

Implementation of Article 56 of the Criminal Procedure Code Concerning Legal Assistance for Suspects and Defendants

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ABSTRAK

Adanya prinsip-prinsip persamaan di hadapan hukum, merupakan petunjuk bahwa negara wajib memperhatikan masalah bantuan hukum bagi warganya. Bantuan hukum bagi orang atau kelompok orang yang tidak mampu menjadi suatu kewajiban yang harus diberikan, karena telah diatur dalam Pasal 56 Kitab Undang-Undang Hukum Acara Pidana. Tujuan dari dilakukannya penelitian ini, untuk mengetahui pelaksanaan Pasal 56 Kitab Undang-Undang Hukum Acara Pidana tentang bantuan hukum secara cuma-cuma terhadap tersangka dan terdakwa di wilayah hukum Kabupaten Batanghari. Penelitian ini menggunakan penelitian *yuridis empiris* dengan menggunakan sumber data primer atau data lapangan dan data sekunder yang diperoleh dari bahan hukum primer, sekunder, dan tersier. Hasil penelitian pelaksanaan Pasal 56 Kitab Undang-Undang Hukum Acara Pidana Tentang Bantuan Hukum secara cuma-cuma terhadap tersangka dan terdakwa di wilayah hukum kabupaten bener meriah belum terlaksanan dengan baik khususnya pada tahap penyidikan di Kepolisian.

Kata Kunci: Pelaksanaan, Bantuan Hukum; Tersangka.

ABSTRACT

The existence of the principles of equality before the law is an indication that the state is obliged to pay attention to the issue of legal aid for its citizens. Legal assistance for people or groups of people who are unable is an obligation that must be provided, because it has been regulated in Article 56 of the Criminal Procedure Code. The purpose of conducting this research is to find out the implementation of Article 56 of the Criminal Procedure Code regarding free legal assistance to suspects and defendants in the jurisdiction of Batanghari Regency. This study uses empirical juridical research using primary data sources or field data and secondary data obtained from primary, secondary and tertiary legal materials. The results of research on the implementation of Article 56 of the Criminal Procedure Code concerning free legal aid to suspects and defendants in the jurisdiction of the district are really lively and have not been implemented properly, especially at the investigation stage at the Police.

Keywords: Implementation; Legal Assistance; Suspect.



I. Introduction

The 1945 Constitution in Article 1 paragraph (3) confirms that Indonesia is a state based on law. In a rule of law state, the state recognizes and protects the human rights of every individual regardless of background, so that everyone has the right to be treated equally before the law (equality before the law). Equality before the law must be defined dynamically and not statically. This means that if there is equality before the law for everyone, then it must also be balanced with equal treatment for everyone. The existence of the principles of equality before the law and fair treatment for all people, is an indication that the state is obliged to pay attention to the issue of legal aid for its citizens.

The provision of legal aid that is not serious is a violation of human rights as stipulated in Article 18 paragraph (4) of Law Number 39 Hold 1999 concerning Human Rights, it is also contrary to the constitutional rights of citizens. The implementation of legal aid cannot be separated from legal rules that can guarantee law enforcement. The rule of law that guarantees the implementation of legal aid is the Criminal Procedure Code which has appointed and placed suspects and defendants in an equal position as God's creatures who have integrity and humanity.

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advocate or legal counsel (access to legal counsel) is everyone's basic right and is one of the elements to obtain justice for everyone.

The need for justice is one of the basic human needs that is always coveted by everyone, whether rich or poor. However, sometimes it can happen that it is easier for the rich with their wealth to obtain justice, so that they can master the mechanism of the operation of the law, even unfortunately in this way it will oppress the poor, which in turn will only create the impression that the law is only for the rich and not for the poor (Sunggono & Harianto, 2009). Often people who are classified as poor (the have not) are treated unfairly and are unable to obtain adequate legal services and defense (access to legal counsel) from advocates (legal advisers). Basically legal aid is the right of the poor which can be obtained without payment (*pro bono publico*) as an elaboration of equal rights before the law (Soekanto, 1983).

Law Number 16 of 2011 in Article 1 point 1 Regarding Legal Aid states that, "Legal Aid is legal services provided by Legal Aid Providers free of charge to Legal Aid Recipients". Free legal aid is legal services provided by advocates without receiving honorarium payments including providing legal consultations, exercising power of attorney, representing, accompanying, defending, and carrying out other legal actions for the benefit of justice seekers who can't afford it. Legal assistance for people or groups of people who are unable to afford it is an obligation that must be provided, because it has been regulated in Article 56 of the Criminal Procedure Code, namely:

- (1) In the event that a suspect or defendant is suspected or charged with committing a crime which is punishable by death penalty or fifteen years or more imprisonment or for those who are unable to afford it who is punished by five years or more imprisonment who does not have his own legal adviser, the official who concerned at all levels of



examination in the judicial process must appoint legal advisers for them.

