

ANALYSIS AND EVALUATION OF LEGAL AID IN THE INDONESIAN COURT

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Abstract

This article examines the regulation and application of legal aid services in the Indonesian Courts. Normatively, guidelines for providing legal aid in courts are based on Law on Judicial Power, Law on General Courts, Law on Religious Courts, and Law on State Administrative Courts, as well as the Supreme Court Regulation Number 1 of 2014 (Perma). On the one hand, there is disharmony in the provision where the law determines that Legal Aid Post (Posbakum) are provided and applied at any level of the court until the decision is legally binding and executable, while in Perma, these are provided for only until the district court level. On the other hand, there is an expansion of the provision of legal aid services regulated in Perma, which is that the recipient of the services is not only required by the poor as stipulated by law but also for those who cannot afford to pay for advocate service. The leniency of this requirement is to facilitate people who are not categorized as poor but cannot afford to pay for the advocate service. In practice, there are several obstacles to providing legal aid services in court related to budget constraints, lack of information, and limited availability of facilities and infrastructure. This article contributes to the role of the Indonesian Court in providing unique access to justice.

Keywords: access to justice, legal aid, court, Indonesia.

Abstrak

Artikel ini membahas pengaturan dan penerapan layanan bantuan hukum di Pengadilan Indonesia. Secara normatif, pedoman penyelenggaraan pemberian bantuan hukum di pengadilan didasarkan pada Undang-Undang Kekuasaan Kehakiman, Undang-Undang Peradilan Umum, Undang-Undang Peradilan Agama dan Undang-Undang Peradilan Tata Usaha Negara, serta Peraturan Mahkamah Agung No.1 Tahun 2014 (Perma). Pada satu sisi terdapat disharmonisasi pengaturan dimana undang-undang menentukan bahwa layanan Pos Bantuan Hukum (Posbakum) diberikan dan berlaku kepada semua tingkat peradilan sampai putusan terhadap perkara tersebut memperoleh kekuatan hukum tetap dan bahkan sampai dengan eksekusi, sedangkan dalam Perma hanya sampai pada peradilan tingkat pertama. Pada sisi lain, terdapat perluasan ketentuan pemberian layanan bantuan hukum yang diatur oleh Perma yaitu pihak penerima layanan tidak disyaratkan orang miskin sebagaimana ditetapkan undang-undang, tetapi juga mereka yang tidak mampu membayar jasa advokat. Kelonggaran syarat tersebut untuk memfasilitasi orang yang tidak berkategori miskin tetapi tidak mampu membayar jasa advokat. Secara praktik, terdapat beberapa kendala dalam pemberian layanan bantuan hukum di pengadilan tersebut yaitu terkait keterbatasan anggaran, minimnya sosialisasi, dan ketersediaan sarana dan prasarana. Artikel ini berkontribusi pada peran pengadilan Indonesia dalam memberikan akses unik terhadap keadilan.

Kata kunci: akses keadilan, bantuan hukum, pengadilan; Indonesia.

Introduction

The understanding of “legal aid” since the issuance and enactment of Law Number 16 of 2011 on Legal Aid has been “specialized” to those administered by the Minister of Law and Human Rights (Article 6 Paragraph (2)). Legal Aid in Law Number 16 of 2011 is defined as *legal services provided by legal aid providers free to legal aid recipients* (Article 1 Point 1). Legal Aid Providers mean *legal aid institutions or social organizations that serve Legal Aid services based on this Law* (Article 1 Point 3). Meanwhile, Legal Aid Recipients indicate *people or groups of “poor people”* (Article 1 Point 2).

As it is known, apart from Law Number 16 of 2011, there are regulations on legal aid that have “other criteria”, including¹ Law Number 18 of 2003 on Advocates, which also regulates the legal aid free of charge held by the Advocate given to the justice seekers who can not afford (Article 22)². Free legal assistance from advocates is further defined by Article 1 Point 3 of Government Regulation Number 83 of 2008 on Requirements and Procedures for Providing Free Legal Aid as *legal services provided by Advocates without receiving payment of honoraria, including providing legal consultations, exercising power of attorney, representing, assisting, defending, and taking other legal actions for the benefit of incapable justice seekers*. From this context, free legal aid provided by the Advocate is bound to his profession³ as a charity in this case, is totally different from the legal aid as referred to by Law Number 16 of 2011, which in fact, is philosophically in the form of social welfare services⁴ from the government⁵ towards the poor in law.

