

## The Provision of Legal Aid to Child As the Victims of Sexual Abuse in Legal Jurisdiction of Syar'iyah Court Of Aceh Barat Regency

Muhammad Ikhwan Adabi<sup>1</sup>, Mohd. Din<sup>2</sup>, Adwani<sup>3</sup>

<sup>1</sup>(UniversitasSyiah Kuala, Indonesia)

<sup>2</sup>(UniversitasSyiah Kuala, Indonesia)

<sup>3</sup>(UniversitasSyiah Kuala, Indonesia)

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**Abstract:** The formation of Law No. 23 of 2002 concerning Child Protection as amended by Law No. 35 of 2014 and Law No. 11 of 2012 concerning Criminal Justice System of Children regulates that the children who are victims of sexual abuse are entitled to get legal aid from the investigation stage, prosecution, until the inspection in court hearing. In this legal research, the provision of legal aid is focused in the jurisdiction of the Syar'iyah Court of Aceh Barat (West Aceh). In Article 60 C paragraph (1) of Law No. 50 of 2009 concerning the Religious Courts states that in each religious court a legal aid post is formed for justice seekers who are poor. Thus, the provision of legal aid in Syar'iyah Court of Aceh Barat was provided through a legal aid post. In a preliminary research, it is found that in the Syar'iyah Court of Aceh Barat, the legal aid post had not been formed until now. Therefore, the main problem are how the role of the Syar'iyah Court of Aceh Barat (West Aceh) in providing legal aid to child as the victims of sexual abuse and whether the right to get legal aid on child as the victim of sexual abuse has been fulfilled or not.

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### I. INTRODUCTION

Victims of a criminal act, which is basically the party that suffers the most in a criminal act, actually does not get as much protection as provided by law to the perpetrators of crime. Based on what had been stated by Andi Hamzah, in discussing criminal procedural law specifically relating to human rights, there is a tendency to explore issues relating to the rights of the suspect without regard to the rights of the victim.<sup>1</sup>

The importance of adequate legal protection for victims of crime is not only a national issue, but also an international issue. Therefore, this issue must receive serious attention. This can be seen from the formation of the Declaration of the Basic Principles of Justice for Victims of Crime and Abuse Power by the United Nations (UN), as a result of The Seventh United Nations Congress on the Prevention of Crime and The Treatment of Offenders, which took place in Milan, Italy, September 1985. In one of the recommendations stated that:

*Offenders or third parties responsible for their behavior should, where appropriate, make fair restitution to or dependants. Such restitution should include the return of property or payment for the harm or loss suffered, reimbursement of expenses incurred as a result of the victimization, the provision of services and the restoration of the rights.*

In the declaration in Milan in 1985, the form of protection provided was expanded with the aim not only for the victims of crime, but also protection of the victims due to abuse of power.<sup>2</sup>Legal protection for victims is part of the protection for the community. This protection can be realized by giving restitution and compensation to victims, medical services, and also in the form of legal aid.<sup>3</sup>Legal protection for victims in the form of legal aid is generally regulated in the Law No. 31 of 2014 concerning Amendments to Law No. 13 of 2006 concerning Protection of Witnesses and Victims. In Article 5 letter n it is stated that the victim has the right to obtain legal advice.

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<sup>1</sup> Andi Hamzah, *Perlindungan Hak-Hak Asasi Manusia dalam Kitab Undang-Undang Hukum Acara Pidana*, Bandung: Binacipta, 1986, page. 33.

<sup>2</sup>Didik M Arif Mansur, ElisatrisGultom, *Urgensi Perlindungan Korban Kejahatan Antara Norma dan Realita*, Jakarta: Rajawali Pers, 2006, page. 23.

<sup>3</sup>*Ibid.*, page. 31

The legal protection for children which is in the form of the provision of legal aid is specifically stipulated in Law No. 35 of 2014 which is an Amendment to Law No. 23 of 2002 concerning Child Protection. Child is someone who is not yet 18 (eighteen) years old, including children who are still in the womb (Article 1 paragraph (1) of Law No. 35 of 2014 concerning Child Protection. Child protection is all activities to guarantee and protect children and their rights so that they can live, grow, develop, and participate optimally in accordance with human dignity and values as well as receive protection from violence and discrimination (Article 1 paragraph (2)). The protection of children which is mentioned above means that protection against sexual crimes (Article 15 letter f). Every child who experiences sexual crimes receives protection and assistance in every court process (Article 59A letter d). Such protection and assistance is provided through provision of legal aid and other assistance effectively (Article 64 letter c).

