



The Implementation of legal aid at Purwokerto Religious Court Legal Aid Post (Posbakum)

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Abstract

The Law number 16 of 2011 concerning Legal Aid emphasizes the importance of legal aid for poor people. One form of providing legal aid to poor people is by establishing Posbakum (pos bantuan hukum/legal aid posts) in every court. One of the Posbakum to resolve Islamic family law is the Posbakum at the Purwokerto Religious Court. However, at the Purwokerto Religious Court Posbakum, legal aid is also provided to people who can afford it. So that, it is necessary to study how to implement the provision of legal aid at the Posbakum in Purwokerto Religious Court. The research method is juridical-empirical. The results of the research show that the implementation of providing legal aid at the Purwokerto Religious Court Posbakum makes it easier for people seeking justice, however the provision of legal aid for people who can afford it is not in accordance with the mandate of the law. Apart from that, the provision of legal aid also faces several obstacles, such as inadequate consultation places and the absence of assistance services for cases that are considered serious.

Keyword: *legal aid, posbakum, religious court.*

INTRODUCTION

Legal aid on Law No. 16 of 2011 concerning Legal Aid is defined as legal services provided free of charge to recipients of legal aid. Recipients of legal aid are poor people or groups of poor people. (*Undang-Undang Nomor 16 Tahun 2011*, n.d.) This is important, considering that legal aid is one of the constitutional rights of citizens in a country based on law such as Indonesia. Quoting from Prof. Jimly Assidique, Indonesia's statement as a state law is expressly stated in the Indonesian constitution. A country of law or known as *Rechtstaat* according to Julius Stahl must fulfill four main elements: 1) Protection of Human Rights, 2) Division of Power, 3) Government based on Law, and 4) State Administrative Court (Asshiddiqie, n.d.). As a state law that guarantees the protection of human rights, Indonesia guarantees the right to justice access and equality before the law for every citizen. This is stated in the 1945 Constitution, Article 27 paragraph (1), Article 28 D paragraph (1) of the Constitution.

The guarantee of constitutional rights and obligations is the basis for the formation of Law no. 16 of 2011 concerning Legal Aid. Although it has actually been regulated in Law no. 39 of 1999 concerning Human Rights in articles 17, 18, 19 and 34. Previously, Indonesia had also ratified the



ICCPR (International Covenant on Civil and Political Rights) which in articles 16 and 26 explains the guarantee of equality before the law so that everyone has the right to receive legal protection and must be protected from various forms of discrimination, whether based on race, skin colour, gender, language, religion, different political views, nationality or national origin, wealth, birth or other statuses.

The provision of Legal Aid that is mandatory by the government gave the regulation of the Supreme Court Circular (SEMA) No. 10 of 2010 concerning Guidelines for the Provision of Legal Aid both in the General Court, Religious Court, and State Administrative Court. Each of these Courts is required to have a Legal Aid Post (Pos Bantuan Hukum / Posbakum). Furthermore, the government issued Supreme Court Regulation (PERMA) No. 1 of 2014 concerning Guidelines for the Provision of Legal Services for the poor people in the Court which includes: 1) Free court fee services, 2) holding trials outside the Court building; and Provision of Court Legal Aid Posts.

Banyumas Regency is one of the regencies in Central Java Province with a population of 1,665,025 people. The poverty rate in this regency according to BPS data in 2018 was 13.5% or 226,200 people. Still according to BPS, this Regency experienced a significant decline in poverty rates in 2018, where previously in 2017 it was 17.05% or 283,250 people. The figure of 13.5% is relatively small compared to several regencies in Central Java province, for example Wonosobo with 20.32%, Kebumen with 19.6% and Brebes with 19.14%.

In the field of Justice, Banyumas Regency has its own uniqueness compared to other regencies, namely having 2 jurisdictional areas in one regency. General Courts are the Banyumas District Court (*Peta Yurisdiksi*, n.d.) and the Purwokerto District Court (*Wilayah Yurisdiksi*, n.d.), and Religious Courts are the Banyumas Religious Court and the Purwokerto Religious Court. So that in one regency there are 4 (four) Posbakum, 2 (two) in the Religious Court, and 2 (two) in the General Court. These Posbakum will later serve the underprivileged in seeking justice.

Posbakum at the District Court, both PN Banyumas and PN Purwokerto, enforce the provisions for justice seekers in accordance with the provisions of the Supreme Court Regulation (PERMA) No. 1 of 2014, which only providing legal assistance to the poor people. Meanwhile, at the Posbakum at the Religious Court, both PA Banyumas and PA Purwokerto do not always provide services to the poor people, but to anyone who comes to the Posbakum.