Other than Law Number 16 of 2011 and Law Number 18 of 2003 above, Law Number 48 of 2009 on Judicial Power is also included, as

¹ Law Number 18 of 2003 on Advocates also helps with free legal aid provided by advocates for justice seekers who cannot afford it. It is determined by Article 22 that:

(1) Advocates are required to provide legal assistance free of charge to incapable justice seekers.

(2) Provisions regarding the requirements and procedures for providing legal assistance free of charge are regulated in Paragraph (1), further regulated by a Government Regulation.

² It is determined by Article 22 of Law Number 18 of 2003 that:

(1) Advocates are required to provide legal assistance free of charge to incapable justice seekers.

(2) Provisions regarding the requirements and procedures for providing legal assistance free of charge are regulated in Paragraph (1), further regulated by a Government Regulation.

³ Komalasari, R., Nurhayati, N., & Mustafa, C. (2022). Professional Education and Training in Indonesia. In O. Kulaç, C. Babaoğlu, & E. Akman (Ed.), *Public Affairs Education and Training in the 21st Century* (pp. 125-138). IGI Global. <https://doi.org/10.4018/978-1-7998-8243-5.ch008>

⁴ Komalasari, R., & Mustafa, C. (2021). *Meningkatkan Pelayanan Administrasi Publik di Indonesia*. PaKMas: Jurnal Pengabdian Kepada Masyarakat, 1(1), 20-27.

⁵ As suggested by Luhut M.P. Pangaribuan cited by Dimas Hutomo in the online legal clinic. The Difference between Pro Bono and Legal Aid, Thursday, April 18, 2019, accessed from www.hukumonline.com

well as the three packages of laws on the judicial jurisdiction under the Supreme Court (Law Number 49 of 2009 on General Court, Law Number 50 of 2009 on Religious Court, and Law Number 51 of 2009 on State Administrative Court) which have mandated that in all courts provide services of “legal aid” and Legal Aid Post (*Posbakum*). The Courts provide free legal aid to all levels until the verdict on the case is legally binding, including the waiver of execution costs. The parties provided with services of legal aid and *Posbakum* in this court are the “incapable justice seekers”.

The Law on Judicial Power and the three packages of Judicial Jurisdiction Laws (general, religious, and state administration courts) do not specify an explicit definition of services of legal aid and *Posbakum* other than those stated in the service⁶ criteria as referred to above. To clarify what *Posbakum* means in these laws, the Supreme Court issued a Circular Letter of the Supreme Court Number 10 of 2010 on Guidelines for Providing Legal Aid, in which Article 1 Paragraph (3) determines the definition of Legal Aid Post (*Posbakum*) is a *center provided by and at each District Court for In-charge Advocates in providing legal aid services to Legal Aid Applicants for filling out legal aid application forms, assisting in legal documents drafting, providing legal advice and consultation, providing further references on case fee waivers, and providing further references on advocate assistance service.*

In its development, the Supreme Court improved the guidelines for providing legal aid in the form of SEMA through Regulating Court Number 1 of 2014 on Guidelines for Providing Legal Services. Perma provides an expanded context from “legal aid” to “legal services”. In the sense of legal services, there is not only legal help as administered by *Posbakum* but also in the form of court and trial fee waiver services outside the court building. This expansion also does not focus only on a person or a group of people who should or must be “assisted” because of their economic inability (poor) but also includes providing extensive access by “picking up the ball” or bringing court services closer to people whose access is difficult or troublesome, reachable only through a circuit court or a congregation at a permanent congregation place. So,

⁶ Komalasari, R., & Mustafa, C. (2021). *Pendidikan Profesi dan Pengabdian Masyarakat di Indonesia*. PaKMas: Jurnal Pengabdian Kepada Masyarakat, 1(1), 28-36.

the inability of the justice-seeking community is, in fact, also interpreted as the inability to access trials or litigate cases in court due to the remote location or difficulty in transportation and accommodation.

In this article, the authors examine the suitability of the “legal services” of the courts to the poor justice-seeking community that has existed and has been in effect so far, where it intersects functions and goals with “legal aid” which has been specified in Law Number 16 of 2011 and Law Number 18 of 2003 mentioned above. The intersection in question regarding the existence of a common goal between the two, namely providing access to justice for the poor (economically incapable), aimed at realizing the fifth principle of Pancasila, namely social justice for all Indonesian people. The difference in the institutional context that carries out the service or legal aid function is between the executive (government power) played by the Ministry and the judiciary (judicial power) played by the court.

