



Enforcement of The Advocate Professional Code of Ethics in Client Assistance in Criminal Cases of Corruption

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Abstract

The profession of an advocate as a law enforcer is based on Law Number 18 of 2003 concerning Advocates and Article 24 Paragraph (1) of the 1945 Constitution. The profession of a free, independent and responsible advocate is regulated in Law Number 18 of 2003. An advocate is a profession that provides legal services, where when carrying out his duties and functions he can act as a companion, give legal opinion or become a legal representative for and on behalf of his client. Advocate profession is inseparable from a code of ethics which contains values and morals. Regarding advocates who are related to corruption cases, the legal services provided to the public by law enforcement officials aim to respect and provide legal protection humanely without distinguishing between the rich and the poor.

Keywords: Code of Ethics for Advocates, Client Assistance, Corruption Cases

A. Introduction

Law Number 18 of 2003 concerning Advocates and Article 24 Paragraph (1) of the 1945 Constitution are the foundation of the advocate profession as law enforcers. In administering justice, the free, autonomous and responsible advocate profession is controlled by Law Number 18 of 2003 in the framework of protecting the rule of law and justice. Law enforcement officials who provide legal services to the public strive to do so in a way that respects human rights and provides legal protection without discriminating between the rich and the poor, especially in cases of corruption. In corruption cases, advocates will represent clients, become legal advisers, and defend suspects or defendants at the same time. In this sense, defending involves defending one's legal rights and legal interests. According to Law Number 30 of 1999 concerning Corruption, corruption is a serious crime that not only harms the nation but also makes Indonesian people poor and disadvantaged because their basic needs are not met.

One of the foundations in defending the rule of law and human rights is the advocacy community which is a component of the legal system. In carrying out their responsibilities and activities, advocates, a profession that offers legal services, may serve as companions, sources of legal advice, or legal representatives for and on behalf of their clients. The code of ethics, which incorporates values and morals, and the advocate profession are interdependent. By prohibiting actions that would harm the material well-being of members, this code of ethics serves to uphold the dignity of the profession and maintain or maintain the well-being of its members. Of course, the duties of each advocate and the Professional Organization that oversees them must come after the independence and freedom enjoyed by the advocacy profession. The provisions of Law Number 18 of 2003 concerning Advocates have established guidelines that must be followed by the advocate profession in order to maintain the rule



of law and the interests of justice. The oath or promise made by an advocate before engaging in his profession is the clearest indicator. An oath is basically an oath made to God, oneself, and society by someone who plans to pursue a career as an advocate. The state of law enforcement would undoubtedly improve further if every proponent not only proclaimed it for ceremonial purposes but also penetrated, educated and implemented it. The judicial branch will be able to uphold the rule of law and justice.¹ The function of the Advocate Organization determines the profession of an advocate who functions as law enforcement and justice. Law Number 18 of 2003 concerning Advocates stipulates guidelines for supervision, enforcement of violations, and dismissal of advocates. Advocate organizations are responsible for implementing these guidelines. For example, according to the requirements of Article 6 of Law Number 18 of 2003 concerning Advocates, advocates can be held accountable for the following reasons:

- 1) ignoring or neglecting the interests of their clients;
- 2) act or behave inappropriately towards opponents or colleagues in their profession;
- 3) behave, behave, speak, or issue statements that show disrespect for the law, legislation, or courts;
- 4) do things that are contrary to obligations, honor, or the dignity of the profession;
- 5) violates laws and or disgraceful acts; and
- 6) violate the advocate's oath/pledge and/or the code of ethics of the advocate profession.