In addition to the Child Protection Act, the Law No. 11 of 2012 concerning the Child Criminal Justice System also regulates the provision of legal aid to victims of child sexual abuse. Article 1 paragraph (2) states that children who are facing the law are the children who are in conflict with the law, children who are victims of criminal acts, and children who are witnesses of criminal acts. Article 3 letter c states that every child in the criminal justice process is entitled to receive legal aid and other assistance effectively.

In the Syar'iyah Court<sup>4</sup> the authority to adjudicate cases of child sexual abuse is regulated in Qanun No. 6 of 2014 concerning Jinayat Law. In general terms, the definition of sexual and child abuse is mentioned. Sexual Abuse is immoral or obscene acts intentionally committed by someone in public or against others as victims of both men and women without the victim's willingness. However, the definition of children is that a person who has not reached the age of 18 (eighteen) years and has not been married. Regarding sanctions for perpetrators of child sexual abuse, it is regulated in article 47 which state that everyone who commits sexual abuse of children is threatened with 'UqubatTa'zir caning at a maximum of 90 (ninety) or a maximum fine of 900 (nine hundred) grams pure gold or a maximum of 90 (ninety) months' imprisonment.

Provision of legal aid to child victims of child sexual abuse can be provided through Legal Aid Institutions, Courts, Local Governments and other institutions. The focus of this research is provision of legal aid in the Religious Courts, hereinafter referred to as the Syar'iyah Court in the legal jurisdiction of Aceh Barat Regency.

The provision of legal aid to the court has been regulated in Law No. 50 of 2009 concerning Religious Courts. Article 60 C paragraph (1) states that in each Religious Court, a legal aid post is established for justice seekers who are poor. Furthermore, the procedures for providing legal aid are regulated in PERMA No. 1 of 2014 concerning Guidelines for Providing Legal Services for the Poor in Courts. Legal aid post services include legal consultations, provision of lawyers for criminal and civil cases, exemption from court fees for both criminal and civil cases and itinerant trial.<sup>5</sup>

However, the problem is that in the Shar'iyah Court of West Aceh regency the legal aid post has not yet been established, while the law has clearly regulated about it. As a result of the absence of legal aid posts, it could be the right of child victims to obtain legal aid can be ignored. Therefore, the Syar'iyah Court of West Aceh (Aceh Barat) cooperated with the regional government of West Aceh (Aceh Barat) in providing legal aid in court. Thus, it is necessary to examine the role of the regional government of West Aceh (Aceh Barat) in providing legal aid to victims of child sexual abuse, so that the right of child victims to obtain legal aid is not ignored.

The Regional Government is obliged to provide legal aid to victims of child sexual abuse, in Law No. 35 of 2014 concerning Child Protection Article 59 paragraph (1) states that the government, regional government and other state institutions have the obligation and responsibility to provide special protection to children. The special protection mentioned above means that the protection of child victims of sexual crimes (Article 59 paragraph (2) letter j). Article 69A states that special protection for child victims of sexual crimes as referred to in article 59 paragraph (2) letter j is carried out through several efforts, including:

1. Education about reproductive health, religious values, and moral values.
2. Social rehabilitation.
3. Psychosocial assistance from the time of treatment to recovery.
4. Provision of protection and assistance at every level of inspection from the investigation stage, prosecution, until the inspection in court hearing.

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<sup>4</sup>Pengadilan Agama di Provinsi Aceh disebut Mahkamah Syar'iyah. diresmikan pada tanggal 4 Maret 2003 M/1 Muharram 1424 H. sesuai dengan Undang-Undang Nomor 18 Tahun 2001, Keppres Nomor 11 Tahun 2003 dan Qanun Provinsi Nanggroe Aceh Darussalam Nomor 10 Tahun 2002.

<sup>5</sup>Syar'iyah Court of Aceh Barat (2019). *Posbakum Service*. Available online from: <http://ms-AcehBarat.go.id/posbakum/>. [Accessed April 29, 2019].