However, at a philosophical, sociological, and juridical level, there are differences that in particular contexts are not to be contested but can complement each other to realize comprehensive, systematic, and massive legal aid services to poor people seeking justice⁷ throughout Indonesia. In this study, we examine several impediments⁸ to delivering court-based legal aid services⁹. In this study, we explore the availability of legal assistance in Indonesian courts via the juridical lens. The statutory method is utilized to trace the previous legality and grasp the legal reasons and rules and regulations controlling legal aid services in Indonesian courts. “After obtaining the necessary information, we classified and analyzed the documents using descriptive¹⁰ and

⁷ Komalasari, R., Nurhayati, N., & Mustafa, C. (2021). *Keadilan bagi Penyalahguna Narkotika di Indonesia*. Arena Hukum, 14(3), 479-499. doi: <http://dx.doi.org/10.21776/ub.arenahukum.2021.01403.4>

⁸ Mustafa, C. (2020). *The perceptions of Indonesian judges in sentencing minor drug offenders: challenges and opportunities*. Jurnal Hukum dan Peradilan, 9(1), 1-26.

⁹ Mustafa, C. (2021). The Challenges to Improving Public Services and Judicial Operations: A unique balance between pursuing justice and public service in Indonesia. In *Handbook of research on global challenges for improving public services and government operations* (pp. 117-132). IGI Global.

¹⁰ Mustafa, C. (2021). *Key finding: result of a qualitative study of judicial perspectives on the sentencing of minor drug offenders in Indonesia: structural inequality*. The Qualitative Report, 26(5), 1678-1692.

qualitative¹¹ methods¹² as part of the document research. When it comes to Indonesian legal access to justice, the conclusions provided in this paper have never been more relevant or important than they are today.

The Necessity of Legal Aid in the Indonesian Rule of Law

Article 1 Paragraph (3) of the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945) stipulates that “the State of Indonesia is a constitutional state”. Of law, the law is the commander in determining the direction and manner and management of life in the country. Law is also the highest supremacy in regulating and determining the mechanism of legal relations between the state and society or its members’ community. It includes the violation of the law and disputes and conflicts, and the law is used as a means of resolution. In this context, the concept of the rule of law applies in the rule’s embodiment of law in the Indonesian state.

Apart from the supremacy of law, two significant characteristics in any rule of law based on AV Dicey’s “rule of law” are equality before the law and due process of law. The principle of equality before the law is adhered to by the Indonesian state has been confirmed in its constitution, namely Article 28D Paragraph (1) of the 1945 Constitution of the Republic of Indonesia, which states that “everyone has the right to recognition, guarantees, protection and legal certainty that is just and equal treatment before law”. The significance of treatment equal before the law is not only seen from the position of equality aspect alone but also regarding access to the competence or capability in access to justice.

Anyone who conflicts with the law must ensure to comprehend and understand and exercise their legal defense rights. Therefore, people who do not understand the law need assistance to improve their competence and capability in fighting for their rights before the law. For example, in criminal justice, suspects or defendants who are suspected and charged by law enforcers for committing an offense or crime do not necessarily or fully understand and apprehend how to defend

¹¹ Mustafa, C. (2021). *Qualitative method used in researching the judiciary: Quality assurance steps to enhance the validity and reliability of the findings*. Qualitative Report, 26(1), 176-185.

¹² Komalasari, R., Nurhayati, N., & Mustafa, C. (2022). *Insider/Outsider Issues: Reflections on Qualitative Research*. The Qualitative Report, 27(3), 744-751.

themselves because they are not law graduates. Compared with law enforcers who have the capacity (knowledge), and capability (expertise/skills) due to receiving special education and training from the state on legal methods, it is not the same as ordinary people or citizens who are the object of legal suspicion. In this context, there is inequality. Therefore, it is necessary for these people to provide legal counsel to oversee the implementation of procedural criminal law so that they fulfill it, especially in determining factual errors and proposing advice and negotiating for them.

In connection with the existence of a legal adviser, as mentioned above, not only for and dealing with criminal cases but in other cases such as civil matters and equal legal positions, the availability of a Legal Advisor is also necessary. For rich people in litigation, they can pay legal advisory services to face and help guard the legal process until it ends. It is not the case for the poor or needy who are still economically troubled in their daily lives, let alone pay for legal advisors. For the poor (needy people) who cannot pay for legal advisory services, the state must not ignore and must provide adequate and equal assistance for them so that there is no imbalance in legal defense. In this context, “positive discrimination” applies to place everyone in an equal position before the law, including in efforts to equalize competence or capability in “law” for every citizen.

