

Government Politics in Legal Aid for Poor Society

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Abstract

The study of normative law on government law politics in providing legal aid to the poor results in the finding that the perspective of providing legal aid to the poor is based on the achievement of justice based on Pancasila in its position as the basis of the nation and the philosophy of the Indonesian nation. The balance dimension in the implementation of the balance between justice itself, legal certainty and the benefit for conflict resolution within the interaction between legal subjects. The meaning of the balance between justice and legal certainty and benefit is oriented towards the realization of this welfare understood as the needs of Indonesian society both spiritual or physical. In law enforcement the poor are marginalized and do not get the right to legal aid properly. Legal aid services are formalistic and do not address the needs of the bulk of the poor who need legal aid. For this, the legal politics of legal aid should be conditioned on the creation of an atmosphere of legal responsiveness. With the legal responsiveness of dealing with issues relating to the provision of legal aid to the poor is based on objective reality in society, without any political element attached to it. This makes poor people's assistance poorly targeted and does not meet the sense of community justice as the most important goal of providing legal aid to the poor.

Keywords: Legal Politics, Legal Aid, Poor People

A. Background

The Constitution of the Republic of Indonesia Year 1945 Article 1 paragraph (3) states that Indonesia is a state law. As a law-based country, it is the state's obligation to protect its citizens based on principles in human rights. One of the most fundamental in relation to the protection of the human rights dimension is the concrete fulfillment of the right to legal aid when citizens encounter legal issues.

It is also mentioned in Article 27 paragraph (1) that all citizens are equal before the law and government and shall uphold such law and government with no exception. In this connection the provision of legal aid to the citizens is an attempt to fulfill and simultaneously as the implementation of the rule of law. It thus becomes the basis of the recognition and protection and guarantee of citizens' human rights on the need for access to justice. Likewise, this becomes the basis of equality before the law.

The relationship of both is referring to access to justice and equality before the law. Thus equality before the law can be realized and can be enjoyed by the community if there is equal opportunity to get justice. In this case equality before the law must be accompanied also by various access to obtain justice, including the fulfillment of the right to legal aid. Thus, the normative reference is not merely a constitutional provision but is applicable.

Public legal aid is incapable, generally related to developing countries. It is therefore understandable that the conceptions, roles and ultimately the application of a legal aid agency are not the same as the conception and role of legal aid institutions in the developed world, where this birthplace was born and raised. This is based on legal relationships, legal needs and of course the unequal knowledge of laws between countries that are qualified as developing countries with developed countries.

As a subsequent implication, it also brings consequences to various policies taken by the government as the organ responsible for the application of legal aid. The policies pursued, which have implications for the existence of problems, especially legal aid, are clearly different. Besides related to different legal issues, it is also not related to the level of intellectual community, social mobility, economic growth and education level of local communities.

The next issue concerns goodwill. The problem is very basic, when associated with providing legal assistance to the community. This concretely involves many aspects. Not only is it technically related to the judicial process, which is a concrete reference in the practice of providing legal aims. Moreover, this legal aid issue is closely related to a legal education process. The concrete is how to cultivate a legal consciousness (legal conciousness) so that people understand the rights and obligations in the law community in society.

In relation to the above for example concerning the main criteria that only people who can not afford. Inability to be a separate problem when applied in the provision of legal aid. In the material sense, the basic incapacity as a prerequisite for obtaining legal aid is a fundamental element in fulfilling the demand for the provision of legal aid, within the custody of upholding the principle of equality before the law. The normative

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imperative is that in law enforcement there is no difference between the societal group and the poor or the poor.

In the fulfillment of legal aid, especially for the poor, the role of legal aid organizations as the formally providing services is very central. This means that the existence and presence of legal aid agencies is indeed needed. However, the presence of legal aid organizations is not necessarily realized. Its existence requires accommodation of various dimensions. Both the political dimension of political support, economically with the provision of adequate budget and the existence of human resources that master the problems and the role of other dimensions.

Juridically, the effort which is the goodwill of the Indonesian government in reflecting on the issue of legal aid for the poor is reflected in Law No. 16 of 2011 on Legal Assistance. Through this Law the provision of legal aid in Indonesia obtains a firmness through a verifiable and measurable procedural order, accompanied by the fulfillment of the various facilities required, although still very limited, and still far from ideal.

However, various issues related to government policy as implementation, in optimistic language can already be considered adequate, for the current state of the country. For this reason, in order to improve in terms of quality and quantity, it needs a deeper clarification and elaboration, so that it can further realize the legal certainty for the protection of people's rights. Especially the poor in order to obtain justice and equality before the law.

In view of its development, the concept of legal aid in Indonesia is still growing. Its existence is related to various dimensions of a complex nature. The existence of legal aid agencies continues to evolve dynamically, in relation to goals and orientation issues, the nature, approaches and scope of legal aid activities, especially for the poor and the blind law in Indonesia. This complexity can basically be categorized into two basic concepts, namely the concept of traditional legal aid and the concept of constitutional legal aid.

The principle of traditional legal aid is the legal services provided to the poor individually. This nature and legal aid is passive, and the approach is very formal-legal, in the sense of seeing all the legal matters of the poor solely from the perspective of applicable law. As a consequence of the nature and manner of its approach to legal services is done both inside and outside the court.

In terms of concept, legal aid is shifting from individual to legal aid that is structural in nature. From the term, legal aid also experienced a development that is from the term legal assistance to legal aid. The term legal aid is always associated with the poor who can not afford an advocate. Meanwhile, the term legal assistance refers to the legal services of the public advocate to the poor and incapable. For the context of Legal Aid Institutions (LBH) for example, the proper term is legal aid because LBH's work is always linked to the poor economically and legally blind. This is an actual existence of poverty, especially for developing countries.

