

Implementation of Javanese Local Wisdom Principles as Alternative Solution for Non-Litigation Legal Aid Model for Marginal Community

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Abstract: Legal assistance for marginal community can be provided in the form of litigation and non-litigation. Legal aid providers will apply universal legal principles to alternative dispute resolution efforts. The principle of local wisdom should also be part of a universal principle, including the local principle of Java Wisdom. This study aims to provide an alternatives dispute resolution that can be used as an alternative solution for non-litigation legal aid provision model. This legal research uses statute and conceptual approach. The result of this research is in Javanese society there have been alternative solution principles for non-litigation legal aid model for marginal community by applying Javanese local wisdom principles. Javanese philosophies of life are the embodiment of local wisdom that can be used as an alternative solution for non-litigation legal aid provision model. The recommendations are the fact that the local Javanese wisdom principles can be used as alternative solution to non-litigation legal aid models in marginal community.

1 INTRODUCTION

Provision of legal aid is one of the manifestations of Indonesia as a state law. As a state of law, it is surely an obligation of the State to provide legal protection. Legal protection basically consists of two aspects, namely the application of the principle of state law and the existence of guarantees of granting human rights protection.

There are thirteen characteristics of the rule of law: the Supreme Godhead, the supremacy of the law, the equality before the law, the due process of law, the limitation of power, the independence of mixed organs, the impartial free judiciary, the state administrative court, the Constitutional Court, the democratic *rechstaat*, welfare *rechstaat*, transparency and social control (Asshiddiqie, 2016).

The existence of legal aid becomes one aspect of the realization of Indonesia as a state law. The legal rules relating to legal aid are still vague norms. Interpretation of the substance and procedure on the rule of law resulted in legal aid for marginal community in Surabaya not yet maximal (Wijayanti, 2017).

There are a few people know the substance and procedure for obtaining legal aid (Erwira, 2016)

Legal aid has not been maximally supervising the process of justice (Kuat, 2012). Legal aid organizations have not provided maximum protection to child laborers (Wijayanti, 2017). The judiciary does not yet have humanizing soul, almost all criminal cases get prison sentence after going through the judicial process (Setia, 2014).

Provision of legal protection through free legal aid programs for marginal community can be provided in the form of litigation and non-litigation. Non-litigation legal effort is often referred to as dispute resolution alternatives (APS / ADR). Legal assistance can also be provided for sharia economic cases in the Religious Courts. Resolving sharia capital market disputes as part of the sharia economic dispute, in litigation aspect are resolved in the Religious Courts while non-litigation settled through BASYARNAS and / or other civil disputes may also be resolved through the Alternative Dispute Settlement pursuant to Law 30/1999 on Arbitration (Hudiata, 2017).

In general, legal aid providers will apply a universally applicable law principle when making alternative dispute resolution efforts. Legal aid providers have not much to know, understand and implement the local culture.

The philosophy that exists in local culture is very important to be applied to all fields of science. There has been research related to the implementation of "*Manunggaling kawulo Gusti*" which is a part of Javanese philosophy in Java architecture (Adiyanto, 2011).

The principle of local wisdom should also be part of the principle of universal law. One of the legal principles in local wisdom is the philosophy found in Javanese culture.

1.1 Research Problem

From the above description, comes the problem of whether the principle of local wisdom of Java can be used as a provision of alternative solutions for non-litigation legal aid model for marginal community?

1.2 Research Methods

This research is normative law research using statute and conceptual approach. Normative legal research is a legal research that places law as the norm system.

The norm system consists of principles, norms, laws, court judgments, agreements and doctrines or teachings (Ranuhandoko, 2003). The method used in legal research conducted by examining the legal materials as existing library materials (Soerjono and Sri, 2009). The main legal research material is the rule of law and court judgement. Analysis of legal materials on the issues under the study is using interpretation or legal construction.

