

# The Role of the Surakarta City Government in Providing Legal Aid for People with Disabilities in Criminal Cases

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## Abstract

*Equality before the law is a symbol of justice in law enforcement, but in its implementation often there is legal discrimination against one group of people namely the disabled. Imperfections of persons with disabilities should not be a cause of loss of their dignity. But back in reality, people with disabilities often become vulnerable and marginalized people in social life. Therefore, it is necessary to have a law or regulation that contains the protection of the rights of the disabled group so that they do not experience discrimination and are guaranteed their rights as citizens like the others. In addition to the laws that govern, legal assistance is also needed from the government and legal aid institutions to provide assistance when they (the disabled) face the law. The existence of Law No. 16 of 2011 concerning Legal Aid has shown the government's commitment in providing equal justice before the law. The implementation of providing legal aid services contained in the Legal Aid Act is not carried out directly by the government, but by the Legal Aid Institute (LBH) which is a social organization (Ormas).*

Keywords: human rights; legal aid; people with disabilities.

## Introduction

Humans are creatures of the Almighty God who have the same position on earth. Humans in all their conditions have the inherent dignity and dignity of themselves. Every citizen has the right to protection and equality before the law. Indonesia as a rule of law applies the principle of *equality before the law* where this principle must be at the forefront of equal treatment before the law, anti-discrimination that does not differentiate anyone involved in a legal case.

According to Franz Magnis Suseno, there are four conditions in the idea of a rule of law that are interconnected with one another, namely first, the existence of the principle of legality, which means that the government acts solely on the basis of applicable law; second, the existence of freedom and independence of judicial power,

especially in its function to uphold law and justice; third, the guarantee of protection of human rights; and fourth, the existence of a government based on a constitutional system or basic law (Franz Magnis, 1993). In Indonesia, the regulation on human rights has been included in our constitution in such a way, starting from Article 28A to 28J, and it is even re-clarified in Article 29 of the 1945 Constitution.

Equality before the law is a symbol of justice in law enforcement, however, in its implementation, there is often legal discrimination against one community group, namely people with disabilities. According to the CRPD, diffable is every person who experiences obstacles in daily activities and participation in society, due to the design of public facilities and infrastructure that is not universal and the social environment that still lives with a normal ideology (Harahap, 2015)

The imperfections of persons with disabilities should not be the cause of the loss of their dignity and dignity. But in reality, people with disabilities are often vulnerable and marginalized in social life. State and world awareness about people with disabilities is not yet comparable to the real efforts being made. There are still many cases involving persons with disabilities reflected in the facts which show that there are an estimated 650 million people with disabilities in the world. The poorest 20% of the world's population are persons with disabilities; 98% of children with disabilities in developing countries have no education; 30% of street children in the world are persons with disabilities; and 3% of adults with disabilities are illiterate and many countries nearly 1% of persons with disabilities who are illiterate are women (Andrew Byrnes, Cs, 2007) in Rahayu Repindowaty and Bustanuddin (2015). Persons with disabilities have not fully got the right to get opportunities and treatment so that they can do activities according to their conditions.

The term that every citizen has the right to protection and equality before the law does not seem to have reached and been felt by people with disabilities. There are still cases of discrimination, harassment, and sexual crimes that befall people with disabilities. People with disabilities have a higher risk of discrimination. Apart from harassment in the form of words or words that are degrading, they also often experience it in the form of acts of violence and coercion. Therefore, it is necessary to have regulations or provisions that provide guarantees and special protection for people with disabilities, especially in legal cases.

The rights of people with disabilities have been guaranteed and recognized both nationally and internationally. *Convention on the Rights of Persons with Disabilities* (abbreviated as CRPD), namely the convention on the rights of persons with disabilities, has subsequently been ratified by the Indonesian state in Law No. 19 of 2011 concerning Ratification of the CRPD. CRPD itself is an international and national human rights instrument in an effort to respect, fulfill and protect the rights of people with disabilities in Indonesia. The aim of this convention is to promote, protect and

guarantee equal rights and fundamental freedoms for all persons with disabilities, as well as respect for the dignity of persons with disabilities as an integral part. Elucidation of Law no. 19 of 2011 explicitly states that the state is obliged to adopt all legislative and administrative policies in accordance with this Convention (Dardiri Hasyim, 2017).

