



Comparison of Law in the System of Applying Legal Aid to the Poor in Indonesia (Before and After the Enacting of Legal Aid Law)

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Abstract

Comparative law or legal system is a scientific activity in comparing one legal system with another legal system, both the legal system between countries and the legal system in a particular country by comparing the legal system that used to apply with the legal system that is currently in force in a particular country, to find and find similarities and differences both in terms of its advantages and disadvantages in the legal system. In order to get an explanation to assess the effectiveness of the legal system. The legal aid system for the poor in Indonesia to access justice, until now, still felt not practical to provide meaningful benefits for the poor in Indonesia when facing legal problems.

Keywords: *Comparative Law; Legal Aid System; Poor People's*

Introduction

That often we hear, there are poor people in Indonesia whose land is sabotaged or "seized" by the rich, corporations, and even by the government. Moreover, in the face of these problems, usually the poor are silent in oppression and helplessness and do not fight the law unless there are parties who feel empathy for the legal problems faced by the poor. One example: events that some time ago went viral on social media and in national media, where Inspector Kodam (Irdam) Merdeka in North Sulawesi, Brig. Gen. TNI Junior Tumilar has written and sent a letter addressed to The Police Chief General of Pol Listyo Sigit Prabowo. The letter explains the summoning of Bintara Pembina Desa (Babinsa) for defending one of the poor, illiterate people named Ari Tahiru (68 years old). PT Ciputra International sabotages the land, claiming to have bought Ari Tahiru from Dan Wannu¹.

Ari Tahiru, who feels he does not know Dan Wannu, feels he never sold his land to other people or parties, including Dan Wannu, then tried to defend his land from land-sabotaging actions carried out by PT. Ciputra International has built a residential fence wall on land Ari Tahiru. For the actions of PT. Ciputra International, Ari Tahiru had reported the company's land sabotage actions to the Sulut Police. Instead of the report being followed up by the police, Ari Tahiru was reported back by the PT. Ciputra International is considered to have destroyed concrete fences built by PT. Ciputra International on Ari

¹.News tanggal 19 Oktober 2021, "Cerita Ari Tahiru Warga yang Terlibat Konflik Tanah dengan Ciputra di Sulut", diproduksi oleh Manado Bacirita, www.m.kumparan.com.

Tahiru, and then determined as a suspect and carried out detention by the police. At this time, Brig. Gen. Junior Tumilar intervened because Babinsa, who had previously been asked for legal protection by Ari Tahiru, was also called by the police to be examined and questioned.²

Although Ari Tahiru has also been assisted by a lawyer named James Bastian Tuwo, S.H., legal assistance from the lawyer before the viral legal problems ari Tahiru with PT. Citraland International is only limited to the delivery of legal notice to PT. Citraland International. So from the example of the case event, the questions arise, Why Ari Tahiru did not submit civil law efforts by filing a lawsuit to the court for acts against the law of PT. Ciputra International, who has done the refreshment on Ari Tahiru? or Ari Tahiru, feels there is no cost to fight PT. Ciputra International filing a civil lawsuit with the court to seek and get justice? So that James Bastian Tuwo only did legal assistance against Ari Tahiru by sending a subpoena and assisting Ari Tahiru when reporting to the North Sulawesi Police.

To answer this question, we need to look at the legal aid legal system for the poor in Indonesia who face legal problems to access justice.

Legal aid programs have been introduced in the justice system in Indonesia since the 1970s by Mochtar Kusumaatmaja and Adnan Buyung Nasution. However, it has not succeeded in improving the right of people who are unable or poor to access justice in litigation proceedings run by advocates (*legal services*). One of the important contributing factors of this situation is that people who are unable or poor do not know and understand their constitutional and legal rights properly. Therefore, legal proceedings to achieve legal certainty and justice through litigation, inaccessible to the unable or poor, have even placed the unable or poor become more unable and made the able more affluent society.³

