



Advocate Legitimacy as Optimization in Fair Law Enforcement in the Multi-Bar Era

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<http://dx.doi.org/10.18415/ijmmu.v11i4.5693>

Abstract

The birth of the Law on Advocates was the result of a long struggle since the Dutch colonial period, where previously the legal position of advocates did not have a clear function in the legal system and judicial system. In the post-independence period, one by one organic laws in the field of justice and judicial power were fully implemented. Various organizations that oversee advocates have emerged, one of the most famous of which is Balie van Advocaten, which later changed to the Indonesian Advocates Association (PERADIN) in 1963. This type of research is normative which uses a statutory approach and a conceptual approach. Results / Findings / Novelty of the Research: The legislative approach is through a legal review of Law No. 18 of 2003 concerning Advocates and also the Role of Advocates / Legal Advisors as part of Providing Legal Aid in the Criminal Justice System regulated in Law No. 16 of 2011 concerning Legal Aid. In order to increase coordination and synchronization of law enforcement components in the criminal justice system in Indonesia, KMA Letter No.73/KMA/HK.01/IX/2015 has been revoked.

Keywords: *Advocate; Optimization; Law Enforcement*

Introduction

The dimensions of legal science are basically very broad, like a "tree", law is a large and shady tree consisting of very dense leaves, roots, twigs, stems and fruit. Because the depth of the law can be studied from the perspective of its principles, sources, distinctions, classifications, and so on. If examined from the perspective of classification of law, it can be clarified based on its source, form, content, place of validity, period of validity, method of maintaining it, nature, and based on its form.¹ Referring to Article 1 Paragraph (3) of the 1945 Constitution of the Republic of Indonesia, confirms that Indonesia is a rule of law country. One of the manifestations of the rule of law (*rechtstaat*) is that there must be equal treatment for everyone before the law. The principle of equality before the law, equality before the law, is a principle where there is equality in the law for every individual without any exceptions. The confirmation of this principle has been stated in Article 27 Paragraph (1) of the 1945 Constitution of the Republic of

¹ Lilik Mulyadi. "Mediasi Penal Dalam Sistem Peradilan Pidana Indonesia: Pengkajian Asas, Norma, Teori dan Praktik". Yustisia Jurnal Hukum. Vol 2 No.1, Januari 2013. Surakarta

Indonesia, which states that all citizens have the same position under the law and government and are obliged to uphold the 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, guarantees, protection and legal certainty. fair and equal treatment before the law. Furthermore, in Article 16 of the International Covenant on Civil and Political Rights, International Covenant on Civil and Political Rights (ICCPR) which was signed and agreed to in New York 19 December 1966, it is stated that: Everyone shall have the right to be recognized everywhere as a person before the law. (Everyone has the right to recognition everywhere as a person before the law).

Furthermore, Article 26 of the International Covenant on Civil and Political Rights (ICCPR), also states that:

“All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”²

Equality before the law means that every citizen must be treated fairly by law enforcement officials and the government. So every law enforcement officer is constitutionally bound by the value of justice which must be realized in practice. One practice of realizing the principle of equality before the law is in the criminal justice process. In the criminal justice process there is an aspect of law enforcement that is based on the principle of equality before the law.³ Law enforcement continues, but the post-reform legal paradigm change is a phenomenon that has a big influence on the political landscape and constitutional life in Indonesia. But on the other hand, the law has not been fully able to fulfill 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. This phenomenon has given rise to a lot of debate, especially regarding the idea of the relevance of law enforcement to the values of social justice and community welfare. With these conditions, it is necessary to increase the role of law enforcers in enforcing the law.⁴ In an effort to realize the principles of the rule of law in social and state life, the role and function of advocates as a free, independent and responsible profession is important, alongside judicial institutions and law enforcement agencies such as the police and prosecutor's office. Through the legal services provided, Advocates carry out their professional duties to uphold justice based on the law for the benefit of the justice-seeking community, including efforts to empower the community to realize their fundamental rights before the law. Advocates as an element of the justice system are one of the pillars in upholding the supremacy of law and human rights. Apart from the judicial process, the role of advocates is also seen in professional channels outside the court. The need for legal services for advocates outside the judicial process is currently increasing, in line with the growing legal needs of society, especially in entering a life that is increasingly open to social interactions between nations. By providing consulting services, negotiations and making trade contracts, the Advocate profession makes a significant contribution to community empowerment and national legal reform, especially in the economic and trade fields, including in resolving disputes outside of court.

