

Reconstruction of Immunity Rights of Advocate as Law Enforcer in Catur Wangsa Based on Justice Value

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Abstract

The objectives of this research are to study the problematic rights of advocates for immunity in the perspective of Law No. 18 of 2003, and how to reconstruct the right to immunity. An advocate with dignity in Catur Wangsa based on the value of justice. This research uses sociological juridical methods. Informants as sources of research data are advocates who are members of the Indonesian Advocate Union (Peradi), prosecutors, judges and police. Data collection techniques are done by interview and documentation. Data analysis through the stages of data collection, data reduction, data display and verification. The results of the study found that The Problematic rights of advocates for immunity in the perspective of Law No.18 of 2003 are: Legal substance, legal structure, legal culture. Therefore, the Reconstruction of the immunity rights of advocates with dignity in Catur Wangsa based on the value of justice is a reconstruction of values, and legal reconstruction is needed, in the form of Reconstruction of Article 14, 15, and 16 of Law no. 18 of 2003, which contains the value of the immunity rights of advocates to realize legal protection for advocates and maintain dignity and integrity as advocates is to enforce administrative sanctions and until the dismissal of an advocate who violates the code of ethics and commits a criminal act, law enforcers are permitted to be examined with the approval of the Advocate Honorary Council.

Keywords: Immunity Rights, Advocate, Catur Wangsa, Justice Value.

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INTRODUCTION

The purpose of regulating the Advocate profession in Law on Advocates Number 18 of 2003 is to equalize the status of the Advocate profession with other legal professions, as well as to provide a clear legal profession structure in order to strengthen public accountability of the administration of justice, namely guaranteeing rights, the legal rights of actual clients (represented clients) and potential clients (the wider community). Advocates are a vital element in seeking material truth in the judicial process, especially from the point of view of client legal interests. The regulation is also aimed at protecting the public from legal services provided by advocates that are below standard. Or broadly speaking, the approach used is the protection of the interests of litigants and the public in general, both in the judicial process and from advocates who act inappropriately.

Law on Advocates Number 18 of 2003, also provides the right of immunity (immunity) to

Advocates in carrying out their professional duties. So that advocates cannot be punished (criminal or civil) as a consequence of carrying out their professional duties.

In defending the interests of advocate clients, they must not be overcome by fear, therefore, they must defend with a sense of security by being protected by the State in carrying out its work as a half-hearted defense will only cause harm to the interests of the client being defended. The condition is, as long as the defense is proportionate, then it does not violate the law and is relevant to the case.

However, in reality, the Advocate profession is sometimes biased in some communities, especially in relation to their role in providing legal services. There are some people who consider this profession as people who often distort facts. This profession is considered the work of people who have no conscience because they always defend those who are guilty and took pleasure in the suffering of others [1].

The existence of advocates in Indonesia as an "agent of law development", is primarily an agent of law cultivation for the community, or even tends to be an "agent of law commercialization" in providing legal services.

If this behavior is displayed by an Advocate, it will destroy the Advocate's opinion as "officium mobile" as this glorious profession will be tarnished by deviant practices carried out by a handful of advocates in providing legal services to clients or society, which will have a very large negative impact on the organization and the profession.

Where it is precisely expressed by the Advocates themselves as a professional concern, currently deviant behavior by advocates is not just an issue and is no longer a secret, but has become a reality in practice. Apart from the pros and cons of society against the role of Advocates, in fact, the provision of legal services through Advocates for every citizen has been going on for a long time. This is intended to seek the truth and uphold justice and uphold the rule of law to ensure the implementation of a constitutional state within the Unitary State of the Republic of Indonesia.

Advocates were originally a "moral force", that is carried out by a group of people directed for people who seek justice who are economically incapable and do not have access to legal aid, so that people with disabilities in the fields of economy, politics, education, employment opportunities in community law will not become victims of injustice.

