

# IMPLEMENTATION OF GIVING FREE LEGAL AID BY ADVOCATE TO CORRUPTION CRIME DEFENDANT AT CORRUPTION COURT OF CRIME 1A CLASS OF PADANG

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## ABSTRACT

The aim of giving free legal aid to corruption crime defendant by the advocate is the citizen right and advocate in giving legal aid to his client that is always used by the presumption of innocence principle. There is a method that was writer used in this research is the sociological research. The data source that writer was used is the primary and secondary data. The writer has used the qualitative technique in the analysis of data. Result and discussion are 1. Is the corruption crime defendant including the person who has to get free guiding by the advocate. 2. How the implementation of giving free legal aid to criminal act defendant at the court of Padang. The conclusion the writer's research is: 1. the corruption crime defendant is the person who has to get free guiding by the advocate. 2. The implementation of giving legal aid by the advocate to the corruption crime defendant is: (a). there is spontaneous without coordination first, (b). because of knowing each other. (c) because of the advocate was ever accompanied the other defendant in the corruption criminal as free.

**Keyword:** legal aid, advocate, corruption, defendant

## INTRODUCTION

The provision of legal aid by advocate is not only seen as an obligation merely as contained in Article 22 paragraph (1) of Law No: 18 of 2003 regarding Advocates. Which reads: Advocates are obliged to provide legal assistance free of charge to the justice seekers who do not only capable, but also must be seen as part of the responsibility that is closely associated with moral touch. Advocate's profession is a profession that is normative is a noble profession. This means that the Advocate in a work devoted himself to the interests of the community to help those less fortunate and help to uphold human rights without distinguishing social background. Economics, Education, Politics, Ethnicity, forth, and also without expecting anything in return or honorarium. The moral touch given by the Advocate could sharpen social sensitivity for other law enforcement officials to uphold truth and justice.(Ishaq, 2010)

Advocates in carrying out their duties and obligations not just want to earn a living only. But also seek out and fight for the values of truth and justice for their clients. In other words, the self-contained Advocate idealism and morality in order to uphold truth and justice based on the principle of presumption of innocence. Explicitly the setting of the presumption of innocence is not mentioned explicitly in the Act No. 8 of 1981 of Criminal

Proceedings, but it can be seen in the Criminal Code section general explanation 3<sup>rd</sup> of c. states that "any person suspected. Arrested, detained, Prosecuted, or confronted in the face of court, and should be presumed as innocent until their verdict the court stating his guilt and permanent legal power.

The advocate should not pick and choose cases that come to him even though the case from the beginning realizing will not get a reward commensurate with what he has done. Including in defense and accompanying case alleged criminal act corruption. Otherwise advocates also must not make agreements with other law enforcement officers both during the process of investigation. Prosecution and trial and also should not abandon client during ongoing litigation pending since it is clearly contrary to law advocates.

The necessary of legal services an advocate in the form of legal advice. Legal advice, legal opinion, defend both inside, and outside of the court are required by a defendant or a person who becomes a victim in order to get the defense in accordance with the principles of decency and fairness.(Ishaq, 2010)

The motives for legal assistance from an advocate not only support by humanity to people who cannot afford it, But also to all people who are facing legal problems without discriminating the

background for legal aid is the protection of the state to the citizens.

According to Sudikno Mertokusumo there are three basic principal that is be the purpose of the law are:

1. Justice;
2. Expediency; and
3. Certainty law. (Sihombing, 2008)

To realize the implementation of state law. So, the state takes an active role in providing legal assistance to citizens as mandated the Act of 1945. That are:

1. Article 27 paragraph (1) reads:  
All citizens have an office the law and government shall abide the law without any exception.
2. Article 28 letter D paragraph (1) reads:  
Everyone has the right to recognition. Security, protection, law, certainly fair, and equal treatment before the law.
3. Article 28 letter H (2) reads:  
Everyone is entitled to have the ease and special treatment to obtain the same opportunities and benefits in order to achieve equality and justice.
4. Article 28 first paragraph letter (4) reads:  
Protection, enforcement, and fulfillment of human rights are the responsibility of the state especially of the government.
5. Article 28 letter I paragraph (5) reads:  
In upholding and protect human rights in accordance with the principles of a democratic constitutional state. The exercise of human rights is guaranteed, regulated, and set forth in the legislation of Article 27 paragraph (1).