Its orientation and purpose is to uphold justice for the poor under the applicable law, which is done on the basis of the spirit of giving charity in the form of assisting the poor, and at the same time growing the values of glory and chivalry highly exalted. The motivation of providing legal aid is not only based on the spirit of charity, but has shifted and more linked and / or presented the political rights or rights of citizens based on the modern constitution.

According to the archipelago, the concept of constitutional legal aid is legal aid for the poor carried out within a broader framework of business and objectives, such as:

- a. awaken the rights of the poor as legal subjects,
- b. enforcement and development of human rights values as the main joint of the rule of law.

Compared to traditional legal aid, the nature and type of constitutional assistance is more active, targeting not only individually but also collectively with community groups. The approaches taken in addition to the formal legal also through the political and negotiation path. This means that efforts to solve legal problems are not only through legal means, but also political channels and negotiations. Similarly, his wider space of motion is like control over the government bureaucracy; education of community law, become an essential part in the concept of constitutional legal aid. The orientation and purpose is to create a state of law based on the principles of democracy and human rights.

Legal aid for the poor is seen as an obligation in order to awaken them as legal subjects with the same rights as other peoples. This awareness is seen as a motivation, for the next will provide awareness of the broader dimension. For example, awareness of rights in equity in the field of economy, equity and togetherness in the field of social services and so forth.

On the other hand, the concept of constitutional legal aid is considered more progressive than the concept of conventional or traditional legal aid. This can be understood, by looking at the concept of constitutional assistance that is not only directed to individuals alone. However, more importantly, it is aimed at community members collectively. Collectivity in the defense of clients, legal servants, especially the advocates not only use the litigation path alone. However, they also use the mediation approach and the political path. Therefore, the existence of constitutional legal aid is understood to be born along with the emergence of the ideal of law supremacy enforcement as its foundation.

In its development, the concept of constitutional legal aid gets criticism from social scientists. It is basically

natural, as a consequence of a concept that is ultimately tested in society. Social scientists are more aware that the concept of constitutional legal aid is still formalistic and has not penetrated the basic problems faced and it becomes a fundamental problem for the poor in Indonesia. The form of constitutional legal aid is considered as a concept that only the middle class in Indonesia such as academics, advocates or students have to social problems in Indonesia.

While the greatest number, that is, the poor is not reached by the concept of constitutional legal aid. Though it is precisely the number of people at this level far more than the middle class. This is also likely to be a fundamental problem in relation to the existence of legal aid, especially for the poor or the poor in Indonesia.

In subsequent developments, following the concept of constitutional legal aid, then came the concept of structural legal aid. The concept of structural legal assistance is closely related to structural poverty. Intended with structural poverty is the poverty suffered by a group of people, because the social structure of society can not participate in enjoying, or using the sources of income that are actually available to them. This is due to the absence or limited access to life that is unattainable to them.

In the empirical sense, that the term structural poverty with artificial poverty because it was deliberately made or legalized people. The social meaning referred to is in the conception that their existence is indeed conditioned to be poor both economically, access to information and access to participate in any government policy. It is preserved with various political and financial motivations.

In relation to the above, the concept of structural legal assistance was born as a consequence of a general understanding of the existence of law. The reality faced by society is the product of the social process that occurs on a certain relationship between the existing community infrastructure. Law is actually a super structure that is always changing and is the result of interaction between community infrastructure. Therefore, as long as the pattern of inter-infrastructure relation shows unequal symptoms then it will make it more difficult to realize a fair law

Thus, institutional legal aid is basically a series of programs through legal and non-legal channels that are directed to changes in relationships that form the basis of social life toward a more equal parallel relationship pattern. This equality before the law has implications for equality in the service of law in the practice of law. This means that the existence of legal aid structurally is not solely aimed at individual cases. However, it tends to be the case of the collective who suffered and became the legal issue of society.

In the development of the concept of legal aid, the Legal Aid Institute (LBH) popularized the "concept of structural legal assistance" which turned out to be well received and responded well within the LBH itself as well as outside LBH. Even this concept of structural legal assistance remains actual and a reflection or thought to develop the concept of legal aid in Indonesia.

In connection with the emergence and development of the concept of structural legal assistance, Nasution states that the legal aid is essentially a program that is not only a cultural action but also a structural action aimed at the change of the unjust social order to a society that is better able to provide a comfortable breath for majority group. Therefore legal aid is not a simple matter, it is a series of actions for the liberation of society from the shackles of political, economic and social structures laden with oppression.

Structural legal assistance is an activity that aims to create conditions for the realization of a law capable of transforming unequal structures toward a more equitable structure, the rule of law and its implementation ensuring equality of positions both in the economic field and in the political field. This means that the implementation and development of the law should be examined from the point of view of structural legal assistance, interdependent with its environment in the ranks, society: economics, politics, education and technology etc. and sub-systems of the criminal justice system itself.

Based on the background and development of the problem of legal aid and the existence of the legal aid institutions above, the authors will elaborate on the existence of legal aid especially for the poor of the existing idealism, with practical implications occurring in society requiring elaboration as a sort of measure for improvement the provision of legal assistance especially to the poor. For this reason researchers conduct a comprehensive study on the topic: Political Law of the Government In Providing Legal Aid To The Poor.

B. Analysis and Discussion

1. Legal Aid History

That the term of legal aid is new for the Indonesian nation. In law enforcement, the term legal aid was only introduced around 1970. The flow of legal aid agencies developed in the country of Indonesia is drawn from developed countries in the service of law, especially from Western countries.

The meaning of the legal aid itself pengertainnya can be listened in the Law of Legal Assistance. From this perspective, basically, in both Europe and America, there are two models (systems) of legal aid.