In line with the development of life and public awareness in various fields, especially in the field of law, Legal services through Advocates are now developing into institutional strengths. With the emergence of various Advocate Organizations which are professionally managed, their existence is increasingly needed by the community to help seek justice and enforce the law in order to regain their rights that have been taken away.

In using the services of an Advocate, it is a form of need for their own legal awareness or indeed a result of the role of the Advocate who is too aggressive in influencing clients to go to court for the benefit of the Advocate. In its development, it is necessary to increase legal awareness for the sake of upholding truth and justice without discrimination.

Provision of legal aid aimed at everyone has a close relationship with "equality before the law" and "acceso legal council" which guarantees justice for all people [2].

The existence of advocates in providing legal services for parties who resolve cases in court is very interesting to examine from a juridical aspect.

Based on the description above, it is necessary to conduct research on the Right to Dignified Advocates' Immunity in a study based on a framework of thought that the settlement of cases using the services of an advocate, apart from being juridical, has a very strong legal basis where the study is divided into 2 main problems as follows:

1. What Is The Problem Of Advocate Immunity Rights In The Perspective Of Law No. 18/2003 Currently?
2. How Is The Reconstruction Of The Rights Of Advocates With Dignity In Catur Wangsa Based On The Value Of Justice?

METHOD OF RESEARCH

This study uses a constructivist legal research paradigm approach. The constructivism paradigm in social science is a critique of the positivist paradigm. According to the constructivism paradigm of social reality that is observed by a person cannot be generalized to everyone, as positivists usually do.

This research uses descriptive-analytical research. Analytical descriptive research is a type of a non-doctrinal research that seeks to describe and seek answers fundamentally about cause and effect by analyzing the factors that cause the occurrence and appearance of a particular phenomenon or event.

The method of approach in research using the method (Socio-Legal Approach). The sociological juridical approach (Socio-Legal Approach) is intended to study and examine the reciprocal relationship that is associated in real terms with other social variables [3].

Sources of data used include primary data and secondary data. Primary data is data obtained from field observations and interviews with sources, While Secondary Data is data consisting of:

1. Primary legal materials, namely binding legal materials in the form of prevailing laws and regulations and have something to do with the issues discussed [4].
2. Secondary legal material, namely legal material whose nature provides an explanation of the primary legal material.
3. Tertiary legal materials are legal materials that provide further information on primary and secondary legal materials.

Research that is associated with the socio-legal approach is research that analyzes problems that are carried out by combining legal materials (which are secondary data) with primary data obtained in the field, supported by prior to secondary legal materials, in the form of writings of experts and existing legal policies [5].

RESEARCH RESULT AND DISCUSSION

1. Problem Of Advocate Immunity Rights In The Perspective Of Law No. 18/2003 Currently

When referring to Article 5 of Law no. 18 of 2003 concerning Advocates, then the fact that the position and status of an advocate are very clear, namely as a free and independent law enforcer guaranteed by law and statutory regulations. As law enforcers, advocates have the same position as judges that is independent and free. However, such position does not give lawyers the same power as other law enforcers even though in terms of the extent or scope of their work, they are actually wider than other law enforcers. Advocates work from upstream to downstream, from the level of investigation to the fall of court decisions and the course of convictions. Other law enforcers are partial and cannot interfere at every level of the judiciary. The police only carry out investigations and they do not carry out prosecutions or convictions, neither do prosecutors and judges which are only limited in the trial. So in terms of the scope of the work carried out, advocates have a wider reach, but in terms of power, advocates are not superior to them.

Although they do not have as much power as other law enforcers, the existence of an advocate is very important for society to defend the rights of a person (individual) in facing legal problems. If an individual faces criminal charges from the State which has the apparatus of the police, prosecutors, judges and prisons, it is clear that an advocate is needed to defend the individual who is a suspect or defendant who is currently facing investigation, prosecution, and examination in court. Advocates' defense of suspects or defendants dealing with a state that has complete instruments will create a balance in the judicial process so that justice for all people (justice for all) can be achieved.

