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Research Article

Analysis of Defense of Criminal Cases by Legal Aid Organizations (OBH) for the Poor as a Realization of Access to Justice

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ABSTRACT

Fulfillment of the right to legal aid for the poor is the establishment of rules that have legal consequences for Advocates or Legal Aid Organizations (OBH) to provide legal aid as a form of social and moral responsibility. Apart from that, to support the means and facilities for fair and equitable law enforcement, local governments are required to provide legal assistance so that the fulfillment of the right to legal aid for the poor is more guaranteed. Fulfillment of the right to legal aid to the poor in criminal cases is influenced by several factors, including Legal Aid Organizations (OBH), which are places of public defense. Advocates are parties who are directly involved in enforcing legal claims and professional obligations both in the field of litigation and non-litigation. The obligation to provide legal assistance is contained in the provisions of Article 22 paragraph (1) of Law Number 18 of 2003 concerning Advocates. In that article it is stated that Advocates are obliged to provide legal assistance free of charge to justice seekers who cannot afford it.

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1. INTRODUCTION

Indonesia is a country that adheres to the rule of law system. The rule of law here implies that the position of all citizens is equal before the law without exception. In addition to adhering to the rule of law system, Indonesia is also a state based on law (rechtstaat). The basis that the Indonesian state is a constitutional state is contained in Article 1 paragraph (3) of the 1945 Constitution that "Indonesia is a constitutional state", therefore that all kinds of issues, both concerning matters between citizens and citizens or citizens with the state (government), must be based on the laws and regulations in force in Indonesia.

In the application of law in society, a gap often arises between the rich and the poor. It is as if the rich can freely access legal remedies in a court of law, while the poor seem resigned to their fate. In fact, Article 34 paragraph (1) of the 1945 Constitution states that "the poor and neglected children are cared for by the state", including providing legal assistance to the poor with the issuance of Law Number 16 of 2011 concerning Legal Aid which is expected to be able to serve as a form of state responsibility in providing legal assistance as a manifestation of access to justice to guarantee the constitutional rights of everyone to obtain

recognition, guarantees, protection and fair legal certainty as well as equal treatment before the law as a means of protecting human rights.

In a rule of law state, the state recognizes and protects human rights for every individual including the right to Legal Aid. The provision of Legal Aid to citizens is an effort to fulfill and at the same time as the implementation of a rule of law that recognizes and protects and guarantees the basic rights of citizens to the need for access to justice and equality before the law.

Guarantees for these constitutional rights have not received sufficient attention, so that the establishment of Law Number 16 of 2011 concerning Legal Aid is the basis for the state to guarantee citizens, especially for people or groups of poor people, to get access to justice and equality before the law. Therefore, state responsibility must be implemented through the formation of this Legal Aid Law. So far, the provision of legal aid has not touched many people or groups of the poor, so they have difficulty accessing justice because they are hampered by their inability to realize their constitutional rights.

Based on Law Number 16 of 2011 concerning Legal Aid, Legal Aid Funding required and used for the implementation of Legal Aid is charged to the State Revenue and Expenditure Budget (APBN). In addition to funding from the State Budget, legal aid funding sources can come from grants or donations and/or other legal and non-binding funding sources. Legal aid is legal services provided by legal aid providers free of charge to legal aid recipients. Recipients of Legal Aid in this case are people or groups of poor people. Legal aid is carried out based on the principles of justice, equality before the law, openness, efficiency, effectiveness; and accountability aimed at: 1) Guaranteeing and fulfilling the rights of Legal Aid Recipients to access justice; 2) Realizing the constitutional rights of all citizens in accordance with the principle of equality before the law; 3) Ensuring certainty that the implementation of Legal Aid is carried out evenly throughout the territory of the Republic of Indonesia; and 4) Creating an effective, efficient and accountable judiciary.

Seeing the statement above, it can be said that the Legal Aid Organization (OBH) is a legal service for the poor in order to create a legal state based on democratic principles and human rights and to fulfill the rights of the poor in obtaining justice. Fulfillment of the scope of the rights of the poor as stipulated in Law Number 16 of 2011 concerning Legal Aid in the form of legal aid is given to recipients of legal aid who are facing legal problems both criminal, civil and state administration both litigation and non-litigation. The legal aid includes exercising power of attorney, accompanying, representing, defending, and/or taking other legal actions for the legal interests of the Legal Aid Recipient.

Law enforcement is a process to make legal wishes come true. As the purpose of issuing Law Number 16 of 2011 concerning Legal Aid is to guarantee the constitutional rights of citizens, especially the poor as a manifestation of access to justice and to provide just social change, Law Number 16 of 2011 concerning Legal Aid is still problematic. Indeed, the budget has been provided by the state in relation to the implementation of legal aid, however, the various geographical conditions in Indonesia's territory do not cover all operational costs, for example, operational costs in big cities will be different from operational costs in remote areas. In addition, the awareness of Advocates on the importance of providing legal assistance to the poor varies, even though the obligation to provide legal assistance is in accordance with the provisions of Article 22 paragraph (1) of Law Number 18 of 2003 concerning Advocates.

