indonesian people.So it is clear that Pancasila should be used as a leitstar, Philosophical Grondslag, and rechtsidee for Indonesian law. Regarding Pancasila as a basic philosophy, Kaelan [10] states that:

"*The values of Pancasila as the basis for the philosophy of the Indonesian state are essentially a source of all sources of law in the Indonesian state. As a source of all sources of law objectively constitutes a view of life, awareness, legal ideals, and moral ideals that encompass the psychological atmosphere and character of the Indonesian nation*".

Based on Kaelan's explanation of Pancasila as a basic philosophy as explained above, it can be seen that the values contained in Pancasila are ideals that Kaelan is trying to aim for or are called das sollen and for that Pancasila becomes the basis for law to create ideals. sublime that exists in the real world or by Kaelan is called das sein. So it is clear that Pancasila is the source of all sources of law in Indonesia.The view of Pancasila as the source of all sources of law is in line with the MPRS Decree Number XX / MPRS / 1966 jo. MPR Decree Number V / MPR / 1973 jo. MPR Decree Number IX / MPR / 1978. Then reaffirmed by MPR Decree Number III / MPR / 2000 and also affirmed by Law Number 10 of 2004 jo. Law Number 12 of 2011 concerning the Formation of Legislative Regulations. MPRS Decree Number XX / MPRS / 1966 jo. MPR Decree Number V / MPR / 1973 jo. The MPR Decree Number IX / MPR / 1978 states that:

"Pancasila is the source of all sources of law or an orderly source of Indonesian law, which in essence is a view of life, awareness and moral ideals that encompass the mystical atmosphere and character of the Indonesian nation".

Meanwhile, Article 1 paragraph (3) of MPR Decree Number III / MPR / 2000 states clearly that "the source of national basic law is Indonesia." Furthermore, in Article 2 of Law Number 10 of 2004 jo. Article 2 of Law Number 12 Year 2011 concerning the Formation of Legislative Regulations states that "*Pancasila is the source of all sources of law*."

Apart from the various provisions that have been mentioned above, evidence that Pancasila is the source of various sources of law in Indonesia can also be seen in the Preamble of the 1945 Constitution. This view is in line with the views of Kaelan, according to Kaelan the Preamble of the 1945 Constitution is a derivation or translation of values contained in Pancasila. This can be proven by Kaelan's explanation regarding the Preamble of the 1945 Constitution.

According to Kaelan, the first main idea in the preamble of the 1945 Constitution is an elaboration of the third principle of Pancasila, this opinion can be seen by the statement in the first principle which explains that the Indonesian state is a unitary state, namely a country that protects the entire nation and all the blood of Indonesia, overcomes all understanding of groups. as well as individuals. Furthermore, the second point of thought in the Preamble to the 1945 Constitution is an elaboration of the fifth principle of Pancasila, this can be seen from the main statements of thought from the Preamble to the 1945 Constitution which states that the state wants to realize social justice for all Indonesian people. In this case the state has the obligation to create general welfare for all citizens, educate the nation's life, and participate in implementing world order based on eternal peace and social justice. Furthermore, the third point of thought from the Preamble to the 1945 Constitution which states that the state is sovereign of the people. Based on democracy and deliberation / representation. Basically it is a translation of the fourth principle of Pancasila and the fourth main point of the Preamble to the 1945 Constitution is the translation of the first and second principles of Pancasila. This is evidenced by the statement on the principal idea which states that the state is based on the One Godhead according to the basis of just and civilized humanity.

Based on the various explanations that exist, it can be seen that Pancasila is the basic philosophy of the Indonesian nation that guides the Indonesian nation in carrying out the life of the nation and state, therefore Pancasila is manifested in the real world through legal means that are sourced from Pancasila itself. This is shown by the elaboration of Pancasila values in the main ideas of the Preamble of the 1945 Constitution which are then manifested in every article in the 1945 Constitution. under the 1945 Constitution. So it can also be concluded that Pancasila is the foundation of moral ethics in the nation and state in Indonesia.

The view of Pancasila as the basic philosophy as well as the source of all sources of law can also be seen by using Hans Kelsen's theory which was named by Kelsen with theorie

[10] Kaelan, (2004),Pendidikan Pancasila, Proses Reformasi, UUD Negara Amandemen 2002, Pancasila Sebagai Sistem Filsafat, Pancasila Sebagai Etika Politik, Paradigma Bermasyarakat, Berbangsa Dan Bernegara, Paradigma, Yogyakarta, p. 88.

von stufenbau der rechtsordnung or often known as the stufenbau theory and also using the theory of Hans Nawiasky which he named *die theorie vom stufenordnung der rechtsnormen* [11].

Stufenbau theory or stufen theory or tiered legal theory by Hans Kelsen states that legal norms are basically hierarchical and layered in a hierarchy, in the sense that a lower norm applies, originates and is based on norms that are even higher until a norm that cannot be traced further and is hypothetical, namely the Basic Norm or Grundnorm. Grundnorm or basic norms are norms that are no longer formed by a norm, basic norms are norms that were formed in advance by the community and become a dependency for other norms underneath so that the basic norm is said to be presupposed.In terms of Pancasila as the source of all sources of law or Leitstar in the field of law, Kelsen's theory positions Pancasila as a Grundnorm. So that it can be said that Pancasila is the basic norm that is the dependence of the legal norms that are under it, this is in accordance with the various explanations above regarding Pancasila as the basic philosophy and as the source of all sources of law in Indonesia.

