



The Standard Concept of the Advocate Profession in Implementing Professional Advocate

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Abstract

The law stipulates what should or should be done and what is prohibited. The principle of a rule of law requires, among other things, the guarantee of equality for everyone before the law (equality before the law). Therefore, the Constitution also stipulates that everyone has the right to recognition, guarantee, protection, and legal certainty that is just equal treatment before the law. From a philosophical point of view, the Legis standard ratio of the advocate profession is to guarantee the protection of human rights by the conceptual objectives of the state of law. Meanwhile, the legal reason is to guarantee legal protection, both for the benefit of the client and the benefit of the advocate himself, so that disputes between advocates and clients can be avoided which are built based on trust.

Keywords: *Advocate; Concept; Standard*

Introduction

The law stipulates what should or should be done and what is prohibited. The principle of a rule of law requires, among other things, the guarantee of equality for everyone before the law (equality before the law).[1] Therefore, the Constitution also stipulates that everyone has the right to recognition, guarantee, protection, and legal certainty that is just equal treatment before the law.

In realizing legal objectives, there are several policies have been issued to improve the quality and capacity of law enforcement officials. In order to make law enforcers more professional, more integrity, have highly personality and morals. Quality improvement is carried out through improvements to the recruitment and promotion system for law enforcement officers, education, training, and supervision of the behavior of law enforcement officers, and improving the welfare of law enforcement officers following the needs of life.

According to Ishaq, "Advocate derives from the Dutch language, namely Advocaat, which means a person whose profession is to provide legal services. These legal services are provided either inside or outside the court." Advocate according to Black's Law Dictionary is "to speak in favor of or defend argument" (speak for the benefit of or defend with an argument for someone). Whereas in Article I point (1) of Law Number 18 the Year 2003 concerning Advocates (which is called the Advocate Law) it is

explained that, "Advocates are people who provide legal services, both inside and outside the court who meet the requirements based on the provisions of the Law this".

The Advocate Law is arranged by noticing the sociological basis which is a consideration or reason that describes the various aspects of society's needs concerning empirical facts regarding the development of problems and needs of the community and the state. The Advocate profession is historically one of the oldest professions, in which in its journey the advocate profession is a profession that prioritizing aspects of the trust of the attorney or client.[2]

Although the real condition of advocates is not infrequently involved in practices that violate the law and code of ethics. On its progress the role of an advocate is very important and needed by the justice-seeking community. Various laws and regulations are regulated on the position of an advocate. At its peak, the regulation of advocates is specifically regulated in law, namely Law Number 18 of 2003 concerning Advocates (Advocate Law).

The Advocate Law was also intended for the establishment and recognition of an advocacy organization, but after establishing the Advocate Law, there was a split within the advocate organization itself, namely the Indonesian Advocates Association (PERADI) and the Indonesian Advocates Congress (KAI). Both PERADI and KAI each claim to be the sole forum for advocate organizations.[3]

Advocates must not comply with the wishes clients that legally weak. It is humane if the person or client as the problematic party always covers up his mistakes and tries, even with all the things, to win the case. Here the importance of professional standards that guide the scientific behavior of advocates.

Research Method

Using normative research with an orientation that is not based on the conceptual attitude that must be taken but also a combinatin of laws and regulations which are fundamental beliefs. This belief is important for producing objective research results.[4]

Discussion

Advocate Professional Standard Legis in Manifesting Advocate Professional

Legislation ratio for the advocate profession as a single bar association is to facilitate guidance, protection, supervision/control, the imposition of sanctions for every violation of scientific application, as well as improving the quality of the profession to protect the public interest. According to Koesy Adji, professional standard norms can be formulated as follows: 1. The actions taken must be through; 2. They must conform to the criteria specified in the concrete case carried out based on science; 3. They must follow the average ability of a professional with the same skill category; and 4. They must be taken by reasonable means and efforts by the concrete objectives of the action he undertakes.[5]

Advocate professional standards are important as part of efforts to monitor the performance of advocates in providing legal services. Supervision can be carried out by clients or advocate organizations. Advocates who provide legal services to clients must have a defined professional standard. The position of an advocate with the client is equal because the provision of services is based on the agreement of both parties, besides that, the relationship of service delivery is based on trust. With an equal position between an advocate and a client, the client can also carry out a supervisory function on an advocate's scientific performance. By having professional standards, the public can judge the

performance of advocates according to their competencies.[6] Community supervision is not easy, because the advocate profession does not fully have professional standards and the minimum knowledge of the community on the scientific ability of a lawyer. This encourages the need for supervisory arrangements for Advocates through representatives from the public who are members of the Professional Organization Supervisory Commission, as regulated in the Advocate Law, particularly Article 13.

