

Right of Access to Legal Aid for the Poor: Study of Islamic Civil Cases in the PA Ponorogo Legal Area

Arliana Agustin Faridhatul Shima¹, Lukman Santoso²

Faculty of Sharia, IAIN Ponorogo, Indonesia

E-mail: arlianaafs19@gmail.com¹, lukmansantoso4@gmail.com²

Abstract

Pro bono legal aid must be provided by Advocates to underprivileged people, as written in Article 22 Paragraph 1 of Law No. 18 of 2003 concerning Advocates. Pro bono assistance is provided to fulfill access to justice. The high poverty rate in Ponorogo Regency and the limited amount of pro bono assistance provided each year make it difficult for underprivileged people to access and obtain legal aid, because not all advocates have carried out their obligations to provide pro bono assistance at the Ponorogo Religious Court . This research is a qualitative research with empirical legal research type. Data collection techniques using snowball sampling. The analysis method uses qualitative analysis. From this research it can be concluded that first, each advocate has its own criteria, namely that the client pays the costs of the case because the Advocate only provides free legal aid services and the Court has no special budget for pro bono assistance. Although they have their own criteria, the assistance has fulfilled the values of justice, helping and *Maqāshid al-Shari'ah* , namely the protection of the soul. Second, the process of providing pro bono assistance has not been carried out optimally because not all advocates have fulfilled their obligations to provide pro bono assistance. Although it has not been done optimally, it has fulfilled the principles of Islamic law, namely the value of tolerance, Amar Ma'ruf Nahi Munkar, equality and *Maqāshid al-Syari'ah* on the protection of offspring and property.

Keywords : *Legal Aid, Pro Bono, Advocate.*

Abstract

Bantuan Hukum Pro bono wajib diberikan oleh Advokat kepada masyarakat kurang mampu, sebagaimana yang tertulis dalam Pasal 22 Ayat 1 Undang-Undang No. 18 Tahun 2003 Tentang Advokat. Bantuan pro bono diberikan sebagai pemenuhan akses keadilan. Tingginya angka kemiskinan di Kabupaten Ponorogo dan terbatasnya jumlah bantuan pro bono yang diberikan tiap tahunnya membuat masyarakat kurang mampu kesulitan dalam mengakses dan mendapatkan bantuan hukum, karena belum semua advokat melaksanakan kewajibannya untuk memberikan bantuan pro bono di Pengadilan Agama Ponorogo. Penelitian ini merupakan penelitian Kualitatif dengan jenis

penelitian hukum empiris. Teknik pengumpulan data menggunakan snowball sampling. Metode analisis menggunakan analisis kualitatif. Dari penelitian ini dapat disimpulkan pertama, setiap advokat memiliki kriteria tersendiri yaitu klien membayar biaya panjar perkara karena Advokat hanya menggratiskan jasa bantuan hukum dan di Pengadilan belum ada anggaran khusus untuk bantuan pro bono. Meskipun memiliki kriteria sendiri, bantuan tersebut sudah memenuhi nilai keadilan, tolong menolong serta *Maqāshid al-Syari'ah* yaitu perlindungan jiwa. Kedua, proses pemberian bantuan pro bono belum dilakukan secara optimal karena belum semua advokat memenuhi kewajibannya untuk memberikan bantuan pro bono. Meskipun belum dilakukan secara optimal, tapi sudah memenuhi prinsip hukum islam yaitu nilai toleransi, Amar Ma'ruf Nahi Munkar, persamaan serta *Maqāshid al-Syari'ah* pada perlindungan keturunan dan harta benda.

Kata kunci: *Bantuan Hukum, Pro Bono, Advokat.*

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Introduction

The state (government) is responsible for ensuring that all its citizens are treated equally before the law (*justice for all*), and every citizen is given access to justice (*access to justice*).¹ Thus, everyone has the right to defend themselves by taking advantage of free legal assistance, including disadvantaged people. Pro bono legal assistance must be provided by an advocate to underprivileged people seeking justice, as stated in Article 22 Paragraph 1 of Law no. 18 of 2003 concerning Advocates, regardless of individual background, race, ethnicity, beliefs, politics, social strata, economics and gender.²

The high poverty rate in Ponorogo Regency in March 2022, namely 9.32%, means that underprivileged people in Ponorogo Regency often encounter obstacles in accessing

¹Suyogi Imam Fauzi and Inge Puspita Ningtyas, "Optimizing the Provision of Legal Aid to Realize Access to Law and Justice for the Poor." *Constitutional Journal*, Vol. 15, no. 1 (2018), 53.

