

The Role of Legal Aid Institution Providing Legal Assistance in Divorce Case

Darania Anisa¹, Nindi Riyana Saputri², Nurul Hidayati³

{darania.anisa@stebilampung.ac.id¹, nindiriyana@stebilampung.ac.id², ululhidayati93@gmail.com³}

^{1,2}Economics and Islamic Business College (STEBI) Lampung, Jl. A.Yani No. 67, Gedong Tataan, Pesawaran, Lampung, Indonesia

³Universitas Islam Negeri Raden Intan Lampung, Jl. Zainal Abidin Pagar Alam, Labuhan Ratu, Bandar Lampung, Indonesia

Abstract. Problematics in divorce are often faced by the underprivileged so that the role of Legal Aid Institution (LBH) is needed to settle such divorce cases. The divorce issue is a privacy problem that is often not revealed in court compared to criminal cases. Thus, in this case, it highly needs an institution or organization that is more focused on divorce issues that receive services and help the community to solve their cases. The role of the Legal Aid Institution in providing legal assistance for divorce cases to the public is (1) Consultation; (2) Mentoring; (3) Counseling. The consultation was done to address divorce issues and cases served by advocates, while mentoring was assisting clients in the trials, and counseling was carried out to the lower sectors of the community to make the public aware about the importance of the law. There are two role pathways undertaken by the Legal Aid Institution among others are; (1) litigation; and (2) non-litigation. The existence of lawyers as law enforcement agencies in the Legal Aid Institution, the government, and the community are the three elements to decide the creation of a legal system according to the ideals of the 1945 Constitution and Pancasila. The existence of Legal Aid Institutions is to help people who are unable and obtain fast responses in solving their legal problems. There are many Legal Aid Institutions in Indonesia. In fact, each court provided a Legal Aid Post (POSBAKUM) which is an effort to help litigants. Therefore, based on these problems, this study will look further into the role of the Legal Aid Institution in providing legal assistance in the resolution of divorce cases.

Keywords: Legal Aid Institutions (LBH), Legal Aid, Divorce

1. Introduction

In the development of Indonesian people's lives, the problem of separation and divorce has been extremely worrying. This can be seen from the data on the divorce case verdict (inkracht) in Religious Courts throughout Indonesia in the last three years. The number of divorce verdict in 2016 was 365,654 cases, consisting of 101,928 *Thalak* divorce and 263,726 divorce lawsuit. In 2017, there was a total of 374,516 divorce ruling, consisting of 100,745 *Thalak* divorce and 273,771 divorce lawsuit, and it continued to increase in 2018 with 409,268 cases, consisting of 111,490 *thalak* divorce and 307,778 divorce lawsuit.

Settlement of household problems is part of gaining access to justice, and one of the efforts to respond to these needs is legal aid. Legal aid or legal assistance is one of the media that can be used by all people to claim their rights over the treatment that is not in accordance with applicable law. This is based on the importance of legal protection for every human being as a subject of law to ensure law enforcement.

It often occurs to the poor people because they do not know their rights as respondents or defendants, and they treated unfairly or are denied the right to be accompanied by an advocate[1]. So, it takes a legal institution or organization that fights for justice and law enforcement such as the Legal Aid Institution (LBH) that accompanies clients or litigants. Article 1 paragraph (1) and (2) of Law Number 16 of 2011, that legal aid is legal services provided by legal aid provider and free of charge to legal aid recipients, with the criteria that a legal aid recipient is a person or group who cannot afford a lawyer.

The divorce issue is a privacy problem that is often not revealed in court compared to criminal cases. Thus, in this case, it highly needs an institution or organization that is more focused on divorce issues that receive services and help the community to solve their cases.

There are many Legal Aid Institutions in Indonesia. In fact, each court provided a Legal Aid Post (POSBAKUM) which is an effort to help litigants[2]. Therefore, based on these problems, this study will look further into the role of the Legal Aid Institution in providing legal assistance in the resolution of divorce cases.