2 LITERATURE REVIEW

2.1 Legal Aid

Legal aid for marginal community can be done through non-litigation by applying the local wisdom principles of Javanese society.

2.1.1 Definition

Legal aid is legal service provided by legal aid providers for free to legal aid recipients (Article 1 of Law 16/2011). Legal aid is conducted on the basis of: justice, which means placing each person's rights and obligations proportionally, properly, correctly, well and systematically; equality before the law, means that everyone has equal rights and treatment before the law and the obligation to uphold the law; openness, means that giving access to the public to obtain a complete, correct, honest and an impartial

information in obtaining justice guarantee on the basis of constitutional rights; efficiency, means that maximizing the provision of legal assistance through the use of existing financial resources; effectiveness, which means that determining the attainment of the objectives of providing legal assistance appropriately and accountability of each activity and the final outcome of the activities of legal aid provision shall be accountable to the public (Article 2 of Law 16/2011 along with its elucidation).

The six principles contained in Law 16/2011 are in accordance with the principle of universal legal aid, namely accessible, affordability, sustainable, credibility, and accountability). The purpose of providing legal aid aims to: guarantee and fulfill the right of legal aid beneficiaries to gain access to justice; realize the constitutional rights of all citizens in accordance with the principle of equality before the law; ensure the certainty of the implementation of legal aid equally applied throughout the territory of Indonesia; and realize an effective, efficient, and accountable judiciary (Article 3 of Law 16/2011).

Legal aid is provided to assist in the settlement of legal issues faced by legal aid recipients (Article 6 paragraph (1) of Law 16/2011). The absence of free legal aid is a barrier to equitable access to justice (Kristel, 2015).

2.1.2 Forms of Legal Aid Provision

Forms of legal aid provision include exercising power, accompanying, representing, defending and / or taking other legal actions for the legal benefit of the Legal recipient (Article 4 of Law 16/2011). There are two forms of legal aid that are litigation and non-litigation.

The provision of legal aid litigation based on Decree of Minister of Law and Ham Number: M.HH-01.HN.03.03 year 2017, consists of: the criminal amounted to Rp. 8,000,000.00 per activity which covers the investigation stage (criminal)/the lawsuit stage (civil)/ the preliminary examination stage (administration) (Rp 2,000,000.00), the trial stage at the first level court (Rp 3,000,000.00), the Appeals Court stage (Rp 1,000,000.00), stage of appeal cassation (Rp 1,000,000.00), and review stage (Rp 1,000,000.00).

The provision of non-litigation legal aid includes: legal counseling, legal consultation, case investigation, electronic or non-electronic, legal research, mediation, negotiation, community empowerment, outside court assistance and/or drafting legal documents.

2.1.3 Non Litigation of Legal Aid

Provision of non-litigation legal aid based on Decree of the Ministry of Justice and Human Rights Number: M.HH-01.HN.03.03 year 2017, consists of:

- Legal counseling support amounted to Rp. 3.740.000,00 which covers the costs of: consumption of activities; professional services/speaker; doubling and binding the final report; documentation of activities; banners;
- Legal consultations amounted to Rp. 140.000,00 which covers the costs of: counselling ; doubling and binding documents;
- Case Investigation amounted to Rp. 290.000,00 which covers the costs of: consultation doubling and binding documents;
- Legal research amounted to Rp. 2.500.000,00 which covers the costs of: proposal writing; instrument; field research; tabulation or data processing; temporary report creation; scientific meeting or FGD ; doubling and binding documents;
- Mediation amounted to Rp. 500.000,00 which covers the costs of: Mediator ; doubling and binding documents;
- Negotiation amounted to Rp. 500.000,00 which covers the costs of: negotiator ; doubling and binding documents;
- Community empowerment amounted to Rp. 2.000.000,00 which covers the costs of consumption; professional services / speaker; doubling and binding; documentation; banner;
- Outside court assistance amounted to Rp. 500.000,00 which covers the costs of assistance to witnesses and / or victims of criminal acts; doubling and binding documents;
- Drafting of legal documents amounted to Rp. 500.000,00 which covers the costs of drafter; doubling and binding documents.