Law No. 39/1999 on Human Rights, especially in Article 5 paragraph (3), states that "*every person belonging to a vulnerable group of people has the right to receive treatment and protection with regard to their specifics*". The explanation of the article further emphasizes that people with disabilities are one of the vulnerable groups of people who have the right to get more and special protection (Alfan Alfian, 2015). Therefore, the government is obliged to provide legal assistance to persons with disabilities in every examination of law enforcement agencies in civil/criminal matters in accordance with statutory provisions.

Even though the rights of persons with disabilities have been guaranteed in Law Number 8 of 2016 concerning Persons with Disabilities, Indonesia is still unable to fulfill these rights. Persons with disabilities still do not get their basic rights, including in terms of mobility, access to decent work, access to education, the right to travel, to legal protection. Even though they are classified as a minority, the existence of persons with disabilities in a country must be guaranteed for their survival. However, it seems that the role of the state is still very far from understanding their needs.

In articles 28 and 29 of Law no. 8 of 2016 describes the role of the government and also local governments in guaranteeing and providing legal assistance to persons with disabilities in every examination at every law enforcement agency in civil and/or criminal matters. This is also regulated in Law No. 16 of 2011 concerning Legal Aid, however, legal aid services for groups with disabilities at the law enforcement apparatus level still encounter obstacles in its implementation. Because the handling of groups of disabilities who are faced with the law is full of special needs that must be considered. Especially in the context of fulfilling the rights and needs of persons with

disabilities to access inclusive legal aid services. Implementation in various regions has not been carried out optimally. This is due to the many constraints, especially in the budget. Legal assistance and assistance needed for people with disabilities who are dealing with the law. Having a companion will make the legal process easier and will be able to provide solutions. Law is not only used as a product of norms, but the existence of law must also contribute to social justice and the benefit of society in general.

## Method

This research is a qualitative research which is library research. Sources of data in this study are secondary data sources. The method of data collection is literature study which includes primary and secondary legal materials. The primary legal materials consist of Law Number 16 of 2011 concerning Legal Aid, Law Number 19 of 2011 concerning Ratification of the *Convention on the Rights Persons with Disabilities*, and Law Number 39 of 1999 concerning Human Rights. Secondary legal materials are in the form of supporting references such as books, journals, and relevant previous research reports. The technique of collecting data is by collecting research data in the form of library data that has been selected, searched, presented, and analyzed. Data analysis techniques are the process of focusing and simplifying data, presenting data through the process of collecting and compiling information, as well as verification or the process of drawing conclusions from the information and data that has been obtained.

## Result and Discussion

The 1945 Constitution does not explicitly state the right to legal aid, but in the 1945 Constitution there are several articles that can be used as a reference as a guarantee for the right to legal aid which is part of human rights. Among them are article 27 paragraph (1), article 28D paragraph (1), and article 24 paragraph (1). These articles state that every citizen without exception has the same position before the law who is entitled to recognition, guarantee, protection and legal

certainty as well as equal treatment before the law, including the poor and neglected children. A country that is democratic and based on law states that the right to legal aid is an inseparable part of the principles of human rights.

However, if seen in reality, the law is empirically enjoyed more by people who have the ability or who are in existence so that they can pay a lawyer or advocate as their legal attorney. Meanwhile, the poor people when they have to deal with various legal cases tend to surrender and give up the situation because they cannot afford to pay a lawyer or advocate as their defense, so that the majority of the community becomes victims of many legal processes that they do not really understand.

The issuance of Law Number 16 of 2011 concerning Legal Aid has demonstrated the government's commitment to providing equal justice before the law. Article 19 of the Legal Aid Law also provides space for regional governments to participate in providing legal aid for people who cannot afford it for free and budget it in the *Regional Revenue and Expenditure Budget* (APBD) which is regulated by a series of regional regulations. In 2016, the Tifa Foundation together with the *National Legal Guidance Agency* (BPHN), the *National Development Planning Agency* (BAPPENAS), and the *Indonesian Legal Aid Institute* (LBHI) held a national consultation on the Legal Aid Local Regulation which resulted in a decision that the local government was weak initiative in passing the Legal Aid Local Regulation because there are still doubts in the division of government affairs related to central government affairs in the field of justice (Ardyanto, Donny, 2017)