According to Soerjono Soekanto, the main problem of law enforcement actually lies in the factors that might influence it, including the legal factors themselves, law enforcement factors, facilities or facilities that support law enforcement, community factors and cultural factors. For this reason, as the purpose of Law Number 16 of 2011 concerning Legal Aid is to guarantee the constitutional rights of the poor and as a manifestation of access to justice, there are several problems with the provision of legal aid by the state to the poor, based on the description above, the defense of the poor, especially in criminal cases by the state must prioritize the values of justice and human rights of the poor as a manifestation of access to justice.

2. RESULTS AND DISCUSSION

2.1. Rights of Suspects in Criminal Cases

According to Article 1 number 14 of the Criminal Procedure Code (KUHAP), a suspect is a person who because of his actions or circumstances, based on sufficient preliminary evidence, should be suspected of being the perpetrator of a crime. The status of a person as a suspect is given from the stage of investigation to being named as a defendant. A suspect has rights as a suspect guaranteed by the 1945 Constitution of the Republic of Indonesia, the Criminal Procedure Code (KUHAP), Law Number 39 of 2009 concerning human rights, Law Number 12 of 2005 concerning Ratification of Rights Convention - Civil and Political Rights, and Law Number 5 of 1998 Concerning Ratification of the Convention Against Torture, and Other Cruel, Inhuman and Degrading Treatment or Punishment and the principle of a fair trial. A criminal law process can be in the form of a series of processes as follows: 1) The alleged incident occurred; 2) An investigation is carried out to collect evidence; 3) Evidence and seek who can be held criminally responsible; 4) Sufficient preliminary evidence is found; 5) A person suspected of being

responsible for a criminal event is found; 6) Upgrade to investigation; 7) Determination of suspects; 8) Examination of witnesses, experts and evidence; 9) preparation of files; 10) Complete files; 11) The file is delegated to the public prosecutor.

The suspect is basically still in detention and has yet to undergo trial. The period of detention is regulated in Article 24 to Article 28 of the Criminal Procedure Code (KUHAP). At the investigation stage, the detention period by the investigator is 20 (twenty) days and can be extended by the public prosecutor for another 40 (forty) days. At the prosecution stage, the detention period by the public prosecutor is 20 (twenty) days and can be extended by the Head of the District Court for another 30 (thirty) days. At the examination stage at the District Court, the detention period by the District Court Judge is 30 (thirty) days and can be extended by the Head of the District Court for 60 (sixty) days. If taking legal action, the detention at the appeal stage is carried out by the High Court Judge for 30 (thirty) days and can be extended by the Head of the High Court for 60 (sixty) days. Whereas in the cassation stage the detention is carried out by the Supreme Court Judge for 50 (fifty) days and can be extended by the Chief Justice of the Supreme Court for 60 (sixty) days. The rights of the suspect in the detention process are as follows: 1) Contact a legal adviser; 2) Immediately examined by investigators after 1 day of detention; 3) Contacting and receiving visits from family or other people for the purpose of suspension of detention or efforts to obtain legal assistance; 1) Request or apply for a suspension of detention; 2) Calling or receiving visits from his personal doctor for health purposes; 3) Obtain a suspension of detention or a change in detainee status; 4) Contacting or receiving visits from relatives; 5) Sending letters or receiving letters from legal advisers and relatives without being examined by investigators/public prosecutors/judges/officials of state prisons; 6) File an objection to the detention or the type of detention to the investigator; 7) Contacting and receiving visits from clergy; and free from pressures such as being intimidated, intimidated and physically abused.

Every suspect has the right to apply for a suspension of detention. This suspension of detention can be requested by the suspect himself or his family. This application for suspension of detention must also be accompanied by guarantees for both people and goods. As stipulated in Article 31 paragraph (1) of the Criminal Procedure Code (KUHAP) that at the request of a suspect or defendant, investigators or public prosecutors or judges in accordance with their respective authorities can hold a suspension of detention with or without guarantees of money or guarantees of persons based on specified conditions. The competent official can revoke the suspension of detention of a suspect or defendant if the suspect or defendant violates the terms and conditions that have been determined.

In Article 51 letter a of the Criminal Procedure Code (KUHAP), a suspect has the right to be clearly informed in a language that the suspect understands when the examination begins. The inspection is made and stated in the inspection report. The most important principle in the process of making an examination report is that the suspect gives information freely without any pressure, torture or threats. The suspect also has the right to provide information based on the facts and cannot be forced to make statements that are untrue and against him.

