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The Essence of Legal Assistance in the Perspective of Criminal Procedural Law and Human Rights

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Abstract: This study aims to examine and analyzes the ideals of laws and regulations in Indonesia on legal assistance based on the perspective of criminal procedural law and human rights. This research uses normative research methods. The collection of legal materials is done by using literature study techniques. The legal material obtained in this study was then analyzed qualitatively with a comparative approach to present conclusions and answer the research objectives. The results show that not all people can protect themselves before the court when they have legal problems. In addition, not all people understand legal issues or how the judicial mechanism works. In contrast, the ideality of legal assistance in Indonesia can be achieved by constructing laws and regulations based on several theories: the theory of legal protection, the theory of justice, the theory of law enforcement, and the theory of the legal system support each other. Therefore, it is recommended that the House of Representatives make amendments to all laws and regulations governing legal assistance. In this case, the amendments to Law No. 8 of 1981, Law No. 18 of 2003, and Law No. 16 of 2011. So with the amendments to these laws and regulations, the ideality of legal assistance in Indonesia can be realized based on the perspective of criminal procedural law and human rights.

Keywords: Criminal Procedural Law; Human Rights; Legal Assistance.

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I. INTRODUCTION

The provision of legal assistance is closely related to the criminal justice process. In this regard, Indonesia adheres to modern legal principles and follows the development of a global society that respects and upholds human dignity. In contrast, some people, especially those economically disadvantaged, think that legal assistance is costly and can only be enjoyed by certain community groups. Meanwhile, legal assistance should not be discriminatory. Legal assistance service providers must embody equal rights of legal subjects before the law (equality before the law), as based on Article 27 section (1) of The 1945 Constitution of the Republic of Indonesia (hereinafter referred to as The 1945 Constitution), which regulates that:

"All citizens are equal before the law and in government and duty to respect the law and government, with no exceptions."

Furthermore, legal assistance from the human rights perspective does not look at social, political, economic, religious, ethnic, and racial backgrounds. It has become an obligation for every State to be responsible for facilitating its people to obtain legal assistance. Article 28D section (1) of The 1945 Constitution regulates that:

"Every person has the right of recognition, securities, protection, and fair legal certainty, and equal treatment before the law"

From the provisions above, the State's responsibility can be understood as a condition in which the poor deserve attention to get access to justice and legal assistance. In this case, based on Article 34 section (1) of The 1945 Constitution regulates that:

"Destitute persons and abandoned children are taken care of by the state."

In respecting, recognizing, and enforcing the law and human rights, the State must make efforts to increase understanding and socialization to obtain legal assistance as the fundamental rights of its people. In this case, the State determines the direction of government policy in developing national law, especially in law enforcement. In addition, the State consistently provides legal assistance by prioritizing appropriate and non-discriminatory behavior to maintain human values. Implementing legal assistance that is not serious in providing equality to everyone seeking justice can be considered a severe violation of human rights. In this case, contrary to the constitutional rights of citizens.

In the judicial process, there is the principle of the presumption of innocence to suspects or accused. This principle demands law enforcement officials' responsibility to respect suspects' rights. In this case, before or the case is currently being processed in a court trial but does not yet have definite legal force (inkracht van gewijsde).However, violations of the right to legal assistance to suspects or accused are still common. In this case, the appointed advocate is unwilling to provide legal assistance services. In addition, law enforcers do not convey to suspects or accused to get legal assistance as a human right. The rights of suspects or accused are recognized and formulated in The Universal Declaration of Human Rights and The International Covenant on Civil and Political Rights.Article 11 section (1) of The Universal Declaration of Human Rights regulates that:

"Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence."

The problem is that not all people can access lawyers to assist them in court. Advocates are professional services, so their expertise must be paid for the services provided. Therefore, the advocate profession may also play a role in creating inequality in fulfilling human rights in the social order. So that the problem of human rights is getting worse and worse for people who are already blind to the law and there is no one to accompany them. In this context, it seems as if justice can only be fought for and obtained for those who can afford it.

Therefore, the State provides legal assistance facilities free of charge (prodeo/pro bono). In this case, for the realization of equality and treatment before the law. Legal assistance is not only a prerequisite to fulfilling the constitutional rights of citizens but is also one of the constitutional rights of citizens that the State must guarantee. In this condition, an important point is a fulfillment of legal assistance by the State, as well as the role of advocates as individuals who work in providing legal services.