In Indonesia's criminal procedure law system, Law No. 8 of 1981 (KUHAP), lawyers or legal counsel is provided to the unable or poor in dealing with criminal law issues. Which is threatened with criminal damage of five years or more is guaranteed to be provided by the state for free, meaning that people who are unable or poor do not need to pay for the services of lawyers or legal advisors who are not able to do so. Will help to meet and defend the legal issues he faced in undergoing criminal justice proceedings, both at the level of examination in the investigation, pro-prosecution, and examination process at the court trial.⁴⁵

Since the second amendment of the 1945 Constitution, which gave birth to Article 28D paragraph (1), the state guarantees legal assistance to its people. It has provided hope for the people unable to obtain legal assistance as part of human rights. It should be considered a fulfillment of Indonesian citizens' constitutional right to access justice. Moreover, based on the provisions in the constitution, as well as at the encouragement of Advocate organizations incorporated in the KKAI (Indonesian Advocate Working Committee) to have their legal umbrella as other law enforcement officials, namely the police, prosecutors, and judiciary, each of which has a legal umbrella. The government then followed up by passing and inviting Law No. 18 of 2003 on Advocates (Advocate Law), which in the provisions of Article 22 Paragraph (1) has sacred to advocates to provide free legal assistance to the justice-seeking community. Moreover, 5 (five) years after the promulgating of the Advocate Law, the new government issued the implementing regulation of the Advocate Law, namely by issuing Government Regulation of

²*Ibid*

³Romli Atmasasmita dalam "*Arah Penegakan Hukum di Indonesia*". Pustaka, Jakarta, 1990, hlm.67.

⁴Article 56 Paragraph (1) of the Kuhap states, "In the event that a suspect or defendant is suspected or charged with a criminal offence threatened with death or a criminal threat of fifteen years or more or for those who are unable to be threatened with a criminal five years or more who do not have their own legal counsel, the officials concerned at all levels of examination in the judicial process shall appoint legal counsel for them".

⁵Article 56 Paragraph (2) of the Kuhap states, "Any legal counsel appointed to act as meant by paragraph (1), provides his assistance freely".

the Republic of Indonesia Number 83 of 2008 on The Requirements and Procedures for Providing Legal Assistance Only.⁶

As for providing legal assistance to the unable or poor in government regulations Number 83 of 2008, based on Article 4 paragraph (1), it can be provided by advocate organizations or legal aid agencies after justice seekers, in this case, people who are unable or poor apply in writing either to the advocate organization or to legal aid agencies.

Furthermore, in order for legal aid to seekers of justice who are unable or poor can be appropriately implemented, and to fulfill the principle of a state of law, that is, a person or citizen must be guaranteed equality before the law. The government then issued Law No. 48 of 2009 on Judicial Power (Law 48/2009 Judicial Power) which the issue of legal aid is regulated separately in Chapter XI Article 56 and Article 57. Then in Law No. 49 of 2009 on General Justice (Law 49/2009 General Justice), the issue of providing legal assistance is regulated in Article 68B and Article 68C. In addition, in Law No. 50 of 2009 concerning the Second Amendment to Law No. 7 of 1989 on Religious Justice (Law 50/2009 Religious Justice) also authorizes the provision of legal assistance to people who are not able only as stipulated in Article 60B and Article 60C, as well as Law No. 51 of 2009 concerning the Second Amendment to Law No. 5 of 1986 concerning State Administrative Justice (Law 51/2009 TUN) in the provisions of Article 5 of 1986 concerning State Administrative Justice (Law 51/2009 TUN) in the provisions of Article 5 of 1986 concerning State Administrative Justice (Law 51/2009 TUN) in the provisions of Article 5 of 2009 concerning the Second Amendment to Law No. 5 of 1986 concerning State Administrative Justice (Law 51/2009 TUN) in the provisions of Article 5 of 2009 concerning the Second Amendment to Law No. 5 of 1986 concerning State Administrative Justice (Law 51/2009 TUN) in the provisions of Article 51 of 2009 concerning the Second Amendment to Law No. 5 of 1986 concerning State Administrative Justice (Law 51/2009 TUN) in the provisions of Article 51 of 2009 concerning the Second Amendment to Law No. 5 of 1986 concerning State Administrative Justice (Law 51/2009 TUN) in the provisions of Article 5 of 2009 Concerning the Second Amendment to Law No. 5 of 19 144C and Article 144D also say the same thing is to provide free legal assistance to the people who are unable or poor in Indonesia.

