Implementation Of Legal Assistance Tosuspectnarcotics Criminal Acts In East Java Regional Police

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Abstract

Legal aid is legal services provided free of charge to legal aid recipients, the Republic of Indonesia as a democratic rule of law and upholds human rights, so everyone has the right to receive equal treatment and protection by applicable laws and laws. Therefore, for every criminal act or violation of the law alleged, the suspect has the right to obtain legal assistance needed in accordance with the principles of the rule of law. The main issue discussed by the author is the implementation of the provision of legal assistance for narcotics crime suspects in East Java Regional Police and obstacles. The research method that the author uses is empirical juridical namely legal research by making a direct approach to the reality of law in society. This approach is used to look at legal aspects in social interactions within the community. Analysis of the implementation of providing legal assistance in the East Java Regional Police on narcotics crime suspects uses data from interviews to drug detectives, one of the suspects, a prisoner and observes directly in the field and sees the data in East Java Regional Police are then explained by the author's thinking power. The results of this study can be seen through the implementation of legal aid to narcotics crime suspects that have not been fully provided, more than 20% of suspects did not get the legal assistance and the obstacles that occurred when providing legal assistance to the suspects.

Keywords: Legal aid, Crime, Narcotics.

I. Introduction

Events in the field, narcotics criminal cases faced by the East Java Regional Police (hereinafter referred to as East Java Regional Police) in 2018 were 310 cases with 376 suspects while 2019 were 464 cases with 534 suspects. Of the 376 suspects in 2018 a total of 91 suspects were not accompanied by legal counsel, and of 534 suspects in 2019 there were 112 suspects who were not accompanied by legal counsel. Some of the suspects in the narcotics crime cases are suspects who are unable (poor) and threatened with a sentence of 5 (five) years in prison or more.

Looking at the number of cases and suspects mentioned above, it is clear that narcotics criminal cases in the East Java Regional Police have a high number of narcotics criminal suspects and are subject to the majority of Narcotics Articles above 5 (five) years of imprisonment.

II. Method

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Empirical juridical is the research that I used in preparing this thesis where the field research was conducted by reviewing the applicable legal provisions and what happened in reality in the community. Legal research to find the process of occurrence and regarding the process of working of law in society by examining the relationship between law and other social institutions using social science research techniques.¹

Both primary and secondary data are used to compile a study. Primary data can be obtained by interviews, observations and questionnaires from community life. Secondary data obtained by collecting data by combining field studies and literature studies. ²The qualitative approach of primary data and secondary data is used to analyze data where the description includes the content and structure of positive law. This research was conducted specifically and related to Indonesian criminal law regarding the Implementation of Legal Assistance to Suspect Narcotics Criminal Acts in East Java Regional Police.

III. Main Heading of the Analysis or Results

A. Implementation of Providing Legal Assistance to Suspected Narcotics Crime in the East Java Regional Police

East Java Regional Police have an obligation to provide legal assistance on a pro bono basis against narcotics criminal suspects, and police investigators with the rank of AKP who have experience to deal with narcotics crime in East Java Regional Police.

The Directorate of East Java Regional Police receives and handles a large number of narcotics cases. Of the many cases handled by the East Java Regional Police Directorate of Defense, there are also many suspects who were given or not given legal assistance. As for the amount of data obtained regarding narcotics criminal cases handled by the East Java Regional Police Directorate General and the suspects who were given or not given legal assistance are as follows:

Data on Narcotics Criminal Case Suspects Given and Not Given Legal Aid in East Java Regional Police

Tabel 1. Number of cases and suspects in narcotics crime given and those not given legal assistance in the East Java Regional Police Directorate General

