

LEGAL RESPONSIBILITIES OF THE ADVOCATE PROFESSIONAL ORGANIZATION FOR MEMBERS WHO CONFRONT THE LAW IN CARRYING OUT THEIR PROFESSION

ABDULLAH EMILE OEMAR ALAMUDY¹, MARYANO², IDZAM FAUTANU³, FAUZIE YUSUF HASIBUAN⁴

^{1,2,3,4} Law Studies, Jayabaya University, Jakarta

Email: Abdullahemile@gmail.com¹, maryano.myn@gmail.com², idzamfautanu@uinsgd.ac.id³, adv_fauzie@yahoo.com⁴

*Correspondence author: Abdullahemile@gmail.com

Abstract: *Advocates are one of the legal professions in Indonesia. Advocates have the duty and function to ensure legal justice can be upheld in court. An Advocate is a person who has been deemed capable and eligible to become an Advocate in accordance with the qualifications established by laws and regulations. The Advocate organization determines the eligibility of an Advocate. The Advocate Organization also functions as a party that oversees all Advocates and ensures that all Advocates act by implementing the Advocate code of ethics. Advocate organizations also serve as protection providers for all Advocate members when faced with the law. This study aims to analyze the responsibilities of the Advocate Professional organization if Advocate members are dealing with legal cases. The research used a descriptive qualitative method with a literature study approach. The data used is secondary data sourced from the results of library observations conducted by researchers. The study results show that several actions can be categorized as responsible actions carried out by advocate organizations if members conflict with the law in their profession. These actions include directing investigators to ask permission from the organization if they intend to conduct investigations on members. Another action is to assist all members who are dealing with the law.*

Keywords: *Advocate, Organization, Law, Profession*

1. INTRODUCTION

Indonesian law has various components. Implementation of the law is based on the principle of legality (Sinapoy, 2012), which involves various parties. There are many people in the legal profession. Initially, law enforcers were classified into three consisting of police, judges and prosecutors. This means that not everyone in the legal field is a law enforcer. However, along with the development of government regulations and decrees, since 2003 there have been many other professions in the field of law that are referred to as law enforcers. Advocate is a profession that can now also be called a law enforcer (Solikin, et.all., 2022) because an advocate has the authority to be a catalyst in Indonesian law and can become an actor in upholding justice.

Advocates who act as law enforcers are often called *officers of the court*. This is because Advocates must comply with all rules set by the court (Setiawan, 2017). Advocates are also required to be able to act in an honourable manner and not violate the law (Panjaitan, 2019). Therefore, an Advocate has a code of ethics and guidelines regarding the limits of actions an Advocate can take. Advocates' code of ethics has a *mutatis mutandis* nature, which means that the code of ethics will continue to be used until new provisions govern this matter. However, in fact it is not uncommon to find that there are Advocates who have been found to have violated the Advocate code of ethics. Violating the Advocate code of ethics can impact the occurrence of lawsuits so that an Advocate has to deal with the law.

Advocates throughout Indonesia are gathered in an Advocate organization founded in 2004. This organization is a forum for Advocates throughout Indonesia as well as being a party that is given the authority to carry out professional education and conduct competency exams for prospective Advocates (Ansari, 2019). At present, the Advocate Organization is starting to take the form of a multibar (Syahrul, 2019) but the main organization responsible for all aspects of advocacy remains PERADI (Sulastri et.all., 2020). The Advocate Organization has an Honorary Board which is tasked with supervising and is authorized to conduct a code of ethics hearing on Advocates who are judged to have violated the code of ethics. Nevertheless, so far the actions taken by the Advocate Honorary Council

against Advocates who have violated the code of ethics are considered not serious enough. It is known that there are several cases of violations of the code of ethics that did not get a complete resolution.

Several cases of violations of the Advocate code of ethics can be seen in the Tonny Gunawan case in 2012, the Bambang Widjojanto case in 2022, as well as several other cases in various regions in Indonesia. Violations of the code of ethics are known to bring the perpetrators to face the law. Advocate organizations as parties that have full authority and authority in all actions of an Advocate certainly have policies that are carried out for Advocate members who are in conflict with the law. Advocate is a profession that has the right of immunity (Tambunan et.all, 2023), but this does not necessarily make an advocate free from all legal cases. This is because the right of immunity possessed by an Advocate is not unlimited (Khambali, 2017) so that in some cases and incidents an Advocate can still face the law and various cases therein.

