

Deskredit Duties and Authorities of Advocates as Law Enforcers

Erlangga¹ and Yapiter Marpi²
{angga.lawyerlubai@gmail.com¹}

Jayabaya University Law Doctoral Program, Indonesia¹, Department Faculty of Law, Universitas Indonesia²

Abstract. This paper aims to analyze the problems of the duties and authorities of law enforcers who are not dynamically ideal in carrying out the struggle for justice and legal certainty on the basis of legal equality. Meanwhile, law enforcers who are recognized in the state are police, prosecutors and judges, but the profession of Advocate is discredited by other law enforcers. In concrete implementation, advocates experience obstacles in carrying out their duties and authority to fight for the client's law enforcement profession. This paper uses normative juridical research in offline or online legal materials supported by qualitative data analysis on the principles of justice and legal equality. An implementation result of this research is that in essence advocates can be said to be law enforcers such as prosecutors, police and judges, because advocates can carry out the role of legal consultation, legal aid, and legal assistance and can make legal findings. The analysis of this research will harmonize advocates who are equal, equal, and balanced with other law enforcers in a synergy and continuous manner in the struggle for justice and legal certainty. Advocates as one of the elements of law enforcement in criminal justice are one of the pillars in upholding the rule of law and human rights. As in the 1945 Constitution of the Republic of Indonesia it clearly determines that the State of Indonesia is a rule of law. Efforts to realize the principles of a rule of law in social and state life, the role and function of Advocates as a free, independent, and responsible profession. The principle of rule of law emphasizes the guarantee of equality for everyone before the law (equality before the law).

Keywords: Advocates; law equality; law enforcers

1 Introduction

The principle of rule of law emphasizes the guarantee of equality for everyone before the law (equality before the law). Therefore, the Constitution also stipulates that everyone has the right to just recognition, guarantee, protection and legal certainty as well as equal treatment before the law. As in the 1945 Constitution of the Republic of Indonesia it clearly determines that the State of Indonesia is a rule of law. Law enforcement continues to run, but the change in the legal paradigm after reform is a phenomenon that is very influential on political affairs and the life of the state administration in Indonesia.

But on the other hand, the law has not fully been able to fulfill the thirst in the midst of the thirst for justice and the welfare of the people. There are still a lot of legal cases that have not been resolved completely so that they affect people's trust in law enforcement. Such a

phenomenon has generated a lot of debate, especially regarding the relevance of law enforcement with the values of social justice and social welfare.

In an effort to realize the principles of a rule of law in public and state life, the role and function of advocates as a free, independent and responsible profession is important, in addition to judicial institutions and law enforcement agencies such as the police and prosecutors. Through the legal services provided, Advocates carry out their professional duties to uphold justice based on law for the benefit of justice-seeking people, including efforts to empower people to realize their fundamental rights before the law. One of the laws and regulations that were born after the amendments to the 1945 Constitution is Law Number 18 of 2003 on Advocates. Although this Advocate Law went through a long deliberation process from the time the bill was submitted to the House of Representatives (DPR) on September 28, 2000 until it was finally passed into law on March 6, 2003, it is still considered to contain many weaknesses. In fact, this law is suspected to be full of various interests, so that many people feel pessimistic and ask cynically, whether the Advocate Law can change the condition of the advocate profession to a better condition. [1]

In the legal system in our country, there is a guarantee of equality before the law which is conceptually stated in the 1945 Constitution Article 27 paragraph 1 which reads: "All citizens have equal position in the law and government without there are exceptions". Therefore, for everyone who needs legal aid, apart from being a human right, it is also a movement guaranteed by the constitution. Besides that, it is also a very important principle that a person affected by a case has the right to get legal assistance (the principle of legal assistance), so this is where the position of the Advocate profession in the judicial power in the context of providing legal assistance to the public has a very important meaning.

