



Legal Protection For Victims of Criminal Offense in the Perspective of Law Number 16 of 2011 on Legal Aid

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ABSTRACT

This research discusses legal protection for victims of criminal acts according to Law Number 16 of 2011 concerning Legal Aid. Although legal aid is very important and needed for victims of criminal acts, its application is still limited, especially litigation legal aid for victims, which results in many victims of criminal acts not getting legal aid assistance. The provisions in Law Number 16 of 2011 limit the provision of litigation legal aid only to suspects, defendants, and convicts, resulting in victims being neglected. This research aims to explore efforts to provide legal aid for victims based on Law Number 16 of 2011 concerning Legal Aid and the importance of legal protection assistance for victims of criminal acts.

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INTRODUCTION

Victims of crime are the most disadvantaged party, they often suffer physical, psychological, and material losses. However, in the practice of law enforcement, both in the police and judicial processes, it tends to focus more on the perpetrators of criminal acts in the law enforcement process. As a result, the rights of victims are often neglected, including the right to obtain justice and proper recovery.

One of the efforts to overcome this inequality can be done through the provision of legal aid for victims of criminal acts. Legal aid is intended to provide assistance, protection, and strengthen the victim's position in the legal process. Victims often do not understand the applicable legal procedures, do not have the economic ability to hire legal counsel, or experience pressure from the perpetrator or the environment in the law enforcement process.

Victims of crime are often overlooked in criminal law enforcement, even though they have the right to justice and recovery. Legal aid for victims of criminal acts is regulated in various laws and regulations, this aims to guarantee the rights of victims and provide them with access to justice. The provision of legal aid for victims of criminal offenses who are economically poor or incapable is regulated through Law No. 16/2011 on Legal Aid (Legal Aid Law). This law is an important breakthrough in ensuring access to justice for the poor in Indonesia, which is provided not only to perpetrators but also includes victims of criminal acts to obtain legal aid assistance for both litigation and nonlitigation.

The Legal Aid Law and Government Regulation No. 42 of 2013 concerning Terms and Procedures for Providing Legal Aid and Distributing Legal Aid Funds do not provide restrictions on the provision of legal aid provided to Legal Aid Recipients whether as suspects, defendants, convicts or victims. This means that every citizen who is categorized as poor has the right to receive legal aid assistance from Legal Aid Providers based on the Legal Aid Law to resolve the legal problems they face.

Although in the Legal Aid Law and Government Regulation No. 42 of 2013 there are no restrictions on the provision of legal aid to victims, in its implementation the provision of litigation legal aid is only provided to suspects, defendants, convicts. This limitation on the provision of legal aid is found in Permenkumham No. 10 of 2015 jo. Permenkumham No. 63 of 2016 concerning the Implementation Regulations of Government Regulation No. 42 of 2013 concerning Terms and Procedures for Providing Legal Aid and Distributing Legal Aid Funds.

This certainly causes the provision of legal aid for victims of criminal acts, especially litigation legal aid, to be unable to be provided due to the limitations on the provision of legal aid. The existence of this limitation makes victims very vulnerable to not getting legal protection, especially in the Litigation Stage of Investigation at the Police, even though assistance to victims during the investigation process at the Police is very important because it will help ensure that victims' rights are fulfilled and the legal process runs according to the principles of justice. This assistance helps victims to provide complete information and prevent procedural irregularities, as well as ensure humane and professional treatment from law enforcement officials.

Based on what the author has described above, this research entitled "Legal Protection for Victims of Crime in the Perspective of Law Number 16 of 2011 concerning Legal Aid" will further elaborate on how legal protection for victims of criminal acts through the provision of legal aid based on the Legal Aid Law and how legal aid assistance in the form of litigation is provided not only for perpetrators but also for victims.

Discussion

Legal protection for victims of criminal acts has several important reasons. First, how victims feel protected to be able to provide information without fear and ensure that the truth in a case can be revealed. Second, this protection aims to ensure that the rights of victims are not neglected. Third, this protection is also to restore the victim's condition and prevent further trauma to the victim. The regulation of legal protection for victims of criminal acts has been regulated in Law Number 8 of 1981 concerning the Criminal Procedure Code and other laws, so this paper will specifically describe the legal protection for victims of criminal acts from the perspective of Law Number 16 of 2011 concerning Legal Aid.

Concept of Legal Protection for Victims of Crime in Indonesia under KUHAP

When examined in more detail, it turns out that the protection of crime victims is abstract protection or indirect protection formulated in formulative policy, namely abstract protection which tends to lead to the protection of society and individuals. The victim as a party harmed by a crime is isolated and does not receive any attention at all, especially with the increasing attention to the development of criminal offenders which is often interpreted as something that is not related to the fulfillment of the interests of victims, it is not surprising that attention to victims is increasingly far from criminal justice which is said by Stephen Schafer to be the cinderella of criminal law.