During the examination, the suspect is also entitled to receive legal assistance from his legal adviser to assist the investigator in the examination process. During the examination, the suspect has the right not to answer questions that are tricky or harmful to his interests and has the right to refuse questions that are impolite and have no relevance to the allegations made by the investigator against him. In the interest of defending a suspect or defendant, he has the right to request copies of the minutes of examination as stipulated in Article 72 of the Criminal Procedure Code (KUHAP). A suspect also has the right to ask witnesses or someone with special expertise to provide information in his favor to be included in the minutes of his examination. The suspect can also refuse to sign the minutes of his examination and for this the investigator will provide the minutes stating the reasons for his refusal.

In addition, there are pretrial rights that suspects and defendants can use to test whether the arrest and/or detention that has been carried out is legal or not. In addition, this pretrial basically is a special authority that belongs to the district court to examine and decide, among other things: 1) Whether or not the termination of the investigation or the termination of the prosecution is valid at the request for the sake of upholding law and justice; 2) A request for compensation or rehabilitation by the suspect or his family or another party on his behalf whose case was not brought to court.

In Article 77 letter a of the Criminal Procedure Code (KUHAP), a suspect has the right to submit a pretrial request through a district court regarding whether or not his arrest or detention is legal. In addition, in Article 95 paragraph (1) of the Criminal Procedure Code (KUHAP), suspects and defendants have the right to claim compensation for being arrested or detained without reasons based on law or mistakes based on laws or mistakes regarding the person or the law. applied.

Claims for compensation where the case is not submitted to the district court only up to the level of investigation or prosecution, the claim for compensation is filed and decided at the pretrial hearing. However, if the claim for compensation is submitted to the court level, the claim for compensation must be submitted to the District Court.

2.2. Rights of the Defendant in Examination of the Trial

State power is basically a gift from the people, therefore it is appropriate for the state through state administrators to provide human rights protection to its people. As mandated by the 1945 Constitution on recognition, guarantees, protection, and legal certainty that is fair and equal treatment before the law. Law enforcement is an instrument to protect human rights for both victims of law violations and perpetrators or people who are in conflict with the law. Law enforcement should be carried out on the basis that everyone's basic rights are protected when dealing with the legal process in order to obtain a balance so as to obtain a fair trial process.

A fair trial (fair trial) includes several principles, namely a fair trial as a human right, a fair trial as a constitutional right of citizens and the Criminal Procedure Code (KUHAP) as a guideline for the implementation of a fair trial (fair trial). The principles of a fair trial or fair trial are the basic rights of individuals because a person in undergoing a judicial process is faced with the power of the state to enforce the law, so that this power does not act arbitrarily, individual rights must be guaranteed in dealing with the judicial process. for both victims of crime and perpetrators of crime. The state guarantees the protection of human rights to citizens when using their powers in law enforcement. In the trial examination, the rights of the accused can be grouped, among others: 1) Rights at the beginning of the trial starting from the reading of the indictment until the interlocutory decision; 2) The right in the inspection program; and 3) Rights at the end of the trial starting with the demands and ending with the reading of the verdict.

A defendant has the right to be clearly informed in a language that he can understand what he has been charged with according to Article 51 letter b of the Criminal Procedure Code (KUHAP). This is to avoid the possibility that the defendant who is being examined and tried in court for what he has been accused of does not know or does not understand what he has done. The court session is the most important place for the accused to freely defend himself against what he has been charged with.

Against the public prosecutor's indictment, the defendant or his legal adviser may submit an exception or objection to the indictment. Exceptions can be made in matters relating to the authority to try or regarding the legitimacy of the indictment with the aim that the court decides the interlocutory decision as follows:

The court does not have the authority to try the case or better known as competence or authority to adjudicate. These competencies include relative competence and absolute competence; The charges are unacceptable; or the Charges should be dropped.

If the defendant's objection is accepted by the panel of judges, then the defendant's examination cannot be continued and vice versa if the objection or exception is rejected, the examination will continue with the evidentiary process. Based on Article 183 of the Criminal Procedure Code (KUHAP) a judge may not impose a sentence on a person unless with at least two valid pieces of evidence so that he gains confidence that a crime has actually occurred and it is the defendant who is guilty of committing it. The valid evidence in Article 184 paragraph (1) of the Criminal Procedure Code (KUHAP) includes: 1) Witness statements; 2) Expert testimony; 3) Letters; 4) Instructions; and 5) Statement of the accused.

For the purposes of defence, the defendant has the right to ask witnesses or someone who has expertise to provide information in his favour. The defendant also has the right to see and examine the evidence presented before the court. After the examination of evidence and witnesses as well as expert testimony is completed, the prosecution proceeds. The public prosecutor will submit charges by listing the amount of the charges according to the errors obtained from the results of the evidence. The defendant has the right to make his defense (pledooi) presented before the court.

If at trial it is of the opinion that during the examination the guilt charged against the defendant has not been legally and convincingly proven, the defendant has the right to be acquitted. If it is legally and convincingly proven, but the act is not a crime, the defendant has the right to be dismissed from all charges. Based on this, the defendant should be in prison status, so he was ordered to be released immediately.