<table>
<thead>
<tr>
<th>Years</th>
<th>Month</th>
<th>Case</th>
<th>Given Legal Assistance</th>
<th>Given’t Legal Assistance</th>
</tr>
</thead>
<tbody>
<tr>
<td>2018</td>
<td>August</td>
<td>58</td>
<td>60</td>
<td>17</td>
</tr>
<tr>
<td>2018</td>
<td>September</td>
<td>57</td>
<td>55</td>
<td>15</td>
</tr>
<tr>
<td>2018</td>
<td>October</td>
<td>65</td>
<td>60</td>
<td>19</td>
</tr>
<tr>
<td>2018</td>
<td>November</td>
<td>62</td>
<td>52</td>
<td>20</td>
</tr>
<tr>
<td>2018</td>
<td>December</td>
<td>68</td>
<td>58</td>
<td>20</td>
</tr>
<tr>
<td>2019</td>
<td>January</td>
<td>92</td>
<td>78</td>
<td>23</td>
</tr>
<tr>
<td>2019</td>
<td>February</td>
<td>95</td>
<td>90</td>
<td>21</td>
</tr>
<tr>
<td>2019</td>
<td>March</td>
<td>89</td>
<td>81</td>
<td>25</td>
</tr>
<tr>
<td>2019</td>
<td>April</td>
<td>90</td>
<td>89</td>
<td>21</td>
</tr>
<tr>
<td>2019</td>
<td>May</td>
<td>98</td>
<td>84</td>
<td>22</td>
</tr>
<tr>
<td>Amount</td>
<td></td>
<td>712</td>
<td>707</td>
<td>203</td>
</tr>
<tr>
<td>Average</td>
<td></td>
<td>71.2</td>
<td>78%</td>
<td>22%</td>
</tr>
</tbody>
</table>

Source: East Java Regional Police Ditreskoba

In the case of narcotics criminal suspects which have the right to receive legal assistance, in the implementation of the East Java Regional Police Ditreskoba using Pasal 114 KUHP as a legal basis for providing legal assistance, must notify the suspect’s right to obtain legal assistance or that in his case the suspect must be accompanied by a legal advisor as referred to in Pasal 56 KUHP. This article is juncto with Pasal 56 ayat (1) of the Criminal Procedure Code which basically explains that there are suspects suspected of committing criminal offenses threatened with capital punishment, crimes of 15 (fifteen) years or more, or for suspects who cannot afford their economies that Threatened with a sentence of 5 (five) years or more who do not have their own legal counsel, the investigating police must appoint legal counsel for the suspects. The implementation is
carried out by police investigators Ditreskoba East Java Regional Police with the following procedures:

1. Examination of Narcotics Criminal Suspects
2. Provision of Legal Aid for Narcotics Criminal Suspects
3. Providers of Legal Aid Communicate with the Suspect
4. Legal Assistance by the Legal Assistance Provider for the Suspect

The author found in research at the East Java Regional Police Directorate General that in providing legal assistance by the East Java Regional Police Directorate General, narcotics criminal suspects who are particularly unable to present their own legal counsel are entitled to legal assistance and are obliged to be accompanied by legal counsel since the start of the examination of the suspect without exception. Police investigators must be able to fulfill the obligation to provide legal assistance, as described in Pasal 56 ayat (1) KUHP, because police investigators must also understand and respect the human rights aspects of narcotics crime suspects in which every person examined has the right to obtain legal assistance from the time the investigation begins until a court decision has legal force.3

The author has also conducted interviews with 2 (two) suspects in narcotics criminal cases Pasal 112 ayat (1) and / or Pasal 114 ayat (1) of the Narcotics Law which is detained and examined by police investigators of the East Java Regional Police. In the author’s interview with Suspect 1, which explained that during the examination of the suspect 1, the police investigator had offered the suspect 1 to be accompanied by a legal advisor. Suspect 1 refused to be given legal assistance because he felt that even though he did not need to pay money to be accompanied by a legal advisor, because Suspect 1 was a person whose economic situation was poor. Suspect 1 did not understand the purpose of receiving legal aid and finally felt confident that the presence of a legal aid provider would not alleviate the charges imposed on the suspect 1. Because suspect 1 refused to present a legal aid provider, then suspect 1 was asked to sign SP2DPH which Suspect 1 thinks is only a file that must be signed for inspection purposes. 4