Moreover, after passing a long process, in 2011, the State of Indonesia has passed and invited the legal system regarding legal assistance to the unable or poor through Law No. 16 of 2011 on Legal Aid (Legal Aid Law), which has specifically regulated the system of providing legal assistance to the unable or poor. However, whether the Aid Law has similarities or differences in the concept of the legal aid system with the previous legal systems that have existed in the State of Indonesia, it is necessary to compare the effectiveness of the legal aid system in meeting the thirst of the unable or poor to get justice.

Discussion

Legal Aid Legal System Prior to the Issuance of the Legal Aid Act

Legal aid policies that defend the interests of society regardless of background, ethnicity, origin, ancestry, color, ideology, belief, politics, rich, poor, religion, or group of people it defends. When an able person (*the have*) has a legal problem, he can appoint legal counsel to defend his interests. The person classified as unable can ask for defense from a public defender of the Legal Aid Institute to defend his interests in a legal case.⁷

⁶.Constitutional rights according to Prof. Jimly Asshiddiqie are rights guaranteed in and by the Basic Law (UUD) 1945. See in Jurnal Abdimas Madani and Lestari Vol. 01, Issue. 01, March 2019, p. 24-33 (e-ISSN:; p-ISSN: -), Dian Kus Pratiwi, Dessy Ariani, Despan Heryansyah, "Introduction to Constitutional Rights of Citizens in Schools", p. 27

⁷.Frans Hendra Winarta, 2009, "Pro Bono Publico: Hak Konstitusional Fakir Miskin untuk Memperoleh Bantuan Hukum", Jakarta, Gramedia, hlm. 1

Legal aid is the service of providing legal advice to people who are unable or poor to get legal representation and access to justice in the face of legal issues, both through non-litigation and litigation (legal proceedings in court) fairly. Therefore for every legal action alleged to the accused must also pay attention to his rights to get the truth and justice by the legal action he did without any legal action discrimination.⁸

Adnan Buyung Nasution, in his book entitled "Bantuan Hukum di Indonesia," mentioned that the concept of legal aid began to be planned on August 18 to 20, 1969, at the THIRD Congress of PERADIN in Jakarta he then realized by forming LBH in 1971. This is not just an institutionalization of the poor's legal interests but a movement on legal rights, interests, and obligations. Legal aid for the poor can be interpreted as legal assistance for low-income groups. In contrast, legal blindness is a poor or poorly educated society that does not know and realize its rights as a subject of law or because of social and economic position and due to pressures from stronger and does not dare to defend and fight for its rights.⁹

Although Article 27 paragraph (1) of the 1945 Constitution has mentioned, "all citizens simultaneously their position in law and government and uphold the law and government with nothing but." The concept or idea of legal assistance for the poor, which Adnan Buyung Nasution then realized by establishing Lembaga Bantuan Hukum, does not yet have the umbrella of state law. The concept of legal aid had not entered the legal system of the State of Indonesia at that time.

Legal assistance to the incapacitated or poor, which is also the goal in the Indonesian state legal system, was initially regulated in Law No. 8 of 1981 concerning the Criminal Procedure Law (KUHAP) by adhering to a fair criminal justice process. In *due process of law*, the rights of suspects/defendants/convicts are protected and considered part of citizens' rights (civil rights); therefore, it is also called part of human rights.

Based on the substance of the law as stipulated in the KUHAP, the provision of legal assistance to the community is not able or poor, in substance can be provided by legal counsel after the appointment of investigators, public prosecutors and judges. In the criminal justice process, to accompany suspects, defendants or convicts in the process of examining cases both at the level of investigation in the police by investigators, pro-prosecution in the prosecutor's office and examination at a court hearing by a judge. This is stipulated in Article 56 paragraph (1) and paragraph (2) of KUHAP to be interpreted based on the substance of the law in KUHAP.

