

## ADVOCATES AS LAW ENFORCEMENT IN THE REALIZATION OF AN INTEGRATED CRIMINAL JUSTICE SYSTEM IN THE MULTI BAR ERA

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### ABSTRACT

*The purpose of this study is to determine the effect of multibar on the role of advocates as law enforcers in the integrated criminal justice system. The method used is normative legal research. The results of this study are that the current multifaceted advocacy organization influences the quality of advocates, especially for justice seekers where with many advocate organizations, the quality control for advocates will not be controlled, so that the defense of justice seekers will be arbitrary and do not consider the principle of justice.*

**Keywords:** Lawyers, Criminal Justice System

### INTRODUCTION

Article 1 Paragraph (3) of the 1945 Constitution of the Republic of Indonesia, confirms that Indonesia is a country based on law. Manifestation of a rule of law (rechtstaat), one of which must be equal treatment for everyone before the law. The principle of equality before the law of equality before the law is a principle in which there is equality in law for every individual without any exceptions. The affirmation of this principle has been stated in Article 27 Paragraph (1) of the 1945 Constitution of the Republic of Indonesia, which states that all citizens have the same position in law and government and are obliged to uphold this law and government without exception.

Equal treatment before the law must apply to everyone, not just citizens, as stated in Article 28 letter (d) of the 1945 Constitution of the Republic of Indonesia, which states that everyone has the right to recognition, guarantee, protection and fair legal certainty and equal treatment before the law. Furthermore, in Article 16 of the International Covenant on Civil and Political Rights, the International Covenant on Civil and Political Rights (ICCPR) which was signed and agreed upon in New York on 19 December 1966, stated that: Everyone shall have the right to recognition everywhere as a person before the law. (Everyone has the right to recognition everywhere as a person before the law).

Law enforcement continues, but the post-reform legal paradigm shift is a phenomenon that greatly influences the political arena and constitutional life in Indonesia. But on the other hand, the law has not been fully able to fulfill thirst in the midst of the thirst for justice and people's welfare. There are still many legal cases that have not been completely resolved, thus affecting people's trust in law enforcement. Such phenomena have generated a lot of debate, especially regarding the relevance of law enforcement to the values of social justice and community welfare. Under these conditions, it is necessary to increase the role of law enforcement in law enforcement.<sup>1</sup>

In an effort to realize the principles of the rule of law in social and state life, the role and function of an advocate as a free, independent and responsible profession is important, in addition to the judiciary and law enforcement agencies such as the police and prosecutors. Through the legal services provided, Advocates carry out their professional duties for the sake of upholding justice based on law for the benefit of justice seekers, including efforts to empower people to realize their fundamental rights before the law. Advocates as an element of the justice system are one of the pillars in upholding the rule of law and human rights. Apart from being involved in the judicial process, the role of the Advocate can also be seen in the profession outside the court. The need for Advocates' legal services outside the judicial process is currently increasing, in line with the growing legal needs of the community, especially in entering an increasingly open life in relations between nations. Through the provision of consulting services, negotiations and in the preparation of trade contracts, the Advocate profession contributes significantly to community empowerment and reform of national law, especially in the fields of economics and trade, including in the settlement of disputes outside the court.

Advocate is a very honorable profession (noble officium). Regarding the role of an advocate as a true law enforcer, there are still those who think that there is ambivalence towards the advocate profession, on the one hand, an advocate is considered a profession that hinders the work of the apparatus, on the other hand, who else can help people who are in litigation in court, if not an advocate. Criminal law enforcement should ideally be carried out by involving all components or elements of law enforcement (Police, Prosecutors and Judges) based on the Integrated Criminal Justice System (ICJS). Criminal law enforcement in Indonesia is carried out based on Law No. 8 of 1981 concerning the Criminal Procedure Code (KUHAP).