Advocates as an element of the judicial system are one of the pillars in upholding the rule of law and human rights. As well as in the judicial process, the role of advocates is also seen in the professional path outside the court. The need for advocate legal services outside the judicial process is currently increasing, in line with the growing legal needs of the community, especially in entering a life that is increasingly open in the interactions between nations. Through the provision of consulting services, negotiations and in making trade contracts, the Advocate profession contributes significantly to community empowerment and reform of national law, especially in the fields of economy and trade, including in settling disputes outside the court. [2]

Efforts to realize the principles of a rule of law in public and state life, the role and function of advocates as a free, independent and responsible profession are important, in addition to judicial institutions and law enforcement agencies such as the Police and the Attorney General's Office. Through the legal services provided, Advocates carry out their professional duties to uphold justice based on law for the benefit of justice-seeking people, including efforts to empower people to realize their fundamental rights before the law.

Advocates in legal practice in Indonesia are people who represent their clients to take legal action based on a power of attorney given for defense or prosecution at court proceedings (litigator), while a legal consultant is a person who works outside the court who acts to provide advice and legal opinion on a legal action that will be and has been carried out by his client (non-litigator), but an advocate, apart from practicing in court, can also accompany or represent a client outside the court based on a power of attorney or order given to him (non litigation).

Advocates as one of the elements of law enforcement in criminal justice are one of the pillars in upholding the rule of law and human rights. In Indonesia. Almost everyone who faces a problem in the field of law in this reform era tends to use the services of the Advocate

profession, ranging from large cases involving rich and famous people, such as cases of KKN (Corruption, Collusion and Nepotism), banking cases, cases from artists to cases involving the poor or the poor, such as theft of chickens, evictions of houses and so on also use the services of advocates. [3]

An example of a case happened to Advocate Fredrich Yunadi who was arrested by the KPK after failing to fulfill the anti-corruption agency's summons to be examined as a suspect in a case suspected of obstructing and obstructing the investigation of the alleged corruption case of the e-KTP project with the suspect Setya Novanto. [4] An example of a case was the Arrest of Advocate David Sihombing by the Kasatreskrim of the Bandar Lampung Police who was defending his client Broto, who claimed the land (land) of the former Kemiling Terminal and had a dispute with the Bandar Lampung City Government, based on District Court Decision Number 25 / Pdt.G / 2020 / PN Tjk. UPT Terminal Kemiling reported DS to the police for violating the law, namely disturbing public road order. [5]

Even so, in a situation full of public pessimism and cynicism, the birth of this Advocate Law was a big leap in the history of the advocate profession in Indonesia. Based on this law, the advocate profession is recognized as a law enforcer equal to other legal professions, such as: Police, Prosecutors and Judges, so that there is hope and optimism to be used as capital in rebuilding the morale and integrity of the advocate profession that has long been in ruins justice and truth

2 Method

The research of this article uses a normative juridical approach, which analyzes various laws and regulations and other library materials that can help explain the position and role of advocates as law enforcers in supporting the realization of an integrated criminal justice system in criminal law enforcement in Indonesia. is a statutory approach, namely by examining statutory regulations and regulations related to the legal issue being handled or the legal issue being raised?

The legal materials used are: 1) Primary legal materials, binding legal materials, namely the laws and regulations relating to Advocates, which include: Law of the Republic of Indonesia Number 8 of 1981 concerning the Criminal Procedure Code (KUHP), Law of the Republic of Indonesia Number 18 of 2003 concerning Advocates, Law of the Republic of Indonesia Number 23 of 2004 concerning the Elimination of Domestic Violence, Law of the Republic of Indonesia Number 13 of 2006 concerning Protection of Witnesses and Victims, Law of the Republic of Indonesia Number 48 2009 concerning Judicial Power, Law of the Republic of Indonesia Number 16 of 2011 concerning Legal Aid, Law of the Republic of Indonesia Number 23 of 2002 as amended by Law of the Republic of Indonesia Number 35 of 2014 concerning Child Protection; 2) Secondary legal materials consisting of books discussing a legal issue and / or several, including theses, legal dissertations and theses, legal dictionaries, legal journals.