The implementation of the provision of legal aid services for the poor as stipulated in the Legal Aid Law is not carried out directly by the government, but by the *Legal Aid Institute* (LBH), which is a community organization (Ormas). The provider of legal aid in the Legal Aid Law is the government, namely the Ministry of Law and Human Rights which is technically implemented by the *National Development Agency* (BPHN) as the central government. The role of the Ministry of Law and Human Rights in this legal aid program covers three aspects, namely

making technical regulations for legal aid, managing the distribution of legal aid funds, and monitoring and evaluating the implementation of legal aid provision.

The Surakarta City Government issued Regional Regulation Number 3 of 2018 concerning Legal Aid for the Poor. Article 1 explains that what is meant by poor people are poor people who live in the city of Surakarta and have a Surakarta *City Identity Card* (KTP) and / or *Family Card* (KK) which is stipulated by a Mayor's Decree. Meanwhile, poverty is a condition in which a person is unable to fulfill basic rights, including food needs, health services, education services, work and business, housing, clean water and sanitation, land, a good and healthy environment, a sense of security, and participation. Legal aid recipients are poor citizens of Surakarta City who are weak and unable to deal with legal problems in criminal, civil and/or state administrative cases (Local Regulation of Surakarta City No.3 of 2018). In this case persons with disabilities are included as recipients of legal aid because of their helplessness, weakness and inability to face legal problems due to their physical and mental limitations. Legal Aid is organized to help resolve legal issues faced by Legal Aid Recipients. Legal aid itself is administered by the regional government through the regional apparatus in charge of law.

Provision of Legal Aid by Litigation is carried out by Advocates who have the status of administrators of Legal Aid Providers and / or Advocates who are recruited by Legal Aid Providers. In the event that the number of Advocates gathered in the Legal Aid Provider forum is inadequate with the large number of Legal Aid Recipients, Legal Aid Providers can recruit paralegals, lecturers and law faculty students.

### **Legal Aid Concept**

According to Adnan Buyung Nasution, legal aid is specifically legal aid for groups of people with low income or in poor popular language, the measure of poverty to date is still a difficult problem to solve, not only for developing countries, but even developed countries. problems (Adnan Buyung, 2007). Meanwhile, according to Frans Hendra Winarta legal aid is a legal service specifically

provided to the poor who need free defense, both outside and inside the court, in criminal, civil and state administration, from someone who understands the ins and outs of legal defense. legal principles and rules, as well as human rights (Frans Hendra, 2000).

In providing justice for the community, legal aid is considered a very important part, especially for people who are considered less well off. In providing legal assistance, there are several forms of service, namely *legal aid*, *legal assistance*, and *legal service*. *Legal aid* is the provision of legal assistance to someone which is carried out free of charge and specifically for the poor. The form of law enforcement efforts is to defend the interests and human rights of the poor. *Legal assistance* is the provision of legal assistance to all groups of society. The concept is by providing free legal assistance to the poor and providing legal assistance in exchange for services for the poor. Whereas *legal service* exists to provide legal services or assistance to all people with the aim of guaranteeing the rights of all people to get legal advice (Bambang, Aries, 1994).

There are three concepts or types of legal aid in Indonesia, namely the concept of traditional legal aid, constitutional legal aid and structural legal aid. First, traditional legal aid, is a legal service provided to the poor individually. This legal aid is passive and the approach is very formal-legal, in the sense of seeing all the legal problems of the poor solely from the point of view of the applicable law. The emphasis in this concept is more on the law itself which is supposed to be neutral, equal in taste and equal. Second, constitutional legal aid, is legal aid for the poor that is carried out in the framework of broader business and goals, such as making the poor people a law subject and upholding and developing human rights values as the main foundation for the upholding of a rule of law. The nature of legal aid is more active, meaning that it is not only for individuals but also for groups of people collectively. Apart from being formal-legal, this approach to legal aid is also by way of politics and negotiations. Third, the concept of structural legal aid is an activity that aims to create conditions for the realization of laws capable

of changing an unbalanced structure towards a more just one (Bambang, Aries, 2001).

