

# Access to Justice for Victims of Structural Violence in Makassar, South Sulawesi

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**Abstract.** Structural Violence is a manifestation of repressive act for overcoming the problems happened in society that reflects lack experience and understanding about social-culture condition. Access to justice for violence of structural violence is a rights warranted by constitution and must be given due to systemic and large impact. The aim of this research is to find out structural violence happened in Makassar as a result of social conflict and manifestation of people rights for access to justice in completing that conflict. this research is descriptive with empirical/sociological approach. The result of the research showed that social conflict occurred as arrogance of power and the blockage of communication in completing the problem. The un synchronized between one law to the other law; weak of apparatus understanding and the arrogance character of Makassar peoples are the other causes. Marginalization which lead to people counterproductive is the biggest cause from impact occurred. Access to justice for victims of structural violence on the one side seen as blessing for victim, however for the authorities is a threat that can disturbing the existence of dominance to low class people.

## 1 Introduction and Literature Review

Legal assistance is part of the citizens' rights as stated in the Republic of Indonesia Law No. 16 of 2011 concerning Legal Assistance. Legal assistance is also a crystallization of the principle of equality before the law in the principle of Indonesian law which equates the position of citizens before the law. In addition, Article 22 paragraph (1) of the Republic of Indonesia Law No. 18 of 2003 concerning Advocates also regulates the obligation of Advocates to provide legal assistance. Republic of Indonesia Law No. 8 of 1981 concerning the Book of Law - Criminal Procedure Law also regulates implicitly where "... the defendant charged with a minimum threat of 5 years imprisonment must be accompanied by an Advocate". In view of this, legal assistance can be seen in 2 (two) perspectives namely becoming a right, when a crime is committed under 5 (years) but becomes an obligation when someone is suspected of committing a crime with a threat of more than 5 (years). This is in line with the Individual Juridical legal assistance model stated by Cappelletti and Gorley [1].

Legal assistance is given not only in terms of poverty/economic background, but has begun to be interpreted as a basic human right. Inequality in social, economic, cultural and political structures is a more complicated problem and becomes a phenomenon that is commonly encountered, especially during the Old Order and New Order. Gradually, legal assistance began to be provided with a more revolutionary concept and implementation of empowerment tasks. This is the core of business bussiness or the essence of what is called Structural Legal Assistance [2].

Legal assistance is given because there are conflicts in society, whether individual or structural. Conflict resolution is also part of the study of criminal policies (political crimes/criminal policies), where rational efforts are put forward to overcome crime or social problems [3]. The pattern of conflict resolution patterns carried out by Law Enforcement Officials still often puts forward repressive approaches, and even tends to use verbal and non-verbal violence even though it can be done preventively. Violence is carried out in a variety of ways, starting from the direct nature to being done in soft ways.

Structural violence itself arises as a reaction to a lack of understanding of the socio-cultural conditions of people who consider that society is a group of people who are ignorant and have a low level of intellectuality. This kind of situation is called sociology of ignorance. The work of law enforcement officers who are at the level of policy and implementation, should be balanced with knowledge and understanding of scientific approaches typical of sociology. There are two problems that will be discussed in this article; First, regarding the form and impact of structural violence experienced by the community. Second, related to the way people access legal assistance in an effort to achieve justice due to the occurrence of structural violence.

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## 2 Objective of the Study

the way people access legal assistance in an effort to achieve justice due to the occurrence of structural violence

## 3 Research Method

To answer the problem in the problem formulation, the research used the empirical juridical research method. The main data source of this study came from the results of in-depth interviews with informants who were considered to represent (representations) of the community and government institutions that were determined using purposive sampling method as well as other additional data such as documents. The research location was focused in Makassar City (Bara-Baraya Village). The data obtained were analyzed using descriptive analysis method.

## 4 Discussion

### 4.1 Structural Violence Conception

Lemert stated that the practice of violent practices often leads to a feedback process and tends to occur in repetitions and over time increases deviations [4]. This becomes legitimacy in every act of irregularity committed so that the practice of violence is like a chain that will never break up. Related to the repetition, Hibnu Nugroho called it a transmutation effect [5]. Galtung divided violence into 2 (two) types namely direct violence and indirect violence. According to Galtung's thought, direct violence actors are the people themselves while indirect violence is handled by the State represented by government institutions through the tools of the State through armed forces and public policies. The role of the dominant State in policy formulation activities on the one hand can go towards the ideals of the State which is to create a prosperous society according to the concept of the welfare state but on the other hand it can cause chaos [6].

Because there is an unjust power factor (structure), it is very possible if a formulated policy can hinder or result in the inability of the community to actualize itself [7]. Mufti Makarim translates violence linguistically where violence uses authority without validity or arbitrary action [8]. Because of experiencing the expansion of meaning, Sahetapy affirmed Galtung's theory of violence by associating violence as social, cultural and structural violence or being synchronized as "sobural" [9]. As White & Haines expressed, the concept given by Galtung, Sahetapy and Makarim regarding the conception of structural violence was very close to the conception of poverty in the perspective of Marxist Criminology [10].

