

IBN KHALDUN INTERNATIONAL CONFERENCE ON APPLIED AND SOCIAL SCIENCES (IICASS)

Universitas Ibn Khaldun Bogor

Analysis of the Service System for Pro Bono and Legal Aid Cases at the Cibinong Religious Court

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ARTICLE INFO

DOI: 10.32832/

Article history:

Received:

August, 26 2024

Accepted:

August, 28 2024

Available online:

Nov, 01 2024

Keywords:

Competency Training, Work Productivity, Nurse Loyalty, Inpatient Care

ABSTRACT

The government of Indonesia is divided into three branches: legislative, judicial, and executive. The judiciary's role includes enforcing justice in cases of disputes between citizens and ensuring equal access to legal representation for all citizens, regardless of status. The state's support in a juridical normative form is outlined in the Indonesian Criminal Procedure Code (KUHP). The state is obligated to provide legal aid through public defenders, though many initiatives are community-driven, with some funded by local governments. These include legal aid posts (posbakum) and legal aid institutions (LBH). The state is responsible for covering legal costs for the indigent to ensure access to justice. This analysis aims to evaluate the effectiveness of pro bono services at the Cibinong Religious Court, identify challenges in providing these services, and assess the impact on low-income individuals' access to justice. This study employs library research with a descriptive qualitative method focusing on the pro bono service system and legal aid rights at the Cibinong Religious Court. Findings indicate that legal aid and pro bono services at the Cibinong Religious Court are effective and comply with government regulations stipulated in Perma No. 1 of 2014. Applicants for pro bono services must provide a certificate of indigency approved by their local village head and submit a request for pro bono proceedings when filing a lawsuit at the Cibinong Religious Court, addressed to the court's chairman. The court then determines whether the case qualifies for pro bono proceedings. Recommendations include a more active government role in providing facilities and infrastructure, particularly DIPA funds for pro bono cases at the Cibinong Religious Court, to ensure equitable service delivery. Additionally, the court should conduct outreach to raise awareness about available legal aid and pro bono services, especially among low-income communities. This outreach is expected to enhance public knowledge and access to these services, promoting the principles of swift, simple, and low-cost justice.

1. INTRODUCTION

Indonesia is referred to as a "Rechtsstaat" or a state governed by law, which guarantees the protection of human rights (HAM) for every citizen in the form of justice, assurance, protection, and equality before the law. This principle is enshrined in Article 1, Paragraph 3 of the 1945 Constitution of the Republic of Indonesia, which states: "Indonesia is a state based on law," implying that in such a state, the government is on equal footing with individuals, and state power is limited by human rights (Hendra Winarta, 2000). Government policies are crucial in addressing poverty-related issues, including those in the legal domain. When poverty intersects with legal matters, it not only has a material dimension but also involves the community's limited access to justice, which is their inherent right. The right to legal aid is implicitly regulated in the 1945 Constitution of the Republic of Indonesia in Article 28D, Paragraph (1), which states: "Everyone has the right to recognition, guarantees, protection, and fair legal certainty and equal treatment before the law" (Asshiddiqie, 2002).

Thus, the cost of legal proceedings is a mandatory requirement for parties wishing to litigate. Legislation explicitly states that if the plaintiff has not fully paid the court fees, their lawsuit cannot proceed further. However, the law also provides provisions regarding court fees for the indigent, allowing them to litigate without cost. This is regulated in Law No. 48 of 2009 in conjunction with Law No. 50 of 2009, which explicitly states that the state bears the court costs for impoverished justice seekers (Perma No. 3 of 2012). Among the programs included in legal aid policies is the pro bono litigation. Pro bono litigation involves the waiver of court fees for litigating parties (free of charge). It represents the state's economic responsibility towards the indigent, allowing those unable to pay court fees to receive equal justice before the law through pro bono services. Pro bono financing is divided into two categories:

1. Prodeo DIPA (Daftar Isian Pelaksana Anggaran) Prodeo DIPA refers to the waiver of court fees funded annually by the Budget Implementation List from the Supreme Court.
2. Pure Prodeo. Pure Prodeo is funded internally by the court through voluntary contributions from justice enforcers (judges, clerks/secretaries, legal aid posts, bailiffs).

The implementation of this pro bono litigation service program relies heavily on the active role of the government in fulfilling the rights of justice seekers, specifically providing pro bono services targeted at financially disadvantaged individuals.