The position and authority of each legal aid institution are regulated separately so that it makes it difficult for the community to use their legal services. The aid providers determine independently in carrying out their duties with one another there is no coordination (Manan, 2005). Basically, the purpose of legal aid is to provide legal protection for citizens. The Republic of Indonesia provides the same legal protection for all Indonesian citizens regardless of their religion, race / ethnicity, descent, or place of birth, and their economic, educational background, etc (Zainuddin, 2005).

UU no. 16 of 2011 provides a new concept of legal aid, namely that legal aid is not only aimed at guaranteeing and fulfilling the rights of poor people or groups to get access to justice, but also to realize certainty that the administration of legal aid can be implemented evenly throughout the territory of the Republic of Indonesia and create a fair trial, effective, efficient and accountable. The concretization of the concept is implemented in various forms, including providing assistance to poor people or groups facing legal, civil, criminal, and state administrative problems, both litigation and non-litigation. Seeing the conception of legal aid introduced by Law no. 16 of 2011 concerning Legal Aid, the legal aid in question is not merely the process of resolving disputes, which are faced in the judicial process, but there is also an effort to create easy and equitable access to legal aid and there are also forms of legal counseling, legal consultation, legal research and community empowerment.

In article 4 of Law Number 16 Year 2011 it is explained that the scope of legal aid includes legal aid provided to legal aid recipients facing legal problems, legal assistance provided includes civil, criminal and state administrative law issues, both litigation and non-litigation and the legal aid provided includes exercising power of attorney, accompanying, representing, defending, and / or taking other legal actions for the legal interests of the recipient of legal aid.

Legal aid providers are legal aid institutions or social organizations that provide legal aid services based on law (Article 1

number 3 Law No. 16 Year 2011). Meanwhile, aid recipients are any person or group of poor people who cannot fulfill their basic rights properly and independently.

Judging from the definition of legal aid recipients, persons with disabilities or people with disabilities can be categorized as one group or person entitled to receive legal aid. This is because a person with a disability is any person who has a physical and / or mental disability, which can disturb or constitute an obstacle and obstacle for him / her to do properly, which consists of: physically disabled; mentally disabled; persons with physical and mental disabilities (Article 1 number 1 of Law No. 4 of 1997 concerning Persons with Disabilities).

The purpose of legal aid in Indonesia is to provide information, legal counseling and provide advice or commonly known as legal consultation so that people are aware of their rights in legal cases. For legal problems in the field of crime, the purpose of legal assistance is provided so that the suspect or defendant can be assisted in handling the criminal case at hand and provides protection for the dignity of humanity for the suspect or defendant so as to help restore their human rights.

### **Legal Aid for People with Disabilities in Criminal Cases**

Difabel New's Magazine (2011) states that difabel is an abbreviation of the English word *Different Ability People* which means People with Different Ability. Law No. 4 of 1997 concerning Persons with Disabilities in article 1 paragraph 1 stipulates that: "*Persons with disabilities are every person who has a physical and / or mental disability, which can interfere or constitute an obstacle for him to carry out activities properly, which consists of from: physically disabled; mentally disabled; people with physical and mental disabilities*".

Indonesia is one of the countries with a fairly high population of people with disabilities. This means that the potential for violations of the rights of persons with disabilities will occur a lot. In addition, the negative stigma against disability has been widely circulated in the community. Disabilities are considered vulnerable people who are often victims of

criminal acts such as discriminatory treatment to sexual harassment and even rape. This does not only stop in the realm of social interactions, but also in handling laws that are not in accordance with the principle of equality before the law (Nurhayati, 2016).

Therefore, it is necessary to have a law or regulation that contains the protection of the rights of these diffable groups so that they do not experience discrimination and are guaranteed the same rights as citizens. Apart from the existence of laws that regulate, legal assistance from the government and legal aid agencies is also needed to provide assistance when they (people with disabilities) are faced with the law. In the elucidation of Law of the Republic of Indonesia Number 19 of 2011 concerning Ratification of the *Convention on The Rights of Persons with Disabilities*, it is explicitly stated that the State is obliged to adopt all legislative and administrative policies in accordance with this Convention. This means that all laws and regulations that are positively applicable in Indonesia must be adjusted and synchronized in accordance with this convention, starting from the substance in the statutory legislation to the article clauses.