Legal aid, locally administered national systems where legal aid is shown to those who are financially unlucky and unable to pay personal legal counsel. From this understanding it is clear that legal aid can help those who can not afford to hire the services of legal counsel.

Thus Legal Aid means the provision of legal services to a person involved in a case or case where in this case: the provision of legal aid services is done free of charge. Similarly, legal aid assistance in legal aid is more devoted to the poor in the poor.

Thus the main motivation in the concept of legal aid is to enforce the law with different ways of interests and human rights of the small people who have no legal and illiteracy.

Legal assistance is also known as Legal assistance. The definition of legal assistance explains the meaning and purpose of legal aid more broadly than legal aid. Legal assistance exposes the profession of legal counsel as a legal expert, so in that sense as a legal expert, legal assistance can provide legal aid services to anyone without exception. That is, the expertise of a legal expert in providing legal assistance is not limited to the poor, but also for those who can afford to pay.

For some people the word legal aid must always be linked to poor people who can not afford to pay advocates, but for some people the word legal aid is interpreted in the same way as legal assistance which usually has the connotation of legal services or legal services from the public advocate to the society capable and unable. The general interpretation adhered to recently is legal aid as a legal aid to the poor.

Legal aid is also known as. Legal Service. Clarence J. Diaz also introduces the term "legal service". In general most are more inclined to give a broader sense to the concept and meaning of legal service compared with the concept and purpose of legal aid or legal assistance.

When translated freely, the meaning of legal service is a legal service, so in the sense of legal service, legal aid is referred to as a symptom of the form of giving services by the legal profession to the public in the community with the aim to ensure that no one in the community deprived of his right to obtain the legal advice he needs only because of the lack of sufficient financial resources.

The term of this legal service is the steps taken to ensure that the operation of the legal system in reality will not be discriminatory as there are differences in the level of income, wealth and other resources controlled by individuals in the community. This can be seen in the concepts and ideas of legal service that contain the meaning and purpose to provide assistance to members of the community whose operations aimed at eliminating discriminatory realities in the enforcement and provision of relief services between the poor who earn small with the rich people who control the source of funds and position power.

With legal services provided to members of the community in need, apat can be realized by the law itself by the law enforcement officers by respecting every law-justified right for every member of society without distinguishing the rich and the poor.

In addition to upholding the law and respect for what is given the law to everyone, legal service in its operations is more inclined to resolve any dispute by way of peace.

Implementation in Indonesia, in everyday reality, rarely distinguishes the three terms, and indeed it seems very difficult to choose the legal terms of Indonesia for the form of legal aid above, both among the legal profession and legal practitioners, and let alone ordinary people only use the term "Legal aid". The absence of a clear definition of legal aid, making the legal profession try to make the basis of the definition of legal aid.

2. Principles in Legal Aid

The meaning and objectives of legal aid programs in Indonesia are as stated in the Legal Aid Foundation (LBH) since the Legal Aid Institute (LBH) has broader objectives and scope of activities and more clearly its directives as follows: Provide assistance to community members whose operations aimed at eliminating discriminatory realities in the enforcement and provision of relief services between the poor and the poor and the wealthy who control the source of funds and positions of power, both individually and to collective community groups can not collectively. The scope of activities includes defense, representation both outside and inside the court, education, research and dissemination of ideas.

Although there is no definite understanding of what constitutes legal aid, the general meaning of legal aid is the assistance of providing services to provide legal advice; in addition to acting as a companion and defending a person accused or convicted of a crime in a criminal case.

Also as a lawyer or adviser must provide briefings and explanations about the sitting matter, advice given by a legal counsel or advocate should not be released from the environment of the allegations of the prosecutor.

The function and purpose of the provision of legal aid turned out to be different and varied, not only from one country to another but also from one age to another, an in-depth study of the history of the growth of the legal aid program was undertaken by Mauro Cappeti, from the research turns out legal aid programs to the poor have started since the Roman era. From these studies, it is stated that each era of meaning and purpose of providing legal assistance to the community that is not able to closely relate to moral values, political views and legal philosophy that apply.

Based on these studies, it can be seen that many factors that play a role in determining what is actually the goal of a legal aid program that so to know clearly what exactly the purpose of a legal aid program need to know how the moral ideals that master a society, how the political will is followed, and the underlying legal philosophy. For example, in Roman times the provision of legal assistance by patrons was motivated only by

getting influence from the people.

In medieval times the problem of legal aid got a new motivation as a result of the influence of Christianity, namely the desire to compete to give charity (charity) in the form of helping the poor. In addition to aims to provide legal services to communities who need it. Likewise, legal aid is also intended to educate the public with the aim of requiring and fostering awareness of rights as legal subjects. Equally important, legal aid is also intended to make legal reforms and improve the implementation of law in all fields.

Legal aid also means trying to carry out legal reforms in order for the law to meet the needs of the people and to follow the change of circumstances even if the motivation or rational rather than the provision of legal aid to the community can not vary from time to time, but there is one thing that would not change, one common goal, namely the basis of humanity.

Normatively, the objectives of the legal aid program in Indonesia are related to the following aspects:

1. Humanitarian Aspects. The purpose of this legal aid program is to alleviate the legal burdens that the poor have to endure before the courts, so that when the community is incapable of confronting the legal process in court, they still have the opportunity to obtain defense and legal protection .
2. Increased Legal Awareness. The objective aspect of legal awareness, it is expected that this legal aid program will spur the level of legal awareness of the community to a higher level. Thus, the public's appreciation of the law will come about through attitudes and actions that reflect legal rights and obligations.

The right to obtain legal assistance for every person in a case is one of human rights. The right to obtain legal aid itself needs to be guaranteed in its implementation.