The birth of the Law on Advocates was the result of a long struggle since the Dutch colonial period, where previously the legal position of advocates did not have a clear function in the legal system and judicial system. In the post-independence period, one by one organic laws in the field of justice and

² Alam suryo Laksono, Eksistensi Advokat Sebagai Penegak Hukum dalam Proses Peradilan pidana Ditinjau dari Pasal 56 Kitab Undang-Undang Hukum Acara Pidana, Swara Justisia, Volume 5, No.1, Semarang, April 2021

³ Alam Suryo Laksono, Ibid.

⁴ Gunarto, Agenda Penegakan Hukum dan Relevansinya Bagi Pembangunan Bangsa, Jurnal Pembaharuan Hukum Volume I, No.1, Januari-April 2014, h. 1

judicial power were fully implemented. Various organizations that oversee advocates have emerged, one of the most famous of which is Balie van Advocaten, which later changed to the Indonesian Advocates Association (PERADIN) in 1963. However, regulatory material regarding legal aid or the function of advocates in legislation is only attached symbolically and is never included in more operational provisions. This has resulted in there being no definite policy regarding legal aid, nor regarding the advocate profession which is tasked with providing it.⁵ In the New Order era, advocates through the PERADIN organization succeeded in formulating the Basic Law on Advocates. However, due to external intervention on advocates by the government and the judicial bureaucracy, efforts to fight for the Advocates Law stopped in line with divisions within PERADIN's internal environment. In the 2000 reform order, the Advocates Bill drafting team from various advocate organizations succeeded in formulating the Advocates Bill and submitted it to the DPR RI. Then in 2003 the Law on Advocates was passed in the form of Law Number 18 of 2003 concerning Advocates.

One of the fundamental aspects of this law is the juridical basis for the formation of advocate organizations with a single bar association system as stated in Article 28 paragraph 1. On the initiative of the leadership of 8 advocate organizations at that time, a single forum for advocate organizations was formed, named the Indonesian Advocates Association (PERADI) as an embodiment of the single bar association and also a positive signal for the unification of the Indonesian advocate profession in a single organization of the advocate profession, transparent, unfair and unaccountable. PERADI is deemed not to meet the requirements for establishing a democratic national bar association. Finally, the declaration of the Indonesian Advocates Congress (KAI) was formed. The formation of KAI gave rise to a dispute between the PERADI management and the KAI management, where both claimed to be a national bar association as mandated by the Law on Advocates. The dispute never ended, because both the PERADI management and KAI management each claimed to be a legitimate national bar association and considered their rival to be an illegitimate organization.⁶

Responding to these developments, the Supreme Court issued the Chief Justice's Letter No. 052/KMA/V/2009 dated 1 May 2009 which essentially states that disputes regarding the legitimacy of advocate organizations must be resolved internally by the advocates themselves, while the Supreme Court stated that it does not interfere in disputes between advocate organizations. The Supreme Court also asked the Chairman of the High Court not to get involved directly or indirectly in the dispute, one of which was by instructing the Chairman of the High Court not to take the oath of a new advocate as stipulated in Article 4 of the Advocate Law as long as there was no resolution of the problem. This has a negative effect on prospective advocates who are waiting to be sworn in as advocates and hampers the fulfillment of community needs for advocacy services in legal disputes. The advocates protested against the Supreme Court's attitude which they considered ignoring the fate of prospective advocates who had passed the PERADI and KAI exams. Some of them are currently undergoing internships, others have finished and are ready to be sworn in by the High Court. Their path to becoming advocates was delayed because of the Supreme Court's attitude in instructing the Chief Justice of the High Court to temporarily not take the advocate's oath.