The definition of legal aid according to the Legal Aid Law is legal services provided by legal aid providers free of charge to recipients of legal aid. With the existence of the Legal Aid Law, it shows that the government has committed that the government strives for legal protection for the poor to enforce *equality before the law*. The implementation of legal aid based on Article 19 of the Legal Aid Law, provides space for local governments to participate in realizing the goal of legal aid for the poor.

The implementation of the provision of legal aid services contained in the Legal Aid Law is not carried out directly by the government, but by the *Legal Aid Institute* (LBH), which is a community organization (Ormas). The provider of legal aid in the Legal Aid Law is the government, namely the *Ministry of Law and Human Rights* (Kemenkumham) which is technically carried out by the *National Legal Development Agency* (BPHN) as the central government.

The definition of a criminal act according to Article 1 of the *Criminal Code* (KUHP) which reads *nullum nulla poena sine*

*praevia poenali*, which means that there is no criminal act nor is it penalized, without the existence of a criminal law in advance. These provisions indicate a close relationship between a criminal act, a crime and a law (criminal law). The legislators will first determine what actions are subject to punishment and what kind of punishment is imposed.

The regulation regarding the diffable who is in conflict with the law is regulated in Article 5 of Law Number 4 of 1997 concerning Persons with Disabilities and Elucidation of Article 5 of Law Number 4 of 1997 concerning Persons with Disabilities which stipulates that every person with disabilities has equal rights and opportunities in all aspects. life and livelihood covering aspects of religion, health, education, social, employment, economy, public services, law, culture, politics, defense and security, sports, recreation, and information. The regulations that regulate diffables in Article 5 of Law Number 4 of 1997 concerning Persons with Disabilities and Elucidation of Article 5 of Law Number 4 of 1997 concerning Persons with Disabilities only focus on the social welfare of persons with disabilities while for persons with disabilities who are dealing with the law have not been specifically regulated.

The regulation regarding the diffable as stipulated in Law Number 19 of 2011 concerning Ratification of the Convention on the Rights of Persons with Disabilities (Convention Concerning the Rights of Persons with Disabilities) has no regulation regarding the application of legal witnesses to perpetrators of criminal acts of persons with disabilities, which results in obstruction of police performance, prosecutors and courts in protecting people with disabilities.

### **The Reality of Providing Legal Aid for People with Disabilities in Criminal Cases**

Advocacy for victims of violence from people with disabilities has been handled by various NGOs in the field of legal aid, including the NGO SIGAB (*Sasana Integration and Advocacy for Difabel*) which is engaged in legal aid, especially for people with disabilities. LKBH FH UII (Consultation and Legal Aid Institute for the Faculty of Law,

Islamic University of Indonesia) which is engaged in legal aid, NGO SAPDA (*Center for Advocacy for Women with Disabilities and Children*), and many other NGOs.

From several studies in journals and news, data was obtained on victims of criminal acts, especially people with disabilities. Disabilities with various disabilities are prone to injustice in the legal process. The case in Sukoharjo happened to girls who have multiple disabilities, namely speech disabilities and intellectual or mental retardation disabilities. Based on the age, the child is 22 years old but the mental age is still equivalent to that of an 18 years old child. She was sexually assaulted by her teacher. Initially this case was not processed by law because it would be resolved internally by the school. Knowing this, the victim's family did not accept it and reported this case to the police with assistance from SIGAB and Aisiyah. Instead of getting a quick response, the police refused to take the case. According to officers, the available evidence is not strong enough to ensnare the alleged perpetrator. They argued that there was a communication barrier with the victim's memory problem. The assistants then report the case to the *National Human Rights Commission* or Komnas HAM, which then provides support. Only then was the case taken seriously by the police and prosecutors and the perpetrator was given a heavy sentence.

Meanwhile, the case in Surakarta happened to a deaf and mute woman. She was raped by six men and had her money taken. The police received a report following up by bringing in a sign language translator. However, the translator did not understand the sign language that the victim conveyed. This is because sign language for deaf and mute varies. At that time, no companion was provided for the victim, so no one understood what the victim was saying. As a result, the police interpreted the reconstruction results themselves. The police concluded that the case was not rape but consensual. Because of this interpretation, the police are only investigating cases of money theft.