Based on the background of the problems that have been stated above, the formulation of the problems are as follows:

1. What are the causes of the legal aid post which has not already been established in the Syar'iyah Court of Aceh Barat?
2. How are the role and cooperation between the Syar'iyah Court of Aceh Barat (West Aceh) and The regional Government of Aceh Barat Regency in providing legal aid to victims of child sexual abuse?

## II. METHODS

This research uses empirical juridical research. Empirical juridical research is legal research on the enforcement or implementation of normative legal provisions in action on any particular legal event that occurs in society.<sup>6</sup> Empirical juridical research or also called sociological legal research is a legal research that uses primary data, which emphasizes the steps of observation and analysis that are empirical, qualitative, quantitative, and tries to do theory building that is finding middle theories and building grand theories.<sup>7</sup> The method is important to support the results that will be obtained from research conducted so that it can help to get the data with a clear description.

## III. RESULT

### A. The Causes Of The Legal Aid Post Which Had Not Already Been Established In The Syar'iyah Court of Aceh Barat Regency.

Legal aid is a service providing legal advice to people who are poor or low-income and those who do not understand the law or do not understand the law at all in order to fight for their rights due to pressure from a stronger party for obtaining legal representative and access in court both non-litigation and litigation fairly without discrimination.<sup>8</sup>

There are two different terms of the definition of legal aid those are legal aid and legal assistance. The term legal aid is used in a narrow sense, namely the provision of services in the field of law to someone who is involved in a case for free, especially for those who are poor, whereas the definition of legal assistance is used to show the definition of legal assistance in a broad sense. Because, besides the legal assistance that is provided for free of charge to those who are poor, it is also the understanding of the legal assistance that is carried out by lawyers who use honorarium or get payment of money from clients.<sup>9</sup>

Legal aid is an important instrument in the criminal justice system because it is part of the protection of human rights for every individual. The right to legal assistance must be given by the state to justice seekers who are poor. The basis of legal aid is also contained in the Law No. 48 of 2009 concerning Judicial Power (UUKK) in Chapter XI regarding Legal Aid as stipulated in Articles 56 and 57. UUKK specifically regulates about the efforts to fulfill the rights of justice seekers, to get legal assistance and to get fees exempt of the case as well as the establishment of legal aid posts for justice seekers who are poor are as follows:

Article 56 paragraphs (1) and (2), UUKK:

- 1) Every person involved in a case has the right to get legal aid.
- 2) The state bears the cost of the case for the justice seekers who are poor.

Article 57 paragraphs (1), (2) and (3), UUKK:

- 1) At each district court, a legal aid post is established for justice seekers who are poor in obtaining the legal aid.
- 2) Legal aid as referred in paragraph (1) is provided with Free of charge at each level of judicial process until the decision on the case obtained the permanent legal force.
- 3) Legal aid and legal aid posts as referred in paragraph (1) are carried out in accordance with the provisions of legislation.

The basis of legal aid is also clearly regulated in Articles 60 B and 60 C in the Law No. 50 of 2009 concerning Religious Courts (UUPA), which is the second amendment of Law No. 7 of 1989 concerning the Religious Courts, that is as follows.

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<sup>6</sup>Abdulkadir Muhammad, *Hukum dan Penelitian Hukum*, Bandung: Citra Aditya Bakti, 2004, page. 134.

<sup>7</sup>Ediwarman, *Monograf, Metodologi Penelitian Hukum (Panduan Penulisan Skripsi, Tesis dan Disertasi)*, Medan, 2015. page. 27.

<sup>8</sup>Frans Hendra Winarta, *Pro Bono Publico: Hak Konstitusional Fakir Miskin untuk Memperoleh Bantuan Hukum*, Gramedia: Jakarta, 2009, page. 2.

<sup>9</sup>Abdul Hakim Garuda Nusantara dan Mulyana W. Kusumah, *Beberapa Pemikiran Mengenai Bantuan Hukum Struktural*, (Alumni 1981), page. 12.

Article 60B, UUPA:

- 1) Every person involved in a case must obtain legal assistance.
- 2) The state bears the cost of the case for the justice seekers who cannot afford in financial (poor).
- 3) The party who is poor as referred in paragraph (2) must attach a letter of statement of financial hardship from the urban village (kelurahan) where the domicile of the related party.