Rusli Muhammad explained that the Advocate's position as part or sub-system of the Indonesian Criminal Justice System is still being debated, this is due to the lack of clarity on the place and organizational structure that unites and controls the work of the Advocate institution.<sup>2</sup> The criminal justice system in the world, both those adhering to the common law and civil law legal systems, still focuses on the classical characteristics which are distinguished into crime control and the due process model. The two models use the adversary system model or the battle model.<sup>3</sup>

<sup>2</sup>Rusli Muhamad, 2012, Indonesian Criminal Justice System: Equipped with 4 Laws in the Criminal Justice System Field, UII Press, Yogyakarta, p. 31

<sup>3</sup>Romli Atsasmita, 2011, Contemporary Criminal Justice System, 2nd printing, Kencana, Jakarta, p. viiii.

The legal profession known as an Advocate is theoretically unknown and cannot be interpreted as a law enforcer.<sup>4</sup>The characteristic of law enforcers as stated in article 1 of the United Nations Code of Conduct for Law Enforcement Officials, is that they have the right to arrest and detain, while Advocates on the other hand other instead trying to free, relieve, change and avoid all these lawsuits. The position of an Advocate as a law enforcer is regulated in article 5 paragraph (1) of Law no. 18 of 2003 concerning Advocates. The role of Advocates / Legal Advisors as part of Legal Aid Providers in the Criminal Justice System is regulated in Law no. 16 of 2011 about Legal Aid. Bagir Manan, explained, that, normatively, the issue of Advocates as law enforcers has been completed with the existence of the Advocate Law which confirms that Advocates are law enforcers, but the next issue is what form and real place Advocates are as law enforcers, especially in their role as a supporting component for the realization of an integrated criminal justice system in enforcing criminal law in Indonesia.<sup>5</sup>

So, based on the background and description that the author put forth, the author formulates a formula. How does multibar influence the role of advocates in the realization of an integrated criminal justice system in Indonesia?

## MULTIBAR INFLUENCES THE ROLE OF ADVOCATES

Legal science seeks to present law as an integral part according to the needs of the study of law itself, so that research methods are needed to obtain a comprehensive research direction.<sup>6</sup>One of the considerations in this Advocate Law is to review the concept of judicial power which must be free from all forms of interference and influence from interests outside law enforcement, so that it requires an advocate profession that is free, independent and responsible to be able to achieve the implementation of a trial that is honest, fair and has legal certainty for all parties seeking justice in upholding law, truth, justice and human rights. So that the Advocate profession needs to be guaranteed and protected by a Law for the sake of implementing efforts to uphold legal supremacy, Law Number 18 of 2003 concerning Advocates was issued which contains 13 Chapters starting with general provisions to closing provisions. Based on the mandate of the Advocate Law in Article 32 paragraph (4) which reads no later than 2 (two) years after the enactment of this law, an Advokat Organization has been formed. In the following provisions, Article 2 paragraph (3) mandates the 8 (eight) existing Advocate Organizations namely IKADIN, AAI, HAPI, SPI, AKHI, HKPM, and APSI to temporarily carry out the duties and authorities of Advocate Organizations. Then on June 16, 2003, these eight Advocate Organizations then agreed to return to using the name Indonesian Advocate Working Committee (KKAI). So on April 7, 2005 the Indonesian Advocates Association. In the following provisions, Article 2 paragraph (3) mandates the 8 (eight) existing Advocate Organizations namely IKADIN, AAI, HAPI, SPI, AKHI, HKPM, and APSI to temporarily carry out the duties and authorities of Advocate Organizations. Then on June 16, 2003, these eight Advocate Organizations then agreed to return to using the name Indonesian Advocate Working Committee (KKAI). So on April 7, 2005 the Indonesian Advocates Association.

Disputes regarding advocate organizations have often been tested by the Constitutional Court up to 22 (twenty two) times, but in reality the decision has not been fully complied with by all parties. On September 25 2015, the Supreme Court through the Chief Justice of the Supreme Court Letter No. 73/KMA/HK.01/IX/2015 actually provides an opportunity for Advocate organizations other than PERADI to be able to propose a Prospective Advocate oath at the High Court in the jurisdiction where the Prospective Advocate is located.<sup>7</sup> At the Constitutional level, the issue of debate over organizational authority has actually been completed. However, in implementation, it turns out that there are still many problems that arise, especially regarding PERADI's position as the only advocate organization that has the right to exercise the 8 (eight) authorities as provided for in the Advocate Law, which are still being questioned. The debate arose as a result of the issuance of a letter from the Chief Justice of the Supreme Court regarding the Advocate's Oath, which was deemed inconsistent and not in line with the Constitutional Court's Decision.<sup>8</sup>

