



## Application of Article 22 of Law No.18 of 2003 Concerning Advocates in Giving Free Legal Assistance to Justice Seekers

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### **Abstract**

The role of Advocates is very important in helping justice seekers who can't afford it, free legal aid is legal services provided by Advocates without paying an honorarium in both criminal and civil cases, this type of research uses empirical juridical, the specification of this research is descriptive analysis, data analysis uses qualitative method. the results of the research data obtained, namely the application of free legal aid in the provision of free legal assistance at the Advocate Office of Nurma Suyatiningrum, SH and PBH DPC PERADI SEMARANG have obstacles, namely: claims for compensation funds from the government are very difficult and the compensation funds provided are very difficult. limited so that the Advocate salary is not sufficient. In conclusion.

**Keywords:** *Advocates; Free Legal Aid; Justice Seeker*

### **Introduction**

The Indonesian state guarantees equality before the law, so that all people have the right to be treated equally before the law (equality before the law). One form of equal treatment is the provision of legal assistance to justice seekers who are unable to obtain justice (access to justice). The role of an Advocate is of course very important in protecting the rights of someone who has a legal problem in both a criminal case and a civil case. Using an advocate's services definitely costs money, but not all people can afford to use an advocate's services because people who can't afford it only make ends meet.

Legal aid is an attempt to fill the rights of the community, especially for justice seekers who can't afford it. The explanation regarding legal aid is not explained explicitly as a state responsibility. However, in accordance with the principle of equality before the law and fair treatment of all, the state must pay attention to the issue of providing legal assistance to all citizens, especially those who seek justice who cannot afford it.

Advocates are a very noble profession whose status is equal to other law enforcement officials, in carrying out their profession an Advocate is obliged to provide free legal assistance to justice seekers who cannot afford it, therefore Advocates may not refuse to provide legal assistance to seekers. Justice for those who are unable to afford it, by being given legal assistance from an Advocate, justice seekers who are unable to have legal problems can be resolved with legal assistance from Advocates and justice seekers get their rights before the law.

The government must not be reckless in providing legal assistance to people seeking justice, because this is a violation of human rights. This is reflected in the foundation of our country, namely Pancasila which contains that all Indonesian people receive justice in all matters including justice in obtaining legal assistance, so the provision of legal assistance by advocates is very important, especially for justice seekers who cannot afford whose rights are usually not protected.

Advocates in carrying out their profession must be based on Law No. 18 of 2003 concerning Advocates, with this regulation Advocates can be protected in carrying out their profession. So that Advocates do not have to worry about being sued back by justice seekers or arbitrarily carried out by law enforcement officials in carrying out their profession, even though they have been protected by this law an Advocate may not act arbitrarily in carrying out his profession but must comply with all regulations - existing regulations.

The government must protect the people of Indonesia, one of which is in the field of law so that the government must provide justice for justice seekers who are struck by legal problems, by providing legal assistance to justice seekers who are economically incapable without paying honorarium to advocates, with legal assistance from the government, seekers Justice has the same position as justice seekers who are able to pay an Advocate honorarium. This is not only from the government providing legal assistance to justice seekers who are unable but now advocates are also obliged and may not refuse to provide legal assistance, thus the government's goal of helping justice seekers who are unable to be affected by legal problems can be carried out. .

Law No. 18 of 2003 concerning Advocates in Article 18 states that:

"Advocates in carrying out their professional duties are prohibited from discriminating in the treatment of their clients based on gender, religion, politics, descent, race or social and cultural background."

Law No. 18 of 2003 concerning Advocates in Article 22 states that:

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

The mechanism for legal aid by Advocates in carrying out their role in providing free legal assistance is regulated in Article 4 of Government Regulation No. 83 of 2008 concerning Requirements and Procedures for Providing Free Legal Aid.

The government in realizing its desire to protect and prosper the Indonesian people for economically disadvantaged justice seekers has not been fully implemented, because there are still justice seekers who do not receive legal assistance from the government, this is due to the requirement to obtain legal assistance for justice seekers who are unable cannot be given directly by justice seekers so that justice seekers cannot get legal assistance for free and justice seekers end up carrying out their own cases without legal assistance even though justice seekers do not know the law, causing cases of justice seekers to lose because they are won by justice seekers who can pay an honorarium Advocate services.