²Frans Hendra Winata, *Pro Bono Publico Constitutional Rights of the Poor to Obtain Legal Aid*, (Jakarta: Gramedia, 2009), 1-2.

justice, especially in Islamic civil cases at the Ponorogo Religious Court.³This is reinforced by the large number of cases handled at the Ponorogo Religious Court, where poverty rates related to economic problems are generally the dominant cases handled at the Ponorogo Religious Court. In 2023, only 1,621 of the 1,747 cases submitted will be resolved.⁴So the high number of cases and the various types of cases that occur require legal assistance, especially free or pro bono legal assistance. So, the creation of pro bono legal aid will be a step to encourage those who are less fortunate to believe in justice again so that they get the security and legal justice they need.

The provision of pro bono assistance by advocates who proceed at the Ponorogo Religious Court in Islamic civil cases is a sincere effort to address the need for access to justice for underprivileged communities in the context of Islamic law. In Law no. 18 of 2003 concerning Advocates Article 22 Paragraph (1) states that "Advocates are obliged to provide free legal assistance to those seeking justice who cannot afford it." Thus, there are obligations that must be carried out or fulfilled by advocates, namely providing pro bono legal assistance to people in need as written in the Law. However, the reality in the field is that not all advocates carry out their obligations in providing pro bono assistance to underprivileged communities. This is as stated in the author's interview, that the system of advocates is not to pick up the ball, but the community itself must come to the Advocate to ask for legal assistance.⁵

Of the eleven advocates who were interviewed by the author, eight advocates have provided pro bono legal assistance, where from 2022-2023 the total number of pro bono legal assistance provided by the eight advocates is 15 times. Where in providing legal assistance, each advocate handles different cases, namely divorce, inheritance, waqf, marriage istbat, guardianship or child custody (hadhanah), and child crime (immorality).

In the context of religious courts that apply Islamic law, providing pro bono legal assistance is very important considering how deeply the values of justice and humanity are contained in Islamic teachings. In the Islamic religion, it is also mandatory to help each other and help each other in good things. As stated in the Qur'an, namely Surah Al-Maidah

³Ponorogo Regency Central Statistics Agency, "Poverty Line, Number and Percentage of Poor Population in Ponorogo Regency", quoted from [https://ponorogokab.bps.go.id/indicator/23/61/1/garis-kemiskinan-nomor-dan -percentage of poor-population-in-ponorogo-regency.html](https://ponorogokab.bps.go.id/indicator/23/61/1/garis-kemiskinan-nomor-dan-%20percentage-of-poor-population-in-ponorogo-regency.html), (accessed on 27 October 2023).

⁴Ponorogo Religious Court, "Transparency in Case Statistics", quoted from <https://www.ponorogo.go.id/transparansi/statistik-perkara>, (accessed on 27 October 2023).

⁵Wahyu Sidik Rastra Hendra, Advocate. *Interview Results*, Ponorogo, January 20 2024.

verse 2, it reads: "Help you in (doing) righteousness and piety, and do not help you in committing sins and enmity. Fear Allah, indeed Allah is very severe in punishment." (QS Al-Maidah: 2)⁶

Although the verse does not specifically discuss pro bono legal assistance, the principle of kindness and mutual assistance in Islam can be applied in this context. Advocates who provide pro bono legal assistance to underprivileged communities can be considered as a form of fulfilling the principle of mutual assistance in Islam and can be expected to receive a reward from Allah SWT.

As explained in the thesis from Rara Astina Fauziyah Hakim with the title "Review of Islamic Law on the Pro Bono Provision of Legal Assistance in the Bengkulu Religious Courts" (Study of KAI Advocates in Bengkulu Province). The research concluded that in order to create justice, the court offers its own posbakum services which aim to facilitate access to information and counseling services for people seeking justice. In Islamic law, it is explained in Surah An-Nahl and Al-Imran that providing free legal aid is mandatory according to law because it is useful and useful for people fighting for justice.⁷The similarity with the author's research is that they both research the provision of pro bono legal assistance. Meanwhile, the difference between the studies is the different research locations.

Based on the above background, this research will focus on the title "Review of Islamic Law on the *Pro Bono Provision of Legal Assistance* for Underprivileged Communities (Study of Advocates Who Proceedings at the Ponorogo Religious Court)". With the first problem formulation, namely, what are the criteria for providing *pro bono legal assistance* by advocates who proceed at the Ponorogo Religious Court in Islamic civil cases for underprivileged people from an Islamic Law Perspective? and secondly, what is the process of providing *pro bono legal assistance* by advocates at the Ponorogo Religious Court in Islamic civil cases for underprivileged communities from an Islamic Law Perspective?

Thus, this research is qualitative research with a type of empirical legal research. Qualitative research is research that emphasizes understanding problems in social life based on reality, complex and detailed conditions.⁸Meanwhile, empirical legal research is research

⁶Ministry of Religion of the Republic of Indonesia, *Al-Qur'an and its Translation*, (Jakarta, 2019), 197.