- (2) Every legal adviser appointed to act as referred to in paragraph (1) provides assistance free of charge.

Seeing the above article, a suspect or defendant who commits a crime with a penalty of five years or more must be given legal assistance. However, the fact is that in the Bener Meriah Regency Legal Area in the implementation of free legal assistance (prodeo), based on the results of the initial research the authors found 55 suspects from 2015 to February 2016, with various cases ranging from theft, abuse and violence in the household (domestic violence). The number of suspects who were threatened with 5 (five) years in prison but did not receive legal assistance was 48 people and only 7 (seven) people who received free legal assistance.

Based on the background of the problems above, the problem formulation in this research is how is the implementation of Article 56 of the Criminal Procedure Code regarding free legal assistance to suspects and defendants in the jurisdiction of Batanghari Regency?

II. Methode

This type of research is juridical empirical and this research is analytical descriptive in nature, descriptive meaning that this research aims to describe the condition or symptoms of an object that is thoroughly and systematically studied. While the analysis will be carried out an analysis of the various aspects studied by legal principles and various legal understandings related to this research. The types of data used in this study are Field Research and Library Research, namely data sources obtained indirectly in the form of documents or literature and consist of primary legal materials, secondary legal materials, and tertiary legal materials (Suhartini & Surya, 2022). The method of data collection used in this research is interview and document study. The data obtained will then be analyzed using



qualitative methods, namely by describing the data that has been obtained based on legal norms or rules that are relevant to the subject matter.

III. Discussion and Analysis

Implementation of Article 56 of the Criminal Procedure Code concerning Legal Assistance to Suspects and Defendants in the Legal Area of Batanghari Regency

Criminal procedural law is the law that regulates how state instruments enforce material criminal law. More specifically, the purpose of criminal procedural law is to seek and obtain material truth or the real truth. The status of suspects in the development of formal criminal law occupies an important position. This is because the suspect and defendant are parties who are suspected of having committed a criminal incident. However, even though the suspect is a suspect, his rights must be maintained at every stage of the judicial examination. This is a manifestation of the high level of human rights upheld in the Criminal Procedure Code.

In the process of settling criminal cases, one of the rights of suspects and defendants is the right to obtain legal assistance, in addition to other rights such as receiving an examination, the right to be notified of their mistakes, the right to be immediately brought to court, the right to get a fair judge's decision. justice, the right to get family visits and others. Article 56 of the Criminal Procedure Code confirms "In the event that a suspect or defendant is suspected or charged with committing a crime punishable by death or a prison sentence of fifteen years or more or for those who are unable to afford a crime punishable by five years or more who do not have their own legal advisers, the officials concerned at all levels of examination in the judicial process are obligated to appoint legal advisers for them".

In practice, especially in criminal cases, the implementation of the provision of legal aid is very often neglected. A suspect whose case is as



referred to in Article 56 of the Criminal Procedure Code, in fact at the stage of investigation to examination at trial was not accompanied by a legal adviser, even though the word "compulsory" in Article 56 of the Criminal Procedure Code is very clear and firm. imperative meaning.

In providing legal assistance to suspects/defendants, legal advisors have an important position in every criminal justice system. Legal advisers (advocates) must be able to work together with law enforcement officials, namely the police, prosecutors and courts in achieving their common goals, namely preventing crime, preventing repetition of crimes and rehabilitating criminals and returning them to society. The profession of legal advisor (advocate) as part of legal aid must be able to carry out its role in defending people who are less able and do not understand the law at all who are usually the objects of torture, unfair, inhuman and degrading treatment and punishment.

Legal advisors (advocates) in providing legal assistance during the investigation stage are expected to have a fair legal process for suspects who are classified as people who are less able or who do not understand the law. In addition, to provide opportunities for the poor to defend themselves accompanied by professional legal advisors. The right to be defended and accompanied by legal counsel (advocate) is often ignored in the investigation process, even being detained without clear reasons according to law and being tried and sentenced without a fair legal process.

