



The authority of legal aid operator for indigent society in Aceh

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Abstract

Implementing the provision of legal aid in Aceh, Beside the Aceh Regional Office of the Ministry of Law and Human Rights ("Kanwil Aceh"), the Aceh Government which is a regional entity can allocate a budget for the provision of Legal Aid in the Aceh Revenue and Expenditure Budget as regulated in Article 19 paragraph (1) Law 16/2011. The dualism of legal aid providers in Aceh gives rise to several practical and juridical problems related to overlapping supervision and duplication of disbursement of legal aid funds (double payment). The Main problem is Does the granting of authority to 2 (two) different agencies as providers of legal aid for disadvantaged communities not cause any overlap in its fulfilment and What are the Juridical Consequences for the Aceh Government as a Provider of Legal Aid for Underprivileged Communities in its Territory as regulated by Qanun 8/2017. This research was conducted normatively juridical method based on bibliographic sources by means of deductive reasoning in leveraging data. Discussion on This research shows and explains that Based on studies that have been carried out, the authority to administer legal aid in Indonesia lies with the Ministry of Law and Human Rights. Meanwhile, the Aceh Government can allocate the legal aid budget, supervision of the provision of legal aid rests with the Governor, in contrast to the budget source from the central government funds whose supervisory authority with the Minister of Law and human rights. Aceh as a regional entity which has special characteristics and does not yet have a legal basis at the level of law in carrying out the provision of legal aid for the poor has juridical consequences which conflict with the Legal Aid Law and can be subject to judicial review.

Keywords: Legal aid, authority

Introduction

In implementing legal aid in the province of Aceh, apart from the Aceh Regional Office of the Ministry of Law and Human Rights ("Kanwil Aceh") as an extension of the Ministry of Law and Human Rights, there are other agencies that carry out activities to provide legal aid for the poor. Namely the Aceh Government. As a legal norm, Article 19 paragraph (1) of Law 16/2011 regulates that regions can allocate budgets for providing legal aid in the regional income and expenditure budget^[1].

The Aceh Government, through the Legal Bureau, has so far carried out the provision of legal aid based on the provisions of Article 19 paragraph (1) of Law 16/2011 which regulates the budget allocation for the provision of legal aid in the regional income and expenditure budget. The same arrangements regarding the provision of legal aid are carried out by the Ministry of Law and Human Rights (in this case the Aceh Regional Office) as regulated in Article 6 and Article 7 of Law 16/2011. The dualism of authority for administering legal aid between the Legal Bureau through the Aceh Government and the Regional Office of the Ministry of Law and Human Rights in Aceh requires harmonization and synchronization between vertical agencies and horizontal agencies^[2].

The various agencies that distribute legal aid give rise to overlaps in the process of providing legal aid, namely duplication of disbursement of legal aid funds (double payment) from the legal aid budget sourced from the APBN, in this case through the Aceh Regional Office as an 'extension' of the Central Government, and sourced from the Aceh Government as the Regional Government. Apart from that, in terms of implementing the process of providing legal aid, there are no rules or norms that regulate clearly and in

detail in Law 16/2011 regarding supervisory institutions or matters that are coordinative between central and regional agencies in terms of implementation, supervision, monitoring and evaluation. Provision of legal aid. As a result, in 2022, in the Audit Findings by the Inspectorate Indonesia, it was found that one Legal Aid Institution/General of the Ministry of Law and Human Rights of the Republic of Organization received disbursement of legal aid funds originating from the budget of the Aceh Regional Office and the Aceh Government at the same time for handling the same case/case (double pay)^[3].

Duplicate disbursement of legal aid funds found in the routine audit process by the Inspectorate General of the Ministry of Law and Human Rights of the Republic of Indonesia in 2022 does not rule out the possibility of this occurring in legal assistance by other Legal Aid Providers in Aceh. This phenomenon is a consequence of the lack of regulations that clearly and in detail regulate the authority of legal aid organizers between the Ministry of Law and Human Rights and Regional Governments which can have wider impacts such as leaks in state finances, disparities in the distribution of legal aid, and problems with monitoring the implementation of aid provision. Law in Aceh.

Research Method

This is a normative juridical method. The data collected is based on secondary data in the form of laws, books, the latest scientific journals, and searches for other law-related materials. In the normative approach, the author uses a comparative approach, a conceptual approach, and a legal approach. This method only looks at laws and regulations as the norm, but the wetting will be prescriptive.