The rules describe the state's obligation to provide legal aid to its citizens. Both in court (Litigation) and outside the court (litigation) to obtain justice and legal certainty because every person has the right as a legal subject

1. To obtain the legal aid.
2. To be treated equally before the law
3. To get justice without exception.(Pandu, 2004)

In practice, the right of citizens to obtain legal aid and the justice of the state can be realized by means the appointment of an advocate or the defense in the trial (access to legal counsel) (Indonesia, 2003) by the judge.

Every citizen in Indonesian must always uphold the law in order to create legal certainty, fairness, and expediency. As contained in Article 1 (3) of the 1945 Constitution of the third amendment. which reads: Indonesia is a country of law means that the country based on law (rechtsstaat) and not based on power (Macht sta at) and system of government based on the constitution (basic law) rather than absolute (unlimited power). But practice in judicial of Indonesia. There are still people who become

suspect/defendant both at the level of investigation. Prosecution and trial is very difficult to get legal aid in conducting the defense of his case. So that their rights to legal assistance many are neglected. Whereas legislation of explicitly says that every citizen who cannot be entitled to free legal aid.

Provision of free legal aid (in the form of litigation and non-litigation) is not necessarily obtained by potential beneficiaries of the law as contained in the legislation are:

Article 14 of Act Number 16 of 2011 on the Legal Aid.

Paragraph (1): In order to obtain legal aid. Legal aid applicants must meet the following requirements:

a. submits a written application containing at least the identity of the applicant and brief description of the subject being applied for legal aid. Hand over documents relating to the case.

C. attaches this letter from village heads or the equivalent of official residence by legal aid applicant.

Paragraph (2): In the case of legal aid applicant is not able to compile a written application a request may be made orally.

Instead, an obligation for Advocates to provide legal assistance free of charge to citizens is punishable up to 5 (five) years or more has been stipulated in the legislation include:

1. Act Number 8 of 1981 about the Code of Criminal Procedure (Criminal Procedure Code). Among others:

A. Article 56 (1) reads: In the case of a suspect or a defendant suspected of or charged with a criminal offense death or criminal penalty of fifteen years or more or for those who cannot afford is punishable by five years or more who do not have your own legal counsel. Officials concerned at all levels of checks in the proceedings shall appoint counsel for them.

B. Article 56 (2) reads: Every counsel is appointed to act as referred to in paragraph (1). Provide assistance free of charge.

Article abovementioned basis for the Corruption Court judges and adjudicates cases of corruption accused to appoint an advocate to provide legal assistance free of charge which aims to assist and defend against the defendant.

2. Act Number 18 of 2003 on the Advocate Article 22 reads:

Paragraph (1): Advocates are required to provide legal assistance free of charge to the justice seekers who cannot afford.

Paragraph (2): Provisions of the conditions and procedures for the provision of legal aid free of charge referred to in paragraph

(1) shall be further regulated under a government regulation.

3. Government Regulation No: 83 of 2008 Article 1 (3) of the requirements and procedures for legal aid free of charge reads: Legal aid is free legal services provided Advocate without receiving honoraria payments includes the provision of legal advice. Exercises the power represents, assist, and defend. And perform other legal actions in the interests of justice seekers who cannot afford.
4. Judicial Authority Act No. 48 of 2009 Section 57 reads: State bears the costs of the case for justice seekers who cannot afford.
5. The Supreme Court Circular No: 10 of 2010. Article 10 paragraph (2) About the Guidelines for Legal Aid reads:  
Advocate referred to in paragraph (1) is a lawyer who provides legal aid services free of charge according to the rules applicable legislation.
6. Legal Aid Act Number 16 of 2011 Article 1 paragraph (1), Legal aid is a legal service provided by legal aid free of charge to the recipient help law.

