

LAW NO. 18 YEAR 2003 CONCERNING ADVOCACY: Effectiveness of Immunity Rights in Defending Clients

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ABSTRACT

In carrying out their profession, advocates have the right to obtain information, data, and other documents needed to defend the interests of their clients, both from government agencies and other parties related to these interests. Advocates are free and without fear of issuing opinions or statements in court proceedings to defend the case for which they are responsible. Law on Advocates Number 18 of 2003 is to equalize the status of the Advocate profession with other legal professions Advocates as a vital element in the search for material truth in the judicial process, especially from the point of view of the client's legal interests. The regulation is intended to protect the public from legal services provided by advocates that are substandard. Law on Advocates Number 18 of 2003, also provides the right of immunity (immunity) to carry out their professional duties, and the interests of clients who are defended. The regulation regarding the immunity rights of advocates in Law no. 18 of 2003 Law on Advocates.

Keywords: Advocates; Regulations; Immunity Rights



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INTRODUCTION

In Law no. 39 of 1999 concerning Human Rights (HAM), Article 18 (paragraph 1) states that "Everyone who is arrested, detained, and prosecuted because he is suspected of committing a criminal act has the right to be considered innocent until his guilt is legally proven in a court hearing and given a legal guarantee required for his defense by the provisions of the legislation. (El-Muhtaj, 2017) This article illustrates the importance of defense in law enforcement against

criminal suspects which can practically be carried out alone or using the services of a legal advocate.

Legal services are services provided by advocates in the form of providing legal consultation, legal assistance, exercising power, representing, assisting, defending, and taking legal actions for the legal interests of clients. A client is a person, legal entity, or legal entity that receives legal services from an advocate. Click or tap here to enter text. (Arliman, 2015) In this case, the profession that provides legal assistance both inside and outside the court meets the requirements based on the law.

In carrying out their profession, advocates have the right to obtain information, data, and other documents needed to defend the interests of their clients, both from government agencies and other parties related to these interests. Advocates are free and without fear of issuing opinions or statements in court proceedings to defend the case for which they are responsible. Advocates in defending their clients must not be influenced by threats by anyone to influence their defense. Thus, advocates freely seek justice in defending their clients. (Rosyadi & Hartini, 2003)

Every advocate has immunity or the right of immunity in carrying out their duties. the freedom of an advocate to do or not take action to issue opinions, statements, or documents to anyone in carrying out their duties, so that he cannot be punished as a consequence of carrying out his professional duties. (Cahyani, Junaidi, Arifin, & Sukarna, 2021)

An advocate may act for a client under a power of attorney, acting for and on behalf of the client. Advocates before carrying out cases in court are given non-legitimacy rights, if there is no peace then they are given the right to file cases in legitimate courts and are protected by the right of immunity to achieve peace (Purser, Cockburn, Cross, & Jacmon, 2018).

The function of an advocate in creating justice with legislation and non-legislation. Can do mediation or prosecution, if the legislation is complete, then justice will arise if the legislation cannot see, protect the rights of clients who have been neglected, and protect them from other parties. Example of a client being harmed in defamation. For people who report pollution, there are times when it is necessary to forward them to the authorities, or not. By taking a professional, familial, and/or legal approach (Desclaux, Badji, Ndione, & Sow, 2017).

Therefore, it is very important for the right of immunity to defend the client, so that the advocate is not easily sued by the client or his opponent. As long as he does not have good ethics, his immunity rights cannot be protected to protect lawyers from attacks by other parties. Advocates must keep secrets from their clients, if they violate they are given the heaviest sanctions to be dismissed as an advocate, by Article 7 of Law 18 of 2003:

1. A verbal warning is offered
2. A written warning is given
3. Temporarily suspended from the advocate profession for 3-12 months
4. Dismissed.

Dismissal is carried out by the Advocates Supervisory Board, supervising the actions of advocates based on complaints from clients. Advocates are summoned

by the supervisory body with the complainants (clients) being called (advocates). If it is not completed then it will be tried in the code of ethics court. Above the Supervisory body, there is an honorary council that has the right to impose sanctions, namely the honorary council. It happens if it is not finished. If the advocate does not violate the provisions of the law and the code of ethics, the advocate can protect the right of immunity. Advocates in carrying out their duties cannot be prosecuted by criminal or civil. Advocates are free to express opinions based on the law, as reflected in article 15 chapter 4. On the rights and obligations of advocates.

Article 16 of Law no. 18 of 2003 states that "advocates cannot be prosecuted both civilly and criminally in carrying out their professional duties in good faith for the benefit of defending clients in court trials". (Indonesia, 2007) It means that the advocate has the right to immunity from being prosecuted and the meaning of good faith is to carry out professional duties for upholding justice based on legal services to defend the interests of his clients.