⁷Rara Astina Fauziyah Hakim, "Review of Islamic Law on the Pro Bono Provision of Legal Assistance in the Bengkulu Religious Courts (Study of KAI Advocates in Bengkulu Province)." *Thesis* (Bengkulu: UINFAS Bengkulu, 2022).

⁸Eko Murdiyanto, *Qualitative Research*, (Yogyakarta: UPN Veteran Institute for Research and Community Service, 2020), 19-20.

that examines the legal provisions that apply in society with the aim of knowing and discovering visible facts or symptoms. ⁹Data collection techniques use snowball sampling techniques, while data mining techniques use interviews and documentation. The analysis in this research uses qualitative analysis.

Discussion

The Concept of Legal Aid in Islam

A. *Maqāshid al-Syari'ah* theory

Islam never limits anyone from achieving justice that is inherent in them and Islam guarantees the rights of everyone without exception. ¹⁰Islamic law that is enforced will be able to protect the following five things:

1. Protecting religion

Islamic law aims to protect religious beliefs and practices. In the context of pro bono legal assistance, advocates who provide assistance to underprivileged communities help ensure that their religious rights are not neglected and that they can carry out their worship and religious obligations calmly without legal interference.

2. Protects the soul

Islamic law protects the lives and safety of individuals. Pro bono legal assistance plays a role in protecting individuals from legal injustice that can threaten their physical and mental safety, especially for those who cannot afford legal services.

3. Protects reason

In Islam, human reason is considered the greatest gift from Allah. Islamic law respects and protects human reason. By providing pro bono legal assistance, advocates assist individuals in understanding their rights and obligations before the law, preventing ignorance and abuse.

4. Protecting offspring

⁹Muhaimin, *Legal Research Methods*, (Mataram: Mataram University Press, 2020), 79.

¹⁰Muhammad Salda, "The Right to Free Legal Aid in Islamic Law and National Law", *Kanun Journal of Legal Sciences*, Vol. 22 (2020), 190.

Islamic law also aims to protect descendants and family honor. Pro bono legal assistance can help in cases involving family issues, such as divorce or child custody, which have a direct impact on the future of offspring.

5. Protect property

One of the goals of Islamic law is to protect property. Advocates who provide pro bono legal assistance help protect the property of underprivileged people from misuse or injustice, for example in cases of land or inheritance disputes.

In general, it is often formulated that the goal of Islamic law is the happiness of human life in this world and in the afterlife, by taking (everything) that is useful and preventing or rejecting everything that contains harm, namely everything that is not useful for life and existence.

In Islam there are several principles that can be associated with pro bono legal assistance, namely:

1. Principles of Justice

Justice contains the principle of legal equality where everyone is treated equally (fairly) before the law, including disadvantaged people. Justice in the law will not be achieved if the law is not applied fairly. Thus, to achieve fair application and implementation of the law, legal awareness is needed for law enforcers.¹¹

2. Principle of Mutual Help (*Ta'awun*)

Ta'awun comes from Arabic which means helping each other, helping each other in accordance with the principle of tawhid, namely helping in matters of goodness and piety to Allah SWT, not helping in sin and enmity.¹²

3. Principles of *Amar Ma'ruf Nahi Munkar*

Amar Makruf means directing goodness and *Nahi Munkar* means preventing evil. Islamic law aims to guide humanity towards good and true goals that are pleasing to Allah. *Amar Ma'ruf Nahi Munkar* underlined the importance of upholding justice in society. Islamic law places great emphasis on justice as one of

¹¹Hariyanto, "The Principles of Justice and Deliberation in Islamic Law and Their Implementation in the Indonesian Legal State", *Justitia Islamica*, Vol. 11, no. 01 (2014), 45-46.

¹²Ismanto Kwat, *Sharia Insurance Review of the Principles of Islamic Law*, (Yogyakarta: Student Library, 2009), 133.

its goals, and this principle encourages law enforcers to ensure that the law is applied fairly and does not discriminate.

4. Principle of Equality

The principle of equality in Islamic law is a concept that emphasizes the equality of all individuals before the law regardless of their background. This principle is based on the teachings of the Koran and Hadith which emphasize the importance of fairness, social justice and respect for human dignity. The principle of equality in Islamic law emphasizes that every individual must be treated fairly and equally before the law.