The application of the code of ethics in the legal profession is very important because it serves as a means to increase the moral fortitude of the advocate profession by outlining how the code of ethics serves society by being upheld and practiced. At the same level as other law enforcement authorities, advocates are a component of the justice system. An advocate has a position as a law enforcer, free and autonomous as provided by laws and regulations, according to Law no. 18/2003 concerning Advocates. As a member of law enforcement, Advocates have the power to help their clients in need with their legal problems. Advocates have the force of law because they are private law enforcement organizations. Until the protection of human rights is realized, the function of an advocate is very important to achieve an integrated criminal justice system. Advocate profession based on the free, autonomous and responsible advocate profession can make a significant contribution to upholding justice, human rights (HAM) and democracy. Advocate profession is at the forefront of the struggle for a just life, with a focus on human rights and democracy, which are usually the main issues in the country of Indonesia, especially among the less fortunate²

¹Minutes of the Constitutional Court Session Number 015/PUU-IV/2006 regarding the Review of the Advocate Law

² Franciscus Xaverius Raditya Wicaksono, 2014, Enforcement of the Code of Ethics of the Advocate Profession in Accompanying Clients of Corruption Criminal Cases , UAJY e-Journal , p.3



An advocate must comply with the advocate's code of ethics, but despite the fact that the law is applied in the field, there are still advocates who do it. The application of the code of ethics in the legal profession is very important because it serves as a means to increase the moral fortitude of the advocate profession by outlining how the code of ethics serves society by being upheld and practiced. However, in reality the behavior of some Advocates is often far from being "noble and noble", For example, a lawyer was arrested by the Corruption Eradication Commission (KPK) because he and five Supreme Court employees were trying to bribe the "Chief of the Supreme Court", a lawyer was caught on the side of the road after handing over bribes to a judge at the State Administrative High Court, or senior Advocate OC Kaligis being arrested for committing bribery. Incidents like these make people wonder where the "noble and honorable" nature and code of ethics of Advocates lie³. The formulation of the problem raised is what is the position of the function of an advocate for clients in cases of criminal acts of corruption and how is the enforcement of violations of the professional code of ethics accompanying clients in cases of criminal acts of corruption? This research is aimed at obtaining data about the position of the function of an advocate for clients in cases of criminal acts of corruption and how to enforce violations of the professional code of ethics accompanying clients in cases of criminal acts of corruption.

B. Research Method

This research is a juridical-normative research using library research. The data source that the author uses in writing this law is a secondary data source, namely consist of:

- 1) Primary legal materials, namely:
 - a. Law No. 18 of 2003 concerning Advocates.
 - b. Law No. 48 of 2009 concerning Judicial Power
 - c. Law Number 8 of 1981 concerning the Criminal Procedure Code.
- 2) Secondary legal materials, namely: It is data that indirectly provides materials for research studies and legal materials in the form of documents, books, dictionaries, and various other literature.
- 3) ertiary legal material Represents data that indirectly provides material research studies and legal materials in the form of internet postings.

C. Results and Discussion

1. Position and Function of Advocate Against Clients in Corruption Crime Cases

The role of advocates in the legal system as legal professionals and law enforcers. Advocates must have the same power to carry out their responsibilities as other law enforcement officials such as the police,

³ Amiruddin, 2017, Social Juridical Accountability of Advocates to Clients in Handling Corruption Crime Cases Based on Law Number 18 of 2003 Concerning Advocates , Journal of Article Legal Opinion, p. 2



prosecutors and courts. Law enforcement officials such as judges, prosecutors and police are given the authority to carry out their duties and functions, but advocates are not given the authority to carry out their profession. This is important in order to maintain the independence of advocates in carrying out their profession and to avoid arbitrariness by other law enforcers. Given this fact, it is important to provide the power of attorney. "This authority is needed not only to create equality among law enforcement officials but also to avoid various interpretations among other law enforcement officials and the advocates themselves regarding authority," said the author. In contrast, Law Number 18 of 2003 concerning Advocates does not regulate the power of advocates in carrying out their roles and responsibilities as law enforcement officers. As a result, there is a gap in the law regarding the power of an Advocate. It should be underlined that the advocacy profession functions as an organ of the state and carries out governmental duties. Therefore, the Advocate profession is equivalent to the Police, Prosecutor's Office, and the Judiciary as state institutions that carry out state duties. Advocates are private organizations that serve the public, in contrast to the Police, Prosecutors' Office, and the Judiciary, which are all public organizations.

