

## ACCESS TO JUSTICE FOR THE POOR AT THE RELIGIOUS COURT OF BOGOR IN 2021

Wella Regina Selviana <sup>1</sup>, Desty Anggie Mustika <sup>2</sup>

Universitas Ibn Khaldun

<sup>1</sup> [wellaregina31@gmail.com](mailto:wellaregina31@gmail.com), <sup>2</sup> [desty@uika-bogor.ac.id](mailto:desty@uika-bogor.ac.id)

### Abstract

One of the basic rights of citizens is the right to obtain fair legal certainty (access to justice) which applies to all citizens. The number of poor people who need Legal Aid Institutions (LBH) in the litigation process, therefore the government tries to overcome it by providing services in the form of providing funds that can be accessed through advocates. To achieve access to justice for the community, Law Number 16 of 2011 concerning Legal Aid was issued. The government also provides financial assistance for the poor through the Religious Courts by waiving court fees (prodeo), in Article 237 of HIR Law no. 48/20 jo no. 50/2009 explicitly states that the state bears the costs of the case for justice seekers who cannot afford it, so the state is obliged to fulfill the mandate of the law. Therefore, this study will discuss about Access to Justice for the Poor regarding the Exemption of Case Fees (Prodeo) at the Bogor Religious Court.

**Keywords:** Access to Justice, Legal Aid, The poor

### INTRODUCTION

Justice is a right that can be given to anyone, justice is also a rule of law that applies in the country of Indonesia, therefore justice must be implemented and enforced by the people of Indonesia. Justice is also contained in Article 5 of Pancasila which reads "Social justice for all Indonesian people".

The court as law enforcement is an institution that will provide justice for those who seek justice, no matter who and what their background is. But in reality, the law from the beginning contained the potential to tend to provide benefits to those who are more economically capable.

One of the problems faced by the poor is access to justice, especially for those who are in conflict with the law. The number of legal problems that apply in Indonesia so that not all people are able to pay court fees and legal assistance in the form of an advocate.

Furthermore, regarding legal aid in Indonesia, the term legal aid is the right of the poor to obtain assistance from advocates free of charge to gain access to justice. According to Law Number 16 of 2011 concerning Legal Aid (State Institution of the Republic of Indonesia of 2011 Number 104, Supplement to the State Gazette of the Republic of Indonesia Number 5248); Regulation of the Supreme Court Number 1 of 2014 concerning Guidelines for Providing Legal Services for Underprivileged Communities in Court.

The role of legal aid institutions in processing criminal and civil cases that are carried out free of charge for people who can't afford it. The granting of a legal role by legal aid agencies for people who cannot afford it has an important role, namely to assist their clients so that they are not treated arbitrarily by the wealthy.

With free legal aid for people who can't afford it, they will get relief from getting legal counsel so that their rights can be protected and the case examination process can run properly.

The concept of justice in Indonesia has two basic objectives from the existence of the legal system, namely a legal system that is accessible to all people from various circles and a legal system that can produce fair provisions or decisions for all groups. Access to justice can be interpreted as a condition and process in which the state guarantees the fulfillment of basic rights based on the 1945 Constitution.

Efforts to realize access to justice include 3 things as follows:

1. The right to obtain benefits and use court institutions
2. There is a guarantee of the availability of means for fulfilling the rights of the poor to achieve justice
3. There are good procedures and methods to expand access to justice for the poor.

Based on the main problem in justice for the poor, the objective of this KKN program is to obtain justice for the poor who are in conflict with the law and also to liberate their case fees (prodeo).

## **METHODOLOGY**

To achieve the expected goals, the Community Service Program at the Bogor Religious Court was carried out by collecting data, interviews/interviews and direct observation to the research site.

The KKN method by collecting data, interviews and observation is one type of qualitative research method.

In the initial research, namely by looking for data to the Bogor Religious Court in the form of data on the waiver of court fees (prodeo). Furthermore, to obtain relevant data. This type of interview or interview which has the aim of knowing how a respondent thinks in an action.

## **RESULTS AND DISCUSSION**

The Bogor Religious Court is the first level court with the duty and authority to examine, decide, and resolve cases at the first level between Muslims in the fields of: marriage, inheritance, will, grant, waqf, zakat, infaq, shadaqah, and economics. sharia as regulated in Article 49 of Law Number 3 of 2006 concerning Religious Courts.