5. Principle of Tolerance

Islamic law requires harmony and peace among the people. The tolerance desired in Islam is tolerance that guarantees rights and does not violate the rights of other people. The scope of tolerance is very broad and is not limited to worship alone but includes all provisions of Islamic law such as civil muamalah, criminal law, justice, and so on.¹³

B. Legal Aid Concept

Legal aid is regulations that are made and agreed upon in writing or unwritten, regulations that are binding on each particular community.¹⁴The relationship between human rights (HAM) and legal aid is the foundation for justice and equal protection for all individuals in society. Human rights guarantee that every individual has the right to receive fair treatment before the law, including equal access to legal assistance.¹⁵

This legal assistance includes exercising power of attorney, accompanying, representing, defending, and/or carrying out other legal actions for the legal interests of Legal Aid Recipients, which aims to guarantee and fulfill the rights of legal aid

¹³Husnul Fatarib, "Basic Principles of Islamic Law (Study of the Flexibility and Adaptability of Islamic Law)", *Journal of Islamic Law*, Vol. 4, no. 01 (2014), 72-73.

¹⁴MB Ali and T. Deli, *Complete Indonesian Dictionary*, (Bandung: Penabur Ilmu, 2000), 267.

¹⁵Lampung Provincial Legal Bureau Office. Problems of Legal Assistance for Poor Communities in Indonesia. Quoted from <https://jdih.lampungprov.go.id/detail-post/problematika-bangunan-Hukum-bagi-community-miskin-di-indonesia>, (accessed on April 3, 2024).

recipients to access justice and realize the constitutional rights of all citizens in accordance with the principles equality in law.¹⁶

In Law no. 16 of 2011 concerning Legal Aid, Article 14 explains the conditions and procedures for providing legal aid, namely as follows:

- (1) To obtain Legal Aid, Legal Aid applicants must meet the following requirements:
 - a. submit a written application containing at least the applicant's identity and a brief description of the subject matter for which Legal Assistance is requested;
 - b. submit documents relating to the case; And
 - c. attach a certificate of poverty from the village head, village head, or official of the same level where the Legal Aid applicant lives.
- (2) In the event that the Legal Aid applicant is unable to prepare a written application, the application can be submitted orally.¹⁷

C. *Pro Bono* Concept

Legal aid or pro bono is a means or forum for people who are classified as disadvantaged to obtain legal assistance in cases of violations or unfair treatment in their opinion. This legal aid is not only intended to help people who have legal problems.¹⁸

In Law Number 18 of 2003 concerning Advocates, Article 22 Paragraph (1) reads: "*Advocatees are obliged to provide free legal assistance to those seeking justice who cannot afford it.*" It can be interpreted as providing legal services by an advocate without paying fees, including providing legal advice, exercising an advocate's rights, representing, assisting, defending and carrying out other legal actions.¹⁹

Recipients Pro bono services are provided to people who cannot afford attorney fees. The criteria for incompetence refer to economics. This assistance is also provided to people who do not have access to justice, such as women, children, migrant workers, victims of serious human rights violations, people with special needs, and so on.

¹⁶Prabumulih Religious Court. Basic Rules Regarding Legal Aid Posts in Religious Courts. Quoted from <https://pa-prabumulih.go.id/index.php/jasa-community/posbakum-2019>, (accessed April 3, 2024).

¹⁷Law no. 16 of 2011 concerning Legal Aid, Article 14.

¹⁸Aradila Caesar, Ifmaini Idris, Siska Trisia Meyriza, Violyta Gita Nadia Pramesa, *Pro Bono: Principles and Practices in Indonesia*, (Depok: Faculty of Law, University of Indonesia (BP-FHUI), 2019), 2.

¹⁹Law Number 18 of 2003 concerning Advocates, Article 22 Paragraph (1).

Pro Bono Provision of Legal Assistance by Advocates at the Ponorogo Religious Court

A. Description of the Advocate Profession in Islamic Civil Cases

An advocate or lawyer is a defender of the truth and an advisor, they are someone who is an expert in the field of procedural law who will provide their services in filing cases in court and representing people who are in court.²⁰In Law Number 18 of 2003 Article 1 paragraph (1) an advocate is defined as: "*An advocate is a person whose profession is to provide legal services, both inside and outside the court, who fulfill the requirements based on the provisions of this Law.*"²¹

Advocates are obliged to provide legal assistance to underprivileged people, this is as explained in Advocate Law Number 18 of 2003 concerning Advocates Article 22 Paragraph 1. This legal assistance is called legal services, which is provided by an advocate without payment, including providing legal advice, exercising the rights of an advocate, representing, assisting, defending and carrying out other legal actions.

The duties and functions of an advocate are to provide legal services or legal assistance, in the form of defense, assistance, advisory, and acting as legal counsel for and on behalf of their clients in a professional manner, both litigation and non-litigation, in the context of upholding the law to realize justice, certainty and benefit.²²

In Indonesia, there are several advocate organizations that represent the interests of advocates and assist in the development of the legal profession, including the Indonesian Advocates Association (PERADI), the Indonesian Advocates Association (IKADIN), the Indonesian Advocates Association (AAI), the Indonesian Legal Counsel Association (IPHI), Himpunan Indonesian Advocates and Lawyers (HAPI), Indonesian Lawyers Union (SPI), Indonesian Legal Consulting Association (AKHI), Capital Markets Legal Consulting Association (HKHPM), and Indonesian Sharia Lawyers Association (APSI).