Article 60 C, UUPA:

- 1) At each religious court, a legal aid post is established for justice seekers who are poor in obtaining legal aid.
- 2) Legal aid as referred in paragraph (1) is provided with free of charge to all levels of judicial process until the decision on the case obtained permanent legal force.
- 3) Legal aid and legal aid posts as referred in paragraph (1) and paragraph (2) are carried out in accordance with the legislations.

In accordance with the provisions of the Law Number 48 of 2009, Articles 56 and 57, the Law Number 50 of 2009 Article 60 B and 60 C, it can be concluded that every person who is involved in a case has the right to obtain legal aid and the state covers the cost of the case for justice seekers who cannot afford for the cost (the poor) as well as the establishment of legal aid posts at each District Court, Religious Court and State Administrative Court for justice seekers who cannot afford for the cost (the poor).

Therefore, the Circular Letter of Republic of Indonesia Supreme Court Number 10 of 2010 was issued concerning Guidelines for Providing Legal Aid. The issuance of SEMA basically carries out the mandate of Articles 56 and 57 of the Law Number 48 of 2009 concerning Judicial Power. SEMA provision instructs every District Court, Religious Court, and State Administrative Court in Indonesia to immediately establish a Legal Aid Post, hereinafter referred to as Posbakum, to provide legal assistance to the people who are incapable in economy.<sup>10</sup>

SEMA No. 10 of 2010 which requires the establishment of legal aid posts in each District Court, Religious Court, and State Administrative Court can be said to be far from perfect. SEMA was only instructed to establish legal aid posts to the communities that are poor without more clearly regulating about the budget, the way to provide legal aid, the rights received by legal aid recipients and so on.

By the establishment of the Law Number 11 of 2016 concerning the Legal Aid, the provision of legal aid in Indonesia achieves a firmness through procedural arrangements which is firm and definite regulated in that Law. Thus, it further guarantees legal certainty for the protection of the rights of the poor in order to obtain justice and equality before the law.

Law No. 11 of 2016 concerning Legal Aid does not regulate legal aid posts in each District Court, Religious Court, and State Administrative Court. The arrangement of the provision of legal aid by establishing legal aid posts is regulated again in PERMA No. 1 of 2014 concerning the Guidelines for Providing Legal Services for Poor people in Court which replaces SEMA No. 10 of 2010. This PERMA stipulates very clearly the provision of legal aid in court.

Article 23 PERMA No. 1 of 2014, mentions that:

- 1) Posbakum (Legal Aid Post) of court is formed At each court.
- 2) The formation of the Posbakum of Court is carried out gradually.
- 3) The stages in the establishment of Posbakum of Court will be adjusted to the planning and budgeting in each Directorate General and the Administrative Affairs Agency.
- 4) The court provides and manages rooms and facilities / infrastructure for Posbakum of the Court in accordance with its ability by considering the access for persons with disabilities, women, children, and the elderly.
- 5) The court must provide access for the accused that is being placed in the Court's detention room to be able to access Posbakum services of the Court.
- 6) For the Court that do not have a budget yet to finance institutional cooperation in the context of organizing Posbakum of the Court, it is still obliged to provide Posbakum room of the court.

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<sup>10</sup>Lampiran 7 Surat Edaran Mahkamah Agung Republik Indonesia Nomor 10 Tahun 2010 Tentang Pedoman Pemberian Bantuan Hukum.

7) If it's necessary, Posbakum of Court can be carried out in an integrated manner with the implementation of the trial outside the Courthouse as described in Article 15 paragraph (5).

The cause of the legal aid post which has not already been established in the Syar'iyah Court of Aceh Barat will be seen from two sides, including legal factors and law enforcement factors. These factors have a neutral meaning, so that the positive or negative impact lies in the contents of these factors.<sup>11</sup>

The two factors are interrelated. Therefore, this is the essence of law enforcement, and is also a standard of the effectiveness of law enforcement. The factors that become the indicators in order to be able to know whether a rule of law conducted in a legal system can run effectively or not, namely the legal factor itself, in its concrete form, there is series of legislation.