Advocates as professionals are ethically (enforced by law) obliged to keep secrets they get from their clients. However, this provision is not absolutely applicable due to the following reasons[6]:

1. Advocates are not merely "alter egos" of their clients but are professionals who work according to their profession.
2. There are other interests that may be more important than the interests of protecting secrets between clients and advocates.
3. The "adversary" criminal income system in Indonesia does not merely impose an "accusatorial" system (as advocates only side with clients), but also applies an "inquisitorial" system (advocates side with justice).

As a profession, the success or failure of achieving goals is one measure to determine the performance of an advocate. An advocate in general is a professional who can do work without having to take shelter under a professional organization or some kind

of law office or law firm. This freedom causes to measure the performance of advocates based on measurements/ indicators that can not be measured with exact or management. However, by paying attention to the development of modern management which requires always balancing between planning, implementation, results, impact, and supervision, it can be seen that it causes an advocate as a profession to readjust themselves.

Legal provisions relating to the position of an advocate in the investigation process are only explained in articles 50-74 of the Criminal Procedure Code. This provision gives the suspect the right to be treated equally in the law enforcement process. This is in accordance with the principle of equality before the law, that everyone has an equal position before the law and government. Articles 50-74 of the Criminal Procedure Code will be implemented properly if assisted by an advocate as a legal advisor. For this reason, the position of an advocate is one of the pillars in terms of the rights of suspects in the law enforcement process. An advocate must really defend in accordance with the rights of the suspect as stipulated in the law. Because on the other hand, the suspect will be attacked as much as possible by the public prosecutor to be charged as a criminal offender based on the results of the investigation/ minutes of the case (BAP) of the investigator.

Currently, advocates affiliated with or joined professional organizations either partially (such as Ikadin, APHI, AAI, and so on) as well as organizations that overshadow the partial professional organizations (both Peradi and KAI). Advocates who are members of professional organizations are supervised by professional organizations through the supervisory committee or the Professional Honorary Council established by the professional organization. This Professional Honorary Council supervises advocates who are passive and active. Passive if the Professional Honor Council only accepts reports or complaints from other advocates, customers/ clients, or the public where the Professional Honorary Council carries out direct supervision of an advocate's practice. It can be said that this supervision is the internal supervision of the profession.

Based on the results of research on the supervision of the work and performance of advocates carried out in Semarang, there is currently no Regional Advocate Professional Honor Council, let alone a Supervisory Commission, so that structurally, no one has directly supervised advocates. In reports and complaints alone, the number or statistics that show problematic advocates in Semarang or Central Java is very small. However, this should not be accepted as the truth, because based on the investigation of the informants, data was obtained that in fact, they (advocates) knew that there was a violation of the code

of ethics in carrying out their duties to provide gauze or legal aid by lawyers, but they were reluctant to report it because there was solidarity among fellow colleagues.

When referring to Article 5 of Law no. 18 of 2003 concerning Advocates, the position and status of an advocate is very clear, namely as a free and independent law enforcer, guaranteed by law and statutory regulations. As law enforcers, advocates have the same position as judges, namely independent and free. Such position however, does not cause lawyers to have the same power as other law enforcers, even though in terms of the extent or scope of their work, they are actually wider than other law enforcers.

This causes problem in itself as legal professionals are part of the judicial system whose role is to help disseminate a system that is considered outdated because there are many law enforcement provisions that are no longer appropriate. Whereas legal professionals serve the interests of people who live in modern times where the current technological advances are not being matched by the acceleration of legal progress that can counteract these technological advances so that the bywords of law are always out of date.

Based on the explanation above, It is very clear that the problem in the legal profession is related to the professionalism itself, a professional is required not only to have technical skills in the profession he is doing but must also be followed by ethical maturity, it is not uncommon for someone who runs a profession to be caught in the web of hedonism so that in carrying out their profession, he justify any means to achieve the happiness they crave.

There are two points that attract attention from Talcott Parsons[7] statement in the encyclopedia about profession and professionalism.