RESEARCH METHOD

The research is included in the type of normative juridical research. Normative juridical research is a type of research that seeks to synchronize the legal provisions that apply in law enforcement to other legal norms or regulations. A conceptual approach is also used based on the opinions of legal experts. (Kamilah, 2021) Based on the type of normative juridical research, the research approach in this study uses a statutory approach and a conceptual approach.

The statutory approach uses laws and regulations related to the rule of advocated immunity rights in defending, while the conceptual approach uses the theories and concepts used in this study that have relevance to the legal issues analyzed regarding the liability of advocates in defending clients.

Normative juridical research uses secondary data sources. Secondary data in this type of normative juridical research is data sourced from legal materials, consisting of primary legal materials, secondary legal materials, and tertiary legal materials

Legal materials as secondary data used to analyze legal issues in this study are as follows.

The source of data in the study is the subject from which the data can be obtained. There are two sources of data used by the author, namely:

1. Primary Data Source

Primary data sources are data sources obtained from parties who are able to provide data directly from the field to researchers. Those parties are limited to the head of the Advocate's office, Indra Syahfri, S.H, and colleagues. Thus, primary data collection is an integral part of the legal research process used for decision-making.

2. Secondary Data Source

Sources of secondary data in this study are sources of data obtained from books/documents related to this research substantively. The documents include books, the Peradi Secretariat Team, the Book of Indonesian Advocates, Rahmat Rosyadi & Sri Hartini, Advocates in Islamic Perspectives & Positive Law, and

other books that support research on the Effectiveness of Advocate Immunity Rights in Client Defense according to Law no 18 2003 concerning advocates (Case Study at the Office of Advocates/Legal Advisers Indra Syahfri, SH and Partners).

RESULT AND DISCUSSION

The provision of legal services carried out by advocates to the community or their clients has a very strong legal basis, both originating from the laws of the colonial era and after the independence period. The provision of legal aid is regulated in the 1945 Constitution, for example: (1). Article 27 paragraph 1 stipulates that: "every citizen shares his position in law and government and is obliged to uphold the law and government with no exceptions." (2). Article 34 states that: "the poor and neglected children are the responsibility of the state" In addition to these laws, it is also regulated in the Law on Advocates, namely as follows: a. UU no. 14 of 1970 concerning Basic Provisions of Judicial Power-Chapter VII Legal Aid, articles 35, 36, 37. b. UU no. 8 of 1981 concerning Criminal Procedure Code- Chapter 1 and Chapter VII Legal Aid, articles 1, 69, 71,72, 73, 74. c. UU no. 14 of 1985 concerning the Supreme Court - Chapter III Powers of the Supreme Court, Article 36. d. UU no. 2 of 1986 concerning General Courts Chapter III Court Powers, article 54. e. UU no. 5 of 1986 concerning the State Administrative Court Article 57. f. UU no. 7 of 1989 concerning Religious Courts- Article 73 paragraph 1. g. UU no. 3 of 1997 concerning Juvenile Justice Article 1 paragraph 13. h. UU no. 31 of 1997 concerning Military Courts Article 1 paragraph (30), article 215, article 217, article 218. i. UU no. 14 of 1998 concerning Stipulation of Government Regulation in place of Law no. 1 of 1998 concerning Amendments to the Law on Bankruptcy to become Law No.5.

1. Advocate Ethic Codes

The advocate profession is a law enforcer that is parallel to other law enforcement agencies. Therefore, each other must respect each other between colleagues and between other law enforcers. [5]

Therefore, every Advocate must also maintain the image and dignity of the profession's honor and be loyal and uphold the Code of Ethics and Professional Oath, whose implementation is supervised by the Honorary Council as an institution whose existence has been and must be recognized by every advocate regardless of which professional organization he is from being a member, which at the time of taking the oath of profession implies his acknowledgment and compliance with the applicable Advocate Code of Ethics. Thus, the Indonesian Advocate's Code of Ethics is the highest law in carrying out the profession, which guarantees and protects, but imposes an obligation on every individual, to be honest, and responsible in carrying out his profession both to clients, courts, the state, or society and especially to himself.

2. Rights and Obligations of Advocates

The rights and obligations of advocates are regulated in the Law on Advocates in Articles 14,15,16,17,18, and 19, as follows. Advocates are free and without fear of issuing opinions or statements in court proceedings to defend the

case for which they are responsible.

Advocates in defending their clients must not be threatened or influenced by threats by anyone to influence their defense. Thus, advocates freely seek justice in defending their clients. (Primus, 2015) Advocates have the right to immunity, and cannot be prosecuted both civilly and criminally in carrying out their profession in good reliance for the benefit of defending clients in court, other judicial institutions, or in hearings in the DPR RI (Caspar & Joukov, 2020). This article only provides immunity to advocates who carry out their profession "in good trust". If it is proven that the advocate does not carry out his profession in good faith, the person concerned can be prosecuted both civilly and criminally (Nuna, Kodai, & Moonti, 2020).