If during the trial process it is legally and convincingly proven to have committed a crime, the presiding judge in the trial immediately informs the defendant about everything that is his right, namely: 1) The right to immediately accept or reject the decision; 2) The right to study the decision before declaring acceptance or rejection of the decision within a specified time limit; 3) The right to request a suspension of the implementation of the decision within the time limit determined by law in order to be able to apply for clemency; 4) The right to ask for a case to be examined at the level of appeal within the time limit determined by the Criminal Procedure Code (KUHAP) if rejecting a decision; and 5) The right to withdraw the statement if accepting or rejecting the decision within the time limit determined by the Criminal Procedure Code (KUHAP).

Against the court decision the defendant also has the right to take legal action. According to Article 1 point 12 of the Criminal Procedure Code (KUHAP) legal remedies are the right of the accused or public prosecutor not to accept a court decision in the form of resistance or appeal or cassation or the right to submit a judicial review in matters and according to the method stipulated in the Criminal Procedure Code. Criminal Procedure Code (KUHAP). Legal remedies are in the form of ordinary legal remedies which include appeal and cassation and extraordinary legal remedies in the form of cassation in the public interest and judicial

review.

Appeal is the right of the accused and the public prosecutor to submit a decision at the district court to be re-examined by the high court. The aim is to correct the possibility of an oversight in the first instance decision. The high court can justify or change or cancel the decision of the district court. According to Article 67 of the Criminal Procedure Code (KUHAP) that the accused and the public prosecutor have the right to appeal the decision of the court of first instance except against acquittals, apart from all lawsuits related to the problem of inaccurate application of the law and court decisions in expedited proceedings.

Cassation is a legal remedy being requested and it is the authority of the Supreme Court (MA) to re-examine previous court decisions. According to the provisions of Article 244 of the Criminal Procedure Code (KUHAP) for decisions on criminal cases given to the final level by a court other than the Supreme Court, the accused or the public prosecutor can submit a cassation examination to the Supreme Court. According to the provisions of Article 253 paragraph (1) of the Criminal Procedure Code (KUHAP) an examination at the cassation level is carried out by the Supreme Court in order to determine: 1) Is it true that a legal regulation has not been applied or has been applied improperly; 2) Is it true that the trial method was not carried out according to the provisions of the law; and 3) Is it true that the court has exceeded the limits of its authority.

In line with this, in Article 30 paragraph (1) of Law Number 5 of 2004 concerning Amendments to Law Number 14 of 1985 concerning the Supreme Court as the second amendment to Law Number 3 of 2009, the supreme court at the cassation level annulled the decision or decisions of courts from all jurisdictions due to: Not being authorized or exceeding the limits of authority; Incorrectly applying or violating applicable laws; and Negligence in fulfilling the conditions required by laws and regulations that threaten such negligence with the cancellation of the decision in question.

In addition to the usual legal remedies, there are extraordinary legal remedies which include cassation for the sake of law and judicial review. Cassation for the sake of law can only be filed by the Attorney General. This extraordinary legal remedy can be filed against all court decisions except in decisions of the Supreme Court at the cassation level. This means that decisions of both district courts and high courts that have permanent legal force can be filed for cassation for the sake of law as stipulated in Article 259 of the Criminal Procedure Code (KUHAP) which stipulates that for the sake of law all decisions that have obtained permanent legal force from other courts apart from the Supreme Court, cassation may be filed once by the Attorney General and the cassation decision for the sake of law may not be detrimental to those concerned. Cassation in the interest of law aims to protect and safeguard the rights of the convict. In addition, the role of the Attorney General as a party submitting a cassation request for the sake of law is one of the responsibilities of the state to provide protection for victims of criminal acts. However, the sentence imposed in cassation for the sake of law may not be heavier than the original sentence which has permanent legal force.

Meanwhile, legal remedies for judicial review can be submitted by the convict or his heirs to the Supreme Court as stipulated in Article 263 paragraph (1) of the Criminal Procedure Code (KUHAP) that against court decisions that have obtained permanent legal force, except for acquittal or acquittal decisions of all lawsuits, the convict or his heirs can submit a request for judicial review to the Supreme Court. The reasons for submitting a judicial review are regulated in Article 263 of the Criminal Procedure Code (KUHAP) on the basis of: 1) If there is a new circumstance which gives rise to a strong allegation, that if the condition was known at the time the trial was still in progress, the result would be an acquittal or the decision to release all lawsuits or the demands of the public prosecutor cannot be accepted or lighter criminal provisions are applied to that case; 2) If in various decisions there is a statement that something has been proven, however the matter or circumstances as the basis and reason for the decision which is stated to have been proven are in fact contradictory to one another; and 3) If the decision clearly shows a judge's mistake or an obvious mistake.