The provision of legal assistance to the unable or poor community is then mandated again in the substance of Indonesian state law, namely by the enactment of Law No. 18 of 2003 on Advocates (Advocate Law), and the Implementing Regulation, namely Government Regulation No. 83 of 2008 concerning the Procedure for Providing Free Legal Assistance (PP No. 83 of 2008), which in the provisions of law Article 22 paragraph (1) of the Advocate Law and Article 2 pp No. 83 of 2008 in 2008, wherein the provisions of the law Article 22 paragraph (1) of the Advocate Law and Article 2 pp No. 83 of 2008 in mentioned that:

"Advocates are obliged to provide free legal assistance to justice seekers who cannot afford it."

To emphasize free legal assistance to the unable or poor people who face criminal, civil, and state law problems in the judiciary. Indonesia then completes the legal substance in the legal system of providing legal assistance into Law 48/2009 the Judicial Power wherein the provisions of Article 56 paragraph (1) mentioned:

"Everyone who is caught up in a case is entitled to legal aid."

⁸.Ibid

⁹.Adnan Buyung Nasution, 2006, "Bantuan Hukum di Indonesia", Jakarta, LP3ES, hlm. 1

Then, Article 56 paragraph (2) mentions:

"The state bears the cost of the case for the seekers of justice who cannot afford it."

Furthermore, the provisions of Article 57 paragraph (1) mentions:

"At every district court, a legal aid post is established to justice seekers who are unable to obtain legal aid."

Then, Article 57 paragraph (2) mentions:

"Legal assistance, as referred to in paragraph (1), is granted free of charge at all levels of the judiciary until the verdict on the case has obtained permanent legal force."

Moreover, Article 57 paragraph (3) then mentions:

"Legal assistance and legal assistance posts as referred to in paragraph (1) are carried out by the provisions of the laws and regulations."

Then in the provisions of Article 68B and Article 68C of Law 49/2009 General Justice, Article 60B and Article 60C of Law 50/2009 Religious Justice, and Article 144C and Article 144D of Law 51/2009, state administrative court also stipulated in Law 48/2009 Judicial Power.

In substance, the provision of legal assistance to the unable or poor based on the KUHAP, Advocate Law, Law 48/2009 Judicial Power, Law 49/2009 General Justice, Law 50/2009 Religious Justice, and Law 51/2009, state administrative court. There are focused on litigation legal assistance, which means the provision of legal assistance in handling cases in judicial institutions, both criminal, civil, and state business. Moreover, in its implementation of new legal assistance in criminal cases, only that can be run by advocates after getting a letter of appointment. In contrast, for civil cases and state governance is still unclear implementation.

Legal Aid System Under Legal Aid Act

The year 2011 is a milestone for people or poor people in Indonesia in accessing justice to get legal assistance. In that year, the government has passed and invited Law No. 16 of 2011 on Legal Aid (Legal Aid Law). Moreover, with the promulgation of the Legal Aid Law, constitutionally, the state has guaranteed and is responsible for access *to justice* in providing legal assistance to the people or poor as the embodiment of the fulfillment of the human rights of Indonesian citizens.

In the Legal Aid Act, the understanding of legal aid is more directed to *legal aid* that is equivalent to pro bono or free legal assistance. This can be seen from the definition given by the Legal Aid Law in Article 1 paragraph (1), which states:

"Legal aid is a legal service provided by a free legal aid provider to the recipient of legal aid."