The grant of free legal aid as included in the legislation clearly show that every citizen who cannot afford the suspects / accused has the right to legal assistance from the state to appoint an advocate with the aim to defend the case. In fact, for the judge hearing it turns out that the legislation is no clear measure of judicial assistance free of charge means that if all the accused of corruption are not a category of people who cannot afford or poor are also eligible to receive free legal assistance.

In practice in corruption cases at the Corruption Court Padang at the present time there was a defendant categorized as capable or not poor also get legal assistance for free (without cost) of advocates. It happened at the time of the judge who checked or prosecute the accused of corruption are not accompanied by an advocate. the obligation for the judge to appoint a lawyer as contained in Article 56 of the Criminal Procedure Code because of the threat of punishment to the defendant in the Law on Corruption Number 31 of 1999 as amended by the Act of Corruption Act Number 20 of 2001 a maximum of 20 years in prison.

The number of corruption cases was transferred to the Corruption Court by Act No. 46 of 2009 on the Corruption Court imposes on the defendant legal aid lawyers sought either alone or obtained based on the designation by the judge.

Since Padang Corruption Court was established in May of 2011. The data I get from the Deputy Registrar (Panmud) Corruption in Class IA Padang District Court on judicial assistance free of advocates to the accused of corruption.

## FORMULATION OF THE PROBLEM

Based on the problem above, the researcher will formulate the problems are:

1. Whether the defendant of corruption among those entitled to free accompanied by an advocate?
2. How the implementation of giving legal aid free of charge by the advocates of the accused of corruption in the Corruption Court Padang?

## RESEARCH METHODS

### 1. Research Approach

This research is a sociological (socio-legal research) means that researchers get the data is collected directly from the respondents either in written form or orally in response to questions that researchers ask. (Indonesia, 2003)

### 2. Sources of Data.

The data used in this study are:

- a. Primary data is data obtained directly in the field or place of research by conducting interviews with 1 (one) judges that Kamijon. 1 (one) Deputy Registrar of Corruption (Panmud) Corruption is Rimson Situmorang. 6 (six) people that advocates Aswar Siri, Asrizal, Riefia Nandra, Riniati Abas, Syofiarni, and Syamsirudin. Providing legal has been assistance free of charge to the accused of corruption in the Corruption Court Padang.
- b. Data secondary is data obtained at the office of Padang in the form of the Corruption Court verdict against the accused of corruption that get help free legal in 2012 s / d in 2013.

## METHODS AND DATA COLLECTION

The data collection tools in this paper are:

- a. Studies document.
- b. Interview.

Once researchers get the data collected and analyzed in the following manner:

### a. Editing.

Editing is the process of research to examine the data that has been obtained in the field by editing beforehand. In order to determine whether the data that has been obtained is sufficiently relevant and comprehensive to support the solving of the problem formulation in this study and if there is an error it will be repaired.

b. Data processing

After the data is held later in the qualification on the data processed by arranging in accordance with the problems that are formulated by visible results are overall to the problem being investigated.

c. Data analysis

techniques of Data analysis used in this research is qualitative research means that do not use the count numbers or research done by arranging and collecting data and then the data is processed in a systematic way. (Arikunto, 2010)

## RESULTS AND DISCUSSION

The rights accused of corruption to be represented free by lawyers.

At present not only the suspect that the threat of punishment over five (5) years have legal assistance free of charge, but also the suspect/defendant who committed the crime of corruption on the condition at the time of the suspect/defendant is not accompanied by the advocates good level investigation. Prosecution and trial of the obligations of officials concerned to appoint advocates to provide legal assistance in order to fulfill formal requirements for inspection of the suspects/defendants as contained in Article 56 of the Code of Criminal Procedure (Criminal Code) reads:

Paragraph (1): in the case of a suspect or accused the suspect or the defendant committed the offense in the threatened with the death penalty or a penalty of fifteen years or more or for those who cannot afford that in the threatened with punishment of five years or more who do not have own legal counsel. The concerned officials at all levels of checks in the proceedings shall appoint counsel for them.

