



The Role of Advocates in Legal Protection for Suspected and Accused

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Abstract

The type of research used in this research is normative legal research. By using primary and secondary legal materials, along with tertiary legal materials as supporting materials. The role of advocates in legal protection of suspects and defendants is very important in an examination, in addition to that, according to the expert opinion expressed by Philipus M. Hadjon that legal protection is the implementation of policies regarding dignity and recognition of the essential human rights possessed by legal subjects of unwholesome actions or acts of arbitrariness (abuse of power) to create justice and legal benefits for the community.

Keywords: *Advocates; Legal; Suspect*

Introduction

Protection of suspects and defendants is not only limited to client assistance by lawyers (advocates), but also legal counseling up to the release of criminal and civil cases, through law enforcement, especially the process of being in court. In the Law of the Republic of Indonesia Number 18 of 2003 concerning Advocates (Law No. 18-2003), an advocate is a person whose profession is to provide legal services in and outside the court who meet the requirements based on the provisions of the law.(1) Advocates have a very important role in protecting what are the rights of the suspect and the accused in order to minimize the possibility of violations of the rights of the suspect or defendant, both at the level of examination by investigators in the police up to the final stage, namely the verdict by the judge in court.(2)

If in the aspect of a criminal case, especially regarding the settlement process of a criminal case against a suspect or defendant, according to Erni Widhayanti, when facing a suspected violation of criminal law, the suspect or defendant must face law enforcement giants ranging from investigators, prosecutors to judges in front of the court.(3) They feel upright and strong when facing a suspect or defendant alone, carrying articles, laws, legal principles and so on, which are often not understood by the suspect or defendant. Justice in itself includes an element of balance from both parties being balanced in all respects, so the product of justice from the justice process is only possible if both parties are balanced in all respects. The defense and legal knowledge and experience accompany the suspect or defendant in obtaining a fair decision.(4)

In essence, the suspect and defendant have a choice whether to get assistance or not, because according to the principles of advocacy, according to the views of experts, the authority is given by an authorized official and has the power of individuals or groups to carry out their will even though they face other parties who oppose them.(5)

A suspect or defendant has the right to obtain legal assistance from one or more lawyers at each level of examination for the sake of defense (Article 54 KUHAP), which he chooses himself (Article 55 KUHAP). Suspects or defendants who are suspected or charged with committing a crime punishable by death or imprisonment for 15 (fifteen) years or more or for those who cannot afford to be punished for 5 (five) years or more who do not have their own legal adviser, official. Those concerned at all levels of examination in the judicial process are obliged to appoint legal advisors for them (Article 56 paragraph (1) of the Criminal Procedure Code).

Based on these several things, the researcher wants to formulate that there is a need for legal protection for suspects and defendants in court proceedings through the existence of advocates in Indonesia, so as to provide legal assistance and facilitators in equality and equality of dignity and good legal dignity in Indonesia.

Research Method

The type of research used in this research is normative legal research.(6) By using primary and secondary legal materials, along with tertiary legal materials as supporting materials.(7)

Discussion

Regulating Legal Norms Regarding Advocates, Protection of the Rights of Suspects, and Defendants in Indonesian Positive Law

Every Advocate must maintain the image and dignity of the honor of the profession, as well as be loyal and uphold the Code of Ethics and the 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 comes from and is a member, who at the time of taking his Professional Oath is implied his acknowledgment and compliance with the prevailing Advocate Code of Ethics. Thus the Indonesian Advocate Code of Ethics is the highest law in carrying out the profession, which guarantees and protects but imposes an obligation on every Advocate to be honest and responsible in carrying out his profession both to clients, courts, the state or society and especially to himself.

In the Law of the Republic of Indonesia Number 8 of 1981 concerning Criminal Procedure Law (Law No. 8-1981), states "a legal advisor is a person who meets the requirements determined by or based on law to provide legal assistance".(8) Law enforcement officials and judges are obliged to respect the rights of a suspect or defendant, the following are the rights of a suspect or defendant in accordance with the principles of justice in Indonesia:(9)

1. Received an explanation of the things that were suspected / accused of him.
2. Receive legal assistance from legal advisors.
3. Stay in touch with family and other interested people.

4. Free to present witnesses or expert witnesses who can provide mitigating information for him.
5. Can prosecute investigators and public prosecutors and have the right to compensation and rehabilitation whether or not an arrest, detention, termination of investigation or prosecution is legal. The form of rehabilitation and replacement is carried out through a court order.
6. During an arrest, only authorized officers can be caught for 1x24 hours (one day)
7. Entitled to obtain a detention warrant / order.
8. If searched, the right to be shown a search permit from the head of the district court which states the place and items to be searched and the identity of the person being searched.
9. If there is a confiscation, the right to request a confiscation permit from the chairman of the local district court and / or receive a confiscation receipt letter along with a copy thereof.

The Role of Advocates in Legal Protection of Suspects and Defendants in Indonesian Positive Law

The position of an advocate in court hearings can act as a representative or companion. This position depends on the special power granted by the authorizer. If the position that is empowered is only as a companion, it means that the lawyer concerned does not have the right to speak at trial. On the other hand, if the advocate has been given the power to act as a representative, then the person giving the power of attorney will no longer have the right to speak in court. This distinction is important so that the proceedings are not disturbed. For example, due to differences in the information provided by the attorney with the statements of the applicant. This kind of situation often occurs when both of them speak in court without prior coordination among themselves.(10)

By looking at this, the researcher argues that as an advocate, of course, not only provides legal counseling or legal knowledge, but also assistance in criminal and civil procedural law cases, especially for suspects and defendants (as clients) to resolve procedural law cases in a judicial environment.(11) Of course, providing proportional legal justice in any situation and in any condition in a court, proportional justice means that the legal position in a law enforcement process does not consider discrimination, social status or economic status.(12) Advocate law in assisting suspects and defendants provides equality and clear legal equality to provide justice for human rights(13) for suspects and defendants from threats, challenges and obstacles in court.

The Criminal Procedure Code (KUHAP) basically guarantees the right of suspects and defendants to be accompanied by legal advisers or advocates Article 54 of the Criminal Procedure Code. For the sake of defense, a suspect or defendant has the right to receive legal assistance from one or more legal advisers during the period and at each level of examination, according to the procedures stipulated in this law.

Article 55 KUHAP in order to obtain a legal advisor as stated in Article 54, a suspect or defendant has the right to choose his own legal adviser. Article 57 paragraph (1) of the Criminal Procedure Code which reads: A suspect or defendant who is subject to detention has the right to contact his legal adviser in accordance with the provisions of this law. So basically the suspect / defendant has the right to be accompanied by a legal adviser or an advocate at every level of examination.

So to answer the above question, basically the suspect or defendant has the right to be accompanied by a legal advisor or advocate at every level of examination. What is of concern is that advocates defending suspects and defendants are not merely so that the client is freed from all charges,

but that the advocate becomes an advisor or companion to the suspect and defendant before the court and protects the rights of the suspect and defendant from being violated.

Conclusion

The role of advocates in legal protection of suspects and defendants is very important in an examination, in addition to that, according to the expert opinion expressed by Philipus M. Hadjon that legal protection is the implementation of policies regarding dignity and recognition of the essential human rights possessed by legal subjects of unwholesome actions or acts of arbitrariness (*abuse of power*) to create justice and legal benefits for the community.

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