

Paralegal Village Legitimacy in Providing Access to Justice Through Legal Assistance

Gede Agung Wirawan Nusantara, I Made Aditya Mantara Putra
Faculty of Law, Warmadewa University Denpasar-Bali, Indonesia
nusantaragede10@gmail.com, adityamantara@gmail.com

ABSTRACT

Legal aid is a citizen's right and legal obligation for the state as regulated in international legal instruments and national legal instruments. In the distribution of legal aid, the idea of a village paralegal was born. One of the ways to fulfill this access to justice is by optimizing the role of paralegals at the village level. Village paralegals are expected to help the community in the village understand the law. In this study, two problems were discussed, namely regarding the position of paralegals in fulfilling the right to legal aid and the function of village paralegals in solving legal problems. The provision of legal aid aims to provide access to justice, equity and fulfillment of civil rights and political rights of all people. This research is normative legal research based on primary and secondary data. The approach used in this research is the statutory approach and the legal concept analysis approach. Paralegals have the task of providing legal assistance to the poor as a form of service for the poor who need assistance in obtaining their legal rights. The formation of village paralegals is very important to overcome legal problems that exist at the village level. Handling conflict in the village is not enough with a social and cultural approach but also with a legal approach.

Keywords: legal aid, paralegal, village.

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1. INTRODUCTION

The provision of legal aid is a form of state responsibility for the poor as a manifestation of access to justice. This is a guarantee from the state to everyone in order to get recognition, guarantee, protection, and legal certainty as a form of protection of human rights.¹ In various international legal instruments, legal aid has received recognition, namely in the Universal Declaration of Human Rights (UDHR), The International Covenant on Civil and Political Rights (ICCPR) as well as in international instruments in the form of the Basic Principles on the Role of Lawyers which were adopted by the eighth Crime Congress in Havana from 27 August to 7 September 1990.

Provisions regarding the right to legal aid in Indonesia are specifically regulated in Law Number 16 of 2011 concerning Legal Aid. Article 3 of Law Number 16 of 2011 concerning Legal Aid, where in the article it is stated that the implementation of Legal Aid aims to:

- a. guarantee and fulfill the rights of Legal Aid Recipients to get access to justice;
- b. Realize the constitutional rights of all citizens in accordance with the principle of equality in the law;
- c. guarantee certainty that the implementation of Legal Aid is carried out evenly throughout the territory of the Republic of Indonesia; and
- d. realizing an effective, efficient, and accountable judiciary

Everyone has the right to get legal assistance in a fair and impartial court.³ Legal aid can be provided by paralegals. Technically juridical, the existence of paralegals in providing legal aid is regulated in the Minister of Law and Human Rights Regulation Number 1 of 2018 concerning Paralegals in Providing Legal Aid. Paralegals are people who are specially trained to have basic skills and knowledge in providing some legal actions, but are under the assistance of a lawyer (advocate). In this context, a paralegal is similar to a

paramedic, namely an orderly, midwife or nurse who can perform medical actions but cannot replace the function of a doctor. Paralegals can carry out activities related to the law, but cannot replace the role of advocates. Paralegals are often known as companions, who carry out legal activities as carried out by lawyers, namely providing legal assistance both through the courts and outside the court, to the extent of the capabilities possessed by people who carry out paralegal activities.

In its development, paralegals can be at the village level. This is based on the condition where in the village there is a fairly high potential for conflict, while the legal understanding of the villagers is not as good as that of the townspeople. The existence of traditional leaders who function as paralegals in providing legal assistance is basically very possible to continue to be encouraged considering the qualifications to become paralegals are not too strict. In addition, the procedure for resolving peaceful disputes has long been and is commonly used by the people of Indonesia. This can be seen from the customary law which places the customary head as a mediator and gives customary decisions for disputes between residents.⁵

From the explanation above, the idea of paralegals is needed to improve access to justice for the community and village organizations who are dealing with legal problems. In this study, two problems were discussed, namely regarding the position of paralegals in fulfilling the right to legal aid and the function of village paralegals in solving legal problems.