Before we discuss about the law enforcement factors, firstly we will discuss from its legal factors side. In this part, the law in material meaning is the regulation which is applied to the public and is made by the authorized central and regional authorities. Therefore, the law in material (hereinafter referred to as the law) includes:

- 1) Central regulations that apply to all citizens or to a certain group or to public in some part of territory of country.
- 2) Local regulations that is only applied in one place or region.

The two categories of regulations, as is known, related to regulations that regulate about matters related to the establishment of legal aid posts, are the existence of UUBH, UUKK, UUPA, and the existence of Government Regulation (PP) Number 42 of 2014, PERMA Number 1 of 2014 and Qanun Number 8 of 2017 for the legislations that has the narrower scope, whereas for the legislations which require each court to provide legal assistance through legal aid posts for victims of child sexual abuse are regulated in Law No. 35 of 2014 concerning Child Protection, The Law Number 11 of 2012 concerning Criminal Justice System of Children, The Law Number 13 of 2006 concerning Protection of Witnesses and Victims as amended by the Law No. 31 of 2014 concerning the Amendments to the Law No. 13 of 2006 concerning Protection of Witnesses and victims as well as Qanun of Aceh No. 11 of 2008 on Child Protection. Thus, if it is seen from its legal factor side, the laws and regulations that apply at the central and regional levels in order to establish legal aid posts at every court for justice seekers who are poor has been very clear.

The next is law enforcer factor. The scope of the term "law enforcer" is very broad, because it includes those who are directly and indirectly involved in the field of law enforcement. In this paper, what is meant by law enforcer will be limited to the group of those who are directly involved in the field of law enforcement which not only covers law enforcement, but also peace maintenance. It is not difficult to guess that these groups include those who work in the fields of justice, prosecutors, police, lawyers, and correctional field.<sup>12</sup>

As explained above that, if it is seen from the legislations side, it is clear that legal aid posts must be established in every religious court and / or Syar'iyah Court of Aceh Barat (West Aceh). However, the problem is that the legal aid post at Syar'iyah Court of West Aceh has not already been formed. This has become ineffective in terms of law enforcement factors within the scope of Syar'iyah Court of Aceh Barat.

The obligation to form a legal aid post that has been clearly regulated in the legislations is carried out by law enforcers. However, the obligation of law enforcers to establish a legal aid post at Syar'iyah Court of Aceh Barat was hampered by several factors. The main factor of the legal aid post which has not already been established by the law enforcers in Syar'iyah Court of Aceh Barat is because of the absence of available budget.

As written on the official website of Syar'iyah Court of Aceh Barat which states that "for the budgeting year of 2008, Syar'iyah Court of Meulaboh does not have the allocation of funds for legal aid post services".<sup>13</sup> The absence of the allocation of funds to form a legal aid post has been ongoing from 2014 to 2019. Legal aid services at Syar'iyah Court of West Aceh (Aceh Barat) had ever been run in 2013 with a budget of 40 million sourced from the Supreme Court of the Republic of Indonesia. In the following year (2014-2019), this legal aid service was not continued to be run, because there was no budget or the allocation of funds from the Supreme Court.

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<sup>11</sup>SoerjonoSoekanto, *Faktor-Faktor yang Mempengaruhi Penegakan Hukum*, Ed. 1, Cet.14, (Jakarta: Rajawali Pers, 2016), page. 8

<sup>12</sup>*Ibid.*, page. 19

<sup>13</sup>Mahkamah Syar'iyah Aceh Barat. Anggaran Posbakum. Available online from: <http://ms-meulaboh.go.id/posbakum/> [Accessed April 29, 2019]



According to the Head of the National Law Development Agency of Indonesia, Prof. DR. R. Benny Riyanto, S.H., M.Hum., CN., he said that in terms of the budget for legal aid services in the court, there has not been much increase, it even tends to fluctuate. In 2013 the budget for legal aid was around 40 billion per year and in subsequent years it was still going up and down at around 40 billion, until 2018 it reached around 48 billion. This number is clearly not comparable with the number of recipients of legal assistance which increased dramatically from 1.040 people in 2013 and it had reached 49,788 recipients in 2017. This condition has resulted the non-optimal implementation of legal aid in Indonesia. The poor who need legal aid services may not be served well with the absence of an increase in the budget.<sup>14</sup>