2.2 Local Wisdom

Local wisdom is often called indigenous knowledge. Used to describe a system of knowledge developed by a community that is contrary to scientific knowledge commonly referred to as modern knowledge (Parry et al., 2007).

Local wisdom is very important in people's lives, especially in the era of globalization. Currently there are many studies on how to deal with the negative impact of globalization. In general, attention is still limited to alternative solutions coming from outside / other countries. There are a few people who are

looking for alternative solutions by basing on local wisdom.

Research conducted by Mungmachon, M., states that globalization has a negative effect on the socialization of life in school, namely the loss of knowledge and traditional wisdom (Mungmachon, 2012). Similar to research conducted by Aromkliang, also shows that the philosophy of "Atoni Pah Meto" has been applied in Timorese society to save the environment (Aromkliang and Chatraphorn, 2014).

The potential for conflict in the community can be reduced through the values of local wisdom. Pela Gandong as a form of local wisdom which has an important role in reconciliation by reuniting the solidarity of communities broken up during the conflict in Maluku (Jati, 2013).

2.2.1 Definition

Local wisdom is the basic knowledge gained from a balance living with the nature. It can be explored through experience or truth obtained from the life of society. There is an integration of body, spirit and environment (Nakorntap et al., 1996).

Local wisdom can be an alternative solution in the inability to live together harmoniously (Miss, 2012). The ability to use local wisdom can be done by people in the city through self-adjustment (Na Thalang, 2001).

2.2.2 Forms of Local Wisdom

Local wisdoms are very important. They determine human dignity in the community (Geertz, 2007). The form of local wisdom can be categorized into two aspects, namely tangible and intangible. Types of local wisdoms include institutional, customary values, and systems and procedures. It attempts to accommodate local cultural values or customs into positive law done through the process of adoption, adaptation, and assimilation (Ernawi, 2010).

2.2.3 Javanese Local Wisdoms

Local wisdoms in Javanese society can be found through the philosophy of life of its people. This philosophies of life are used to run everyday life.

Alon-alon waton kelakon has similar meaning with slow but sure. It also means that people must work carefully, rigorous and focus in order to get maximum result gradually and sustainably (Almunauwar, 2017).

Aja gumunan, aja getunan, aja kagetan, aja aleman suggests people not to be easily wonder, regret, surprised, and spoiled. This philosophy

teaches us to be the one who can adapt in any situations. So they will not make trouble for themselves and others (Safira, 2018).

Sapa nandur, bakalan ngunduh basically contains retribution or *karma*. For those who collect goodness then one day will get the results. People who help a lot of others, he will get good *karma* someday. We are taught to compete to plant good wherever we are. It also means that our hard work will succeed someday (Safira, 2018).

Nrimo ing pandum means accepting God's gift with a sincere heart. This means that man always seeks and puts up any work he does during the work is good and right. Do not impose the will moreover to the detriment of others (Almunauwar, 2017). That philosophy means accepting all gifts. We should be sincere in facing everything happens in our lives. This is shown especially so that we do not become greedy and want the property of others (Safira, 2018).

Sepi ing pamrih rame ing gawe, banter tan mbancengi, dhuwur tan ngungkuli means doing things silently, working with spirit, fast without overtaking, and high without having to exceed (Almunauwar, 2017).

Mangan ora mangan asal ngumpul means that eating is not an important thing when we can still gather in a bond of unity. Thus, the concept of working concepts has dimensions of *ukhuwwah* or brotherhood and not limited to the lust of the world (Almunauwar, 2017).

Tuna satak, bathi sanak means that a little loss is not a problem to create a new family member. This phenomenon spawned a network of services, emotional, and financial (Almunauwar, 2017).