Justice seekers who are unable to get legal assistance from advocates to assist their clients so that justice seekers who cannot afford are not treated arbitrarily by law enforcement officials from criminal cases in the hope that decisions at the court level will provide a sense of justice, so that the rights of the community justice seekers who are unable to be protected as they should.

Based on the reasons and descriptions above, it is hoped that the legal assistance provided by Advocates can realize and defend the rights of justice seekers who are unable and legally illiterate so as to obtain proper legal protection.

Based on the description of the background, the problem can be formulated as follows, How is the application of Article 22 of Law No. 18 of 2003 concerning Advocates in providing legal assistance to justice seekers and the obstacles faced by Advocates in providing free legal assistance to justice seekers who are unable and how efforts to overcome them.

Regarding this discussion in previous research written by Nike Sepvinasari and Zulfikar Judge in the journal "Implementation of Provision of Free Legal Assistance to Defendants Who Cannot Afford at the West Jakarta District Court "the author discusses discussing the procedure for providing free legal assistance to defendants who cannot afford through the Legal Aid Post at the West Jakarta District Court and the obstacles faced Legal Aid Post in providing free legal assistance to defendants who can't afford it. How to deal with this phenomenon using the theory of Lawrence M. Friedman. In previous research, the authors only said that there are many laws and regulations and other regulations governing the rights of a defendant who cannot afford to get legal assistance free of charge and every accused who undergoes examination in court.

## ***Research Methods***

This study uses a qualitative approach, namely to describe word for word systematically so that it can find answers to problems. The type of research used is empirical juridical, namely a research conducted by means of interviews as a source of research. The data used in this study are primary data, namely data obtained directly, obtained from secondary legal materials, namely books, journals, articles, theses and dissertations related to the problem under study as supporting data.

This study uses the technique of collecting legal materials through library research, namely to obtain secondary data, seek theories from views related to the subject matter or to obtain relevant theoretical foundations related to free legal aid and interviews is one of the methods. data collection in order to obtain information by holding direct question and answer with predetermined informants. The data analysis technique used in this study is descriptive analysis, which is a method that functions to describe or provide an overview of an object under study through data or samples that have been collected as they are without conducting analysis to make general conclusions.

## ***Results and Discussion***

### **1. Application of Provision of Free Legal Aid by Advocates**

Advocates are a noble profession (*officium nobile*) because advocates serve the interests of society, not just personal interests. Advocates have an obligation to provide legal assistance free of charge to justice seekers who can't afford it. This is in accordance with Article 22 of Law Number 18 of 2003 concerning Advocates which reads:

1. "Advocates are obliged to provide free legal assistance to justice seekers who cannot afford it."
2. "Provisions regarding the requirements and procedures for providing free legal assistance as referred to in Paragraph (1), shall be further regulated by Government Regulation."

Justice seekers who are unable to afford legal assistance to advocates are required to come to the Advocate's Office to get legal assistance free of charge. The procedure for requesting legal assistance to Advocates in providing legal services to people who are unable due to a legal problem, namely:

1. The Petitioner came to the Advocate's office to meet the Advocate by explaining the chronology of the legal problems he was facing.
2. Explaining that the justice seeker is incapacitated so he cannot pay the attorney's fee, then the Advocate provides legal consultation and provides instructions on the steps that must be taken by the applicant which must be prepared and what documents must be fulfilled.

A person who wants to get legal assistance free of charge must submit a written application to the Advocate, in which the application states the name, occupation, address of the person and the chronology of the case clearly and attaches an Identity Card, Certificate of Domicile made by the local Sub-District Head and Letter Statement of Disadvantage made by the local Kelurahan stating that the person concerned is truly incapacitated. If the applicant is illiterate and cannot write, then he can submit it orally to the Advocate, then the Advocate makes a chronology of the case.