This is an indication or explanation of the primary legal material; Tertiary legal materials such as the Big Indonesian Dictionary (KBBI) and encyclopedias and the internet and bloggers. Analysis of the principles, especially the principles of equality before the law, theories and doctrines as well as prevailing legislation. The specification of this research is descriptive in accordance with the problems and objectives in the study by describing a number of variables to contribute to the research of this article. [6]

3 Discussion and Assessment

3.1 Advocate Profession by Equality Before the Law

The implementation of law enforcement in Indonesia, often law enforcers have carried out their duties in accordance with the existing rules of the game, in the sense of formal rules of the game. An Advocate is a person whose profession is to provide legal services, both inside and outside the court who meets the requirements based on the provisions of the law. The status of an Advocate as a law enforcer is regulated in Article 5 Paragraph (1) of the UURI. No. 18 of 2003 concerning Advocates.

The implementation of law in society is very dependent on the legal awareness of a society because humans are legal subjects. However, apart from being dependent on public legal awareness, it also depends and is very much determined by the implementation of law enforcement by law enforcement officers. Therefore, many legal regulations cannot be implemented properly because law enforcers do not understand how to carry out their duties and responsibilities.

Placement of Advocates as a sub-system in the criminal justice system parallel to other subsystems (Police, Attorney General's Office, Court Judges and Correctional Institutions) is a step forward and very important meaning not only for justice seekers (Justisiabel), but also for the sake of smooth process itself. As a logical consequence of this thinking is that Advocates must be given sufficient opportunities both through regulation and in practice of providing Legal Aid for full access to the criminal justice process. Academically and (practically) it turns out that there are still differences in views on position. [7]

One of the goals of law is justice, even though true justice is difficult to achieve, even so in everyday life it should always be maximized to achieve this justice. As a rule of law based on the constitution, Indonesia certainly desires that all aspects of life in society can be regulated by law and problems that arise can be resolved according to the applicable law. To achieve justice is only possible if law enforcers, including lawyers, are mentally prepared and able to have a professional attitude to carry out their profession according to their respective roles.

As law enforcers, advocates can provide enlightenment, counseling and legal assistance for clients who are still blind to the law. Regarding the cases they handle, as a legal servant in the advocate society, many are required to work in the social and community fields, so advocates will sacrifice their time, energy and thoughts when dealing with people who are economically disadvantaged and are experiencing legal problems to help resolve cases by free (prodeo). [8]

Advocates as law enforcers in the criminal justice system. Some say that only the Police, Attorney General's Office, Courts and Correctional Institutions. On the other hand, it is stated that Legal Counsel can also be added as part of the sub-system of criminal justice. Normatively and in fact, the Law Enforcement Institution does not only consist of the three positions mentioned above, even from the perspective of problem solving and reform of law enforcers, if only the three positions are mentioned, it is not only incomplete but misleading which causes bias.

However, since the enactment of UURI No. 18 of 2003 concerning Advocates, it has been stated that the position of Advocates is also one of the law enforcers, in fact it is the only free and independent law enforcer guaranteed by laws and regulations so that their position is the same as other law enforcers. It has also been recognized by him as a law enforcer of Chess Wangsa (Judges, Prosecutors, Police, and Advocates).

Then the hope that then arises with the promulgation of the UURI. No. 18 of 2003 is to make the existence of Advocates become recognized and no longer underestimated so that in carrying out their obligations related to their profession, an Advocate can carry out it properly, without pressure, and can fight for justice according to a good legal basis according to procedural proceedings in and in outside the trial.

Therefore, since the client arrives and then conducts legal consultation with the Advocate, the Advocate has been doing legal services. Advocates are people whose profession is to provide legal services, both inside and outside the court who meet the requirements based on the provisions of Law Number 18 of 2003 concerning Advocates. The services provided by Advocates are in the form of providing legal advice, legal assistance, exercising power, representing, accompanying, defending, and taking other legal actions for the client's legal interests (legal services). Advocates are lawyers appointed by the Minister of Justice after receiving advice from the Supreme Court. The legal boundaries of the duties of an advocate are all provinces in Indonesia. [9]

The role of advocates in carrying out the duties of providing legal aid to the community cannot be carried out based on the following provisions:

- a. Law Number 4 of 2004 concerning Judicial Power;
- b. Article 13 (1) concerning: Organization, administration and finance of the Supreme Court and judicial bodies under the authority of the Supreme Court;
- c. Article 37 concerning: Every person involved in a case has the right to obtain legal assistance;
- d. Law Number 8 of 1981 concerning the Criminal Procedure Code:
 1. Article 56 (1) concerning: In the event that a suspect or defendant is suspected or charged with committing a death penalty or a penalty of fifteen years or more or for those who cannot afford to be punished with a sentence of five years or more who do not have their own legal advisor, the official those concerned at all levels of examination in the judicial process are obliged to appoint legal advisors for them;
 2. Article 56 (2) concerning: Every legal adviser appointed to act as referred to in paragraph (1) shall provide assistance free of charge.
 3. Code of Civil Procedure Code (HIR / RBG) Article 237 HIR / 273 RBG concerning: Whoever wants to litigate either as a plaintiff or as a defendant, but is unable to bear the costs, can obtain permission to litigate for free.
 4. Instruction of the Minister of Justice of the Republic of Indonesia No. M 01-UM.08.10 of 1996, concerning Guidelines for the Implementation of Legal Aid Programs for Poor People through Legal Aid Institutions.
 5. Instruction of the Minister of Justice of the Republic of Indonesia No. M 03-UM.06.02 of 1999, concerning Guidelines for the Implementation of Legal Aid Programs for Poor People through District Courts and State Administrative Courts.
 6. Circular of the Director General of State General Courts and Administrative Courts No. D.Um.08.10.10 dated 12 May 1998 concerning the JUKLAK for the Implementation of Legal Aid for the Poor through LBH.

Advocate position in law enforcement system as law enforcer. In carrying out their functions and duties, advocates should be equipped with the same authority as other law enforcers such as police, prosecutors and judges. This means that in carrying out their duties Advocates are subject to and obeying laws and regulations. Indeed, there is a kind of contradiction in that status, because on the one hand it has to defend the interests of the client, but on the other hand it holds the title of law enforcer.

Consequently, advocates should not blindly defend the interests of clients because they also have to participate in enforcing the law. Advocates' authority arises after Advocates get power and clients, namely the authority to carry out their profession as law enforcers. Advocate organizations are basically organs in a broad sense and are independent in nature which also carry out state functions. Article 5 paragraph (1) of the Advocate Law regarding the status of Advocates as law enforcers should be detailed and directed to strengthen the authority of Advocates. This includes providing the possibility of legal action for advocates against other law enforcers who violate laws and regulations.

Thus, the Advocate profession has an important role in law enforcement efforts. Every legal process, whether criminal, civil, state administration, always involves a profession of advocate whose position is equal to that of other law enforcers. Advocates' authority in the law enforcement system is very important in order to maintain the independence of Advocates in carrying out their profession and also to avoid any arbitrariness committed by other law enforcers. The independence and freedom of the Advocate profession, of course, must be followed by the responsibilities of each Advocate and Advocate Professional Organization. [10]

The role of an advocate in handling a case both criminal and civil is one of the efforts to enforce law in society through the judiciary and outside the court as an advisor in the field of law. Advocates are not civil servants, are not employees of an agency or agency but are private workers. Advocates are not paid by the government, so the remuneration fee they receive comes from the client and is incidental in nature, may not receive other fees in other cases that are contrary to the case being defended, and collect multiple honoraria and benefits. The activities of an advocate profession are not allowed to prioritize mere material interests for themselves, but loyalty devotion to law enforcement.

With the large role of the professional Advocate profession being a component in the integrated criminal justice system where there is coordination and cooperation between components, it is necessary to reorganize the laws and regulations related to the criminal justice system, in order to further strengthen the position of Advocates as a sub system of the criminal justice system itself, so that it becomes a sub-system that is parallel to other subsystems (Police, Attorney General's Office, Courts and Correctional Institutions).

Unlike today, even without advocates, the enforcement process in the criminal justice system continues so that the domination of legal control in law enforcement seems to belong to law enforcers who are in government. The aforementioned provision can be said to be a manifestation and further elaboration of the principle of equality before the law as implied in Article 27 paragraph 1 of the 1945 Constitution.