2. General Overview of the Role of Legal Aid Institutions

The role and function of the Legal Aid Institution for the community are crucial. The lack of public understanding about the procedures, procedure for administration, administration in the Court and legislation concerning marriage are the main factors the Legal Aid Institution is selected to help to solve the legal problems. Legal Aid Institutions are established in line with legal institutions in the eyes of the general public. The existence of a Legal Aid Institution in Indonesia has the legality of legislation, namely Law Number 16 of 2011 concerning Legal Aid. With this legality, the community has the authority to establish a Legal Aid Institution. The Legal Aid Institution has rules in accordance with applicable laws, but it is coordinatively independent.

Role theory written by Khan is an emphasis on the individual nature as social actors who learn behavior that is line with the position occupied in society[3]. Role is a central concept of the role theory. Therefore, the study of role theory is inseparable from the definition of roles and many behavioral terms therein. Related to law enforcement, the ideal the actual roles are those desired and expected by law, determined by law and constitution.

According to Khan, the ideal role is type of role performance, which is the role of being a set of rules containing the obligations possessed by someone in performing and carrying out their duties and positions at the social level of society. In accordance with this research, the intended role is the role of the Legal Aid Institution in conducting its duties, functions, and obligations as well as its effectiveness in performing this role in relation to the applicable laws and regulations.

The effectiveness or success of law enforcement depends on three elements of the legal system[4] including: (1) legal structure, a permanent framework of the legal system that supports the process within its limits. As a law of structural system that decides whether or not the law can be applied properly. (2) The substance of law, norms, rules, and actual human behavior in the system, the element is connected to the thing produced or done by the legal structure. (3) Legal culture, as attitudes and values that have to do with law and the legal

system. The term legal culture is used to refer to the legal traditions used to control the lives of the legal community.

3. The Role of Legal Aid Institutions in Divorce Cases

Considering the acceptance of cases in Legal Aid Institutions, not a few who come directly or through the media like telephone or email to declare complaints of problems occurred. Every Legal Aid Institution has its own characteristics. Some of them focused on handling a case alone, for example, the APIK Legal Aid Institution, which focused more on cases suffered by women, or YLBHI, which focused more on structural cases. There are several forms of legal aid models, which are used generally by legal aid agencies, including:

1. Model of Providing Legal Aid

The Legal Aid Institution provides legal assistance to people who are economically unable for free (Prodeo). The legal assistance is in a form of services provided by Legal Aid Institutions, as consultants and attorneys. Thus, the community is served free of charge, using funds from the Ministry of Law and Human Rights for accredited Legal Aid Institutions. They also use funds obtained from clients who experienced litigation but economically capable. It is commonly referred to as “cross-subsidized funds”.

The requirements to get free legal aid services are the following documents: Certificate of Unability (SKTM), or Social Security Letter, or Statement of Not being able to pay for advocate services that are written and signed by the Applicant for Legal Aid Institution services.

2. Model of Legal Aid Services

The Legal Aid Institution is focused on helping to resolve legal issues faced by litigants, who does not have the funds to pay the legal process. Therefore, the Legal Aid Institution provides space for efforts to resolve legal problems, such as providing a free legal consultation room. Moreover, to support services to the community, the Legal Aid Institution presents online legal consulting services.

The process of performing consultations carried out by the Legal Aid Institution is done by the community by coming to the office, filling in the guest book. It aims to inform the purpose and intention of the guest. Then, the staff will make an appointment to meet the lawyer. In the consultation process, the lawyers will invite the guest to explain the problems encountered.

Besides providing consultation and assistance, the Legal Aid Institution also actively provide legal counselling activity for the community. In brief, the concentration of legal services in the Legal Aid Institution include Consultation, Assistance, and Counseling.