This report will describe the decision of the case which was carried out on a free basis, as well as how the waiver of case fees at the Bogor Religious Court through interviews (interviews) with the clerk of the Bogor Religious Court.

The Bogor Religious Court has a target of waiving court fees this year as many as 100 cases and the total cases that have been financed from January to August amounted to 73 cases, which is close to the target to be achieved by the Bogor Religious Court.

The achievements made by the Bogor Religious Court so far have reached 70%, of which 73% are for service achievements and 72.5% in terms of budget.

For the Exemption of Case Fees, the initial ceiling owned by the Bogor Religious Court is Rp. 40,000,000.00 for 100 cases, which can be interpreted as Rp. 400,000.00 for one case. There is no revision ceiling at the Bogor Religious Court. The realization of the case fee waiver

budget carried out by the Bogor Religious Court was Rp.4,800,000.00 this month, which included 12 cases and the total realization of the budget from January to August was Rp. 29,200,000,000.00 which means that the remaining budget for the waiver of court fees until the end of August is Rp10,800,000.00.



Source of data from the Bogor Religious Court

The following is the Prodeo Data Table from January to August 2021:

Month	Case Number	Registration date
January	0068/Pdt.G/2021/PA.Bgr	11/01/21
	0008/Pdt.P/2021/PA.Bgr	14/01/21
	0119/Pdt.G/2021/PA.Bgr	19/01/21
February	0197/Pdt.G/2021/PA.Bgr	04/02/21
	0211/Pdt.G/2021/PA.Bgr	08/02/21
	0216/Pdt.G/2021/PA.Bgr	09/02/21
	0218/Pdt.G/2021/PA.Bgr	09/02/21
	0224/Pdt.G/2021/PA.Bgr	10/02/21
	0287/Pdt.G/2021/PA.Bgr	22/02/21
	0294/Pdt.G/2021/PA.Bgr	23/02/21
	0300/Pdt.G/2021/PA.Bgr	23/02/21
	0308/Pdt.G/2021/PA.Bgr	24/02/21

	0311/Pdt.G/2021/PA.Bgr	24/02/21
	0312/Pdt.G/2021/PA.Bgr	24/02/21
	0323/Pdt.G/2021/PA.Bgr	26/02/21
March	0331/Pdt.G/2021/PA.Bgr	01/03/21
	0347/Pdt.G/2021/PA.Bgr	03/03/21
	0373/Pdt.G/2021/PA.Bgr	08/03/21
	0377/Pdt.G/2021/PA.Bgr	08/03/21
	0379/Pdt.G/2021/PA.Bgr	08/03/21
	0384/Pdt.G/2021/PA.Bgr	08/03/21
	0043/Pdt.P/2021/PA.Bgr	09/03/21
	0397/Pdt.G/2021/PA.Bgr	10/03/21
	0405/Pdt.G/2021/PA.Bgr	12/03/21
	0419/Pdt.G/2021/PA.Bgr	15/03/21
	0432/Pdt.G/2021/PA.Bgr	16/03/21
April	0515/Pdt.G/2021/PA.Bgr	01/04/21
	0516/Pdt.G/2021/PA.Bgr	01/04/21
	0518/Pdt.G/2021/PA.Bgr	01/04/21
	0519/Pdt.G/2021/PA.Bgr	01/04/21
	0520/Pdt.G/2021/PA.Bgr	01/04/21
	0060/Pdt.P/2021/PA.Bgr	05/04/21
	0535/Pdt.G/2021/PA.Bgr	05/04/21
	0536/Pdt.G/2021/PA.Bgr	05/04/21
	0539/Pdt.G/2021/PA.Bgr	06/04/21
	0540/Pdt.G/2021/PA.Bgr	07/04/21
	0549/Pdt.G/2021/PA.Bgr	08/04/21
	0582/Pdt.G/2021/PA.Bgr	16/04/21
	0586/Pdt.G/2021/PA.Bgr	16/04/21
	0596/Pdt.G/2021/PA.Bgr	20/04/21
May	0642/Pdt.G/2021/PA.Bgr	03/05/21
	0649/Pdt.G/2021/PA.Bgr	04/05/21
	0656/Pdt.G/2021/PA.Bgr	10/05/21
	0687/Pdt.G/2021/PA.Bgr	19/05/21
	0712/Pdt.G/2021/PA.Bgr	21/05/21
	0725/Pdt.G/2021/PA.Bgr	25/05/21
	0726/Pdt.G/2021/PA.Bgr	25/05/21
June	0798/Pdt.G/2021/PA.Bgr	08/06/21
	0799/Pdt.G/2021/PA.Bgr	08/06/21
	0801/Pdt.G/2021/PA.Bgr	08/06/21
	0809/Pdt.G/2021/PA.Bgr	09/06/21
	0832/Pdt.G/2021/PA.Bgr	10/06/21
	0097/Pdt.P/2021/PA.Bgr	15/06/21
	0927/Pdt.G/2021/PA.Bgr	30/06/21
	0935/Pdt.G/2021/PA.Bgr	30/06/21
July	0957/Pdt.G/2021/PA.Bgr	22/07/21
	0966/Pdt.G/2021/PA.Bgr	26/07/21
	0975/Pdt.G/2021/PA.Bgr	27/07/21
	1023/Pdt.G/2021/PA.Bgr	09/08/21
	1030/Pdt.G/2021/PA.Bgr	10/08/21
	1049/Pdt.G/2021/PA.Bgr	13/08/21
	1069/Pdt.G/2021/PA.Bgr	18/08/21

