



Implementation of East Kalimantan Provincial Regulation Number 5 of 2019 Concerning the Provision of Legal Aid for Underprivileged Communities in East Kalimantan

Isnawati¹, Dina Paramitha Hefni Putri², Dinda Widia Sandra³

¹Law Study Program, Faculty of aw, University of 17 August 1945 Samarinda

*Corresponding Author: Isnawati

E-mail : isnawati21kaltim@gmail.com



Article Info

Article history:

Received 18 October 2023

Received in revised form 9
November 2023

Accepted 24 November 2023

Keywords:

Regional Regulations

Legal Aid

Underprivileged Communities

Abstract

Equality before the law and the right to obtain defense from an advocate is a fundamental human right and one of the essential elements in achieving justice for everyone. The East Kalimantan regional government provides legal aid to the poor based on East Kalimantan Provincial Regulation Number 5 of 2019 concerning the Implementation of Legal Aid. This study discusses issues regarding the implementation and challenges of East Kalimantan Provincial Regulation Number 5 of 2019 concerning the Implementation of Legal Aid. The writing of this thesis employs empirical research methods, utilizing both primary and secondary data sources. The results of this study indicate that the implementation of East Kalimantan Provincial Regulation Number 5 of 2019 concerning the Implementation of Legal Aid in Samarinda City has been carried out in accordance with the established regulations, but it has not yet been fully felt by some segments of the community. The challenges in implementing the regulation include budget limitations, lack of public awareness about the existence of legal aid, and insufficient outreach.

Introduction

Everyone has the right to be treated equally before the law, including the poor who are facing legal issues. Article 34 paragraph (1) of the 1945 Constitution states that, 'The poor and abandoned children are cared for by the state. Legal assistance for the poor is also a duty and responsibility of the state.' The provision of legal assistance is a realization of Article 28D paragraph (1) of the 1945 Constitution, which explains: "Every person shall have the right to recognition, guarantees, protection, and fair legal certainty as well as equal treatment before the law". This is also known as the principle of equality before the law. The principle of equality before the law is not only understood as equality before the law itself but also as equal access to the legal system and justice (Hayek & Shearmur, 2022; Pellegrini-Masini et al., 2020; Derrett, 2021; Frost et al., 2022; Acemoglu & Wolitzky, 2021).

In realizing fair justice, one form of regulation is found in Law Number 16 of 2011 concerning Legal Aid (Díaz Gude & Navarro Papic, 2020; Lucy, 2020; Gutman, 2019; Pratiwi et al., 2020). This law is expected to protect the rights of every individual to receive legal aid and also to provide protection for underprivileged communities. The East Kalimantan local government provides legal aid to poor individuals or groups based on Regional Regulation Number 5 of 2019 concerning the Provision of Legal Aid (Nugroho et al., 2022; Astono et al., 2023; Salim & Drenth, 2020). The legal aid provided consists of legal services that are given free of charge to underprivileged communities facing legal issues, including civil, criminal, and state administrative matters, both through litigation and non-litigation processes (Reich, 2020; Chand et al., 2021; Michener, 2020; Ellen et al., 2021).

One example discussing legal aid is Yusuf Saefudin's work titled 'Implementation of Legal Aid for the Poor in Central Java Based on Law Number 16 of 2011 on Legal Aid' published in 2015. The study reveals that the implementation of legal aid for the poor in Central Java has not been well executed. Several factors contribute to this, including: (1) Supervision is not optimal, (2) Many poor people are unaware of the legal aid program, (3) Many poor people involved in legal cases do not receive legal aid, (4) The reimbursement process is often delayed, (5) High sectoral ego among the related legal institutions, and (6) The reimbursement administration is too complicated and not yet effective and efficient.

The implementation of legal aid in Indonesia has not been carried out effectively, similarly to the implementation of legal aid in East Kalimantan (Syahr et al., 2023; Muhdar et al., 2019). Therefore, the issues arising from providing free legal aid to underprivileged individuals in East Kalimantan who have committed legal violations still face many obstacles. This results in the legal aid provision being less effective. Based on the background description, the issues to be discussed in this writing are How is the implementation of East Kalimantan Provincial Regulation Number 5 of 2019 concerning the Provision of Legal Aid for Underprivileged Communities in East Kalimantan and What are the obstacles in the implementation of East Kalimantan Provincial Regulation Number 5 of 2019 concerning the Provision of Legal Aid for Underprivileged Communities in East Kalimantan (Dharmawan et al., 2021; Sholahuddin & Sadhana, 2022; Astuti et al., 2022).