This study basically aims to analyze the role of the Advocate professional organization in Advocate members who have to deal with the law due to various actions taken while carrying out their profession. There are several problems formulated in this research, including how is the status of legal protection in the Advocate profession who is dealing with the law in carrying out his profession? And what is the responsibility of the Advocate organization which acts as a provider of legal protection for its members who are in conflict with the law in carrying out their profession? This research is expected to provide benefits to people who are studying knowledge in the field of law, especially those related to the implementation of law in Indonesia. This research is also expected to contribute to the development of knowledge in the field of legal studies, especially those related to the administration of the legal profession.


2. METHODOLOGY

The research method used is a qualitative method. This research refers to normative juridical research methods, namely research that is guided by the values and norms contained in laws and regulations. The approach taken in this research process is a conceptual approach. The conceptual approach is an approach that involves views or doctrines that have developed in the science of law which in turn can give birth to new and relevant legal concepts or legal principles that can be used as a reference in establishing an argument in solving ongoing legal issues. This research is also *library* - based research, which is a research technique that uses references in the form of books, books or other scientific publications that have a high level of relevance to the discussion. The literature used is literature that has been published for the last 10 years and also has publishing quality as an indexed journal. The data used in this study is secondary data in the form of publication data from various literature and regulations. Data obtained through library observation conducted by researchers.

The use of qualitative methods is based on the need for research results which do not prioritize results in the form of mathematical measurements but require results that have depth of meaning and can be a disclosure of a fact. The use of the literature study method has the aim that this research can reveal facts that are relevant to the applicable statutes and regulations without ignoring the facts that are commonly found. In general, the selection of the use of this method has been adjusted to the needs of research. The stages of research using qualitative methods began with the stage of collecting data from data sources which in this study were the informants concerned. The next stage is data classification which is done by grouping data based on data sources. Next is the data reduction process. This process is also known as the process of centralizing data or simplifying data by removing or eliminating data that has a low correlation with the research theme. Next is the publication or data presentation stage which is carried out by compiling various information into a systematic research result so that it makes it easier to draw conclusions.

3. RESULTS AND DISCUSSION

The regulations governing Advocates are Law no. 18 of 2003. In this law there are several things that must be considered. These matters relate to the rights and obligations that accompany an Advocate (Gems et.all, 2022). Some things to pay attention to are as follows:


- 
- 1) Advocates have the freedom to express opinions and provide statements in order to defend a problem or case that is the responsibility of the Advocate while in court.
 - 2) Advocates have the freedom to carry out professional duties in order to provide a defense for cases that are their responsibility.
 - 3) While carrying out their duties as an Advocate, an Advocate cannot be subject to criminal or civil counterclaims.
 - 4) An Advocate has the right to be able to obtain information from various sources related to the settlement of a case.
 - 5) Advocates are not allowed to differentiate their treatment of clients based on various elements such as gender, race, ethnicity, religion, and political ideology, economic, social and cultural conditions.
 - 6) The authorities cannot identify an Advocate with a client being defended in a case settlement.
 - 7) Advocates have an obligation to maintain client confidentiality, including the relationship with the client, and various files and documents owned by the client.
 - 8) Advocates have the right to maintain the confidentiality of relationships with clients, including the confidentiality of various files and documents in their possession.
 - 9) Advocates are not allowed to hold concurrent positions with other positions that are assessed and deemed not to have the same value or even conflict with the interests of the duties and honor of the Advocate profession.
 - 10) Advocates have the right to receive an honorarium for services rendered to clients.