II. RESEARCH METHOD

According to [Soekanto, \(2010\)](#), there are 2 types of legal research, namely: normative legal research and empirical or sociological legal research. The type of research used in this research is normative legal research. Normative legal research is legal research based on secondary data. There is also a normative legal research that focuses on analyzing legal norms and placing legal norms as the object of research. In this study, researchers used normative legal research by examining norms relating to paralegals and villages. The approach used in this research is the statutory approach and the legal concept analysis approach ([Marzuki, 2005](#)).

III. DISCUSSION

3.1. The Position of Paralegals in Fulfilling the Right to Legal Aid

Legal aid is all forms of service provision by legal professionals to the public in the community with the aim of ensuring that no one in the community is deprived of the right to obtain the legal advice they need simply because they do not have sufficient financial resources. Legal aid is also defined as the defense obtained by a defendant from a legal advisor when his case is examined in a preliminary examination or in the process of examining his case before the court.

Legal aid was first carried out by western nations, namely the people of the Roman era. At that time legal aid was considered a noble job to help someone who was caught in a legal case without expecting anything in return. A paradigm shift occurred in the Middle Ages where the provision of legal aid was carried out on the basis of a desire to do charity or good deeds, in the form of helping the poor, and at the same time the values of nobility and chivalry were highly exalted. person. Since the French Revolution and the American Revolution, and up to modern times today, the motivation for providing legal aid is not only charity or a sense of humanity to the poor, but an aspect of "political rights" or citizen rights based on the modern constitution. Recent developments, the concept of legal aid has been linked with the ideals of a welfare state, so that almost every government supports legal aid programs as part of welfare facilities and social justice.

The Indonesian state has recognized legal aid since the entry of the western legal system in Indonesia or the Dutch colonial period, especially since the third PELITA the government has launched a legal aid program for equal distribution of justice in the legal field.¹¹ The right to legal aid is a constitutional right as regulated in Oasal 27 paragraph (1) The 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution) states "All citizens are equal before the law and government and are obliged to uphold the law and government without exception." In relation to this constitutional right, Solly Lubis explains that:

What is meant by this law and if we look at it further, it appears that the "law" referred to as a tool includes civil and criminal aspects, as well as other branches of public law, such as Constitutional Law, Administrative Law, Criminal Procedure Code/ Civil law and so on, in Article 27 paragraph (1) of the 1945 Constitution, all legal rights as stated in the Constitution have been covered ([Lubis, 1979](#)).

The state has a legal obligation to provide guarantees for equal rights before the law as human rights as regulated in Article 28D paragraph (1) of the 1945 Constitution where "Everyone has the right to recognition, guarantee, protection, and legal certainty that is fair and equal treatment before the law." Article

28 I paragraph (2) of the 1945 Constitution states "Everyone has the right to be free from discriminatory treatment on any basis and is entitled to protection against such discriminatory treatment." In relation to this constitutional right, M. Akil Mochtar said that the 1945 Constitution stipulates that the fulfillment of the right to equal treatment before the law, the right to recognition as a person before the law and the right to justice through legal assistance are the responsibility of the state, especially the government (Mochtar, 2020)

Various laws and regulations governing the position of paralegals, for example Law Number 39 of 1999 concerning Human Rights, Law Number 40 of 2008 concerning the Elimination of Racial and Ethnic Discrimination, Law Number 12 of 2006 concerning Citizenship, and Law No. Law Number 12 of 2005 concerning Ratification of the International Covenant on Civil and Political Rights (International Covenant on Civil and Political Rights). In particular, the position of paralegals in providing legal assistance is regulated in Law No. 16 of 2011 concerning Legal Aid. General Explanation of Law Number 16 of 2011 concerning Legal Aid, namely:

"The implementation of providing legal aid to citizens is an effort to fulfill and at the same time implement a state of law that recognizes and protects and guarantees citizens' human rights regarding the need for access to justice and equality before the law. The guarantee of constitutional rights has not received adequate attention, so that the establishment of the Law on Legal Aid is the basis for the state to guarantee citizens, especially for poor people or groups of people, to get access to justice and equality before the law. Therefore, the responsibility of the state must be implemented through the establishment of this Law on Legal Aid."