First, professional human beings cannot be classified as a capitalist group or a group of workers. Nor can it be included as a group of administrators or bureaucrats.

Second, professional human beings are a separate group, whose job is to turn the wheels of the company, with a leadership status. Clearly, they were the leadership layer in turning the wheels of the company. Leadership at all levels, from superiors, middle to lower levels. Professionalism is an irresistible process in the development of today's modern corporate world. Parsons did not know the direction of the professionalization process, but according to him, the whole complex of professionalism not only came to the fore as something that was notable but began to dominate the present situation.

In addition, a professional, according to Wawan Setiawan[8], should at least be responsible to Clients

and the communities it serves, their Fellow professions and professional groups, Government, and their country.

Mastery of the law is done through an educational and applicable process. Because the process is like this, what is obtained and controlled (law) is a product of science that places those who control it to have a special (specification) expertise in a field that not all people have.

There is a functional demand that must be empowered by those who have entered the world of the legal profession. The specialization or specificity of the expertise they master becomes "expensive" in value in society. This means that the "ruler" of the profession is required to be a functional agent who can place his profession to be useful in society [9].

Therefore, the legal profession can be defined as a functional (applicable) activity regarding statutory provisions, which is projected to people (society) and the State who are facing juridical problems.

A person who masters law and primarily has formal requirements to resolve juridical cases that befell other people, then that person is already involved in empowering the specific skills or techniques of a legal profession.

2. Reconstruction Of The Rights Of Advocates With Dignity In Catur Wangsa Based On The Value Of Justice

Regarding the orientation of the protection of the community as clients, the Law on the Advocate Profession basically does not introduce malpractice institutions which should be a means of monitoring clients of Advocate behavior. Through this institution, the impact of the advocate's negligence does not always have to be borne by the client. The client must be on the side to sue for compensation if his interest is harmed due to failure to comply with certain legal procedural law provisions. It is clear that the protection of Advocates' interests is prioritized.

This is reflected in the provisions of Article 15 of the advocate law, which gives legal immunity to Advocates when carrying out their profession. Autonomy and protection are absolutely given to Advocates because the nature of this profession often puts them in a position opposite to those of the authorities. However, the need for autonomy and protection in no way justifies Advocates from breaking the law on the pretext of running a profession, let alone making Advocates immune to the law.

If there is legal protection provided for Advocates in carrying out their profession. This must lead to the protection of community rights in the judicial process. If not fulfilled, it can disturb the balance and accountability of the judiciary as a whole

as anyone must be given strict sanctions if they violate the rights of the community where some of which are represented in the Advocate function.

Therefore, Advocates must be optimally empowered according to their potential. This is what Advocates have not done so far therefore it must not be set as a standard that the success of an Advocate is only determined by the success in winning cases with a large value for money. Meanwhile, the substance of the issue of law and justice does not end there. In fact, there are many legal problems which when viewed from their economic value, are small, but contain substantial legal and justice issues because they involve the sense of justice in society.

This parameter appears to have shifted. This happens because of the paradigm of thinking about the success or failure of an advocate. In the past, people were famous when they defended the little people who were against the government, nowadays people are famous not because they defend the little people, but because they defend cases of large material. In fact, it could be that a case with a large amount of money actually only contains a simple legal substance.

If this paradigm is not straightened out, then don't blame it if there is a cynical voice, directed against the Advocate profession who says to go ahead and not be afraid to defend those who pay. This cynicism is indeed a reality. Therefore, advocates must have the courage to take the stance to Move forward without being afraid to defend what is right.

Advocate violations are all forms of violations of Advocate professionalism only contained in the Advocate Law No. 18 of 2003. Meanwhile, violations of the Indonesian Advocate Code of Ethics above are violations of Advocate discipline.

Any wrong attitude, lack of skills to a reasonable level, failure to provide professional services and perform at a reasonable level of skills and intelligence in the community by average colleagues from the profession concerned, resulting in loss to the recipient of the service which tends to be put faith in them.