The program of providing legal assistance to the community can not be done based on the following provisions:

1. Law Number 8 Year 1981 About the Criminal Procedure Code (KUHAP):
2. Article 56 paragraph (1) stating that: In the event that a suspect or defendant is suspected or charged with a criminal offense or a criminal penalty of fifteen (15) years or more for an incapacitated person threatened with five (5) years or more who do not have their own legal counsel, the official concerned at all levels of examination in the judicial process shall appoint a legal counsel to them;
3. Article 56 paragraph (2) stating that: Any legal counsel appointed to act as referred to in paragraph (1), provides assistance free of charge.
4. Book of Civil Procedure Code (HIR / RBG) Article 237 HIR / 273 RBG stating that: Anyone who wishes to enter into powers either as a plaintiff or as a defendant, but is unable to bear the cost, may obtain permission to pursue his / It's just.
5. Law Number 48 Year 2009 on Judicial Power.
6. Government Regulation Number 83 of 2008 on Requirements and Procedures for Providing Legal Aid for Free.
7. Instructions of the Minister of Justice of the Republic of Indonesia No. M 01-UM.08.10 Year 2006, on the Guidelines for the Implementation of Legal Aid Program for Disadvantaged People through Legal Aid Institutions.
8. Instruction of the Minister of Justice of the Republic of Indonesia No. M 03-UM.06.02 of 1999 on Guidelines for the Implementation of Legal Aid Program for Disadvantaged People through State Courts and State Administrative Courts.
9. Circular Letter of the Director General of the General Courts and the State Administrative Courts. D.Um.08.10.10 dated 12 May 1998 on the Implementation of Legal Aid for Disadvantaged People through Legal Aid Institute (LBH).

Clear facts in positive law, law enforcement in Indonesia has recognized legal aid as long as it concerns the examination of cases in criminal cases, namely Legal Aid formulated in Article 250 Het Herziene Indonesisch Reglement (HIR).

Even if the basis of legal aid is substantially stated in Article 250, it does not mean that the right of defendant has a defender as a legal aid person. However, HIR only introduced legal assistance to the defendant before a court hearing proceeding, while to suspects in the investigation process investigation process, HIR has not granted the right to legal assistance. Thus, HIR has not granted the right to obtain and engage with a legal advisor at all levels of the examination, only limited after entering the examination stage of the trial.

Likewise, the duty of the judiciary to appoint legal counsel is only limited to criminal offenses punishable by death penalty. Outside of a crime punishable by the death penalty, there is no obligation for the court to appoint legal counsel to provide legal assistance to the defendant.

Despite the limited power of HIR, it can be interpreted as the initial institutionalization of legal aid into our positive law. Although HIR is not required in full but HIR is a guideline that seems also accepted as a practice reality. This HIR is still regarded as a guideline until the birth of Law no. 14 of 1970 on the Basic Law of Judicial Power.

Law no. 48 Year 2009 About Judicial Power. Explanation in Law no. 48 of 2009, stipulated a much broader provision with what is encountered in the HIR. In Law no. 48 of 2009, there is a special chapter containing provisions on legal aid contained in chapter XI and comprising Articles 36 to 37.

The outline of provisions concerning legal aid provided for in Law no. 48 of 2009, among others, has stipulated the right for every person in the affairs of the case to obtain legal assistance (Article 56 paragraph 1). This provision shows the principle of legal aid has been recognized as important, but Law no. 48 Year 2009 has not reached the level that lay the principle of "obligatory" to obtain legal aid because in this case get legal aid is still a "right".

Although legal aid is still a "right", the right to obtain legal assistance in a criminal case has been justified in obtaining legal assistance from arrest or detention (Article 57, paragraph 2). The nature of the right to legal aid at the new level of arrest or detention is "the right" to contact and seek the assistance of legal counsel "and how to contact and seek the assistance of legal counsel.

Law no. 48 Year 2009 has not clearly set about legal aid as set forth in Articles 36 and 37 of the Criminal Procedure Code, so further regulation is required. The enactment of Law no. 48 of 2009 has been placed the basis for the judiciary and procedural law, especially criminal events. However, the Law contains only those items that still require regulation in the form of implementing regulations and does not yet contain rules of procedure for their implementation.

3. Orientation and the Future of Legal Aid

Etymologically, right is a normative element that serves as a code of conduct, protects freedom, immunity and guarantees an opportunity for human beings to maintain their dignity and prestige. Asasi means the most fundamental or fundamental. Thus human rights mean the most basic rights possessed by human beings as nature, so that no single creature can intervene let alone pull I the notion of human rights under the Universal Declaration of Human Rights is the right to liberty and equality in degrees gained from birth and can not be deprived of any person. In TAP MPR-RI No. XVII / MPR / 1998 on Human Rights, in the Appendix to the Declaration of Human Rights Manuscript in point I letter D point 1 stated that human rights are a right as a gift of God Almighty, inherent in human being, natural, universal and eternal, related to human dignity and prestige.

The Act number 39 of 1999 on Human Rights (adopted on 23 September 1999, LN-RI of 1999 No. 165) Article 1 point 1 defines human rights is a set of rights attached to the essence and existence of human beings as the creature of God Almighty and is a gift- Who is to be respected, upheld and protected by the state, the law, the government, and everyone for the honor and protection of human dignity and prestige. Thus, the regulation of human rights in a constitution is a basic prerequisite for Indonesia as a state of law that upholds human rights and democracy. Nevertheless, Indonesia as part of the international community is bound by international law and regulation.

According to the Universal Declaration of Human Rights document the notion of human rights as a basic human rights instrument that can not be separated from its existence as a human being. Thus, human dignity is the source of all human rights. Human dignity will develop if the most basic rights of independence and equality can be developed.