When viewed from a broader philosophical perspective, the actual obligation of the state to ensure that everyone can have the same position before the law, as referred to in Article 28D Paragraph (1) of the 1945 Constitution of the Republic of Indonesia, is only limited to law enforcement construction. In the theoretical sense, it is only limited to “access to law” in “equality before the law”, and not yet included in “access to justice” in “due process of law” as administered by the judiciary or court. In general understanding, between “access to law” and “access to justice” is a unity in the embodiment of “equality before the law”. In a particular context, a person can gain access to the law in the form of an equal (equivalent) position with another party (the opponent in litigation) before the law enforcement process. In terms of access to justice through a judicial decision, he will get a “sense of fairness”, which is significantly different and substantively depends on the effort (attempt) to convince the judge in the trial evidence stage.

Whereas theoretically, as mentioned by AV Dicey, equality before the law and due process of law as elements or characteristics of the rule of law are distinguished, it applies to say that legal aid in law enforcement and legal aid in judicial administration in that court can be distinguished. As the statement by the United Nations Development Program (UNDP) in 2008, the injustice experienced by the poor is also increasing due to their inability to access judicial institutions or their marginalization from other channels of achieving justice. Similarly, Tri Astuti Handayani found that poverty which causes a low level of education and knowledge, makes the community unconscious of their rights, and even though they are aware of their rights, it still does not make them able to pursue justice.

The Existence of Legal Services by Courts Based on the Philosophy of Fairness

The court is a formal institution that is an estuary for obtaining justice in upholding the rule of law in the aspect of criminal, civil, religion, state administration, and even constitutional matters. Responding to the important position of the court, according to Roscoe Pound, the concept of the *rule of law*, which has the essence of *judicial*, always upholds the judiciary, both the people and the government. If they make mistakes, they must resolve them through the law. There is no difference in treatment between the people and the government in the eyes of the law (*equality before the law*).¹³ (Al-Zoubi, 2020)

A court is a place where the perpetrator of judicial power (judge) administers the judiciary to uphold law and justice. Justice is not only the law that is enforced but also pursued by the judge in court decisions. Besides procedural justice as stipulated by legislation, they also require judges to pay attention to and realize substantial justice based on the outcomes of examination and trial evidence. In addition, they also need judges in court to explore the value of the law and the sense of justice that develops in society. In this context, it also directs judges as the

¹³ In Baher Johan Nasution, *State of Law and Human Rights*, (Bandung: Mandar Maju, 2011) p. 9. See also Al-Zoubi, M. See also *Legal Aid in the Criminal Matters in Jordan*. JL Pol'y & Globalization, (2020) 93, 77.

primary organ of the court to have sensitivity in realizing *social justice*, including the interest of *access to justice* from *poor justice* seekers.

Sociologically, in responding to the diversity of justice seekers, not all of them can litigate in court, and Article 56 of Law Number 48 of 2009 stipulates that *every person involved in a case has the right to legal assistance, and justice seekers who cannot afford the costs of the case are borne by the State*. It is determined by the Article 68B and Article 68C of Law Number 49 of 2009, Article 60B and Article 60C of Law Number 50 of 2009, and Article 144C and 144D of Law Number 51 of 2009 that in every court, namely the district court, religious court, and state administrative court, it is mandatory for the establishment of a Legal Aid Post (Posbakum) for justice seekers who unable to get legal assistance. They provide the legal aid from Posbakum at no charge to all levels of the judiciary until the verdict on the case has permanent legal force, including the cost of execution in this case. From this context, Perma should also regulate the facilitation of Posbakum, which provides legal assistance and aid to the poor people who have litigation at all levels of the judiciary until the completion of the case (execution of the decision).

The obligation to provide legal assistance to incapacitated justice seekers by the court as regulated by the Law on Judicial Powers and the three packages of judicial jurisdiction laws above is in line with Article 5 Paragraph (2) of Law Number 39 of 1999 on Human Rights: “*Everyone has the right to have fair assistance and protection from an objective and impartial court*”. Fairness assistance and protection from the courts referred to by the Human Rights Law is one of the human rights (HAM). Such services include the right to obtain justice by submitting applications, complaints, and lawsuits in criminal, civil, and administrative cases and being tried through a trial process that is free and impartial, under the procedural law which guarantees an objective examination by an honest and upright judge, fair to obtain a just and unbiased decision.¹⁴ (*vide* Article 17 of Law Number 39 of 1999).