### 4.2 Shape and Impact from Structural Violence in Bara Baraya, South Sulawesi

Structural conflict that occurred in Bara Baraya Village, Makassar began when the Mandala operation was completed in the 1960s, and after completion many TNI members settled in Makassar. However, KODAM had difficulty in providing facilities to members until finally KODAM rented land from two people, each named Daeng Mantika and Daeng Madinong covering an area of  $\pm 2$  ha to build a housing complex. Gradually, the land was bought by civilians in turn but later there was one of the heirs who demanded the return of the land. Differences in perceptions experienced by one heir then triggered a continuing conflict for many years.

From the conception of structural violence as outlined above-especially Galtung-revealed that the violence encountered in Bara Baraya Village was indirect violence. The use of authority is a characteristic that distinguishes it from other types of violence. Violence began when the second warning letter was sent to residents, KODAM member XIV Hasanuddin acted arrogantly while saying that the Bara Baraya area would be leveled. This offended the citizens (the front row of mothers) who spontaneously pursued and attacked the TNI/KODAM [11]. The military finally carried out the execution of house evictions that were carried out before dawn where the residents were sleeping and there were those who were praying at night. Then the residents were also forced to receive compensation so that the residents could not calm down and be burdened by their thoughts, leading to a counterproductive situation [12]. KODAM XIV Hasanuddin also attempted to legitimize militaristic actions by inviting journalists in every activity in Bara Baraya in order to lead opinions. Incorrect news/info was also disseminated, for example: KODAM said that the area being evicted was only the dormitory area, while the outside area of the dormitory was not, but in fact the residents outside the dormitory also entered the plan to be upset [13]. This intimidation and eviction action was confirmed by KODAM XIV Hasanuddin which stated that the military always put forward social communication with a persuasive and educative approach including socialization to citizens and deliberations to community leaders before eviction and post-eviction plans. This was also followed by giving warning letters 1 and 2 to residents to vacate their land and then end with the execution process. KODAM also has intelligence that is deployed / assigned in the Bara Baraya area to reduce the provocateurs and seek information and who spreads it to find information regarding residents who reject the eviction [14].

The relation between KODAM XIV Hasanuddin and the Heirs is a questionable thing from the start because this case is actually a civil matter, not a military domain. Therefore, this is very confusing because KODAM XIV Hasanuddin or the military indirectly shows their partiality to one of the parties, which should be neutral so that it gives the impression that the military is backing up and not unlike a security services business for outsiders (heirs). There are forces that try to emerge through symbols, for example, an impressive uniform that they feel above society.

This event certainly has an impact as a consequence of follow-up. Residents initially became afraid, anxious. There are also elderly who are sick because they are burdened with their thoughts. This has an impact on children who because of the event the school is closed. Even after the issuance of the 2nd Warning Letter, the traumatic feeling transformed into an anti-military feeling. Residents block and isolate the area while applying "anti-camouflage area". Citizens' intolerance to the symbol of the military symbol has taken its toll where one of the family heads who were damaged in the windshield of his house by the Bara Baraya residents only because the house was attached to a TNI sticker. Then, there was a misunderstanding and mutual suspicion arose between citizens so that the conflict spread into horizontal conflicts that have the potential to divide the community [15].

The Sulawesi community, especially Makassar, has what is called *Sirri 'na pace*. Someone will be embarrassed if their rights are violated by others. Everything that concerns human dignity will be maintained from anything, anywhere and however. In this event, Sirri's culture was accelerated in the form of resistance to the military together with heirs who carried out the eviction systematically and gradually. The military also mobilizes all kinds of efforts so that the community is willing to give up the land, for example by giving disbursed money (losses) with a disproportionate amount to spread intelligence to gather information around the Bara Baraya area. Not surprisingly, around the Bara Baraya area there were many banners that were spread by the residents and one of them read "Bara Baraya Membara, Makassar Lautan Api".

### **4.3 Access to Justice for Structural Violence in Barara Baraya, South Sulawesi**

Access to justice for victims of structural violence in Barara Baraya is provided by the Makassar Legal Aid Institute. The Indonesian Legal Aid Foundation/Makassar Legal Aid Institute assistance provided in two ways. First, enter through the existing network. In the Bara Baraya case, an advocate named Visi came to the campaign of citizens who were accompanied by student organizations, which then provided information and recommended the case to Makassar Legal Aid Foundation. In other cases, LBH Makassar also handles cases along with other networks such as, LBH APIK, WALHI, OMBUDSMAN and KOMNAS HAM. In addition, LBH Makassar also actively involves students who are members of several external organizations such as FMN (National Student Front). Second, cases come from public complaints. This public complaint is then reviewed first whether it is feasible or not feasible to be accompanied and get legal assistance by reviewing and considering in advance with a measurable indicator whether the case meets the elements of involvement with the State apparatus. Then after it was decided that it was worthy to be handled, the initial efforts were carried out by organizing the masses.