3Gunawan, Ricky. (2012). The Dismantling Of Criminal Suspect’s Rights Violation Practice On Investigational Level:A Case Study On Narcotics Crime Suspects In Jakarta. Jakarta: Pelitaraya Selaras, p. 120
4Interview with Suspect 1, as the perpetrators of narcotics crime, Thursday, February 27, 2020 at 10:00 WIB
Suspect 2 accepted to be given legal assistance offered by police investigators. Suspect 2 met with the legal aid provider against him the day after suspect 2 received to be given legal assistance. During the meeting between the suspect 2 and his legal advisor, suspect 2 explained that he was given 1 (one) hour by the police investigator to consult with his legal advisor. But at the commencement of the investigation by the police investigating the suspect 2 was confused because when accompanied by his legal counsel, the legal counsel was only silent and pay attention while the suspect 2 was examined by the police investigator which caused the suspect 2 to feel that the defendant himself was accompanied by a suspect 2 by a legal counsel absolutely does not help in any way in the context of examination of the suspect 2.5

B. Analysis of the Implementation of Providing Legal Aid Against Narcotics Criminal Suspects in East Java Regional Police

The author analyzes the information above and for that reason can provide several explanations. Each suspect is a legal subject protected by the state’s rights, as stated in Pasal 8 ayat (1) of the Judicial Power Act with the principle governing the protection of the dignity of a human being. In Pasal 27 ayat (1) and 28D ayat (1) UUD 1945, so that every citizen has the right to get a fair trial and also get justice held by the state.6 The Police also need to pay attention to the rights held by each criminal suspect in the recognition, guarantee, protection and fair legal certainty, to get special facilities and treatment in order to get equal opportunities and benefits among other citizens in order to achieve equality and justice, and to advance itself in the context of defending the rights of the suspect based on the provisions of Pasal 5 ayat (1) Regulation of the Head of the Indonesian National Police No. 8 of 2009 concerning the Implementation of the Principles and Standards of Human Rights in Carrying Out the Duties of the Indonesian National Police (hereinafter referred to as Perkap No. 8/2009) and also included as part of Polri’s duties to suspects in accordance with Pasal 6 of Perkap No. 8/2009. The East Java Regional Police Directorate General has tried to fulfill this right by explaining the right of the suspect to get free legal assistance for a suspect facing a sentence of imprisonment for 5 (five) years or more, and the East Java Regional Police Directorate

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5Interview with Suspect 2, as the perpetrators of narcotics crime, on Friday 28 February 2020 at 10:00 WIB
General has been sufficiently successful in fulfilling the rights of the suspect. However, for a suspect who does not wish to be accompanied by a legal advisor, an SP2DPH will be made. In fact, the right of a suspect to obtain legal assistance is mandatory to be granted by the investigating police as in Pasal 114 KUHAP and the investigating police are also obliged to appoint a legal advisor to the suspect in accordance with Pasal 56 ayat (1) KUHP. Then it can be said that the existence of SP2DPH which was used by police investigators to not present legal aid providers for suspects can be said to be merely a SE Kejagung No. B-570 / F / Fpk.1 / 9/1994 in order to be able to abort their obligations to provide legal assistance to the suspect, even though this country is a state that has a civil law system in which to run a regulation there must be a positive law that has permanent legal force first. Therefore the provisions stipulated in KUHP must be fully implemented by the East Java Regional Police’s Ditreskoba has clearly led to conflicting regulations below so that it may not need to be implemented.

C. The Obstacles In The Implementation Of Providing Legal Assistance For Narcotics Crime In East Java Regional Police

Ditreskoba of East Java Regional Police stated that there is a problem that is still relatively difficult to find a solution for it. The obstacle encountered by the investigating police Ditreskoba is that the suspects refuse to receive legal assistance because the suspects feel guilty and submit themselves to proceed immediately so that they can be tried before the court even though the police investigator has explained the right of the suspect to be given legal assistance in a legal manner free of charge. This obstacle is an obstacle that is not easy to be resolved by the police investigator because the police investigating the East Java Regional Police Ditreskoba stated that the suspect who refuses to be accompanied by a legal advisor is the right of the suspect because it is the will of the suspect concerned himself. In the interview results of the writer outside the East Java Regional Police Ditreskoba General, it can be explained that some of the obstacles faced by the investigating police are constraints that are arguably the