The advocates who have handled pro bono cases at the Ponorogo Religious Court are Endra Panji Anuri, Wafa Zaenassa'dy, Mohammad Pradhipta, Endang

²⁰Sukris Sarmadi, *Litigation & Non-Litigation Court Advocate*, (Bandung: Mandar Maju, 2009), 1-2.

²¹Republic of Indonesia Law no. 18 of 2003 concerning Advocates, (Surabaya: Karya Anda, 2003), 17.

²²Jefry Tarantang, *Noble Advocate Prophetic Legal Paradigm in Resolving Islamic Family Law Disputes*, (Yogyakarta: K-Media, 2018), 73-74.

Misnati, Asit Defi Indriyani, Riaya Novia Putri, 'Alaika Muhlisin, and Jainuri. They are advocates who have shown their dedication in providing pro bono legal services, helping underprivileged people obtain justice. They are involved in various cases, ranging from matters of divorce, inheritance, waqf, hadhanah or guardianship, child immorality, the bath of marriage, and so on. Their expertise and experience in handling various types of cases shows their commitment to the values of legal justice and equality.

B. Description of the Ponorogo Religious Court

The Ponorogo Religious Court is a first level court which has the duty and authority to examine, decide and settle first level cases between Muslims in the fields of marriage, inheritance, wills, gifts, endowments, zakat, infaq, sadaqah and sharia economics as regulated in the Law. No. 3 of 2006 regarding amendments to Article 49 of the Religious Courts Law no. 7 of 1989.

The Ponorogo Religious Court has several functions, including adjudicating functions, coaching functions, supervisory functions, advisory functions, and administrative functions. ²³The vision of the Ponorogo Religious Court is *"The realization of the Great Ponorogo Religious Court"*. Meanwhile, the mission of the Ponorogo Religious Court is:

1. Maintaining the independence of the Ponorogo Religious Court.
2. Providing fair legal services to justice seekers
3. Improving the quality of leadership and professionalism of human resources at the Ponorogo Religious Court.
4. Increasing the credibility and transparency of the Ponorogo Religious Court.

At the Ponorogo Religious Court there are various kinds of cases that are handled, especially in Islamic civil cases, namely divorce, talak, divorce, joint property, control of children, guardianship, origins of children, marriage istbat, marriage dispensation, guardian adlol, sharia economics, inheritance. , grants, determination of heirs and so on.²⁴

²³Ponorogo Religious Court, Duties and Functions of the Ponorogo Religious Court. Quoted from <https://www.pa-ponorogo.go.id/tangan-pengadilan/profil-pengadilan/tas-pokok-dan-function>. (accessed on February 3 2024).

²⁴Ponorogo Religious Court, *2023 Activity Implementation Report* , 7.

C. *Pro Bono* Providing Legal Assistance in Islamic Civil Cases by Advocates at the Ponorogo Religious Court

1. Criteria for Pro Bono Legal Assistance

Based on the results of interviews conducted by researchers with eleven Advocates, it can be explained regarding the criteria for providing pro bono legal assistance at the Ponorogo Religious Court, namely that the criteria given by each Advocate to their prospective clients are different.

Advocates set or have their own criteria for providing pro bono legal assistance, there are advocates who only provide their services for free but pay the down payment costs for the case to be borne by the client. The advocates who apply these criteria are Wafa Zaenassa'dy, Endang Misnati, Jainuri, 'Alaika Muhlisin, Moh. Pradhiptha, and Asit Defi. This is what Mrs. Endang Misnati said

"I provide services. So, if there is a down payment fee, it is still borne by the parties, but our assistance service is free, there is no need to pay. During my time as a lawyer, the criteria that I applied were only underprivileged communities where clients had to attach a letter of indigency. Then because there are still sibling ties."²⁵

Apart from that, there are several advocates who apply other criteria, namely that the client must be in the position of the Defendant. This is because in the future there will be no down payment costs for the case so that the client and the advocate will not be disadvantaged in terms of money. The advocates who apply these criteria are Wafa Zaenassa'dy, Endang Misnati, Jainuri, 'Alaika Muhlisin, Moh. Pradhiptha, and Asit Defi. This is as stated

"There are no criteria for the cases, all cases can be handled pro bono. And from the community there are people who cannot be proven by a certificate of incapacity such as RASKIN, etc. As an advocate, I can handle pro bono cases provided that the client must be the defendant so that we as lawyers will not spend any money."²⁶

Meanwhile, for the two Advocates, namely Mr. Endra and Mrs. Riaya, they do not apply special criteria, the most important thing is only people who are in a less fortunate condition as proven by a Certificate of Inadequacy from the Village.