Article 6 paragraph (1) PERMA No. 1 of 2014 concerning Guidelines for the Provision of Legal Aid Services in Court for the People who are poor, states that all costs to implement legal services for poor people in court are covered by the state through the budget of the Supreme Court of the Republic of Indonesia. Thus, it is clear that the budget for legal aid sourced from the Supreme Court has also not been effective. The ineffectiveness of the budget from the Supreme Court is one of the main causes of the legal aid post which has not already been established in the Syar'iyah Court of Aceh Barat. It can be said that law enforcer within the scope of Supreme Court of the Republic of Indonesia has not been very effective related to the budget. As a result, it will be difficult for every court which is under the authority of the Supreme Court to provide legal aid services.

The budget is the main factor for law enforcers to carry out what has been regulated in the legislation. By the absence of a budget it will be very difficult to implement a regulation. Article 23 paragraph (4) and Article 23 paragraph (6) PERMA No. 1 of 2014 provides an alternative for courts that do not already have a budget to establish legal aid posts. Article 23 paragraph (6) PERMA No. 1 of 2014 states that for the court that does not have a budget yet in order to finance institutional cooperation in the context of organizing Posbakum of the court, the court is still obliged to provide Posbakum room of the court. In Article 23 paragraph (4) PERMA No. 1 of 2014, it is mentioned that "The court provides and manages the rooms and facilities / infrastructure for Posbakum of the Court in accordance with its ability ...". It can be said that there is no reason to not form a legal aid post at the Syar'iyah Court of Aceh Barat.

By the existence of the provisions of Article 23 PERMA No. 1 of 2014 it can be concluded that Syar'iyah Court of Aceh Barat is still obliged to provide legal aid services according to the ability of the Court even though the court does not have a budget. However, until now the legal aid service has not been carried out yet. There is a tendency of the law enforcers of the Syar'iyah Court who are passive and less active in order to explore the law that has been set or the lack of legal knowledge from law enforcers in the Syar'iyah Court.

Due to the absence of legal aid posts in providing legal aid services to victims of child sexual abuse that must be provided at the time of trial, the clerk of the Syar'iyah Court of Aceh Barat said that although there were no legal aid posts yet, the right of the child victim to be accompanied by legal counsel at the time of trial has been given since 2016-2019. The provision of legal assistance was provided by the Regional Government of Aceh Barat (West Aceh) through the Office of Women's Empowerment, Child Protection and Family Planning (DP3AKB). The party from the Syar'iyah Court of Aceh Barat coordinated with DP3AKB.<sup>15</sup> Therefore, it is necessary to study about the role of the Office of Women's Empowerment, Child Protection and Family Planning (DP3AKB) on behalf of the Regional Government of West Aceh.

It can be concluded that, According to Article 60 B paragraph (1) of Law No. 50 of 2009 concerning Religious Courts states that everyone who is involved in a case is entitled to legal aid. Article 60 B paragraph (1) mandates that "every person" whether a suspect or victim is entitled to obtain legal aid. If we relate it to the Syar'iyah Court of Aceh Barat, this article has been applied even though indirectly it is not carried out by the Syar'iyah Court of Aceh Barat itself. The Article 60C paragraph (1) concerning Religious Courts states that a legal aid post in every religious court is established for justice seekers who are poor in order to obtain legal aid. Article 60 C paragraph (1) mandates the establishment of a legal aid post at every religious court. According to the provisions of this article, the Syar'iyah Court of Aceh Barat has not yet carried out the commands of the law with some of the problems that have been explained.

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<sup>14</sup>Supreme Court of the Republic of Indonesia (2018). *BPHN-MA Wacanakan Sinergitas Bantuan Hukum Untuk Masyarakat Miskin*. Available online from: <https://www.mahkamahagung.go.id/id/berita/3363/bphn-ma-wacanakan-sinergitas-bantuan-hukum-untuk-masyarakat-miskin> [Accessed Mei 1, 2019].