Law State as Philosophical Reason of Advocate Professional Standard Legis Ratio

Professional ethics is part of social ethics, namely philosophy or rational critical thinking about the obligations and responsibilities of humans as members of humanity. The enforcement of professional ethics has principles that are generally outlined in a professional code of ethics that must be upheld. This professional code of ethics is usually prepared by representatives who sit in the professional association itself.[7]

Professional ethics enforcement in carrying out their duties and professions is needed. In this case, the aspect of protecting the public interest is very important and is of concern in the implementation of advocate services to clients. It is the responsibility of advocates to always pay attention to these aspects in carrying out their profession. Given the very influential role of advocates in the implementation of their profession as law enforcers and legal advisors needed by most people who stumble in legal cases.[8]

The problem arises in the world of advocates in implementing the professional code of ethics is that many associations cope advocate profession itself. The difficulties that arise are even more severe because each of it n translates the principles of the profession differently in their code of ethics. Society or someone who needs advocate services does not have clarity regarding the good standard of service that an advocate must provide. The community finally translates the behavior of advocates by themselves based on their experiences or judgments about the behavior of lawyers in general.[9]

This standard of the advocate profession is needed as a guarantee of legal certainty as well as legal protection to prevent the emergence of allegations of malpractice committed by advocates to their clients as the embodiment of the protection of advocate human rights. Often the client's malpractice accusations are filed against his advocates just because of poor communication between them.

Legal malpractice only occurs when two elements are met. They are the existence of behavior or practice that is below professional standards, and secondly is the result of legal practice that is below the professional standard so that it makes the client suffer losses. It must also be proven that the losses suffered by clients are the result of the negligence of advocates, and not caused by the negligence of clients themselves or the bad faith of third parties.

The standard of the advocate profession is very important to be a guide for advocates in carrying out their professional duties as well as the protection of the legal interests of people who feel persecuted or have their human rights violated. This is to realize the mandate of the constitution, namely the State of Indonesia is a constitutional state, with one of its characteristics is the protection to human rights.

According to it, the main characteristic is that the protection of human rights should be given not only by the states and the state apparatus in the case law enforcement, namely the police, prosecutors, judges, and lawyers, but also society must respect and uphold human rights. In Indonesia, there must be recognition of personal rights inherent in the human rights of others, besides that, it is not only human rights that are prioritized, but also human obligations that must be carried out.

Law Protection as Embodiment of Legal Reason of Advocate Professional Standard Legis Ratio

The absence of the state when the public is in need, which occurred in the lawsuit against the Governor of DKI Jakarta in handling floods or the lawsuit against the President of the Republic of Indonesia in handling the coronavirus pandemic.[10] It is said that the state has neglected or harmed people's human rights. Considering that the community does not understand the law so the role and handling of Advocates are needed.

Advocates so far, in carrying out their profession are based on statutory regulations and a code of ethics. It clearly regulates the prerequisites and behavior of advocates in handling cases, meaning that it contains moral demands that advocates must make in carrying out their professional duties.

By following on clearly defined standards of the advocate profession, there is no arbitrary treatment of the legal interests of clients whose human rights have been violated. This is in accordance with the thinking in a rule of law, one of the characteristics of which is the protection of human rights as presented.[11] The concept of *Rechtsstaat* and the rule of law in principle have the same philosophical foundation, which is based on individualistic liberalism which places human rights as the main concentration in law enforcement. Legal protection, and the supremacy of law over state power.[12]

In addition to philosophical reasons related to the need for advocate professional standards in carrying out Indonesia's mandate as a state le of law, legal reasons for the need for advocate professional standards can also be stated in order to provide legal protection. Therefore, legal protection theory becomes relevant to provide a basis for the importance of the advocate professional standard.

The Standard Concept of the Advocate Profession in Implementing Professional Advocate

In the international world, the advocates need advocate professional organization to get together. International Bar Association nowadays is a place/forum where all the advocates throughout the world meet. It is the association of internationally advocates established in 1947, not long after United Nation Organization It is function to be a means of communicating and broadening horizons of all the advocates throughout the world. The International Principles on Conduct for Legal Profession, which are stipulated by the International Bar Association, are of course an important input in developing the concept of standards for the advocate profession in Indonesia. The important things in the International Principles on Conduct for the Legal Profession can be adopted by Indonesian advocate organizations, while adjusting to the values and culture in Indonesia and should not contradict to Pancasila or the 1945 Constitution as the highest source of law in Indonesia.

