

Representation Of Legal Assistance Against The Criminal Action Of Murder In Tulehu In The State Court Of Ambon, Indonesia

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ABSTRACT

This study aims to represent legal assistance to the accused of the crime of murder in Tulehu which was tried at the Ambon District Court. This type of research is a qualitative research. There are two types of research data, namely primary data and secondary data. Primary data is the main data in the form of interviews with informants, while secondary data is documentation data that supports the research results. This research technique includes three stages, namely, the process of (1) reduction, (2) presentation, and (3) drawing conclusions. The results of this study concluded that 2. The protection of the rights of the accused of the crime of murder in Tulehu is not in accordance with the rule of law. The service for granting the rights of the accused through legal assistance provided to the accused of the crime of murder in Tulehu is not in accordance with the rule of law, this is because law enforcers in the sense of prosecutors and judges have not optimally carried out trial procedures according to the directions or instructions in the Criminal Procedure Code and the law. the law in order to create justice in maintaining the rights of the defendant. The prosecutor did not provide complete proof of the guilt of the defendant in the Tulehu murder crime in the facts of the trial, thus affecting the rights of the accused in order to obtain legal certainty and a sense of justice

ABSTRAK

Penelitian ini bertujuan untuk merepresentasikan bantuan hukum terhadap terdakwa tindak pidana pembunuhan di Tulehu yang disidangkan di Pengadilan Negeri Ambon. Jenis penelitian ini merupakan penelitian kualitatif. Jenis data penelitian ini ada dua yakni data primer dan data sekunder. Data primer merupakan data utama berupa hasil wawancara terhadap narasumber, sedangkan data sekunder merupakan data dokumentasi yang mendukung hasil penelitian. Teknik penelitian ini meliputi tiga tahap, yaitu, proses (1) reduksi, (2) penyajian, dan (3) penarikan kesimpulan. Hasil penelitian ini disimpulkan bahwa 2. Perlindungan terhadap pemberian hak-hak terdakwa tindak pidana pembunuhan di Tulehu tidak sesuai dengan aturan hukum. Adapun layanan pemberian hak-hak terdakwa melalui bantuan hukum yang diberikan kepada terdakwa tindak pidana pembunuhan di Tulehu tidak sesuai dengan aturan hukum, hal itu dikarenakan para penegak hukum dalam artian jaksa dan hakim belum optimal menjalankan prosedur persidangan sesuai arahan atau petunjuk dalam KUHAP maupun undang-undang guna menciptakan keadilan dalam menjaga hak-hak terdakwa. Jjaksa tidak memberikan membuktikan keseluruhan terhadap kesalahan terdakwa tindak pidana pembunuhan di Tulehu dalam fakta persidangan, sehingga mempengaruhi hak-hak terdakwa guna mendapatkan kepastian hukum dan rasa keadilan.

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I. Introduction

The 1945 Constitution of the Republic of Indonesia Article 28D Paragraph (1) expressly stipulates that "Everyone has the right to recognition, guarantee, protection and fair legal certainty and equal treatment before the law." This principle is in line with the fourth paragraph of the Preamble to the 1945 Constitution which contains five state principles called Pancasila (Khalid, 2014). In fact, Pancasila is a source of law enforcement in Indonesia (Purwanto, 2020). This article has also provided fair recognition, guarantees, protection and legal certainty for everyone regardless of ethnicity, religion or status of life, to gain access to justice so that their rights to recognition, guarantee, protection, and legal certainty are fair. and equal treatment before the law can be realized properly. The state has the right to guarantee justice and protection for its citizens (Efendi, 2022). In fact, the United States Institute of Peace, access to justice involves normative legal protection, legal awareness, legal assistance and advice, adjudication, law enforcement, and monitoring from civil society (Raseukiy & Aulia, 2019).

The position and position of a person before the law is very important in realizing the order of the legal system and a sense of community justice. This is in accordance with the ideals of a "due process of law" judiciary which is a fair and proper legal process (Syahrin, 2018). In a state of law (Rechtstaat), the state recognizes and protects the human rights of every individual. Therefore, everyone has the right to get legal assistance, even though legal assistance from legal aid organizations has not been sufficient to protect all vulnerable groups in Indonesia (Huang & Sharifa, 2019). State recognition of individual rights is implied in equality before the law for everyone. In a state of law, all people must be treated equally before the law (Equality before the law). Equality before the law must also be balanced with equal treatment (Equal treatment). In fact, in seeking justice there is restorative justice by involving the perpetrator and the victim or his family in order to resolve the problem fairly without any element of revenge (Munajah, 2016). Obtaining a defense from an advocate or public defender (Access to legal counsel) is a human right and is one of the elements to obtain justice (Access to justice) for all (Access for all). No one in a state of law should be denied the right to obtain a defense from an advocate or public defender regardless of their background, such as religious background, ancestry, race, ethnicity, political belief, socio-economic strata, skin color and gender. Everyone has the right to get legal certainty in order to prevent arbitrary behavior from certain individuals with bad intentions (Nola, 2016).

