



The right of the suspect to obtain state legal aid

Anshar¹, Din², Saleh²

¹ Department of Law, Faculty of Law Universitas Syiah Kuala, Banda Aceh, Indonesia

² Lecture, Department of Law, Faculty of Law Universitas Syiah Kuala Banda Aceh, Indonesia

Abstract

The purpose of this research is to explain the factors behind suspects not being accompanied by legal counsel. It is known that based on Article 56 of the Criminal Code (KUHP) it is stipulated that the defendant must fulfill the requirements to receive assistance from a legal advisor appointed by the investigator free of charge. This journal uses empirical juridical research methods, namely legal research regarding the application or implementation of normative legal provisions in action at each specific legal event that occurs in society. The reality that occurred in this case was that the defendants were not accompanied by legal advisors from the investigation process to the trial process. Based on the research results, it is known that the absence of a suspect or accused being accompanied is caused by several factors, namely the Legal Substance or Law Factor, namely that there are no provisions or sanctions if law enforcement officials violate Article 56 paragraph (1) of the Criminal Procedure Code, second is the legal structure factor. shows that law enforcement officers do not carry out their duties and authority properly, and the third factor is legal culture, one of which is that the defendant believes that legal aid only belongs to capable people who can pay the honorarium.

Keywords: Advocates, lawyer, legal aid, right

Introduction

Article 1 number 1 of Law Number 16 of 2011 concerning Legal Aid states that Legal Aid is a legal service provided by legal aid providers free of charge to legal aid recipients. More specifically, Article 4 paragraph (3) of the Legal Aid Law details the legal aid in question, namely exercising power, accompanying, representing, defending and carrying out other legal actions for the legal interests of legal aid recipients. The main actor who is central to defending a suspect or defendant is the legal advisor.

In Article 1 point 1 of Law Number 18 of 2003 concerning Advocates (hereinafter referred to as the Advocate Law), an Advocate is a person whose profession is to provide legal services, both inside and outside the court, who fulfill the requirements based on the provisions of the law. Legal services are services provided by advocates in the form of providing legal consultations, legal assistance, exercising power of attorney, representing, assisting, defending, and taking other actions in the interests of clients. Article 5 of the Advocate Law states that advocates have the status of law enforcers, are free and independent, guaranteed by laws and regulations, the Advocate's work area covers the entire territory of Indonesia.

Article 1 point 13 of the Criminal Procedure Code explains that a legal advisor is a person who meets the requirements determined by or based on law to provide legal assistance. Every judicial process is required to provide legal advice to indigent suspects. Criminal Procedure Code No. 8 of 1981, Article 56 Paragraph (1) also regulates the following matters:

"In the event that a suspect or defendant is suspected or accused of committing a criminal offense which is punishable by the death penalty or a sentence of fifteen years or more or for those who are incapacitated who are threatened with a sentence of fifteen years or more who do not have their own legal counsel, the official concerned shall all levels of examination in the judicial process are

obliged to appoint a legal advisor for them." (so according to this article, the appointment of a Legal Advisor is mandatory if a suspect or defendant is threatened with imprisonment for more than 5 years. This threat is deemed to be a serious threat so it is important to protect the rights - the right is that the presence of a Legal Advisor is urgent, to ensure that the examination process runs according to standards in the criminal justice system).

At the end of the sentence in this paragraph, it is stated that it is mandatory to appoint a legal advisor for a suspect who is incapable. The appointment of a legal advisor to accompany the suspect is a normative necessity. The origin of Article 56 of the Criminal Procedure Code is that before the existence of the Criminal Procedure Code, the Criminal Procedure Law in force in Indonesia was *Het Herziene Inlandsh Reglement* or H.I.R (Staatsblad of 1941 No. 44). In HIR, the evidentiary process generally places more emphasis on the suspect's confession alone, so that the search for other evidence is less carried out. As a result of emphasizing the search for evidence over the suspect's confession, wrongful arrests often occur or suspects confess due to coercion on the grounds that they cannot withstand torture from investigators, this has violated the suspect's human rights.