The results of Constitutional Court Decision No.101/PPU-VII/2009 state that: the High Court is obliged by law to take an oath for Advocates before carrying out their profession without linking it to membership in the Advocates' Organization which currently *de facto* exists, within a period of 2 (two) years since this Decision was pronounced. The signing of the peace between the two parties was confirmed by KMA Letter No.089/KMA/VI/2010 dated June 25 2010. Since then, PERADI's '*de jure*' and '*de facto*' existence has been recognized as an advocate organization with a single bar association system, in Indonesia. The problem that emerged then was that the KAI management expressed dissatisfaction with KMA Letter No.089/KMA/VI/2010, because the agreement at the time of signing on 25 June 2010

⁵ Ishaq, 2012. Pendidikan Keadvokatan, Jakarta: Sinar Grafika

⁶ Lev, Daniel S. 2001. Kata Pengantar: Advokat Indonesia Mencari Legitimasi. Jakarta, PSHK

was not in accordance with the agreement the day before (24 June 2010) that a single forum would be determined through the Joint National Conference. Indonesian Advocate without mentioning the names PERADI or KAI. KMA No.089/KMA/VI/2010 seems to be taking sides by listing a single advocate forum using the name PERADI. For this reason, the DPP KAI sent a letter of objection to the Chief Justice of the Supreme Court regarding the inclusion of the name PERADI in the collective charter of understanding which was deemed to have been determined unilaterally.

The KAI management again submitted a material review of the Law on Advocates No. 18 of 2003 Article 28 paragraph 1 which essentially wants to challenge the phrase "the only one" because it makes advocate organizations fight over the title as the sole forum for advocates and results in uncertainty regarding the fate of prospective advocates, including advocates, who have passed the exam but cannot be sworn in, or law graduates who aspire to become advocates. However, the attempt to submit this material was rejected by the Constitutional Court (MK) through Decision No. 79/PUU-VIII/2010, with the consideration that the submission of the quo petition, especially the phrase, "the only one" in Article 28 paragraph (1) of the Advocate Law was declared *nebis in idem*, because it has been decided in the previous Constitutional Court Decision. The Constitutional Court also believes that a single advocate organization does not prevent someone from carrying out work and a decent living in accordance with Article 27 paragraph 2 of the 1945 Constitution and a single advocate organization does not prevent anyone from developing themselves to meet their basic needs. The fact that prospective KAI advocates have not yet been sworn in or refused to proceed in court is not related to the constitutionality of the norm requested for review, but is a matter of implementation by the court. The problem remains factually unresolved considering that PERADI itself has been divided and each claims to be the legitimate administrator after the Makasar National Conference which failed to take place. Meanwhile, conditions in the field show that in some areas there is a shortage of advocate staff, because many advocates have not taken an oath or promise so they cannot proceed in court, while justice seekers really need the services of advocates.⁷ Based on these considerations, on September 25 2015, the Chief Justice of the Supreme Court again issued Letter No.73/KMA/HK. 01/IX/2015 addressed to all Chief Justices of High Courts throughout Indonesia. The KMA letter essentially confirms that the Chairman of the High Court has the authority to swear in advocates who meet the requirements, whether proposed by advocate organizations on behalf of PERADI or administrators of other advocate organizations until the new Advocate Law is formed. The publication of this KMA Letter *de facto* gave birth to the transformation of advocate organizations in Indonesia from a single bar association system to a multi bar association system. All advocate organizations such as the Indonesian Advocates Congress (KAI), IPHI (Indonesian Legal Counsel Association), IKADIN (Indonesian Advocates Association), HAPI (Indonesian Advocates and Lawyers Association), APSI (Indonesian Sharia Lawyers Association) and several other advocate organizations can submit applications. oath of prospective advocates and other authorities as mandated by the Advocates law. Advocate is a very honorable profession (noble officium). Regarding the role of Advocates as law enforcers, there are still those who think there is an ambivalence towards the Advocate profession, on the one hand, Advocates are considered a profession that hinders the work of the authorities, on the other hand, who else can help people who are in court if not Advocates. 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 (SPPT) / 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 position of Advocates as part or sub-system of the Indonesian Criminal Justice System is still being debated, this is due to the lack of clarity regarding the forum and organizational structure that unites and controls the working of the Advocate institution. Common law and civil law still focus on classical characteristics which are divided into crime control and

