

JURIDICAL REVIEW OF ADVOCATES IN PROVIDING FREE LEGAL AID TO PERPETRATORS OF NARCOTICS ABUSE CRIMES

Baginda Victor Leonardo Sibarani¹, Erikson Sihotang², I Nyoman Suandika³

¹²³Program Magister Hukum, Passcasarjana Universitas Mahendradatta

*Email: bagindalaw@gmail.com¹, eriksonsihotang1@gmail.com², pakden278@gmail.com³

ARTICLE INFO	ABSTRACT
Keywords: Advocate Legal Aid Narcotics Crime	<i>The authority of advocates in providing legal assistance to perpetrators of narcotics abuse crimes as outlined in Article 55(1) of the Advocate Law gives status to advocates as law enforcers equal to other law enforcement officials. This legal aid is a fundamental right of defendants, especially in narcotics cases. However, advocates face several challenges, such as limited community awareness about legal rights and the financial constraints affecting the provision of free legal aid. This paper identifies these obstacles and explores solutions to improve the delivery of legal services, including enhancing legal literacy and refining the legal framework for effective assistance.</i>

INTRODUCTION

Law enforcement against narcotics crimes has been carried out by law enforcement officials and has received many judicial decisions. Thus, this law enforcement is expected to serve as an antidote to the spread of illicit narcotics trade and trafficking. However, in reality, the more intensive the law enforcement is, the more the circulation and trafficking of narcotics tends to increase (Carpenter, 2014). Provisions of legislation regulating narcotics problems have been drafted and enforced, but despite these efforts, crimes related to narcotics have not been alleviated. In many recent cases, numerous dealers have been caught and severely sanctioned, but other perpetrators seem to expand their areas of operation.

Law enforcers include not only police, judges, and prosecutors but also advocates, who play a crucial role in ensuring that legal rights are upheld. The implementation of legal aid provided by the state to legal aid recipients is an effort to realize constitutional rights, as well as an implementation of the rule of law that recognizes, protects, and guarantees citizens' rights to access justice and equality before the law (Gebeye, 2016).

This study aims to analyze the effectiveness of law enforcement, particularly the role of advocates in providing legal assistance to narcotics offenders, and to evaluate the obstacles advocates face in carrying out their duties (Ibrahim, 2006). By examining the current legal framework and its implementation, the research seeks to identify gaps in the law and propose updates to improve the quality of legal aid for narcotics offenders (Kleiman et al., 2011). The findings are expected to contribute to the betterment of the criminal justice system by ensuring fair treatment of offenders and enhancing the role of advocates in upholding justice. Ultimately, this research will benefit policymakers, law enforcement agencies, and legal practitioners by providing recommendations to strengthen legal provisions and enforcement related to narcotics crimes, thus supporting the broader goal of reducing narcotics trafficking and misuse.

To further support the analysis, this study draws upon **Deterrence Theory** and **Legal Positivism**. **Deterrence Theory** suggests that individuals are dissuaded from committing crimes when they perceive the potential consequences as severe, certain, and swift (Beccaria, 2016). In the context of narcotics law enforcement, this theory underpins the belief that harsher penalties for narcotics offenders will reduce the rate of such crimes. However, as observed in practice, increased law enforcement intensity has not led to a proportional decrease in narcotics trafficking (Carpenter, 2014). This suggests that while deterrence plays a role, it may not be sufficient alone, and additional strategies are needed to address the root causes of narcotics crime (Kleiman et al., 2011).

This research is grounded in **Deterrence Theory** and **Legal Positivism**. Deterrence Theory, proposed by (Beccaria, 2016), suggests that the certainty, severity, and swiftness of punishment can discourage criminal behavior. In the context of narcotics law enforcement, the theory supports the imposition of severe penalties to deter drug trafficking and abuse. However, empirical evidence suggests that deterrence alone is insufficient to curb the growing number of narcotics offenses (Carpenter, 2014). This raises the need for complementary strategies, such as legal aid, to ensure that justice is not only punitive but also rehabilitative.

On the other hand, **Legal Positivism**, as articulated by (Hart, 1962) asserts that the legitimacy of laws depends on their adherence to established legal procedures. Advocates, as key actors in the legal system, ensure that the rights of defendants are protected and that legal processes are conducted fairly. By providing free legal aid, advocates play a critical role in maintaining the integrity of the judicial system, particularly in cases involving vulnerable groups such as narcotics offenders. These theoretical perspectives strengthen the argument that while law enforcement and legal frameworks are essential, their implementation must be critically assessed and continually improved to achieve meaningful reductions in narcotics-related crimes.