Based on the foregoing, the reconstruction of legal aid policies for the poor that is based on the value of justice is by optimizing access to justice in legal aid policies for the community by redefining the requirements for legal aid recipients which were originally only for the poor to become people with minimal legal knowledge and balance of authority between central and regional governments in providing legal aid to the public by making changes to Article 1 Paragraph (1) and Paragraph (2) of Law Number 16 Year 2011 so that it reads as:

In this law, what is meant as

1. Legal aid recipients are people or groups of poor people.
2. The poor are people or groups of people who are unable to fulfill their basic needs.

a. Reconstructing Article 5 Paragraph (1) of Law Number 16 Year 2011 so that it becomes:

1. Recipients of Legal Aid as referred to in Article 4 paragraph (1) include every person or group of poor people who are unable to fulfill their basic rights properly and independently. Legal aid is also provided to middle class people who lack legal knowledge.

b. Reconstruction in Article 7 Paragraph (1) of Law Number 16 Year 2011 into

1. To carry out the verification and accreditation as referred to in paragraph (1) letter b, the Minister shall form a committee consisting of elements such as :

a. the ministry that administers government affairs in the field of law and human rights;
b. academics;
c. public figure;
d. institutions or organizations that provide Legal Aid services;and
e. Regional government.

c. Reconstructing Article 16 Paragraph (1) of Law Number 16 Year 2011 so that it becomes

1. Legal aid funding required and used for the provision of legal aid in accordance with this law is borne by the State Revenue and Expenditure Budget as well as the Regional Revenue and Expenditure Budget.

d. Reconstruction of the provisions of Article 19 Paragraph (1) of Law Number 16 Year 2011 so that it becomes: "Regions are required to allocate budget for the administration of Legal Aid in the Regional Revenue and Expenditure Budget".

[11] Hans Kelsen, in von Bernstorff, Jochen. (2010). The Public International Law Theory of Hans Kelsen: Believing in Universal Law. Cambridge University Press, 10.1017/CBO9780511776953.

Conclusion

1. Problems in the policy of legal aid to the community are the access to justice in legal aid policies that are still not optimal because they are still shackled with administrative requirements related to the meaning of poverty in the administration of legal aid and the problem of centralization of authority by the government which results in an imbalance of authority between the central and regional governments in the implementation of the legal aid.
2. Reconstruction of legal aid policies for the community based on the value of justice is to optimize access to justice in legal aid policies to the community by redefining the requirements for legal aid recipients, which were originally only for the poor to become people with minimal legal knowledge and a balance of authority between the central government and regions in providing legal aid to the public by making changes to Article 1 Paragraph (1) and Paragraph (2) of Law Number 16 Year 2011.

References

1. Arifin Ridwan. Legal Services and Advocacy in the Industrial Revolution 4.0: Challenges and Problems in Indonesia. Indonesian Journal of Advocacy and Legal Services, 2020; 1:159-162. 10.15294/ijals.v1i2.36488.
2. BPHN.go.id, Verifikasi dan Akreditasi Organisasi Bantuan Hukum Periode 2019 - 2021 Resmi dibuka, 2018. https://bphn.go.id/news/2018073106235062/Verifikasi-dan-Akreditasi-Organisasi-Bantuan-Hukum-Periode-2019-2021-Resmi-dibuka, retrieved on august 2020.
3. Faisal, Menerobos Positivisme Hukum, Rangkang Education, Yogyakarta, 2010.
4. Johnny Ibrahim. Teori dan Metodologi Penelitian Hukum Normatif, Bayumedia, Surabaya, 2005.
5. Kaelan. Pendidikan Pancasila, Proses Reformasi, UUD Negara Amandemen 2002, Pancasila Sebagai Sistem Filsafat, Pancasila Sebagai Etika Politik, Paradigma Bermasyarakat, Berbangsa Dan Bernegara, Paradigma, Yogyakarta, 2004.
6. Moleong L. Metode Penelitian Kualitatif, PT Remaja Rosdakarya, Bandung, 2002.
7. LPMDIMENSI. Konsolidasi Akbar Tolak Omnibus Law Menuju Aksi 11 Maret Mendatang, 2020. http://www.lpmdimensi.com/2020/03/konsolidasi-akbar-tolak-omnibus-law-menuju-aksi-11-maret-mendatang/, Retrieved on August 2020.
8. Pasaribu Parlindungan. Hakekat Profesi Advokat Sebagai Penegak Hukum. Yuriska: Jurnal Ilmiah Hukum, 2017; 4:25. 10.24903/yrs.v4i1.161.
9. Von Bernstorff, Jochen. The Public International Law Theory of Hans Kelsen: Believing in Universal Law. Cambridge University Press, 2010. 10.1017/CBO9780511776953.
10. Widodo W. The Diversion Based Philosophy of Restorative Justice Indonesia, Version, 2017; 30:1-12.
11. Yudi Latif. Negara Paripurna, Historistas, Rasionalitas, Dan Aktualitas Pancasila, PT. Gramedia Pustaka Utama, Jakarta, 2011.