Methods

This type of research uses a juridical-empirical approach, where the legal aspect is viewed from norms and refers to applicable laws and regulations to uncover field issues being studied, while adhering to normative provisions regarding the provision of legal aid. The research specification is descriptive, aiming to accurately describe individuals, conditions, phenomena, or specific groups, or to determine the frequency of other phenomena within society.

The research stages consist of primary data obtained from interviews, and secondary data acquired from literature reviews and documentation studies, including reading and examining laws, regional regulations, gubernatorial regulations, legal books, and relevant legal journals related to the study material.

The data analysis method used in this research is qualitative, involving the stages of collecting interview data, followed by data reduction and categorization, and then continuing with data analysis by describing the research findings related to the provision of legal aid.

Results and Discussion

Legal effectiveness is the basis for determining whether a regulation that has been enacted has been implemented or not. According to Soerjono Soekanto's theory of legal effectiveness, the effectiveness of a law is determined by five factors, namely: (1) The law itself (legislation); (2) Law enforcement officers; (3) Facilities and infrastructure; (4) The community; and Culture. Justice means not being arbitrary, impartial, and unbiased. Aristotle stated that justice can be understood as a value for creating an ideal relationship between individuals as members of society. Justice is the ability to treat each person according to their rights. Free legal aid is also an effort to uphold justice. Access to justice means being treated fairly under the law; if one is not treated fairly, they will not receive their rightful entitlements appropriately.

Legal aid principles are the basic principles underlying the provision of legal aid to the community, particularly for underprivileged individuals. Article 2 of Law Number 16 of 2011 on Legal Aid states that Legal Aid is implemented based on the following principles among them justice, equality of position, openness, efficiency, effectiveness and accountability.

General Overview of Legal Aid Provision

Legal Aid Provision

The purpose of providing legal aid is to ensure that legal aid is implemented uniformly across the entire territory of the Republic of Indonesia and to achieve a justice system that is effective, efficient, and accountable. Legal aid is administered by the Ministry of Law and Human Rights and carried out by Legal Aid Providers. In practice, legal aid is provided by Legal Aid Institutions (LBH) or organizations that offer and manage legal aid services.

Legal Aid Providers

Legal aid provided to recipients, as regulated in Article 4 paragraph (1), is legal assistance given to poor individuals facing legal issues. Article 5 of the Legal Aid Law specifies the characteristics of poor groups eligible for free legal aid. The regulation also details the implementation of Legal Aid Provision as outlined in Article 3 of Gubernatorial Regulation Number 56 of 2021 on the Implementation Guidelines for Regional Regulation Number 5 of 2019, stating that: "Legal Aid can only be provided by Legal Aid Providers accredited by the ministry responsible for legal affairs in accordance with the provisions of the legislation."

Objectives of Legal Aid Provision

The Law Number 16 of 2011 on Legal Aid aims to: (1) Ensure and fulfill the right of Legal Aid Recipients to access justice; (2) Realize the constitutional rights of all citizens in accordance with the principle of equality before the law; (3) Ensure that the provision of legal aid is implemented uniformly across the entire territory of the Republic of Indonesia; (4) Achieve a justice system that is effective, efficient, and accountable.

Requirements for Applying for Legal Aid

The requirements for applying for legal aid are regulated in Article 18 of East Kalimantan Provincial Regulation Number 5 of 2019 on Legal Aid. These application requirements must be submitted by the prospective Legal Aid Recipient to the Legal Aid Provider in accordance with the stipulated criteria.

Implementation of East Kalimantan Provincial Regulation Number 5 of 2019 Concerning the Provision of Legal Aid to Underprivileged Communities in East Kalimantan.

In the implementation of legal aid in Samarinda City, the legal aid is provided by the government in collaboration with Legal Aid Institutions that have been verified by the Ministry of Law and Human Rights. There are approximately 9 Legal Aid Institutions in Samarinda City accredited with a C grade and 1 Legal Aid Institution accredited with a B grade. The distribution of legal aid in East Kalimantan, particularly in Samarinda City, cannot yet be considered equitable due to various considerations, such as corruption cases and drug-related cases. In 2023, legal aid was provided for 90 criminal and civil cases. In line with this, if the implementation of this regional regulation does not adhere to the rules, the Legal Aid Providers will be subject to sanctions as stipulated in East Kalimantan Provincial Regulation Number 5 of 2019 concerning the Provision of Legal Aid.

Obstacles in the Implementation of East Kalimantan Provincial Regulation Number 5 of 2019 Concerning the Provision of Legal Aid to Underprivileged Communities in East Kalimantan.