²⁵Endang Misnati, Advocate. *Interview Results*, Ponorogo, January 31 2024.

²⁶Wafa' Zaenassa'dy, Advocate. *Interview Results*, Ponorogo, January 24 2024.

It can be concluded that the eight Advocates who have handled pro bono cases at the Ponorogo Religious Court have their own criteria that must be met by their prospective clients in order to obtain legal assistance or legal assistance services from Advocates.

So it can be concluded that the criteria in question are administrative requirements that must be fulfilled by prospective clients receiving pro bono assistance. Where these criteria are determined by each advocate. The client must be an underprivileged member of society, then the client must take the position of defendant, postpone the payment of the down payment to the client, the case handled must be interesting or have added value, make a letter of application or agreement between the client and the advocate and so on.

2. Process for Pro Bono Legal Assistance

In this research, researchers conducted interviews with several advocates related to the process of providing pro bono legal assistance at the Ponorogo Religious Court, including advocates who have handled pro bono cases at the Religious Court, namely Endra Panji Anuri, Wafa Zaenassa'dy, Mohammad Pradhipta Erfandhiarta, 'Alaika Muhlisin, Jainuri, Endang Misnati, Asit Defi , Riaya Novia Putri. And those who have never handled pro bono cases based on the informants interviewed are Wahyun Sidik, Endrik Safudin, and Endang Wahyu.

The types of cases handled pro bono by advocates who have attended the Ponorogo Religious Court are very diverse, namely divorce, inheritance, endowments, hadhanah (child custody), guardianship and marriage istbat. The cases handled are of course in accordance with the problems being faced by the client.

The practices carried out by advocates when providing pro bono legal assistance are mostly the same. The provision of legal aid services begins with clients or underprivileged people visiting the Advocate's office to carry out legal consultations regarding the problems they are facing by bringing their personal identity and SKTM from the village. One of them is as stated by Mr. Jainuri

"What is certain is that people are underprivileged, where they must submit requirements in the form of a Certificate of Inadequacy from the Village/ Subdistrict. In practice I just waive my services. Starting from the consultation and then accompanying me to the trial, I

*told them to prepare witnesses. Yes, everyone, I will guide the client to resolve the case." But I will hand over the down payment fee to the litigants.*²⁷

This also applies to the seven advocates who have handled pro bono cases. So it can be concluded that the process of providing pro bono legal assistance by an advocate does not involve paying the down payment fee for the case in court, but the process only starts from the consultation stage regarding the problems faced by the client, after that the advocate helps prepare the files or documents, the advocate helps register the case independently at the Ponorogo Religious Court, then the Advocate provides assistance at the beginning of the trial and at the end of the trial. Meanwhile, the down payment for the case will be handed over to the pro bono client.

Islamic Law Review of the *Pro Bono Provision of Legal Assistance* by Advocates

A. Analysis of Islamic Law on the Criteria for *Pro Bono Providing Legal Assistance* by Advocates at the Ponorogo Religious Court in Islamic Civil Cases for Underprivileged Communities

Pro bono assistance is assistance provided by advocates free of charge to underprivileged communities . Based on PP no. 83 of 2008 concerning Requirements and Procedures for Providing Free Legal Assistance , pro bono legal assistance is defined as "Legal services provided by Advocates without receiving honorarium payments include providing legal consultations, exercising power of *attorney, representing, assisting, defending and carrying out other legal actions for the benefit of indigent justice seekers*".²⁸

Supreme Court Regulation No.1 of 2014 Article 7 concerning Guidelines for Providing Legal Services for Disadvantaged People in Court, explains the criteria for providing legal aid, namely:

- 1) Any person or group of people who are economically disadvantaged can apply for a waiver of court fees.
- 2) Economic incapacity as intended in paragraph (1) is proven by:

²⁷Jainuri, Advocate. *Interview Results* , Ponorogo, 04 April 2024.

²⁸Government Regulation no. 83 of 2008 concerning Requirements and Procedures for Providing Free Legal Assistance, Article 1 Paragraph 3.

- a. Certificate of Inadequacy (SKTM) issued by the Village Head, Head of the local area, stating that it is true that the person concerned is unable to pay the court fees, or
- b. Other Social Benefit Certificates such as Poor Family Card (KKM), Community Health Insurance Card (JAMKESMAS), Poor Rice Card (RASKIN), Family Hope Program Card (PKH), Direct Cash Assistance Card (BLT), Social Protection Card (KPS) , or other documents related to the list of poor people in the government's integrated database or issued by other agencies authorized to provide information on indigents.
- c. The provision of court fee waiver services can be carried out according to needs in each fiscal year.