Article 56 of the Criminal Procedure Code gives rise to an affirmation in the Supreme Court Decision Number 1565 K/Pid/1991 which states that "If the requirements for the request are not met, such as when the investigator does not appoint a legal adviser and be accompanied by a legal adviser for the suspect from the start of the investigation, the demands of the public prosecutor cannot be accepted. The Supreme Court's decision gives a warning to investigators to comply with the suspect's request to provide legal



assistance. If the suspect expressly asks for the right to be accompanied by a legal adviser as stipulated in Article 56 of the Criminal Procedure Code, appoints a legal adviser and wants the examination to be attended by a legal adviser and the investigating officer does not appoint and does not provide a legal adviser, then at the trial court the lawsuit public prosecutor is unacceptable.

Based on research conducted by the author at the Batanghari District Police, there were 55 suspects who were sentenced to 5 years and above as shown in the table below.

Table 1
Data on Suspects and Types of Crime at the Batanghari Police
Years 2021-2022

No	Type of Crime	Amount
1	Pencurian	16
2	Penganiayaan	14
3	Kekerasan Dalam Rumah Tangga (PKDRT)	9
4	Narkotics	10
5	Illegal Logging	6
Jumlah		55

Source : Polres Kabupaten Batanghari

From the table above, it can be explained that the number of suspects and types of criminal acts in the jurisdiction of Batanghari Regency that occurred in January 2015 to February 2016, the crime of theft amounted to 16 cases, the crime of persecution amounted to 14 cases starting from minor maltreatment to serious abuse, 9 cases of Domestic Violence (PKDRT) crimes ranging from wife beating and violence against minors, 10 cases of Narcotics crimes, while 6 cases of Illegal Logging crimes.



From the above data, among the 55 people who were subject to criminal penalties of more than 5 years, only 7 suspects received free legal assistance, as explained in the following table:

Table 2
Number of Suspects Receiving Legal Assistance

No	Name	Type of Crime	Punishment
1	Suprianto bin Supardi	Pencurian	5 Tahun
2	Saharuddin Bin Subandi	Pencurian	7 Tahun
3	Salim Habibim Bin Erwin	Pencurian	7 Tahun
4	Santoso Bin Sunarto	Penganiayaan	6 Tahun
5	Alek Agustoni Bin Slamet	PKDRT	5 Tahun
6	Kamaruddin Bin Lahat	Kekerasan Terhadap Anak	6 Tahun
7	Safari Bin Syamsudin	Pencabulan	7 Tahun

Source : Polres Kabupaten Batanghari

Based on the table above, it can be seen that the number of suspects who are subject to imprisonment for 5 years or more and suspects who receive free legal assistance as mandated in Article 56 of the Criminal Procedure Code are 7 suspects, while the other suspects do not receive legal assistance. Of course this shows a violation of the rights of the suspect/defendant to get free legal assistance.

This was justified by Aipda Syaiful Bahri as the Assistant Investigator at the Batanghari Police, asserting that all criminal cases punishable by 5 years or more as stipulated in Article 56 of the Criminal Procedure Code, suspects should receive legal assistance in the form of legal advisor assistance starting from the level the investigation process to the trial process, due to budget constraints, the Batanghari District Police were only able to provide legal assistance to as many as 7 suspects.

The implementation of Article 56 of the Criminal Procedure Code in providing legal assistance at the investigation stage at the Batanghari



Regency police level has not been optimal. Based on interviews with Muspida as the Assistant Investigator of the Batanghari Police, the number of suspects is more than the number of legal advisers/advocates in the jurisdiction of Batanghari Regency, so that investigators find it difficult to provide legal assistance to suspects, while the process of examining suspects must be carried out immediately.

The procedure for legal assistance provided by police investigators to suspects is for the investigator to send a letter requesting the appointment of a legal adviser to one of the law offices that will be asked for legal assistance. The letter contains a request for free assistance to be able to accompany the suspect/suspects during the examination process, the request letter is accompanied by a police report. After receiving the request letter for the appointment of a legal adviser submitted by the investigator, the law office concerned will send one or several of their lawyers/advocates to accompany the suspect/suspects and then together with the suspects the advocates make a letter of appointment of legal advisors signed by the suspect and the advocates who has been appointed. With the letter of appointment of the legal adviser, legally the suspect already has a legal adviser who will accompany him.

According to Ahmad Rifai as Head of General Crime Section at the Batanghari District Attorney's Office, the provision of legal assistance in the form of legal advisor or advocate assistance is a continuation of the investigation level, so at the public prosecutor level, legal assistance will also be given to suspects or defendants. However, in practice there are still legal advisers/advocates who provide legal assistance unprofessionally or do not carry out their duties optimally. Like the legal adviser does not wait for the suspect or follow the course of the examination from start to finish. The suspect was left unaccompanied, and the legal adviser only asked for the



Minutes of Examination (BAP) from the results of the examination, and signed the files/letters in the Minutes of Examination (BAP).