In essence, the position of a defendant in the process of examining criminal cases in court is very weak because they are dealing with law enforcement officers who by law are equipped with a number of powers. The defendant had to deal with law enforcement officers as a result of the violation of the law. Violation of the law does not only result in the person being harmed, but is also a violation of the public interest. Defendants are usually harmed when they do not receive legal protection regarding notification of decisions by law enforcement, so they need legal assistance or protection to assist administratively (Setiawan, 2019). These criminal acts according to their form and nature are contrary to the order or order required by law. They are detrimental to society, in the sense that they are contrary to or hinder the order in good and just social relations. It can also

be said that criminal acts are detrimental to society, so they are anti-social. Therefore, these actions are strictly prohibited or forbidden (Moeljanto, 1982). Law Number 39 of 1999 concerning Human Rights also stipulates in Article 18 paragraph (1): "Everyone who is detained, arrested, and prosecuted because he is suspected of committing a crime has the right to be considered innocent, until his guilt is legally proven in a trial. court and given all necessary legal guarantees for his defense, in accordance with the provisions of the legislation.

In principle, we all know that a defendant is someone who is prosecuted, examined, and tried in a court of law. A defendant has violated the rights of others that are in conflict with a public order and an applicable rule. Therefore, the freedom of the accused in terms of giving information according to the Criminal Procedure Code (KUHAP) needs to be lived up to by law enforcers, not only in court examinations who must be firmly aware of what they are carrying on their shoulders, namely seeking material truth in the public interest. that are in line with individual interests, but also the defendant himself must have known and realized his rights and obligations guaranteed by law. Legal aid provided to the defendant is essentially defending the rule of law and also the protection provided by law so that the suspect or defendant's rights are only protected, because legal aid for the defendant is not merely defending the interests of the defendant to be free from all charges but the purpose defense in a criminal case to defend the rule of law lest the rule of law be wrong or unfairly applied in a case. Thus the provision of legal assistance to the defendant so that law enforcement officers and law enforcement officers make and decide a fair decision in accordance with applicable legal regulations (Syahrini, 1983). Legal aid is currently generally considered as a right that can be demanded by everyone and such rights are seen as part of human rights, because legal aid is focused on fighting for the enforcement of human rights in the process of the cases they face, both outside and inside the court.

Law Number 8 of 1981 concerning the Criminal Procedure Code (KUHAP) explicitly regulates the provision of legal assistance, as described in the provisions of Article 54 and Article 56 paragraph (1) of the Criminal Procedure Code which explains that the provision of legal assistance begins at the preliminary examination level at level of investigation to examination in court. The nature of this legal aid is also said to be structural (Huang & Sharifa, 2019). Article 54 states "For the purposes of defense, a suspect or defendant has the right to obtain legal assistance from one or more legal advisers during the time and at every level of examination, according to the procedure specified in this Law". Furthermore, Article 56 paragraph (1) states: "In the event that a suspect or defendant is suspected or charged with committing a criminal act which is punishable by death or a sentence of fifteen years or more or for those who are incapacitated, who are threatened with a sentence of five years or more, do not have their own legal counsel, the officials concerned at all levels of examination in the judicial process are obligated to appoint legal counsel for them", while in the explanation it is stated: "Recognizing the principle of justice which must be carried out simply, quickly and at low cost and with the consideration that those who are threatened with a sentence of less than five years is not subject to detention except for the crime referred to in Article 21 paragraph (4) letter b, therefore for those who are threatened with a sentence of five years or more, but less than fifteen years, the appointment of their legal adviser is adjusted to developments. and the availability of legal advisors in that place. Therefore, this is what underlies this research, it is important to do to find out the fulfillment of the rights of the accused in the murder case handled by the Ambon District Court.

II. RESEARCH METHOD

This research is an empirical legal research with a qualitative descriptive approach. The data of this research are primary data and secondary data. Primary data is data in the form of information or facts directly obtained by the author in conducting research in the field. Secondary data is data obtained indirectly which includes documentation or written materials in the form of laws and regulations, books, reports, and documents related to the problems studied. This data collection is done through the methods of interview, observation, and documentation. This research phase includes the process of (1) reduction, (2) presentation, and (3) drawing conclusions (Miles, & Huberman, 2014). At the reduction stage, it is done by (1) transcribing the data (2) identifying the data according to the focus and purpose of the research, (3) classifying the existing data according to the research focus, (4) describing the data to reveal meaning. The presentation stage is entering the existing data into the table, then drawing conclusions based on the data that has been analyzed.