Regarding the legal remedy in the form of judicial review, Article 268 paragraph (3) of the Criminal Procedure Code (KUHAP) states that a request for judicial review of a decision can only be made once. However, the Constitutional Court in its decision on case number 34/PUU-XI/2013 the Panel of Constitutional Justices stated that Article 268 of the Criminal Procedure Code (KUHAP) is contrary to the 1945 Constitution and has no permanent legal force. The considerations of the Panel of Judges of the Constitutional Court in this matter are:

That justice is a constitutional or human right that cannot be limited by time or formal provisions as stipulated in Article 268 paragraph (3) of the Criminal Procedure Code (KUHAP). Because there is a possibility that after the Judicial Review was filed and decided by the Supreme Court, substantial new evidence (novum) was found which had not been found when the Judicial Review was filed;

Whereas in the science of law there is the application of the litis finiri opportet principle (every case must have an end as a guarantee of legal certainty) it is not rigid and rigid but still pays attention to whether there is a conflict with the principle of justice.

In addition to ordinary legal remedies and extraordinary legal remedies, there are also special legal remedies called clemency. According to the provisions of Article 1 paragraph (1) of Law Number 22 of 2002

concerning Pardons as amended by Law Number 5 of 2010, clemency is pardon in the form of amendment, mitigation, reduction or elimination of the execution of a sentence against a convicted person by the President. Based on Article 14 paragraph (1) of the Criminal Procedure Code (KUHAP) can grant clemency and rehabilitation by taking into account the considerations of the Supreme Court. The President's power to grant pardons is one of the prerogative rights or privileges of the President as Head of State.

2.3. Defense by Legal Aid Organizations in Criminal Cases

The Legal Aid Organization (OBH) is a place for public defenders to receive public complaints. Public defenders are individuals, both law graduates and advocates. Public defense is closely related to the Advocate profession because the legal aid function is one of the aspects and obligations of the Advocate profession. as Article 22 paragraph (1) of Law Number 18 of 2003 Concerning Advocates. The purpose of legal assistance specifically in the criminal justice system is a real effort so that the criminal justice system starting from the investigation stage at the police to the implementation of court decisions can process and run fairly.

Legal Aid Organizations (OBH) as legal aid providers in Article 9 of Law Number 16 of 2011 concerning Legal Aid have the right to: 1) Recruit Advocates, Paralegals, Lecturers, and Law Faculty Students; 2) Perform Legal Aid services; 3) Organizing legal counseling, legal consultations, and other program activities related to the implementation of legal aid; 4) Receiving a budget from the state to implement legal aid under the law on legal aid; 5) Issuing opinions or statements in defending cases which are his responsibility in court hearings in accordance with the provisions of laws and regulations; 6) Obtain information and other data from the government or other agencies, for the purpose of defending cases; and 7) Get guaranteed legal protection, security and safety while carrying out the provision of legal aid.

In addition, Legal Aid Organizations (OBH) as legal aid providers also have obligations as stipulated in Article 10 of Law Number 16 of 2011 concerning Legal Aid, namely: 1) Reporting to the Minister regarding legal aid programs; 2) Report every use of the state budget that is used to provide legal aid; 3) Organizing Legal Aid education and training for Advocates, paralegals, lecturers, law faculty students who are recruited; 4) Maintain the confidentiality of data, information and/or information obtained from legal aid recipients in relation to the case being handled, unless otherwise stipulated by law; and 5) Providing legal assistance to recipients of legal aid based on the terms and procedures specified in the law on legal aid until the case is finished, unless there is a valid reason legally.

As a defense in criminal cases Legal Aid Organizations (OBH) can provide non-litigation assistance in the form of assistance at the investigation level at the police up to the examination in the trial process. In providing legal assistance, Legal Aid Organizations (OBH) do not discriminate between cases handled. All are carried out professionally based on provisions to realize the principle of a fair trial.

In general, in criminal cases, Legal Aid Organizations (OBH) provide legal assistance to legal aid recipients until the legal issues are resolved or the case has permanent legal force, as long as the legal aid recipient does not revoke the special power of attorney. When looking at the criminal justice process, Legal Aid Organizations (OBH) can provide defense from the level of investigation at the police to the trial stage as well as in the case of taking legal action. In detail the defense made by the Legal Aid Organization (OBH) as a legal adviser in criminal cases to legal aid recipients.

Legal Aid Organizations (OBH) can provide assistance in examinations conducted by police investigators by guarding the rights of suspects/recipients of legal aid. These rights are as regulated in Article 50 to Article 68 of the Criminal Procedure Code (KUHAP). In addition, Legal Aid Organizations (OBH) can assist or carry out pretrial efforts to test whether the arrest and/or detention actions that have been carried out are legal or not and make requests for compensation whose cases have not been submitted to court.