August	1082/Pdt.G/2021/PA.Bgr	19/08/21
	0122/Pdt.P/2021/PA.Bgr	20/08/21
	1142/Pdt.G/2021/PA.Bgr	30/08/21
	1145/Pdt.G/2021/PA.Bgr	30/08/21
	1151/Pdt.G/2021/PA.Bgr	31/08/21
	0132/Pdt.G/2021/PA.Bgr	31/08/21
	1152/Pdt.G/2021/PA.Bgr	31/08/21

Data Source: Bogor Religious Court

Based on data obtained from January to August, a total of 69 cases that have been handled during the Prodeo period amounted to 69 cases. In the following, I will describe 2 (two) court decisions which were examined on a free basis.

a. Decision Number 0008/Pdt.P/2021/PA.Bgr

Petitioner I, age 65, works as a casual daily laborer, and Petitioner II, age 60, works in housework. Submit a free marriage isbat.

The seat of the case is as follows:

- That applicant I and applicant II are underprivileged people based on the Certificate of Disability issued by the Semplak Village office, West Bogor District, Bogor City, West Java Province with number: 460/03/Spk dated 12 January 2020. Therefore, please for litigation free of charge (prodeo).
- Whereas Petitioner I and Petitioner II have married according to the Islamic religion in the area of the Office of Religious Affairs, West Bogor District.
- Whereas at the time of the marriage, Petitioner I had the status of Divorced at the age of 40 years and Petitioner II had the status of Divorced at the age of 35, the marriage was carried out with the marriage guardian of the biological father of Applicant II and was attended by witnesses of each marriage with a dowry of Rp. 100,000 and paid in cash.
- That Petitioner I and Petitioner II are not related by blood and are not of the same lineage and fulfill the requirements to marry.
- That the marriage contract between the marriage of applicant I and applicant II was carried out in an Islamic religion and was not recorded at the marriage registrar's office, because the applicants did not understand the law.
- That the marriage has been blessed with 2 children: the first child is 23 years old and the second is 21 years old.
- That during the marriage there is no third party that interferes with the marriage lawsuit.
- That applicant I and applicant II have never received a marriage certificate from the Office of Religious Affairs, West Bogor District. Based on Unregistered Certificate Number: B.1479 /KUA.10.17.04 /PW.01/12/2020 dated December 14, 2020.
- That the costs arising from this case please be waived.

The Judges' Decisions are as follows:

- Granting the petitioners

- To stipulate that the marriage of applicant I and applicant II will be held in the area of the Office of Religious Affairs, West Bogor District, Bogor City, West Java Province on November 9, 1995.
- Exempt the applicants from costs arising from this case.

b. Decision Number 0549/Pdt.G/2021/PA.Bgr

The plaintiff, 39 years old, taking care of the household, filed for Divorce against her husband (defendant), 45 years old, who works as a freelance daily worker.