The primary objective of this research is to evaluate the effectiveness of advocates in providing legal assistance to narcotics offenders and to identify the obstacles that hinder the provision of free legal aid. Specifically, this study seeks to:

- Analyze the challenges faced by advocates in delivering legal aid to narcotics offenders.
- Propose solutions to enhance the delivery of legal aid services in Indonesia.
- Contribute to the improvement of the legal framework governing legal aid for narcotics-related crimes.

The anticipated benefits of this research include providing actionable recommendations for enhancing the role of advocates in the criminal justice system, promoting better access to justice for narcotics offenders, and ultimately contributing to the reduction of narcotics-related crimes in Indonesia. This research will also serve as a valuable resource for future studies on legal aid and criminal justice, offering insights into the practical challenges faced by legal professionals in upholding the rights of vulnerable populations.

METHOD

This study employs a normative legal research design to analyze laws and regulations related to the role of advocates in narcotics-related crimes. The research focuses on examining the legal framework and its implementation in practice. A purposive sampling method is used to select the most relevant legal documents and cases, allowing the study to focus on materials that provide valuable insights. Primary sources such as legislation, along with secondary sources like legal literature and court decisions, are analyzed to form a comprehensive view of the legal context. Data is chosen based on its relevance to the research questions, focusing on the role of advocates and the legal challenges they face. Document review is the primary method for data collection, ensuring accuracy and depth in the research findings. A document checklist is used as a tool to guarantee that all significant legal texts are included for analysis. The reliability of the data is enhanced through cross-verification of multiple sources to ensure consistency. Data analysis follows a deductive approach, applying general legal principles to specific cases to draw meaningful conclusions. This systematic process contributes to a better understanding of the legal issues surrounding narcotics crimes and the role of advocates in upholding justice.

RESULTS AND DISCUSSION

Authority of Advocates in Providing Legal Assistance to Perpetrators of Narcotics Abuse Crimes

Although narcotics are very useful and necessary for treatment and health services, if they are misused or used not in accordance with treatment standards, especially if accompanied by illicit circulation of narcotics, it will cause very detrimental consequences for individuals and society, especially the younger generation. It can even pose an even greater danger to the life and cultural values of the nation which will ultimately be able to weaken national resilience.

In an effort to overcome the problem of abuse and illicit circulation of narcotics, the government has issued Law Number 35 of 2009 concerning Narcotics. The law basically regulates narcotics only used for the benefit of health services and science. Violations of the regulation are threatened with high and severe penalties with the possibility of the defendant being sentenced to the maximum penalty of death in addition to imprisonment and fines.

The Advocate Law Article 1 letter a formulates an advocate as a person who is in the profession of providing legal services, both inside and outside the court, who meets the requirements under this law. And in Article 1

letter b it is explained definitively that what is categorized as legal services are legal consultation, legal assistance, exercising power, representing, accompanying, defending and performing other legal actions for the benefit of the client. In the textual translation of the formulation of the above article, advocate is generally translated as a mere profession, but does not allude to the position of advocate in relation to the state that has a special character in carrying out its profession. This pattern of relationship is recorded in the Indonesia judicial system as a manifestation of the exercise of judicial power. The judicial system as a form of law enforcement mechanism is filled by law enforcement actors consisting of police, prosecutors, judges and advocates. This quartet through the judicial system is expected to be able to present a fair law enforcement process in accordance with the ideals of the rule of law. We know that three of the quartet (police, prosecutor and judge) are forms of representation of the state in the justice system, while advocates act on behalf of justice-seeking communities and are positioned outside the system. The police, prosecutors and judges have formal legitimacy from the state as a concrete form of practicing the trias of politics, while advocates do not have such legitimacy. Legitimacy for advocates is reflected in public trust in them (social legitimacy).

Historically, the role of legal advisors has existed along with the development of law and society, the law will always exist as long as there is a community and society needs the law as well as wants law enforcement. Then the state as a form of formal power, along with its legal apparatus and system, is entrusted to complement the law that was still in the form of awareness and moral norms so that it becomes an enforceable rule or legal norm. In a modern state, it is in the form of trias politica the state carries out its duties.