Victims are essentially the ones who suffer the most in a criminal offense, as they do not receive as much protection as the law provides to perpetrators. As a result, when the perpetrators of crimes have been sentenced to criminal sanctions by the court, the condition of crime victims seems to be completely ignored. In fact, the issue of justice and respect for human rights does not only apply to the perpetrators of crime but also to victims of crime. In every handling of criminal cases, law enforcement officers (police, prosecutors) are often faced with the obligation to protect two interests that seem contradictory, namely the interests of victims who must be protected to restore their suffering because they have become victims of crime (mentally, physically and materially), and the interests of the accused / suspect even though he is guilty but he is still a human being who has human rights that should not be violated.

The issue of justice and respect for human rights should not only be given to the perpetrators, but also to the victims of crime. Criminal law should be able to provide legal protection of human rights for both perpetrators and victims of crime, as well as function in safeguarding the interests of society and the state. However, the reality often does not reflect this and this problem arises due to various factors. One of the reasons is Law Number 8 of 1981 on the Criminal Procedure Code (KUHAP), which substantially does not offer sufficient protection for victims of criminal acts. The material of KUHAP mostly regulates the protection of perpetrators, which has an impact on the lack of protection provided to victims of criminal acts. This can be seen in Article 54 of the Criminal Procedure Code which states that "For the purpose of defense, a suspect or defendant is entitled to legal assistance from one or more legal counsel during the time and at every level of examination, according to the procedures specified in this law". Furthermore, Article 55 of KUHAP also provides a basis for recognizing the right of the suspect or accused to choose their own legal counsel. In special conditions such as in the event that the suspect or defendant is charged with a criminal offense punishable by death penalty or a sentence of fifteen years or more or for those who are incapacitated punishable by five years or more who do not have their own legal counsel, the relevant official at all levels of examination in the judicial process is obliged to appoint a legal counsel for them. Every appointed legal counsel shall provide his/her assistance free of charge (Article 56 KUHAP). Protection for victims and perpetrators must be balanced and inseparable in accordance with the principle that everyone has equal standing before the law.

Article 27 paragraph (1) of the 1945 Constitution of the Republic of Indonesia states that "All citizens shall be equal before the law and government and shall uphold the law and government with no exceptions." In this context, the state is committed to treating every citizen fairly in law, both as a perpetrator and as a victim of a criminal offense. The humanitarian principles that underpin the values of Pancasila should underpin the entire legal system in Indonesia, from the 1945 Indonesian Constitution to lower regulations.

The criminal justice system through the products of Indonesian legislation, especially the Criminal Procedure Code which is the basis for the implementation of the criminal justice system, has not really included what is required in the 1945 Constitution of the Republic of Indonesia. This raises a classic problem, that the criminal justice system as the basis for resolving criminal cases has not recognized the existence of victims of crime as seekers of justice, a victim of crime will suffer again as a result of the legal system itself, because victims of crime cannot be actively involved as in civil law, cannot directly file criminal cases themselves to the court but must go through the designated agency.

The current criminal justice system focuses too much on the perpetrator and not enough on the victim. What often happens is that the involvement of victims in the criminal justice system only adds to their trauma and increases their sense of helplessness and frustration because they are not given adequate protection and legal remedies. The current criminal justice system is indeed too "offender centered", which requires us to improve the position of victims in this system so that what they get is not only symbolic satisfaction.

In terms of the application of criminal law in Indonesia, there is still a lack of attention to the rights of victims and the consequences that must be faced by victims of criminal acts. This can be seen in the Criminal Procedure Code, where there are few articles that discuss victims, and the discussion does not specifically regulate the existence of victims. This can be seen from the various terms used to refer to a victim, such as in Articles 98 and 99 of the KUHP the victim can be referred to as an injured party. This article gives the victim of a criminal offense (or the injured party) the right to file a claim for compensation (civil) in the criminal process, without having to file a separate claim in the civil court, and if the civil claim filed by the victim is not accepted or rejected in the criminal case, the victim still has the right to file a separate claim in the civil court.

The article in the Criminal Procedure Code that clearly states the rights of victims is found in Article 108 which states that "Every person who experiences, sees, witnesses and or becomes a victim of an event that constitutes a criminal offense has the right to submit a report or complaint to the investigator and or investigator either orally or in writing." This article provides legal recognition of the role and rights of victims in the criminal process, as they can initiate the legal process themselves by reporting or complaining about criminal events.