This is certainly different from what is intended to be achieved by Law No. 16 of 2011 concerning Legal Aid, SEMA No. 10 of 2010 concerning Guidelines for the Provision of Legal Aid and PERMA No. 1 of 2014 concerning Guidelines for the Provision of Legal Services to the poor people in Court. This also applies to the Purwokerto Religious Court Posbakum, whose jurisdiction



covers urban areas in Banyumas Regency. Where according to BPS data, the poverty rate in urban areas in Central Java is smaller than in rural areas (*BPS Provinsi Jawa Tengah*, n.d.)

Based on this background, the author is interested in discussing further about How to Implement Legal Aid at the Purwokerto Religious Court Posbakum.

METHODS

The research approach in this paper is juridical-empirical, which studying the applicable legal provisions and what happens in reality in society (Arikunto, 2011). Or it can also be said that a research conducted on the actual situation or real conditions that occur in society with the intention of knowing and finding the facts and data needed, after the required data is collected then leading to the identification of problems that lead to problem solving (Bambang Waluyo, 1991). The juridical-empirical approach is carried out by examining the law in reality or based on facts obtained objectively in the field, either in the form of data, information, and opinions that can be obtained through direct observation of the problems discussed in this research. This research itself is included in qualitative research, which is research that can be interpreted as research that does not conduct calculations. The purpose of this research is to gain understanding, develop theories and describe complexly. Qualitative research is usually used to produce descriptive data in the form of written or spoken words from people, or observed behaviour, and then strengthened with primary and secondary data sources (Soekanto, 2006).

DISCUSSION

Legal Aid and Rule of Law

According to Abdul Rahman, legal aid can be interpreted as all forms of assistance or provision of services related to legal problems provided by someone who has legal expertise to those involved in the case either directly or indirectly by prioritizing the poor people (Rahman, 1980). Besides, in the Criminal Procedure Code (Kitab Undang-Undang Hukum Acara Pidana/KUHAP) according to Yahya Harahap, legal assistance referred to in the KUHAP includes the provision of legal assistance services professionally and formally, in the form of providing legal assistance services professionally and formally, in the form of providing legal assistance services to everyone involved in a criminal case, either free of charge for those who are unable and poor or providing assistance to those who are able by advocates by way of receiving compensation for services (M. Yahya Harahap, 2000).



Law No. 18 of 2003 concerning Advocates in article 1 number 9 states that legal aid is a legal service provided by an Advocate free of charge to clients who cannot afford it. Meanwhile, in Law No. 16 of 2011 concerning Legal Aid, it is a legal service provided by a legal aid provider free of charge to a legal aid recipient.

The definition of legal aid according to Yahya Harahap has characteristics in different terms, namely: first, Legal Aid. Legal aid means providing services in the legal field to someone involved in a case or matter. The provision of legal aid services is carried out free of charge. Legal aid assistance is more specifically for the poor community (Harahap, 2005).

Second, Legal Assistance. Legal assistance explains the profession of a legal advisor as a legal expert, so that in the sense of a legal expert, legal assistance can provide legal assistance services to anyone without exception. This means that the expertise of a legal expert in providing legal assistance is not only limited to the poor, but also to those who can afford the services (Harahap, 2005).

Third, legal service. Legal service is a legal aid referred to a service provision by the legal profession to the public in society. The purpose of legal service is that no member of society is deprived of their right to obtain the legal advice because they do not have sufficient financial resources. Thus, legal aid in the narrow sense can be said to be the provision of legal services to someone involved in a case for free or pro bono, especially for those who are unable or poor. While in the broad sense the definition of assistance is interpreted as an effort to help disadvantaged groups in society in the legal field (Eleanora, 2012).

Although legal aid has been regulated in legislation, the provision of legal aid does not always run according to the rules. Requirements as an implementer of legal aid providers sometimes become obstacles in the provision of legal aid. Thus, it can be said that the provision of legal aid does not run according to expectations because it is still influenced by inappropriate implementing regulations (Pujiarto et al., 2016).

The face of law in Indonesia is often shown through cases involving poor people. The public can certainly still remember the incident in 2011 that Minah case, a resident of Ajibarang sub-district, Banyumas. This case attracted public attention at that time. Minah had to sit in the court just because she stole three cocoa pods. The trial that attracted a lot of public attention ended with the judge's decision stating that Minah was legally and convincingly proven to have committed the crime of theft even though she was only sentenced to probation.

This is different to the legal treatment of people in power. The public was shocked by the news of the Suka Miskin Prison, a place where corruption convicts spend their sentences. The results

of the inspection conducted by the Ministry of Law and Human Rights and covered by the media at that time showed how luxurious facilities can be enjoyed by corruption convicts

The paradox above has not happened once or twice in Indonesia. Differentiation of treatment is received by someone based on the power and position they have. In fact, Indonesia is none other than a state law (*rechtstaat*), not a country of mere power (*maachstaat*). A state law places law at the highest level known as the term supremacy of law.