The state guarantees legal aid. Based on data from the National Legal Development Agency, legal assistance is provided in both civil and criminal cases. This can be seen from the following statistics:

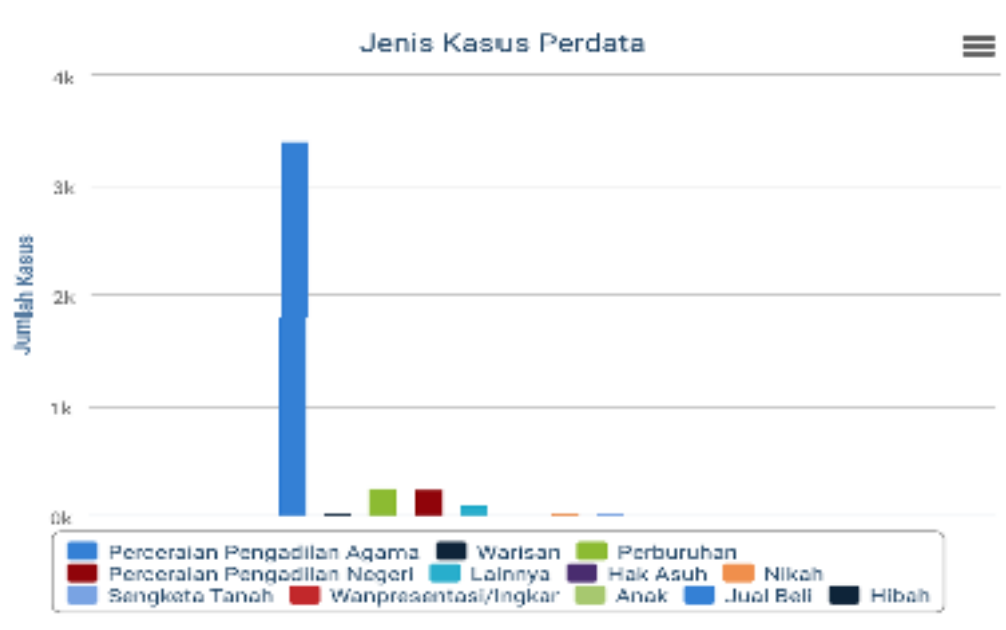


Figure.1 Types of Civil Cases
<https://sidbankum.bphn.go.id/>



Figure.2 Types of Criminal Cases
<https://sidbankum.bphn.go.id/>

Legal assistance, one of which can be done by paralegals. In general, the term paralegal is put forward based on the similarity of terminology in the medical world, namely paramedics. Paramedics themselves are parties who are not actually doctors, but understand the world of medicine and health sciences. The term paralegal itself was first recognized in the United States in 1968 with the role of a legal assistant whose function is to help a person

legal, namely advocates or notaries in providing legal advice to the public and reporting directly to advocates (lawyer). In Indonesia, paralegals are developed not in terms of legal assistants as in the United States, but rather refer to third world experiences, namely working in and for the benefit of their communities. Thus, paralegals themselves must be responsible to their community. Paralegal is defined as “A person who is not an advocate, who has knowledge in the field of law, both material law and procedural law, with supervision or legal aid organizations, whose role is to help people seeking justice. Paralegals can work alone in their communities or work for legal aid organizations or law firms”.