Given the importance and broad scope of legal assistance, further analysis is needed from various stakeholders to answer the need for laws and regulations governing the implementation of legal assistance as a constitutional right, including:

1. Law of the Republic of Indonesia Number 8 of 1981 on the Code of Criminal Procedure (hereinafter referred to as Law No. 8 of 1981);
2. Law of the Republic of Indonesia Number 39 of 1999 on Human Rights (hereinafter referred to as Law No. 39 of 1999);
3. Law of the Republic of Indonesia Number 18 of 2003 on Advocates (hereinafter referred to as Law No. 18 of 2003);
4. Law of the Republic of Indonesia Number 16 of 2011 on Legal Assistance (hereinafter referred to as Law No. 16 of 2011).

Based on the description above, this study examines and analyzes the ideals of laws and regulations in Indonesia on legal assistance based on the perspective of criminal procedural law and human rights.

II. METHOD

This research uses normative research methods, including legal principles, legal systematics, legal history, and legal comparisons (Qamar, 2021). Legal material is a type of secondary data used in this study. Data collection is done using literature study techniques or tracing legal literature materials: reference books, legal scientific journals, legal encyclopedias, and related legal dictionaries. The data obtained in this study were then analyzed qualitatively with a comparative approach to present conclusions and answer the research objectives.

III. RESULTS AND DISCUSSION

A. The Essence of Legal Protection

The relevance of the essence of legal assistance in the perspective of criminal procedural law and human rights is still narrowly defined. Article 1 point 9 of Law No. 18 of 2003, explains that:

"Legal assistance is a legal service provided by Advocates free of charge to clients who cannot afford it."

Furthermore, Article 22 section (1) of Law No. 18 of 2003, regulates that:

"Advocates must provide free legal assistance to justice seekers who cannot afford it."

In contrast, legal aid providers use other terms in Article 1 point 13 of Law No. 8 of 1981, which explains that:

"Legal counsel is a person who has qualified under requirements set by or on the basis of law to provide legal assistance."

From the provision above, Manan (1995)put forward the ideal concept of providing legal assistance arrangements based on the perspective of criminal procedural law and human rights. Previously, Bagir Manan described the meaning of laws and regulations, including:

1. Every written decision issued by an authorized official or office environment contains rules of conduct that are general in nature or binding;

2. Are rules of behavior that contain provisions regarding rights, obligations, functions, status, or an order;
3. Is a regulation that has general and abstract characteristics, which means it does not regulate or is not directed at specific concrete objects/events/symptoms;
4. By taking an understanding in the Dutch literature, laws and regulations commonly referred to as *wet in materiele zin*, or often also referred to as *algemeen verbindende voorschrift*, including:

a. *de supra nationale algemeen verbindende voorschriften*;
b. *wet*;
c. *A MvB*;
d. *de Ministeriele verordening*;
e. *de gemeentelijke raads-verordeningen*;
f. *de provinciale stater verordebingen*.

Laws and regulations itself is one form of legal norms(Saraswati, 2013). In the legal literature and laws and regulations, in general, there are three kinds of legal norms that are the result of the legal decision-making process, namely:

1. Normative decisions that are regulating (regeling);
2. Normative decisions with the character of administrative determination (beschikking);
3. The normative decision is called a verdict.

In addition to the three legal products above, there is a form of regulation called policy rules (beleids regulations). Asshiddiqie (2006)defines it as a quasi-rule.Rahardjo (2014) then explained several characteristics of laws and regulations, including:

1. It is general and comprehensive, which is the opposite of specific and limited properties;
2. It is universal and is formed to deal with future events whose concrete form is not yet clear. Therefore, laws and regulations are not formulated only to deal with certain events;
3. Usually, laws and regulations contain a clause with the possibility of judicial review.

According to Krems (1979), that one big part of the science of legislation is the theory of laws and regulations (*Gestzgebungs-theorie*). The theory is oriented towards seeking clarity of meaning or cognitive understanding. Clarifying the meaning of laws and regulations is influenced by forming laws and regulations. Forming laws and regulations is a process of developing, implementing, enforcing, and understanding the law.

Legal development must be implemented comprehensively(Aziz, 2012). In this case, it must include legal substance or the content of laws and regulations. Therefore, so that the output of laws and regulations can reflect good quality as legal products, it is necessary to understand one of the basic foundations of its formation, namely the philosophical basis.

From the description above, it can be understood that the ideal concept of providing legal assistance arrangements based on the perspective of criminal procedural law and human rights is closely related to the philosophical basis for forming laws and regulations. The philosophical basis for forming laws and regulations contains views of life, awareness, and legal ideals(Amarini, 2018). In this case, it covers the atmosphere of mysticism and the philosophy of the Indonesian nation, which comes from Pancasila and the Preamble to the 1945 Constitution of the Republic of Indonesia.