Then the so-called legal aid givers and recipients of legal aid in the provisions of Article 1 paragraph (3) and paragraph (2) are: *"The granter of legal aid is a legal aid institution or community organization that provides legal services under this law."* In contrast, *"The recipient of legal aid is a person or group of the poor."*

In addition, according to the provisions of Article 1 paragraph (2) of the Legal Aid Law, not all advocates can carry out their duties as Legal Aid Providers as mandated in the KUHAP and the Advocate Law, as well as other laws and regulations for free legal assistance or *pro bono*. To the poor. On that

basis, advocates who can provide legal assistance to non-poor people are only advocates registered in legal aid organizations or community organizations that provide legal services after getting a letter of duty from a legal aid organization.¹⁰

The provision of free legal assistance or better known as pro bono legal assistance (*pro bono publico*), is an effort to achieve justice for everyone, especially for the unable or poor, as referred to in the Legal Aid Law in dealing with legal problems. Legal assistance in handling legal problems experienced by recipients of legal assistance, in this case, the community, cannot be done through litigation or non-litigation channels.¹¹

Furthermore, in the Legal Aid Law Article 4 Paragraph (3) mentioned, legal assistance includes exercising power of attorney, accompanying, representing, defending, and/or taking other legal actions for the legal benefit of legal recipients, both in dealing with civil, criminal and state administrative law issues. Advocates carry out the implementation of legal assistance under this law to legal aid providers incorporated and accredited by the state through the ministry of law and human rights as legal aid providers.

The state, in the Legal Aid Law, has guaranteed funding for the implementation of legal assistance by advocates to legal aid providers to poor people as recipients of legal aid. This provision is regulated in Article 16 paragraph (1) of the Legal Aid Law and Article 18 paragraph (1) of Government Regulation No. 42 of 2013 concerning the Terms and Procedures for The Provision of Legal Aid and The Distribution of Legal Aid Funds, which mentions: Funding or costs needed and used in the implementation of legal assistance to poor people or communities by the provisions of the legislation, charged to the State Revenue and Spending budget.

Implementation of the provisions of legal substance in the Legal Aid Law and PP 42/2013 on the Terms and Procedures for The Provision of Legal Aid and The Distribution of Legal Aid Funds is currently regulated in the Decree of the Minister of Law and Human Rights of the Republic of Indonesia Number: M.HH-01. HN.03.03 Of 2017 Concerning The Amount of Litigation And Non-Litigation Legal Aid Costs (Kepmenkumham No.M.HH-01. HN.03.03 the Year 2017);

The effectiveness of legal aid for the poor in Indonesia to access justice before the enacting of the Legal Aid Act

Although the provision of legal assistance has been regulated and mandated in the KUHAP because, in its implementation, *the crime control model (arbitrary process or arbitrary process)* is still in force. This arbitrary process occurs because the suspect or defendant is considered and used as an object of examination regardless of human rights and his right to defend and defend the dignity and truth he has. Arbitrariness in the judicial process can occur because law enforcement officials have become accustomed to practicing investigation and investigation according to crime control *models*, such as torture, inhumane treatment, and degrading following those embraced by *Het Herziene Inlandsch Reglement (HIR)*.¹²

¹⁰.Article 13 and Article 16 of Government Regulation No. 42 of 2013 concerning the Terms and Procedures for The Provision of Legal Aid and The Distribution of Legal Aid Funds, regulates the provision of litigation and non-litigation legal assistance by legal aid advocates and/or advocates recruited by legal aid providers, *Ibid*.

¹¹.Legal assistance through litigation, handling and resolution of legal problems is carried out through judicial process (siding in court) while non-litigation legal assistance, handling and resolution of legal problems is carried out outside the judicial process through mediation, negotiation in a consensus deliberation. General Provisions of Article 1 number 8 and number 9 of Government Regulation No. 42 of 2013 concerning The Terms and Procedures for The Provision of Legal Aid and Distribution of Legal Aid Funds, *Ibid*.

¹².Frans Hendra Winarta, *Op Cit*, hlm. 5

Moreover, because of the role of advocates as legal counsel to provide free legal assistance, according to the provisions of Article 56, paragraph (1) and paragraph (2) of the KUHAP is only passive because to provide legal assistance to people who are unable or poor. In the face of criminal cases, must wait to get an appointment from investigators, prosecutors, and judges first. Therefore, the provision of legal assistance based on the provisions in the KUHAP cannot be effectively implemented in the concept of providing free legal assistance (advocates as legal counsel do not receive honorarium) to poor justice seekers who are suspects or defendants.