If viewed in terms of form and place, then the role of Advocates as law enforcers in supporting the realization of an integrated criminal justice system in criminal law enforcement in Indonesia, there are 2 (two) main roles namely:

- a. The role of Advocates in the form of legal assistance to perpetrators regulated in the Criminal Procedure Code, namely:

Legal assistance by advocates for perpetrators regulated in the Law of the Republic of Indonesia Number 8 of 1981 concerning Criminal Procedure Code (KUHP).<sup>9</sup>It turns out that the Criminal Procedure Code does not regulate the role of advocates in legal assistance to victims by advocates. As for what is regulated in the Criminal Procedure Code is the role of an Advocate in legal assistance to suspects or defendants during the time and at each

<sup>4</sup>Judicial Commission, 2012, Dialectic of Renewal of the Indonesian Legal System, Judicial Commission, Jakarta, p. 82

<sup>5</sup>Bagir Manan, 2009, Upholding the Law of a Search, Indonesian Advocates Association, Jakarta, p. 40.

<sup>6</sup>Yati Nurhayati, "The Debate of Normative Methods with Empirical Methods in Legal Research in View of the Character, Functions and Objectives of Law Science", Journal of Al Adl, Volume 5 Number 10, 2013, p. 15

<sup>7</sup>Imam Ghozali, et al, Transformation of Indonesian Advocate Organizations from Single Bar to Multi Bar (Implications of Constitutional Court Decision No.101/PPU-VII/2009 and Letter of Chief Justice of the Supreme Court No.73/KMA/HK.01/IX/2015), Journal of Law Sciences, Volume 8 Number 1, June 2018

<sup>8</sup>Miftah Ulumudin Tsani, Overlapping Lawyer Regulations in Indonesia, Al Adl Journal, Volume 13 Number 1, January 2021

<sup>9</sup>Laely Wulandari and Ainul Azizah. "Penal Mediation as an Alternative Effort to Handle Domestic Violence", Legal Issues. Vol 40 No.

4.Semarang, 2011

level of examination (Article 54 of the Criminal Procedure Code). According to Yahya Harahap,<sup>10</sup> the position and presence as well as the benefits of the Legal Counsel following the course of the investigative examination are passively limited to only seeing and hearing or within sight and within hearing, not allowed to give advice. The benefit is, at least it prevents investigators from making the examination atmosphere more humane, and from a psychological point of view, it encourages suspects, defendants (perpetrators) to be more courageous in expressing the truth they have and know.

- b. The role of an Advocate in the form of legal assistance to victims regulated outside the Criminal Procedure Code, namely:<sup>11</sup>
  - 1) Legal assistance by advocates for victims, which is regulated in Law no. 23 of 2004 concerning the Elimination of Domestic Violence (KDRT Law) regulates the role and function of advocates in assisting victims of domestic violence (KDRT) in court examinations. In Article 25 (Domestic Violence Law) it is stated that in terms of providing protection and services, advocates are required to:
    - a) Provide legal consultations that include information regarding victims' rights and the judicial process;
    - b) Accompanying victims at the levels of investigation, prosecution and examination in court proceedings and assisting victims to fully describe the domestic violence they experienced; or
    - c) Coordinate with fellow law enforcers, companion volunteers, and social workers so that the judicial process runs as it should.
  - 2) Legal assistance by advocates for victims, namely in cases or cases involving children under 18 (eighteen) years of age as stipulated in Article 18 of Law No. 23 of 2002 which has been renewed by Law no. 35 of 2014 concerning Child Protection regulates that every child who is a victim or perpetrator of a crime has the right to receive legal assistance and other assistance. Provision of legal assistance involving advocates is intended for children of victims or perpetrators.
  - 3) Legal assistance by advocates for victims, which is regulated in Law no. 13 of 2006 concerning the Protection of Witnesses and Victims (UU PSK) the rights of victims are regulated in Article 5 paragraph (1) which when connected with the role of an Advocate, the role of Advocate will be related to the rights of victims, especially in Article 5 paragraph (1):
    - a) letter f. obtain information regarding the progress of the case;
    - b) letter g. obtain information regarding court decisions;
    - c) letter h know in terms of the convict being released and;
    - d) I letter get legal advice