Witnesses and examinees have the right to be accompanied by a legal advisor during examinations in criminal cases and inquiries and investigations. A legal advisor is a person whose profession is to provide legal services both inside and outside the court who fulfill the requirements based on the provisions of Article 1 paragraph (1) of the Legal Advisor Law. Meanwhile, according to Article 5 paragraph (1) of the Legal Advisor Law, Legal Advisors have the status of law enforcers, free and independent, guaranteed by law and statutory regulations. "From the two articles above, it can be ascertained that the Legal Advisor as a law enforcer provides legal assistance to justice seekers in the criminal case process both at the inquiry and/or investigation level in

accordance with the norms or provisions regulated in the Law on Criminal Procedure Law," To maintain the authenticity of the research in this thesis, there are several previous studies that are related to this research, namely as follows

1. Bambang Sunoto and Jawade Hafis, "Legal Counsel Assistance for Suspects and Defendants in Corruption Cases Case Study of the jurisdiction of the Semarang Corruption Crime Court", published in the legal journal, Vol 13, 01 March 2018. That this journal focuses on assistance by Legal Advisor in Corruption Crimes and does not focus on legal assistance.
2. Ahkam Jayadi, "The Role of Legal Advisors in Achieving Justice". Which was published in the legal journal Volume 5 Number 2 December 2018. What is focused in this research is the role variable of the legal advisor himself, not the suspect.
3. Lies Sulistiani *et al.*, "The Role of Legal Aid in Efforts to Protect the Human Rights of Defendants in the Criminal Justice Process. Study of the Legal Area of the Bandung District Court", that the variable in this research is Legal Aid for the protection of Human Rights, not based on the Suspect's Right to obtain assistance law.
4. Ajie Ramdan, "Legal Aid as a State Obligation to Fulfill the Constitutional Rights of the Poor" published in the Constitution Journal Vol, 11, Number 2, June 2014. That the variable in this journal research is legal aid which is the state's obligation to the poor, whereas in this study the focus is on the suspect's right to obtain state legal assistance because equality before the law is inherent in it.

From all the journals above, there has not been a single study regarding why a suspect or defendant is not accompanied by a legal advisor when it is related to Lawrence Friedman's theory of the legal system, namely legal substance, legal structure, and legal culture. So, because of this it will be analyzed in depth in this journal.

Research Method

The method used in this research is the juridical-empirical research method, namely research by conducting a comprehensive study by conducting direct observations and interviews at the research location. To complete this research, a literature review was also carried out, such as reviewing several legislative regulations related to the problem under study which became secondary material in this research.

Discussion

Factors The Defendant Did Not Appoint Legal Counsel

Article 1 number 1 of Law Number 16 of 2011 concerning Legal Aid explains "Legal Aid is a legal service provided by Legal Aid Providers free of charge to Legal Aid Recipients. According to Prof. Miriam Budihardjo, the state is an organization within an area that can impose its legitimate authority on all power groups within it and can determine various goals for that life. So legal aid is service assistance provided to clients free of charge whose operational costs or attorney services are borne by the state.

The suspect's right to obtain legal assistance. Based on Article 1 point 14 of the Criminal Procedure Code, a suspect is a person who, because of his actions or circumstances,

based on preliminary evidence, is reasonably suspected of being the perpetrator of a criminal act. The defendant is a suspect who is charged, examined, and tried in court.

Rights are something absolute and inherent in human life. Rights are something that every individual must obtain from the time they are still in the womb. In general, rights are defined as a form of truth, ownership, authority, power, degree, and authority according to law. In Indonesia, rights are regulated in the Constitution or the 1945 Constitution. One example of a citizen's rights that is guaranteed is the right to live, grow and develop. Citizens also have the right to live and live in certain areas without discrimination.

Thus, legal aid is everyone's right which is guaranteed by the constitution and statutory regulations. The Criminal Procedure Code and other regulations have appointed and placed suspects or defendants in a position of dignity as creatures of God who have complete human dignity. The law must be enforced, in implementing law enforcement against suspects or defendants (M. Yahya Harahap: 2009)^[13].

In this sense the law must be a protector for everyone. Therefore, legal advisors have an important role in providing legal assistance as the front guard of legal practitioners in providing defense. Legal assistance is the right of a suspect or defendant while undergoing the examination process. The following are factors why a suspect or defendant is not accompanied by legal counsel:

Legal substance factor

This is an internal factor that causes the defendant not to be accompanied by legal counsel. Article 56 of the Criminal Code (KUHP) stipulates that the defendant must fulfill the requirements to receive assistance from a legal advisor appointed by the investigator free of charge. The reality that occurred in this case was that the defendants were not accompanied by legal advisors from the investigation process to the trial process. This is contrary to Article 56 of the Criminal Procedure Code. The absence of a legal advisor is because there are no provisions governing the sanctions given for violating Article 56 paragraph (1).