III. RESULTS AND DISCUSSION

The Ambon District Court is the first level court that examines criminal and civil cases. Its main task is to receive, examine, and adjudicate the delegation of case prosecution files from the Ambon District Prosecutor's Office relating to crimes and violations of law that occur within its jurisdiction, such as criminal acts, civil cases, corruption, industrial and fishery disputes. In the civil sector, the Ambon District Court plays a very important role in examining and resolving rights disputes between the plaintiff and the defendant who feel aggrieved. As for the process or procedure to find out someone has committed a crime or not, the truth will be proven in the facts of the trial by the judge. Similarly, the murder criminal case that occurred in Tulehu was then processed in the Ambon District Court. The legal aid process for the defendant has been obtained as basic rights that must be obtained. This is in accordance with the statement in data 1 below which was submitted by the resource person at the Service Section for Criminal Case Services at the Ambon District Court.

a. Data 1

In the system for handling the criminal case of homicide at the Ambon District Court, when a person is declared a suspect or a defendant, firstly there must be witness testimony, expert testimony, letter evidence and evidence of instructions and a minimum of 2 (two) pieces of evidence that a person has been designated as a suspect, when someone has determined as a suspect, the suspect must be notified of his case and the suspect or defendant who does not have legal counsel is obliged to appoint a legal advisor for the suspect or defendant to defend him from the level of examination to the level of court examination.

Based on data 1 above, it has been explained that the defendant in the murder case has legal rights, namely legal counsel as a defense in the trial. The dossier from the investigator who was delegated to the Ambon District Prosecutor's Office, the public prosecutor also delegated a case to the Ambon District Court to be further examined, tried and decided by the panel of judges. Furthermore, the chairman of the court reviews the files submitted by the public prosecutor, after that the chairman of the court determines the time of the trial and appoints 3 (three) judges to hear

the case. When a case has been tried, the public prosecutor is obliged to prove the crime of murder, by reading out the indictment that has been described in a clear, detailed, and systematic way regarding the evidence of instructions, letters and witness statements in the facts of the trial.

The provision of legal assistance for the accused of the crime of murder in Tulehu is part of the guarantee of protection of the legislation regarding the recognition of the rights of the suspect or defendant that must be recognized and respected by law enforcement officers in a case of a crime of murder. In fact, legal assistance is needed in the form of preventive or repressive legal instruments, both written and unwritten (Sanjoto, 2019). This process is a form of law enforcement to obtain legal certainty in order to create justice and social benefits (Nola, 2016). The purpose of providing legal assistance to a defendant is to guarantee the rights of the accused to get access to justice, to realize the constitutional rights of citizens in accordance with the principle of equality before the law, to guarantee legal certainty and to ensure that the implementation of legal aid is carried out evenly throughout the community who are litigating. an effective, efficient and accountable judiciary as well as creating legal certainty and a sense of justice. This is in accordance with the explanation of the resource persons in the Criminal Case Services Section of the Ambon District Court.

b. Data 2

The purpose of providing legal assistance to a defendant in a litigation has been regulated in Article 3 of Law no. 16 of 2011 concerning legal aid, namely: firstly, to guarantee and fulfill the rights of legal aid recipients to obtain access to justice, secondly, to realize the constitutional rights of all Indonesian citizens in accordance with the principle of equality under the law, and thirdly, to guaranteeing the certainty that the implementation of legal aid is carried out evenly throughout the territory of the Indonesian state, and the last is how to realize an effective, efficient, and accountable judiciary, as the vision and mission of the Ambon District Court.