⁷ Rusli Muhamad, 2012, *Sistem Peradilan Pidana Indonesia : Dilengkapi Dengan 4 Undan- undang di Bidang Sistem Peradilan Pidana*, UII Press, Yogyakarta, hlm. 31

due process models, both models use an adversary system model or battle model. In the process, both systems confront the two parties in the trial, namely the suspect and the state represented by public prosecutor to litigate in court. 10 The legal profession known as Advocate is theoretically unknown and cannot be interpreted as a law enforcer. and detain, while advocates on the other hand actually try to free, mitigate, change and avoid all these legal demands. The position of Advocates as law enforcers is regulated in Article 5 Paragraph (1) of Law no. 18 of 2003 concerning Advocates. The role of Advocates / Legal Advisors as part of providing legal aid in the criminal justice system is regulated in Law no. 16 of 2011 concerning Legal Aid. Bagir Manan, explained that, normatively, the problem of Advocates as law enforcers has been resolved with the existence of the Advocate Law which confirms that Advocates are law enforcers, but the next issue is what the real form and place of Advocates as law enforcers is, especially in their role. as a supporting component for the realization of an integrated criminal justice system in enforcing criminal law in Indonesia.⁸

Method

This type of research is normative which uses a statutory approach and a conceptual approach. The legislative approach is through a legal review of Law No. 18 of 2003 concerning Advocates and also the Role of Advocates / Legal Advisors as part of Providing Legal Aid in the Criminal Justice System regulated in Law No. 16 of 2011 concerning Legal Aid. Apart from that, it also uses a conceptual approach, which is an approach that focuses on emphasizing understanding through legal concepts and principles related to the subject matter.

Results and Discussion

A. Optimization in Fair Law Enforcement in the Multi-Bar Era

1. Legacy Lawyer

The basic values that are the principles of the criminal justice system approach are that it focuses on coordination and synchronization of criminal justice components (Police, Prosecutor's Office, Court, Corrections and Advocates). By emphasizing the supervision and control of the use of power by all components involved in the criminal justice system and placing the effectiveness of the crime prevention system as more important than the efficiency of case resolution. As well as optimizing the use of law as an instrument in order to strengthen the administration of criminal justice.⁹ On this occasion the researcher will present one of the components that is part of the criminal justice process. Conceptually, the advocate profession is a job based on expertise in the legal field to serve the community independently within the boundaries of the code of ethics of the community (professional organization). The quality of expertise in general is usually determined by the professional community (organization) itself or peer groups including those monitoring it.

The work of an advocate stretches from investigation to implementation of the law. It has been stated in Article 1 letter (a) of Law Number 18 of 2003 concerning Advocates, that an advocate is a person whose profession is to provide legal services, both inside and outside the court, who fulfill the requirements under the law. -legislate this. In the criminal justice process in Indonesia, there are advocates as law enforcers which are regulated in Article 5 Paragraph (1) of Law Number 18 of 2003 concerning Advocates, which states that advocates have the status of law enforcers, free and independent which is guaranteed by law and statutory regulations. invitation. So in discussing and analyzing the

⁸ Bagir Manan, 2009, Menegakkan Hukum Suatu Pencarian, Asosiasi Advokat Indonesia, Jakarta, hlm. 40.