Advocates are equal to other law enforcement officers if they are given the authority to carry out their duties and responsibilities in their capacity as law enforcement officers. This alignment will lead to a state of balance that will improve the legal system. Legal Position and Judicial Powers of Advocates In the judicial power structure, advocates are tasked with upholding and representing the community. To represent the interests of the state, judges, prosecutors and police are put in place. The position, function and role of an advocate is very important in this situation, especially in maintaining a balance between the interests of the state and society. The two responsibilities of an advocate of justice must be granted the authority of an advocate under the law. The task of an advocate in the judicial power structure is to defend and represent the community. Judges, prosecutors and police are there to serve as representatives of the state. In this context, the position, responsibilities and role of an advocate are very important, especially in achieving a balance between the interests of the state and society. Adnan Buyung Nasution explained that practicing law is a free profession; This freedom goes beyond the practice of law itself to realize a larger interest, namely the establishment of an independent judiciary. An independent judiciary is a requirement for upholding the rule of law and practicing democratic values.⁴

First, the interests of representing clients to maintain justice, and second, the role of an advocate is very important for the client he represents, are two duties of an advocate for justice that need attention. In addition to helping clients, an advocate upholds the integrity of the legal system and their own operations. Apart from these two crucial roles, Advocates also have another crucial responsibility: educating the public about the role of law in society. Communities can be educated through receiving legal advice, learning about different laws and regulations, and receiving legal advice through print, electronic, or in-person media.⁵ public, an advocate can do so for free (Pradeo) or on the basis of obtaining an Honorarium (Lawyer Fee) from his

⁴ Frans Hendra Winata, 1995, *Indonesian Advocate, Image, Idealism and Concern*, Sinar Harapan: Jakarta, p. 14

⁵ Tri Hastuti Handayani, 2018, *Position and Role of Advocates in Law Enforcement in Indonesia (Study on the Board of Directors of the Peradi Branch, Bojonegoro Regency*, ejournal.unigoro, p. 17



client. Because he can function as a mediator for the parties in a dispute over a case, whether it is related to criminal, civil, or administrative matters, an advocate is a noble profession. Constitutional Court Decision. Advocacy groups can function as intermediaries in seeking the truth and upholding justice in addition to defending human rights and offering free and impartial legal assistance.

Satjipto Rahardjo is of the opinion that the role played by a defender is as a guardian (guard) of the court's power, in this case the defender's duty is to ensure that legal officials do not commit irregularities that harm the rights of the suspect/defendant⁶If there are or have been irregularities by investigators as law enforcement officers, such as errors by investigators in carrying out the investigation and investigation process because they are not in accordance with current procedures, then the role and function of an advocate is required. As a result, someone who should be innocent can become a suspect, while someone who should be legally guilty is exempt from punishment. It goes without saying that this is grossly unfair to the victim of false arrest, who has no idea what has happened to him and must now serve a sentence that was not his to give but was meant for him. This is the situation where Law Number 38 of 1999 concerning Human Rights regulates the function of an advocate to protect human rights. Given the aforementioned truth about the importance of the position and role of an advocate, it is clear that, in general, all suspects and defendants, including those who are aware of the law, must be accompanied by an advocate. In addition, it should be noted and acknowledged that many people have come forward to acknowledge the existence of various human rights violations so far thanks to legal assistance, especially in terms of resolving criminal cases. It is important to recognize the importance of the advocate defending the accused at all times, not only during the trial but also during the post-trial investigative phase with the court.

The right to obtain legal assistance from an Advocate is closely related to the achievement of a fair legal process (due process of law) and to avoid arbitrary legal proceedings based solely on the power of law enforcement officials (arbitrary process). although the right to be accompanied by an Advocate is closely related to achieving a fair legal process and to avoid arbitrary proceedings in the criminal justice process. According to Article 54 of the Criminal Procedure Code, a suspect or defendant has the right to legal representation from one or more legal advisers (advocates) at each stage of the investigation. In criminal proceedings, an advocate is a person who provides legal assistance; in the Criminal Procedure Code, this person is referred to as a legal adviser. In civil and administrative matters, the person providing legal assistance is also known as a legal adviser. Given the crucial role played by advocates in the Indonesian justice system, a strong organization is needed to provide a place for advocates to carry out their profession. The Advocate Organization is the only free and independent forum for the advocate profession which was established in accordance with the provisions of this law with the aim and objective of increasing the standards of the advocate profession, in accordance with Article 28 paragraph 1 of Law Number 18 of 2003 concerning Advocates. Thus the Advocate group is basically a separate state institution that also performs state duties. The clauses of the articles mentioned above show how autonomous the profession of an advocate is in the Indonesian legal system. The independence of the legal profession is consistent with the independence of the

