

Choosing Structural Legal Assistance: a Paradigmatic Study on the Effort of Justice

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Abstract. This study aims to understand the structural legal aid, and the contribution of paradigmatic study in structural legal aid as an effort to realize justice. This research is conducted using field research by conducting observations and interviews with stakeholders related to the application of structural legal aid with the support of literature review. Structural legal aid has a different way of working than usual legal aid. The way it works in carrying out legal aid cannot be separated from the meaning of justice believed in.. This makes structural legal aid interesting to be studied. Through philosophical studies, the main paradigmatic study will be traced in detail and in depth paradigms that guide structural legal aid.

Keywords: structural legal aid, philosophy, paradigm, justice.

1 Introduction

The state of Indonesia is a state of law. The statement is contained in Article 1 paragraph (3) of the Law of the Republic of Indonesia. The article emphasizes that the methods used by the state in solving problems must be carried out according to law. Rules are made, containing what is and isn't allowed. Every regulation that has been mutually agreed upon is made by the state, so that citizens are given proper attention. Law needs to be seen as an expression of the ideals of community justice.[1]

Therefore, a state which has declared itself to be a state of law must under any circumstances be able to realize justice.

The inauguration of Indonesia as a state of law listed in Article 1 paragraph (3) of the 1945 Constitution sends a message that there is a strong desire of the state to guarantee the implementation of equality in law, among others marked by the regulation of the right of everyone to get equal treatment before the law, as well as guarantee for everyone to get access to justice (justice for all and access to justice). These rights are the basic rights of every person that is universal. This is important to understand because so far, the state has always been confronted by groups of people who are poor or unable, both economically and knowledge to understand the law itself (legally blind) so that they cannot get justice.[2] Based on this, some legal figures were moved to form not only a forum for advocacy, but also legal education for them. Later, this movement would be known as its concept as 'Structural Legal Aid'.

In Indonesia, there is an institution called the Legal Aid Foundation (YLBH-LBH). This institution was formed on the idea of Adnan Buyung Nasution. In 1969, Buyung who was a young advocate launched the concept of legal aid that breathed the movement in the third congress of PERADIN in Jakarta, to be further realized by forming LBH in 1971.[3] Since it

was formed in Jakarta, it was called LBH Jakarta. After operating for a decade, the legal status of LBH was upgraded to YLBH. Until then, the legal aid institutions were formed in several regions in Indonesia.[4] In the case of LBH, the concept of Structural Legal Aid was developed.

Another fact about legal aid is about the Law Aid Law itself. The regulation on legal aid was only officially issued by the government in 2011, namely Law Number 16 of 2011 concerning Legal Aid.[5] Furthermore, in Article 1 of this Law it is explained that Legal Aid is a legal service provided by Legal Aid Providers free of charge to Legal Aid Recipients. This law becomes the basis of citizens' rights, especially for the poor or unable to obtain justice. The poor status of the person can be proven through a poor certificate from the village, it is contained in Article 14 of the Legal Aid Act. These laws also regulate the terms and procedures for providing legal assistance, funding, prohibitions, criminal provisions, transitional provisions, and the closing provisions are at the end of the law.

The implementation of the Law on Legal Aid which actually has long been carried out by YLBH-LBH. This foundation was officially established in 1970, long before the issuance of Law No. 16 of 2011. Other than that, what YLBH-LBH did not only provided legal assistance, but also community legal education. This is an interesting thing from YLBH-LBH. The author intends to conduct a study of the concept of Structural Legal Aid applied by YLBH-LBH. In accordance with the scientific discipline of the basics of legal science that the author is taking, the author plans to conduct a paradigmatic study of structural legal aid.

The knowledge of what is meant by the author's paradigm is obtained from lectures in Philosophy of Law. Erlyn Indarti introduces students to the 'paradigm' through the thinking of Egon G. Guba and Yvonna S. Lincoln. Furthermore, this paradigm study according to Guba and Lincoln is what the writer will use as a knife of analysis in writing this law. According to the author, the paradigm of Guba and Lincoln is more systematic and concise, and rational

The true paradigm is a philosophical system of 'umbrella' which includes certain ontology, epistemology, and methodology. Each consists of a series of 'basic beliefs' or worldviews that cannot be easily exchanged [with 'basic beliefs' or worldview from ontology, epistemology, and other paradigm methodologies]. [6] Through a paradigmatic study, the flow of Legal Philosophy which is basically a basic belief or worldview can be traced and sorted into ontology, epistemology, and methodology. [6] The paradigm can actually be referred to as 'mental tools/tools (mental tools) that we use each time we [try] to understand the various situations and conditions that we have, are, or will one day face. In short, the paradigm is the consensus of a scientific community; and arguably it is a concrete set of problem solutions. [6] Using paradigm as a tool to see the problem can be called a paradigmatic study.