Results and Discussions

Authority to Provide Legal Aid for Indigent Communities

The implementation of legal aid in Indonesia will be highlighted based on the legal structure in Indonesia, Legal Aid is implemented by the Central Government through the Ministry of Law and Human Rights as regulated in Law Number 16 of 2011 concerning Legal Aid. In general, there are 3 main points in legal aid regulations, namely Legal Aid Recipients (Poor People), Legal Aid Providing (Legal Aid Organizations) and legal aid organizers (Indonesian Ministry of Law and Human Rights). The National Legal Development Agency (BPHN) of the Ministry of Law and Human Rights of the Republic of Indonesia has a very strategic and important role in implementing Law Number 16 of 2011 concerning Legal Aid. Legal Aid for the Poor in the scheme of this Law has 3 (three) stakeholders, namely

- a. Recipients of Legal Aid, namely poor people or groups of people.
- b. Legal aid providers, namely Legal Aid Organizations that have passed verification/accreditation.
- c. The Legal Aid Organizer, namely the Ministry of Law and Human Rights of the Republic of Indonesia through the National Legal Development Agency (BPHN) was appointed by the Ministry of Law and Human Rights to carry out the Provision of Legal Aid ^[4].

The development of the provision of legal aid in Indonesia quantitatively in 2024 has begun to be well received by OBH where from the total budget of Rp. 56,365,320,000 (fifty-six billion three hundred sixty-five million three hundred twenty thousand rupiah) in the first quarter of 2024 has been realized amounting to Rp. 13,886,894,259 (thirteen billion eight queen eighty-six million eight hundred ninety-four thousand two hundred and fifty rupiah) or 24% of the total budget for providing legal aid in 2024 ^[5].

Even though legal aid is provided free of charge, the legal aid must still be of high quality and for this reason the government carries out accreditation and verification. Article 7 paragraph (1) letter B of the Legal Aid Law regulates that the Minister has the authority to carry out verification and accreditation of legal aid institutions or community organizations to fulfill their eligibility as legal aid providers based on the Legal Aid Law. To carry out verification and accreditation, the Minister forms a committee whose elements consist of on

- a. The Ministry which carries out government affairs in the field of law and human rights.
- b. Academics.
- c. Public figure.
- d. Institutions or organizations that provide legal aid services ^[6].

Verification and accreditation carried out by the Ministry of Law and Human Rights is part of the procedure for obtaining a legal aid budget and is not a mechanism for legalizing legal aid organizations. The verification process carried out by the Ministry of Law and Human Rights does not affect the strength of the legal assistance provided by an institution, but will only differentiate the rights to the budget for each institution. Based on the Legal Aid Law, funding for legal aid is charged to the State Revenue and Expenditure Budget (APBN). However, regional

governments can allocate a budget for providing legal aid in the Regional Revenue and Expenditure Budget (APBD) ^[7].

Aceh Local Government as an Institution of Legal Aid for Indigent Society

The Aceh Government as a regional government at provincial level in the system of the Unitary State of the Republic of Indonesia which carries out government affairs carried out by the Aceh Regional Government and the Aceh Regional People's Representative Council (DPRA), the Aceh Government allocates assistance in Aceh which is sourced from the Aceh Revenue and Expenditure Budget (APBA) ^[8].

In 2023, the Aceh Government through the Legal Bureau of the Aceh Regional Secretariat allocated IDR 800,000,000 (eight hundred million rupiah) for Legal Aid activities for the Poor. The budget was given to 12 (twelve) OBH/LBH verified as Legal Aid Providers ^[9].

Since 2017, Aceh Qanun Number 8 of 2017 concerning Legal Aid for the Poor has been promulgated, which is the legal basis for distributing legal aid funds in Aceh sourced from APBA. In this qanun we cannot find provisions that specifically regulate the supervision of the provision of legal aid to the poor in Aceh. The qanun explicitly regulates that legal aid providers must report the implementation of their duties to the Governor of Aceh through the Legal Bureau of the Aceh Regional Secretariat with a copy to the DPRA ^[10].

Aceh Qanun Number 8 of 2017 concerning Legal Aid for the Poor (Qanun Legal Aid) regulates that the Aceh Government is not only limited to budget facilitation but also provides legal aid in coordination with the Central Government, Other Provincial Governments and City/Regency Governments ^[11].

In 2019, the Aceh Government issued Aceh Governor Regulation Number 10 of 2019 concerning Implementation and Technical Guidelines for Providing Legal Assistance for the Poor (Pergub 10/2019). As an implementing regulation of the Legal Aid Qanun, Gubernatorial Regulation 10/2019 regulates Supervision and Evaluation of the implementation of Legal Aid sourced from APBA where the authority to supervise the provision of legal aid and distribution of legal aid funds rests with the Governor through the Legal Bureau ^[12].