In addition, another provision in the Criminal Procedure Code that clearly regulates the position of victims is for victims who also act as witnesses, this is contained in Article 160 paragraph (1) letter b which states that "The first to be heard is the victim who is a witness". Article 108 and Article 160 paragraph (1) letter b only emphasize the interests of victims who are victims of crime in terms of disclosure of criminal events and have not fully met the needs in protecting the interests of victims.

The importance of victims of crime is based on the idea that the victim is the party who is harmed in the event of a crime, so they must receive attention and services in order to provide protection for the interests of the victim. In addition, victims often have a very important role in the occurrence of a crime, which is expected that by obtaining a broad and in-depth understanding of crime victims, it will be easier to find crime prevention efforts that will ultimately lead to justice and a decrease in the quantity or quality of crime.

The implementation of criminal enforcement in terms of protecting the interests of victims of criminal acts has been represented by state instruments, namely the police and prosecutors as investigators, investigators, and public prosecutors, but the relationship between victims of criminal acts on the one hand with the police and prosecutors on the other hand is symbolic, while the relationship between the defendant and his legal counsel in principle is purely in the legal relationship between service users and service providers regulated in civil law. The police and prosecutors act to carry out the duties of the state as representatives of the victims of criminal acts and/or the community, while the legal counsel acts on the direct authorization of the defendant who acts on behalf of the defendant himself. In short, the victims in this justice system are only used for the benefit of the authorities in order to enforce the law, so in essence, the victims and other parties involved in the implementation of criminal justice do not perfectly enforce the law.

In addition, in order to protect the interests of witnesses and victims, Law No. 13/2006 on Witness and Victim Protection has been enacted, which has been amended by Law No. 20/2014 on the Amendment to Law No. 13/2006 on Witness and Victim Protection, which was then followed by the enactment of Government Regulation No. 44/2008 on the Provision of Compensation, Restitution, and Assistance for Witnesses and Victims. The rationale for the need for a law that regulates the protection of crime victims (and witnesses) can clearly be seen in the weighing section of this law, which among others states: law enforcers often experience difficulties in seeking and finding clarity about criminal acts committed by perpetrators because they cannot present witnesses and / or victims due to threats, both physical and psychological from certain parties. Whereas we know that the role of witnesses (victims) in a criminal justice process occupies a key position in efforts to seek and find clarity about criminal acts committed by the perpetrator.

This law was enacted because the Criminal Procedure Code did not fully regulate the protection of witnesses and victims, particularly in relation to security in providing testimony in the criminal justice

process and guaranteeing victims' rights, including the right to restitution and recovery. KUHAP also does not explicitly regulate victim protection, unless the victim is also a witness as stated in Article 160 paragraph (1) letter b of KUHAP. Therefore, this law is present to fill this void in order to provide guarantees for the protection of witnesses and victims.

Legal Protection for Victims of Crime in the Legal Aid Law

Indonesia is a country based on the principle of justice, which is the reason why Indonesia is called a state of law. Because it is based on Pancasila and the 1945 Constitution which is based on the principles of justice, Indonesia highly upholds the rights of every citizen to be fulfilled, this is evidenced by the various laws contained in the rights of each community along with sanctions for violators.

Even Indonesia has its own rules that regulate and discuss specifically about human rights, namely Law 39 of 1999, and many other legal rules that discuss the principles of justice of the Indonesian state that apply to all its citizens. Regarding justice as a basic principle of the Indonesian state is also stated in the fifth principle of Pancasila, namely Justice for All Indonesian People, this is also clarified in other rules in Indonesian positive law that everyone is entitled to their rights including the right to be treated equally in the eyes of the law and the state and get equal justice regardless of race, religion, ethnicity, and others. Both the rich and the poor, as long as they are still Indonesian citizens, have the same rights and have the right to ask to be treated equally by the state. This is in accordance with the principle of legal equality so that the law implemented should not seem "overlapping" in its society.

Furthermore, Article 28 D paragraph (1) of the 1945 Constitution states that "Every person shall have the right to recognition, guarantees, protection and certainty of a just law and equal treatment before the law". This is a basic footing and constitutional order to guarantee every citizen, including people who are unable, to get access to justice so that their rights to recognition, guarantees, protection, and certainty of a just law and equal treatment before the law can be realized properly. The position and position of a person before the law (the equality of law) is very important in realizing the order of the legal system and a sense of justice in society.