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8 Prakoso, Djoko. (1985). The Existance of Prosecutor In The Middle Of The Community. Jakarta: Ghalia Indonesia, p. 28
constraints created by the police of the East Java Regional Police of Ditreskoba investigators, which include: 9

1. At the time of the examination of the suspect
2. Investigators investigated by East Java Regional Police
3. Some police investigators Ditreskoba East Java Regional Police have also tried to prevent suspects from getting legal assistance

The results of the author’s interview at the East Java Regional Police Directorate of Representatives also found a percentage of the number of narcotics suspects who were accompanied or not accompanied by legal counsel. With the existence of suspects who are not accompanied by legal advisors, it remains an obstacle that must be resolved by the East Java Regional Police Ditreskoba.

D. Efforts made by the East Java Police in overcoming obstacles in the implementation of providing legal assistance to suspected narcotics crime

Ditreskoba of East Java Regional Police is undertaking several efforts to address the obstacles faced in providing legal assistance to suspects who do not wish to be accompanied by legal counsel. Some of the efforts undertaken by the East Java Regional Police Ditreskoba General are as follows: 10

1. Efforts are made so that the suspects of narcotics crimes handled by the East Java Regional Police Ditreskoba General are willing to receive legal assistance, namely by trying to explain to the suspect that the suspect has the right to be accompanied by a legal advisor to assist the suspect during an examination of the suspect and that the police the investigator has the obligation to present a legal counsel for the suspect for free;
2. Ditreskoba East Java Regional Police also strives to provide legal assistance to suspects as well as possible by explaining to the suspect that with the receipt of legal assistance by the suspect, it can ease the sentence charged against the suspect and shorten the time of detention; and
3. The East Java Regional Police Ditreskoba General has also made an effort if the suspect still does not want to be given legal assistance, it will be allowed, because

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that is the right of the suspect, by making SP2DPH to be made an attachment in the BAP.

The author can provide an analysis of the efforts made by the investigating police Ditreskoba of East Java Regional Police and advocates interviewed by the author along with some of his fellow advocates. The author sees that the efforts made to carry out the provision of legal assistance in the East Java Regional Police Ditreskoba of Drug Crimes suspected can indeed help the efforts carried out in order to run effectively and efficiently. But it remains to be remembered that the obstacles raised by several investigative police officers make the efforts of these efforts difficult, so these efforts must be honest and implemented in accordance with UUD 1945, KUHP, UU HAM, UUBH and Perkap No. 8/2009, as police investigators as law enforcement officers are seen by the community as the front guard to guarantee justice and truth for the people as human beings who have the same rights before the law.11

IV. Conclusion

Based on the results of research on the implementation of providing legal assistance to suspected narcotics crime in East Java Regional Police, the author can explain several conclusions, including:

1. The police investigator is obliged to inform the suspect's right to obtain legal assistance pro bono/free according to Pasal 114 jo. Pasal 56 ayat (1) KUHP;
2. The suspect has the right to be presented by legal counsel from the police investigator or to bring his own legal counsel in accordance with Pasal 55 jo. Pasal 54 KUHP;
3. Advocates appointed to become legal aid providers must provide legal assistance on a pro bonobasis in accordance with Pasal 56 ayat (2) KUHP, even though the advocate accepts gifts from suspects as a thank you for providing such legal assistance;
4. For suspects who do not wish to be represented by legal counsel as legal aid providers, an SP2DPH will be made as a statement that the suspect really does not need or does not want legal assistance against him;

5. The obstacles faced by police investigators Ditreskoba East Java Regional Police are internal and external constraints, where there are obstacles that the suspect actually refuses to be given legal assistance, there are also obstacles where police investigators who do not explain the intent and purpose of giving legal aid to the suspect, there are also obstacles where the police investigator who is blocking the suspect from getting legal assistance and also the police investigator is not holding a lesson for the public to avoid legal blindness;

6. The suspects interviewed by the author were confused and concluded that legal counsel was not useful in handling the cases of the suspects so that they could be sentenced;

7. Efforts have been made by police investigators to try to get legal assistance and allow suspects to request the presence of legal counsel for narcotics crimes.

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- Interview with Suspect 2, as the perpetrators of narcotics crime, on Friday 28 February 2020 at 10:00 WIB