In principle, an Advocate has the duty and authority to take action in order to defend clients (Gen et.all, 2019) act as a consultant for people who are legally illiterate, and perform legal services which are manifested by the ability to make a real contribution to the field of law. The workspace of an Advocate is quite diverse based on issues, communities, countries or regions where violations occur even across countries (Sarah, 2020). In addition, while carrying out the duties carried out by an Advocate, he must carry out several Advocate functions consisting of (Gunawan, 2018):

- 1) Be a guardian of the constitution and provide protection and be willing to fight for Human Rights (HAM)
- 2) Implement the Code of Ethics for the Advocate Profession
- 3) Stick to the Advocate oath
- 4) Uphold morals and idealism
- 5) Uphold the honor of the Advocate profession
- 6) Protect the independence and autonomy of advocates
- 7) Able to maintain and improve the quality of services provided to the community
- 8) Provide action and handle cases in accordance with the code of ethics of the Advocate profession
- 9) Advocate for clients honestly and responsibly
- 10) Preventing abuse of the Advocate profession which can cause harm to society at large.
- 11) Maintain good relations with clients and colleagues
- 12) Maintain the vision and mission of the Advocate organization
- 13) Providing legal services, legal advice, and legal opinions
- 14) Provide appropriate legal information
- 15) Provide defense and represent clients during the trial process
- 16) Providing free legal aid to people who can't afford it

The Advocate code of ethics is the highest law held by Advocates while carrying out their duties in the Advocate profession (Pramono, 2018). The Advocate's code of ethics is also a guarantee and protection for the Advocate and a burden of responsibility and obligation carried out by the Advocate. In general, the existence of an Advocate code of ethics is as a means of exercising social control, as an effort to prevent interference from outsiders in all problems that occur to members of Advocate organizations, and as an effort to prevent misunderstandings potential conflicts.

As already mentioned, an Advocate can have freedom in order to provide a defense to a client as stated in the Advocate law. That is, an Advocate must be independent in carrying out his duties and



must not be influenced or pressured by various position hierarchies. An Advocate should not be given demands to side with a particular group or group. An Advocate should also not be able to be made submissive to people who have certain powers or powers.

The Advocate Organization is described as a house that can protect Advocates in their profession. Even though ideally, an Advocate can act freely and independently, an Advocate is often faced with a reality full of pressure from various parties and sides. Not a few Advocates have encountered stumbling blocks and have had to deal with the law. Under these conditions, advocate organizations are expected to become protectors and helpers (Hasibuan, 2019). Instead, an Advocate must also be willing to comply with the standards the Advocate organization sets.

Advocate ethical standards set by Advocate organizations are compiled on 4 things. First, provisions relating to the Advocate's personality personally. Second is the standard set by the organization regarding the Advocate's relationship with the client. Third is the standard relating to the relationship of Advocates with fellow members of the Advocate profession. The fourth is the standard regarding the attitude of an Advocate in handling cases. The standards set by the organization aim to maintain the dignity of the Advocate profession and ensure that Advocate members can carry out their responsibilities properly.

Advocate is a profession with high dignity and prestige because an advocate gets the client's complete trust (Risidalina, 2019) and is considered a law enforcement agent. Advocates are one of the legal axes that can project a country's level of legal justice. Advocates are the last hope that society has when it comes to dealing with legal issues. The role of the Advocate is not only present during the trial but also outside the court arena, such as when required to provide legal consulting services. An Advocate is even obligated to provide legal assistance without honorarium if the client facing him is indeed an incapacitated person who can provide concrete evidence of his incompetence (Pranoto, 2019).

Law is one of the instruments that will continue to exist in the administration of a country (Isnantiana, 2019). So, it can be concluded that the role of the Advocate will continue to be needed by the community in a country. An Advocate is required to be professional in carrying out his duties and profession. Advocates are also required to have an attitude that is in accordance with the norms and values of society. This sometimes triggers problems. Norms, values, and ethics are things that have relativism. Therefore, the actions of an Advocate can be considered right and wrong at the same time depending on the point of view and ethical values adhered to by the person giving the assessment.

Presently, the Advocate organization considered legitimate in organizing various forms of activity is Peradi (Malik et.all, 2020). Advocate organizations have the authority to enforce the Advocate code of ethics but also have a role as a protector for all Advocate members (Susanto, 2023). Therefore, when an Advocate is declared to have violated the code of ethics, the Advocate Honorary Council will conduct an examination and trial if the person concerned is proven guilty. Violation of the code of ethics is an act of violation committed by an individual considered not in accordance with agreed ethics. Basically, a violation of the code of ethics will not result in an Advocate being tried in court because the violation that occurs is a violation of professional ethics and is not the domain of the court to impose sanctions.