Legal aid is the provision of legal services to people who are economically disadvantaged. On the basis of humanity, an institution was formed that specifically provides legal assistance to people or groups of poor people (those who are economically disadvantaged). This concept has been implemented with the existence of various Legal Aid Institutions in Bener Meriah Regency which provide legal aid services.

Legal assistance is provided on the basis of a request directly from the perpetrator of a crime or from someone suspected of committing a crime or indirectly from the family concerned or other parties. Legal assistance was also provided due to requests from the police and courts.

According to Reilawati as an LBH lawyer/advocate, in practice at the stage of examining suspects in the police, legal assistance is provided when making the Minutes of Examination (BAP) with notification of the suspect's right to obtain legal assistance, but legal assistance can only be enjoyed by suspects during additional examinations. , the suspect will immediately be examined even if there is no legal adviser/advocate.

Specifically in the provision of legal assistance in criminal cases at the stage of examining the accused in court, in addition to referring to the Criminal Procedure Code, guidelines have been issued for courts in the implementation of legal assistance as stipulated in the Supreme Court Circular Letter (SEMA) Number 10 Year 2010. With the Supreme Court Circular Letter (SEMA) Number 10 of 2010, there is already a guideline for the implementation of legal aid at the stage of examining the accused in a district court trial.

Guidelines for Providing Legal Aid in the General Courts Environment, There are 4 types of legal assistance that can be provided in the administration of legal aid namely, Legal Aid Posts, Advocate Services



Assistance, Exemption of Case Fees both Criminal and Civil, and Court Fees at Fixed Court Places (Zitting Plaats) or a trial outside the courthouse. In contrast to the implementation of legal aid at the stage of examining suspects at the investigative level, the provision of legal aid at the Batanghari District Court is provided and carried out through a Legal Aid Post (Pos Bakum) which is authorized and tasked with providing legal aid services.

According to Moratua Hasayangan Rangkuti as a Batanghari Court Judge, the Legal Aid Post (Posbakum) is a room provided by the Simpang Tiga Redelong District Court for Lawyers/Advocates who are picky in providing legal aid services to legal aid applicants. The lawyer/advocate who was at the legal aid post did not ask for and receive payment from the defendant at all. The court will provide a fee (payment) to the advocate for the legal assistance provided to the defendant, from Government funding through the Ministry of Justice and Human Rights.

The provision of legal assistance at the stage of examining the accused at trial is basically the same as at the stage of examining a suspect at the investigative level provided based on Article 56 of the Penal Code of Criminal Procedure Law with the qualification of criminal threats from the crime the defendant was accused of committing.

Moratua Hasayangan Rangkuti added, the mechanism for providing free legal assistance in criminal cases at the District Court, namely: The application is submitted orally or in writing to the Chief Justice accompanied by supporting documents, as follows: Certificate of Inability (SKTM) from the Village Head/Head Local village; or other Social Allowance Certificates such as Poor Family Cards or Community Health Insurance Cards (Jamkesmas) or Family Hope Program Cards (PKH) or Direct Cash Assistance Cards (BLT). Statement of incapacity made and signed by the Legal Aid applicant and known by the Head of the District Court.



The availability of the Legal Aid Post at the Batanghari District Court has shown the seriousness in administering legal aid and has shown that legal aid has been properly implemented which protects the rights of the accused by not carrying out an examination before the presence of a lawyer/advocate. The trial will be adjourned and will continue at the next session accompanied by a lawyer/advocate. The professionalism of advocates in the implementation of legal aid at the stage of examining the accused at the Batanghari District Court is also considered to be better. The lawyer/advocate did not ask for and receive payment from the defendant at all. Defendants can obtain their right to obtain legal assistance without charge or for free because the government has provided facilities and infrastructure in the form of funding to be given to lawyers/advocates in administering legal aid. So the implementation of legal aid at the Batanghari Court is better when compared to the implementation of legal aid in criminal cases at the stage of examining suspects at the investigation level.

IV. Conclusion

The implementation of Article 56 of the Criminal Procedure Code concerning free legal aid to suspects and defendants in the jurisdiction of Batanghari Regency has not been carried out properly, especially at the investigation stage, there have been irregularities in practice. For example, the implementation of legal assistance through the assistance of new legal advisers/advocates can be enjoyed by suspects during additional examinations, not during the initial examination and the examination process continues even without the presence of an advocate, the lack of professionalism of legal advisers/advocates in the implementation of legal aid.



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