The provision of free legal assistance is carried out in accordance with the Advocate Code of Ethics and the Advocate Law, if an Advocate violates the provisions of the Advocate Code of Ethics, sanctions will be imposed by the advocate organization, namely:

- a) verbal reprimand;
- b) Written warning;
- c) Temporary dismissal from his profession for 3 (three) to 12 (twelve) consecutive months; or
- d) Permanent dismissal from the profession.

Advocates in providing free legal assistance to justice seekers who are unable to include legal consultations, carrying out power of attorney, representing, accompanying and defending, where Advocates provide legal assistance to justice seekers from the process of investigation, investigation, prosecution, until the trial process is over with decisions that have permanent legal force, without distinguishing justice seekers who pay honorariums or those who do not pay honorariums, Advocates are carried out fairly and obtain legal certainty.

Advocates in providing legal assistance free of charge to justice seekers who cannot afford it have been carried out fairly without any differences with justice seekers who pay honoraria, provided that the justice seekers have completed the documents requested by the Advocate.

Based on the results of the research above, for justice seekers who can be assisted by advocates must meet the requirements specified in the Advocate Law, namely a Certificate of Disadvantage (SKTM) made by the Kelurahan, the intended SKTM must be verified by Integrated Social Welfare Data (DTKS) and Certificate of Domicile made by the Kelurahan, if the justice seeker cannot provide a Certificate of Disadvantage then the advocate cannot help because the letter is proof that the justice seeker is truly incapacitated and cannot pay the Advocate's honorarium.

## **Implementation of Provision of Free Legal Aid by Legal Aid Institutions**

Legal Aid Institute at PERADI SEMARANG Branch Representative Council Advocate Organization (DPC) in collaboration with Demak District Court, Ungaran District Court, Semarang

District Court, Pati District Court, Blora District Court where the contents of the Memorandum Of Understanding (MOU) PBH DPC PERADI SEMARANG help seekers incapable of justice, the MOU between PBH DPC PERADI SEMARANG and the Semarang District Court is valid for one year and if the validity period has expired then the MOU is made again, if there is a change in the MOU then it is stated in the new MOU. For criminal cases assisted by PBH DPC PERADI SEMARANG with the Semarang District Court there is no limit to the number of cases.

PBH DPC PERADI SEMARANG has two ways to provide free legal assistance to justice seekers, namely:

1. A justice seeker who wants to ask for legal assistance from PBH DPC PERADI SEMARANG comes to the office to explain the chronology of his criminal case and states that the justice seeker is really incapacitated, then the justice seeker must complete the document requirements that must be given to PBH DPC PERADI SEMARANG including:

- Certificate of Disadvantage from the local Kelurahan
- Family card
- Identity card

If the above requirements are complete, PBH DPC PERADI SEMARANG makes a power of attorney and executes it according to the contents of the power of attorney.

2. PBH DPC PERADI SEMARANG provides legal assistance to justice seekers who are in the process of trial at the Semarang District Court, because the Semarang District Court cooperates with PBH DPC PERADI SEMARANG to provide legal assistance free of charge, so there are several Advocates from PBH DPC PERADI SEMARANG who every day are in the Semarang District Court and the Semarang District Court is given a special room for legal aid services so that justice seekers will easily get in touch with the PBH DPC PERADI SEMARANG Advocate, besides that if there is a criminal case that carries a penalty of five years and above and in court the justice seeker is not accompanied by an Advocate then the Chairperson of the Panel of Judges can directly appoint an Advocate from PBH DPC PERADI SEMARANG to assist justice seekers in court, although there is no power of attorney because he was immediately appointed by the Chairperson of the Panel of Judges, the PBH DPC PERADI SEMARANG Advocate can accompany the trial by giving verbal power of attorney before the Chairperson of the Panel of Judges.

PBH DPC PERADI SEMARANG apart from providing legal assistance free of charge to justice seekers for criminal and civil cases in court, PBH DPC PERADI SEMARANG also helps with costs incurred by justice seekers for courts in civil cases including:

1. Civil case registration fees
2. The cost of paying the witness oath
3. Legalize documentary evidence
4. Make a decision

Even if there are justice seekers who are truly incapacitated from PBH DPC PERADI SEMARANG who also arrange the letters required for requesting legal assistance free of charge, for example: arranging a Certificate of Inadequacy in the Kelurahan.