Advocate organizations have the main task of supervising and protecting their members. Advocate organizations also play a role in providing education and coaching for Advocate members or prospective Advocate members. One form of protection provided by Advocate Organizations is by prioritizing Advocate immunity rights. An advocate cannot be investigated and examined like an ordinary citizen. An Advocate Organization will provide information regarding the profession's legitimacy, and whether the Advocate to be examined is a legal advocate. Suppose the Advocate is indeed a member of the Advocate. In that case, the investigator cannot directly investigate the individual concerned because the Advocate organization will first explain whether the actions taken by the Advocate can be classified as an act of violation of the professional code of ethics or not (Oktaviani, 2019)

If indications are found that the individual Advocate has violated the law, the Advocate Honorary Council will conduct an investigation and examination. If proven guilty, the organization will

provide a number of sanctions in the form of administrative or criminal sanctions (Hatono, 2019). However, if in the judicial process with the Organizational Honorary Council, no legal violations were found by the individual, then no further legal proceedings can be carried out. Exceptions are made in legal cases that contain fatal errors such as robbery, narcotics use, embezzlement, and law violations outside the profession (Daryanti et.al, 2017). So, if there is an Advocate who defends a corruptor, it does not necessarily make the Advocate a group that conspires with the corruptor.


According to the Memorandum of Understanding between the National Police and Peradi, arrangements for summoning a lawyer by the police must first go through Peradi through the Peradi Honorary Council (Khalid, 2019). Organizations that protect and assist their members in resolving legal issues must ensure that the defence of the legal profession is understood as defending the honor of the legal profession against possible misconduct with the interests of customers and ensuring the interests of members. For members suspected of committing a crime, the immunity held by the attorney does not apply. *This immunity* has implications for the principle of equality before the law, but in some considerations it is necessary not to protect one's personal interests, but because law enforcement is beneficial.

4. CONCLUSION

Advocates are a type of profession in the field of law that of course has a responsibility for implementing good and fair law. An Advocate can carry out his duties when he has been declared qualified through a series of educational and examination periods. An Advocate is declared eligible to become an Advocate by an Advocate organization. Therefore, an Advocate is an honorable and dignified profession so that he has professional completeness in the form of a professional code of ethics. The Advocate code of ethics aims to provide limits on every action carried out by an Advocate. In fact, there are still many Advocates who violate the code of ethics and even require Advocates to deal with legal cases. In conditions like this, the role of the Advocate organization is questioned. It is known that the role of the Advocate organization in providing legal protection to advocate members is carried out in various ways, one of which is by requiring the investigator to ask permission from Peradi as the Advocate organization if they intend to carry out investigations on Advocate members. Advocate organizations also have responsibility for all members of advocates when faced with the law. One of the actions taken to fulfill this responsibility and fulfill the role as a provider of protection for advocate members is carried out by providing assistance when there are advocate members who are in conflict with the law. The Advocate Organization will also carry out a number of defenses to ensure that there are no attempts to criminalize its members and also ensure that all rights possessed by its members can be fulfilled during the legal process.

BIBLIOGRAPHY

- [1] Ansari. 2019. *Management Implementation of the Indonesian Advocates Association (PERADI) in Organizing Advocate Profession Special Education*. *Al-Mabsut* 13(2). 23-41
- [2] Daryanti, Silvia. PJ, Nyoman United & Purwoto. 2017. *Criminal Accountability of Advocates Perpetrators of Bribery Against Judges*. *Diponegoro Law Journal* 6(2). 1-15
- [3] Gems, Chusnul Qotimah Nita. Haidarrani, Ananda & Sumbowo, Eri Bambang Budi. 2022. *Professional Ethics of Legal Advisors or Advocates When Proceeding in Court*. *Amsir Law Journal* 3(2). 93-102.
- [4] Gen, Sheldon & Wright, Amy Conley. *Strategies of Policy Advocacy Organizations and Their Theoretical Affinities: Evidence from Q-Methodology*. *Policy Studies Journal* 46(2). 298-326.
- [5] Gunawan. 2018. *Position, Role and Function of Advocates in the Criminal Justice Process (Efforts to Straighten Negative Public Perceptions of Advocates)*. *Glorification of the Law* 1(1). 47-72.
- [6] Hasibuan, Paet. Azmi, Muhammad Nurul & Lubis, Fauziah. *Term of Office of the Leaders of the Advocate Professional Organization through a Decision of the Constitutional Court of the Republic of Indonesia*. *Journal on Education* 5(2). 1850-1854
- [7] Hatono. 2019. *Implementation of Legal Sanctions for Advocates Perpetrating the Crime of Bribery in the Positive Legal System in Indonesia*. *Journal of Legal Scholars* 5(1). 77-98

