



## Advocate Rights of Immunity as a Criminal Law Effort in the Criminal Justice System

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### **Abstract**

Advocates have a very heavy burden in defense, in other words that the Advocate's authority is to defend or handle cases from the investigation stage to execution by a judge's decision if it is a criminal case, whereas in civil cases, the Advocate must defend with a passive nature of justice, or the parties more active in litigation. The existence of an Advocate as a profession that is free, independent and responsible in carrying out his profession, a profession that is said to be a noble office This results in vulnerability to the Advocate profession, due to the noble function of Advocates to carry out the orders of the Law and as a form of protection of human rights, so that Advocates must have the right of immunity every time they carry out their functions and duties as an Advocate. that the right of immunity that exists in Advocates will indirectly be reduced, with the Criminalization of Advocates who defend in Court this will have an impact on the role and burden of Advocates in handling cases, arrangements regarding the criminalization of Advocates are regulated in the chapter regarding crimes against court process (Contempt of Court).

**Keywords:** *Immunity; Advocate; Criminal Justice System*

### **Introduction**

The existence of an Advocate as a profession that is free, independent and responsible in carrying out his profession, a profession that is said to be *A noble office* This results in vulnerability to the Advocate profession, due to the noble function of Advocates to carry out the orders of the Law and as a form of protection of human rights, so that Advocates must have the right of immunity every time they carry out their functions and duties as an Advocate.<sup>1</sup> That Advocates in carrying out their profession have the right of immunity in the defense of clients, and cannot be sued by anyone, the author in this case understands what is stated in the Article above, that Advocates have a very heavy burden in defense, in other words that the Advocate's authority to defend or handling cases from the investigation stage to execution by a judge's decision if it is a criminal case, whereas in civil cases, Advocates must defend with a passive nature of justice, or parties who are more active in litigation. What kind of material criminal law is in Article 50 of the Criminal Code *expressive verbs* also protects Advocates' duties in carrying out

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<sup>1</sup> Solehodin, 'Measuring Advocate Profession Immunity Rights, *Rechtldde Journal of Law*', State University of Malang Vol. 10 No.1 (2015), 92

statutory regulations as stated in Law Number 18 of 2003 Concerning Advocates, Article 50 of the Criminal Code contains the following:

*"People who commit acts to carry out the provisions of the law may not be punished."*The purpose of this article is that there is a reason for criminal elimination, if a person carries out an order of the law then there will be no punishment for the person who committed it, Rimmelink argues that the act referred to in the article above is an action that already fulfills the elements of an offense, but this makes it a the basis for the abolition of punishment is because the provisions of the offense are broadly formulated so that they include other acts which have actually been stipulated in the provisions of other laws and regulations.<sup>2</sup>

The writer's savings in carrying out the orders of this Law can be classified as having legal interests that both regulate different matters but at the same time, in this case it relates to Article 50 of the Criminal Code of an Advocate who carries out his duties and functions based on Law Number 18 of 2003 concerning Advocates, then accordingly *mutatis mutandis* Article 50 of the Criminal Code also protects advocates in carrying out their duties and functions as law enforcement officers. There is a Constitutional Court Decision Number 26/PUU-XI/2013 which confirms that advocates cannot be prosecuted by criminal or civil lawsuits, namely<sup>3</sup> :

*"Article 16 of the Law of the Republic of Indonesia Number 18 of 2003 concerning Advocates does not have binding legal force as long as it is not construed, Advocates cannot be prosecuted both civilly and criminally in carrying out their professional duties in good faith for the benefit of defending clients inside and outside the courtroom.."*

This further confirms that an Advocate who previously could not be prosecuted either civilly or criminally only in court is changed to inside and outside the trial. Thus an Advocate who is prosecuted even outside the trial, his right to immunity remains attached to the Advocate. Whereas the protection of Advocate's right to immunity in law enforcement is impartial or free from any pressure, because Advocate's protection in order to maintain his right of immunity must be in accordance with the applicable laws and regulations. Observing the article above, it seems to the author that the right of immunity in Advocates will indirectly be reduced, with the Criminalization of Advocates who defend in Court, this will have an impact on the role and burden of Advocates in handling cases, arrangements regarding the criminalization of Advocates are regulated in chapter on criminal acts against the trial process (*Contempt Of Court*).