In the implementation of legal aid for underprivileged communities in Samarinda City, budget constraints are a major factor hindering the execution of legal aid. Additionally, delays in receiving documents from potential legal aid recipients, due to difficulties in obtaining a

Certificate of Inability from the local village head or official, also contribute to the delays in providing legal aid. Furthermore, the lack of socialization by the government or law enforcement officials is an issue, as many people are unaware of the existence of legal aid. The limited knowledge and participation of the community, coupled with the perception that legal matters, courts, and cases involve high costs, discourage people from seeking legal assistance (Sourdin & McNamara, 2020; Tarr, 2019; Young & Billings, 2020).

Legal effectiveness theory governs social life in society. A regulation can be said to be effective if the community behaves in accordance with what the law intends (Dana, 2019; Stigler, 2021; Savelsberg, 2019). The effectiveness of the law can be observed through community behavior. If people are aware of and adhere to the rules, then the regulation can be considered effective. However, in practice, the legal aid is not yet operating effectively according to Soerjono Soekanto's Theory of Legal Effectiveness due to the continued lack of community participation in Samarinda City.

Conclusion

The implementation of East Kalimantan Provincial Regulation Number 5 of 2019 concerning the Provision of Legal Aid in Samarinda City has been carried out following the enactment of the regional regulation, in accordance with the implementing rules set forth in Gubernatorial Regulation Number 56 of 2021 concerning the Implementation Guidelines for Regional Regulation Number 5 of 2019 on Legal Aid. However, this legal aid implementation is not yet effective as it has not been felt by communities living in remote areas. The government collaborates with accredited Legal Aid Institutions from the Ministry of Law and Human Rights to provide legal aid to underprivileged communities to maximize the implementation of this regional regulation. However, if the provision of legal aid does not comply with the regulations, sanctions will be imposed on the legal aid providers.

Obstacles in the implementation of East Kalimantan Provincial Regulation Number 5 of 2019 concerning the Provision of Legal Aid in Samarinda City include several factors: first, the limited budget for providing legal aid; second, the lack of public awareness about the availability of legal aid; and third, insufficient socialization by law enforcement officials regarding the provision of legal aid. The government is advised to increase the budget allocated for providing legal aid to the underprivileged. Additionally, legal institutions should collaborate with communities to provide information and legal education on rights

References

- Acemoglu, D., & Wolitzky, A. (2021). A theory of equality before the law. *The Economic Journal*, 131(636), 1429-1465. <https://doi.org/10.1093/ej/ueaa116>
- Astono, A., Alkadrie, S. M. R. R. M., Fitriani, Y., Arabiyah, S., & Sitorus, A. P. M. C. (2023, December). Sustainable Mining Development Based on Local Wisdom in West Kalimantan: Progressive Legal Perspective. In *International Conference on "Changing of Law: Business Law, Local Wisdom and Tourism Industry" (ICCLB 2023)* (pp. 47-55). Atlantis Press. https://doi.org/10.2991/978-2-38476-180-7_7
- Astuti, R., Miller, M. A., McGregor, A., Sukmara, M. D. P., Saputra, W., & Taylor, D. (2022). Making illegality visible: The governance dilemmas created by visualising illegal palm oil plantations in Central Kalimantan, Indonesia. *Land Use Policy*, 114, 105942. <https://doi.org/10.1016/j.landusepol.2021.105942>
- Chand, D. E., Calderon, M. A., Hawes, D. P., & O'Keeffe, L. (2021). Serving immigrant communities: Effectiveness of nonprofit legal aid organizations in an age of