Paragraph (2): any legal counsel designated to act as referred to in paragraph (1). Provide assistance free of charge.

Advocates who provide legal assistance to indigent defendants justified by law because it is a noble job or profession noble (noble official). Every person who is the defendant should be treated equally before the law because the responsibility advocates not only limited if there is honorarium New willing to help those who seek legal assistance both litigation and non-litigation but otherwise advocate also has the responsibility of noble kind to himself. on the results of author interviews with Kamijon judge Corruption Court in the District Court of Class IA Padang ever be the presiding

judge in examining and deciding cases of corruption for free (without cost) said: that the defendant corruption is a person who is entitled to get help law free from advocates on the grounds.

1. The presence and the presence of an advocate in court are very important in order to help judges to seek the material truth.
2. To align the actual legal facts by providing moral touch to the accused means that the defendant will be open all the problems it faces in a brightly lit in the hope of freeing the defendants of penalties or criminal sanctions.
3. Every citizen has the right to legal assistance provided by the state through the relevant authorities both in the investigation. Prosecution until the examination in court appoints a lawyer.

Corruption Court Padang there are several accused persons when his case would be tried was not accompanied by a lawyer when the minimum sentence of 5 (five) years and as for the reason of the defendant is not represented by an advocate is:

1. Because the defendant is unable to pay the honorarium advocate.  
That advocate in their profession to defend both litigation and non-litigation cases or both assisting / representing the costs awarded by a client to advocate are:
  - a. The operational cost fee consisting of transport. Accommodation and lodging,
  - b. The cost of legal fees means to create. Deliver and send letters and facing to party interested parties in relation to the case at hand.
  - c. Cost success fee means if lawyers are won or freeing his client then lawyers will get additional fee beyond the cost of legal aid services contract.
2. Because of the defendant from the investigation. Prosecution until the trial has been let go. No longer desire to defend has pleaded guilty. Remorseful, Not convoluted with the hope that his case quickly disconnected and penalties are light-light.

Corruption Court that the defendant turns Padang ever get free legal assistance backgrounds unfavorable life. Among others:

1. In terms of employment.  
This means there's work as farmers Day laborers and drivers of public transport.
2. In terms of education.  
Meaning that there did not graduate from elementary school and High School.
3. In terms of the economy.  
This means that there are not able to meet the needs of everyday life. There are those who rent housing.

Based on the facts above, at the time the defendant is given the duties and responsibilities of

the relevant agencies to carry out the work of its budget comes from the budget and the state budget for the immediate receipt of the defendant's work solely to earn money without again considering its domain expertise and also the defendant at the time of signing the letters associated with the Letter instruction Work and the Main Duties and Functions do not read and understand in advance the details of the letter. So in the end a lot of work has been committed by the defendant is not in accordance with the Work Order and the Main Duties and Functions.

Based on the description above, be fair and reasonable defendants were entitled to be granted legal assistance free of charge in accordance with the principles of decency and fairness and the legislation in force in order to fulfill the principle of equality before the law (equality before the law) means that every citizen has the right to get legal assistance free of charge that is given by the state to its citizens.

Before the release of Act Number 46 of 2009 on the Corruption Court then no suspect / defendant to legal assistance free of charge because at the time legal aid for corruption may say that a suspect / accused are officials or people who have the ability to materially and also have important positions both in government and in companies where the defendant worked.