In contrast to the above actions, it is also an act against the law against the provision of legal services, which results in losses for clients. Where the legal services are rendered below operational standards or provided in violation of the Advocate's "fiduciary" obligations or done intentionally or can be equated with negligence, or provided in a manner contrary to applicable law, or in default of the legal service provision contract.

The Advocate profession which is free from a sense of responsibility must be aware of the Advocate Professional Code of Ethics, therefore it is demanded to

try to stay away from all its prohibitions. In the peaceful settlement of a case that does not work, it must not be used as an excuse in the case before the trial judge and use disrespectful or deviant speech before the court or to other fellow law enforcers[10].

Judging from the legal relationship that occurs between professional persons (Advocates) and service users (Clients), the relationship can be simply divided into two model of engagement (*verbintenis*). The first model is an engagement that promises a result (*resultaatsverbintenis*), while the second model is an engagement that promises a certain effort (*inspectionverbintenis*).

The legal relationship between the Advocate and the client should use a seeking engagement model. Advocates promise to strive for the rights of their clients so that they are not harmed as long as the case process is resolved according to the law. Advocates are strictly prohibited from promising a certain outcome that they handle. Promising that such results will change the pattern of this professional legal relationship, from the essence of being "*verbintenis inspannings*" to "*verbintenis resultaats*". In other words, the Advocate's actions that promise results for their professional services have actually "undermined" the essence of the profession they carry.

These basic things should be the principles of providing legal services, upholding justice, and guaranteeing human rights in Law No.18 of 2003 concerning Advocates.

Based on the description above, the reconstruction of the value of advocate immunity rights to realize legal protection for advocates and maintaining dignity and integrity as an advocate is upholding administrative sanctions and until the dismissal of advocates who violate the code of ethics and commit criminal acts, law enforcers are permitted to be examined with the approval of the Advocate Honor Council. so that in connection with this, 3 articles that must be changed are Article 14 of Law no. 18 of 2003 which becomes: "Advocates are free to issue opinions or statements in defense of cases which are their responsibility in court proceedings while adhering to the professional code of ethics and laws and regulations", Article 15 of Law no. 18 of 2003 which becomes: "Advocates are free in carrying out their professional duties to defend cases that are their responsibility by sticking to the professional code of ethics and laws and regulations both inside and outside the court", and Article 16 of Law no. 18 of 2003 which becomes: "Advocates cannot be prosecuted either civil or criminal in carrying out their professional duties in good faith for the benefit of client defense in court proceedings as long as they comply with the professional code of ethics and laws and regulations"

CONCLUSION

1. Weaknesses of the right to immunity of advocates when viewed substantially, can be seen in article 5 of Law no. 18/2003 as it has not provided advocate with the same powers as other law enforcers, even though in terms of the extent or scope of work, it is actually wider than other law enforcers, from the structural point of view, where the organizational structure has yet to supervise advocates directly, and from a cultural point of view where there is still an abuse of the advocate profession coupled with the low quality of legal professional knowledge.
2. Reconstruction of the value of advocate immunity rights is needed to realize legal protection for advocates and maintain dignity and integrity as an advocate is upholding administrative sanctions and until the dismissal of advocates who violate the code of ethics and commit criminal acts, then it is permitted to be examined by law enforcers with the approval of the Advocate Honor Council so that it is related With this in mind, 3 articles that must be changed are Article 14 of Law no. 18 of 2003 which becomes: "Advocates are free to issue opinions or statements in defense of cases which are their responsibility in court proceedings while adhering to the professional code of ethics and laws and regulations", Article 15 of Law no. 18 of 2003 which becomes: "Advocates are free in carrying out their professional duties to defend cases that are their responsibility by sticking to the professional code of ethics and laws and regulations both inside and outside the court", Article 16 of Law no. 18 of 2003 which becomes: "Advocates cannot be prosecuted either civil or criminal in carrying out their professional duties in good faith for the benefit of client defense in court proceedings as long as they comply with the professional code of ethics and laws and regulations"

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