<sup>15</sup> The Results of Interview with Ibu Khaidar who is in charge Paniterain Syar'iyah Court Aceh Barat on 5nd July 2019 in Meulaboh

**B. The Role and Cooperation Between the Syar'iyah Court of Aceh Barat and the Regional Government of Aceh Barat Regency in the Provision of Legal Aid for the Victims of Sexual Abuse against Children.**

The provision of legal aid provided by the Regional Government is regulated in Article 19 of Law No. 16 of 2011 concerning Legal Aid, which states that the regions can allocate a budget of the implementation legal aid in the Regional Revenue and Expenditure Budget and further provisions regarding the implementation of legal aid are regulated in Regional Regulation. At the level of Regional Government of Aceh Barat Regency, Qanun No. 4 of 2015 concerning legal aid for the poor was enacted.

The basis of child protection is regulated in Article 28 B paragraph (2) of The Constitution of The Republic of Indonesia of 1945 (UUD 1945) which expressly states that every child has the right to survival, growth and development as well as is entitled to protection from violence and discrimination.

The Arrangement regarding legal protection for victims are generally regulated in the provisions of Law No. 31 of 2014 concerning Protection of Witnesses and Victims. After the Law of LPSK was regulated, it was clear that the legislators had shifted their concept of thinking to provide protection not only for perpetrators, but also maximum protection for victims. Similarly, for the vulnerable children who are victims of crime. In Article 1 number 3 of Law No. 31 of 2014 mention that the victim is a person who has experienced physical suffering, mental suffering, and / or economic loss caused by a criminal act. In Article 1 number 8, the protection is all efforts to fulfill the rights and provide assistance to provide security for Witnesses and / or Victims which must be carried out by LPSK or other institutions in accordance with the provisions of this Law.

The Clear and comprehensive arrangements regarding child protection are further regulated in Law no. 35 of 2014 concerning Child Protection. According to article 1 number 2 of Law No. 35 of 2014, child protection is all activities to guarantee and protect children and their rights to live, grow, develop, and participate optimally in accordance with human dignity and value, as well as obtain the protection from violence and discrimination. In Article 1 number 15a, violence is any act against child which results physical suffering, psychological, sexual, and / or neglect, including threats to commit acts, coercion or deprivation of freedom unlawfully.

The obligation of the regional government of Aceh Barat regency in terms of providing legal aid to child victims of sexual abuse is given to the Office of Women's Empowerment, Child Protection and Family Planning (DP3AKB) of Aceh Barat.

The legal basis for the establishment of the Office for the Empowerment of Women, the Protection of Children and Prosperous Families in Aceh Barat Regency is the Regulation of the Regent of Aceh Barat No.43 of 2008 concerning the explanation of the Tasks, Functions and Work Procedures of the Office for the Empowerment of Women and Prosperous Families and Qanun of Aceh Barat Regency Number 11 of 2012 concerning the Organizational Structure and Work Procedures of the Technical Institute of Aceh Barat Regency. In accordance with the formal juridical aspects in the implementation of women's empowerment is the Law No. 7 of 1984 on the Ratification of the Convention Concerning the Elimination of All Forms of Discrimination against Women, the Law number 39 of 1999 concerning Human Rights, presidential instruction Number 9 of 2000 on Gender Empowerment and Equality in National Development, and Medium-term Development Plan (RPJM) 2004-2009 in which these laws have in essence placed women in their human value and dignity, both as creatures created by God Almighty and as citizens as well as development resources.<sup>16</sup> In the Office of Women's Empowerment, Child Protection and Family Planning (DP3AKB) of Aceh Barat that is in charge of the section of child protection, the provision of child protection is carried out by:<sup>17</sup>

- a. Providing the legal assistance to the perpetrators or child victims from police investigation stage until the inspection in court hearing.
- b. Providing legal consultation to perpetrators or child victims and
- c. Providing psychological assistance to child victims.

DP3AKB of Aceh Barat also cooperated with Police Chief of Aceh Barat (the West Aceh), Cut NyakDien Hospital, Syar'iyah Court of Aceh Barat and The Integrated Service Centre of Empowerment and Child Protection (P2TP2A). Legal assistance for child as victims of sexual abuse from the investigation stage in the police to prosecution in court is given authority to The Integrated Service Centre of Empowerment and Child Protection (P2TP2A) of Aceh Barat. The establishment of P2TP2A is based on the Regulation of the Minister of Women Empowerment and Child Protection Number 5 of 2010 concerning Guidelines for the Establishment

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<sup>16</sup> Office of Women's Empowerment, Child Protection and Family Planning (DP3AKB) of Aceh Barat. *Profile*. Available online from: <http://dp3akb.acehbaratkab.go.id/profil/latar-belakang> [Accessed April 29, 2019].

