

Virtual Legal Aid Post (Posbakum) in The New Normal Era

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ABSTRACT

As a means of access to justice for the poor, the existence of the Posbakum can make it easier to obtain information, consultations, legal advice, and produce legal documents. In a pandemic situation like now, many people need legal aid, such as debtors who are unable to repay their debts, employees who are unilaterally laid off, or cases of domestic violence. However, the emergence of the Covid-19 outbreak made it difficult for the public to access the Posbakum because they had to go to it directly. This paper aims to analyze the implementation of the Posbakum procedures in the new normal era that apply social restrictions and physical contact. Even though since 2018, the Supreme Court of the Republic of Indonesia has implemented an E-Court system in court and since the Covid-19 pandemic started has held virtual trials. However, the Posbakum service has not been integrated with the current E-Court system. The method used is a qualitative method with data collection techniques through literature study and coupled with normative studies of the regulations related to the Posbakum service. The results showed that it is necessary to integrate the Posbakum service into the E-Court system of the Supreme Court of The Republic of Indonesia and the legal aid information database system (Sidbankum), which is managed by The Agency of National Legal Development (BPHN) of Ministry of Law and Human Rights as the mandate holder for legal aid administrators according to Law No. 16 of 2011 on Legal Aid.

Keywords: access to justice, legal aid, Posbakum, e-court.

1. INTRODUCTION

The provision of legal aid to citizens is an implementation of a rule of law that recognizes and protects and guarantees the human rights of citizens regarding the need for access to justice and equality before the law[1]. The right to legal aid is one of the most important rights that every citizen has because in every legal process, especially criminal law, generally it is impossible for everyone who is declared an accused in a criminal case to be able to defend himself in a process law and in legal examinations against him[2]. Therefore, the Government of Indonesia issued Law No. 16 of 2011 on Legal Aid, in which Article 2 states that legal aid is based on the principles of justice, equality in law, transparency, efficiency, and accountability[3].

In addition, previously, there were several regulations that became the basis for providing legal aid in Indonesia, namely:

a. Law Number 8 of 1981 on Criminal Procedural Law or KUHAP Article 56, Paragraph 1: "In the case of a suspect or defendant who is suspected or charged with committing a criminal offense punishable by death or a penalty of fifteen years or more or for those who are incapacitated who are liable to imprisonment of fifteen years or more who do not have their own legal advisor, the official concerned at all levels of examination in the judicial process are obliged to appoint legal advisors for them."[4]

- b. Law Number 39 of 1999 on Human Rights. Article 18, Paragraph 4 states that "Every person being investigated has the right to get legal aid from the time of the investigation until a court ruling has permanent legal force."[5]
- Law Number 18 of 2003 on Advocates. Article 22, paragraph 1 states that "Advocates are obliged to provide free legal aid to incapable justice seekers."[6]
- d. Article 4, Paragraph 22 of Law Number 48 of 2009 on Judicial Powers mentions that "Courts help justice seekers and try to overcome all obstacles and obstacles in order to achieve a simple, fast, and low cost trial"[7]

Universally, the right to legal aid has been guaranteed in the International Covenant on Civil and Political Rights (ICCPR). It was adopted by the United Nations General Assembly on December 19, 1966, and it came into force on March 23, 1976; the Indonesian government then ratified the convention on September 30, 2005[8]. The United Nations Development Program (UNDP) also stated that to form a democratic government and reduce poverty; it is UNDP's goal to strengthen access to justice, specifically by empowering the poor and disadvantaged in finding solutions to injustices they receive by strengthening the foundations of formal and informal justice structures[9].

For this reason, the Supreme Court of the Republic of Indonesia issued a Circular Letter of Supreme Court of Republic Indonesia No. 10 of 2010 on Guidelines for Providing Legal Aid. Then it was strengthened by the Regulation of Supreme Court No. 1 of 2014 on Guidelines for Providing Legal Services for Poor People in Court. According to the regulations, legal aid post (Posbakum) is a service established by and available at every court of the first level to provide legal services in the form of information, consultation, and legal advice, as well as the preparation of legal documents required in accordance with the laws and regulations governing Judicial Power, General Courts, Religious Courts, and State Administrative Court. The recipient of Posbakum services is "Every person or group of people who is economically disadvantaged and / or does not have access to legal information and consultations who require services in the form of providing information, consultation, legal advice or assistance in making the required legal documents, can get services at Posbakum."[10]

The need for access to justice through legal aid is increasingly felt during the current Covid-19 pandemic. Research from the Indonesia Judicial Research Society (IJRS) reveals several factors that have made the demand for legal aid increase since the pandemic. Among them are the many legal cases related to violations of social restrictions, cases of unilateral termination of employment, and cases of domestic violence[11]. In addition, there are also problems with access to health services in hospitals and access to government assistance. Meanwhile, divorce cases also experienced an increasing trend during the pandemic based on 2020 data[12]. Therefore, it is important to raise the issue of legal aid, especially Posbakum, in order to provide maximum service to people in need.