3. Legal Assistance Process

Assistance in divorce cases is given until the legal problems have permanent legal force, as long as the client does not revoke a special power of attorney. The process starts when the client appoints a Legal Aid Institution to become its legal counsel. The forms of legal assistance provided in divorce cases are as follows:

Litigation

Litigation is the resolution of legal issues through the courts. Application of assistance for the divorce case process is provided until the realm of litigation. The Legal Aid Institution provides assistance as the procedures.

Non-Litigation

Non-litigation means resolving legal matters outside the court. This path is known as Alternative Dispute Resolution. The provision of legal assistance in non-litigation include legal counseling activities, legal consultations, case investments both electronically and non-electronically, legal research, negotiation, community empowerment, assistance outside the court and/or drafting of legal documents.

In the legal process in non-litigation settlement in divorce cases, the Legal Aid Institution seeks to conduct consultations or as mediation outside the court to reconcile the two parties, and of course to save the integrity of the households that have been developed.

4. Analysis of the Role of Legal Aid Institution in Divorce Cases

The basis of normative legal aid and the position of the community is a formulation of constitutional policy that is consolidated in an integrated manner with the legal system. The Legal Aid Institution is an extension of the guaranteed legal protection mandated by the highest state of the country, the 1945 Constitution[5]. Therefore, the existence of a Legal Aid Institution is clearly regulated by state legislation, in terms of legal objects and their existence.

The law and the basis of the state have regulated as a legal element. The legal advisor takes a role to carry out the element based on rules that apply to the role of the community as legal actors or objects.

Then, the existence of the Legal Aid Institution is as a legal structure that has the authority to help the community to resolve legal cases they encounter. As a structured legal aid institution, it is in direct contact with the legal element as a basis or foundation for action, and becomes the community culture in the form of awareness, spirit and willingness to be a balancing law.

Role theory in an institution or organization can determine the behavior and destiny of each individual whose focus is responsibility. Individuals or communities have expectations for the institution. They are in the form of certain norms and pressures. Positive pressure can lead to excellent change, while negative pressure can lead to depression, despair, and distrust of legal institutions. The targeted role is the role of the Legal Aid Institution in implementing its duties, functions, and obligations.

In fact, Legal Aid Institutions provide legal aid services to economically weak communities. It is in line with the presence of the Legal Aid Institution in providing space for litigation but economically weak people in society. The role of the Legal Aid Institution as an institution that can determine the behavior and fate of each individual who become the focus of their responsibilities. Individuals or communities have expectations for the institution in the form of norms and particular pressures.

The effectiveness of the role of the Legal Aid Institution is connected with the existence of Law Number 16 of 2011 concerning Legal Aid. It is inseparable from the concept of Lawrence that the effectiveness and success of law enforcement depends on three elements of the legal system, including legal substance, legal structure, and legal culture[4].

Every law enforcer who is engaged in implementing the rules, according to Hans Kelsen, runs based on the existing legal norms because the nature of the legislation is *stufentheorie*.

Related to legislation in Indonesia, Hamid S. Attamini said that the hierarchy of legal norms is divided into four elements; *staatsfundamentalnorm* (Pancasila, Opening of the 1945 Constitution); *Staatgrundgesetz*; *formell Gesetz* (Law) and *vorordnung* (PP to Perda). Hierarchically legal norms and legal aid have regular norm provisions and become mandatory to be implemented.

Legal Aid Institutions legally, directly follow the applicable laws and regulations, including the provisions of Law Number 18 Year 2003 about Advocates because advocates take the main role in providing legal assistance to the community. At the Legal Aid Institution, lawyers perform their obligations based on the rules. Therefore, the success of divorce that enters the Legal Aid Institution depends on the Advocate as a lawyer.

Therefore, based on the provisions of Law Number 16 of 2011, the substance of the law is match between the reality of the role of the Legal Aid Institution in performing its duties in handling divorce cases, the nature of legal aid, the model of assistance, and the form of legal assistance with applicable regulations. The correlation between them aims to create certainty, justice, and the benefit of the law to the community.