The Criminal Procedure Code does not regulate the legal consequences of a trial process that does not carry out its obligations as stipulated in Article 56 of the Criminal Procedure Code, which can also be interpreted as saying that it is not explicitly regulated what the legal consequences will be if the judge does not carry out his obligation to appoint a legal advisor for the defendant even though the obligation is imperative, so that In order to fulfill an obligation imposed on a person, it cannot only be relied on the awareness of the legal subject in carrying out his or her duties to carry out that obligation, but rather there needs to be a legal consequence or legal implication that can be imposed if this is not carried out. Legal consequences are needed so that the fulfillment of these obligations is not ignored, so it is unfortunate that the legal consequences or legal implications for the criminal justice process or legal sanctions against authorized officials for non-fulfillment of obligations as outlined in Article 56 paragraph (1) of the Criminal Procedure Code formulate the word "obligatory" in this article it loses its imperative nature.

According to Sugianto, a legal advisor is a person who meets the requirements determined by law to provide legal assistance. Legal aid and the term legal advisor are new terms, and the terms that are usually used first are advocate, defender, lawyer and the term procureur. All of them are

used to mean people who provide legal assistance, because of their function as companions to suspects or defendants in the examination process and other processes.

According to Andi Sofyan, a legal advisor or lawyer is an advocate, a person whose profession is to provide legal services, both inside and outside the court, who meet the requirements set out in law. In the conclusion it is stated that people whose profession is providing legal assistance are called legal advisors/lawyers Andi Sofyan, Abd Asis: 2015). This definition is taken from Article 1 number 1 of Law Number 18 of 2003 concerning Advocates with the original formulation, namely: "An Advocate is a person whose profession is to provide legal services, both inside and outside the court, who fulfill the requirements under the provisions of this Law".

In Winarta's notes, legal aid is interpreted as a concept for realizing equality before the law and providing legal services and defense (access to legal counsel) for everyone within the framework of justice for all.

In another sense, legal aid is legal services provided by legal aid providers free of charge to aid recipients (Muhammad Hasyim: 2020). So, it is clear that legal advice and legal aid are related to each other.

Some of the definitions above show that legal advisors are not ordinary people, but must be people who have met certain criteria as a requirement for legality. Therefore, it can be stated again in a new review that a legal advisor, also called an advocate or lawyer, is a person who legally fulfills the requirements set by law as a lawyer, with the aim of accompanying his client, or a person who needs legal assistance, within the framework of a proceeding, in the court.

Factors that Law Enforcement Officials do not carry out their duties and authority properly.

Accompaniment by a legal advisor in a criminal justice process is very important for the defendant because the defendant still has human rights that are inherent to him and their fulfillment cannot be ruled out even if his freedom is limited, namely the right not to be tortured; the right to have one's dignity maintained; the right to be considered innocent before a judge's decision has permanent legal force and other inherent rights. In cases with the threat of a certain penalty, the appointment of a Legal Advisor to accompany the Defendant's defense is mandatory as in Article 56 paragraph (1) of the Criminal Procedure Code which states that in the event that the suspect or defendant is suspected or accused of committing a criminal offense that is punishable by the death penalty or criminal threat fifteen years or more or for those who are incapacitated who are threatened with a sentence of five years or more who do not have their own legal advisor, the officials concerned at all levels of examination in the judicial process are obliged to appoint legal advisors for them, and Article 56 paragraph (2) The Criminal Procedure Code states that every legal advisor appointed to act as intended provides the help is free.

Article 114 of the Criminal Procedure Code states that if a person is suspected of committing a criminal act before the investigation begins by an investigator, the investigator is obliged to inform him of his right to obtain legal assistance or that he must be accompanied in his case by a legal advisor as intended in Article 56. Provisions in Article 114 This KUHAP is a supporting article for the provisions contained in.

Article 54 and Article 56 of the Criminal Procedure Code provide a juridical basis for a suspect and defendant to be informed of their right to be accompanied by a legal advisor from the investigation stage to the trial stage. However, the word "mandatory" stated in Article 56 of the Criminal Procedure Code contains multiple interpretations due to the lack of clarity regarding the legal consequences or legal implications that can be imposed on a judicial process if the provisions of Article 56 of the Criminal Procedure Code are not implemented properly. Problems also arise where there is a conflict between the right and obligation to be accompanied by legal counsel. On the one hand, the state is obliged to provide or provide legal assistance to suspects or defendants.

The defendant believes that legal aid only belongs to capable people who can pay the honorarium (Legal Culture Factor)

The study found that defendants thought that legal aid only belonged to wealthy people who could pay the honorarium. Apart from internal factors, there are also external factors that cause the defendant not to appoint a legal advisor, namely the defendant's lack of knowledge of the law and the importance of legal assistance provided by legal advisors to defend their rights at trial, and the absence of legal advisors in the jurisdiction where the defendant is being tried.