⁹ Setyo Langgeng, "Peran Advokat Sebagai Penegak Hukum dalam Mendukung Terwujudnya sistem Peradilan Pidana Terpadu Dalam Penegakan Hukum Pidana di Indonesia", Jurnal Daulat Hukum, Volume 1 Nomor 1, Maret 2018, hlm.138-156

existence of advocates as law enforcers in the criminal justice process, researchers start with the theory used in this research, namely law enforcement theory. The benchmark for the existence of advocates is seen from the theory of law enforcement put forward by Lawrence Meir Friedman, that the success or failure of law enforcement depends on legal substance, legal structure and legal culture. In this case, advocates are normatively referred to as law enforcers by Law Number 18 of 2003 concerning Advocates, so that their existence is measured by the success of advocates in carrying out their duties and authority according to the Law, the way advocates act (legal structure) and the legal culture point of view in community regarding the existence of advocates. So the existence of advocates in terms of law enforcement theory can be said to be not optimal, where there are different arguments between law enforcers recognized by law in Indonesia, namely police, prosecutors, judges and correctional institutions. Of the four elements of law enforcement, advocates are positioned as external parties who have no connection to the criminal justice system which is regulated by the Criminal Procedure Code. In the Criminal Procedure Code, the position of an advocate is only limited to the rights of a suspect or defendant, especially for cases that carry the threat of the death penalty or a sentence of fifteen years or more or for those who are indigent who are threatened with a sentence of five years or more who do not have their own legal advisor. With these provisions, advocates cannot optimally carry out their duties and authority in the criminal justice process. Where the criminal justice process does not differentiate between the form of criminal acts or threats. However, advocates or referred to as legal advisors in the Criminal Procedure Code, only in certain cases in the form of Rights. So there is no obligation for advocates to carry out their duties as law enforcers as stated in Law Number 18 of 2003 concerning Advocates. It is concluded that in law enforcement theory, the existence of advocates in the criminal justice process is not optimal which is influenced by:

a. Legal Substance

Advocates are limited to the rights of suspects and in criminal acts which are punishable by the death penalty or a sentence of fifteen years or more or for those who are incapacitated who are threatened with a sentence of five years or more who do not have their own legal counsel.

b. Legal Structure

The role of advocates as law enforcers in the criminal justice process refers to the legal structure in Indonesia, so their performance as law enforcers is independent where advocates carry out their profession based on the client's achievements. Although it is still mandatory to carry out its activities, it is also subject to the Criminal Procedure Code.

c. Legal Culture

Advocates as law enforcers, in terms of legal culture in Indonesia, have not been maximized where the role of law enforcement officers who are better known by the public, namely the police, prosecutors and judges, are dominated.

Therefore, researchers note that if measured from law enforcement theory, the existence of advocates as law enforcers has not been implemented well. Next, the existence of advocates as law enforcers in the criminal justice process from a theoretical perspective in the criminal justice system means that advocates dominate in being able to participate in every stage. In the criminal justice system, there are legal aspects that focus on the operationalization of laws and regulations in an effort to tackle crime and aim to achieve legal certainty. In this case, the advocate is the party whose duty is to ensure that the client's rights and obligations can run smoothly, including avoiding procedural errors in handling cases. However, again, the duties and obligations of an advocate cannot occur without the power of attorney from the client or suspect.