PBH DPC PERADI SEMARANG in applying free legal assistance is carried out in accordance with requests for justice seekers, for example, justice seekers only ask for legal assistance to the District Court, even though the decision has not yet been legally enforceable by PBH DPC PERADI

SEMARANG it is still carried out, as well as if justice seekers those who request free legal assistance until the case is completed/the decision has permanent legal force PBH DPC PERADI SEMARANG also fulfills the request of the justice seeker.

From the results of the research above, if a justice seeker who is incapacitated is subject to a criminal sentence of over 5 years and above and in court the justice seeker is not accompanied by an Advocate, then the Chairperson of the Panel of Judges can appoint an Advocate to accompany him in accordance with the provisions of Article 56 of the Criminal Procedure Code.

There are two methods of assisting Advocates to justice seekers whose criminal penalties are over 5 years, namely:

1. For justice seekers who cannot afford to get advocate assistance, it can be done in court by way of appointment from the Chairperson of the Panel of Judges and carried out without any costs incurred.
2. For justice seekers who are able to get advocate assistance, they can come to the Lawyer's Office according to the wishes of the justice seeker, and the justice seeker must pay the agreed advocate honorarium.

## **Implementation of Provision of Free Legal Aid by Legal Aid Institutions**

The application of justice seekers in receiving free legal assistance by PBH DPC PERADI SEMARANG is in accordance with the requests of justice seekers who are involved in criminal cases at the Semarang District Court in cases of drug crimes by PBH DPC PERADI SEMARANG given legal assistance so that the District Court's decision becomes lighter than demands of the Public Prosecutor.

At this time the justice seekers assisted by PBH DPC PERADI SEMARANG are still serving prison terms at the Kedungpane Penitentiary in Semarang and cannot be met because there are regulations from the Kedungpane Correctional Institution in Semarang for inmates there may not be visits from outside even though it is their own family during the pandemic, because Correctional Institutions anticipate that convicts will not be exposed to Covid 19 from visitors who visit them.

## **2. Obstacles Faced by Advocates in Providing Free Legal Aid to Inadequate Justice Seekers**

### **1. advocate**

Advocate Nurma Suyatiningrum, SH, who has an office at the Attorney Office for Nurma Suyatiningrum, SH & Ramadian Munif Wardhana, SH, who is domiciled on Jl. Purwoyoso II No.83 Semarang is an advocate who often provides free legal assistance to justice seekers (Probono), while providing free legal assistance Advocate Nurma Suyatiningrum, SH experienced several obstacles both internal and external constraints:

#### **-Internal Constraints**

Justice seekers who request legal assistance free of charge from advocates, after being assisted optimally, suddenly in the middle of their journey, justice seekers revoke their power of attorney for various reasons.

#### **-External constraints**

Advocates who provide legal assistance free of charge to justice seekers who can't afford it, claim compensation funds from the Semarang City government is very difficult because the requirements for applying for compensation funds from the Semarang City Government are too complicated and there are



many requirements, in addition to funds from the Semarang City Government is very limited, the City Government of Semarang limits only 100 (one hundred) cases within one year, for civil cases, criminal cases and state administrative cases. Even though there are thousands of Advocates in Semarang from various Advocate Organizations who are officially in court, so Advocates who want to get compensation funds from the Semarang City Government have to scramble to register in order to get compensation funds.

## 2. Legal aid

Advocates are obliged to provide free legal assistance to justice seekers who cannot afford it and Advocates may not refuse to provide free legal assistance to justice seekers for those who cannot afford it, for the implementation of the Government program, namely the Semarang District Court to provide free legal assistance – only for justice seekers who can't afford it, the Semarang District Court held an MOU (Memorandum Of Understanding) with PBH DPC PERADI SEMARANG to provide free legal assistance to justice seekers at the Semarang District Court, where the contents of the Cooperation Agreement/Memorandum Of Understanding are to provide free legal assistance to justice seekers at the Semarang District Court which includes: legal consultation, accompanying, defending, administering, basically everything related to cases seeking justice until the case is finished and the decision has permanent legal force.