The problem raised in this research is that since the Covid-19 outbreak hit the world, including in Indonesia, the government has implemented strict rules regarding social distancing rules in public places, including in courts. The problem is that the services provided by Posbakum to the community must be carried out directly in court. So far, legal aid services in Posbakum require that legal aid recipients have to meet directly with a lawyer who is in charge of Posbakum. Based on data from the Supreme Court of the Republic of Indonesia, in 2020, Posbakum has served 312,963 hours of service in general courts, religious courts, and state administrative courts[13]. This means, if that many Posbakum service hours still have to be done face-to-face, then, of course, it raises concerns regarding the spread of the Covid-19 outbreak, which is still not under control. Especially with the implementation of PPKM (Enforcement of Restrictions on Community Activities) in several regions in Indonesia, it will certainly make it difficult for people to access the courts.

Until now, there has been no innovation regarding the provision of legal aid in court in accordance with the current pandemic situation. Based on these facts and problems, this paper seeks to answer research questions,

- 1) How does Posbakum respond to the current pandemic condition?
- 2) How about virtual legal aid services in other countries?
- 3) How to optimize Posbakum services virtually?

This paper aims to provide input to the Supreme Court of the Republic of Indonesia regarding innovations in providing virtual legal aid that will help the public to access legal aid through Posbakum without having to go to court.

2. RESEARCH METHOD

This research uses a descriptive qualitative approach, which is carried out by studying literature and a normative approach to statutory regulations. This paper also requires understanding and comparing the regulations relating to the provision of legal aid. In connection with the laws and regulations governing legal aid, normative research methods are also carried out. The approach used in the normative method is the statute approach and conceptual approach.

This research uses legislation and international agreement as primary legal materials. The legislation used is Law Number 48 of 2009 on Judicial Powers, Law No. 16 of 2011 on Legal Aid and Regulation of Supreme Court No. 1 of 2014 on Guidelines for Providing Legal Services for Poor People in Court. While the international agreement referred to is the International Covenant on Civil and Political Rights (ICCPR) ratified by the Indonesian government through Law No. 12 of 2005 on Ratification of International Covenant on Civil and Political Rights.

Then the secondary legal materials used include the results of the latest research on the provision of legal aid in Indonesia published through journals, scientific books, and through the internet/websites. The data collection method was carried out by literature study, conducting expert meetings, direct observation to the court observation, and in-depth interviews with stakeholders. The data obtained is analyzed by linking the facts obtained with the regulations or legal principles that have been explained.

3. FINDINGS AND DISCUSSION

For the poor, the existence of a court Posbakum can make it easier for them to get information, consultations, and legal advice and to produce legal documents. The existence of Posbakum also makes it easy for the community to seek assistance from advocates to proceed to court proceedings. However, the pandemic and the implementation of strict health protocols in the public space are feared to have made the provision of legal aid services in the Posbakum less optimal. Posbakum services as contained in Article 25 of Regulation of Supreme Court Number 1 of 2014 are as follows:

- 1) Providing information, consulting, or legal advice
- 2) Assistance in making the required legal documents
- 3) Provision of information on the list of Legal Aid Organizations as referred in Law No. 16 of 2011 on Legal Aid or other legal aid organizations or advocates who can provide free legal assistance.

The Supreme Court of the Republic of Indonesia has issued regulations related to public services during the pandemic through Circular Letter of Supreme Court of Republic Indonesia No. 6 of 2020 on Work System in the Court Environment The Supreme Court and the Judicial Body under it in a New Normal Order. According to the circular, court leaders were ordered to open online communication media as a means of consultation, convey information and new service standards to justice seekers electronically, and ensure that judicial service products carried out online remain in accordance with established standards.