The objective appointment of a Legal Advisor is one of the implementations of the principle of Presentation of Innocence (principle of presumption of innocence), and the Principle of Equality Before the Law, which is the right of the examinee to be accompanied and go through an examination process which is carried out procedurally, therefore the legal advisor is present to ensure that the investigation process and investigations are carried out fairly.

In the Miranda Rules principle, which is a legal principle of Criminal Procedure in the United States which originates from the Miranda vs. Arizona case in 1966 which ultimately gave rise to the fifth Amendment to the Bill of Rights, it reads as follows (Pidel Kastro Hutapea, Indra Karianga: 2019) ^[18]:

"No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

The real form of implementing the Miranda Rules is the Miranda Warning, which must be given at a minimum by the police when arresting a suspect and before interrogation. Generally, the Police will say: (You have the right to remain silent. Anything you say can and will be used against you in court. You have the right to speak to legal counsel and have legal counsel present during interrogation. If you cannot afford legal counsel, then you will provide one for you which is borne by the Government). This principle is what gave birth to fair investigations in the American Criminal Procedure Code.

An investigation that is in accordance with procedures or carried out fairly is to protect the rights of the suspect so that the investigation is carried out on a *pro justitia* basis, and not because of mere subjective suspicion, so that procedural justice is achieved. For example, in case 145/Pid.B/2023/PN Bir, the defendant Ridwan bin Syamaun in his statement at trial admitted before the Panel of Judges at the Bireun District Court that he was not accompanied by a legal advisor, even though the maximum criminal threat he faced was Article 306 paragraph (2), namely 9 (nine) years in prison. The problem is that when the Investigation Report (BAP) is signed by a legal advisor, even though he does not accompany the suspect in the examination process at the investigative level, this will have juridical consequences for the BAP.

The description above illustrates that legal advice must be provided to suspects and defendants. The importance of legal counsel is to protect the defendant's rights during the investigation period. It will be a serious problem if the inquiry or investigation is not accompanied by legal counsel, as is the case with the BAP's statement which all incriminates the defendant, not to mention that the statement does not match the facts that occurred in the field.

Providing legal advice is a means of supporting law enforcement in general and efforts to protect human rights. Law enforcement (criminal) officials are a component part of the criminal law system, so that no matter how perfect the substance of criminal law is without law enforcement, it is of no benefit in realizing the goals of the criminal justice system. This means that appointing a legal advisor is the right of a suspect (Abdussalam: 2008) ^[1].

Conceptually, if the law is enforced, then certainty, a sense of security, peace or a harmonious life will be realized, as well as the obligation of law enforcement to notify the defendant's rights in obtaining legal aid, then law enforcement officials have followed the existing provisions. However, there are still defendants' rights that cannot be felt as they should be.

Regarding the legal consequences for judges who conduct trials without appointing legal counsel for the defendant, it has been clearly stated that there are no consequences for the judge's personality in carrying out his judicial function, seen from the essence contained in the judge's freedom in exercising judicial power, because this is not regulated and not contained within the provisions of judicial power.

Legal efforts to apply Article 56 of the Criminal Procedure Code as a legal obligation in resolving criminal cases at the investigation stage include, among other things, internal supervision by the police regarding the protection of suspects' rights and increasing legal education for both law enforcement officers and the public regarding existing provisions in the Criminal Procedure Code. So that they can know their rights and obligations when it comes to criminal acts.

Legal treatment of suspects and defendants in criminal cases is the same as legal treatment of ordinary people without fault. This means that suspects and defendants in criminal cases still have a number of rights which may not be legally denied. For this reason, several groups such as Munir Fuady say it is a protection for human dignity. Providing appropriate rights to criminal suspects is a protection of human dignity, so that the government's guarantee of the implementation of suspects' rights has entered the realm of

human civilization. Therefore, one of the civilized laws is to protect the rights of suspects to the maximum.

The formulation of the rights of suspects and defendants is part of the modern legal state's efforts to carry out its function to provide guarantees and also protect human dignity and human rights, including suspects and defendants who are born with them, or other rights, which is legally appropriate and worthy of protection.

According to Andi Sofyan, rights are something given to suspects, defendants and convicts or convicts, so that if these rights are violated, then the human rights of suspects, defendants and convicts have been violated or not respected. In this way, their rights must continue to be guaranteed, respected and respected and for the sake of upholding the protection of human rights. In line with that, Kasiyanto also stated that every person, including suspects, suspects and defendants, still has rights that must be protected by law enforcement officials. In fact, law enforcement officials must inform suspects of the rights they must receive. In this way, it is sufficient to understand that in the name of rights, they must be given to someone, and law enforcers are obliged to protect them, and the state is also obliged to guarantee them. Not only do ordinary people make no mistakes, but these rights must be fulfilled by people who are legally problematic, or at least have been considered or strongly suspected of being suspects in criminal cases.