- heightened enforcement. *VOLUNTAS: International Journal of Voluntary and Nonprofit Organizations*, 32, 621-633. <https://doi.org/10.1007/s11266-020-00205-w>
- Dana, D. A. (2019). The new “contractarian” paradigm in environmental regulation. In *Environmental Law* (pp. 139-163). Routledge. <https://doi.org/10.4324/9781315194288>
- Derrett, J. D. M. (2021). Justice, equity and good conscience. In *Changing law in developing countries* (pp. 114-153). Routledge. <https://doi.org/10.4324/9781003245674>
- Dharmawan, A. H., Mardiyarningsih, D. I., Rahmadian, F., Yulian, B. E., Komarudin, H., Pacheco, P., ... & Amalia, R. (2021). The agrarian, structural and cultural constraints of smallholders’ readiness for sustainability standards implementation: the case of Indonesian Sustainable Palm Oil in East Kalimantan. *Sustainability*, 13(5), 2611. <https://doi.org/10.3390/su13052611>
- Díaz Gude, A., & Navarro Papic, I. (2020). Restorative justice and legal culture. *Criminology & Criminal Justice*, 20(1), 57-75. <https://doi.org/10.1177/1748895818796549>
- Ellen, I. G., O’Regan, K., House, S., & Brenner, R. (2021). Do lawyers matter? Early evidence on eviction patterns after the rollout of universal access to counsel in New York City. *Housing Policy Debate*, 31(3-5), 540-561. <https://doi.org/10.1080/10511482.2020.1825009>
- Frost, T., Huxley-Binns, R., Martin, J., & Mithani, S. (2022). *Unlocking the English legal system*. Routledge. <https://doi.org/10.4324/9781003263678>
- Gutman, K. (2019). The essence of the fundamental right to an effective remedy and to a fair trial in the case-law of the Court of Justice of the European Union: the best is yet to come?. *German Law Journal*, 20(6), 884-903. <https://doi.org/10.1017/glj.2019.67>
- Hayek, F. A., & Shearmur, J. (2022). *Law, legislation, and liberty: a new statement of the liberal principles of justice and political economy*. Routledge. <https://doi.org/10.4324/9781003320777>
- Lucy, W. (2020). Access to Justice and the Rule of Law. *Oxford Journal of Legal Studies*, 40(2), 377-402. <https://doi.org/10.1093/ojls/gqaa012>
- Michener, J. (2020). Power from the margins: Grassroots mobilization and urban expansions of civil legal rights. *Urban Affairs Review*, 56(5), 1390-1422. <https://doi.org/10.1177/1078087419855677>
- Muhdar, M., Tavip, M., & Al Hidayah, R. (2019). State failure in recognition and protection of indigenous peoples over natural resource access in East Kalimantan. *Asia Pacific Law Review*, 27(1), 127-143. <https://doi.org/10.1080/10192557.2019.1665921>
- Nugroho, R. M., Setyaningrum, W., Sobirin, S., & Shalihah, F. (2022). Model of the Development of Muhammadiyah Legal Assistance Services for the Poor. *International Journal of Social Science Research and Review*, 5(10), 489-497. <https://doi.org/10.47814/ijssrr.v5i10.675>
- Pellegrini-Masini, G., Pirni, A., & Maran, S. (2020). Energy justice revisited: A critical review on the philosophical and political origins of equality. *Energy Research & Social Science*, 59, 101310. <https://doi.org/10.1016/j.erss.2019.101310>
- Pratiwi, S. J., Steven, S., & Permatasari, A. D. P. (2020). The application of e-court as an effort to modernize the justice administration in indonesia: challenges &

- problems. *Indonesian Journal of Advocacy and Legal Services*, 2(1), 39-56. <https://doi.org/10.15294/ijals.v2i1.37718>
- Reich, C. A. (2020). Individual rights and social welfare: the emerging legal issues. In *Welfare Law* (pp. 255-267). Routledge. <https://doi.org/10.4324/9781003073246>
- Salim, W., & Drenth, M. (2020). Local governance and access to urban services: political and social inclusion in Indonesia. *Governance for urban services: Access, participation, accountability, and transparency*, 153-183. https://doi.org/10.1007/978-981-15-2973-3_7
- Savelsberg, J. J. (2019). Law That Does Not Fit Society: Sentencing Guidelines as a Neoclassical Reaction to the Dilemmas of Substantivized Law 1. In *Criminal Courts* (pp. 1-38). Routledge. <https://doi.org/10.4324/9781351160766>
- Sholahuddin, A., & Sadhana, K. (2022). The Implementation of Policies in the Management of Private Company based on the Regional Regulation of The Province of East Kalimantan, of Indonesia. *International Journal of Research in Social Science and Humanities (IJRSS)* ISSN: 2582-6220, DOI: 10.47505/IJRSS, 3(9), 28-37. <https://doi.org/10.47505/IJRSS.2022.V3.9.4>
- Sourdin, T., Li, B., & McNamara, D. M. (2020). Court innovations and access to justice in times of crisis. *Health policy and technology*, 9(4), 447-453. <https://doi.org/10.1016/j.hlpt.2020.08.020>
- Stigler, G. J. (2021). The theory of economic regulation. In *The political economy: Readings in the politics and economics of American public policy* (pp. 67-81). Routledge. <https://doi.org/10.4324/9781315495811>
- Syahr, Z. H. A., Sally, N. U., & Albana, M. Z. (2023). The bailiff's services in the electronic judicial era in Indonesia. *Transforming Government: People, Process and Policy*, 17(3), 317-327. <https://doi.org/10.1108/TG-01-2023-0014>
- Tarr, G. A. (2019). *Judicial process and judicial policymaking*. Routledge. <https://doi.org/10.4324/9780429427961>
- Young, K. M., & Billings, K. R. (2020). Legal consciousness and cultural capital. *Law & Society Review*, 54(1), 33-65. <https://doi.org/10.1111/lasr.12455>