Paralegals have developed since 1970, their role is very helpful for small communities who need legal assistance. A person who becomes a paralegal does not have to be a law scholar or receive legal education at a university, but he must take special education in paralegalism. In this special education, paralegals are given some basic knowledge and some basic skills. The term Paralegal is intended for someone who is not an advocate but has knowledge in the field of law, both material law and procedural law with the supervision of an advocate or legal aid organization whose role is to help people seeking justice. The 3rd Asian Law Conference in Jakarta, from 16 to 19 July 1973, stated that there was a general tendency to see legal aid to the poor as only mercy, not as a human right. Legal aid should not be seen in a narrow sense, but in a broad sense. Apart from helping the poor, legal aid is also a moral movement that fights for human rights. Regarding these paralegals, Mongue (2017) said as follows:

“In 1980, the South Carolina Supreme Court noted, “Paralegals are routinely employed by licensed attorneys to assist in the preparation of legal documents such as deeds and mortgages.” According to the court, the activities of a paralegal were of a preparatory nature, such as legal research, investigation, or the composition of legal documents. This assessment of paralegal utilization in 1980 might well have been surprising to many readers of the court’s decision. As the delegation of legal work to non-lawyers evolved, so has the paralegal profession. The goal of this paper is to trace the transition of paralegals from a somewhat glorified – albeit very specialized – secretarial role to a professional position, emphasizing the period just before and after the creation of the ABA definition of the legal/assistant paralegal position”.

In examining the legal basis for the position of paralegals, Crossett (2007) said “Paralegal regulation may come from a variety of sources. Paralegals may be regulated by state statute, state supreme court rules, or state bar rules. Voluntary certification or registration may also be offered through a state bar or a state or local paralegal association”.¹⁸ voluntary certification or registration may also be offered through state bars or state or local paralegal associations).

Paralegals are not a job or a profession and that can make money in it, paralegals are pure dedication in providing assistance in the legal field for poor people who need assistance in getting rights that are confiscated by others or confiscated by the state. Paralegals are required to have strong abilities and integrity by being given special training or abilities in the legal field and cadres of people or groups who have the status of Paralegals must have knowledge that is continuously honed and up-to-date in terms of the latest legal knowledge, from the simplest, namely knowledge basics of law, paralegal ethics.

1.2. The Function of Village Paralegal in Legal Problem Solution

The state through its complementary tools seeks to realize its responsibility to fulfill access to justice for the poor. As an effort, this should be appreciated, although in some cases it still needs to be criticized. Efforts to realize access to justice in its implementation include three things, namely, first, the right to benefit and use educational institutions. Second, there is a guarantee of the availability of means to fulfill the rights of the poor to achieve justice, and third, the existence of effective methods and procedures to expand public access to justice.

The principle of the right to equality before the law requires that every person has the right to equality before the law and before the power of the court, has the right to the independence and impartiality of the judge who is examining the case, is entitled to a defense in an open trial with the presence of witnesses who are free from all forms of intimidation, and ultimately the right to the presumption of innocence. Even though citizens have committed a disgraceful act (criminal act), their rights as citizens are not erased or lost. In providing justice and guaranteeing equality before the law, paralegals can provide various legal assistance. There are several types of Paralegals known, including:

- a. Legal Aid is the provision of services in the field of law to someone who is involved in a case or case, which is characterized by the provision of free legal aid services, specifically for those who cannot afford it, and the main motivation is law enforcement by defending the interests and human rights of common people.
- b. Legal Assistance, which is in addition to containing the meaning and purpose of providing legal aid services, is also known as an advocate who provides assistance both to those who are able to pay achievements and free of charge to the poor.
- c. Legal Service or legal services, aims to provide assistance to community members whose operations aim to eliminate discriminatory facts in the enforcement and provision of services between poor people with low incomes and rich people who control sources of funds and positions of power. Legal service in its operations is more likely to resolve any dispute by way of peace.

The village is a government organization and a place that is prone to conflict. Various legal problems can occur in the village. Therefore, the initiation of village paralegals is very necessary. The existence of village paralegals cannot be separated from the history of the paralegals themselves. Mauro Cappeleti, from the research it turns out that the legal aid program for the poor has been started since Roman times. From this research, it is stated that every era the meaning and purpose of providing legal aid to the poor are closely related to the prevailing moral values, political views and legal philosophy.