<sup>17</sup>The Results of Interview with Ibu Ida Sumati who is in charge in the section of Children Protection, DP3A and Family Planning of Aceh Barat Regency on 22nd July 2019 in Meulaboh.

and Development of Integrated Service Centers. The regulation stipulates that each regency/city has an obligation to form P2TP2A institution.

According to Article 1 paragraph (1) of the Regulation of the Minister of the Women Empowerment and Child Protection Number 5 of 2010 concerning Guidelines for the Establishment and Development of Integrated Service Centers, it is stated that the Integrated Service Center, hereinafter referred to as PPT, is a functional work unit that organizes integrated services for witnesses and / or victims of violence act. Article 6 paragraph (1) states that PPT provides integrated services for victims of violence in the form of complaints services, health rehabilitation services, social rehabilitation services, legal aid services, repatriation and social reintegration.

The provision of legal aid or legal assistance by P2TP2A to child as the victims of sexual abuse has been given at the investigation stage until the trial at Syar'iyah Court of Aceh Barat from 2016-2019. Assistance or provision of legal assistance to victims of child sexual abuse by P2TP2A of Aceh Barat Regency is carried out if P2TP2A knows about the occurrence of sexual abuse, there was a complaint from the victim himself, and also if there is a request from the Syar'iyah Court of Aceh Barat (West Aceh) to accompany the victim in court. Provision of legal protection for child victims of sexual abuse is provided by providing legal advice to victims and their families. The cooperation between P2TP2A and the Syar'iyah Court was not carried out through the signing of the MoU etc., in other words it was not formal. In terms of the budget for assisting child victims from the investigation stage to the court, it does not have a special budget. The party of P2TP2A receives a budget from DP3AKB in accordance with the ability of DP3AKB. During this time, according to the party from P2TP2A the budget provided to accompany the victims has been met and has not encountered any obstacles.<sup>18</sup>

There are three members from P2TP2A. The members are paralegals. The Providers of legal aid are regulated in Article 9 letter a of the Legal Aid Law, namely the provision of legal aid given to lawyers, paralegals, lecturers, and law school students. The provision of legal aid by paralegals is regulated in Articles 11 and 12 of the Minister of Law and Human Rights Regulation No. 1 of 2018 concerning Paralegals in Providing Legal Aid. The task of paralegals is to only accompany the victim during the trial. Paralegals do not have the authority to proceed in court like an advocate.

As stated in Law No. 23 of 2002 concerning Child Protection and Law No. 11 of 2012 concerning the Criminal Justice System for Children, which mention that children who are facing the law are children who are in conflict with the law, children who are victims of criminal act, and children who are a witnesses to a criminal act are entitled to get the legal aid and other assistance in every court process. By the existence of P2TP2A, the rights of victims of sexual abuse against children to get legal aid in Syar'iyah Court of Aceh Barat have been fulfilled even though it is not within the scope of the Syar'iyah Court of Aceh Barat itself.

#### IV. CONCLUSION

The implementation of the provision of legal aid to victims of sexual abuse against the child in legal jurisdiction of Syar'iyah Court of Aceh Barat (West Aceh) is still ineffective. That is because there is no budget to establish a legal aid post at the Syar'iyah Court of West Aceh, law enforcement officers who have lack knowledge of the obligation to form legal aid posts according to their ability and also understand that legal aid posts has not been much needed because they have been assisted by P2TP2A.

By the existence of P2TP2A, the Syar'iyah Court of Aceh Barat was greatly helped in terms of its obligation to provide legal services in court towards everyone involved in the case including the victim. P2TP2A is very helpful in providing protection to children who are obliged and entitled to be accompanied in every process from the investigation stage to the court. What we needs to be further noted is about the cooperation between the Syar'iyah Court of Aceh Barat and P2TP2A which conducted the informal cooperation. It would be better for the two institutions to sign the MoU so that there will be the the legal certainty of the two parties that made the agreement and can be applied as a law for every party that made it.

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