The United Nations (UN) defines the rule of law as a principle of governance in which all persons, institutions and bodies, public and private, including the state itself, are accountable to the law that is generally applicable, equally enforceable and independently administered, and that is in accordance with human rights norms and international standards. It also requires measures to ensure compliance with the principles of the supremacy of law, equality before the law, legal accountability, fairness in the application of the law, separation of powers, participation in decision-making, certainty of avoidance of arbitrary laws and procedural and legal transparency (Harahap, 2005).

The principle of rule of law in Indonesia is manifested in the Preamble to the 1945 Constitution, namely:

1. Indonesia is a state law (Article 1 paragraph 3);
2. The judicial power is an independent power to administer justice in order to uphold law and justice (Article 24 paragraph 1);
3. All citizens have equal standing before the law and government and are required to uphold the law and government without exception (Article 27 paragraph 1);
4. In Chapter XA on Human Rights, contains 10 articles including that everyone has the right to recognition, guarantees, protection and certainty of fair law and equal treatment before the law (Article 28 paragraph 1);
5. Everyone has the right to work and receive fair and proper compensation and treatment in employment relationships (Article 28 paragraph 2).

The provision of legal services and assistance is the implementation of the principle of fair trial and equality of arms between the parties. The right to a fair trial is the right to be examined fairly and openly to the public, unless the law states otherwise (fair and public hearing), by a competent, independent and impartial tribunal base on the presumption of innocence. A fair trial process is when the standard of recognition of the rights of a suspect and being treated equally before the law and not being declared guilty until a court decision declares him guilty (Harahap, 2005).



In other words, legal aid is a basic right of every person who is caught up in a legal case as a means of defending the constitutional rights of every person and is a guarantee of equality before the law (Kusumawati, 2016). Thus, legal aid services are a necessity in a state of law. This service must be provided to everyone without exception. And the state as the protector of its citizens is obliged to allocate legal aid funds for the poor, vulnerable marginalized, and for the sake of justice. In the implementation of this legal aid, legal aid institutions have a very large role in access to justice for the community, especially the poor. This is because legal aid institutions are able to provide solutions from the consultation level, non-litigation assistance level to litigation (Kusumawati, 2016).

Furthermore, the provision of legal aid is a state obligation to fulfil the constitutional rights of the poor. The government provides funds to legal aid providers through the State Budget, considering that the Legal Aid Law adopts the concept of welfare model legal aid which is part of the social protection framework provided by a welfare state. The orientation and purpose of constitutional legal aid is an effort to realize a state law based on the principles of democracy and Human Rights (Ramdan, 2016).

Posbakum (Pos Bantuan Hukum/Legal Aid Post)

Legal aid in The Law number 16 of 2011 concerning Legal Aid Article 1 paragraph (1) states that legal aid is a legal service provided by a legal aid provider free of charge to a recipient of legal aid. The recipient of legal aid here is specifically a person or group of poor people who cannot fulfil their basic rights properly and independently who are facing legal problems. In terms of providing legal aid, the government issued SEMA No. 10 of 2010 concerning Guidelines for Providing Legal Aid. This guideline regulates the rights of every person involved in a case to obtain legal aid and the state bears the costs of the case for justice seekers who cannot afford it, as well as the establishment of legal aid posts in every District Court, Religious Court, and State Administrative Court for justice seekers who cannot afford it.

Based on research findings in 2007, the poor face major financial barriers to accessing Religious Courts related to court fees and transportation costs to come to the Court. The Supreme Court responded to these findings by holding circuit courts and exempting court fees through a prodeo process. Besides, to holding circuit courts and exempting court fees through a prodeo process, another form of legal aid provided by the state is the establishment of legal aid posts at each District Court, Religious Court, and State Administrative Court. Posbakum is an important part of the court environment to facilitate the needs of poor communities (Pertiwi & Fimansyah, 2021).

In the District Court, Article 1 paragraph (4) states that the Posbakum is a space provided by and at each District Court for advocates on duty to provide legal aid services to applicants for legal aid to fill out legal aid application forms, assistance in preparing legal documents, legal advice or consultations, providing further referrals regarding exemption from court costs, and providing further referrals regarding assistance with legal services.

In the Religious Court, Legal Aid in Article 1 paragraph (4) is defined as the provision of legal services facilitated by the state through the Religious Court, both in civil cases of lawsuits and applications and criminal cases (*jinayat*). Furthermore, each case is explained, namely in paragraph (5) Legal aid in civil cases includes prodeo case services, the organization of circuit courts and the provision of a free Legal Aid Post at the Religious Court for the poor. While in paragraph (6) Legal aid in criminal cases through the Legal Aid Post and Advocates at the Sharia Court is free of charge for the poor.