To defend clients, advocates are given the freedom to seek and obtain information, data, or other documents needed by the provisions of the applicable laws and regulations. Advocates in carrying out their profession are prohibited from discriminating in the treatment of clients based on gender, religion, politics, descent, race, or social and cultural background. Advocates cannot be stopped with their clients defending client cases by the authorities and or the community (Melton et al., 2017).

3. The Effectiveness of Immunity Rights of Advocates in Defending Clients According to Law No.18 of 2003 concerning Advocates.

Based on Law No.18 of 2003 concerning Advocates, the recognition of the rights and roles of advocates as part of the legal and judicial system must be respected by all parties and other law enforcement officers, especially in terms of equality in carrying out their respective functions and duties. With the existence of a legal umbrella for the advocate profession based on Law No. 18 of 2003 concerning Advocates, the right of advocates, which can be said to be the most central, is to have the right of immunity (immunitet) so that they cannot be prosecuted both civilly and criminally in carrying out their professional duties in good faith. whether in court, this right of immunity is related to the recognition that advocates cannot be identified with their clients by the authorities or the public. (ADJI, 1991)

Thus, what is meant by the right of immunity is the freedom of an advocate to take or not to take any action and to issue or not to issue opinions, statements, or documents to anyone in carrying out his professional duties, so that he cannot be punished as a consequence of carrying out his professional duties.

Based on Article 18 paragraph (2) of the Law on Advocates, Advocates cannot be identified or equated with their clients who are represented or defended. Advocates have the right to defend any of their clients, including high-profile criminals who have been blasphemed by many people, and continue to implement the principle that everyone has the right to a fair legal defense, which is recognized by every modern law in the world, including Indonesian law. If an advocate defends his client who is a big criminal, for example, the advocate must not be ostracized or blasphemed such as ostracizing and blaspheming his client. As already mentioned, once an advocate holds a case, even though his client is unpopular and a criminal who is reviled by the public, advocates must still provide the best possible legal services by professional, intellectual, and

emotional principles. Besides that, everyone has the right to get legal aid, even though that person is a big criminal, based on the principle that everyone's right to get legal aid cannot be blamed.

Therefore, in defending or fighting for these rights, advocates must not be the party affected by something that is being fought for or is being defended, either criminally or civilly. As has been said, in carrying out his work in the field of litigation and non-litigation, an advocate is tasked with maintaining the rights of individual legal subjects (*natuurlijke Persoon*) and legal subjects in the form of legal entities (*rechtspersoon*). The rights that advocates defend are absolute rights and relative rights.

In addition, this law also regulates other immunity rights, namely the right to confidentiality in their relationship with clients, including protection of files and documents against confiscation and examination as regulated in Article 19 of Law no. 18 of 2003 advocates, who asserted as follows:

- a. Advocates are obliged to keep everything that is known or obtained from their clients because of their professional relationship unless otherwise stipulated by law.
- b. Advocates have the right to confidentiality in their relationship with clients, including protection of their files and documents against confiscation and examination and protection against eavesdropping on the advocate's electronic communications.

This provision is a reflection of the protection of human rights within the framework of the rule of law, which in this case is the protection of documents and files belonging to the client from an advocate. This protection is also the right of a person who is exercising power, representing, accompanying, defending, and taking other legal actions for the legal interest of his client. In addition, advocates also have the right to freedom to express opinions and cases in court for which they are responsible (Article 14-15 of Law No. 18 of 2003) because advocates have the right to obtain information, data, and other documents, both from government agencies and parties related to interests necessary for the defense of his client by the laws and regulations.

Regarding the right to immunity, it is also regulated in Chapter VII article 9, the Code of Ethics and Provisions concerning the Honorary Council of Indonesian Advocates/Legal Counselors, namely:

- a. The profession of Advocate/Legal Adviser is noble and honorable (*officium nobile*), carrying out work duties to enforce law, justice, and truth, as law enforcers in court with prosecutors and judges (*officers of the court*) who in their work duties are under the protection of law and law. -law.
- b. Advocates/Legal Advisers cannot be examined as suspects by the authorities in cases of clients being handled.
- c. Advocates/Legal Counselors have the right to civil and criminal immunity both in making statements (*statements*) made in good ethics or *pledoi* (legal defense), written or oral, or in their appearance before a court, tribunal, or legal authority or administrative authority.