2. RESEARCH METHODS

The research conducted by the author employs a library research method, which involves using literature such as books, notes, and reports from previous studies (Nasution & Rosyada, 2022). The research approach used is a qualitative method with a normative empirical approach. The normative empirical approach examines the implementation of positive and written legal provisions in specific legal events (Muhammad Syahrums, 2022). This research is conducted at the Cibinong Religious Court, located at Pemda Cibinong, Jl. Bersih No.1, Tengah, Kec. Cibinong, Kabupaten Bogor, Jawa Barat 16914. This location

is considered relevant to the title and objectives of the research, facilitating the research process. The research period is from May to June 2024.

3. RESULTS & DISCUSSION

3.1. Definition of Pro Bono

Pro bono is defined as legal cases handled without charge, provided free of cost to indigent or financially disadvantaged individuals seeking justice. Therefore, pro bono legal services refer to the provision of legal assistance and court litigation services at no cost to financially disadvantaged individuals (Article 121, Paragraph 4 HIR/Article 145, Paragraph 4 R.Bg).

3.2. Legal Basic for Pro Bono Law No.4 of 2004 on Judicial Power

- a. Article 5, Paragraph 2: Courts assist justice seekers and strive to overcome obstacles and barriers to achieving justice.
- b. Article 37: Everyone involved in litigation is entitled to legal assistance.

In the Quran, the term "justice" is mentioned over 1,000 times, with many commands for humans to act justly and uphold justice, making it a mandatory call to action (Saifuddin and M.D, 2005). The legal basis for pro bono services in Islamic law is found in the Quran, the Sunnah, and Ijma. Specifically, the Quran addresses this in Surah Al-Maidah: 48.

وَأَنْزَلْنَا إِلَيْكَ الْكِتَابَ بِالْحَقِّ مُصَدِّقًا لِمَا بَيْنَ يَدَيْهِ مِنَ الْكِتَابِ وَمُهَيْمِنًا عَلَيْهِ فَاحْكُم بَيْنَهُمْ بِمَا أَنْزَلَ اللَّهُ وَلَا تَتَّبِعْ أَهْوَاءَهُمْ عَمَّا جَاءَكَ مِنَ الْحَقِّ لِكُلِّ قَوْمٍ شَرٌّ جَعَلْنَا مِنْكُمْ شِرْعَةً وَمِنْهَاجًا وَلَوْ شَاءَ اللَّهُ لَجَعَلَكُمْ أُمَّةً وَاحِدَةً وَلَكِنْ لِيَبْلُوَكُمْ فِي مَا آتَاكُمْ فَاسْتَبِقُوا الْخَيْرَاتِ إِلَى اللَّهِ مَرْجِعُكُمْ جَمِيعًا فَيُنَبِّئُكُم بِمَا كُنتُمْ فِيهِ تَخْتَلِفُونَ

Meaning:

"We have sent down the Book (the Quran) to you (Prophet Muhammad) with the truth, confirming the previous scriptures and as a guardian over them. So judge between them according to what Allah has revealed, and do not follow their desires, deviating from the truth that has come to you. To each of you, We have prescribed a law and a clear way. If Allah had willed, He could have made you one community, but He tests you through what He has given you. So compete with each other in doing good. To Allah is your return all

together, and He will inform you concerning that over which you used to differ. (Surah Al-Maidah: 48).

3.3. Principles of Pro Bono

Legal services for underprivileged communities in court, as stated in Supreme Court Regulation (PERMA) No. 1 of 2014 Article 2, are based on:

- a. Justice
- b. Simplicity, speed, and low cost
- c. Non-discrimination
- d. Transparency
- e. Accountability
- f. Effectiveness and efficiency
- g. Responsibility and professionalism.

3.4. Pro Bono Procedures and Requirements

Procedure for Free Legal Services (Pro Bono) at the First Level in the Cibinong Religious Court:

- a. Application Submission: Plaintiffs/Petitioners submit a written or oral request for fee waiver before the first hearing.
- b. Supporting Documents: The request must be accompanied by a certificate of indigence (SKTM) issued by the local village head/chief stating the inability to pay court fees, or other relevant documents such as:
 1. Poor Family Card (KKM)
 2. Public Health Insurance Card (Jamkesmas)
 3. Rice for the Poor Card (Raskin)
 4. Hope Family Program Card (PKH)
 5. Direct Cash Assistance Card (BLT)
 6. Social Protection Card (KPS)
 7. Other documents related to the government's integrated database for the poor.
- c. Eligibility and Budget Check: The court clerk/secretary checks the eligibility for fee waiver and the availability of funds.
- d. Decision by Court Chair: The Chair of the Religious Court reviews the case file based on the clerk/secretary's recommendations and issues a Fee Waiver Service Order if the request is granted.
- e. Rejection of Application: If the fee waiver request is denied, the case proceeds as a regular case.