⁶ Satjipto Rahardjo, 1976, *Community and Development Law*, Alumni: Bandung, p. 104



judiciary itself. One of the main principles of democracy is the proximity of the judiciary. He wants the judiciary branch, including the Supreme Court, to be free from interference, pressure or coercion that comes either directly or indirectly from the authority of other institutions, subordinates or other parties outside the judicial branch. So that judges can make decisions based solely on fairness and their moral convictions.⁷ Because the judiciary requires an advocate profession, the advocate profession must also be independent. The function played by an advocate or legal adviser in the criminal justice system is an integral part of the significance of an advocate.

The methods in which they operate, how intensely they interact with the courts, and the types of cases they handle are where the two vary in this regard. Satjipto Rahardjo claims that only experienced lawyers always accompany their clients, have a high level of intelligence, specialization and expertise, have extensive personal ties with various agencies, uphold the highest standards of professional ethics, credibility and reputation, as well as skilled litigators who fulfill terms of representing clients. Regarding the importance or function of an advocate, it is generally proven that every suspect or defendant, including those who are aware of the law, must be accompanied by an advocate. Equally important, it must be clearly understood that lawyers who represent the rights of defendants must always be able to stand up straight, not only during the investigation process but also in the post-trial process to ensure the protection of the rights of suspects and defendants. Criminal offenses have various rights, including at least 7 (seven) sets of rights specifically described in the Criminal Procedure Code.

These rights include: 1.) trial 5.) The right of the defendant to take legal action 6.) Ordinary measures such as appeal and cassation, as well as extraordinary remedies for review 7.) The right of the suspect or defendant to demand compensation and rehabilitation 8.) The right of the defendant after the court decision has been pronounced at trial. It takes someone who has knowledge of the law to fight for the discovery of the rights of suspects and defendants when those rights are exercised, whether there are anomalies in criminal justice procedures or in the criminal justice system as a whole, or whether those rights are being exercised. This is where advocates in the criminal justice system fit in and serve a purpose. In connection with what was stated, it can be seen that the duties and functions of an advocate in any job or profession cannot be separated from one another. In carrying out their duties, an advocate must function; as guardian of the constitution and human rights, fighting for human rights in the Indonesian legal state, implementing the advocate's code of ethics, providing legal advice, providing legal consultations, providing legal opinions, drafting contracts - contracts (legal drafting), providing legal information (legal information), defending client interests (litigation), representing clients before court (legal representation), providing free legal assistance to the weak and underprivileged (legal aid) . In connection with the position or function of the advocate, the advocate also of course has a responsibility in law enforcement, the advocate must be responsible for four things, namely:

- a. Responsibility to God

⁷ Shimon Shetreet, 1985, *Judicial Independence: New Conceptual Demintions and Contemporary Challenges*, in Shimon Shetreet and J. Deschenes (eds) *Judicial Independence* (Nether-lands: Martinus Nijhoff Publisher).



- b. Responsibility to the advocate's code of ethics
- c. Responsibilities to Law advocates
- d. Responsibility to society.

Based on what has been stated above, it can be seen that advocates can maintain and guarantee the meaning and nature of the objectives of the criminal justice system in general, as well as the principles of criminal law in particular and uphold human rights.

2. Enforcement of Violations of the Professional Code of Ethics Accompanying Clients in Corruption Crime Cases.

From an ethical point of view, the Advocate code of ethics provides the foundation for this choice of commitment, which is regulated in article 3 of the Indonesian Advocate code of ethics chapter on Advocate personality, which reads: "Advocates may refuse to provide legal advice and assistance to anyone who needs services and or assistance. law with considerations because it is not in accordance with his expertise and contrary to his conscience, but cannot refuse on the grounds of differences in religion, belief, ethnicity, ancestry, gender, political beliefs and social position. As we know "corruption" is an extraordinary crime which not only harms the country but also causes poverty and underdevelopment of some Indonesian people because their needs are not met.⁸