The discussion will discuss the procedures for legal aid services in Posbakum in the new normal era and the integration of Posbakum services into the electronic court system at the Supreme Court of the Republic of Indonesia and the Sidbankum application belonging to the BPHN (The Agency of National Legal Development) of the Ministry of Law and Human Rights of the Republic of Indonesia.

3.1 Virtual Posbakum in Response to Pandemic Conditions

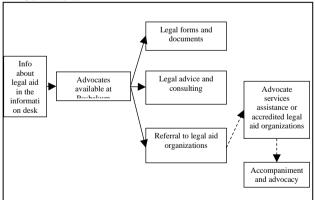


Figure.1 The stages of providing legal aid in Posbakum

The illustration above depicts the stages of providing legal aid in court begin with providing information about legal aid at the court information desk. Furthermore, legal aid recipients will be directed to Posbakum, where there are picket advocates who will help recipients of assistance only in information, consultations, or legal advice and assistance in making legal documents. If a legal aid recipient needs assistance until the trial stage, then a Posbakum advocate will provide information about legal aid organizations or NGOs that have been accredited by the Ministry of Law and Human Rights.

The requirements for obtaining Posbakum services include a Certificate of Economic Disability (SKTM) issued by the Village Head/Lurah, which explains that the person concerned is unable to pay court fees or Social Benefit Certificates such as Poor Family Cards (KKM), Health Insurance Cards Community (Jamkesmas), Family Hope Program Card (PKH), Direct Cash Assistance Card (BLT), Social Protection Card (KPS) or other documents related to the list of the poor and integrated government databases or issued by other agencies authorized to provide statements inability. If the Posbakum Service Applicant does not have the above documents, then he/she must make a statement letter of inability to pay for the services of an advocate, which is made and signed by the Posbakum applicant and approved by the Posbakum officer[10].

However, since the Covid-19 pandemic hit Indonesia, the government has imposed social distancing regulations which, of course, have an effect on legal aid services in Posbakum. The pandemic situation also puts advocates in Posbakum in a vulnerable position because their obligations as providers of legal aid require them to continue to provide services even though they are at risk of being exposed to Covid-19 if they meet face-to-face with people who need legal aid. Advocates can only refuse to provide Legal Aid with demanding reasons and considerations, or the designation given to him is not according to their expertise or against themselves with her conscience and her pleas if accepted will result in the occurrence of conflicts of interest as set out in Constitution[14].

Even though it was hit by the Covid-19 Pandemic, people's rights to obtain public services, including services for justice seekers, must not stop. As part of the legal services provided by the court, there is a need to also make adjustments to the services provided by Posbakum as part of the new normal court procedures. Advocates are expected to continue to provide consultation and assistance services for people seeking justice, especially for the poor, safely and within the corridors of applicable health protocols.

To solve the above problems, Posbakum should have innovated by forming a virtual Posbakum. Virtual Posbakum is the provision of legal assistance services by Posbakum virtually; the way is through the e-court application, through social media such as WhatsApp, or by telephone. Legal aid recipients can consult with advocates online without having to come directly to Posbakum in court. Meanwhile, assistance in making legal documents can be done by providing legal document templates online that match the needs of legal aid recipients. Thus, even though it is currently in a pandemic era, access to justice for the poor can still be realized. Because the concept of legal aid can help realize access to justice for the poor is a responsive legal aid concept that can answer challenges and obstacles[15].

There are several reasons for the application of virtual Posbakum in accordance with current conditions; the public can access Posbakum services anywhere without having to come directly to the court. Virtual Posbakum can provide answer services to questions that are often asked by the public. If they really need to meet the advocates in person at the Posbakum, they can make an agreement to meet in advance so that it will not cause a crowd in court. Virtual Posbakum is also a manifestation of support for the rules of social distancing and the implementation of health protocols that are implemented by the Government of Indonesia and the Supreme Court of the Republic of Indonesia. Besides that, virtual Posbakum can also save time, money, and energy so that people can get faster legal certainty.

3.2 Comparative Study of Virtual Legal Aid with Australia and Singapore

Legal aid in Australia, or precisely in the state of Tasmania, can be accessed online, and there is even a live question and answer feature (live chat) and complete with a variety of required information. Furthermore, in Singapore, just like Australia, the provision of legal aid can be accessed online. Even on the website, there is the slogan "save time, do it online" This means that not only virtually legal aid services can support the implementation of health protocols in the midst of a pandemic, but also save time and effort.