In line with this, the implementation of conventions, declarations and international legal instruments related to human rights became the spirit of human rights in Indonesia. This is confirmed in the explanation of Law no. Law No. 39/1999 on Human Rights, among others: "... immediately ratify the various instruments of the United Nations on human rights as long as it is not contradictory to Pancasila and the 1945 Constitution. Similarly, human rights material as contained in Law no. 39 of 1999 adopted from the material formulation of MPR-RI Decree No. XVII / MPR / 1998 on Human Rights.

The provisions regulating human rights in the pre-amended 1945 Constitution include only: Article 27, Article 28, Article 29, Article 30, Article 31, Article 32, Article 33, and Article 34. Although the provisions on human rights provisions are relatively few in the 1945 Constitution, in the Preamble of the 1945 Constitution is expressed in a statement that reflects the determination of the Indonesian nation to realize and uphold human rights. "That freedom is indeed the right of all nations and, therefore, the occupation of the world should be abolished, for it is incompatible with humanity and justice." Whereas in the 1945 Constitution post amendment, although specifically mention human rights in its own chapter, namely CHAPTER XA Human Rights, Articles 28A to 28J, but the human rights arrangements are also included in Article 29 paragraph (2), Article 30 paragraph (1), Article 31 paragraph (1), and Article 34 paragraph (2).

That Article 21 of the Universal Declaration of Human Rights of the United Nations of 1948 states: 1) The will of the people shall be the basis of the authority of government; 3) This will shall be subject to the judgment of voting procedures.

Thus it is clear that in a democratic society, which has been universally accepted by civilized nations, the right to political participation is a Human Rights, conducted through free, fair and just elections as manifestation of the will of the people who become the basis of government authority. Without a substantive reason, the right to vote and be elected in the electoral process should not be violated.

Article 25 International Covenant on Civil and Political Rights (ICCPR), 1966, reads: 1) To vote in elected at genuine periodic elections which has to be held by secret ballot, guaranteeing the free expression of the electors, 3) To have access, on the general term of equality, to public service in his country.

The Indonesian Constitution expressly states that Indonesia is a constitutional state, one of its basic elements is the fulfillment of Human Rights, especially the right to obtain legal protection. Legal protection is a very basic element, bringing implications for various protections or protections on the field or other dimensions of life, both social and economic.

The idea of a constitutional state, as stated in the constitutional preliminary, is contained in Article (3) of the 1945 Constitution. The provision, that the State of Indonesia is a state law. The assertiveness as stated in Article 1 paragraph (3) of the 1945 Constitution, according to Jimly Ashiddiqie contains the understanding of substantial understanding as follows:

- a. recognition of the constitution and the constitution,
- b. the principle of separation and limitation of power according to the constitutional system set forth in the 1945 Constitution,
- c. the existence of human rights guarantees in the 1945 Constitution, the existence of a free and impartial judiciary principle which ensures the equality of every citizen in the law, as well as
- d. guarantee justice for everyone including abuse of authority by the ruling party.

From this perspective, it can be understood that the essence of a legal state, as expressed by Frans Magnis Suseno, is "... based on the fact that the power of the state must be exercised on the basis of good and just law. The law becomes the foundation of all the actions of the state, and the law itself must be good and just. Good because in accordance with what is expected by society from law, and fair because the basic purpose of all law is justice. There are four main reasons for demanding that the state be held and carrying out its duties under the law: (1) legal certainty; (2) the same treatment demands; (3) democratic legitimacy; and (4) the demands of the mind".

That in order to fulfill the elements to be called a state of law, especially in the sense of *rechtstaat*, Julius Stahl requires several principles, which include:

- a. human rights protection (*grondrechten*);
- b. power sharing (*scheiding van machten*);
- c. government by law (*wetmatigheid van bestuur*); and
- d. the existence of the Administrative *rechspraak* court.

In connection with the above, in the opinion of Jimly Asshiddiqie, there are at least 11 principles of the rule of law prevailing in this day and age. The whole is the main pillar that supports the standing and upright of a country, so it can be called the State of Law in the real sense.

The eleven basic principles include the following components:

1. rule of law (supremacy of law);
2. equality before the law;
3. due processality (due process of law);
4. limitation of power;
5. independent executive organs;
6. impartial and independent judiciary;
7. state administrative court (administrative court); h. constitutional court;
8. Human rights protection (human right spirit);
9. democratic (*democratische rechtstaat*);
10. serves as a means of realizing welfare objectives (*welfare rechtstaat*);
11. transparency and social control (*transparency and social control*).

That within a country law, one of the most important pillars, is protection and respect for human rights. In simple sentences such a thing is seen as the spirit of the rule of law. Without human rights the state of the law loses a spirit which means no meaning. Thus there is an inseparable link between the rule of law and the protection and enforcement of human rights.

The protection of human rights is widely popularized in order to promote respect, to protect, and the fulfillment (to fulfill) of human rights as an important feature of a democratic legal state. Its substantial significance that every human being from his birth carries free and basic rights and obligations.

In another perspective, that the formation of the State and so the administration of a state's power does not diminish the meaning or meaning of freedom and human rights. The implementation of a government that reduces, is seen as violating human rights and becomes a reflection of an authoritarian system of government and out of the rule of law. The protection of the law becomes a fundamental element in relation to Human Rights.

The above as stated by A.V. Dicey on the principle of this legal state, that he emphasized the principle that the constitutional content of a state that embraces the rule of law which is then popular with the rule of law, must follow the formulation of the basic rights (constitution based on human rights). In addition to the principle of

the supremacy of law, and equality before the law;

In connection with the above, it is the obligation of the State in nature to promote the respect, protection and fulfillment of Human Rights because basically the state is established to ensure the implementation of human rights principles. This is the main purpose and the main formation of the state that is protecting, respecting and fulfilling Human Rights. Includes the right to politics that is more specifically the right to vote and the right to be elected.