In its position as the basis and ideology of the Indonesian state, Pancasila must be used as a paradigm (frame of thought, source of values, and orientation of direction) in legal development, including all efforts to reform it. Pancasila is a fundamental value that must always exist and be embedded in the life of the nation and state(Widiatama et al., 2020). Thus, the values contained in Pancasila are fundamental moral values that are always actual that always surround one another in the actions of Indonesian people.

The ideal concept of regulating the provision of legal assistance from the perspective of criminal procedural law and human rights is very relevant to the ideals of the nation's law and the paradigm of national law development(Gayo, 2020). According to Mahfud (2012), Pancasila has at least four principles that must be used as guidelines in the formation and enforcement of law in Indonesia:

1. The law must protect the entire nation and ensure its integrity of the nation. Therefore, it is not allowed to have norms in legal products that contain disintegration values.
2. The law must be able to guarantee social justice by providing protection. In this case, especially for the vulnerable group so as not to be exploited in free competition against the strong group.
3. The law must be built democratically and in line with the development of nomocracy (state of law).
4. The law must not be discriminatory based on any primordial ties and must encourage the creation of religious tolerance based on humanity and existence.

From the description above, it can be understood that laws and regulations have a philosophical basis (philosofiche gronslad or philosophical gelding) if their formulation or norms get justification (rechtsvaardiging) if studied philosophically.Therefore, the theory of legal protection asserts that every human being has fundamental natural rights(Aswandi & Roisah, 2019).

The beginning of the theory of legal protection comes from the theory of natural law or the sect of natural law. This sect was pioneered by Plato, Aristotle, and Zeno. This sect states that the law comes from God, which is universal and eternal. In addition, this sect considers that law and morals should not be separated. The adherents of this sect view that law and morals are a reflection and regulation internally and externally of human life, which is realized through law and morals(Sinay, 2020).

Thomas Aquinas in Sumaryono (2002), said that natural law is a provision of the reason that comes from God. In this case, it aims for the good created and disseminated by people to maintain social conditions. So far, the existence and concept of natural law are still widely contested and rejected by most legal philosophers. One of the reasons underlying the rejection of many philosophers of law against natural law is that they still consider the search for something absolute from natural law, which is only a futile and useless act(Mas, 2004; Sunarjo, 2014). At the same time, experts who reject this sect present works containing the basic logic of the sect of natural law.

There are different views of philosophers about the existence of natural law. However, it also raises many hopes from experts that the search for the absolute is a human yearning for the essence of justice. Until today's modern life, natural law as a universal, eternal, and absolute rule is still being discussed(Susilo, 2011). In this case, more and more legal studies discuss human rights issues.

Thomas Aquinas in Sumaryono (2002), said that natural law reflects eternal law (lex naturalis). Long before the legal history sect emerged, the natural law sect was not only presented as a science but also accepted as fundamental principles in laws and regulations. The seriousness of humankind's longing for justice is essential, where there is an implementation of a law that is higher than positive law. Natural law has shown that the essence of truth and justice is a concept that covers many theories. Various opinions of legal philosophers have emerged from time to time. In the 17th century, the substance of natural law placed a universal principle called human rights.

Article 1 point 1 of Law No. 39 of 1999, explains that:

"Human rights mean a set of rights bestowed by the Almighty God in the essence and existence of humans as creations of the Almighty God and which must be respected, upheld in the highest esteem and protected by the State, law, Government, and every person for respectability as well as protection of human dignity and worth."

From the description above, it can be understood that every human being is born as a creature created by God Almighty who naturally has fundamental rights: the right to freedom, the right to life, the right to be protected, and other rights. This fundamental value is in line with the principles of natural law in the 18th century, where Locke (1967) explained that legal theory rests on individual freedom and the primacy of reason. Locke (1967) also taught about the social contract. In this case, the ideal society does not violate fundamental human rights. Therefore, Locke (1967) concludes that humans who carry out social contracts are human beings who are orderly and respect freedom, the right to life, and property ownership as innate human rights.

From the description above, it can be understood that the authorities do not necessarily control these fundamental rights when the social contract occurs. On the other hand, the power that comes from the social contract is also not absolute. Therefore, power based on a social contract aims to protect human rights from threats from all sides. That is the essence of legal protection so that the state protects the fundamental rights of its people(Tanya et al., 2010).