Meanwhile, the reality in the field is based on the results of interviews conducted by researchers with advocates who are involved in the Ponorogo Religious Court, the criteria for providing pro bono legal assistance to underprivileged communities where advocates ask their clients or potential recipients of pro bono assistance to show their identity or documents stating that the client is truly incapacitated, such as a Certificate of Incapacity (SKTM) made by the Village. Certificate of other social benefits such as Community Health Insurance Card (JAMKESMAS), Poor Rice Card (RASKIN), Direct Cash Assistance Card (BLT), and so on.

Advocates also have their own discretion or decision to determine the criteria for potential recipients of pro bono legal assistance without having to show a certificate as to whether the client is truly an incapacitated person or not. In providing pro bono legal assistance , advocates only accept clients whose position is the defendant. This is because the defendant will not pay the down payment for the case at the Religious Court. The role of advocates in providing pro bono legal assistance is only to provide free services such as document processing, trial assistance, and so on.

Each advocate has his own criteria for determining whether a client needs to be given free legal assistance or not. In general, advocates provide pro bono assistance to underprivileged communities and in providing services do not discriminate between clients who can afford the services of an advocate, but on the other hand there are

other criteria that must be met by clients or potential recipients of pro bono legal assistance.

In statutory regulations it is written that legal aid services must be provided free of charge where the client does not pay a penny. However, some Advocates only use their assistance services which are free, while the down payment costs for cases at the Ponorogo Religious Court are borne by the party concerned, this is so that the Advocate does not suffer material losses.

The Islamic religion considers that justice is considered important because Allah sent his people to behave equally, including in resolving problems and bearing witness. Doing justice will bring peace, benefit, happiness and calm to each other person. Fairness in a law originates from practices that when a decision is taken by law enforcers, it will bring peace and tranquility to everyone and can inspire public opinion that the decision is fair and reasonable and instill awareness in the community to trust the judiciary because it upholds rights. human rights and punish those who violate them. This is as stated in the Al-Qur'an, Surah An-Nisa' Verse 135.

This verse emphasizes that justice must be the main principle in our actions. When advocates provide free legal assistance to underprivileged communities, they demonstrate their commitment to the principles of justice, providing needed legal assistance regardless of their clients' social or economic status. The principle of justice is one of the fundamental values in the legal system, and this is also an important part in the context of pro bono legal assistance by advocates for underprivileged communities. This principle emphasizes the importance of every individual having equal access to the legal system, regardless of social, economic or other status.

Meanwhile, the facts that occur in the field are that when advocates provide pro bono assistance, they fulfill the principles of justice. Advocates treat clients who receive pro bono the same as other clients at trial.

Based on this analysis, it can be concluded that, although each advocate has his own criteria in determining pro bono assistance, the pro bono assistance provided meets the principles of Islamic law such as justice and mutual assistance as well as *Maqāshid al-Syar'ah*, namely the protection aspect. soul.

B. Islamic Law Analysis of the Process of Pro Bono Providing Legal Aid by Advocates at the Ponorogo Religious Court in Islamic Civil Cases for Underprivileged Communities

In Law no. 18 of 2003 concerning Advocates explains that legal aid is legal services provided by Advocates free of charge to clients who cannot afford it where the services are in the form of legal consultation, legal assistance, exercising power of attorney, representing, assisting, defending, and carrying out other legal actions to client's legal interests.²⁹ Legal aid services can be aimed at underprivileged people seeking justice, meaning that people who receive legal aid are individuals or groups of people who are economically disadvantaged and need legal services to help resolve the legal problems they are facing.³⁰

In Law no. 16 of 2011 concerning Legal Aid Article 14 explains the conditions and procedures for providing/practicing legal aid as follows:

- (1) To obtain Legal Aid, Legal Aid applicants must meet the following requirements:
 - a. submit a written application containing at least the applicant's identity and a brief description of the subject matter for which Legal Assistance is requested;
 - b. submit documents relating to the case; And
 - c. attach a certificate of poverty from the village head, village head, or official of the same level where the Legal Aid applicant lives.
- (2) In the event that the Legal Aid applicant is unable to prepare a written application, the application can be submitted orally.³¹

Meanwhile, in practice the provision of pro bono legal assistance is carried out by advocates who proceed at the Ponorogo Religious Court, namely:

1. Clients carry out legal consultations regarding problems that occur. In this case, the client must also show a Certificate of Inadequacy (SKTM) obtained from the Village.³²

²⁹Law no. 18 of 2003 concerning Advocates Chapter I Article 1 Paragraph 2 & 9.

³⁰Indonesian Legal Aid Foundation, *Legal Aid is Not a Given Right*, (Central Jakarta: YLBHI, 2013),

33.