In Law no. 18 of 2003 articles 14 to 19 of Law No. 18 of 2003, to be

precise chapter IV on rights and obligations. In general, it can be said that the right of immunity arises from the rights and obligations of advocates in carrying out their duties, which expressly states that advocates are free to issue opinions or statements in defense of cases that are their responsibility in the Court Session. The meaning of the word free in this case is without any pressure, threat, obstacle, fear, or treatment that demeans the dignity of the advocate profession. In addition, advocates are free in carrying out their professional duties to defend cases for which they are responsible by adhering to the Code of Professional Ethics and legislation.

In full, Article 16 of the Law on Advocates reads: “Advocates cannot be prosecuted both civilly and criminally in carrying out their professional duties with good ethics to defend the client's interests in court proceedings. The right of immunity (immunitet) not to be prosecuted both civilly and criminally in carrying out his professional duties for the benefit of the client's defense in court proceedings. With the status of law enforcers, the role of advocates has freedom and independence guaranteed by law and legislation.”

It signifies that lawyers are no longer just professionals who provide legal services without guarantees of independence protected by law. Defend law and justice without pressure, intimidation, obstacles, fear, or disrespect for the dignity of the profession.

CONCLUSION

Advocates carrying out their duties to defend clients are protected by Law no. 18 of 2003 concerning advocated. The provision of legal services carried out by advocates to the community or their clients actually has a decisive legal basis, both originating from the laws of the colonial era and after the independence period. According to Frans Hendra Winarta, regarding legal aid, including the principles of equity before the law and access to legal counsel, Indonesian positive law has been clearly and firmly regulated through various laws and regulations.

Advocates as an honorable profession (*officium nobile*) who in carrying out their profession are under the protection of the law, laws, and the Code of Ethics, have freedom based on the honor and personality of Advocates who adhere to independence, honesty, confidentiality, and openness. The advocate profession is a law enforcer who is equal to other law enforcement agencies. Therefore, each other must respect each other between colleagues and also between other law enforcers.

REFERENCES

- ADJI, H. (1991). *Etika Profesional dan Hukum Pertanggungjawaban Pidana Dokter, Profesi Dokter*.
- Arliman, Laurensius. (2015). *Notaris dan Penegakan Hukum Oleh Hakim*. Deepublish.
- Cahyani, Fenny, Junaidi, Muhammad, Arifin, Zaenal, & Sukarna, Kadi. (2021). Kedudukan Hak Imunitas Advokat Di Indonesia. *JURNAL USM LAW REVIEW*, 4(1), 146–160.

- Caspar, Samantha M., & Joukov, Artem M. (2020). The Case for Abolishing Absolute Prosecutorial Immunity on Equal Protection Grounds. *Hofstra L. Rev.*, 49, 315.
- Desclaux, Alice, Badji, Dioumel, Ndione, Albert Gautier, & Sow, Khoudia. (2017). Accepted monitoring or endured quarantine? Ebola contacts' perceptions in Senegal. *Social Science & Medicine*, 178, 38–45.
- El-Muhtaj, Majda. (2017). *Hak asasi manusia dalam konstitusi Indonesia*. Prenada Media.
- Indonesia, Perhimpunan Advokat. (2007). *Kitab Advokat Indonesia, Bandung: PT. Alumni*.
- Kamilah, Anita. (2021). PENERAPAN PRINSIP ACTIO PAULIANA DALAM KEPAILITAN DAN PERLINDUNGAN HUKUMNYA TERHADAP PEMBELI YANG BERITIKAD BAIK. *Jurnal Hukum Mimbar Justitia*, 7(2), 160–176.
- Melton, Gary B., Petrila, John, Poythress, Norman G., Slobogin, Christopher, Otto, Randy K., Mossman, Douglas, & Condie, Lois O. (2017). *Psychological evaluations for the courts: A handbook for mental health professionals and lawyers*. Guilford Publications.
- Nuna, Muten, Kodai, Dince Aisa, & Moonti, Roy Marthen. (2020). Code Of Ethics And The Role Of Advocates In Providing Legal Aid To The Poor. *Indonesian Journal Of Advocacy And Legal Services*, 1(2), 259–274.
- Primus, Eve Brensike. (2015). Culture as a Structural Problem in Indigent Defense. *Minn. L. Rev.*, 100, 1769.
- Purser, Kelly, Cockburn, Tina, Cross, Cassandra, & Jacmon, Helene. (2018). Alleged financial abuse of those under an enduring power of attorney: an exploratory study. *British Journal of Social Work*, 48(4), 887–905.
- Rosyadi, A. Rahmat, & Hartini, Sri. (2003). *Advokat dalam perspektif Islam dan hukum positif*. Ghalia Indonesia.
- Wibowo, Bagus Satrio, Asikin, Zainal, & Amirudin, Amirudin. (2021). Application of Integrated Assessment in Law Enforcement against Narcotics Abusers. *International Journal of Multicultural and Multireligious Understanding*, 8(4), 422–429.