Types of legal services in Posbakum in Religious Courts include; providing information, consultation, advice and making lawsuits/applications to both plaintiffs/applicants and defendants/respondents. The requirement in providing legal services to plaintiffs/applicants and defendants/respondents is that it may not be done by the same legal aid provider.

Service providers at Posbakum are detailed in Article 18, paragraph (1) which states that those who can provide services at Posbakum are advocates, law graduates and sharia graduates. All three, according to paragraph (2), must come from legal aid organizations from the elements of the Advocates Professional Association, Universities, and Non-Governmental Organizations registered with the Ministry of Law and Human Rights. The remuneration for service providers at Posbakum in paragraph (3) is given through the DIPA (Daftar Isian Pelaksanaan Anggaran/ Budget Implementation Checklist) of the Religious Court.

The recipients of legal aid services in Article 19 are none other than people who are unable to pay for the services of an advocate, especially women and children and people with disabilities in accordance with applicable laws and regulations, both as plaintiffs/applicants and defendants/respondents. The requirements to obtain services from the posbakum in article 20 are by attaching the following documents;

1. Certificate of Inability to Pay (SKTM/Surat Keterangan Tidak mampu) issued by the head of the Village/Lurah/banjar/Nagari/Gampong; or
2. Certificate of Other Social Benefits such as the Poor Family Card (KKM/Kartu Keluarga Miskin), Community Health Insurance Card (Jamkemas/Jaminan



- Kesehatan Masyarakat), Family Hope Program Card (PKH/Program Keluarga Harapan), and Direct Cash Assistance Card (BLT/Bantuan Langsung Tunai), or
3. Certificate of inability to pay the cost of legal services made and signed by the applicant for legal aid and acknowledged by the Head of the Religious Court.

The mechanism for providing services at the Religious Court's legal aid post in accordance with Article 22 is:

1. Applicants for legal aid services submit an application to the legal aid post by filling out the form provided;
2. The application is accompanied by: a photocopy of the Certificate of Inability to Pay (SKTM) by showing the original, or a photocopy of other Social Allowance Certificates by showing the original, or a statement of inability to pay for an advocate;
3. Applicants who have filled out the form and attached the SKTM can immediately be provided with legal aid services in the form of providing information, advice, consultation and making lawsuits/applications;

In addition to civil cases, Posbakum also provides legal services in criminal cases, but specifically at the Sharia Court in Nangroe Aceh Darussalam. The types of legal services contained in article 25 are legal aid services to suspects/defendants in the form of providing information, consultation and advice as well as providing free accompanying advocates to defend the interests of the suspect/defendant in the event that the defendant is unable to finance his/her own legal counsel and assistance in providing free advocates is only provided for cases that have been transferred by the Public Prosecutor (JPU) to the Sharia Court.

The presence of Posbakum in all Indonesian Courts makes the community closer to the Court. Ultimately, it is hoped that Posbakum will be able to erode the negative and frightening stigma about the court for the public (Nasution, 2015).

Purwokerto Religious Court

Banyumas Regency has a uniqueness besides other regencies in Indonesia. The uniqueness is, Banyumas Regency has two courts, both State and Religious as well as the Prosecutor's Office. So for Religious courts, in Banyumas there are Banyumas Religious Court and Purwokerto Religious Court. Purwokerto Religious Court is a Religious court with class 1 A under the Supreme Court, which is located at Jl Gerilya No. 7 A Purwokerto.

Based on Article 49 of Law Number 7 of 1989 concerning Religious Courts, which was last amended by Law Number 50 of 2009, the main task of the Religious Courts is to receive, examine, try and resolve every case between people of the Islamic religion in the fields of Marriage, Inheritance, Testament, Grants, Waqf, Zakat, Infaq, Shodaqoh, Sharia Economics.

The explanation of each of these functions is: first, the adjudicating function, namely receiving, examining and resolving certain cases that are the authority of the Religious Court (vide article 49 of Law Number 3 of 2006). Second, the Guidance and Supervision function and the Administrative function, namely providing direction, guidance and instructions and carrying out supervision to all its ranks, both regarding judicial and non-judicial technical matters in the fields of general administration, finance, personnel and others to support the implementation of the main tasks of the Judicial Technique and Judicial Administration. Third, the Advisory Function, namely providing considerations and advice on Islamic law to government agencies in their jurisdiction if requested (vide Article 52 paragraph (1) of Law Number 7 of 1989). Fourth, the Community function, namely the Religious Court is obliged to provide certainty of the truth (isbat) of the rukyah hilal testimony at the beginning of the Hijri month. (vide article 52A of Law Number 3 of 2006) .

The jurisdiction area of the Purwokerto Religious Court covers part of the Banyumas Regency area which consists of 16 Districts, namely: Gumelar District, Lumbir District, Wangon District, Jatilawang District, Ajibarang District, Pekuncen District, Baturraden District, East Purwokerto District, Kedungbanteng District, North Purwokerto District, Purwojati District, South Purwokerto District, West Purwokerto District, Karang Lewas District and Cilongok District.