The arguments/reasons are as follows:

- That the plaintiff is an underprivileged person registered in the TNP2K Integrated Database SIMTALAK application, therefore please file the case for free (free)
- That the plaintiff is the legal wife of the defendant who was married on Friday, October 20, 2000, was met by the marriage registrar at the local Religious Affairs Office.
- That when the plaintiff was married, he was a virgin and the defendant was a virgin
- That after marriage, the plaintiff and the defendant lived together
- That during their married life, the plaintiff and the defendant have been in a relationship as husband and wife and have been blessed with 4 children, the first is 20 years old, the second is 11 years old, the third is 8 years old, and the fourth is 2 years old.
- That the defendant has not provided physical and spiritual support for two years and two months, in which the defendant left around February 2019 so that the plaintiff and the defendant have separated from their homes and there is no relationship like husband and wife anymore.
- That the plaintiff believes that there is no hope of continuing the household with the defendant.
- That the costs arising from this case please be charged to the DIPA of the Bogor Religious Court for the 2021 fiscal year

The Decisions of the Panel of Judges are as follows:

- Accept the plaintiff's claim
- Dropping the divorce of one ba'in shugro of the defendant to the plaintiff
- Charge the costs arising from this case to the DIPA of the Bogor Religious Court for the 2021 fiscal year.

Based on the results of interviews conducted with Mr. Agus Yuspiain. Bey. S.Ag.M.H, namely as the Young Clerk of the Lawsuit at the Bogor Religious Court. That the waiver of court fees has been in effect since the establishment of the Bogor Religious Court. The waiver of fees at the court has conditions including in addition to the applicant's ID card, which is to attach a Certificate of Incapacity (SKTM) issued by the village/lurah where he lives. To apply for the conditions is not difficult as long as there is a budget for the DIPA, the submission will be accepted. Even if the DIPA budget has run out, it is possible to apply for a pure prodeo, the requirements are the same as the Prodeo paid by the state (DIPA). This waiver of court fees can be applied in all cases in the Court, for appeal cases it can also be applied in this free case. And for the prodeo application, it doesn't really have to be accepted, some are rejected. When a

person who submitted a prodeo was examined by a judge, it turned out that he was working and earning up to 5,000,000 per month. So the application was rejected prodeonya.

In fact, there are many people who can't afford it and are also in trouble with the law. So that in litigation in court, they need free assistance (free) because from the initial stage of registration, fees are needed. The application of this prodeo case is generally a case of marriage and divorce isbat. However, in the prodeo case at the Bogor Religious Court, the majority of divorces.

## **CONCLUSION**

The prodeo case at the Bogor Religious Court has been in effect since the first Bogor Religious Court was established. The initial ceiling of the DIPA budget owned by the Bogor Religious Court is Rp. 40,000,000.00 for 100 cases with a budget of Rp. 400,000.00 for one person. If the DIPA budget owned by the Religious Courts has been exhausted, the plaintiff can still file a case free of charge by submitting a pure prodeo whose terms and conditions are the same as the filing of a prodeo case budgeted by DIPA.

The consideration of the Panel of Judges at the Bogor Religious Court in the case of a prodeo case is normative which means that in deciding whether a prodeo case is accepted or rejected, one of them is an economic problem because the indicator of the acceptance or rejection of a prodeo case is based on the inability of the plaintiff to pay court fees. That is why there are several conditions that must be met before the plaintiff wants to file a prodeo case.

So far, during the observations in the research that I conducted at the Bogor Religious Court in the case of this prodeo case, the Bogor Religious Court is sufficient to protect the community, it cannot be proven in this case even though the budget provided by the DIPA is exhausted, people who cannot afford can still file cases for free. by submitting a pure free income which in terms of requirements is the same as the free income submission budgeted by DIPA. In terms of deciding who to accept this pro-democracy case, the Bogor Religious Court does not necessarily give it just because the plaintiff has an SKTM, but also from other aspects, so that the pro-deo case submission should be right on target.

## **Suggestion**

For people who can't afford it, don't worry if they are dealing with the law, there is assistance for waiving court fees (prodeo) in religious courts and there is a Legal Aid Institute as well who will help handle the case at hand.

## **REFERENCES**

Law Number 16 of 2011 concerning Legal Aid

Article 237 HIR of Law Number 48/20 Jo Number 50/2009 concerning Exemption of Case Fees (Prodeo)

Article 49 of Law Number 3 of 2006 concerning Religious Courts