By taking into account the mandate of helping justice-seeking communities unable to comply with the above statutory provisions, the Supreme Court and its subordinated Judicial Bodies carry out a program

¹⁴ Mustafa, C. (2020). *The influence of sunni islamic values on rehabilitation as judicial decision for minor drug users in Indonesian court*. Ijtihad: Jurnal Wacana Hukum Islam dan Kemanusiaan, 20(1), 79-96.

to provide legal services for disadvantaged people in court. The provision of legal services for the poor in this court is guided by Perma Number 1 of 2014. This Perma divides legal services for the underprivileged people in court into 3 (three) types, namely Court Fee Waiver Service (LPBP), Outside Court Building Session (SLGP), and Court Posbakum¹⁵.

LPBP is the state that bears the cost of proceeding to court cases so that every person or group of economically incapable people can litigate for free¹⁶, which applies to the first level, the level of appeal, level of cassation, and review¹⁷. LPBP is implemented by assisting with case handling fees, which are charged to the budget of the Court unit and can be implemented as needed in each fiscal year¹⁸. LPBP recipient is any person or group of economically disadvantaged people applying for a waiver of court fees. This economic inability is proven by an Incapable Economically Certificate (SKTM) issued by the Village Head/Lurah/Head of the local area or other Social Benefits Certificate such as a Poor Family Card (KKM), Community Health Insurance Card (*Jamkesmas*), or other documents, related to those people whom economically poor.¹⁹

The SLGP is a trial held regularly and periodically or a trial by the Court in a place within its jurisdiction but outside the domicile of the Court building in the form of a Circuit Court or Session at a Permanent Court Place²⁰. We intend the SLGP service provided by the Court to make it easier for every citizen who is unable or difficult to reach the location of the Court office due to cost or physical or geographic constraints²¹. However, not all cases can be carried out by the SLGP because the SLGP is only for a small claim court²².

Meanwhile, Posbakum Court is a service established by and available at every court of the first level to provide legal services in the form of information, consultation, and legal advice, and formulate legal documents required under laws and regulations governing Judicial

¹⁵ Article 1 Section 1 of Perma Number 1 of 2014

¹⁶ Article 1 Section 4 of Perma Number 1 of 2014

¹⁷ Article 1 Section 2 of Perma Number 1 of 2014

¹⁸ Article 8 of Perma Number 1 of 2014

¹⁹ Article 7 Section 3 of Perma Number 1 of 2014

²⁰ Article 7 Section 2 of Perma Number 1 of 2014

²¹ Article 14 of Perma Number 1 of 2014

²² Article 16 of Perma Number 1 of 2014

Power, General Courts, Religious Courts, and State Administrative Courts²³. As for legal services in litigation at the Cassation level at the Supreme Court, for example, the Posbakum authority is not specially regulated. The Posbakum service is intended against any person or group of people who are unable economically by the proven from SKTM, or a letter of a statement of other social benefits, and a letter of a statement of not being able to pay the advocate services. The statement letter was prepared and signed by the Applicant of Posbakum services and approved by the Court Posbakum Officers²⁴. With the statement letter of not being able to pay for advocate services in the way of obtaining Posbakum services, it is possible for people who are economically capable signing up for Posbakum services by signing the statement letter.

Analysis and Evaluation of Legal Aid Services by Courts in Indonesia

Normatively, there are differences in legal aid arrangements in court between the Law on Judicial Power and the three packages of Judicial Jurisdiction Laws (general, religion, and state administration courts), and the Perma Number 1 of 2014, including the validity period of legal aid services from Posbakum which by Perma Number 1 of 2014 is determined to only apply at the first level (Article 1 Number 2 and Number 6), while according to the Law on Judicial Power and the three packages of Judicial Jurisdiction Laws (general, religious, and state administration courts) where legal assistance from Posbakum should be provided and applied to all levels of courts until the decision is legally binding and even up to the execution. However, the services from Posbakum in the form of information, consultation, and legal advice, as well as preparing the required legal documents, will also benefit the poor (incapable economically) whose cases reach the level of appeal, cassation, and review.