A more explicit thought about law as a protector of human rights and freedoms of its citizens was put forward by Kant. Kant (2002) stated that:

"Humans are intelligent and free-willed creatures. The State is in charge of upholding the rights and freedoms of its citizens. The prosperity and happiness of the people is the goal of the State and the law. Therefore, fundamental human rights should not be hindered by the State."

Apart from the State's existence, fundamental human rights should not be ignored or taken away by anyone. Fitzgerald (1966), in his work Salmond on Jurisprudence, describes that:

"Law aims to integrate and coordinate various interests in society. In this case, the interaction presents a traffic of interest. Therefore, the protection of the interests of certain parties can only be done by limiting the various interests of other parties."

Furthermore, Rahardjo (2009) said that:

"The interest of law is to take care of human rights and interests. Therefore, the law has the highest authority in containing a series of norms to protect every human right and interest."

Every legal protection has stages where it is born and begins with a legal provision. As for all provisions of laws and regulations given to the community, it is nothing but an agreement. In this case, it regulates the behavioral relationship between community members and between individuals and the government, which is considered to represent the community's interests. On the other hand, the law must

protect a person's human rights due to being harmed by others. Therefore, regulations are formed so that every community can enjoy all human rights protected by laws and regulations.

Rawls (1971) argues that there are two principles of justice:

1. Everyone has the same right to the broadest fundamental liberties, as broad as equal liberties for all.
2. Social and economic inequalities should be regulated in such a way that:

a. Everyone benefits from living a social life; and

b. Everyone can compete for positions and institutional structures.

In contrast, the abovementioned principles can be considered an alternative way by the theory of utilitarianism as proposed by Hume, Bentham, and Mill. On the other hand, Rawls (1971)considers that community activities that are regulated based on utilitarianism principles will impact the loss of self-esteem of certain parties. In addition, utilitarianism's principle will also impact the disappearance of aspects of mutual service for the development of life together. Therefore, Rawls (1971)asserts that the Social Justice Theory is more brutal than what is considered reasonable by the community. In this case, it does not matter if every society sacrifices for the public interest. However, it is not justified if the poor are the first to be required to make sacrifices for the sake of the public interest.

According to Rawls (1971), the law must contain regulations in responding to conditions of inequality so that it can benefit the position of the weakest community groups. In this case, legal protection has been realized if it fulfills the following two conditions:

1. The condition of inequality still guarantees the maximum and minimum welfare limits for the weakest society groups. In this case, the situation of society must be such that it still provides utility to the weakest groups of society.
2. The condition of inequality remains based on positions that are open to all. In this case, the weakest community groups also have the opportunity to change their lives to be more prosperous.

According to Kelsen (2006), justice is a specific social order so that efforts to seek the truth can develop and thrive under its protection. As for the justice that Kelsen means: freedom justice, peace justice, democratic justice, and tolerance justice.

Law is closely related to justice. There are many opinions of experts who state that justice is the goal of the law. A legal and judicial system cannot be formed without paying attention to the aspect of justice. In this case, justice is an essential understanding of the legal and judicial system. On the other hand, there are general principles concerning a nation and State's interests. In this case, the belief that resides in the community is about just life. In addition, the purpose of the State and law is to achieve the greatest happiness for all its people.

In Pancasila, the word just is found in the second and fifth precepts. The values of fair humanity and social justice contain a meaning that substantially humans, as cultured and natural creatures, are fair, including:

1. Fair to oneself;
2. Fair to other human beings;
3. Fair to society, nation, and State;
4. Fair to the environment; and
5. Fair to God Almighty.

The consequences of the values of justice that must be realized include:

1. Distributive justice is a relationship of justice between the State and its citizens. In this case, the State is obliged to provide justice in the form of justice in sharing, welfare, assistance, subsidies, and opportunities to live together based on rights and obligations;
2. Legal justice is a relationship of justice between citizens and the State. In this case, citizens are obliged to present justice in the form of obeying laws and regulations applicable in the country; and
3. Commutative justice is a reciprocal justice relationship between citizens and one another.

B. The Essence of Legal Assistance

Legal assistance issues are regulated in Article 69 to Article 74 of Law No. 8 of 1981. However, Law No. 8 of 1981 does not provide a clear interpretation of what legal assistance means. Therefore, legal assistance can only be understood in Article 54, Article 56, and Article 114 of Law No. 8 of 1981.