Based on the data above, it shown that the authors from both the results of interviews with judges. Deputy Registrar Corruption Rimson Situmorang and some people advocate. Among others; Riefia, Sandra Syamsiruddin, and Syofiarni,Asrizal Who had accompanied the accused of corruption free then it is obvious that the cause of the corruption offenses committed by the accused is:

1. Since the defendant did not have a good educational background and also the appropriate job Auth (the basic tasks and functions) his
2. Because most of the defendants did not understand and know where to begin the work, so the fact that so many procedures that violated either intentional or unintentional, so that at the time of disbursement of funds by term (period) either from the budget or state budget many defendants do not understand, but again the job still run well even though the defendants were aware that what has been done it is against the law.
3. The lack of supervision and warning of the Budget Authority or other relevant agencies to work charged to the defendant, causing the defendant seemed to have no errors that result will be entangled with legal problems later in the day when the occupation is not in accordance with the Work Order.

Based on author interviews with advocates Riefia Nadra, Syofiarni, Aswar Siri, Syamsirudin, Asrizal, Riniati Abas said the defendant agrees on corruption legal assistance from an advocate with the reason:

1. Based Advocate Act Number 18 of 2003
  - a. Article 22 paragraph (1) reads: lawyer shall provide legal assistance free of charge to the justice seekers who cannot afford.
  - b. Article 18 paragraphs (1) reads: advocate performing tasks prohibited profession differentiate the treatment of client based on sex, religion, political, descent, race, or social and cultural background.
2. Article 56 of the Code of Criminal Procedure (Criminal Code) reads as follows: Paragraph (1): in the case of a suspect or the suspect or the accused was charged with a criminal offense which threatens to capital punishment or penalty of fifteen years or more or for those who cannot afford that in the criminal threatened with five years or more who do not have their own legal counsel. The concerned officials at all levels of checks in the proceedings shall appoint counsel for them.

Paragraph (2): any legal counsel designated to act as referred to in paragraph (1). Provide assistance free of charge.

3. The Supreme Court Circular Number 10 of 2010. Article 10 paragraph (2) About the Guidelines for Legal Aid reads:

Advocate referred to in paragraph (1) is a lawyer who provides legal aid services free of charge according to the rules applicable legislation.

4. Constitution Legal Aid Act Number 16 of 2011 Section 1 paragraph (1)

Legal aid is a legal service provided by legal aid free of charge to the recipient helping law.

Implementation of Legal Aid free of charge by the Advocate in Accusing of Corruption on the Corruption Court Padang.

To get legal aid free of charge. Then the procedure must be completed by the defendant in accordance with the legislation in force are :

1. Article 14 of Act Number 16 of 2011 on the Legal Aid said:

(1) To obtain Legal Aid. Legal Aid applicants must meet the following requirements:

- A. submits a written application containing at least the identity of the applicant and brief description of the subject being applied for Legal Aid;
- B. hand over documents relating to the case; and
- C. attaches this letter from village heads or the official level in the applicant's residence Legal Aid.

(2) .In terms of legal aid applicant are not able to compile a written request that may be made orally.

2. Article 4 paragraph (1) of Government Regulation Number 83 of 2008 on the Terms and Procedures for Granting Legal Assistance Free of Charge mention:

(1) To obtain Legal Aid Free of Charge. Justice Seeker filed a written request addressed directly to the Advocate or through an Advocate Organization or through Legal Aid.

(2) Petition referred to in paragraph (1) shall at least contain:

- a. Name, address, and job applicants.
- b. Commentary issue brief filed legal aid.

(3) In the application referred to in paragraph (2). Justice Seeker must attach a poverty that made the authorities.

3. Article 11 of Circular (Sema) Number 10 of 2010 on Guidelines for Legal Aid. Among others: a. Certificate of No Capable of village heads a local village chief.

The certificate of other social benefits such as Poor Family Card. Community Health Insurance Card (Assurance).

c. Affidavit not able to made and signed by the legal aid applicants and known by the Chairman of the Court.