As previously explained that assistance to increase the capacity (scientific) and capability in the *quo* law case at the court of appeal, cassation, and review is also needed to gain access to justice so that what the judges want/demand or defend can be “understood” by the judges

²³ Article 1 Section 6 of Perma Number 1 of 2014

²⁴ Article 22 Section 2 (c) of Perma Number 1 of 2014

besides the court of the first instance through the legal documents its submits. Therefore, under the mandate of the Law on Judicial Power and the three packages of law on general, religious, and state administrative courts, which have a higher hierarchical position than Perma in fact, then Posbakum determined by the law is not appropriate if Perma narrows its enforcement. Thus it is essential to consider in the evaluation of Perma Number 1 of 2014 to make changes, especially regarding the application of legal aid by Posbakum to all levels of the judiciary and including the execution of the final and binding decision.²⁵

Another problem is that although the Law on Judicial Power and the three packages of Judicial Jurisdiction Laws (general, religious, and state administration courts) stipulate the SKTM requirements, which explains the applicant's (poor) economic inability to get Posbakum services in court, Perma Number 1 of 2014 support the Affidavit who can not afford the services of lawyers, who prepared and signed by the applicant and the Court Posbakum service officer Posbakum approved by the Court (Article 22 Paragraph (2) c). In fact, in some courts, there is leeway in service delivery Posbakum, also addressed to people who are not poor law.²⁶ It is more of a court leadership policy to prevent and eliminate the practice of extortion in court, where court employees will offer assistance to the public by asking for fee services.²⁷

Different from the two settings Posbakum service of legislation with Perma Number 1 of 2014 on, there is a setting that is precisely SLGP not regulated and determined by the Judicial Power and three packages of Judicial Jurisdiction Laws (general, religious, and administrative courts). However, this expansion is "positive" because the court responsively picks up the ball by visiting a location that is more accessible to the justice-seeking community so that access to examination and court proceedings does not make it difficult for them both in terms of transportation and accommodation costs. In addition, the SLGP regulation in Perma Number 1 of 2014 implicitly states that those who need legal services are not only the poor, who are not economically capable, but also those who cannot access transportation and accommodation to access justice or litigate in court.

²⁵ Mustafa, C. (2021). *The view of judicial activism and public legitimacy*. Crime, Law and Social Change, 76(1), 23-34.

²⁶ Muhammad Zaky Albana, *Post Effectiveness...* Op Cit, p. 35

²⁷ *Ibid*

It is worth appreciating the SGLP service initiative and the understanding of the incapable economic community by providing a “pickup” solution from Perma Number 1 of 2014 and other legal aid providers, both from the Ministry of Law and Human Rights and the advocates that need to follow. In terms of funding, the two other legal aids can be carried out independently, but it would be better if they were compared with SGLP (in its activity package) so that not only Posbakum accompanied SGLP but also other forms of legal aid that had more complete service facilities (includes exercising power, accompanying, representing, defending, and/or taking other legal actions) can join in realizing *access to law and justice* for people in remote areas²⁸. For this reason, technically, the court needs to provide sufficient space for those who provide other legal assistance in the SGLP program.

In fact, in 2016, a cooperation agreement was signed between the National Law Development Agency (BPHN) of the Ministry of Law and Human Rights and the Indonesian Supreme Court through the Directorate General of General Courts, Directorate General of Religious Courts, and the Directorate General of Military Courts and State Administrative Courts, namely to establish cooperation and communication for the parties in an integrated manner for the sake of implementing access to legal aid for poor people facing legal problems (Article 1 Point 2). The role of Posbakum in the cooperation agreement is directed at providing references to Legal Aid Organizations accredited by the Ministry of Law and Human Rights of the Republic of Indonesia directly to poor people who face legal problems, both criminal cases, civil cases, state administration cases at the first level court, appeal level and cassation level until reconsideration (Article 4 Point 2). It is also under Article 25 of Perma Number 1 of 2014 Letter c, which states the Posbakum services, one of which is the provision of information on the list of Legal Aid Organizations as referred to in Law Number 16 of 2011 or other legal aid organizations or advocates that can provide legal assistance only. However, it would be better if the cooperation agreement could also accommodate cooperation in accessing or accompanying SGLP as

²⁸ Article 4 Paragraph (3) of Law Number 16 of 2011

referred above. So not only provide a list but also facilitate SLGLP together with Posbakum.