Conclusion

That the internal factors that cause the defendant not to be accompanied by a legal advisor are firstly the legal substance factor where the contents have not been properly implemented, because there is no legal basis that regulates the sanctions that will be given to law enforcement officials who violate Article 56 paragraph (1) Criminal Procedure Code. Second, the legal structure factor shows that law enforcement officers do not carry out their duties and authority properly, and the third is the legal culture factor, one of which is that the defendant believes that legal aid only belongs to capable people who can pay the honorarium.

Suggestion

It is recommended that law enforcement officers in the criminal justice system, especially police, prosecutors, and judges, remind those examined, in this case suspects or defendants, to always be accompanied by a legal advisor during every examination.

References

1. Abdussalam. Response to the Draft Law Concerning Criminal Procedure Law, Restu Agung, Jakarta, 2008
2. Achmad Ali, Lifting the Veil of Law, Gunung Agung, Jakarta, 2002.
3. Ahyuni Yunus. Marriage Law and Isbat Nikah: Between Protection and Legal Certainty, Humanities Genius, Makassar, 2020.
4. Al Yasa' Abubakar. Istislahiah Method: Utilization of Knowledge in Ushul Fiqh, Kencana Prenada Media Group, Jakarta, 2016.
5. Alī Muḥammad al Ṣallābī. Modern Islamic State: Towards Baldatun Thayyi batun wa Rabbun Ghafur, Pustaka al-Kautsar, Jakarta, 2017.
6. Budi Setiawan Alfahmi. Legal Aid in Indonesia in the Perspective of Human Rights Law Enforcement

- (Judicial review of Law Number 16 of 2011 concerning Legal Aid in realizing access to justice), Thesis, Indonesian Islamic University, 2020.
7. Eko Murdiyanto. *Qualitative Research Methods (Application Theory)*, Yogyakarta Press, Yogyakarta, 2020.
 8. Fajlurrahman Jurdi. *Indonesian Constitutional Law*, Kencana Prenada Media Group, Jakarta, 2019.
 9. Fred N Kerlinger. "Foundations of Behavioral Research", in the Revision Drafting Team, *Guidebook for Writing Thesis for Master of Law Study Program*, Master of Law, Syiah Kuala University, 2017.
 10. Herman Warsito. *Introduction to Research Methodology*, Student Handbook, PT. Gramedia Pustaka Utama, Jakarta, 1997.
 11. Hetty Panggabean. *Legal Protection of Midwifery Clinical Practice*, Budi Utama Deepublish, Yogyakarta, 2018.
 12. Jandi Mukianto. *Principles and Practice of Legal Aid in Indonesia*, Kencana Prenada Media Group, Jakarta, 2017.
 13. M Yahya Harahap. *Discussion of Problems and Application of the Criminal Procedure Code for Investigation and Prosecution*, Sinar Graphics, Jakarta, 2009.
 14. MA Loth. *Language and Law: A Small Methodology*, Jakarta, Linus Doludjawa, Directorate, General, Department of Law and Human Rights, 2007.
 15. Master of Law, Syiah Kuala University, *Thesis Writing Guidelines for Master of Law Study Program*, Darussalam, 2017.
 16. Munir Fuady, Sylvia Laura L. Fuady, *Human Rights of Criminal Suspects*, Kencana Prenada Media Group, Jakarta, 2015.
 17. Kaligis. *Legal Protection of the Human Rights of Suspects, Accused and Convicts*, PT Alumni, Bandung, 2006.
 18. Pidel Kastro Hutapea, Indra Karianga. "The Principle of Miranda Rules "The Right to Remain Silent" in a Comparative Legal Perspective", *Media Juris*, 2019, 2(3). ISSN: 2621-5225.
 19. Pinus Julianto Sinaga. *Providing Free Legal Aid in the Criminal Justice System in Pelalawan Regency*, Thesis, Hasannuddin University, 2019.
 20. Rhona Smith, *et al.* *Human Rights Law*, Pusham UII, Yogyakarta, 2008.
 21. Ronny H Soemitro. *Legal Research Methodology*, Ghalia, Jakarta, 1982.
 22. Zakki Fikri Khairuna. *State Obligation to Provide Legal Counsel for Suspects or Accused of Rape (Studies in the Legal Area at the Aceh Sharia Court)*, Thesis, Master of Law Study Program, Syiah Kuala University, 2020.