The paradigmatic study enables Legal Philosophy to explore the differences that exist between the various schools of Legal Philosophy to then build understanding and use in more detail, subtle, and sharp. [6] By studying the main points of the flow of Legal Philosophy, it is hoped that the dynamics of various kinds of thinking about law can be traced. Other than that, the complexity of the law will also be revealed by various perspectives. Each school of Philosophy of Law is present with its own nature and legal objectives. The Philosophy of Law [Law] is not the same as the 'paradigm'. Every school of Philosophy [Law] is actually a part - and can be said to be embodied or born or rooted from a certain 'paradigm'. [6]

2 Research Method

In this paper, the author uses the term 'research process' to refer to the 'research method' section that is commonly used in the positivism principle. The research process can be seen as a series of phases that are interrelated and inseparable from one another. This aims to deliver researchers in order to achieve a deep understanding of the problems of the study in accordance with the objectives of the investigation to be achieved. Denzin and Lincoln in 'Introduction: Entering the Field of Qualitative Research' in the 'Handbook of Qualitative Research' (1994) as quoted by Agus Salim stated five stages of the level that constitute a series of research processes, namely researchers and things being studied as multicultural subjects; important paradigms and interpretive points of view; research strategy; methods for collecting data and analyzing empirical materials; the art of interpreting and describing the results of research.[7]

This research uses the tradition of qualitative research. According to Bogdan and Taylor, qualitative research is a research procedure that produces descriptive data in the form of written or oral words from people and observable behavior.[7]

Meanwhile, Kirk and Miller define qualitative research as a particular tradition in social science that fundamentally depends on observing humans, both in their area and in their terminology.[7] Another expert, David Williams, writes that qualitative research is collecting data on a scientific setting, using natural methods, and carried out by people or researchers who are scientifically interested.[7]

Denzin and Lincoln stated that qualitative research is research that uses a natural setting, with the intention of interpreting the 'phenomena' that occur and are carried out by involving various existing methods.[7] While Jane Richie, stated that qualitative research is an attempt to present the social world, and its perspective in the world, in terms of the concepts, behaviors, and issues concerning the human being studied.[7] From some of the opinions above, it can be understood that qualitative research involves the ability of the senses (able to capture phenomena) and the ability of the mind (being able to interpret).

Based on the paradigm proposed by Guba and Lincoln, this research is guided by the Constructivism paradigm. According to Guba and Lincoln in the Handbook of Qualitative Research as quoted by Erlyn Indarti, paradigm is an umbrella philosophy that builds and encompasses ontology, epistemology, and methodology that cannot be interchangeably between one paradigm with another paradigm, which represents a basic belief system from their use and then link their users to a certain worldview.[6] Furthermore, Guba and Lincoln propose 4 (four) main paradigms that cover more systematic, dense, and rational ways. The four paradigms are positivism, post-positivism, critical theory et al, and constructivism. The four paradigms are distinguished from one another through responses to 3 (three) fundamental questions, which include 'ontological', 'epistemological', and 'methodological' questions.[6] Berikut ini adalah '*Set Basic Belief*' dari keempat paradigma utama tersebut:

Table 1. Basic Belief Set of 4 (Four) Main Paradigms

Question	Positivism	Postpositivism	Critical Theory et al	Constructivism
	Naive Realism:	Critical Realism:	Historical Realism:	Relativism:
Ontology	external reality, objective, real, and understandable .	external, objective, and real realities that are understood imperfectly.	'virtual' reality formed by social, political, cultural, economic, ethnic and gender	compound and diverse realities, based on social-individual, local and