Legal Aid Organizations (OBH) can provide assistance at the trial stage. At this stage the Legal Aid Organization (OBH) ensures that the indictment meets the material and formal requirements as stipulated in Article 143 paragraph (2) of the Criminal Procedure Code (KUHAP). Against the indictment the Legal Aid Organization (OBH) can submit objections or exceptions as stipulated in Article 156 paragraph (1) of the Criminal Procedure Code (KUHAP) which can relate to the authority to adjudicate or regarding the legitimacy of the indictment with the aim that the court decides on a decision interlude which includes the court not having the authority to try cases better known as adjudicating authority or competence, the indictment being unacceptable, and the indictment being dropped. For the purposes of defence, Legal Aid Organizations (OBH) can propose witnesses or someone who has certain expertise to provide information that can lighten the defendant.

After examining evidence, witnesses and experts, the process continues with prosecution. Legal Aid Organizations (OBH) can conduct a defense (pledoi) as stipulated in Article 182 paragraph (1) of the Criminal Procedure Code (KUHAP) submitted before the court against the demands of the public prosecutor. If the court is of the opinion that the results of the examination at trial of the defendant are not legally and convincingly proven, then the defendant has the right to be prosecuted acquitted. Besides that, if the defendant's actions are proven but not a crime, the defendant will be dismissed from all charges.

Legal Aid Organizations (OBH) can take legal action against court decisions, be it appeals, cassation or

judicial review. Legal Aid Organizations (OBH) have the right to appeal against court decisions of first instance except for acquittal decisions, apart from all lawsuits related to issues of inappropriate application of law and court decisions in expedited procedures as referred to in Article 67 of the Criminal Procedure Code (KUHAP).). Regarding criminal case decisions given at the final level by courts other than the Supreme Court Legal Aid Organizations (OBH) can submit a request for an appeal to the Supreme Court as referred to in Article 244 of the Criminal Procedure Code (KUHAP). Regarding court decisions that have obtained permanent legal force, Legal Aid Organizations (OBH) can submit requests for judicial review to the Supreme Court, except for acquittals or free from all lawsuits as referred to in Article 263 paragraph (1) of the Criminal Procedure Code (KUHAP).).

2.4. Fulfillment of the Right to Legal Assistance in Realizing Just Social Change

In order to realize justice for all levels of society, especially for the poor who generally have limited knowledge of law, the state has provided access in the form of legal assistance through verified and accredited Legal Aid Organizations (OBH). It is hoped that through this Legal Aid Organization (OBH) the poor who have legal problems, especially in criminal cases, will get their constitutional rights guaranteed by the state.

In Western countries the term legal aid is used in two senses, namely legal aid and legal assistance. The term legal aid is used to denote the notion of legal aid in a narrow sense in the form of providing services in the field of law to someone involved in a case free of charge or free of charge, especially for those who are unable (poor), while legal assistance is used to denote the notion of legal aid. to those who can't afford it, or the provision of legal assistance by Advocates using honorariums.

The term legal aid is still a new thing for the Indonesian nation. Legal aid that is developing in Indonesia is essentially inseparable from legal developments from developed countries. It is not easy to provide a definition or definition of legal aid considering the complexity of the problem not only concerning law and community development, but also the existence and program of legal aid itself.

According to Article 1 point 1 of Law Number 16 of 2011 Concerning Legal Aid, the meaning of Legal Aid is legal services provided by Legal Aid Providers free of charge to Legal Aid Recipients. Then it is continued in number 2 and number 3 that Legal Aid Recipients are people or groups of poor people and Legal Aid Providers are legal aid institutions or community organizations that provide Legal Aid services based on Law Number 16 of 2011 concerning Legal Aid.

The definition of legal aid whose scope of activities is quite broad was also defined by the national level legal aid workshop in 1978 which stated that legal aid is an activity of legal services provided to disadvantaged groups (poor) both individually and collectively disadvantaged community groups. .

The terms legal aid and legal advisor are new terms. Previously known as defender, advocate, procureur (pokrol), and lawyer. The terms legal aid and legal adviser are indeed more appropriate and in accordance with their function as a companion to a suspect or defendant during an examination rather than the term defender. The term defense is often misinterpreted, as if it functions as a helper for the suspect or the accused to be released from punishment even though he is clearly guilty of what he was charged with. Even though the function of the defender or legal adviser is to assist the judge in an effort to find material truth, even though it is based on the subjective view of the suspect or defendant.

Legal aid activities cannot be separated from the role of an Advocate who is tasked with providing legal assistance both accompanying and representing the legal interests of his clients. The task of providing legal assistance, especially to the poor, has become an inherent obligation of an Advocate. This has been stated in Article 22 of Law Number 18 of 2003 concerning Advocates that "Advocates are obliged to provide free legal assistance to citizens who cannot afford it".

This is in line with the opinion of Frans Hendra Winata who stated that legal aid is a legal service specifically provided to the poor who need free defense both outside and in court in criminal, civil and state administration from someone who understands the ins and outs of legal defense, principles and rules of law and human rights.