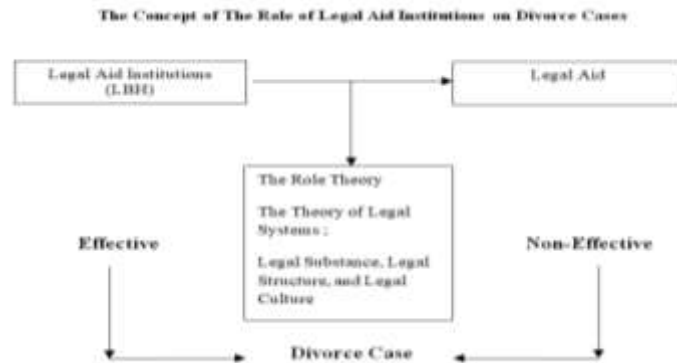
However, legal structure includes three elements, including judiciary, jurisdiction, and legislative body structuring. Based on the aspect of legal aid carried out by the Legal Aid Institution, the legal structure makes legislation and the person responsible for implementing it. Advocates and *Kemenkumham* in the area of the Legal Aid Institution have carried out their functions. *Kemenkumham* provides funds for the trial, while advocates provide legal services on a voluntary and prodeo basis. Moreover, the existence of *Kemenkumham* is instructive to the activities of the Legal Aid Institution to provide justice for the community.

Legal culture is the values and attitudes of society that can affect the implementation of law[6]. Understanding the legal culture related to Legal Aid Institutions can be seen from the frequency of guests or clients in using the Legal Aid Institutions. The presence of guests and clients of the Legal Aid Institution proves that the community has the awareness to solve their problems legally. Furthermore, the public is aware of the use of their rights regulated in the element of the rule of law.

The category of legal culture of External Legal Culture is where the society totally develops and runs its culture according to established law[7]. However, the existence of the management or lawyer in the Legal Aid Institution is positioned as Internal Legal Culture, where the law enforcer who carries out the duties and rules of law concerning legal aid to the community.

The development of legal culture is reflected in the legal service model by the Legal Aid Institution, where consultation and counseling are intended to make the public aware of the importance of the legal position. Counseling is another activity to boost public awareness of the law. It is a part of the process to obtain benefits, certainty, and legal justice.

Therefore, the existence of lawyers as law enforcement agencies in the Legal Aid Institution, the government, and the community are the three elements to decide the creation of a legal system according to the ideals of the 1945 Constitution and Pancasila. The existence of Legal Aid Institutions is to help people who are unable and obtain fast responses in solving their legal problems.



5. Conclusions

The role of the Legal Aid Institution in providing legal assistance for divorce cases to the public is (1) Consultation; (2) Mentoring; (3) Counseling. The consultation was done to address divorce issues and cases served by advocates, while mentoring was assisting clients in the trials, and counseling was carried out to the lower sectors of the community to make the public aware about the importance of the law. There are two role pathways undertaken by the Legal Aid Institution among others are; (1) litigation; and (2) non-litigation. The specific target of the role of the Legal Aid Institution is the Pro Deo for poor people, and the general target is for wealthy people with the honorarium fee.

Substantially, the Legal Aid Institution has provided legal services to the public in accordance with the provisions of Law Number 16 of 2011 regarding Legal Aid, that legal aid is for all citizens, and legal assistance covers civil, criminal and administrative matters.

In terms of legal structure, from the aspect of organizing legal aid, the government (Ministry of Law and Human Rights) has done its duties to the Legal Aid Institution in the form of funding, supervision, verification, and accreditation. Moreover, the legal aid providers were assigned to the poor people. While the legal culture, the community is well aware of the importance of the Legal Aid Institution, they realize that the court is passive and the Legal Aid Institution is active in solving legal problems in the community.

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