Urip iku urup means that life must be lit. If you follow this philosophy, you are invited to make our lives lit by helping those around us. The main point is that you should be able to benefit both the small and the big things (Safira, 2018).

Aja keminter mundak keblinger, aja cidra mundak cilaka means that do not feel the smartest if you do not want to go wrong and do not like to cheat. Corruptors are smart people but they are in the wrong way. They also cheat a lot of people. That is why we must always be humble in order to be safe in our life (Safira, 2018).

Sak bejo-bejone wong kang lali isih bejo wong kang eling lan waspodo. This philosophy is taken from the book of Ronggo Warsita the poet from the land of Java. It mean that the lucky person is the one who always remembers the God and careful in life. (Safira, 2018).

Ngunduh wohing pakarti means that everyone will get the consequences of all his own behavior. So,

we do not have to blame and look for the faults of others because it could be the result of what we did. So, we must be careful in doing any actions. (Safira, 2018).

Ngluruk tanpa bala, menang tanpa ngasorake, sekti tanpa aji-aji, sugih tanpa bandha. Attack without army, triumph without humiliation, powerful without supernatural power, rich without capital is the meaning of this philosophy. The meaning of these words is that we should be courageous despite fighting alone and always maintain prestige and always be grateful. (Safira, 2018).

Ajining diri saka lathi, ajining raga saka busana. The meaning of this philosophy is self-respect derived from oral and body honor derived from clothing. For the Javanese, the way to dress it determines the honor of the body and the way of speaking shows the honor of one's self. Our appearance and speech affect how people react and appreciate us. (Safira, 2018).

Becik ketitik ala ketara means that the goodness will be seen and evil will also appear. All deeds will be obvious whether good or bad. It is a teaching for us to make good acts frequently. If you do bad thing and hide it, be sure that one day it will also be revealed (Safira, 2018).

3 ANALYSIS AND DISCUSSION

Legal aid is needed for someone who is having legal problems and is unable to pay for advocates / lawyers. Law 16/2011 provides a guarantee of legal protection in the form of providing legal aid for free to the community in need. The aid provider is limited to an accredited legal aid agency.

The legal aid recipient is a person or group of poor people who face legal problems and who can not fulfill basic right appropriately and independently (including the right to food, clothing, health care, education services, work, and / or housing) (Article 1 number 1 jo Article 4 paragraph (1) jo Article 5 of Law 16/2011). The facts that a person or group of the poor are by having:

- Letter of poverty (SKTM) issued by the head of Village or Head of district of the same level stating that the concerned can not afford the cost of the case, or;
- Other social security certificates such as Poor Family Card (KKM), Public Health Insurance Card (Jamkesmas), Rice Poor Card (Raskin), card of *Keluarga Harapan Program* (PKH), card of *Bantuan Langsung Tunai* (BLT) KPS) or other documents relating to the list of poor

people in an integrated government database or issued by other agencies authorized to provide inadequate information, or;

- The statement of incapacity on the services of an advocate made and signed by the applicant of the Court Postal Service and approved by the Court Post of legal aid Officer if the Court's Post of legal aid service applicant does not have the document (Article 22 paragraph (2) of Perma 1/2014).

Recipients of legal aid are limited to the poor and does not include marginal community. The marginal community or grassroots is the bottom society that has poverty and exclusion problems and has no access to labor market, land, product distribution and certain rights (Samandawai, 2001).

Marginal community should be entitled to legal aid, both litigation and non-litigation. Provision of non-litigation legal aid based on Decree of the Ministry of Justice and Human Rights Number: M.HH-01.HN.03.03 Year 2017, including legal counseling, legal consultation, case investigation, legal research, mediation, negotiation, community empowerment, outside court assistance, legal documents drafting.