The Standard Concept of Advocate Profession in Manifesting Professional Advocate

Professional standards are defined as guidelines that must be used as guidelines in carrying out the profession well. Several matters related to the standard of the advocate profession, are contained both in the requirements to become an advocate, and the curriculum in special education for the advocate profession is regulated separately in PERADI Regulation Number 3 of 2006 concerning the Implementation of Advocate Professional Special Education (PKPA), as well as PERADI Regulation Number 1 of 2006 about the Implementation of Internships for Candidates. Therefore, specifically, the advocate profession does not yet have an advocate professional standard which is regulated separately.[13]

The standard concept of the advocate profession also emerges legal responsibility for advocates in handling cases submitted by clients. Advocates cannot act carelessly and arbitrarily, but there are measures and indicators that advocates must follow in handling cases.

The principle of responsibility based on the element of error (fault liability or liability based on fault)[14] is a fairly general principle applicable in criminal and civil law. In the Civil Code, especially Articles 1365, 1366, and 1367 of the Civil Code, this principle is firmly upheld. This principle states that a person can only be held accountable if there is an element of wrongdoing. Article 1365 of the Civil Code, which is commonly known as an article on illegal acts, requires the fulfillment of four main elements, they are: a. there is an act; b. there is an element of error; c. there is a loss confiscated; d. there is a causal relationship between mistakes and losses.

Advocates are also given the right to defend themselves for their actions based on advocate professional standards.[15] It must be guaranteed for advocates to declare their innocence on the handling of the cases they are handling because they are deemed in accordance with the professional standards of an advocate.

Conclusion

From a philosophical point of view, the Legis standard ratio of the advocate profession is to guarantee the protection of human rights by the conceptual objectives of the state of law. Meanwhile, the legal reason is to guarantee legal protection. both for the benefit of the client and the benefit of the advocate himself, so that disputes between advocates and clients can be avoided which are built based on trust. This is a form of preventive legal protection, as well as settlement in case of disputes between advocates and clients as repressive legal protection. The standard concept of the advocate profession made by an advocate organization must in detail regulate the minimum competence of an advocate, have special education for the advocate profession in increasing knowledge skills, and professional conduct. All these are in order to the advocates able to get requirements for an advocate s license to carry on their professional activities independently in the society. In addition, regarding to Supervision Standards and Dispute.

References

- [1] Acemoglu D and Wolitzky A, 2020 A Theory of Equality Before the Law* *Econ. J.*
- [2] Powell J and Paterson J, 2010 *Cicero the Advocate* .
- [3] Akmaluddin, 2014 Peranan advokat dalam sistem peradilan di indonesia *Ganec Swara*.
- [4] Michael T, Aug. 2017 ALIENASI DALAM UNDANG-UNDANG REPUBLIK INDONESIA NOMOR 1 TAHUN 1974 TENTANG PERKAWINAN *Mimb. Keadilan* p. 229.
- [5] Arif K, 2018 PERLINDUNGAN HUKUM TERHADAP HAK IMUNITAS ADVOKAT DALAM PENEGAKAN HUKUM DI INDONESIA *IQTISAD*.
- [6] Pelle L, 2012 Peranan Etika Profesi Hukum Terhadap Upaya Penegakan Hukum Di Indonesia *Lex Crim.*
- [7] Michael T, Feb. 2017 RIGHT TO HAVE RIGHTS *Mimb. Keadilan* p. 106.
- [8] Braswell M, 2014 *Justice, Crime, and Ethics* .
- [9] Biddle J E and Hamermesh D S, 1998 Beauty, productivity, and discrimination: Lawyers' looks and lucre *J. Labor Econ.*
- [10] Yunus N R and Rezki A, 2020 Kebijakan Pemberlakuan Lock Down Sebagai Antisipasi Penyebaran Corona Virus Covid-19 *SALAM J. Sos. dan Budaya Syar-i*.
- [11] University of Nottingham. Human Rights Law Centre. A, 2001, Human rights law review., *Human Rights Law Review*. .
- [12] Weingast B R, 1997 The Political Foundations of Democracy and the Rule of the Law *Am. Polit. Sci. Rev.*

- [13] Setyowati H and Muchiningtias N, 2018 PERAN ADVOKAT DALAM MEMBERIKAN BANTUAN HUKUM KEPADA MASYARAKAT DALAM PERSPEKTIF HAK ASASI MANUSIA *Lex Sci. Law Rev.*
- [14] Goldberg J C P and Zipursky B C, 2016 The strict liability in fault and the fault in strict liability in *Fordham Law Review.*
- [15] Chairani M A, 2018 HAK IMUNITAS ADVOKAT TERKAIT MELECEHKAN AHLI *JUSTITIA J. Huk.*

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