The MOU between the Semarang District Court and PBH DPC PERADI Semarang is valid for only 1 (one) year, and when the validity period has expired for 1 (one) year the Semarang District Court can enter into an MOU with other Legal Aid Institutions, but for PBH DPC PERADI Semarang it has since 2003 until now 2021 entered into an MOU with the Semarang District Court to provide free legal assistance for justice seekers at the Semarang District Court. Apart from the Semarang District Court, PBH DPC PERADI SEMARANG also entered into an MOU providing free legal assistance to the Demak District Court, Ungaran District Court, Blora District Court and Pati District Court.

Externally, the constraints faced by PBH DPC PERADI Semarang are:

Justice seekers who are currently undergoing trials at the Semarang District Court on average are not natives of Semarang City and do not have a family, so justice seekers will find it difficult to provide a Certificate of Disadvantage from the sub-district, even those justice seekers do not have an Identity Card, so they cannot provide Letter of Inability to PBH DPC PERADI Semarang.

The obstacles faced by PBH DPC PERADI Semarang internally are:

PBH DPC PERADI Semarang MOU with Semarang District Court, Ungaran District Court, Blora District Court, Demak District Court and Pati District Court, whereby each District Court by PBH DPC PERADI Semarang, every day must send 4 to 5 Advocates to the District Court to placed at the Posbakum of the District Court so that it requires costs for transportation, meals and salaries for advocates who are at the Posbakum of the District Court concerned. There are not many compensation funds from the MOU with the District Court, so the compensation funds given to Advocates who are sent and placed at the District Court Posbakum are few and few, so Advocate administrators at PBH DPC PERADI Semarang provide additional funds from the administrator's personal money.

## 3. Justice Seeker

For justice seekers who can't afford it who ask for legal assistance free of charge must complete the requirements, these requirements are:

1. Certificate of Disadvantage from the local Kelurahan which has been verified by Integrated Social Welfare Data (DTKS) from the Ministry of Social Affairs
2. Certificate of domicile
3. Identity card.
4. Family card.

Internal constraints for justice seekers who can't afford are:

1. Poor justice seekers have not been verified by the Social Welfare Integrated Data (DTKS) from the Ministry of Social Affairs.
2. The justice seeker does not have an identity card where the justice seeker resides. This condition is an incident that occurs a lot in Indonesian society where after marriage the husband/wife still lives with their parents even though the Identity Card has not changed address to the address of the last place of residence, so that the sub-district will not provide a Certificate of Disadvantage because they are considered not residents of the sub-district. even though they have lived in the village for many years.

External obstacles for justice seekers are:

Seekers for justice do not have the cost to arrange documents and transportation costs when proceeding for trial in court.

## ***Conclusions and Suggestions***

Based on the explanation above, it can be concluded that: First, Advocates in providing free legal assistance to justice seekers who can't afford it, claiming compensation funds from the Semarang City Government is very difficult because the requirements to apply for compensation funds from the Semarang City Government are too complicated and the requirements many, besides that the funds from the Semarang City Government were very limited, only 100 cases within one year. So that the government has to increase the quota of compensation funds for Advocates. Both PBH DPC Semarang must send 4 to 5 people every day to the Semarang District Court to be placed at the Posbakum so that it requires costs for transport, food and salaries for advocates who are at the Posbakum of the District Court concerned.

## ***Suggestion***

1. Advocates in providing free legal assistance must be carried out effectively and professionally.
2. Justice seekers can increase their legal awareness in order to realize the active role of Advocates to carry out legal administration free of charge so that justice seekers who can't afford it can be protected when exposed to legal problems.
3. For the Government, it can improve legal aid services through Advocates by increasing the quota of compensation funds for Advocates and the government is also intensively conducting legal aid counseling to the community in Semarang City
4. For Advocate Institutions to continue to carry out regular counseling efforts to the community and increase training for Advocates to increase legal knowledge, especially regarding free legal assistance.



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