Sahab in Prakoso (1996) stated that with the presence of the defense in the preliminary examination, the defense could see and listen to the examination of the suspect. As for Legal assistance, it has been regulated in several laws and regulations, namely:

1. Government Regulation of the Republic of Indonesia Number 42 of 2013 on Terms and Procedures for Providing Legal Assistance and Distribution of Legal Assistance Funds
2. Regulation of Minister of Law and Human Rights of the Republic of Indonesia Number 4 of 2021 on Service Standards of Legal Assistance
3. Regulation of the Supreme Court of the Republic of Indonesia Number 1 of 2014 on Guidelines for Providing Legal Services for Poor People in Courts

The above laws and regulations regulate the model of providing legal assistance through the general judiciary to suspects or accused who are less capable. The provision of legal assistance is not solely based on a sense of charity (compassion) for the poor but also on citizens' political rights(Angga & Arifin, 2018). In its development, the concept of legal assistance has always been associated with the ideals of the welfare state. The government must provide welfare to its people. Legal assistance is intended as one of the programs to improve people's welfare, especially in the social and legal fields(Afandi, 2013).

From the development of ideas regarding the concept of legal assistance, various variations of legal assistance are given to community members. Cappelletti and Gordley (1972)divide legal assistance into two models: juridical-individual legal assistance model and welfare model legal assistance.

Juridical-individual legal assistance is a right given to citizens to protect their interests(Ramdan, 2014). Implementing this legal assistance depends on the active role of the people who need it, where they can ask for legal advice (advocates), and then the advocate's services will be paid for by the state. At the same time, legal assistance for welfare is defined as a right to welfare which is part of the social protection framework provided by a welfare state. Legal assistance for welfare as part of the social policy is needed to neutralize uncertainty and poverty. Therefore, social development or social improvement has always been part of implementing welfare legal assistance.

An intensive role of the state is needed in realizing it because the state must fulfill its citizens' basic needs to give rise to the rights they can demand. The state can carry out the fulfillment of these rights through the provision of legal assistance to its citizens.

For the sake of legal development in Indonesia, the state aims to increase people's legal awareness, guarantee law enforcement and legal certainty, and legal services. In this case, the state makes efforts in the form of movements so that the public knows and understands it all, including providing legal assistance. With legal assistance in general, it can be said that all types of legal assistance are aimed at changing attitudes. Although this is not the ultimate goal, each legal assistance has a goal-directed to various social categories.

Understanding legal assistance is certainly still growing and being discussed. It is neither an established nor a finished concept. Conceptually, let us look at the objectives and orientation, the nature, approach, and scope of legal assistance activities, especially for the poor who do not understand the law in Indonesia. It can be categorized into two main concepts: the concept of traditional legal assistance and the concept of constitutional legal assistance.

Traditional legal assistance is legal services provided to the poor individually(Sihombing, 2019). The nature of legal assistance is passive, and the approach is very formal-legal, in the sense of seeing all legal issues solely from the point of view of the applicable law(Mustamu & Salmon, 2021). In this case, as a consequence of the nature and approach to legal services inside and outside the court. The orientation and purpose of this legal assistance are to uphold justice according to applicable law, which will be carried out based on the spirit of compassion (charity).

Based on this spirit of charity, Nasution (1996) said that legal assistance had been known since Roman times. This spirit is driven more by the motivation to gain influence in society. In the Middle Ages, the issue of legal assistance had a new motivation as the influence of Christianity, namely that everyone was competing to give charity (charity) in the form of helping the poor. At the same time, these actions present the values of nobility and chivalry, which people highly respect. Then, since the French and American Revolutions until today, the motivation to provide legal assistance has not only provided charity (charity) but has shifted and is more related to displaying "political rights" or citizens' rights based on the modern constitution.

The concept of traditional individual legal assistance is an old concept that is in line with the existing legal system, where legal assistance in every case, according to law, has a reason to be defended. However, the emphasis in the concept of legal assistance is more on the law itself, which is always assumed and considered neutral, same taste, and equal. This condition causes problems with quite often the law not providing justice, and even the law in its neutral position benefits those in power and those who have it and harms the majority of the poor.