Basically the role and function of an Advocate who accompanies victims in court examinations is to ensure that the rights of victims are fulfilled in accordance with statutory regulations. Law enforcement is a series of processes of elaborating values, ideas and ideals to become a legal goal, namely justice and truth. The values contained therein must be realized into a real reality. The existence of law becomes real if the moral values contained in the law can be implemented properly.<sup>12</sup> In principle, law enforcement must provide benefits or be efficient for the community to achieve justice.<sup>13</sup>

Based on the duties and authority of an Advocate, duty means something that must be done, while authority means the power to give orders,<sup>14</sup> so Advocates have functions, including:

- a. Advocates as law enforcers will uphold law and justice. While Advocates as a legal profession will defend the interests of clients by not blindly, helping expedite the settlement of cases by assisting judges in deciding cases through existing data and information to be presented in court, in accordance with the professional code of ethics, upholding Pancasila, law and justice
- b. Advocate is a job called *beoep*, which is a professional job based on expertise in the field of law bound by rules of conduct and a professional code of ethics.<sup>15</sup> The provision of legal services by Advocates is called legal aid which means Free or inexpensive legal services provided to those who cannot afford to pay full price Legal aid in a narrow sense is the provision of free legal aid services to justice seekers who cannot afford it.<sup>16</sup> Meanwhile, the term legal assistance, which covers a wide range of legal assistance, is not only used for justice seekers who can't afford it, but also for the provision of legal assistance to advocates using honorariums.<sup>17</sup>
- c. Advocates in the position of law enforcers who are outside the government. The existence of advocates as a counterweight to the dominance of law enforcement is not only an effort to protect the rights of justice seekers, but also as a form of community representation in a judicial process. The existence of an Advocate can prevent arbitrariness from other law enforcers such as Police, Prosecutors and Judges.<sup>18</sup>
- d. Advocates will carry out functions related to judicial power, in fact Advocates play a very important role in the judicial process, a judicial process will not be efficient and effective without an Advocate.<sup>19</sup>

<sup>10</sup>Yahya Harahap. 2016, Discussion of Problems and Implementation of the Criminal Procedure Code, Investigation and Prosecution, Sinar Graphic, Jakarta, p. 133-134

<sup>11</sup>Dwidja Priyatno. "Criminalization for Children in the Concept of the Draft Criminal Code (in the Framework of Restorative Justice)", Child Rights Advocacy Institute (LAHA), Edition VIII/Volume III, Bandung, 2007

<sup>12</sup>Satjipto Raharjo, 2009, Law Enforcement in Indonesia (A Sociological Review), Genta Publishing, Yogyakarta, p.vii

<sup>13</sup>Umm Rozah. "Building Penal Mediation Legal Political Constructions as an Alternative to Settlement of Criminal Cases", Legal Issues. Vol 39 No. 3.Semarang, 2010

<sup>14</sup>WJS Poerwadar Minta, 2007, Indonesian General Dictionary, Third Edition Fourth printing, Balai Pustaka, Jakarta, p. 1299

<sup>15</sup>Bagir Manan, 2009, Upholding the Law of a Seeker, Indonesian Advocates Association, Jakarta, p. 282.

<sup>16</sup>Bryan A. Garner, 2009, Black's law Dictionary Ninth edition, West, United States of America, p.975.

<sup>17</sup>Bambang Sunggono and Aries Harianto, 2009, Legal Aid and Human Rights, Mandar Maju, Bandung, p. 9

<sup>18</sup>Bagir Manan, Op.Cit, p.69.

<sup>19</sup>Ibid.

Advocates will act to defend human dignity and dignity in the criminal justice process including suspects or defendants who have the right to be accompanied by legal advisors, the right to be tried openly to the public, the right to present witnesses, take legal action, the principle of presumption of innocence, avoiding error in persona.

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