Yayasan Lembaga Bantuan Hukum (YLBH/Legal Aid Foundation) SIKAP

The Legal Aid and Public Policy Study Institute, hereinafter referred to as YLBH SIKAP, was established on December 22, 2009 in the city of Yogyakarta, which was later changed to the SIKAP Legal Aid Foundation on May 22, 2013, is a legal entity in the form of a Foundation with a notarial deed Number: 11/ Date: May 22, 2013 Notary Office Muhammad Kamaludin Purnomo, S.H. Sleman, Yogyakarta. NPWP Number: 31.774.250.0-542.000. and registered as a community organization/Non-Governmental Organization at BAKESBANGLINMAS of the Sleman Regency Government, based on the Registered Certificate Number: 06/ Lsm/Bakesbanglinmas and PB/2011.

YLBH SIKAP has a program focus on; first, Providing legal aid, both inside and outside the Court. Second, Legal Counselling Program as an effort to increase legal awareness and the ability of the underprivileged and/or legally illiterate community to defend themselves and fight for their legitimate rights and interests according to law. Third, Guidance and legal practice training programs



for graduates and students who are interested in legal aid institution activities in the form of internships, training. Fourth, Socialization and publication of the understanding and values of the rule of law, the rights and obligations of Legal Subjects, human rights, and the understanding of legal aid in the broadest sense, obeying the rules of law. Fifth, Study and research programs (Research) on public policy and legal problems in society in the broadest sense related to social, political, economic and cultural problems. Sixth, Legal education and advocacy programs for vulnerable groups and sectoral community groups, especially for women and children, as well as workers, farmers, and street vendors.

The Implementation of legal aid at Purwokerto Religious Court Legal Aid Post (Posbakum)

The procurement of Posbakum is a mandate from the Law, so the Purwokerto Religious Court is committed to always implementing the program. The procurement procedure for Posbakum services is carried out with a transparent mechanism. In addition to conducting tenders, in order to obtain qualified human resources, who will later carry out the task of providing legal aid, the Purwokerto Religious Court also conducts tests on prospective legal aid providers.

The provisions regarding prospective officers and their institutions are in accordance with the rules in Perma No. 1 of 2014 as an amendment to SEMA No. 10 of 2010. The institution providing Posbakum services in accordance with the general provisions in article 1 point 8 is a civil society institution providing legal advocacy and/or legal advocacy work units in advocate organizations and/or legal consultation and assistance institutions at universities. Meanwhile, for officers in point 7 it is explained that service providers at the Court Posbakum are advocates, Law Graduates, and Sharia Graduates who come from institutions providing Court Posbakum assistance services that cooperate with the Court and are on duty in accordance with the agreement on the Court Posbakum service hours in the cooperation agreement.

The criteria for the institution providing the Court's Posbakum service are further contained in Article 27 of this Perma, namely: a) in the form of a legal entity, b) domiciled in the jurisdiction of the Court, c) Have experience in handling cases and/or litigation in court, d) have at least one advocate, e) have staff or members who will later serve at the Court's Posbakum who have a minimum degree of Bachelor of Law or Bachelor of Sharia, f) Pass the qualification test set by the Court, g) if including students to serve at the Court's Posbakum, they must have taken 140 credits and passed the Procedural Law and Procedural Law Practice courses and during their duties are under the supervision of an Advocate or Bachelor of Law or Bachelor of Sharia.



Based on this provision, LBH SIKAP becomes a partner in implementing Posbakum in the Purwokerto Religious Court environment. Of course, after going through the mechanism determined by the chairman of the Purwokerto Religious Court.

1. Legal Aid Procedures at the Purwokerto Religious Court Posbakum

The procedures carried out at the Posbakum in serving the community/clients, namely: first, the officer on duty will ask about the needs/problems faced by the client. Then as a formal requirement, the officer asks for a photocopy of the KTP, the client fills in the guest book and fills in the legal aid form. Problems handled by Posbakum include: legal consultation, making a lawsuit/divorce application, requesting permission to have more than one wife, requesting a marriage dispensation, requesting a marriage confirmation, requesting a determination of heirs, requesting a name change.

Second, the officer on duty examines the completeness of the documents so that they can later be registered with the Purwokerto Religious Court registration section. In the case of filing a lawsuit/application for divorce, the documents that must be available are a photocopy of the ID card, original marriage book/marriage certificate extract and photocopy, then the photocopy of the ID card and photocopy of the marriage book/marriage certificate extract are legalized with a stamp and stamped by an officer from PT Pos Indonesia who is placed at the Purwokerto Religious Court. In a prodeo case application, another document that the client must have is a SKTM (Certificate of Inability) issued by the sub-district and supporting cards can be PKH cards, Jamkesmas or Raskin.