The legal aid providers in providing non-litigation legal aid to the legal aid recipients can apply the principle of local Javanese wisdom. Legal providers should always strive to provide great benefits to legal aid recipients. The legal aid providers can apply the Javanese philosophy of *urip iku urup*. Meaning that life must be lit. If following this philosophy, the legal aid providers should strive to make their lives lit by helping the people around them, including the recipients of legal aid. The point is that legal aid providers should be able to benefit both the small and the big things in the process of legal aid.

The topic of legal counseling and empowerment for marginal community can be in the form of brainwashing Javanese local wisdoms in marginal communities where legal counseling is conducted.

Providing legal consultations for marginal community who are undergoing civil, criminal or state administrative cases may implement Javanese local wisdom in the form of *ngluruk tanpa bala, menang tanpa ngasorake, sekti tanpa aji-aji, sugih tanpa bandha*. Legal aid providers can help to analyze the existing case appropriately so that the direction of the consultation may reflect that philosophy and can be a meaningful weapon for the struggle of the rights of the violated legal aid recipients.

Providing non-litigation legal aid in the form of investigation of cases, legal aid providers can apply

the basic philosophies of Javanese local wisdom of *alon-alon waton kelakon; sapa nandur, bakalan ngunduh; aja keminter mundak keblinger, aja cidra mundak cilaka; sak bejo-bejone wong kang lali isih bejo wong kang eling lan waspodo; ngunduh wohing pakarti; ajining diri saka lathi, ajining raga saka busana dan becik ketitik ala ketara*. As well as the existence of an adage or proverb which states that "the real opponent of an advocate is his own client". Often the legal aid recipient who is a client of the legal aid organization has not presented the whole facts of truthfully. Regardless of the element of intent or negligence, legal aid providers must be able to explore the truth of facts so that the results of the investigation of the case can be maximized.

Legal aid providers may conduct legal research or drafting legal documents in relation to the case of a recipient of legal aid. Javanese philosophy *alon-alon waton kelakon* can be applied in the process of legal research work. Legal research should be conducted in accordance with appropriate stages. Should not be hasty in doing legal research steps. Normative legal research can be done using statute approach, conceptual approach, historical approach or comparative approach. Legal aid providers must be careful, thorough, and concentrated in order to obtain maximum results in stages and sustainable. The final result of legal research can be legal opinion. Error determining the steps, so the result of legal opinion is not correct and will bring the possibility of negative impact for legal aid organization.

The provision of legal aid in the form of negotiation, mediation and outside court assistance can also apply the basic philosophy of Javanese local wisdom. Its implementation must be impartial. Both parties in dispute must be strived to understand and apply the existence of the spiritual responsibility to Allah SWT / God Almighty. The hope of *tuna satak bathi sanak* philosophy can be implemented. Achieving an agreement or peace on which the purpose of keeping the bonds of brotherhood among the people is maintained.

The fourteen Javanese philosophies have lived in Javanese society. Fourteen Javanese philosophies are local wisdom that can be a source of formal law in an alternative dispute resolution that can be used as an alternative solution for non-litigation legal aid provision model.

4 CONCLUSIONS

In Javanese society there has been alternative solution principle for non-litigation legal aid model for

marginal society by applying the principle of local wisdom of Java, that are *alon-alon waton kelakon; aja gumunan, aja getunan, aja kagetan, aja aleman; sapa nandur, bakalan ngunduh; nrimo ing pandum; sepi ing pamrih rame ing gawe, banter tan mbancengi, dhuwur tan ngungkuli; mangan ora mangan asal ngumpul; tuna satak, bathi sanak; urip iku urup; aja keminter mundak keblinger, aja cidra mundak cilaka; sak bejo-bejone wong kang lali isih bejo wong kang eling lan waspodo; ngunduh wohing pakarti; ngluruk tanpa bala, menang tanpa nagorake, sekti tanpa aji-aji, sugih tanpa bandha; ajining diri saka lathi, ajining raga saka busana dan becik ketitik ala ketara*. Javanese local wisdoms can be used as an alternative solution for non litigation legal aid model.

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