The concept of the purpose of this country is promoted by John Locke which states that the state exists and is constituted by man solely to ensure the protection of the rights of human property that is his life, his freedom and his property. These inherent human property rights are then interpreted as human rights, because the right is indeed owned by humans from birth.

The above thought, which forms the basis of Locke's thought of the link between human rights and the state. This is the main point of Locke's idea of the link between human rights and the state. The state exists through a covenant among people to safeguard human rights. In addition to being a goal, it is also the basis of the existence of the state. Therefore, the preservation of human's property is a state's *raison d'être*.

As a reflection of the rule of law of A.V. Dicey is also affirmed by Eric Barendt. He said that the characteristics of the constitutional document, which primarily is to provide guarantees of Human Rights. In addition to the necessity to impose limits on legislative and executive powers, and encourage the strengthening and independence of judicial institutions.

On the reflection of the relationship between the state law and human rights it becomes the substance of the state law also said by Brian Z. Tamanaha in his book on the Rule of Law. Tamanaha states, that the substance of the rule of law is on the fulfillment of human rights. According to him individual rights, the right to justice and dignified acts, as well as the fulfillment of social welfare, become the essence of the rule of law. While the implementation of government and democracy, is the instrument or procedure to achieve prosperity that becomes substance.

For the Unitary State of the Republic of Indonesia based on the constitutional state's constitution, it is expressly stated that Indonesia is a country with a constitutional basis. On the basis of such matters, the notion of an Indonesian legal state based on the 1945 Constitution and Pancasila, according to Simorangkir, differs from the notion of a legal state within the framework of *rechtsstaat*, as applied in the Netherlands. But it is closer to the state of law in terms of the rule of law.

Conceptually the source of *rechtsstaat* on one side and the rule of law on the other side is different. *Rechtsstaat* derives from the Continental European legal tradition, while the rule of law derives from the Anglo American legal tradition. In this connection it is not relevant to provide an assessment of the quality of the two systems. Each born and developed according to the conditions of society are not the same. Therefore, inequality is seen as something natural and not necessarily contested.

In connection with the above, Moh. Mahfud MD, also gave a similar opinion with Simorangkir. According to Mahfud, the use of the term *rechtsstaat* in the 1945 Constitution is very oriented to the conception of Continental European law states, however, when looking at the content of the 1945 Constitution, it appears that the material is Anglo Saxon nuanced, especially the provisions that regulate the guarantee of protection of human rights.

In the same perspective, according to Kusumadi Pudjosewojo because Indonesia is a legal country, then all the authorities and acts of state equipment must also be based and regulated by law. Rulers are not law-makers, but formers of the rule of law.

Therefore the law applies not because it is established by the authorities, but because of the law itself. This brings consequences, that the *pundapat* ruler is held accountable if in exercising his power beyond the limits set by law, or committing unlawful acts.

In the perspective above, that within the rule of law, the rule of legislation that is created, must contain the values of justice for all people. As quoted by Jimly Asshiddiqie, from Wolfgang Friedman in his *Lawina Changing Society*, distinguish between organized public power (the rule of law in the formal sense), with the rule of just law (the rule of law in a material sense).

The state of law in the formal (classical) sense concerns the notion of the law in a narrow sense, ie in the sense of written legislation, and does not necessarily guarantee substantiating justice. The state of law in the sense of material (modern) or the rule of just law is a manifestation of the rule of law in a broad sense which concerns the notion of justice in it, which becomes the essence, rather than simply functioning legislation in the strict sense.

The idea of a legal state also does not contain an element of discrimination against a person. Every citizen must obtain legal protection based on human rights. When such discrimination exists, it is contrary to the provisions of the 1945 Constitution. Such discrimination is a violation of the concept of the rule of law, which is based on a legal system in which rules are clear, well understood, and fairly enforced and Human Rights.

In the perspective of human rights, the rule of law can be interpreted as a legal system in which rules are clear,

well-understood, and fairly enforced. With one feature, among others equality before the law, and legal certainty that contains the principle of legality, predictability, and transparency.

In this regard, legal aid obtains a very strategic place in the idea of a legal state. It is a legal politics that becomes a consequence of the state of the law itself. Thus legal aid should be implemented as a manifestation of the effort to create justice within the framework of fulfilling the right of the people to obtain legal services.

C. Closing

a. Conclusion

Based on the description in the preceding section, the following conclusions can be drawn:

1. Whereas the concept of constitutional legal aid is an attempt to normalize legal aid, especially for the poor. The form of constitutional legal aid is considered as a concept that only the middle class in Indonesia such as academics, advocates or students have to social problems in Indonesia. Constitutional legal aid does not reach the poorest layers of society in the fullest sense. In the case of the poor much more in the community and need legal assistance only *secagra*.
2. Whereas structural legal assistance is an activity that aims to create conditions for the realization of a law capable of transforming unequal structures toward a more equitable structure, there is a rule of law and its implementation ensuring equality of positions both in the field of economy and in the field of politics. This means that the implementation and development of the law should be examined from the point of view of structural legal assistance, interdependent with its environment in the ranks, society: economics, politics, education and technology and others and sub-systems, especially the criminal justice system.
3. Whereas the perceptive provision of legal aid to the poor is based on the achievement of justice based on Pancasila in its position as the basis of the state and the philosophy of the Indonesian nation. The balance dimension in the implementation of the balance between justice itself, legal certainty and the benefit for conflict resolution within the interaction between legal subjects. The meaning of the balance between justice and legal certainty and benefit is oriented towards the realization of this welfare understood as the needs of Indonesian society both spiritual or physical. Juridically this refers to how much the legal ability to give benefit to the community.
4. Whereas in the political perspective of law, issues relating to legal aid for the poor are not stuck in the law enforcement process that substantively requires legal assistance. Assistance in perspective is not conceptually related to the notion of the poor. In this connection the spirit to enforce the law by implementing the aforementioned aid is inseparable from the political process which became the basis for the establishment of legislation on legal aid.
5. That the pattern of legal political performance has not been responsive, does not accommodate the interests of the poor in the true sense. In the poor community law enforcement is marginalized and does not get the right to legal aid properly. Legal aid services are formalistic and do not address the needs of the bulk of the poor who need legal aid.
6. Whereas in its implementation, what has been happening so far is the existence of a clutter in the concept of legal aid in the form of advocate offices claiming to be legal aid institutions but actually practicing commercially and collecting fees, which deviates from the concept of *pro bono publico* which is actually a duty of advocate. In addition to advocate offices claiming to be legal aid organizations there is also a legal aid organization that practices commercial by collecting fees for granting services to its clients and not being given to the poor in *pro bono publico* or for free.
7. Whereas the constitutionality requirement which is the right of the citizen is the right of every person to obtain equality before the law by obtaining legal aid free of charge which is borne by the state for those who can not afford to hire legal counsel. In the Law on Legal Assistance it is stipulated that the government has a major role in financing the provision of Legal Aid. Operationalization in the Law on Legal Assistance is that the Legal Aid for incompetent citizens includes legal assistance in the civil, criminal and administrative fields of both litigation and non litigation. As an advocate who can provide legal assistance free of charge under this Act is an advocate who is in the shade of an institution or organization of legal aid.
8. That the provision of legal assistance to citizens is an attempt to fulfill and simultaneously implement the legal state which recognizes and protects and guarantees citizens' rights of access to justice and equality before the law. The guarantee of such constitutional rights has not received sufficient attention, so the formation of this Law on Legal Aid provides the basis for the state to ensure that citizens, especially for people or groups of the poor, have access to justice and equality before the law.
9. The right to legal aid is part of a fair and inherent judicial process within the rule of law and is one of the universally accepted principles of human rights. This is stated in Article 7 of the Universal Declaration of Human Rights (DUHAM), which guarantees equality before the law and elaborated in the International Covenant on Civil and Political Rights (ICCPR) or the Civil and Political Rights Convention. In addition to the Universal Declaration of Human Rights and the ICCPR, the right to legal aid is contained in the UN

- Standard Minimum Rules for the Administration of Juvenile Justice, regarding the importance of the right to legal aid to children in conflict with the law, people of difable (different abilities). Legal Aid rights are categorized as non-derogable rights.
10. Although in Indonesia the right to legal aid is not explicitly stated as the responsibility of the state, but by referring to the principle of equality before the law and the law states that the right to legal aid is a constitutional right. After the reformation there has been a fundamental change in the constitutional system including the amendment of the 1945 Constitution. One of the changes is the idea of Indonesia as a reinforced legal state, from what was originally contained in the explanation, became Article 1 paragraph (3) of the 1945 Constitution, which formulates explicitly that the State of Indonesia is a state law".
 11. That the majority of Indonesian people who are still below the poverty line and the blind law encourage the growth of awareness among the people who are concerned about this to find a powerful formula to overcome the problem. The legal aid referred to in this sense includes legal assistance in formal dispute resolution in courts, and legal aid outside the judicial process. The purpose of legal assistance outside the judicial process is to include efforts to prevent conflict in the form of giving legal opinions or legal opinions, resolving conflicts informally in the form of negotiation or mediation and the application of law outside the conflict. Provision of legal aid is certainly provided by people who have certain skills and expertise.
 12. That in essence every person as a legal subject must be treated equally before the law regardless of any background. The law must be upheld even though tomorrow the earth collapses that is adagium in the law. So far in practice the legal world of the poor and capable act still marginalized socially, law and culture. Those who in fact are mostly Indonesian people when dealing with the law are always reluctant to hire advocates for reasons of cost or honorarium is too expensive.
 13. Legal assistance free of charge for the poor and incapable in implementation is not maximal and not in accordance with what is expected. This is because law enforcement officers at the time of investigation, prosecution and justice sometimes ignore the rights of suspects / defendants. The previous law enforcement officers did not disclose any rights which the State granted him. The disregard for the rights of suspects and defendants to obtain free legal aid directly infringes the citizens' right to be treated humanely before the law.
 14. Whereas the constitutionality of legal aid is the right of every poor or poor member of society. More than this, it is fundamental that the constitution guarantees the right of every citizen of hell to be accorded equal treatment before the law, including the right to access justice through the provision of legal aid. The right to legal aid is a constitutional right for everyone. Despite its constitutional rights, its implementation has been struck by a highly bureaucratic, expensive, complicated (procedural) judicial mechanism. Its isoteric nature (can only be understood by the legal person), causing not everyone to get the same asses and treatment when dealing with the law, especially for the poor. It is precisely this group of people whose greatest number is marginalized.
 15. That in the implementation, even though legal aid for the poor has been arranged, however, a helping hand to help poor people access justice is still urgently needed. For this time access to the poor tends to be ignored. Legal aid activities undertaken by legal aid activists, from campus legal aid agencies, mass organizations, political parties, non-governmental organizations, all seem to comply with the demands of constitutionality without substance in accordance with the hoax of justice services.
 16. Despite the existing Law no. 18 Year 2003 About Advokad, as a law that megatur Advocate profession, but this Act is considered to suppress the activity of providing legal aid for the poor. The law does not provide the widest possible extension of access to the provision of free legal aid (pro-bono) to the poor. The spirit is precisely to the condition of monopoly spirit. The Advocate Profession, although recognized as an honorable provision (ovissium nobile), is in reality a "corporate", not a nonprofit dedicated to the realization of justice for the poor.
 17. That poverty is a complex social problem, and becomes the problem of most countries in the world including Indonesia. Especially for Indonsia, based on a description made to measure it by the Central Bureau of Statistics (BPS) that the poverty rate still shows a high number. In relation to the provision of legal assistance to the poor as mandated by the Law on Legal Assistance, it is necessary to understand the structure of the poor, based on the size presented by the BPS. Thus normatively understandable, which poverty then becomes the measure of the Act referred to as a benchmark of providing legal aid free of charge only to the poor.
 18. That the struggle of the lives of the poor, poor and marginalized when faced with the law makes it difficult to get justice. To obtain and obtain justice for the poor and marginalized people desperately need a lot of sacrifices from various dimensions of life ie time, energy, thought, cost, wealth and work.
 19. When experiencing problems and dealing with the law enforcement process, what is in the minds and minds of the poor is fear and fear, so all that can be done is to let, avoid and escape from responsibility. The legal subject in this case the poor are not materially materialized by the existence of poverty qualifications as described in the previous section. The result is an injustice to the poor in obtaining legal aid.