From the two cases handled differently, it can be seen that the importance of assisting persons with disabilities who face

the law. The role of assistants includes identifying barriers with disabilities and helping provide solutions. Assistance is carried out from the beginning to after the judge's decision, both in the litigation and non-litigation processes (Tempo, 2019).

### **Obstacles in Providing Legal Aid for People with Disabilities**

Based on the cases above, in fact there are still many cases that have stopped being handled. From the reality of the provision of legal aid to victims of criminal acts whose victims are persons with disabilities, there are several obstacles experienced by both legal aid institutions, victims and law enforcement officers, including the following: First, obstacles to the Legal Aid Institution. The obstacle that occurs is the absence of a psychologist assistant or a special translator with disabilities, especially for disabled victims who suffer from mental retardation, hearing impairment, speech impairment, and slow learner. Other obstacles experienced by institutions that deal with victims of disabilities, such as the absence of witnesses who saw the violence experienced by the victim, and the lack of evidence also become obstacles in processing it to the legal realm.

Second, the constraints for the diffable victims, among others: a) The victim is considered inconsistent in telling the chronology of the incident. The mentally retarded / mentally retarded victims are often unable to express the incidents of violence or rape they have experienced clearly and consistently. This causes the legal apparatus to often face difficulties with the victim's testimony. As a result, inconsistent testimony of victims often concluded that the victim was lying; b) Age of the victim (mismatch between calendar age and mental age). Based on the calendar, the victim's age is included in the adult category, but not mentally. Mentally, the victim was not yet an adult, so law enforcement officials often overlooked the testimony presented by the victim; c) Constraints from Individual Victims. When there is violence against persons with disabilities, the victim cannot fight back and is unable to defend himself because of the limitations he has, both limited movement, speech limitations, and intellectual limitations

(for mentally disabled people). This causes victims with disabilities to be unable to fight back; d) The victim does not understand the physical, social and psychological consequences. Usually victims are not able to understand the consequences of the violence and rape they have experienced. The victim cannot anticipate the perpetrator's actions because the victim does not know that what the perpetrator has done is a form of violence. There is no emotional response in the victim, in general, only the victim feels physically ill; e) The victim cannot understand the rights they have. Persons with disabilities have limited knowledge and information relating to their rights; f) Inaccessible judicial administration system. The administrative system in the police is very complicated, causing difficulties in reporting cases.

Third, constraints on Law Enforcement Officials. The reality that has occurred in the process of legal assistance and services for people with disabilities so far is the unpreparedness of law enforcers in handling cases where the victims are disabled and they often stop, even reject cases and ignore cases of criminal acts against people with disabilities. This happens because law enforcement officials do not understand the form of disability and the needs of each victim, and do not have special skills to handle women with disabilities, retardation, blindness, hearing loss, speech and other types of disabilities (Anggun Malinda, 2014).

## Conclusion

The provision of legal aid to the poor is an effort to fulfill the responsibility of the state as the implementation of a rule of law that recognizes and protects and guarantees the human rights of every citizen to have an equal position before the law (*equality before the law*). In this case, the Law on Legal Aid was born which provides space for local governments as part of the principle of regional autonomy. The Implementation of Legal Aid by the Government, finally Law Number 16 of 2011 concerning Legal Aid has shown the government's commitment to providing equal justice before the law. Article 19 of the Legal Aid Law also provides space for regional governments to participate in

providing legal aid for people who cannot afford it for free and budget it in the *Regional Revenue and Expenditure Budget (APBD)* which is regulated by a series of regional regulations.

The existence of the Local Regulation on legal aid for the poor, including for people with disabilities in Surakarta, shows that the local government has committed to providing legal aid in the city of Surakarta. However, there are still cases that befell people with disabilities whose handling is not optimal. Legal assistance to diffable victims of criminal cases is still very much needed because the role of assistants includes identifying barriers to diffables and helping to provide solutions, reflected on legal aid should be proactive in providing legal aid, for example in cooperation with law enforcement agencies to provide counseling or assistance for the poor that case is still under investigation. in facts there are still many cases that have stopped being handled. From the reality of the provision of legal aid to victims of criminal acts whose victims are persons with disabilities, there are several obstacles that are experienced, both constraints on legal aid institutions, constraints on victims, and obstacles to law enforcement officials.

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