In addition to organizing the masses, other forms of assistance are carried out by providing legal education in the form of socialization and case discussions. In each forum with citizens, LBH Makassar encourages women to actively argue and contribute. Citizens are also involved in every campaign action, one of them by means of LBH Makassar encouraging citizens to campaign through the media and research. Then LBH is also active in assisting assisted communities to coordinate with other agencies. Empowerment efforts are also carried out such as trainings in the context of human rights awareness and the most common are Capacity Building programs. Which essentially motivates citizens to live up to the resistance actions. Students begin to be involved again in the efforts of non-litigation efforts to move in non-legal areas. Such efforts are part of a strategy to pressure the government. While the output of this legal assistance is to encourage policy makers to make improvements through amendments to the Act, bureaucratic reform, especially Law Enforcement Officials. Structural legal assistance also wants to build awareness and independence so that the community is not confined by an oppressive system, thus this effort can lift the confidence and motivation of the community to defend their rights.

Legal assistance provided by the Makassar Legal Aid Institute has become a trademark by the Indonesian Legal Aid Foundation in structural legal assistance. The input and output of structural legal assistance as outlined by Mas Achmad Santosa covers 3 things, namely delivering the legal awareness of the community that they are victims of injustice and encouraging the public to formulate solutions, use the justice channel to criticize the performance of existing legislation and launch activities - policy reform activities by articulating various defects in positive law and existing policies to then provide alternatives [16]. Looking at this, it seems that the court is not the main means in resolving cases, but functioned as a public "stage" of defender and society as part of the pressure. Non-litigation efforts that are thick with empowerment efforts are an important complement - even though using art media - from litigation efforts in the courts [17] that aim not only procedural justice to be achieved, but also substantive justice [18]. The Bara Baraya community, which initially consolidated itself spontaneously, became more organized. Similarly, understanding the case of the position they experienced. The difference between after and before obtaining legal assistance is not just to fulfill the needs of a brand as a citizen but more than that is to make the community understand the law and can criticize existing legal products, namely by providing legal and citizenship education for the community (civic education) [19].

The government's perspective that considers that legal aid providers are merely provocateurs also shows that the State has not fully understood the concept of structuralism. This proves that the country's perspective on legal aid is still

confined to the old concept of settlement through the courts. Litigation procedures that only pay attention to the factors of evidence without regard to the factors of benefit and justice, indirectly prove the government's perspective is still in the scope of traditional legal assistance. The government as a neutral party and has full authority, submits administrative settlement and land conflicts to the Makassar National Land Agency. However, both conceptually and technically, the method of dispute handling that is used often excludes history and wisdom, but rigid norms. The Makassar National Land Agency divides land issues into two based on their widespread potential namely conflict (widespread) and disputes (not widespread). In its performance, the Makassar National Land Agency only handles disputes (adjudication) because it does not reach the social sphere. The action of the Makassar National Land Agency relies on basic tasks and functions and Standar Operasional Prosedur. In fact, the Makassar National Land Agency does not know the events directly in the field because the information obtained is only sourced from documents and has not been dropped directly into the field [20]. Such a situation is the perspective of closed logical systems or law enforcement using horse glasses. In other words, the adoption of the judiciary in resolving conflicts can be translated as a formal legal system of criminal justice [21].

The problem of the way of looking at a problem should be seen from a variety of disciplines and wisely addressed so that not only the humble behaviors that arise, but also the courage to correct yourself [22]. Seeing an event from various points of view is very necessary especially for the decision maker. Looking at the above phenomena, there are actually a number of things that can be done, first expanding the perspective by way of carrying out the breaking rule by putting aside the normative side believed to create progressive breakthroughs. Sociological approaches to communities in conflict using the customs of the community can be more accepted. The combination of objectivity, calmness and maturity becomes an absolute requirement if the Law Enforcement Officials want to reach outreach. This is evidenced by an incident in Bukit Tinggi where the conflict between water resources between local communities and the Bukit Tinggi City Government can be resolved properly through mediation [23]. Second, the use of conflict resolution in every conflict response. Conflict resolution itself is part of conflict management that is more than just conflict resolution. It is said that because in it there is an effort to deal with the causes of conflict, there are also efforts to build new relationships / relationships in the long run, one of which is negotiation. There is an element of empowerment so that inevitably or not, the Law Enforcement Apparatus and the people in dispute are "forced" to work together in finding solutions in a mutually beneficial form.

## 5 Conclusion

Based on the above, 2 (two) conclusions can be drawn. First, violence is still a habit and is seen as the main solution to the settlement of cases. Violence carried out can be identified as indirect violence that uses power lines (military) as an intermediary, causing a traumatic and frustrating effect on the community. Second, legal assistance provided involves several elements such as students and other advocacy institutions by involving assisted residents. Legal assistance provided is not just the fulfillment of constitutional rights, but also functions as a means of legal education to realize legal awareness.

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