A comparative study conducted with Singapore and Australia is based on several considerations. Singapore is the most advanced country in the ASEAN region in digitizing court services, including online legal aid services. Even in 2018, the Supreme Court of the Republic of Indonesia conducted a comparative study in Singapore regarding the Electronic Case Management System. Singapore has become one of the examples by the Supreme Court of the Republic of Indonesia in the development of E-Court applications which in this study will be the basis for the virtual Posbakum application[16]. Meanwhile, Australia, to be precise, Tasmania has held discussions with the Religious Courts of the Supreme Court of the Republic of Indonesia regarding online legal aid services in 2020. The purpose of the meeting was to share experiences and the possibility of virtual or online Posbakum during the pandemic in the religious court environment as a legal service for the underprivileged[17]. In addition, Singapore and Australia have experience and a wellstructured online legal aid service system.

In Singapore, the legal aid service is run by the Legal Aid Bureau, which is under the Singapore Ministry of law. This Legal Aid Bureau serves civil matters such as divorce, custody and probate matters, legal advice, and legal assistance in drafting wills and contracts. Meanwhile, services that cannot be facilitated by the Legal Aid Bureau include criminal proceedings and certain civil proceedings such as defamation cases; proceedings before the Small Claims Tribunals and the Tribunal for the Maintenance of Parents; and Proceedings in the Family Justice Courts for maintenance and personal protection orders where the opposing party is not legally represented[18].

Legal aid services are not provided just like that, but applicants must meet the requirements of passing a means test (to determine your financial eligibility for legal aid) and a merits test (to determine whether there is a reasonable chance of your case succeeding in court) to be granted legal aid. Since October 16, 2019, if the applicant does not pass the two tests above, so legal aid is not free of charge as most applicants will have to pay a sum towards the costs of the work done for their case. This amount is assessed according to factors such as financial means, the nature of the case, and the amount of money to be recovered for the applicant[18].

In Tasmania, the legal aid service is run by the Legal Aid Commission of Tasmania (LACT) under the Legal Aid Commission Act 1990[19]. The governing body of the Commission consists of representatives of the Commonwealth and State Governments, the private legal profession, a person qualified in financial management, community representatives, and the Director of the Commission[19]. Legal Aid Commission of Tasmania has The Safe at Home Program to provide legal advice and assistance to victims/survivors of family violence, include:

- 1) Explanation of how to take out a Family Violence Order.
- 2) Assistance to write applications for Family Violence Orders and provide representation in court for the application.
- 3) Advice about what Orders mean, how they affect you, and what orders would enable you to work out issues about children and property.
- Advise and/or assist with applications to extend, vary (change) or revoke (remove) Family Violence Orders and Police Family Violence Orders.
- 5) Advice and assist you if charged with instigating a breach of a Family Violence Order.
- 6) Give general information about Family Law matters, especially children's living and time-with arrangements, and help you apply for a grant of aid for a Family Lawyer to act on their behalf.
- 7) Help you find out what is happening to the offender's criminal charges in the Magistrates Court and what is likely to happen as a result.
- 8) Where Police are making an application on your behalf, talk with them to help you achieve the outcome you would like.

The Legal Aid Commission may also provide appropriate referrals, including to the Court Support & Liaison Service, the Family Violence Counselling & Support Service, and the Police's Family Violence Unit (FVUs) [20]. Virtual legal aid in Tasmania allows people to appear via video, and this helps to access the courts in person, so this is very much felt by the poor[17]. Another function is to save time, it is an added advantage, and the function of legal aid will not decrease and remain optimal. Indonesia can benefit from the application of online legal aid, especially in cases of domestic violence which has increased during this pandemic. Often victims of domestic violence are afraid to directly report their situation. With online legal aid, victims can easily access lawyers or legal aid providers without having to leave their homes.

3.3 Integration of Legal Aid Services Posbakum With The E-Court System

E-Court is a service for registered users for online case registration, get estimated down payment of case fees online, payments online, trial summons made by electronic channels, and trials conducted electronically[21]. The Supreme Court of the Republic of Indonesia wishes that e-Court reduces issues related to the inefficiency of court proceedings in Indonesia, including the issue of slow processes in handling cases, the difficulty of accessing the courts, and the poor quality and integrity of the judicial apparatus all of which lead to a reputation for the low quality of the judicial process itself[22]. However, until now, legal aid services have not been included in the services provided by the e-Court system.