4 Conclusion

The role of the professional Advocate profession becomes a component in the integrated criminal justice system where there is coordination and cooperation between components, so there is a need to reorganize the laws and regulations related to the criminal justice system, in order to further strengthen the position of Advocates as a sub system of the justice system criminal law itself, so that it becomes a sub-system that is equal to other subsystems (Police, Attorney General's Office, Court Judges and Correctional Institutions) as law enforcers. An Advocate is a person whose profession is to provide legal services, both inside and outside the court who meets the requirements based on the provisions of the law.

The status of an Advocate as a law enforcer is regulated in Article 5 Paragraph (1) of the UURI. No. 18 of 2003 concerning Advocates. Strictly speaking, the provisions of Article 5 paragraph (1) of the Advocate Law regarding the status of Advocates as law enforcers should be detailed and directed to strengthen the authority of Advocates. The aforementioned provision can be said to be a manifestation and further elaboration of the principle of equality before the law as implied in Article 27 paragraph 1 of the 1945 Constitution. The term Advocate has actually been known since Roman times, whose position was called *officium nobile*.

Acknowledgements

The author would like to thank the promoters who guided this dissertation to completion; The author would like to thank the Rector of the Jayabaya University Campus; The author would like to thank colleagues who have supported morally for the final project of this doctoral program; Advocate organizations should give serious attention to the Government over the division of the advocate union as an *officium nobile* profession.

References

- [1] Rosdalina, „Peran Advokat Terhadap Penegakan Hukum Di Pengadilan Agama,“ *Jurnal Politik Profetik*, zv. 6, %1. vyd.2, 2015.
- [2] D. Supriyatna, „Bantuan Hukum Yang Ideal Bagi Masyarakat Tidak Mampu,“ *Jurnal Living Law*, zv. 10, %1. vyd.1, 2018.
- [3] S. Langgeng, „Peran Advokat Sebagai Penegak Hukum Dalam Mendukung Terwujudnya Sistem Peradilan Pidana Terpadu Dalam Penegakan Hukum Pidana Di Indonesia,“ *Jurnal Daulat Hukum*, zv. 1, %1. vyd.1, 2018.
- [4] R. Belarminus, „Fredrich Ditangkap, Pengacara Sebut KPK Tak Hargai Profesi Advokat,“ *Kompas.com*, 13 01 2018. [Online]. Available: <https://nasional.kompas.com/read/2018/01/13/13363581/fredrich-ditangkap-pengacara-sebut-kpk-tak-hargai-profesi-advokat?page=all>. [Cit. 21 02 2021].
- [5] M. Yasland, „Blokir Jalan, Polresta Tahan Advokat Kasus Terminal Kemiling,“ *republika.co.id*, 09 02 2021. [Online]. Available: <https://fbeta.republika.co.id/berita/qo7tjk396/blokir-jalan-polresta-tahan-advokat-kasus-terminal-kemiling>. [Cit. 21 02 2021].
- [6] S. d. P. Dillah, „Metode Penelitian Hukum,“ Jakarta, Alfabeta, 2015.
- [7] B. N. E. Fauziah Lubis, „THE ANALYSIS OF CRIMINAL LAW POLICY ON ADVOCATE REPORTING IN PREVENTING AND ASSISTING MONEY LAUNDERING CRIME IN INDONESIA,“ *The Lawyer Quarterly*, zv. 4, %1. vyd.2020, p. 361–380, 2020.
- [8] M. K. Y. S. Rifka Zuwanda, „Implementation Of Giving Free Legal Aid By Advocate Tocorruption Crime Defendant At Corruption Court Of Crime 1a Class Of Padang,“ *Jurnal Reformasi Hukum*, zv. 1, %1. vyd.1, pp. 27-34, 2018.
- [9] Y. Marpi, „The Criticism of Social Justice in Economic Gap,“ *Journal of International Relations*, zv. 1, %1. vyd.1, pp. 23-31, 2021.
- [10] E. B. T. E. a. K. N. Yapiter Marpi, „Legal Effective of Putting "Business as Usual" Clause in Agreements,“ *International Journal of Criminology and Sociology*, zv. 1, %1. vyd.1, pp. 58-70, 2021.