General authorities with the power to take certain legal processes to support victims of corruption are known as advocates. Advocates are entitled to an honorarium as payment for providing assistance while carrying out their obligations as a client companion. According to Abdul Ghofur Anshori,⁹ although a profession is run not solely based on money, an award (honorarium) is absolutely necessary as an element of professionalism. Temporary Advocate and/or Advocate professional organizations are required to draw up 1 (one) Advocate Professional Code of Ethics that applies nationally to be adhered to by all Advocate and temporary Advocate members. The preparation of the Advocate Professional Code of Ethics is jointly carried out by the Advocate professional organization and approved by the Chairman of PERADI as a joint guideline for the development of the Advocate profession.

The actions of an advocate who helps his client win a case in an "unlawful" way (breaking the law) cannot be protected by an advocate's right to immunity. Regarding the law enforcement process against lawyers who obstruct the investigation of corruption, which is clearly contrary to good ethics in carrying out their professional duties, with bad ethics, or violates the law, the defense

⁸ Ali Achmad, 2008, *Revealing the Law*, Ghalia Indonesia Publisher: Bogor, p. 7

⁹ Sudikno Mertokusumo and A. Pitlo, *Anthology of Law Studies*, Liberty: Yogyakarta, ham. 33



obstructs the law enforcement process, so that the right of immunity does not apply in cases like it.¹⁰

Advocates' honorarium is regulated by Law Number 18 of 2003 concerning Advocates, which states, for example, that the fee (honorarium) for permanent and temporary advocates, as well as witnesses, cannot be more than a reasonable assistance price. According to ethical rules, advocates are required to determine a reasonable fee for assistance and have the right to receive an honorarium or payment for support services. However, in practice, there are still advocates who assert that the honorarium for providing assistance exceeds the relevant law. The aspect of integrity is the main requirement for an Advocate's personality as a law enforcement figure who usually also holds an honorable position as *officium nobile*, so the existence of Law Number 18 of 2003 concerning Advocates is referred to as the Code of Law complementing the previous rules that are internal to the Advocate organization regarding governance orderly behavior, attitudes and behavior of members commonly referred to as the Code of Ethics or Code of Conduct¹¹, which are rules regarding inner characteristics or conscience or conscience and Advocate behavior according to organizational provisions, so that therefore the existence of an Advocate in the midst of society will be more visible the figure of an Advocate as an *officium nobile* law enforcer. Similarly, in this era of globalization, the moral character of an advocate will resemble that of an advocate who is respected by both Indonesians and foreigners. The role of advocates as law enforcers in the midst of a decline in law and justice is a formidable challenge, especially in the face of increasingly serious transnational crimes that are suspected of occurring. Advocates as law enforcement figures, especially in participating in filling in and improving the performance of the judiciary in Indonesia are said to be very damaged, while law enforcers such as judges, prosecutors and police are almost no longer trusted by the public. In essence, the task of an advocate in law enforcement is to fight for the truth of justice on behalf of the client (the litigant), who is still a suspect and needs assistance so that his guilt or innocence is determined. In addition, community members must step up so that law enforcement, or in this case, activists, can restart their efforts. Law enforcement officers must not be silenced for the good of society as law enforcers and justice seekers, even by silencing lawyers to help them win their cases.¹²

¹⁰ Vicky Yohanes Rakinaung, 2019, *Legal Studies Against Attorneys Who Deliberately Obstruct, Complicate the Investigation, Prosecution and Judicial Process Against Defendants in Corruption Crimes*, *Lex Crimen*, Vol. VIII/No. 4/Apr/2019188, p. 192

¹¹ Code of Law in Law Review Law, Role of Advocates as Law Enforcers Facing positive transnationals that also bind the public, Faculty of Law Universitas Pelita Harapan, Vol. IV No. 1, 7 Lumhuun, 2004, p. 12

¹² Angga Nugraha, 2019, *Advocates who Obstacle the Investigation Process of Corruption Crimes are Connected with Law No. 18 of 2003 Concerning Advocates*. Skripsi(S1) thesis, Faculty of Law, University of Pasundan, page 97