Based on the statement in data 2 above, it can be described that the right to legal aid is one of the human rights recognized and guaranteed by the constitution in Indonesia. The right to legal aid has been guaranteed in the constitution and is stated in Article 28 D paragraph 1 of the 1945 Constitution which states, "everyone has the right to recognition, guarantee, protection and fair legal certainty and equal treatment before the law". Then in Article 27 Paragraph (1) of the 1954 Constitution, it is stated that: "All citizens have the same position in law and government and are obliged to uphold the law and government with no exceptions". The constitutional guarantee is then realized through national and international laws that have been ratified or ratified by the Indonesian government as stated in Article 18 paragraph (4) of the Human Rights Law, Article 14 paragraph 3 letter d of Law no. 12 of 2005 concerning the Ratification of the International Convention on Civil and Political Rights, which essentially states that every person being examined has the right to obtain legal assistance from the time of the investigation until a court decision has permanent legal force. Based on this provision, it is clear that legal aid is the right of every person guaranteed by the constitution and the laws and regulations under it. In the Law on Advocates there is also an obligation of advocates to provide free legal aid, namely Article 22 paragraph Advocates are obliged to provide free legal assistance to justice seekers who cannot afford it. The provision of legal aid to citizens is an effort to fulfill and at the same time implement a state of law that recognizes and protects and guarantees citizens' human rights to the need for access to justice and equality before the law. This is in line with the statement of the defendant's attorney as evidenced by the following statement.

c. Data 3

The legal aid provider checks the completeness of the requirements within 1 (one) working day after receiving the legal aid application file. The application for legal aid has met the requirements, the legal aid provider is obliged to submit a written willingness or rejection of the application within a maximum of 3 (three) working days after the application is declared complete. Legal aid providers state their willingness to provide legal assistance based on a special power of attorney from the legal aid recipient. To act inside and outside the court to defend the rights of the accused

Based on the statement above, it is explained that the legal assistance provided to the accused of the crime of murder in Tulehu is essentially to defend the rule of law and also the protection provided by law, so that the suspect or defendant has his rights fulfilled and protected, not to release the suspect or defendant to be free from all lawsuits. This is also emphasized in Article 54 of the Criminal Procedure Code, namely: "For the sake of defense, a suspect or defendant is entitled to legal assistance from one or more legal advisors during the time and at each level of examination according to the procedure determined by this law". Based on the legal basis in article 54 of the Criminal Procedure Code, the state has provided guidelines for carrying out their respective duties and responsibilities. This is in line with the following statement data presented by the defendant's attorney.

d. Data 4

In providing legal assistance to the accused of the crime of murder in Tulehu, we as legal advisors have actively provided the defendant's rights in the trial process according to existing procedures. and basically the defendant must also have received legal assistance and provided information freely, since the defendant was determined as a suspect, but the defendant was only given legal assistance when the defendant was brought to the Ambon District Court for trial.

Based on data 4 above, it proves that the legal assistance provided by a lawyer to the defendant must meet certain conditions that have been determined in the legislation. Having a lawyer who accompanies and defends the defendant from the time of his arrest or detention until the process of examining the case at trial is to avoid arbitrary treatment from irresponsible officers. The implementation of the provision of legal aid is not only carried out by a person who is an expert in the field of law and experienced in carrying out his profession, but can also be a legal entity that already has certain criteria. Legal aid provided by legal aid providers in this case is an advocate who is oriented towards noble values, namely the human aspect to fight for human rights so that they can live in prosperity and justice, especially in the judiciary. Legal aid is a medium that can be used by all levels of society in order to claim their rights for treatment that is not in accordance with applicable legal rules. The legal assistance provided by the lawyer to the defendant is not only to defend the defendant's rights, but to seek true justice for the defendant for the cause of the murder. This is in accordance with the statement from the source lawyer for the murder defendant in Tulehu below.

e. Data 5

We, as lawyers for the defendant Asrul Falevy alias Falevy, believe that the legal deviations committed by the public prosecutor in the process of proving the facts at trial are not in accordance with what happened in the legal facts. This is known from the defendant's statement regarding what the victim did in fact exceeds the limit, namely the victim came by provoking people to make a fuss while carrying sharp weapons, thus threatening the safety of the defendant and there the defendant acted in self-defense from attacks. and threats. Because we, as legal advisers, are fully

convinced that a person is being punished for carrying out an emergency defense act to defend himself from attacks or threats that are against the law.

Based on data 5 above, it is clear that prosecutors are trying to make demands that are not in accordance with legal facts. This is where the role of a lawyer is to defend directly against the defendant. Through the defense, it was revealed that the murder case began with a provocation from the victim in a gang. The arrival of the victim and his friends who were carrying sharp weapons made the defendant feel threatened so that he defended himself and resulted in a fight that resulted in the victim being killed by the defendant. This is what needs to be revealed in the trial to provide true justice for the victim and the defendant in particular. In handling this legal case, the defendant's lawyer Abd. Sukur Kaliky has always given the rights of the accused actively through the defense of legal aid guaranteed by law, namely making exceptions or denying accusations in court against charges that are not in accordance with legal facts. This effort was made because the Public Prosecutor in the facts of the trial was unable to prove the guilt of the defendant in the crime of murder in Tulehu as a whole. Then, the panel of judges decided that the case was not based on legal facts and only paid attention to the facts of the trial. This case is clearly contrary to the principle of proof in legal science (*incumbite pro bafitto*) which means that whoever accuses someone has the right to prove in court and injure the rights of the accused to get justice. Moreover, based on the defendant's statement contained in the indictment, it revealed several facts in accordance with the defense presented by the lawyer. The contents of the indictment are described below.