			'factors.	specific experiences.
	Dualists/Objectivists:	Modification of Dualists/Objectives :	Transactional/Subjectivist:	Transactional/Subjectivist:
Epistemology	the researcher and the object of investigation are two independent entities; free value .	dualism recedes and objectivity becomes the determining criterion; external objectivity.	researchers and related investigative objects interactively, findings are 'mediated' by values held by all parties .	researchers and related investigation objects interactively; the findings are copyrighted/'constructed' together.
	Experimental/Manipulative:	Experimental/Manipulative Modifications:	Dialogical/Dialectical:	Hermeneutical/Dialectical:
Methodology	empirical testing and verification of research questions and hypotheses; manipulation and control of opposite conditions; mainly quantitative methods.	falsification by means of critical multiplism or modification of 'triangulation'; utilization of qualitative techniques; more natural setting, more situational information and an emic perspective.	there is a 'dialogue' between the researcher and the object of investigation. is dialectical, doesn't transform stupidity and misunderstanding into awareness to break down.	'Construction' is traced through interactions between researchers and objects of investigation, with hermeneutical techniques and dialectical exchange 'construction' interpreted; goal: distillation/consensus/resultant.

3 Discussion

3.1 LBH and Structural Legal Aid

The legal aid program in Indonesia which is institutionalized and has a large scope is only started since the establishment of the Legal Aid Institute in Jakarta on October 28, 1970. What is meant by legal aid is special legal assistance for low-income people or popularly known as 'the poor'. Meanwhile, structural legal aid is a term that can easily turn into a slogan, while people expect something clearer and more decomposed.[8]

The legal aid movement must be seen as an effort to uphold human rights for the poor, who have long been 'held captive' by rich people, and that human rights will not be given away. Through the legal aid movement, that right must be usurped even though it must be realized that legal aid alone is not enough. Unclear and unfair structures must be overhauled and replaced with more equitable patterns of relationship.[9]

The purpose of legal aid thus needs to be expanded, not only limited to individual legal assistance but also rural. The mistake of the legal aid movement in Indonesia so far is because

the legal aid movement is too individual and urban in nature. Talking about human rights, then, the most oppressed due to violations of human rights are the poor from the lower structure who live in rural areas. It is time for our legal aid movement to actively come to the countryside and do legal aid work in the broadest sense.[8]

The important thing is this legal assistance to free poor people from the structures that oppress them. If this is the case, then the legal aid movement must be able to open the eyes and feelings of the poor that they are victims of an unjust social system. Awareness that they are poor and oppressed must be pumped on them.[8]

In changing the structure, the idea of a structural approach to legal aid must be spread, in addition to continuous lobbying. The legal aid movement must not only present itself as a representative of the poor, but become part of the lives of the poor themselves. With 'manunggal' with the people, the legal aid movement will be able to appreciate the problems that exist in the people and find a more appropriate solution. The mistake so far has been the direct involvement of legal aid itself. Providers of legal assistance tend to be the spokesperson of the poor, making the poor as a commodity.[8]

The purpose of structural legal aid is to realize a law capability of changing an unequal structure towards a just structure, where the rule of law and its implementation guarantee equality both in the political and economic fields. That is, the implementation and development of law in the perspective of structural legal aid in the context of helping build a just and prosperous society.[8]

In providing legal assistance, YLBHI has certain principles. YLBHI designed four priority cases that were of primary concern, including criminal, labor, environmental and natural resource allocation and land cases. In particular, the land case received a lot of attention because it was related to the distribution of economic resources of the poor. The issue of land in the future is very important because there will be many victims from development projects carried out by the government and the private sector. This land acquisition has the potential for extensive conflict.[8]

In addition, there is characteristic possessed by LBH-YLBHI in providing legal assistance, namely the case which is not only seen as something that must be resolved, but also to see a deeper social conflict. Thus the steps taken are not limited to legal actions but also politics, such as urging legislative institutions to demand recognition of rights, fair laws and the rejection of arbitrary powers.[8]

This perspective has implications for the evaluation system. Successful implementation of the program is not only seen in the win-win cases handled but also considers other social impacts.[8]

For LBH priority cases, the four sectors are to be entry points in developing:[8]

1. The legal function of realizing people's rights which has been de jure recognized
2. Alternative mechanisms for resolving legal conflicts with a public dimension
3. The function of criticism through the judiciary as a forum
4. Institutionalization of legal values and norms through awareness raising activities and publications in the legal field
5. Ideas on the establishment, renewal and enforcement of laws
6. The legal interests of people experiencing injustice through the courts, bureaucracy and other constitutional channels
7. The act of delegitimation and deconstruction of the concepts of state life which weakens the position of the people and at the same time constitutes an effort to fight against State hegemony.