The goal of presenting lawyers in addition to fulfilling Article 56 of the Criminal Procedure Code mentioned above, is also to provide legal assistance for the defendant and assist the judge in finding legal truth with the core of justice. Legal aid itself in the general provisions of Law No. 18 of 2003 concerning Advocates explains that legal aid is a legal service provided by advocates free of charge to clients who cannot afford it. Then the legal service itself is the service provided by the advocate in the form of providing legal advice, legal assistance, exercising power, representing, accompanying, defending and carrying out other legal actions for the client's legal interests. All of this is clear that a positive value must indeed be maintained in the essential law enforcement process so that there is no discrimination and irregularities in the law enforcement process so that truth and justice can be felt by the community.

In law enforcement practice in Indonesia, often law enforcers have carried out their duties in accordance with the existing rules of the game, in the sense of formal rules of the game. An advocate is a person who is in the profession of providing legal services, both inside and outside the court who meets the requirements as stated in the provisions of law Number 18 of 2003 concerning Advocates. In the Advocate Law, it is emphasized that an advocate has the status of a law enforcer, free and independent guaranteed by laws and regulations.

Legal aid provided by advocates for free is a right owned by a person who has the status of a defendant in a criminal act that is threatened with the death penalty or a criminal threat of fifteen years or more or for those who are incapable who are threatened with a sentence of five years or more who do not have their own legal advisor. Therefore, the state is obliged to provide free legal assistance. This legal aid is expected to prevent inhumane treatment of defendants who are classified as poor. This is called due process of law or fair legal process. The suspect/defendant is protected as a person who faces lawsuits and is pressed to be tried. For this reason, the presumption of innocence should be applied.

Obstacles and Solutions Faced by Advocates in Providing Legal Assistance to Perpetrators of Narcotics Abuse Crimes

Free legal aid is a right owned by a person who has the status of a defendant in a criminal act that is threatened with the death penalty or a criminal threat of fifteen years or more or for those who are incapable who are threatened with a sentence of five years or more who do not have their own legal advisor. Therefore, the state is obliged to provide free legal assistance. This legal aid is expected to prevent inhumane treatment of defendants who are classified as poor. This is called due process of law or fair legal process. The suspect/defendant is protected as a person who faces lawsuits and is pressed to be tried. For this reason, the presumption of innocence should be applied. Accompanied or defended by legal counsel since he has been detained, examined, interrogated, and tried, the suspect or defendant must know in what capacity he or she is detained and what the basis of the lawsuit against him is.

Based on interviews and statements from sources, advocates who handle free legal aid must continue to do their duties as a professional advocate, whether working in Profit or Non-Profit cases and advocates in providing legal aid must be socially motivated and not with money motives so that it is really pure to help the community, especially for free. An advocate who handles cases for free must be really pure and wholehearted from the

advocate himself so that expectations and reality can be fulfilled. Although he does not deny that not a few advocates have a bad image in the eyes of the public because they are synonymous with money and money.

Based on the results of the author's observations and research, there are several cases that the resource person handled, one of which is the Narcotics case in which the defendant is threatened with a prison sentence of 5 (five) years and 6 (six) months with a reduction while the defendant is in custody and with an order that the defendant remains in custody and a fine of Rp.800,000,000,- (eight hundred million rupiah) subsidy of 3 (three) months in prison because the defendant commits a criminal act "without rights or against the law has, storing, possessing, or providing Class I Narcotics", as regulated and criminally threatened in Article 112 paragraph (1) Jo. Article 132 paragraph (1) of Law No. 35 of 2009 concerning Narcotics in the Subsidiary Indictment. From the case, the source said that there were difficulties with the defendant where the defendant was not frank with his lawyer so that the Advocate was not optimal in defending the defendant's rights, plus there were no witnesses from the defendant which could actually help relieve the defendant in the case.

There are also several other obstacles to the defendant, namely: 1. The number of defendants who are not honest in providing the necessary information, apart from that the information provided is more likely to be good. With good information, the defendant hopes that the case entrusted to the advocate can be won/get justice in his favor. In fact, what the advocate needs is actual information about the case he is defending, because it will affect what steps the advocate will take in defending the defendant. 2. The defendant's ignorance and lack of knowledge in the field of law make it difficult for the advocate to explain what the defendant should know about his case.