The demands of development and partiality of the poor to legal assistance ultimately lead to a situation where traditional legal assistance is lacking and insufficient. Lubis (1993) said that there were several reasons behind this condition. First, the traditional and individual nature of legal assistance as in Article 259 of HIR and Article 35 to Article 37 of Law no. 14 of 1970. In this case, the provisions position legal assistance as not much different from individual health services. These individual conditions do not consider social aspects. Second, the current legal system supports the individual traditional legal system. In this case, it is still not possible for collective legal assistance in the procedural law (class action) as known and applied in America. Third, legal assistance is currently still very urban. In this case, it is still questionable whether legal assistance has reached the poor and suburban communities. Fourth, the passive nature of the law. In this case, the law acts more as a legitimacy of the status quo that maintains the pattern

of oppressive relations between the city's center and outskirts. Fifth, legal assistance is too tied to only positive legal approaches. In this case, less attention is paid to non-legal approaches that can help accelerate resolving disputes or social conflicts in society. Sixth, legal assistance is still running alone or at the stage of cooperating with other legal assistance organizations. In contrast, disputes and conflicts are not merely legal. Organizations outside the Legal Aid Agency should not only enrich our understanding of the conflict between the center and the outskirts of the city. In this case, the Legal Aid Agency must focus on accelerating the resolution of disputes or conflicts. Seventh, current legal assistance has not yet led to the creation of a social movement.

The concept of constitutional legal assistance, commonly referred to as structural, is legal assistance for the poor that is carried out within a broader framework of business and objectives (Firdausy & Mahanani, 2021). The nature of constitutional legal assistance is more active, where legal assistance is provided not only individually but also to community groups collectively. Politics and negotiations are taken in addition to the formal legal approach. All the essential parts of the concept of legal assistance structural then received perfect responses and discussions, especially within the Legal Aid Agency and outside the Legal Aid Agency itself. Even today, their concept is still actual and has become material for reflection or thought that develops the concept of legal assistance as a whole in Indonesia.

If studied and observed, the emergence and development of legal assistance structural is based on facts/realities on the ground. More specifically, what is happening in the community and generally in the legal world, which already considers the traditional concept of legal assistance to be inadequate and unable to serve as the basis for the operation of legal assistance in Indonesia. So it is not surprising that both practitioners and academics engaged in legal assistance, the concept of legal assistance structural very adequate and more feasible to implement.

Regarding the emergence and development of the concept of legal assistance structural, Nasution (1996) stated that:

"Legal assistance is essentially a program that is not only a cultural action but also a structural action directed at changing the social order that is more capable of providing a comfortable breath for the majority group. Therefore, legal assistance is not a simple matter. It is a series of actions to liberate the community from the shackles of the social structure full of oppression."

Legal assistance structure is an activity that aims to create conditions for the realization of the law as it should be. In this case, being able to change the unequal structure towards a more just structure. In addition, implementing and enforcing the law guarantees equality of position in terms of economic and political background. This condition must be seen from the point of view of the legal assistance structure. In this case, it is carried out in the context of helping to build a just and prosperous society.

The legal assistance structure was born as a consequence of understanding the law. The legal reality we currently face is a product of social processes that occur on a specific pattern of relationships amid the existing community infrastructure. If this is the case, the law is actually a constantly changing superstructure resulting from the interaction between the community's infrastructure. Therefore, as long as the pattern of relations between infrastructure shows unequal symptoms, this will further complicate the realization of a just law. So the role of the legal assistance structure is to reorganize society from sharp structural inequalities by creating power resources. At the same time, redistribution of power to carry out bottom-up participation. It can even be said that what is essential is that the poor majority living in the suburbs regain their fundamental rights: political, economic, technological, information, and other rights.

From the explanation above, the concept of a legal assistance structure can be characterized as follows:

1. Changing the orientation of legal assistance from urban to rural;
2. Making the nature of legal assistance active;
3. Utilizing more approaches outside the law;
4. Establishing more cooperation with other social institutions;
5. Making legal assistance a movement that involves the participation of many people (facilitators);
6. Prioritizing structural cases; and
7. Accelerating the creation of responsive laws that support social change.

Based on the characteristics of the legal assistance structure approach above, legal assistance activities do not merely provide legal services for cases that appear on the social surface. However, it must be able to resolve cases found among the poor and urban periphery to realize the effective implementation of the rights of the poor. In this case, legal education can be a beacon to create awareness of the poor's rights. Implementing this concept will solve the inequality problem between the center and the outskirts of the city. On the other hand, until now, the legal assistance structure movement has not been adequate. Therefore, all the offered and pursued processes are the first steps in a series of significant works that must be carried out simultaneously in all fields, and this requires a more comprehensive approach.