Legal aid is also part of the legal services provided by Advocates as stipulated in Article 1 point 2 of Law Number 18 of 2003 Concerning Advocates that legal services are services provided by Advocates in the form of providing legal consultation, legal assistance, exercising power, representing, accompanying , defend, and take other legal actions for the legal interests of clients. Clients in this case are people, legal entities, or other institutions that receive legal services from Advocates. While the definition of legal aid according to Article 1 number 9 of Law Number 18 of 2003 Concerning Advocates that legal aid is legal services provided by Advocates free of charge to clients who can't afford it. If it is concluded both from Law Number 18 of 2003 concerning Advocates and from Law Number 16 of 2011 concerning Legal Aid, in essence, legal aid is aimed at people or other institutions that can be categorized as poor or poor.

Meanwhile, according to Schuyt, Groenendijk, and Sloot, there are 5 (five) types of legal assistance, namely: 1) Preventive legal assistance, in the form of providing information and legal counseling to the public so that they understand their rights and obligations as citizens; 2) Diagnostic legal assistance, in the

form of providing legal advice or known as legal consultation; 3) Legal aid for conflict control, namely in the form of actively overcoming concrete legal problems that occur in society; 4) Legal assistance for the formation of laws, which aims to provoke a firmer, more precise, clearer and correct jurisprudence; and 5) Legal assistance for legal reform, which aims to carry out legal reform either through judges or legislators (in a material sense).

In Law Number 16 of 2011 Concerning Legal Aid, the scope of legal aid in Article 4 and Article 5 namely: Article 4 1) Legal aid is given to legal aid recipients who face legal problems. 2) Legal aid as referred to in paragraph (1) covers civil, criminal and state administrative law issues, both litigation and non-litigation. Article 5 1) Recipients of Legal Aid as referred to in Article 4 paragraph (1) include every person or group of poor people who cannot fulfill their basic rights properly and independently. 2) Basic rights as referred to in paragraph (1) include rights to food, clothing, health services, educational services, employment and business, and/or housing.

Providing legal assistance when looking at these provisions can be grouped into 2 (two), namely litigation and non-litigation. Provision of legal assistance in litigation includes assistance and/or exercise of power starting from investigation, prosecution and examination as well as legal remedies in criminal cases. In civil cases, the provision of legal assistance can be done by providing assistance and/or exercising power of attorney in the examination process at trial as well as taking legal action. Provision of legal assistance in the form of assistance and/or exercising power of attorney as well as taking legal action can also be carried out at the State Administrative Court.

The provision of non-litigation legal assistance referred to in Article 16 paragraph (2) of Government Regulation Number 42 of 2013 concerning Terms and Procedures for Providing Legal Aid and Distribution of Legal Aid Funds includes the following activities: 1) Legal counseling; 2) Legal consultation; 3) Investigation of cases, both electronic and non-electronic; 4) Legal research; 5) Mediation; 6) Negotiation; 7) Community empowerment; 8) Assistance outside the court; and/or 9) Drafting of legal documents.

Effectiveness is one part of the basic principles of the implementation of legal aid as stated in Article 2 of Law Number 16 of 2011 concerning Legal Aid, namely: 1) The principle of justice is to place the rights and obligations of each person in a proportional, proper, right, good, and orderly; 2) The principle of equality before the law is that everyone has the same rights and treatment before the law and the obligation to uphold the law; 3) The principle of openness is giving access to the public to obtain complete, correct, honest and impartial information in obtaining guarantees of justice based on constitutional rights; 4) The principle of efficiency is maximizing the provision of legal aid through the use of existing budgetary resources; 5) The principle of effectiveness is to determine the achievement of the objectives of providing legal aid appropriately; and 6) The principle of accountability is that every activity and final result of the activity of administering legal aid must be accountable to the public; 7) Fulfillment of the right to legal aid to legal aid recipients is also influenced by statutory provisions and technical factors in the field. In other words, to fulfill the objectives of administering legal aid to recipients of legal aid can be influenced by legal aspects which include laws and regulations as well as various technical conditions that will be found in their application. The purpose of administering legal aid through Law Number 16 of 2011 concerning Legal Aid to recipients of legal aid can be said to be law enforcement.

According to Soerjono Soekanto, the main issues affecting law enforcement include: 1) The legal factor itself (law); 2) Law enforcement factors, namely the parties that form and apply the law; 3) Factors of facilities or facilities that support law enforcement; 4) Community factors, namely the environment in which the law applies or is applied; and 5) Cultural factors, namely as a result of creative works and feelings based on human initiative in the social life of law enforcement institutions.

Provisions regarding the administration of legal aid and the distribution of legal aid funds are regulated in Government Regulation Number 42 of 2013 concerning Terms and Procedures for Providing Legal Aid and Distribution of Legal Aid Funds as implementation of Article 15 paragraph (5) and Article 18 of Law Number 16 of 2011 About Legal Aid.