## **Research Methods**

This study uses a normative method in which this research uses the interview method

## **Discussion**

### **1. Factors for the Lack of Protection of Advocate Immunity rights in the Criminal Justice Process:**

Discussing the legal profession, the legal profession is a job with special expertise that fulfills broad knowledge and responsibilities in carrying out their duties related to the field of law. Associated with an honorable profession (*noble office*), namely Advocates, Notaries, Prosecutors, and Judges where each profession has its own Law and Code of Ethics which aims to provide legal protection for their respective professions. The reality of law enforcement practices by advocates in Indonesia, even though

<sup>2</sup> Rimmelink dalam Eddy OS Hiariej, 2016 *Principles of Criminal Law* Revised Edition, Light of Atma Libraries, Yogyakarta, page 278

<sup>3</sup> See Ruling of the Constitutional Court Number 26/26.PUU-XI/2013

they are both law enforcers, the roles and functions of these law enforcers are different from one another. The independence and freedom of a person who works as an Advocate must be followed by the responsibilities of each Advocate and the professional organization that oversees him. As regulated by Law Number 18 of 2003 concerning Advocates, that Advocate Organizations are required to compile a code of ethics for advocates to maintain the dignity and honor of the advocate profession as a noble and honorable profession.

Basically the main task of a legal adviser or what we usually call a lawyer (advocate) is a noble position. It is said to be noble because the purpose of the advocate profession is to help clients or power givers who trust them to defend and fight for their rights in a predetermined forum. An Advocate must adhere to principles *equality before the law* and the principle of "presumption of innocence" (*presumption of innocence*), so that in his daily defense and duties he has the courage to carry out his profession and functions effectively. Moreover, if he is equipped with adequate legal knowledge, then there is no reason why he should be afraid to face any cases, no matter how serious the cases.<sup>4</sup>

Law enforcement in the criminal justice system is a series consisting of sub-systems between state institutions, Muladi stated that in the criminal justice system the criminal justice system as a system is *an open system*, namely: SPP in motion will always experience *interface* (interaction, interconnection and interdependence) with the environment in the levels of society: economic, political, educational, and technological, as well as the subsystems of the SPP itself (*subsystem of criminal justice system*).<sup>5</sup> from what was stated by Muladi above, it can be broadly concluded that advocates as law enforcement officers will naturally intersect with society and certain economic activities in order to support the ongoing criminal justice system. The author also drives the opinion of Mardjono Reksodiputro that the criminal justice system is a system created to deal with crime problems that can disturb order and threaten people's sense of security, is one of the community's efforts to control crime so that it is within the limits of tolerance that can be tolerated. accepted<sup>6</sup>.

Advocates are independent professions that are not bound by any state institutions such as Judges, Prosecutors and Police, in their daily lives Advocates always deal directly with people who need legal assistance, Another problem arises when viewed from the empirical facts that advocates or lawyers in handling cases only understand their profession as legal counsel for clients and set aside their profession as a law enforcement officer.

So that he will easily accept bribes in any form from clients and even enter into agreements with other law enforcement officials, this is an interesting problem to study by taking into account that the existence of power relations that occur in the criminal justice process has a very significant impact on the position of an advocate, the author argues that advocates are representatives of citizens while the state is represented by judges, prosecutors and police, in such a position that there is a conflict between citizens and the state resulting in an imbalance in the law enforcement process, the state which in fact has the legitimacy to process and prosecute citizens countries that commit criminal offences. The relation of power to advocates who represent the interests of citizens in the criminal justice system in Indonesia is widely felt by more or less advocates, this is strengthened by the mention as *legal counsel or lawyer, attorney* who theoretically are not known as law enforcement officers (*law enforcement agency*). Talking about law enforcement cannot be separated from the existence of factors from the applicable laws and regulations, Friedman in theory suggests that there are factors related to law enforcement, the first is substance or statutory factors, the second is law enforcement apparatus factors and the third is cultural factors. certain societal laws.<sup>7</sup>

<sup>4</sup> Frans Hendra Winarta, 1995, *Indonesian advocate of image, idealism and concern*. Jakarta: Sinar Harapan Library

<sup>5</sup> Muladi, 1995, *Capita Selekt Criminal Justice System*, Undip Publishing Agency, Semarang p. 7

<sup>6</sup> Mardjono Reksodiputro.