C. Ideality Laws and Regulations on Legal Assistance in Indonesia based on Criminal Procedural Law and Human Rights

The provision of legal assistance in the perspective of criminal procedural law and human rights is seen as inadequate and not maximized(Palilingan, 2015). In this case, legal assistance is regulated in all hierarchies of laws and regulations in Indonesia. Therefore, it is necessary to improve various laws and regulations that regulate criminal procedural law, advocates, paralegals, and legal assistance institutions. In addition, the ideal concept of legal assistance regulation in the perspective of criminal procedure law and human rights, namely the creation of detailed laws and regulations, guarantees justice, certainty, and protection of human rights for justice seekers who are faced with criminal law problems(Panjaitan, 2019).

Ideally, to guarantee the human rights of suspects or accused in criminal cases, it is necessary to improve the formulation of Articles in several regulations related to legal assistance. The provisions referred to include the following.

Article 54 of Law No. 8 of 1981, regulates that:

"For purposes of defense, a suspect or an accused shall have the right to obtain legal assistance from one or more legal counsels during the period of and at every stage of examination; according to the procedures regulated by this law."

Ideally, to guarantee the provision of adequate legal assistance to suspects or accused, the formulation of the clause in Article 54 of Law No. 8 of 1981 should have been amended so that it regulates that:

(1) For purposes of defense, a suspect or an accused shall have the obligation to obtain legal assistance from one or more advocates/legal counsels during the period of and at every stage of examination; according to the procedures regulated by this law.

(2) Any suspect or an accused who did not obtain legal assistance as referred to in section (1), the minutes of examination are null and void.

Article 56 of Law No. 8 of 1981, regulates that:

(1) In the event a suspect or an accused is suspected of or accused of having committed a offense which is liable to a death penalty or imprisonment of fifteen years or more or for those who are destitute who are liable to imprisonment of five years or more who do not have their own legal counsel, the official concerned at all stages of examination in the criminal justice process shall be obligated to assign legal counsel for them.

(2) Any legal counsel who is assigned to act as referred to in section (1) shall provide his assistance free of charge.

Ideally, to guarantee the provision of legal assistance without discrimination to suspects or accused, the formulation of the clause in Article 56 of Law No. 8 of 1981 should have been amended so that it regulates that:

(1) In the event a suspect or an accused is suspected of or accused of having committed an offense but does not have their advocate/legal counsel, the official concerned at all stages of examination in the criminal justice process shall be obligated to assign advocate/legal counsel for them.

(2) Any advocate/legal counsel who is assigned to act as referred to in section (1), cannot refuse to provide his assistance free of charge.

Article 114 of Law No. 8 of 1981, regulates that:

"A person is suspected of having committed an offense before an examination commenced by an investigator, the investigator shall be obligated to notify him his right to obtain legal assistance or that it is obligatory for him to be assisted his case by legal counsel as referred to in Article 56."

Ideally, to guarantee that the investigator shall be obligated to notify the rights of a suspect or an accused to obtain legal assistance, the formulation of the clause in Article 114 of Law No. 8 of 1981 should have been amended so that it regulates that:

(1) A person is suspected of having committed an offense before an examination commenced by an investigator, the investigator shall be obligated to notify him his right to obtain legal assistance from an advocate/legal counsel or that it is obligatory for him to be assisted his case by advocate/legal counsel as referred to in Article 56.

(2) Any investigator who does not notify legal assistance as referred to in section (1), the minutes of examination are null and void.

Article 22 of Law No. 18 of 2003, regulates that:

(1) Advocates must provide free legal assistance to justice seekers who cannot afford it.

(2) Provisions regarding the requirements and procedures for providing free legal assistance as referred to in section (1), are further regulated by Government Regulation.

Ideally, to guarantee that an advocate/legal counsel does not refuse to provide free legal assistance, the formulation of the clause in Article 22 of Law No. 18 of 2003 should have been amended so that it regulates that:

(1) Advocates/legal counsel must provide free legal assistance to justice seekers who cannot afford it.

(2) Any advocate/legal counsel who is assigned to act as referred to in section (1), cannot refuse to provide free legal assistance.
(3) Provisions regarding the requirements and procedures for providing free legal assistance as referred to in section (1) and section (2), are further regulated by Government Regulation.
Article 16 of Law No. 16 of 2011, regulates that:
(1) Legal Assistance funding required and used for the implementation of Legal Assistance in accordance with this Law shall be charged to the State Revenue and Expenditure Budget.
(2) In addition to the funding as referred to in section (1), Legal Assistance funding sources may come from:
a. grants or donations; and/or
b. other legal and non-binding sources of funding.
Ideally, to guarantee budget support for legal assistance from the government, the formulation of the clause in Article 16 of Law No. 16 of 2011 should have been amended so that it regulates that:
(1) Legal Assistance funding required and used for the implementation of Legal Assistance in accordance with this Law must be provided at a minimum of 20% of the State Revenue and Expenditure Budget.
(2) In addition to the funding as referred to in section (1), Legal Assistance funding sources may come from:
a. grants or donations; and/or
b. other legal and non-binding sources of funding.