In Article 17 of Government Regulation Number 42 of 2013 concerning Terms and Procedures for Providing Legal Aid and Distribution of Legal Aid Funds that the provision of legal aid must meet legal aid standards stipulated by ministerial regulations so that the minister in charge of law issues Minister of Law and Human Rights Regulation No. 22 of 2013 concerning Regulations for Implementing Government Regulation Number 42 of 2013 concerning Terms and Procedures for Providing Legal Aid and Distribution of Legal Aid Funds (Permenkumham Number 22 of 2013) which was later revoked by issuing Minister of Law and Human Rights Regulation Number 10 of 2015 concerning Regulations Implementation of Government Regulation Number 42 of 2013 concerning Terms and Procedures for Providing Legal Aid and Distribution of Legal Aid Funds (Permenkumham Number 10 of 2015) then underwent changes as regulated by the Minister of Law and Human Rights Number 63 of 2016 concerning Amendments to Regulations of the Minister of Law and Rights Human Rights Number 10 of 2015 concerning Regulations for Implementing Government Regulation Number 42 of 2013 concerning Terms and Procedures for Providing Legal Aid and Distribution of Legal Aid Funds (Permenkumham Number 63 of 2016).

The distribution of legal aid funds is an integral part of administering legal aid. According to Article 18 of Government Regulation Number 42 of 2013 concerning Terms and Procedures for Providing Legal Aid and Distribution of Legal Aid Funds, the sources of funding for organizing legal aid are borne by the State Revenue and Expenditure Budget (APBN), grants/donations and/or other legal funding sources and not binding. Apart from that, in Article 19, regions can allocate budgets for administering legal aid in the Regional Revenue and Expenditure Budget (APBD), the allocation of which is regulated in regional regulations by reporting the implementation to the Minister of Law and Human Rights and the Minister of Home Affairs.

The Minister of Law and Human Rights proposes a standard cost for the implementation of litigation and non-litigation legal assistance to the Minister of Finance. The cost standard approved by the Minister of Finance is used as a reference in planning budget requirements and implementing the legal aid budget.

In legal practice which includes law application and law formation, the existence of legal institutions has a significant influence, especially in the context of law enforcement. Laws that are abstract in nature become concrete over the working functions of legal institutions whose role is to implement the law, so the behavior of law enforcement officers determines and colors sterile and whether the ideals and objectives of the law are not, because the process of enforcing law towards legal ideals is delivered, guarded and escorted by law enforcers. Diverting the direction of legal objectives is an act of inconsistency that has a negative impact on the law and results in the legal objectives not reaching their target.

The criminal justice system is a process of enforcing criminal law, therefore it is closely related to the legislation itself, both substantive criminal law and criminal procedural law. Basically, criminal legislation is an in-abstraco criminal law enforcement that will be realized in concrete law enforcement.

The right to legal aid is aimed at the recipients of legal aid, namely the poor. As the aim of organizing aid is an effort to fulfill and at the same time as the implementation of a rule of law that recognizes and protects and guarantees the basic rights of citizens for the need for access to justice (access to justice) and equality before the law (equality before the law). Poor people who deal with the law, especially in the criminal realm, are confronted by tools of state power so as to guarantee justice and equality before the law, legal assistance is needed in order to achieve a fair administration of law.

3. CONCLUSION

Fulfillment of the right to legal aid to the poor in criminal cases is influenced by factors which include Legal Aid Organizations (OBH) which are public defenders, one of which plays an important role is Advocates. Advocates are parties who are directly involved in law enforcement according to the demands and obligations of their profession in both litigation and non-litigation fields. However, the social and moral responsibilities for providing legal assistance to the poor are different for each Advocate. Although the obligation to provide legal assistance is contained in the provisions of Article 22 paragraph (1) of Law Number 18 of 2003 concerning Advocates. The article states that Advocates are obliged to provide legal assistance free of charge to justice seekers who cannot afford it, but there are no other legal consequences if Advocates do not provide legal assistance. While the second is that finance is an important means because there are some technicalities that do require sufficient finances such as transportation and other administrative needs. Indonesia is an archipelagic country that has different geographical conditions and landscapes. Seeing this situation, of course each region should have adequate financial capacity, especially remote areas.

In administering legal aid, it is necessary to supervise the substance of the defense. This is intended so that the purpose of the defense carried out by the Legal Aid Organization (OBH) really shows material truth and prioritizes the basic individual rights of a person in undergoing a judicial process that is faced with the power of the state to enforce the law. In Government Regulation Number 42 of 2013 concerning Terms and Procedures for Providing Legal Aid and Distribution of Legal Aid Funds, it has been regulated that there is supervision of the provision of legal aid and the distribution of legal aid funds, but in order to realize a fair trial it is necessary to have a supervisory board to oversee the substance of the defense being provided by the Legal Aid Organization (OBH).

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