The appointment to advocates to become legal advisors and provide legal assistance to the poor, as stipulated in the KUHAP, applies only in criminal cases and does not apply to the provision of legal assistance to the incapacitated or poor in the face of civil or state administrative cases. The concept of providing legal assistance to the unable or poor based on the legal regulations that have been regulated in this KUHAP cannot be effectively implemented to fulfill the constitutional rights of the unable or poor as Indonesian citizens comprehensively to get legal assistance.

Likewise, although the State has guaranteed the provision of free legal assistance to the unable or poor people who are in the judiciary either through the Advocate Law, Law 48/2009 Of The Power of Justice, Law 49/2009 General Justice, Law 50/2009 Religious Justice, and Law 51/2009 Of state administrative court, that laws bearing the cost of cases at all levels of the judiciary by way of the release of case registration fees, Indonesian state legal system in terms of providing legal assistance to the unable or poor cannot be realized and implemented effectively, this is because it is not clear the legal aid funding budget system in the legislation.

In addition to the unclear budget, advocates have not been moved by their hearts and souls to provide free legal assistance to the poor. So that if they get appointments from other law enforcement officials, both in the examination in the police and the courts, the advocates are reluctant to carry it out. Even if they do, the advocates will not be maximal in providing legal assistance to the unable or poor community, unlike in providing legal assistance or handling cases with the receipt of honorarium from clients.¹³

Legal aid institutions are also "indolent" to provide legal assistance to the unable or poor in general, except to the built or assisted communities that have been built from legal aid agencies. They will be swift and directly able to provide legal advocacy.

The bureaucratic system that requires the community to be unable must first submit a written application to the advocate or through the advocate organization or to a legal institution with conditions.¹⁴ In the author's opinion, also as one of the causes of ineffectiveness for the poor to access legal aid for free,¹⁵ from an advocate before the enactment of the Legal Aid Act.

In addition to the bureaucratic system, although the Advocate Law requires advocates to provide legal assistance, in practice, many advocates are also reluctant, even fleeing to provide free legal assistance to poor justice seekers, because there is no economic benefit. If implemented, it will be carried

¹³.Normative framework regarding the provision of legal assistance in the level of practice in the community, especially in the constituents of the regulation, namely the poor people are still not optimally run by advocates as one of the legal aid providers. There are three things advocate behavior in dealing with the problem of legal assistance for the poor, namely: avoiding for various reasons, accepting the case on condition that the case must attract the mass media so as to raise the prestige of advocates, and the latter receive fully the provision of legal assistance. See, Marudut Tampubolon, 2014, *Membedah Profesi Advokat, Perspektif Ilmu Sosial Interaksi Advokat-Klien*, Yogyakarta, Pustaka Pelajar. Dikutip dari tulisan: Ni Gusti Agung Ayu Mas Triwulandari, dengan judul, "Problematika Pemberian Bantuan Hukum Struktural Dan Non Struktural Kaitannya Dengan Asas Equality Before The Law (Problematic Provision of Legal Assistance Structural and Non-Structural Relation ti The Basis of Equality Before The Law)", *Jurnal Ilmiah Kebijakan Hukum*, Volume 14, Nomor 3, November 2020: 539-552. Downloaded from the internet: <https://www.ejournal.balitbangham.go.id/index.php/kebijakan/article/view/1291>.

¹⁴.These provisions as stipulated in Article 4, Article 5 and Article 6 of Government Regulation No. 83 of 2008 concerning the Requirements and Procedures for The Provision of Legal Assistance For Free.