³¹Law no. 16 of 2011 concerning Legal Aid, Article 14.

³²Wafa' Zaenassa'dy, Advocate. *Interview Results*, Ponorogo, January 24 2024.

2. The client submits a pro bono application letter to the Advocate. The letter contains a request for free legal assistance. The letter can be in the form of a form given by the Advocate so that the client just has to fill it out.³³
3. Advocates help write and prepare lawsuit letters and other files or documents.
4. The advocate will help register the case at the Ponorogo Religious Court and the client will be accompanied until the trial process is complete. Then the down payment fees at the Religious Courts will be deferred to the litigants³⁴

Thus, the pro bono legal assistance process carried out by advocates in handling Islamic civil cases at the Ponorogo Religious Court has not been carried out optimally and in accordance with the applicable laws. Advocates in the process of providing pro bono legal assistance at the initial stage still adhere to written laws and regulations. Advocates will accompany clients or underprivileged people from the initial stages, namely consultations, to assistance at the end of the trial. However, at the end of the process of providing pro bono assistance, the costs incurred by the Ponorogo Religious Court will be the responsibility of the client where the client will be required to pay the down payment costs of the case themselves.

In religious courts that apply Islamic law, providing free legal services is essential for underprivileged communities because in this context it teaches how deep the values of *Amar Ma'ruf Nahi Munkar*, the value of equality and tolerance are. Where in reality they invite goodness by ensuring that underprivileged individuals continue to have fair access to the legal process. They also help fill the gaps where poor people often cannot afford legal services, so they can still defend their rights before the law. Apart from that, advocates who provide pro bono assistance at the Ponorogo Religious Court do not look at the client's background, be it social or economic status. Then Advocates believe that every individual has the right to receive fair and equal treatment before the law. Advocates ensure that their clients, whether able to pay or not, are treated with respect and receive equal legal protection. This reflects their commitment to the value of equality in legal services.

Pro bono legal assistance also fulfills *Maqāshid al-Syari'ah* in the aspects of protecting descendants and property. Where in fact on the ground, Advocates help

³³Mohammad Pradhipta Erfandhiarta, Advocate. *Interview Results*, Ponorogo, January 24 2024.

³⁴Endang Misnati, Advocate. *Interview Results*, Ponorogo, January 31 2024.

handle Islamic civil cases, namely in cases of hadhanah or child custody, guardianship, or child immorality. Then also handle inheritance issues, wills. Even though the provision of Pro Bono legal assistance by advocates does not fulfill the concept of pro bono itself, which eliminates all handling costs, especially for underprivileged people. However, if we look at the legislation, it is still not implemented in its entirety, where not all advocates provide pro bono legal assistance, but in the context of legal aid, the provision of pro bono assistance that has been carried out by the eight advocates already meets the principles of Islamic law, such as values. tolerance, *Amar Ma'ruf Nahi Munkar* and the value of equality. As well as *Maqāshid al-Syari'ah* on the protection of descendants and property. Then it also fulfills human rights. Such as realizing constitutional rights for all citizens, especially disadvantaged communities seeking justice based on the principle of equality before the law. These constitutional rights are in the form of the right to justice and the right to welfare.

Conclusion

From the explanation that has been given, the author hereby concludes as follows:

1. Each advocate applies its own regulations regarding the criteria that must be met by clients who receive pro bono, such as the client must be in the position of defendant, requires the parties to pay down payment fees in court, and so on. This is because the Advocates only provide free legal aid services and the Ponorogo Religious Court has not provided a special budget for pro bono assistance. Even though each advocate has its own criteria, the pro bono assistance provided by the eight advocates fulfills the principles of Islamic law, namely the values of justice and mutual help, where when providing pro bono legal assistance they do not differentiate between their legal services and clients who are able to pay for their services. Apart from that, it also fulfills *Maqāshid al-Syari'ah* in the aspect of life protection.
2. The process of providing pro bono assistance carried out by the eight advocates starts from consultation, filing, case registration and assistance at trial. The legal assistance provided has not been carried out optimally because not all advocates have fulfilled their obligations to provide pro bono legal assistance to underprivileged communities. Apart from that, it has not fulfilled the pro bono concept itself which makes all handling costs free, especially for underprivileged people. Even though the process of

providing pro bono assistance has not been carried out optimally, the pro bono assistance provided has fulfilled other principles of Islamic law such as the value of tolerance, the value of *Amar Ma'ruf Nahi Munkar*, and the value of equality. And has fulfilled *the Maqāshid al-Syari'ah* in the aspect of protecting offspring and property. Then it has also fulfilled human rights, such as realizing constitutional rights for all citizens, especially disadvantaged communities, in accordance with the principle of equality before the law.

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