If virtual Posbakum can be integrated with E-Court, it will certainly make it easier to get legal aid because, with just one E-Court account, court service users will get access to all services, including Posbakum. Even though until now, services through e-court are still specifically aimed at advocates who have litigated cases in court. After registering and obtaining an account, registered users must go through the advocate validation mechanism by the High Court, where advocates are appointed, while registration from individuals or legal entities will be further regulated.

Furthermore, the Supreme Court of the Republic of Indonesia has made a cooperation agreement with the BPHN of the Ministry of Law and Human Rights in 2016 regarding the provision of legal aid to the poor by legal aid institutions that have been accredited by the Ministry of Law and Human Rights. According to the agreement, Posbakum can provide referrals to legal aid agencies accredited by the Ministry of Law and Human Rights of the Republic of Indonesia directly to poor people who face legal problems at the first trial, appeal trial, and cassation. This agreement can serve as the basis for the integration of the virtual Posbakum system with e-court and the legal aid information database system (Sidbankum).

Posbakum service integration virtually requires readiness from the E-Court and Sidbankum systems as well as the good wishes of policymakers from both the Indonesian Supreme Court and the Ministry of Law and Human Rights of the Republic of Indonesia. By integrating the Posbakum service into the E-court and Sidbankum systems, it will make it easier for the public to gain access to legal aid without having to go directly to a Posbakum advocate in court. The poor can also access legal aid organizations whose databases are in the Sidbankum application without having to leave the house and, of course, saves time and effort. The virtual Posbakum can also help advocates to provide services to legal aid recipients without having to be tied to the Posbakum picket schedule and can provide legal aid quickly and efficiently.

There are several challenges that may be faced if the virtual Posbakum is implemented in Indonesia. First, the virtual Posbakum requires adequate internet access so that it may be difficult for some people who have not been able to access the internet or are economically incapable of accessing the internet. Second, some areas often experience a shortage of legal aid providers, especially in remote areas. Third, the budget provided by the courts for the Posbakum service is still small; furthermore, due to the lack of a Posbakum budget in some courts, the Posbakum service hours are limited to only 2-3 hours per day. If the legal aid service provider has to perform Posbakum services virtually, the service hours will be 24 hours a day, and this can certainly burden the budget spent.

4. CONCLUSION

Based on the discussion above, there are several important things that must be done immediately to respond to the impact of the Covid-19 pandemic on legal aid services in Posbakum. Because the current condition continues, it will affect access to justice for the poor. The challenges faced in creating virtual Posbakum are, people in remote areas have difficulty accessing the internet. Furthermore, there are still courts in Indonesia that do not have Posbakum. There are no rules yet made by the Supreme Court of the Republic of Indonesia regarding the implementation of virtual Posbakum. Legal aid services in Posbakum have not been integrated with E-Court, and the E-Court application is not integrated with the Sidbankum application.

To overcome the problem of implementing virtual Posbakum services, the researcher recommends several suggestions that can be considered by policymakers. To overcome the limitations of internet access, the virtual Posbakum service can also be accessed via telephone or short message services. If there is a shortage of legal aid providers, Posbakum can provide opportunities for local paralegals or final year law students to be able to help fill the vacancy of advocates in remote areas. The same applies to overcoming the budget shortfall for Posbakum services if virtual services must be carried out by implementing a picket system for legal aid service providers.

Practically, it is highly recommended for the Supreme Court of the Republic of Indonesia to make new regulations and agreements as a legal basis for virtual Posbakum. It is also recommended to create a virtual Posbakum application that is integrated with the E-Court system. It is also hoped that the E-Court application can not only be used by lawyers but also people who seek justice, including those who need legal aid services in Posbakum. The Supreme Court of the Republic of Indonesia needs cooperation with the Ministry of Law and Human Rights of the Republic of Indonesia to integrate Posbakum with the E-Court system and the Sidbankum application. Finally, it is recommended to provide virtual Posbakum services on the court website so that it can make it easier for the public to access it.

AUTHORS' CONTRIBUTIONS

Muhamad Zaky Albana carried out the analysis of Posbakum practice in Indonesia in the current pandemic. Zulfia Hanum Alfi Syahr carried out the comparison of Posbakum practice in Singapore and Australia. All authors read and approve the final manuscript.

ACKNOWLEDGEMENTS

We would like to express our gratitude to the Law and Justice Research and Development Center, Supreme Court of the Republic of Indonesia, for supporting this research activity. Furthermore, we have to thank Adzkiya Azura Albana and Izarre Hanania Pratama for providing support on article preparation.

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