3.5. Procedure for Free Legal Services (Pro Bono) at The Appeal Level

- a. Application Submission: An oral or written request for pro bono is submitted to the Religious Court within 14 days after the judgment is delivered or notified.
- b. Hearing and Documentation: The Religious Court panel examines the pro bono request and records it in a hearing report.
- c. Submission to Higher Court: The report, along with the case files and a copy of the decision, is sent to the High Religious Court within seven days after the examination.
- d. Decision by Higher Court: The High Religious Court reviews the request and issues a decision, which is sent back to the original court.

- e. **Rejection of Application:** If the pro bono request is denied, the applicant can appeal within 14 days after notification, with the appeal fee being applicable.

3.6. Procedure for Free Legal Services (Pro Bono) at The Cassation Level:

- a. **Application Submission:** An oral or written request for pro bono is submitted to the Religious Court within 14 days after the judgment is delivered or notified.
- b. **Hearing and Documentation:** The Religious Court panel examines the pro bono request and records it in a hearing report as a consideration for the cassation level.
- c. **Submission to Supreme Court:** The hearing report, along with the case files, is sent to the Supreme Court.
- d. **Final Decision:** The Supreme Court panel simultaneously examines the pro bono request and the main case, issuing a final decision.

3.7. Requirements For Bono Cases:

- a. **Written or Oral Application:** Submission of a written or oral request for free litigation.
- b. **Certificate of Indigence:** The application must be accompanied by a Certificate of Indigence issued by the local village head/chief and acknowledged by the sub-district head, stating the applicant's inability to pay court fees.

3.8. Obstacles to Pro Boni Litigation at The Cibinong Religious Court:

- a. **High Volume of Applications:** The high number of pro bono applications results in the allocated DIPA budget being insufficient.
- b. **Transition to Pure Pro Bono:** If DIPA funds are exhausted, cases may be handled under pure pro bono, requiring stricter scrutiny by judges, who have full discretion to accept or reject applications. Fraudulent applications with falsified certificates of indigence result in funds being misallocated.

Impact of Legal Aid on Access to Justice for the Underprivileged. The pro bono legal aid system provides access for the financially disadvantaged to resolve their cases and achieve justice. Previously, many were unaware of legal aid, leading them to avoid legal resolution or incur debt, often exceeding the actual litigation costs. The pro bono program significantly benefits the underprivileged, alleviating concerns about court fees and encouraging them to pursue justice without financial barriers.

4. CONCLUSION & SUGGESTION

Based on the explanation provided above, the following conclusion can be drawn regarding the implementation of legal aid and pro bono services at the Cibinong Religious Court: The legal aid and pro bono services at the Cibinong Religious Court can be considered effective and in accordance with government regulations as outlined in PERMA Number 1 of 2014, meeting the required conditions. These conditions state that a petitioner or party wishing to file a case pro bono must provide a certificate of incapacity approved by the head of the village or sub-district where the petitioner resides, and submit a written request to file the case pro bono when submitting the lawsuit to the Cibinong Religious Court. The request will then be reviewed to determine whether the case can be handled pro bono. The procedure for applying for a pro bono case involves submitting the required documents, such as the Certificate of Incapacity (SKTM) and other similar certificates of poverty, along with the lawsuit. The resolution of pro bono cases at the Cibinong Religious Court is funded by the DIPA (State Budget Implementation Document) and is referred to as pro bono DIPA.

The court also provides a pure pro bono option, used when the DIPA budget is exhausted, with a more thorough review process conducted by the court. The main obstacle in the pro bono service system at the Cibinong Religious Court is the availability of funds. The annual budget allocated by the government to the Cibinong Religious Court is insufficient due to the higher number of pro bono applications compared to the allocated funds. However, the Cibinong Religious Court has taken an alternative approach by providing pure pro bono services, where the court fully covers the case costs, with a more rigorous review to ensure that the opportunity is genuinely utilized by those in need. Therefore, the government is expected to play a more active role in fulfilling the infrastructure needs, particularly the DIPA budget for pro bono cases at the Cibinong Religious Court, to ensure that the poor and those in need of legal aid are served fairly and adequately. This will help realize the judicial principle of providing fast, simple, and low-cost services. It is also hoped that in the future, the court will conduct socialization efforts related to legal aid and pro bono services, as this will help spread awareness about pro bono services, especially among the underprivileged communities.

ACKNOWLEDGEMENT.

WITH ALL DUE RESPECT, THE AUTHOR WOULD LIKE TO EXPRESS HIS DEEPEST GRATITUDE TO ALL THOSE WHO HAVE PROVIDED SUPPORT AND ASSISTANCE IN THE COMPLETION OF THIS ARTICLE.

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