A regulation was made that regulates the honorarium of Advocates as a profession as well as public officials who can collect honorariums for the services they provide as referred to in Law Number 18 of 2003 concerning Advocates. Advocates who receive delegation of authority from the government to provide assistance do not receive a salary from the state for services provided to the community.¹³ According to the process outlined in Article 56 of the Criminal Procedure Code, a suspect or defendant has the right to legal representation from one or more lawyers during an examination and at any level. The legal services offered to the public by law enforcement officials in relation to allegations of corruption seek to respect and compassionately provide legal protection without discriminating between the rich and the poor. Although the definition in the Advocate Law is intended to equalize with other law enforcers, the definition of law enforcement as reported by Boy Mardjono Reksodiputero substantively requires law enforcement in order to seek the truth objectively. This is the definition in the Advocate Law. Even if an Advocate is in a subjective position, his thoughts and arguments must remain objective based on the Law.¹⁴ making his attitude different from that of a defendant or accused. It is possible to point out a legislative provision which denies the existence of such a component of error or action in carrying out the professional obligations promised by the Advocate Law to show the criminal wrongdoing of an advocate in obstructing or impeding the investigation of a criminal act of corruption. The law guarantees and protects advocates in carrying out their professional obligations as a profession that is autonomous, independent, and is tasked with enforcing the law in the framework of carrying out applicable law enforcement efforts. As for the role of advocates that can be sought in defending the legal interests of the accused in cases of alleged abuse of authority before the trial, among others¹⁵:

1. Exception/Rebuttal of the indictment
2. Evidence
3. Defense/Pledoi

It is clear from Law Number 18 of 2003 concerning Advocates that advocates carry out the role of advocate as well as carry out responsibilities as one of the four pillars of law enforcement, including upholding the law. Article 16 Advocates are protected from civil and criminal prosecution by continuing to act in the best interest of the client's defense before the trial. Article 50 of the Criminal Code states that "anyone who commits an act to carry out the provisions of the law shall not be punished".

¹³ ranciscus Xaverius Raditya Wicaksono, 2014, Enforcement of the Code of Ethics of the Advocate Profession in Accompanying Clients of Corruption Criminal Cases , UAJY e-Journal, p. 10

¹⁴ Sumaryono E, 1995, Ethics of the Legal Profession, Norms for Law Enforcement , Kanisius Publisher: Yogyakarta, p.34

¹⁵ Kevin Tigo, 2016, The Existence of an Advocate in the Defendant's Defense on Alleged Abuse of Authority in the Corruption Crime Court at the Pekanbaru District Court , JOM Faculty of Law Volume III Number 2, p. 9



D. Conclusion

Law enforcement officials such as judges, prosecutors and police are given the authority to carry out their duties and functions, but advocates are not given the authority to carry out their profession. This is important in order to maintain the independence of advocates in carrying out their profession and to avoid arbitrariness by other law enforcers. It is clear from Law Number 18 of 2003 concerning Advocates that advocates carry out the role of advocate as well as carry out responsibilities as one of the four pillars of law enforcement, including upholding the law. Chapter 16 In carrying out his professional obligations in good faith for the benefit of client defense in court, advocates are immune from civil and criminal prosecution. Article 50 of the Criminal Code states that "anyone who commits an act to carry out the provisions of the law shall not be punished". Advocates are public officials who are given authority regarding certain legal actions in assisting clients of criminal acts of corruption. In carrying out the duties of his position as a client companion, an Advocate is entitled to receive an honorarium as a service for making assistance. According to Abdul Ghofur Anshori,¹⁶ although a profession is run not solely based on money, an award (honorarium) is absolutely necessary as an element of professionalism. Temporary Advocate and/or Advocate professional organizations are required to draw up 1 (one) Advocate Professional Code of Ethics that applies nationally to be adhered to by all Advocate and temporary Advocate members. The preparation of the Advocate Professional Code of Ethics is jointly carried out by the Advocate professional organization and ratified by the Chairman of PERADI as a joint guideline for the development of the Advocate profession.

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¹⁶ Sudikno Mertokusumo and A. Pitlo , 2010 , *Anthology of Law Studies , Liberty*: Yogyakarta, p. 33



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