Based on the above according to the judge Corruption Kamijon practice in the Anti-Corruption Court Padang. Then the implementation of the provision of legal aid free of charge by lawyers to the accused of corruption despite the non-fulfillment of the conditions mentioned above to obtain legal aid free of charge by the defendant. They don't necessarily the trial examination be postponed until conditions are met as mentioned above, but in general, judge, and adjudicates the trial process is still running as usual because:

- a. The terms referred to in the legislation does not constitute formal requirements that must be completed first.
- b. is not necessarily lead to the cancellation of the by-laws were approved by the decision of the judge to the defendant.
- c. Plus a period of time to examine and decide the guilt or innocence of the accused under Act Number 46 of 2009 on the Corruption Court was 120 days in the count since the case was put on trial at the Corruption Court.

Furthermore Kamijon judge SH said that if the above procedure must be completed immediately by the defendant. It will cause by:

1. The reading of the indictment will be postponed one week because the accused through his attorney will complete the first of those conditions as mentioned in the above legislation.
2. If the defendant is not able to complete the terms of the cause concerned officials or judges who

examine and try the case is not possible to postpone the hearing of 1 (one) week longer because of the time wasted plus many other cases are also in session by the judge concerned.

Kamijon The judge also said that the implementation the provision of free legal aid of charge by a lawyer to the accused of corruption in the Corruption Court Padang is:

1. There was spontaneous without any coordination first.

The lawyers concerned at the time it was generally browsing environment Corruption Court Padang to wait or follow the proceedings the other. so without realizing when lawyers are passing in front of the courtroom spontaneously summoned by judges who examine and prosecute the defendant so inevitably advocate concerned agree to it for the appointed and confirmed directly by the judges to accompany the defendant although without any fee and worked on a timely basis.

2. Due connected with each other.

Because of frequent lawyers met with the judge Corruption in the case of the others in the trial. causing kinship professionally run well so that their designation advocate by a panel of judges that is commonplace and even lawyers could have been repeatedly designated by the judge concerned to defend another accused of corruption.

Based on this it was revealed that the implementation of the provision of legal aid free of charge just to complete the formality of the criminal procedural law just because mostly from advocates designated character only spontaneity alone and also know each other before resulting in an advocate when assisting or proceedings in the Court of idealism sometimes cannot walk optimally in defense for their awe to the judge who has appointed lawyers to accompany the accused so that lawyers are impressed on the sidelines of the accused is no longer positioned himself as a defender or advocate but only as a complement to the fulfillment of formal requirements in the law of criminal procedure.

## CONCLUSION

Based on the description and discussion above it can be concluded are:

1. The defendant corruption is accompanied by the person who has the right freely to advocate for:
  - a. In accordance with the legislation.
  - b. In accordance with the principle of equality before the law.

- c. To align the actual legal facts by providing supporting evidence so as to relieve the defendants.
  - d. It can help judges to seek the material truth of the alleged principal case to the defendant.
  - e. Not at all accused of corruption are those who have a background in education and a good job.
2. Implementation of legal aid provision free of charge at the Corruption Court Padang is not found to be under the procedures of the legislation but include:
- a. There were spontaneous without any coordination first.
  - b. Because the relationship between the judge to know each other advocates.
  - c. Because in the past lawyers have been assisting the defendant corruption free.

## SUGGESTIONS

1. It should be in the revision of article 22 paragraph (1) and (2) of Act Number 18 of 2003 concerning Advocates and Article 1 paragraph (1) of Act Number 16 of 2011 on Legal Aid in the absence of clear legal rules to the extent where the duties and responsibilities of lawyers in providing legal assistance free of charge means that if allowed to accompany the defendant only started in the course of investigation. Prosecution or court level area course only or even already have permanent legal force (inkrah).
2. The Government Republic of Indonesia Especially the relevant agencies should not longer give the tasks and responsibilities of the project or work to people who do not have the educational background and work. According to their expertise it will cause of people concerned will be faced with legal problems later in the day.
3. In order to create a deterrent effect and the fulfillment of a sense of fairness. Expediency and legal certainty in the community specifically accused of corruption should not be given more facilities to obtain legal assistance from the state because the defendant has hurt state finances. Hampering development and damage the country's economy despite the defendant's obviously people who cannot afford.

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