¹⁵.Article 12 paragraph (1) regulates the prohibition, *Ibid*.

out just like that. The lack of willingness or reluctance of advocates to provide legal assistance makes it difficult for the poor to access legal aid. Therefore, free legal aid or *pro bono public* for the poor is just a myth.¹⁶

Therefore, although the Advocate Law and its Implementing Regulation, Namely Government Regulation No. 83 of 2008 concerning the Procedure for Providing Free Legal Aid, which regulates the system of legal assistance to the poor as seekers of justice.¹⁷ This situation happens because the obligation for advocates and advocacy organizations to socialize the provision of free legal assistance by advocates based on the Advocate Law and the government is minimal to socialize free legal assistance from advocates when the poor face a legal problem.

Based on considerations and factors as outlined above, the author argues that the legal system's ineffectiveness in carrying out its duties is to provide legal assistance to the poor to access justice in Indonesia due to legal substance that existed before the Legal Aid Law. These still regulate the process of bureaucratization (legal culture) thick, which causes poor justice seekers to be reluctant to apply for legal assistance. The passive nature of advocates, advocate organizations, and legal aid agencies as a legal structure in providing legal assistance (because it is only waiting for the application for legal assistance in advance from poor justice seekers or waiting for an appointment from other law enforcement officials), is also one of the causes of ineffective provision of legal aid to the unable or poor to get justice.

Conclusion

Conclusions regarding the comparison of legal aid legal systems to the unable or poor, before and after the Legal Aid Law was enacted based on the above discussion, and the author can say as follows: *First*, legal assistance to the unable or poor before the Legal Aid Law was enacted, referring to and based on the provisions of the KuHap, Advocate Law, Law 48/2009 Judicial Power, Law 49/2009 General Justice, Law 50/2009 Religious Justice, and Law 51/2009 Tun Judiciary, legally providing legal assistance to the unable or poor, is only given to litigation legal assistance, meaning the provision of legal assistance in the handling of cases in criminal, civil, and state administrative institutions. *Second*, advocates as *stakeholders* or as implementers (legal structures) of the provisions of the laws and regulations before the enactment of the Legal Aid Law are only passive in providing legal assistance to the poor who face legal problems. This is because advocates are only waiting for appointments to be given by the police, prosecutors, and judges to provide legal assistance to the incapacitated or poor. Moreover, *third*, it is not clear the system of budgeting legal aid funds and the procedures for their use in the laws and regulations before the enactment of the Bantuan Law Law.

Meanwhile, after the Legal Aid Law is implemented, the conclusions that the author can convey are: *First*, legal assistance to the unable or poor can be provided by legal aid providers either through litigation or non-litigation processes. *Second*, advocates as *stakeholders* or as implementers (legal structures) of the provisions of the Legal Aid Law have a playful nature. Legal Aid Advocates will provide legal assistance for litigation or non-litigation because it will be a reference and assessment for the Ministry of Law and Human Rights. The following verification and accreditation, because Legal Aid Provider will always make maximum efforts in carrying out its work in providing legal assistance to the poor, both through litigation and non-litigation. This regulation means a control mechanism for the performance of legal aid advocates, which in previous regulations did not exist. Moreover, *third*, in the Legal Aid Law and its implementing regulations, the legal aid budgeting system and the procedure for its

¹⁶Frans Hendra Winarta, 2011, *Bantuan Hukum di Indonesia: Hak untuk Didampingi Penasihat Hukum Bagi Semua Warga Negara*, Jakarta, Elex Media Komputindo, hlm. 5

¹⁷Advocates although have an obligation to carry out the principle of *pro bono publico* as has been charged by the law to help the poor, in practice it is not easy to make it happen, moreover there has been a shift in the meaning of the advocate profession from *officium nobile* to commercialization. Agus Raharjo, Angkasa and Rahadi Wasi Bintoro, "Access to Justice for the Poor (Dilemma in The Provision of Legal Aid By Advocates)", Seen at the Pulpit of Law Volume 27, Number 3 October 2015, page 433, downloaded through <https://media.neliti.com> On Thursday, November 4, 2021.

use is very clearly regulated by the government. However, according to the author, there is still very minimal budgeting.

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