f. Data 6

Initially, the defendant only reprimanded the victim, because the victim came to the Air Mareta complex by making noise and cursing. After that, the victim followed the defendant and wanted to hit the defendant with a rock, so the defendant avoided it and a fight ensued until the victim felt pain and took a knife to stab the defendant. Then the defendant took the knife from the victim's hand and pulled the victim closer and stabbed the victim until she fell. And the defendant left the victim

Based on data 6 above, it shows that the legal offense alleged to the defendant is not in accordance with the demands of the public prosecutor who tried to corner the defendant. The prosecution of the public prosecutor is an act that injures the rights of the accused in the facts of the trial as stated in Law no. 48 of 2009 concerning Judicial Power Article 6 Paragraph 2 explains that: "No one can be sentenced to a crime, unless the court, because of the legal evidence according to the law, is convinced that a person who is considered to be responsible has been guilty of the act that is being charged. over him." In this case, the defendant did not purely commit a mistake in general, let alone planned, but started with a provocation that was considered self-threatening so that it was deemed necessary to have a self-defense from the defendant. In the implementation of the granting of the defendant's rights, it is considered that the prosecutors, police, and judges have not given the maximum amount of rights. The lack of effective legal services for defendants is due to the negative side in law enforcement that haunts the defendant to get justice as a whole. This is in accordance with the results of the interview with the defendant's lawyer below.

g. Data 7

In providing legal assistance to the accused of the crime of murder in Tulehu, we as legal advisers have actively provided the defendant's rights in the trial process according to existing procedures and basically the defendant in the trial process has constitutional rights not only from

legal advisers but also from the attorneys. Law enforcement officers such as prosecutors and judges are also obliged to provide the rights of the accused by looking at the procedures for implementing the guidelines of the Criminal Procedure Code in the application of the rights of a defendant, but in the fact that the trial the public prosecutor was unable to prove the guilt of the defendant as a whole, namely where the knife came from and whose property knife used for the crime of murder.

Based on data 7 above, it has been explained that the public prosecutor also has an obligation to give rights to the defendant. Although the prosecutor has a role to prove guilt and prosecute the defendant, it must not ignore the legal principles that the defendant must obtain. When the prosecutor is unable to fully prove the guilt of the defendant, it is not permissible to corner the suspect with trapping questions. It is the same with the data above which explains that the public prosecutor cannot prove where the knife came from and who the knife was used in the murder. In this case, prosecutors and judges in making decisions on the crime of murder are dependent on criminal acts, meaning that if the crime of murder is based on the criminal act of murder, namely article 338 of the Criminal Code, articles of law No. 1981 concerning the Criminal Procedure Code. The point is that whatever the crime is, it must be adjusted to the crime itself.⁴ In the context of law enforcement, it can be translated that no two cases are identical so that each case must be considered according to the characteristics of each case.

IV. CONCLUSION

Based on the results of research and analysis of "Providing Legal Aid to the Rights of the Defendants of the Crime of Murder in Tulehu (Study of Murder Case No: 214/Pid.B/2019/PN.Amb)", it can be concluded as follows: In terms of the concept of the applicable legal rules, the author considers that there are still many irregularities or actions from law enforcement officers in granting the defendant's rights which have been guaranteed by law not based on existing rules, so that the defendant of the crime of murder in Tulehu did not get his rights in full. Law enforcers are not effective in paying attention to the rights of a defendant in the law enforcement process in order to reach the peak of legal certainty with justice. So the author assesses the existence of an act of abusing the rules by law enforcement officers in granting the rights of the accused of the crime of murder in Tulehu. The protection of the granting of the rights of the accused of the crime of murder in Tulehu is not in accordance with the rule of law. The service for granting the rights of the accused through legal assistance provided to the accused of the crime of murder in Tulehu is not in accordance with the rule of law, this is because law enforcers in the sense of prosecutors and judges have not optimally carried out trial procedures according to the directions or instructions in the Criminal Procedure Code and the law. the law in order to create justice in maintaining the rights of the defendant. The prosecutor did not provide complete proof of the guilt of the defendant in the Tulehu murder crime in the facts of the trial, thus affecting the rights of the accused in order to obtain legal certainty and a sense of justice.

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