Completion and or improvement of the clauses in the laws and regulations above is a consequence of Indonesia being a law-based state. However, if these provisions are not improved and refined, there will still be room for discrimination in legal assistance services. In addition, Article 56 of Law No. 8 of 1981 provides a classification of recipients of legal assistance services. In contrast, the ideal concept of legal assistance is that there is no need to classify criminal threats to obtain legal assistance. It is essential to amend these provisions to avoid discrimination and human rights violations in the process of providing legal assistance to suspects or accused. The regulation on legal assistance in Indonesia should ideally follow the criminal justice system in the United States. In this case, the Miranda Rule is based on the United States Constitution, which stipulates that a suspect can defend himself as much as possible according to the applicable regulations. The constitutional order to guarantee the human rights of a suspected person is based on the due process of law clause. In this case, Section 1 of The Fourteenth Amendment to the Constitution of the United States regulates that:

"... No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law ..."

From the provisions above, it can be understood that there is no discriminatory treatment against a person suspected of committing a crime. In this case, all suspects or accused get legal protection through legal assistance and human rights guarantees. So it is clear that there are differences and similarities in legal assistance services between Indonesia and the United States. In this case, Article 56 of Law No. 8 of 1981 and the Miranda Rule principle both open up space and guarantee legal assistance services. However, the fundamental difference is in classifying the threat of criminal sanctions as regulated in Article 56 section (1) of Law No. 8 of 1981. In contrast, the Miranda Rule principle guarantees legal assistance services without requiring classifying criminal threats to all suspects or accused. Therefore, the Miranda Rule principle does not contain discrimination. In addition, the Miranda Rule principle has strict sanctions if these provisions are not heeded. In this case, suspects or accused are obliged to be released, and the legal examination process is stopped.

With the improvement of various provisions in laws and regulations formulated and described above, all suspects or accused will get justice and equality before the law. In this case, the provision of legal assistance services in Indonesia is carried out without discrimination based on criminal procedural law and human rights. This condition is also in line with the ratification of the Universal Declaration of Human Rights carried out by the Government through the establishment of Law No. 39 of 1999. Article 3 section (2) of Law No. 39 of 1999 regulates that:
"Every person has the right to recognition, guarantee, protection, and fairly legal treatment as well as legal certainty and equality before the law."
Article 5 of Law No. 39 of 1999 regulates that:
(1) Every person is recognized as an individual who has the right to demand and obtain equal treatment and protection as befits his/her human dignity before the law.
(2) Every person has the right to fair assistance and protection from an objective and impartial court.
(3) Every person who belongs to a vulnerable group has the right to receive treatment and more protection with regard to its special.

From the provisions above, it can be understood that not all people can protect themselves before the court when they have legal problems. In addition, not all people understand legal issues or how the judicial mechanism works. That is why the process of providing legal assistance is known, as well as legal assistance carried out by advocates/legal counsel or legal assistance agencies. With legal assistance from advocates/legal counsel, the suspected person will have the opportunity to gain access to legal justice through an objective judicial process.

From the full description above, it can be understood that the essence of legal assistance is being sharpened by analysis of the theories that support it. In this case, the theory of legal protection, the theory of justice, the theory of law enforcement, and the theory of the legal system support each other. Therefore, this research can justify the urgency of legal assistance from the perspective of criminal procedural law and human rights.

IV. CONCLUSIONS AND SUGGESTIONS

Based on the results and discussion above, it can be concluded that not all people can protect themselves before the court when they have legal problems. In addition, not all people understand legal issues or how the judicial mechanism works. In contrast, the ideality of legal assistance in Indonesia can be achieved by constructing laws and regulations based on several theories: the theory of legal protection, the theory of justice, the theory of law enforcement, and the theory of the legal system support each other. Based on the description of these conclusions, it is recommended that the House of Representatives make amendments to all laws and regulations governing legal assistance. In this case, the amendments to Law No. 8 of 1981, Law No. 18 of 2003, and Law No. 16 of 2011. So with the amendments to these laws and regulations, the ideality of legal assistance in Indonesia can be realized based on the perspective of criminal procedural law and human rights.

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