Third, the officer interviews the client to make a legal document, this process takes the longest, because each client has different problems and different characteristics. The officer must be detailed in asking things related to the client's problems, for example in making a lawsuit the officer must be observant in determining the points contained in the client's posita (background of case), such as the client's domicile from marriage to the last residence, then search into the family problems faced by the client. Sometimes this is difficult, because often clients are not honest and cover up what happened.

Fourth, After the document is completed by the officer, the officer prints the document to then be corrected together with the client to ensure that there is nothing wrong. starting from the identity of the plaintiff/applicant and the defendant/respondent, the flow in the posita, and the petitum. Then, the officer copies it on a blank CD and reprints the document if there is an error then the client signs it.



Fifth, the officer asks the client to duplicate the documents into 8 (eight), where 6 (six) parts including the original will later be registered in the case registration section, 1 part for the client to learn, and 1 more part for the posbakum to be archived. After all are fulfilled, before being registered in the registration section, the officer helps the client compile the documents to be registered, for example in a divorce case, it must be ensured that there are 6 bundles of lawsuits, original marriage certificates, photocopies of KTP and Marriage Certificates that have been legalized and for prodeo it is equipped with SKTM and photocopies of other supporting cards. Sixth, officers invite clients to register their own cases and invite clients to continue to consult with the Posbakum during the handling of their cases.

2. Recipients of Posbakum services

Recipients of services at the court's legal aid post PERMA No. 1 of 2014 Article 22, namely:

- a. Every person or group of people who are economically disadvantaged and/or do not have access to legal information and consultations who require services in the form of providing information, consultations, legal advice or assistance in preparing the required legal documents, can receive services at the court's legal aid post.
- b. Inability as referred to, proven by attaching: 1) a certificate of inability (SKTM/Surat Keterangan Tidak Mampu) issued by the Village Head/Lurah/Head of the same level of region stating that the person concerned is truly unable to pay the court fees, or b) a certificate of other social benefits such as a poor family card (KKM/Kartu Keluarga Miskin), community health insurance card (jamkesmas/Jaminan Kesehatan Masyarakat), poor rice card (raskin/Beras Miskin), family hope program card (PKH/Program Keluarga Harapan), direct cash assistance card (BLT/Bantuan Langsung Tunai), social protection card (KPS/Kartu Perlindungan Sosial) or other documents related to the list of poor residents in the government's integrated database or issued by other agencies authorized to provide information on inability, or, c) a statement of inability to pay for legal services made and signed by the applicant for court posbakum services and approved by the court posbakum officer, if the applicant for posbakum services does not have these documents.
- c. The person or group of people referred to are parties who will/have acted as: a) plaintiff/applicant, or b) defendant/respondent, or c) accused, or d) witness.

However, the Purwokerto Religious Court broadens the meaning of the "inability" of justice seekers not only referring to the economic conditions of the justice seekers. The Religious Court sees the description of legal aid not limited to legal aid and legal services that are specifically aimed at providing free assistance to the poor, but more to legal



assistance. By interpreting legal aid as Legal Assistance, the Posbakum at the Purwokerto Religious Court is required to provide legal aid services to anyone without exception. Posbakum no longer only serves people in the poor category as stated in PERMA No. 1 of 2014 Article 22 in point b above, but also to people who are able to pay for the achievement. Therefore, in the previous legal aid implementation procedure section, if there are people who come to court without preparing legal documents and then ask the information centre to be able to file a case, then the court officers will immediately direct the people to the Posbakum, without asking whether they are included in the category of being economically disadvantaged in accordance with the Perma.

3. Legal Aid Services Provided at the Purwokerto Religious Court Posbakum

The services available at the Purwokerto Religious Court Posbakum include document preparation and legal consultation. Consultation and legal document preparation that are widely requested by the public at the Purwokerto Religious Court Posbakum include: divorce lawsuits, requests for divorce vows, requests for marriage dispensation, requests for polygamy permits, requests for name changes, determination of heirs and requests for guardians.

However, there are also those who do not request legal document preparation services, but only consultation. This usually happens when the client does not understand the flow of the case, for example in the field of divorce, they consult who can later be a witness in court, or there are clients who want to divorce but do not meet the reasons for divorce permitted by the Law or the Compilation of Islamic Law. Cases that have occurred several times, clients want a divorce, but the existing conditions, husband and wife still live in one house, and only sleep apart, after further information is sought by the officer, it is known that the last time they had sexual intercourse was only one week ago. From this information, it is certain that the officer cannot help to make a document for a request for permission to declare a divorce/divorce lawsuit. What the officer can do is provide advice, so that both parties can correct each other's mistakes, try to think about the future of the child, and try to maintain the household that has been built with great difficulty so far. If the client is still adamant about getting a divorce, then the officer can only provide advice to meet the officer again, six months later after the client last had sexual intercourse. In the field of inheritance, they usually consult about who is entitled to receive the inheritance, before the document determining the heirs is made by the officer.