<sup>7</sup> friedman,

Regarding the law governing advocates in Indonesia. It can be seen that the duties and powers of an advocate contained in the Advocate Law are not much different from those stipulated in the Criminal Procedure Code. That the advocate in his duty defends the case he is handling, then the advocate can also the duties and powers of an advocate in the Advocate Law as obtain information, data and documents for the benefit of their defense, Article 16 of Law Number 18 of 2003 explicitly states that<sup>8</sup>:

"You cannot be prosecuted both civil and criminal in carrying out your profession in good faith for the sake of defense in court hearings."

In my opinion, the phrase defense in court hearings has too broad a meaning, so that lawyers who carry out the orders of this law often experience excessive anxiety or there is no guarantee of legal certainty. Advocates cannot be identified with their clients in defending client cases by authorities and/or the public. This means that an advocate in providing services or legal assistance to clients should not be equated either in attitude or behavior.

The right of immunity inherent in every individual advocate often encounters several obstacles related to their protection, in this case with regard to information obtained by advocates in order to carry out their profession, Article 19 of Law Number 2003 concerning Advocates states that:<sup>9</sup>

"Advocates have the right to the confidentiality of their relationship with clients, including protection of their files and documents against confiscation or inspection and protection against wiretapping of Advocates' electronic communications."

The right of immunity related to Article 19 above is a right that is attached to advocates who receive files and information that are confidential from clients, but in the construction of Article 19 above there are no provisions related to the right of imminence as a whole. *expressive verbs* In this article, advocates' immunity rights are often ignored by law enforcement officials representing the state, advocates who carry out their profession in accordance with statutory rules and professional codes of ethics.

The authority and duties of an advocate are also contained in criminal procedural law, that in the Criminal Procedure Code the notion of an advocate is understood as a legal advisor, in the opinion of the author that the meaning of the word legal advisor is that an advocate only has the nature of advising clients in criminal justice, so that criminal responsibility remains delegated to the client and the client. as an object of criminal justice examination, in contrast to attorneys who in fact are advocates who defend client interests in civil cases, in this case civil clients absolutely authorize clients to and objects of dispute in the form of land, or other material rights.

## 2.Future Advocate Immunity Protection in the Criminal Justice System

The role of lawyers, advocates or attorneys is not subjective, or a role that only a few people who work as advocates want. The role is really needed and objectively needed. This is explicitly acknowledged in the weighing section, letter b of Law Number 18 of 2003 concerning Advocates which states: "that the judicial power which is free from all interference and outside influence, requires the profession of an advocate who is free, independent and responsible, for the implementation of a trial that is honest, fair and has legal certainty for all justice seekers in upholding law, truth, justice and human rights".<sup>10</sup> Article 1 paragraph (1) of the Advocate Law also states that, "An advocate is a person whose profession is providing legal services, both inside and outside the court who fulfill the requirements under this law". Furthermore, it is emphasized in Article 5 paragraph (1) of the Advocate Law that "Advocates are law enforcers, free and independent who are guaranteed by law and statutory regulations". Whereas

<sup>8</sup> Look Article 16 Law Number 18 of 2003 concerning Advocates

<sup>9</sup> See Article 19 of Law Number 18 of 2003 concerning Advocates

<sup>10</sup> Law No. 18 of 2003 regarding Advocates, see section considering letter B

thus it has been expressly stated that the position of an advocate is equal to that of the police, prosecutors and judges as a member of the law enforcement family.<sup>11</sup> In accordance with this, it is clear that advocates are a family of law enforcers who deserve to be protected by their right of immunity on a par with other law enforcers.

The role of advocates in their duties and profession as law enforcers and advisors has noble duties and strategies in implementing legal aid, especially to realize the principle *equality before the law* and *presumption of innocence*. Article 37 Law no. 14 of 1970 and Article 56 paragraph (2) of the Criminal Procedure Code stipulates that "legal advisers as parties providing legal assistance"<sup>12</sup>. The duty of an advocate is to uphold the law of an advocate in carrying out his duties which must be consistent with what he is doing.