There are also cases of forging certificates of incapacity which are used as a condition for obtaining free legal aid. They came to the Legal Aid Post supported by appearing as if they looked like the underprivileged community. Advocates should also not be easily believed, so it is necessary for a team to be directly involved in observing their prospective clients so that they can know who are deliberately using this facility and which people really need free legal assistance.

The need for important efforts in socializing this legal aid through electronic media, through non-governmental organizations or community leaders so that many underprivileged people can be guaranteed their rights if accompanied by advocates, especially those at the Legal Aid Post.

The provision of Legal Aid should be carried out from the beginning of the process of assisting the Police to appoint an Advocate not only in court, as is the case in the Provision of Legal Aid to the Defendant in the Narcotics case carried out by the Underprivileged Defendant that the author presents. in Legal Aid Providers. The Police also provide an Advocate appointed by the Police should always accompany until the end of the trial process because they know more from the beginning of the preliminary examination and examination at the court hearing, not only in the trial, so that they can maximize legal counsel to provide Legal Assistance in the process of defending the defendant during the process.

CONCLUSION

The authority of advocates in providing legal assistance to perpetrators of narcotics abuse crimes, as stipulated in Article 55 paragraph (1) of the Advocate Law, gives status to advocates as law enforcers who have an equal position with other law enforcers in enforcing law and justice. In exercising this authority, advocates still experience obstacles both from the defendant himself and in terms of regulations. Therefore, it is necessary to socialize and update the rules on this legal aid.

REFERENCES

Beccaria, C. (2016). *On crimes and punishments*. Transaction Publishers.

Carpenter, T. G. (2014). Carpenter, T. G. (2014). The War on Drugs is a War on Freedom. *Cato Journal*, 34(1), 99–114. *The War on Drugs Is a War on Freedom. Cato Journal*, 34(1), 99–114.

Gebeye, B. A. (2016). Gebeye, B. A. (2016). The Role of Legal Aid in Access to Justice: A Comparative Study of Selected Jurisdictions. *Journal of Legal Pluralism and Unofficial Law*, 48(2), 252–273. *Journal of Legal Pluralism and Unofficial Law*, 48(2), 252–273.

Hart, H. L. A. (1962). Kelsen visited. *UCLA L. Rev.*, 10, 709.

Ibrahim, J. (2006). Ibrahim, J. (2006). Normative Legal Research: Theory and Practice. Malang: Bayumedia Publishing. *Normative Legal Research: Theory and Practice*.

Kleiman, M. A. R., Caulkins, J. P., & Hawken, A. (2011). *Drugs and drug policy: What everyone needs to know®*. Oxford University Press.

Johnny Ibrahim, 2007, *Teori dan Metodelogi Penelitian Hukum Normatif*, Citra Aditya Bakti, Bandung.

Rusli Muhammad, 2011, *Sistem Peradilan Pidana Indonesia*, UII Press, Yogyakarta.

Sutiyoso Bambang, 2010, *Reformasi Keadilan dan Penegakan Hukum di Indonesia*, UII Press, Yogyakarta.

Syamsul Hidayat, 2010, *Pidana Mati di Indonesia*, Genta Press, Yogyakarta.

Yudha Pandu, 2001, *Klien dan Penasehat Hukum dalam Perspektif Masa Kini*, Indonesia Legal Center Publishing, Jakarta.

Undang-Undang:

Undang-Undang Dasar Negara Republik Indonesia Tahun 1945.

Undang-Undang No. 8 Tahun 1981 tentang Kitab Undang-Undang Hukum Acara Pidana, Lembaran Negara Republik Indonesia Tahun 1981 Nomor 76, Tambahan Lembaran Negara Nomor 3209.

Undang-Undang Republik Indonesia Nomor 18 Tahun 2003 tentang Advokat, Lembaran Negara Republik Indonesia Tahun 2003 Nomor 49, Tambahan Lembaran Negara Nomor 4288.

Undang-Undang Republik Indonesia Nomor 35 tahun 2009 tentang Narkotika, Lembaran Negara Republik Indonesia Tahun 2009 Nomor 143, Tambahan Lembaran Negara Nomor 5062.

Undang-Undang Nomor 16 Tahun 2011 tentang Bantuan Hukum, Lembaran Negara Republik Indonesia Tahun 2011 Nomor 104, Tambahan Lembaran Negara Nomor 5248.