4. The Role of Posbakum in the Purwokerto Religious Court

The provision of services at the Posbakum greatly assists the services at the Religious Court. With the existence of Posbakum, the community seeking justice is greatly facilitated. Before the existence of Posbakum, usually the community who were going to litigate in court were often trapped by individuals who offered to help with document preparation services by asking for compensation. The community who usually became victims of these individuals were lay people in the law. This can be seen from their awkward, nervous and restless movements, so that they are very easily recognized by individuals who are looking for opportunities to find clients. They are usually immediately stopped in front of the building or court gate, and take them to the legal aid institution around the Religious Court building. With the existence of the Posbakum service, people who were previously confused when going to court (considering that they had to register a case with complete documents) now be served well without spending a penny. Posbakum, in addition to providing consultation services, also makes legal documents for free.

5. Problems in providing legal aid at the Purwokerto Religious Court Posbakum

Problems that sometimes arise in the posbakum service at the Purwokerto Religious Court include the assumption that posbakum officers are court officers. So, when there are officers who act inappropriately, the public assumes that it is part of the Purwokerto Religious Court. In trivial matters, for example, officers who are untidy in clothing give the impression that the Purwokerto Religious Court officers are untidy.

In addition, in carrying out their duties, sometimes the posbakum officers on duty are not precise in making documents. When this happens, the Court officers will immediately confirm to the posbakum officers so that they can be corrected immediately. Mistakes like this, if not immediately corrected, can cause cases to not be registered which will later harm those seeking justice.

Some of the problems experienced by the officers on duty at the Purwokerto Religious Court Post include: first, the Posbakum facilities. The Posbakum room at the Purwokerto Religious Court cannot be said to be adequate. This can be seen when the number of people seeking justice is large, they often have to queue until they leave the Posbakum room. In addition, the room, when viewed from the perspective of client comfort, can be said to be uncomfortable. This happens because most of the clients who come are filing for divorce, either in the form of a request for permission, a vow of divorce or a divorce lawsuit. It is understandable that in making these two types of documents, the officer



and the client need a little privacy. This is important because what the client will discuss is a personal problem, which should not be heard by others. So that the client will be more comfortable in telling their problems. The client will be embarrassed if the problems they are facing are known by others, in this case other clients who are also queuing to have documents made. In some cases, clients often show emotions of sadness in telling their family problems by crying. This is very inhumane, when someone cries telling their family problems, then heard by people around them. If the client can tell their problems, then the officer is easier in making a posita.

Second, the problem of the client itself. Often clients feel that Posbakum is part of the religious court, which is indeed tasked with serving the preparation of documents because they will later pay the court costs, not as a legal aid activity. Therefore, clients force what they want, not infrequently they force what they want. For example, a client wants to apply for a divorce oath permit, but the wife who will be divorced has not committed any violations according to the provisions of the Law or Islamic Compilation Law (KHI/Kompilasi Hukum Islam), what exists is that the husband wants to divorce his wife because she already has another partner. Because Posbakum is funded by the state, it cannot make a lawsuit according to the client's wishes, but according to the existing facts, which will later be stated in the posita.

The third problem is that there are parties who take advantage of the services of the Posbakum. This happens when there is someone from the client's home area who usually helps people who want to file for divorce in the religious court. The person previously asked for payment from the prospective client, promising to help make documents to be submitted to the religious court. The person only brings the client to the Posbakum, and the Posbakum was the one who made the documents, while the person was the one who received payment from the client. The impact of this practice is that clients, because they feel they have given some money, are often uncooperative when asked for information by officers. For clients, they often do not understand what a letter of application/lawsuit is. They only want a "divorce" to happen, without wanting to know that to file it requires a document containing the posita which contains the chronology, facts, and reasons for filing for divorce. When the officer search for client data, clients are often dishonest or cover up the problems that occur. Especially if the client is the party at fault/responsible for the breakdown of their family.



The fourth problem is the availability of facilities and infrastructure. In the provisions of Perma No. 1 of 2014, in article 33 the Court provides the facilities and infrastructure needed to support the implementation of posbakum, including a room equipped with furniture, computers, printers, air conditioners and office stationery. For the implementation of posbakum at the Purwokerto Religious Court, the court only provides a room, service desks and chairs, while computers, printers, air conditioners and office stationery are provided by YLBH SIKAP.