In accordance with the presentation of the results of the author's interviews with several advocates, it can be concluded that an advocate is indeed in carrying out his duties the right to immunity is inherent as long as he carries out his profession in accordance with the corridors and provisions of the code of ethics and good faith. It should be emphasized that there must be efforts to implement Law Number 18 of 2003 concerning Advocates where technically efforts must be made regarding the right of immunity inherent in an advocate. Apart from that, according to the source, Lanang Kujang Pananjung, it is necessary that "there *issingle bar* the source also agreed with the existence of a single bar, it is clear that there are limitations for advocates that are determined by an Advocate Organization. there is one advocate who is in an Advocate Organization who violates the code of ethics he cannot run to another Advocate Organization in the sense that he is *inblacklist*. Now how can our profession really be called a noble profession if person A commits an offense at the Advocate Organization one, he gets punished and is punished? *blacklist* then he ran to another Advocate Organization and he was accepted then given a KTA and again allowed to do the event again which then made talkative. If it is the advice from the sources to enforce this code of ethics that is important, then for the issue of the right to immunity this is definitely guaranteed as long as we don't violate the rules and we act according to our corridor as advocates, that is our right. means *single bar* here referring to the provisions of Article 28 paragraph (1), it is clear that the Advocate Law requires only one Advocate Professional Organization that oversees Advocates in Indonesia. Which means that the Advocate Law itself clearly adheres to the Single Organization system (*single bar system*) fully represented explicitly.<sup>13</sup> This means that the Advocate Organization actually has quite clear arrangements regarding the code of ethics regulated by the Advocate Organization. The function of this organization should be that if an advocate is violated, their right to immunity is that this organization of advocates should be able to protect under the umbrella of law other than the applicable laws.

Examining the opinions of several advocates who have been interviewed regarding the right to immunity against Advocates, the current situation of Advocates is indeed textually with the existence of Law Number 18 of 2003 it is considered sufficient, but in technical terms it is felt that there is a lack of Advocate Immunity rights in him. The author analyzes that in order to achieve real goals regarding the implementation of advocate immunity rights, it is necessary to change the existing system both during trial and outside the trial. Changing the system is a noble goal to protect advocates for their right to immunity, because advocates are part of a law enforcement group that needs to be protected to carry out their profession.

The author here analyzes that there needs to be a change in the system. System changes here the author describes with the United States model, namely *Advesarial System* namely that the method of handling cases by negotiating or negotiating with the parties between the accused and the public

<sup>11</sup> Fenny Cahyan, et al 2021, Status of Advocates' Immunity Rights in Indonesia Journal of USM Law Review Vol 4 No 1

<sup>12</sup> H.P Panggabean, "Advocacy Management", (Alumni, Jakarta, 2010), p. 151.

<sup>13</sup> Hutabalian, Maslon. 2020. The Impact of Dualism in Management of the Indonesian Advocates Association (PERADI) Organization on Law Enforcement. Articles in the Justiq Journal. Vol. 02. No. 01. February,

prosecutor, is an integral part of the entire applicable law enforcement system. So this method is a formal and legal procedure. This practice is known as “*plea bargaining system*”. *Inadversary system*, in dealing with criminal matters, the plaintiff is the state, which represents the victims and the interests of the community, and the defendant is the accused. The accused is usually represented by a defense attorney (*defense attorney*), while the state is represented by the public prosecutor (*prosecuting attorney*). The party whose task is to find the truth of the facts and is impartial and is usually represented by a jury. In the event that an accused refuses to be tried by a jury, the judge also has the task of finding the truth of the facts presented at trial.<sup>14</sup>

In an adversary system, the principles used in the criminal justice system are as follows:

1. Criminal justice procedures must constitute one “dispute” (*dispute*) between the accused and the prosecutor in the same position before the court;
2. The main objective of the procedure is to resolve disputes arising from crimes;
3. Use of the method of filing objections or statements (*pleadings*) and the existence of a guarantee and negotiation institution is not only a necessity, it is actually very important. This is to strengthen the existence of contests between parties and accurately provide the boundaries of the rules of the game in the criminal justice system;
4. The parties have an autonomous and clear function, namely the prosecutor carries out the prosecution, the accused rejects or denies the accusations. The prosecutor determines which facts must be proven along with supporting evidence, the accused determines which facts presented at trial are favorable to his position;
5. The role of the judge as a neutral arbiter in disputes is to comply with the rules of the game. The judge is only active when one of the parties raises objections to the arguments put forward;
6. More oriented towards protecting someone who is innocent.