20. With the Law on legal aid, it is a form of a sense of justice that can be utilized in obtaining justice for poor people / groups. Inspired by the various complaints of the poor when experiencing legal problems, in this case the advocates / lawyers who helped accompany should fight for wholeheartedly in order to seize justice. But in practice they are generally less serious in court proceedings to help the poor due to low fees or other factors are late paying lawyers / advocates so there is a reluctance to assist. It is certainly an injustice, which ensures that it is indeed difficult to obtain justice.
21. That an embodiment of justice through the provision of legal assistance to the poor directly, the linkage with the effort to obtain justice is however costly. There is a psychological correlation with various things. It is comprehensively a part of the effort to bring about justice for the poor. The existing linkage with the effort to obtain justice in the law should be accompanied by an act of giving enlightenment, strengthening the mind, mental, phsyhic to the poor; Truly caring, Communicating effectively. Meet each other, face face and explain thoroughly, and have an aura of friendship and empathy as well as mMelakukan approach with various related parties.
22. In the elaboration of the Law on Legal Assistance, it was stated that the poor who could use legal aid were limited to normative measures as set out in poverty measures. Based on the above poverty measures, it is evident that the understanding of poverty based on normative measures, particularly economic measures as stated above, is unfair. In fact, the size of poverty creates injustice to people in conflict with the law, because it limits the provision of legal aid to people who are unable to fulfill basic rights properly and independently. Though there are people who are able to fulfill their basic rights at a minimum but do not include those who get legal aid for free from the government.
23. That the idealism of financing in aid for the poor must satisfy the sense of justice. In the framework of fulfilling this sense of justice the financing of the implementation of legal aid for the poor must be rational. In the sense that the financing referred to is based on concrete facts that serve as a foundation when a case or case is being processed in court. Financing is based on the realistic reality of the costs that should be incurred for it.
24. That the terms of becoming a Legal Aid proved to be a weakness when implemented. The problem lies in the high practice of corruption and abuse of authority and position in Indonesia that occur in all lines. In this connection, who can then access legal aid is a person who is not really worth it. In this connection, the process by submitting an application through a poor letter from the headman, village head, or an equivalent officer in the Legal Aid of the applicant can be manipulated. This is because not all poor people are recorded in the kelurahan or village where he lives. Thus there is a practice of buying and selling poor letters, when there is no strict control of the community and / or its own legal aid.
25. That the fundamental problem faced in the application of the Legal Aid Law in relation to legal aid services for the poor is more concerned with administrative rather than providing legal services to persons or groups of the poor. This is because the law regulates the administrative requirements for obtaining legal assistance. When the requirements are not met then the request for legal aid from poor justice seekers is rejected. In terms of administrative requirements this only reflects the formalities side of the reality of poverty seoang residents.
26. Based on the description of the administrative parameters in the legal aid service for the poor above indicates that the administrative aspects of the Legal Aid service are still highly bureaucratic. In the implementation must be raced with the process done by the authorities when handling the case, especially in criminal cases. What's more if the legal subject who became the applicant for the Legal Aid is because one thing can not take care of its own administrative requirements.

b. Recommendations

Based on an assessment of the problems of government legal politics in the provision of Legal Aid for the poor it is recommended the following:

1. The legal levy of legal aid provision is conditioned on the creation of an atmosphere of legal responsiveness. With the legal responsiveness of handling issues related to the provision of legal aid to the poor is based on objective reality in society, without any political elements accompanying it. This causes poor people's assistance to be poorly targeted and not fulfilling the sense of community justice as the most important goal of providing legal assistance to poor people.
2. Administrative provisions in the provision of legal aid shall be modified in such a manner by not making the administrative aspect a necessary condition in the provision of legal assistance. Thus the legal aid given to the poor is substantively targeted both in terms of the subject and the goal of providing just legal aid to the poor.
3. It should be clarified the requirements as the basis for the provision of legal aid, with a clause that facilitates the provision of legal aid free of charge. For example, in a criminal case when someone is actually involved in a case, while he can not take care of a letter, then a mechanism should be established in such a way that the legal aid providers can still provide services. This is so important as a basis for being able to continue

- providing legal aid services to those in need without being hampered by formalistic administration.
- The size of poverty should not be based on income and other technical matters that complicate the provision of legal aid. The size of poverty should be expanded not solely based on the size of the physical physical economy. The size of the poor should be expanded so that socially marginalized groups, low-ranking civil servants can also access legal aid for these poor. Consequently, very limited budgets must be added in such a way, in the context of appropriate targeted legal aid services.
 - Should the provision of legal aid not be limited to conventional law issues. It is precisely in criminal acts that are extra ordinary crime, especially in the case of Drug-related crimes are accommodated as the poor who are entitled to legal aid free of charge. Types of criminal offenses for drug abuse concerning the poor need to be accommodated as part of the procurement of legal aid for the poor free of charge.

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