To ensure fair legal certainty and equal treatment before the law as stated in Article 28 D paragraph (1) of the 1945 Constitution, Indonesia has Law No. 16/2011 on Legal Aid (Legal Aid Law). The provision of Legal Aid in the Legal Aid Law is given to poor people who face legal problems including civil, criminal, and state administrative law problems which will be provided in the form of litigation and non-litigation. Meanwhile, the implementation of legal aid is carried out by Legal Aid Providers who have passed verification and accreditation by the Ministry of Law.

Litigation is the process of handling legal cases that are carried out through court channels to resolve them. Litigation legal aid is provided to legal aid recipients to balance the treatment of law enforcers in criminal, civil and state administrative cases. The stages of the litigation process in handling cases in litigation are as follows:

1. criminal cases, including investigation, and trial at the first instance court, appeal court, cassation court, and judicial review;
2. civil cases, including reconciliation efforts or first instance court decisions, appellate court decisions, cassation court decisions, and judicial review; and
3. state administrative cases, including preliminary examinations and first instance court decisions, appellate court decisions, cassation court decisions, and judicial reviews.

Meanwhile, non-litigation legal aid is the process of handling legal cases that are carried out outside the court to resolve them. Non-litigation legal aid includes activities: legal counseling; legal consultation; case investigation both electronically and non-electronically; legal research; mediation; negotiation; community empowerment; out-of-court assistance; and/or drafting legal documents. Nonlitigation legal aid is provided for the sake of socializing the rights of every citizen, especially the poor when they get legal problems and efforts to provide solutions or solutions to legal problems that exist in society outside the court, the goal is to realize a society that has an understanding and awareness of the law, so that not every problem is always taken to the litigation track.

The concept of legal aid to be realized through the Legal Aid Law is the creation of a good justice system by applying legal principles, including access to justice, equality before the law, and an effective, efficient and accountable judiciary. These legal aid objectives can be found in Article 3 of the Legal Aid Law. Setting the objectives of legal aid to achieve these three important principles in law enforcement shows the important role of legal aid as a foundation for the community when dealing with the law. Article 3 letter a of the Legal Aid Law states that "The implementation of Legal Aid aims to guarantee and fulfill the right of Legal Aid Recipients to obtain access to justice" and Article 6 paragraph (1) states that "Legal Aid is organized to help resolve legal problems faced by Legal Aid Recipients."

However, the implementation of legal aid currently focuses more on litigation assistance and the funding allocation is used for assistance for perpetrators. As for victims, legal aid is currently provided in the form of non-litigation activities such as legal consultation and out-of-court assistance, the amount of which is

not large enough. So legal aid support for victims often only covers up to the reporting or examination stage at the police level, even though it should be able to cover nonhandling issues such as the recovery stage and access to special needs for certain cases, such as psychological rehabilitation, counseling, safe houses, and so on.

The provision of legal aid for victims who can only be provided with non-litigation legal aid assistance and cannot be provided with litigation legal aid assistance is due to restrictions in the regulations on the implementation of legal aid. Limitations on the provision of legal aid are contained in Article 4 paragraph (1) of Permenkumham No. 10 of 2015 jo. Permenkumham No. 63/2016 concerning the Implementation Regulations of Government Regulation Number 42 of 2013 concerning Terms and Procedures for Providing Legal Aid and Distributing Legal Aid Funds, which states that:

Legal Aid in litigation in handling criminal cases as referred to in Article 3 letter a is provided to Legal Aid Recipients who have status as:

- a. suspects;
- b. deceased; or
- c. convicts who file ordinary legal remedies or extraordinary legal remedies.

Although in the Legal Aid Law and Government Regulation No. 42 of 2013 there are no restrictions on the provision of legal aid to victims, in its implementation the provision of litigation legal aid is only provided to suspects, defendants, convicts based on the provisions in Article 4 paragraph (1) Permenkumham No. 10 of 2015. So that this limitation causes litigation legal aid for victims not to be accommodated by the legal aid fund.

As a result, the victim as the party who suffers the most in a criminal offense does not get as many rights as the law gives to the suspect or defendant. Victims are not given the right to be actively involved in the investigation process until the trial examination, so they lose the opportunity to fight for their rights and restore their condition as a result of the criminal offense they experienced. Legal aid that is not oriented towards victims (especially those who cannot be provided with litigation legal aid), causes victims to be hampered in their rights to access justice. According to LBH APIK's experience in assisting victims in the litigation process, many problems were found. The following are some of the legal problems found, at the police, prosecution, trial stages.