In accordance with the author's theory that the author has described above *adversarial System* may be subject to immunity. The author analyzes that the judge is only a jury here between advocates and public prosecutors trying to prove the charges and allegations presented at trial. The author analyzes if there is a violation of the code of ethics, for example an advocate is attacked or criminalized by the opposing party, then with *Adversarial System* This Advocate can prove that what an Advocate does in accordance with the procedures and rules of the applicable law is the System that becomes the legal umbrella for an Advocate where Advocates can prove for themselves what they are doing in carrying out their Profession in accordance with the law. In a theory put forward by John Kenedi states that law enforcement is the process of carrying out efforts to enforce or function norms as the basis for legal behavior in society and the state. The law enforcement system is related to harmony between legal values and rules and real human behavior.<sup>15</sup> In accordance with this theory, it is stated that "The law enforcement system is related to the harmony between values and legal principles and real human behavior". The theory states values and principles with real human behavior when analyzed that whether Advocates in carrying out their duties and authorities are in accordance with the values, norms and codes of ethics that apply, therefore there is a need for real supervision of the duties and authorities of advocates.

Apart from that, in order to create legal protection for real immunity rights, it is necessary to confirm the implementation of the Advocate Law. Advocate organizations must play an active role in protecting their members in carrying out their duties if there is a violation of immunity rights, the Advocate Organization is obliged to assist its members. This author's analysis is reinforced by the opinion of another advocate, namely Advocate Michael Agung B. Kaparang, S.H (KAI Solo) who stated that according to sources regarding regulations on the right to immunity for advocates in the future, this right of immunity should be supposing that there should *betake and give* to what extent do we carry out our

<sup>14</sup> Romli Atmasasmita (A), Anthology of Criminal Procedure Law, Cipta Bina, Bandung, 1983, p.71.

<sup>15</sup> John Kenedi, 2010 Criminal Law Enforcement. Anthology Press: Jakarta

duties whether in accordance with the corridor or not, or whether we as advocates have also violated the rules, so strict supervision is needed. If there is no strict supervision, there could be an abuse of the right of immunity. There could be a violation of the right of immunity. The author analyzes supervision here in the sense of analyzing the duties carried out by Advocates in accordance with applicable procedures and laws or not.

## Conclusion

In accordance with the author's discussion above, it can be concluded that:

1. In accordance with the discussion above, basically advocates are not above the law according to the principle of equality before the law, but advocates have immunity, namely the right to immunity, this right to immunity is contained in Article 16 of Law Number 18 of 2003 concerning Advocates and the Constitutional Court Decision Number 26/PUU- XI/2013 dated May 14 2014, "Advocates cannot be prosecuted either civilly or criminally in carrying out their professional duties in good faith for client defense inside or outside the court". Advocates in carrying out their professional duties are given legal protection, namely in the Advocate Law, Law on Legal Aid, Constitutional Court Decisions and in the KEAI (Indonesian Advocate Code of Ethics), but sometimes there are still many advocates who are dragged to court because they lose the right of immunity for negligence or intentional abuse of their authority, what he should have.
2. The duty of an advocate is to uphold the law of an advocate in carrying out his duties which must be consistent with what he is doing. The author here concludes that in the future advocate immunity rights can be used *Adversarial System*. Where *inadversarial System* may be subject to immunity. That the judge is only a jury here between the advocate and the public prosecutor trying to prove the charges and allegations presented at trial. The author analyzes if there is a violation of the code of ethics, for example an advocate is attacked or criminalized by the opposing party, then with *Adversarial System* This Advocate can prove that what an Advocate does in accordance with the procedures and rules of the applicable law is the System that becomes the legal umbrella for an Advocate where Advocates can prove for themselves what they are doing in carrying out their Profession in accordance with the law.

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