A paralegal is someone who specifically helps the community (the poor) and the marginalized, who due to special skills and legal knowledge (basic) and is able to provide services, legal education, and guidance to the community. Paralegal is also commonly defined as "a person who is not an advocate, but has knowledge in the field of law, both material law and procedural law with the supervision of lawyers or legal aid organizations whose role is to help people seeking justice. These paralegals can work alone in their communities or work for legal aid organizations or law firms". Based on this opinion, the prospectus for the development of village paralegals is very good.

According to Abdul Hakim, G. Nusantara paralegals are young legal scholars, community leaders, workers of non-governmental organizations who have attended a lightning legal education course which is usually held by the offices of Legal Aid Institutions, practicing as legal advisors to the poor or the community. underprivileged or disadvantaged in development. According to [Muhlizi, \(2019\)](#) several technical things that traditional institutions need to do in order to improve their administration and management are:

1. Documentation of customary court decisions;
2. Documentation of customary values while at the same time aligning them with the values of human rights and universal justice;

3. Regeneration of customary justice holders;
4. Education and training of indigenous peoples assigned to assist the implementation of customary justice.

The role of paralegals in providing legal aid is only authorized to provide legal assistance on a non-litigation basis, but is not authorized to provide legal assistance in litigation in the form of mentoring and/or exercising power of attorney starting from the level of investigation, and prosecution, assistance and/or exercising power of attorney in the examination process at trial, or mentoring and/or exercising power over Legal Aid Recipients in the State Administrative Court. The formation of village paralegals is in line with the fulfillment of justice for everyone. Ronald M. Dworkin put forward the concept of justice as follows:

“The law of community is a set of special rules by the community directly or indirectly for the purpose of determining which behavior will be punished or enforced by the public power, these special rules can be identified and distinguished by specific criteria, by test having to do not with their content but with their pedigree or the manner in which they were adopted or developed”.

The position, duties and functions of village paralegals in terms of Law Number 6 of 2014 concerning Villages are actually to answer the problem of the unequal distribution of legal aid.²⁹ So far, the provision of Legal Aid has not touched many people or groups of poor people, so that they find it difficult to access justice because they are hampered by their inability to realize their constitutional rights. The regulation regarding the provision of legal aid in this Law is a guarantee of the constitutional rights of poor people or groups of people.

IV. CONCLUSION

The position of paralegals in fulfilling the right to legal aid is regulated in various laws and regulations in Indonesia. Legal aid is a constitutional right and a human right, therefore, access to legal aid needs to be expanded by involving paralegals. The function of village paralegals in solving legal problems needs to be done by improving village management and administration. The existence of village paralegals helps villagers to gain understanding in the field of law, access to justice and equal rights before the law.

REFERENCES

- Crossett, L. (2017). Regulation of the Paralegal Profession and Programs for Limited Practice by Non-Lawyers. *Journal of the Professional Lawyer*.
- Lubis, M. S. (1979). *Pembahasan Undang-Undang Dasar 1945*. Alumni, Bandung.
- Marzuki, P. M. (2005). *Penelitian Hukum*. Kencana Pranada Media Group.
- Mochtar, M. A. (2020). Bantuan Hukum Sebagai Hak Konstitusional Warga Negara. *Karya Latihan Bantuan Hukum (KALABAHU)*.
- Mongue, R. E. (2017). From Apprentice to Paralegal: The Rise of the Paralegal Profession in America. *Issues in Legal Scholarship, Vol.15(1)*.
- Muhlizi, A. F. (2019). Penguatan Peran Tokoh Adat Sebagai Paralegal dalam Memberikan Bantuan Hukum. *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional, Vol.8(1)*.
- Soekanto, S. (2010). *Pengantar penelitian hukum*. Universitas Indonesia, Jakarta.