In some evaluative research results on Posbakum services in several courts (not all/certain), several weaknesses were stated, including: *first*, the lack of information dissemination about the existence of Posbakum to visitors/the community through both court personnel and Posbakum²⁹; *second*, the lack of written information available about the promotion of Posbakum services such as flyers, brochures, banners, and visual electronic devices or broadcasting institutions³⁰; *third*, inadequate facilities in the form of Posbakum rooms that are not strategic enough and the lack of work facilities and infrastructure available³¹, such as office stationery³²; *fourth*, funding or budget funds at Posbakum which are considered inadequate³³, especially in courts where many cases are less proportional to the number of applicants for Posbakum services such as the Special Class IA District Courts³⁴. As a result, the incapacity of the justice-seeking population to access trials or to fight matters in court is also characterized by the distant location or difficulties in transportation and lodging. Of course, some of these weak problems³⁵ need the attention of the Supreme Court to find solutions

²⁹ Tumbur Palti D. Hutapea, *Posbakum Harmonization Realizes Access to Justice for Poor People*, in Muhammad Zaky Albana, et al, *Implementation of Legal Aid Posts for Poor People in Courts*, (Jakarta: Puslitbang Hukum dan Peradilan Mahkamah Agung RI, 2018) p. 62

³⁰ Tumbur, *Op Cit*, p. 62

³¹ This office stationery is used by officers in serving legal aid applicants in every service. Office stationery, among others, such as paper is used to fill out service requests, for making claims and other legal documents, making reports, pens for writing services performed, folders for storing archives and others. Ari Prabowo, *The Role of Legal Aid Posts (Posbakum) in Bengkulu Religious Court Class I A Based on the Regulation of the Supreme Court of the Republic of Indonesia Number 1 of 2014*, Qiyas Volume 2, Number 2, October 2017, p. 204

³² Tumbur, *Op Cit*, p. 63

³³ Todiman Rajagukguk, *The Effectiveness of Court Legal Aid Posts as Providers of Free Legal Aid Services in Criminal Cases at Pekanbaru District Court*, JOM Faculty of Law Volume III, February 1, 2016, pp. 11-12

³⁴ Interview with Dr. Marsudin Nainggolan, S.H., M.H. former Chairman of the Medan District Court on Wednesday, 29 July 2020

³⁵ Mustafa, C. (2018, December). " Punishment, in fact, did not resolve the problem": The judicial perspectives on the sentencing of minor drug offenders in Indonesia. In *Papers from the British Criminology Conference* (Vol. 16, pp. 93-110). British Society of Criminology.

to overcome the obstacles mentioned earlier. In the event that a revision of the Perma is required and standard operating procedures are the same in terms of socialization and provision of an adequate budget for court legal services.

Concluding Remarks

Normatively, the Law on Judicial Power and the three packages of Laws on General Courts, Religion, and State Administration have mandated that every court held “legal aid” and a Legal Aid Post (Posbakum). They provide the legal aid in question free to all levels of the judiciary until the verdict on the case is legally binding, including waiver of execution costs. The parties provided with legal aid and Posbakum services in this court are “incapable justice seekers”.

As the implementation of the legislation above, the published Perma Number 1 of 2014 expands the context of “legal assistance” to “legal services”. In the sense of legal services, there is not only legal assistance as administered by Posbakum but also in the form of court and trial fee waiver services outside the court building. This expansion also does not only focus on a person or group of people who should or must be “assisted” because of their economic inability (poor) but also includes providing broad access by “picking up the ball” or bringing court services closer to people whose access is challenging, reachable through a circuit court or a congregation at a permanent congregation place. Therefore, the inability of the justice-seeking community is interpreted as the inability to access trials or litigate cases in court due to the remote location or the difficulty of transportation and accommodation.

The legal services of the courts to the underprivileged justice-seeking community that exists and apply under the Law on Judicial Powers and the three packages of Law on General Courts, Religion, and State Administration and Perma Number 1 of 2014 intersect functions and objectives with “legal aid”, which has been regulated in Law Number 16 of 2011 and Law Number 18 of 2003. Although there are differences in definition, scope, subject of the organizers, and the form and recipient of legal aid, the three are not to be contested but can complement each other to realize comprehensive, systematic, and

massive legal aid services to the poor people who seek justice in all regions of Indonesia. In addition, the Perma needs to be amended to include arrangements for facilitating legal services in the form of Posbakum to the level of the Cassation Court at the Supreme Court and until the execution of court decisions is complete.

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