1. Legal issues of victim assistance at the police stage
 - a. Victims are often blamed for events that happen to them (victim blaming) or are considered to have contributed to the incident (victim participating).
 - b. The victim's statement was not believed.
 - c. The burden of proof is on the victim.
 - d. The victim becomes an object, which is thrown from one unit to another. Meanwhile, victims do not get the right service information.
 - e. Long case handling, expensive costs (e.g. visum et psichiatrikum, visum et psychologikum, DNA tests, transportation), causing victims to despair and drop their cases. The filing process (BAP) is carried out in a stressful situation due to repetitive, or entangling questions, or the use of vulgar language that is often not appropriate to the case, thus making the victim more uncomfortable (traumatic), revictimization.
 - f. Victims were not informed of their rights, including restitution.
 - g. The victim was confronted with the perpetrator.
2. Legal issues of victim assistance in prosecution
 - a. No information on the status of the case at stage P.21
 - b. No information on victims' rights such as the right to restitution.
 - c. The prosecutor did not involve the victim in the process of preparing the indictment and charges. In fact, the prosecutor did not even meet with the victim so the victim was not prepared for the trial. There is no regulation that requires the prosecutor to meet with the victim
3. Legal issues on victim assistance in court
 - d. There was victim blaming during the trial process
 - e. Victims have difficulty accessing verdicts
 - f. The victim's right to testify in the absence of the perpetrator is often ignored.
 - g. The right of female victims to receive assistance at the victim's side while giving testimony in accordance with Perma No. 3/2017 concerning Guidelines for Adjudicating Cases of Women Against the Law, is not fulfilled.

In addition to the above problems, when viewed from the victim's point of view, the victim also needs the presence of an advocate to be able to maintain the balance of his position so that the victim's position can be seen as equal to the perpetrator. This is because there is a view that in the rolling of the criminal justice process the position of the victim is often seen as a weak party and even less attention. In fact, the position and existence of the victim should be the central axis of the criminal justice process because it is the justice of the victim that is violated by the perpetrator who finally undergoes the criminal justice process, so that the existence of this advocate is expected to be a balancer in the position of the victim. Legal aid for victims in

the criminal justice process plays an important role as part of efforts to ensure victims' rights are fulfilled. Through effective and quality legal aid, other victims' rights such as the right to recovery, compensation, or restitution can be fulfilled. In other cases, legal assistance will also protect victims from discrimination, re-victimization and intimidation, such as intimidation to withdraw reports, or intimidation that endangers the safety of victims.

So far, advocates / legal counsels have been suspected of being people who interfere with the smooth running of the examination. Whereas the presence of advocates is very much needed in litigation legal aid assistance for victims. So far, victims have not received proper legal aid assistance, so it can be assumed that there is a problem in access to justice for victims, especially in terms of legal aid. In addition to the economic limitations that are usually faced or the lack of information and knowledge, it turns out that there are bureaucratic obstacles from existing regulations that cause victims to not get litigation legal aid support from advocates. So far, victims are still alone when dealing with the perpetrator or his lawyer in the law enforcement process, because it is assumed that the victim is already represented by the state in this case through law enforcement officials. Litigation legal aid assistance to victims is not to complicate the settlement process but to fulfill their rights related to fair trial principles. This is important so that law enforcers do not only focus on revealing the guilt of the perpetrator, but also pay attention to the interests and restoration of victims' rights and provide comprehensive justice.

Litigation assistance for victims has a very important role in law enforcement, in addition to helping victims to understand their rights and get access to justice, but also as a tangible form of the state's presence in providing protection and recovery for victims who suffer losses due to a criminal offense and as a form of state commitment to ensure victims' rights are fulfilled and they get proper protection and recovery.

CONCLUSION

Legal aid for victims in the criminal justice system is needed to ensure that victims get justice and their rights are fulfilled. With good legal aid support that accommodates the needs of victims, both in the form of litigation and non-litigation legal aid assistance, it is hoped that it can ensure that the legal process is fair and transparent. If the process of legal aid assistance to victims is not carried out or has not run optimally, it is feared that victims will not dare to report the problems they experience so that the case does not enter the law enforcement process or enter the law enforcement process but does not accommodate the needs and recovery of victims so that victims do not get their rights, which in the end their cases will only be allowed to pass without clear accountability.

For this reason, the state must be able to provide protection and guarantees in the form of justice and legal certainty for all citizens without exception. In addition to the KUHAP which regulates legal protection for victims, the Legal Aid Law must also be able to ensure access to justice for all, including for victims to obtain litigation legal aid assistance. Thus, improvements are needed in legal aid services by expanding the contents of the regulations in Permenkumham No. 10 of 2015 jo. Permenkumham No. 63 of 2016 concerning the Implementation Regulation of Government Regulation No. 42 of 2013 concerning the Terms and Procedures for Providing Legal Aid and Distributing Legal Aid Funds which regulates the provision of litigation legal aid for victims.

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