CONCLUSSION

As a conclusion the implementation of legal aid at the Purwokerto Religious Court Posbakum, it can be concluded that Posbakum at the Purwokerto Religious Court was carried out transparently and the selection of LBH SIKAP as the Posbakum manager was in accordance with the qualifications in PERMA No. 1 of 2014. Services at the Purwokerto Religious Court Posbakum include providing information, legal consultation/advice and the most is the preparation of legal documents, including: divorce lawsuit/application, answers, *replik*, *duplik*, applications for Marriage Dispensation, applications for determining heirs, applications for marriage confirmation, applications for changes to marriage book biodata, documents for applications for having more than one wife, and applications for the origin of children. The Purwokerto Religious Court applies legal aid at Posbakum not only as legal aid and legal service but also as legal assistance, where recipients of Posbakum services at the Religious Court are not limited to the underprivileged. So that Posbakum services are widely used by people who are actually able to pay, or parties who seek profit from this service. The infrastructure in the Posbakum service that is still lacking is the availability of space that still does not maintain client privacy.

REFERENCE

- Arikunto, S. (2011). *Prosedur Penelitian—Suatu Pendekatan Praktik* (14th ed.). RIneka Cipta.
- Asshiddiqie, D. J. (n.d.). *GAGASAN NEGARA HUKUM INDONESIA*. 8.
- Bambang Waluyo. (1991). *Penelitian hukum dalam praktek*. Sinar Grafika.
- BPS Provinsi Jawa Tengah. (n.d.). Retrieved February 6, 2021, from <https://jateng.bps.go.id/pressrelease/2019/01/15/1137/persentase-penduduk-miskin-september-2018-sebesar-11-19-persen.html>.
- Eleanora, F. N. (2012). *BANTUAN HUKUM DAN*. 9, 9.

ICCPR

Harahap, M. Y. (2005). *Hukum acara perdata: Tentang gugatan, persidangan, penyitaan, pembuktian, dan putusan pengadilan* (Cet. 2). Sinar Grafika.

Kusumawati, M. P. (2016). PERANAN DAN KEDUDUKAN LEMBAGA BANTUAN HUKUM SEBAGAI ACCESS TO JUSTICE BAGI ORANG MISKIN. *Arena Hukum*, 9(2), Article 2. <https://doi.org/10.21776/ub.arenahukum.2016.00902.3>

M. Yahya Harahap. (2000). *Pembahasan permasalahan dan penerapan KUHP: Penyidikan dan penuntutan*. Sinar Grafika.

Nasution, I. S. (2015). URGENSI PERAN PENGADILAN DALAM MEMBERIKAN PELAYANAN BANTUAN HUKUM TERHADAP ORANG MISKIN SESUAI UNDANG-UNDANG NOMOR 16 TAHUN 2011 TENTANG BANTUAN HUKUM. *Jurnal Hukum Dan Peradilan*, 4(1), Article 1. <https://doi.org/10.25216/jhp.4.1.2015.171-188>

Pertiwi, N. L. P., & Fimansyah. (2021). PERAN POSBAKUM DI PENGADILAN AGAMA METRO MASA NEW NORMAL. *As-Salam: Jurnal Studi Hukum Islam & Pendidikan*, 10(1), Article 1. <https://doi.org/10.51226/assalam.v10i1.213>

Peta Yurisdiksi. (n.d.). Retrieved February 6, 2021, from <https://www.pa-purwokerto.go.id/tentang-pengadilan/peta-yurisdiksi>

Pujiarto, I. W., Kalo, S., & Ikhsan, E. (2016). PELAKSANAAN PEMBERI BANTUAN HUKUM DIKAITKAN DENGAN UNDANG-UNDANG NO. 16 TAHUN 2011 TENTANG BANTUAN HUKUM. *Arena Hukum*, 8(3), Article 3. <https://doi.org/10.21776/ub.arenahukum.2015.00803.2>

Rahman, A. (1980). *Pembaharuan Hukum Acara Pidana dan Hukum Acara Pidana baru di Indonesia*. Alumni.

Ramdan, A. (2016). Bantuan Hukum Sebagai Kewajiban Negara Untuk Memenuhi Hak Konstitusional Fakir Miskin. *Jurnal Konstitusi*, 11(2), Article 2. <https://doi.org/10.31078/jk%20x>

Soekanto, S. (2006). *Pengantar penelitian hukum*. Penerbit Universitas Indonesia (UI-Press).

Undang-Undang Nomor 16 Tahun 2011. (n.d.). Pusat Data Hukumonline.com. Retrieved February 6, 2021, from <https://www.hukumonline.com/pusatdata/detail/lt4ed719a7bf5cb/node/29/uu-no-16-tahun-2011-bantuan-hukum>

Wilayah Yurisdiksi. (n.d.). Retrieved February 10, 2021, from <http://www.pa-banyumas.go.id/index.php/tentang-pengadilan/profile-pengadilan/wilayah-yurisdiksi>