The cases that need to be dealt with by this approach are first, the nature of the conflict revealed through the case is not only for the benefit of individuals, but also for the interests of lower social groups. Regardless of how many justice seekers are asking for legal assistance from LBH. Second, the vertical nature of the conflict, which confronts weak and strong groups of people. Third, the possibility for legal reform and development to better guarantee the interests of the poor.[8]

In the future, the characteristics of LBH organizations are more oriented to lower class people, especially farm laborers, small farmers, fishermen and urban marginal groups. These groups are part of the Legal Aid Society (MBH) and are an alternative way for collective advocacy, together with other non-governmental organizations. In addition to being the basis of the organization, they are a driving force for the achievement of justice for all.

3.2 Paradigm, Flow of Legal Philosophy and Structural Legal Aid

The following table presents the Paradigm, Legal Philosophy, and Structural Legal Aid:

Table 2. Paradigms, Flow of Legal Philosophy, and Structural Legal Aid

Paradigm	Flow of Legal Philosophy	Legal Reading	Structural Legal Aid
Positivism	The Flow of Positivism Law	The law is read rigidly, textually, without interpretation	As far as possible prioritizing non-litigation and extra-legal efforts.
Post-Positivism	Realist, Sociological and Society Law Flow	The law is read with independence and subjectivity in interpretation	Doing the interpretation before accepting the case that came in. Whether it is a structural case or not. Also, interpret how much influence litigation has on cases received. Given the litigation path tends to be used as a last resort in handling cases.
Critical Theory et.al	Critical Legal Theory, Feminist Jurisprudence, and Critical race Theory	Law is based on reality/virtual structure so that: <ul style="list-style-type: none"> tends to be unjust, oppressive, lame, exploitative. cannot be trusted just like that obligatory to be interpreted critically 	Efforts to mediate the parties to the dispute. There is a critical legal education that is held for the community. In addition it also held campaigns against cases that were being dealt with, built movements and mobilized the community for mass action.
Constructivism	Constructivist Law Flow		Dialogue as an effort to resolve the problem. By bringing together the parties to negotiate. Then provide an opinion on the problems that occur.

From the table above, the positivism paradigm with a naive realism ontology will read the law rigidly, textually and without interpretation. In handling legal cases, one of the strategies of structural legal assistance is through channels outside the judiciary. This method is preferred as far as possible because litigation efforts tend to have little influence on the structural cases being faced. Because in the positivism paradigm, law is also a closed logical system, which means regulations can be deducted from applicable laws without the need for guidance from social, political and moral norms.[10]

In contrast to the positivism paradigm, the positivism paradigm with ontology critical realism makes it possible to interpret the readings of the law. LBH examined the legal cases that came into them. Before approving the case being handled, LBH will see whether the case has structural elements/has other social impacts. If the legal case is an ordinary case, meaning there is no structural element or social impact, then structural legal assistance will provide legal opinion or suggest the dispute to take the case to another legal aid agency.

Moving far from the two paradigms above, there is the paradigm of critical theory et. al. This paradigm sees that law is based on an understanding of virtual reality so it cannot be trusted just like that. Critical theory sees that the law comes from understanding virtual reality which tends to be oppressive, lame, and exploitative. Therefore the law needs to be interpreted critically. These characteristics are characteristic of the way structural legal aid works. This can be seen from structural legal aid work such as:

- Provide critical legal education to the community
- Hold discussions about structural cases and their legal regulations
- Creating a campaign
- Open dialog space
- Mobilize the community for mass action

Whereas the constructivism paradigm assumes that law is a mental construction in the form of consensus or agreement that is relatively, and diverse. The constructivism paradigm will promote dialectical and hermeneutic dialogue, namely by understanding the opinions of each party and interpreting them to then produce consensus/resultante. These methods are also carried out in structural legal assistance, namely by bringing together the disputing parties to negotiate and dialogue honestly to reach an agreement. In these negotiations, LBH provided a legal opinion in accordance with the values of justice he believed in.

4 Conclusion

Based on the studies conducted in this legal research, there are several things that can be drawn as conclusions, including:

1. Through philosophical studies, it can be traced and distinguished subtly regarding structural legal aid. It can be found out the paradigm that guides structural legal aid. Paradigmatically, structural legal aid in this study was answered differently according to each paradigm that sheltered it. Different views of each paradigm can contribute ideas in studies of structural legal aid.
2. Structural Legal Aid with the paradigm of critical theory based on the concept of structural legal aid, justice can be achieved when there is no oppressive, lame, and exploitative system structure.

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