The Authority for Supervision and Evaluation by the Governor of Aceh through the Legal Bureau of the Aceh Regional Secretariat in Qanun Aceh Number 8 of 2017 concerning Legal Aid for the Poor (Qanun Legal Aid) and Pergub 10/2019 has different regulations from Law Number 16 of 2011 concerning Legal Aid and Regulations Government Number 42 of 2013 concerning Conditions and Procedures for Providing Legal Aid and Distribution of Legal Aid Funds which regulates the authority to supervise and evaluate the provision of legal aid whether originating from APBN Budget sources, Grants, other non-binding funding sources, and APBD under the Minister of Law and Human Rights through the Central Supervisory Committee Work Unit and the Regional Supervisory Committee (Panwasda) which are elements of the Regional Secretariat Legal Bureau.

The differences and separation of authority to supervise the implementation of legal aid in Aceh between the Governor through the Legal Bureau of the Regional Secretariat and the Ministry of Law and Human Rights through the Panwasda at the Regional Office of the Ministry of Law and

Human Rights in Aceh has resulted in weak control over legal aid funds both sourced from the APBN and APBD, this can be seen from the findings of the Inspectorate General of the Ministry of Law and Human Rights in a routine inspection in 2022 where it was found that the YLBHI Legal Aid Manager carried out Reimburse / disbursement of legal aid funds at the Regional Office of the Ministry of Law and Human Rights in Aceh and the Legal Bureau of the Aceh Regional Secretariat in the same case [13].

The mechanism for providing free legal aid for poor people sourced from the Regional Revenue and Expenditure Budget (APBD) has not been clearly regulated in statutory regulations. The formulation of general norms at the regulatory level of laws and implementing regulations gives rise to differences in interpretation among Regional Governments (Pemda) when drafting Regional Regulations (Perda) related to Legal Aid.

Differences in national and regional regulatory provisions regarding Supervision of the Delivery of Legal Aid to the Poor do not only occur in Aceh. Through searching the Legal Documentation and Information Network, there are several provinces that have issued regional regulations on legal aid to the poor, which are different from national regulations, such as in Bengkulu Province, which regulates the supervision of the implementation of legal aid under the authority of the governor by forming a regional supervisory committee. Furthermore, West Java Province and Kebumen Regency have issued Regional Regulations on Legal Aid Assistance to the Poor, however, they do not have supervisory arrangements in the implementation of legal aid [16].

In this case, it is necessary to review the Legal Aid Qanun through a process of synchronization and harmonization with the Legal Aid Law, while material review is the authority to investigate and assess the existence of conflicts between a law and higher regulations. In this case, there are differences in the regulation of the administration of legal aid, such as the authority to administer legal aid, supervision of the administration of legal aid, and the scope of the administration of legal aid in the Legal Aid Qanun which not only guides the Legal Aid Law but looks at the specifics of Aceh.

Conclusion

The authority to administer legal aid in Indonesia rests with the Ministry of Law and Human Rights. Meanwhile, the Aceh Government as a regional apparatus can allocate a budget for the provision of legal aid as regulated in the Legal Aid Law. Based on a comparison of the provision of legal aid in various countries, the authority to administer legal aid in India, the Netherlands, Australia, Turkey is the authority of ministry-level agencies, specifically in the United States, the authority to distribute legal aid rests with the State. The implementation of legal aid at the Ministry of Law and Human Rights includes verification and accreditation processes at each stage, both litigation and non-litigation legal aid. The implementation of legal aid for the poor carried out by the Aceh Government is not clearly regulated according to legal norms, giving rise to overlaps in its implementation with the authority of the Ministry of Law and Human Rights.

Distribution of Legal Aid sourced from the Regional Government Budget refers to Permendagri 116 of 2006

concerning Regional Financial Management, where the distribution mechanism is through a by name by address system. This cannot be implemented using the legal aid delivery model in the Legal Aid Law which must go through a verification process. Monitoring, evaluation. Because it originates from the APBD budget, the supervision of the implementation of legal aid rests with the Governor, in contrast to the budget source from the APBN whose supervisory authority rests with the Minister of Law and Human Rights through the Central Supervisory Committee and the Regional Supervisory Committee (Panwasda) as regulated in the Legal Aid Law. Aceh, as a regional government entity with unique characteristics and history, does not yet have a legal basis at the level of law in implementing legal aid for the poor so that the Legal Aid Qanun and its derivative regulations have juridical consequences that conflict with the Legal Aid Law and can be subject to judicial review.

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