- 
- [8] Isnantiana. 2019. *Law and Legal System as Pillars of the State*. *Journal of Sharia Economic Law* 2(1). 19-35.
- [9] Jasmine, Dwi Putri. 2017. *The Existence of Advocate Immunity in Criminal Law Enforcement*. *Justicia Science* 2(2). 183-194
- [10]Khalid, Afif. 2019. *Attempts to Criminalize Advocates in the Legal Profession*. *Borneo Law Journal* 3(2). 136-170
- [11]Khambali, Muhammad. 2017. *Unlimited Advocate Immunity*. *Legal Horizon* 14(1). 18-29
- [12]Knuckey, Sarah., Hoffman, Benjamin., Perelman, Jeremy., Reddy, Gulika., Ancheita, Alejandra & Jain, Meetali. 2020. *Power in Human Rights Advocate and Rightsholder Relationship: Critiques, Reforms, and Challenges*. *Harvard Human Rights Journal* 33. 1-56
- [13]Malik, Prayudi. Sampara, Said & Qamar, Nurul. 2020. *Analysis of the Ruling of the Constitutional Court of the Republic of Indonesia Number 35 PUU-XVII/2018 concerning Advocate Organizations*. *Journal of Lex Generalis* 1(7). 989-1010
- [14]Oktavianti, Risky. 2019. *Obstruction of Justice by Advocates Against Investigation and Investigation of Corruption Crimes*. Thesis. Syarif Hidayatullah State Islamic University. Jakarta
- [15]Panjaitan, Budi Literature. 2019. *Advocate Profession as a Noble Profession*. *Journal of Tectum LPPM Asahan University* 1 (1). 136-143
- [16]Pramono, Agus. 2018. *Analysis of the Legislative Ratio of Honors Against Ethics Enforcement Advocate Profession*. *UNTAG Law Review* 2(2). 177-188
- [17]Putranto Urip. 2019. *Obligation to Provide Legal Assistance by an Advocate in His Position as Officium Nobile*. *De Jure Plenary* 8(1). 39-47
- [18]Risdalina. 2019. *Relations Between Advocates and Clients in Enforcement of Civil Law*. *Advocacy Scientific Journal* 7(1). 9-20.
- [19]Setiawan, Arif., Wicaksono, Lucky Suryo., Anisah, Siti & Nugroho, Eko Rial. 2017. *Comparison of Arrangements for Advocate Professional Education (PPA) in Indonesia and the United States*. *Legal Arena* 10(1). 120-140
- [20]Sinapoy, M. Sabaruddin. 2012. *Legal Responsibilities of the President in Granting Permits to Examine State Officials*. *Juridika* 27(3). 217-232
- [21]Siritus, Syahrul. 2019. *Authority of the Indonesian Advocates Association in proposing an advocate's oath (Juridical Analysis of the Constitutional Court Decision Number 35/PUU-XVII/2018)*. *Journal of Wisdom* 16(2). 85-94.
- [22]Solikin, Nur & Rohmatullah, Anis. 2022. *The Regulatory Reform of Advocate Organizations in Proposing Oath of Prospective Advocates in Indonesia*. *Journal of Law Renewal Studies* 2(2). 133-154
- [23]Sulastrri, Lusia & Nugroho, Norcha Satria Adi. 2020. *Reconstruction on The Regulations of Advocate Organizational System as Accountability for The Quality of Professions*. *Journal of Legal Dynamics* 20(1). 210-228
- [24]Susanto. Nurhayati & Herdiana, Dadan. 2023. *Disobedience to the Law: Measuring the Advocate Organization's Compliance with Judge Decisions that Have Permanent Legal Force*. *Jurisprudence* 6(1). 67-82.
- [25]Tambunan, Selamat & Supriyanto, Bambang Heri. 2023. *Advocate Immunity Rights in Indonesian Principles, Concepts, Legislation*. *International Journal of Social Science (IJSS)* 2(5). 2275-2294