The criminal justice system adopted by the Criminal Procedure Code consists of a subsystem which is the stage of the case resolution process, the investigation subsystem is carried out by the police, the prosecution subsystem is carried out by the prosecutor's office, the examination subsystem at court

hearings is carried out by the court, and the subsystem for implementing court decisions is carried out by the prosecutor's office and correctional institutions. The justice system as a form of law enforcement mechanism is filled with law enforcement actors consisting of police, prosecutors, judges (courts), correctional institutions and then advocates. Through the justice system, it is hoped that it can provide a just law enforcement process in accordance with the ideals of a rule of law. We know that three of them (police, prosecutors & judges) are forms of state representation in the justice system, while advocates act on behalf of people seeking justice and are positioned outside the system. Police, prosecutors and judges have formal legitimacy from the state as a concrete form of practicing the trias politica, while advocates do not have such legitimacy.

2. Advocate Legitimacy

Legitimacy for advocates is reflected in the public's trust in them (social legitimacy). Historically, the role of advocates or legal advisors has existed along with the development of law and society, law will always exist as long as there is society and society needs law and at the same time wants law enforcement. Then the state as a form of formal power, together with its legal instruments and system, is entrusted to complete the law which was still in the form of awareness and moral norms so that it becomes enforceable legal rules or norms. As we know, modern states are characterized by a trias politica form where the state carries out its duties.

The aim of bringing in advocates, apart from fulfilling Article 56 of the Criminal Procedure Code, is also to provide legal assistance for defendants and assist judges in finding legal truths that have justice as their core. Legal aid itself in the general provisions of Law Number 18 of 2003 concerning Advocates explains that legal aid is a legal service provided by advocates free of charge to clients who cannot afford it.

Then legal services themselves are services provided by advocates in the form of providing legal consultations, legal assistance, exercising power of attorney, representing, assisting, defending and carrying out other legal actions for the client's legal interests. It is clear that a positive value must be maintained in the essential law enforcement process so that discrimination and irregularities do not occur in the law enforcement process so that truth and justice can be felt by the community.

It is confirmed in Law Number 18 of 2003 concerning Advocates that an advocate has the status of a law enforcer, free and independent which is guaranteed by law and statutory regulations. In Article 5 Paragraph (1) of Law Number 18 of 2003 concerning Advocates, it is stated that the existence of advocates has the status of law enforcers, free and independent which is guaranteed by laws and statutory regulations.

Based on Article 5 Paragraph (1) of Law Number 18 of 2003 concerning Advocates, it can be seen that advocates have their existence guaranteed by law and their status as law enforcers. Furthermore, in the explanation of Article 5 Paragraph (1) of Law Number 18 of 2003 concerning Advocates, it is explained that what is meant by an advocate with the status of a law enforcer is an advocate as one of the instruments in the judicial process who has an equal position with other law enforcers in enforcing law and justice.

With the existence of Article 5 Paragraph (1) of Law Number 18 of 2003 concerning Advocates, it can be seen that the true existence of advocates as law enforcers has an important role in enforcing the law, especially in the criminal justice system.

Regarding legal assistance for suspects, it is a fundamental or human right for someone affected by legal problems. Because obtaining legal aid is a form of access to justice for those who are or are dealing with legal problems. Obtaining legal assistance is also a manifestation of equality before the law.

Furthermore, regarding legal aid, it is regulated in Article 1 Number 9 of Law Number 18 of 2003 concerning Advocates, which states that:

“Legal aid is legal services provided by advocates free of charge to clients who cannot afford it. Law Number 4 of 2004 concerning Judicial Power. Article 37 of Law Number 4 of 2004 states: Every person involved in a case has the right to obtain legal assistance.”

This is done for various reasons or pretexts, such as to expedite the process so that suspects or defendants are advised not to use the services of a lawyer, there is no institutional budget intended to provide lawyer services or legal aid to suspects or defendants, even many individuals or certain officials who recommends that suspects do not use legal counsel, and that suspects are conditioned in such a way by making a statement that they are not willing to be accompanied by a legal advisor, and quite a few of the officers think that having a statement from the suspect or defendant who is not willing to be accompanied by a legal advisor is a human right. suspect or defendant so that law enforcement officials no longer feel the need to fulfill their obligation to appoint legal advisors for suspects or defendants as required by the provisions in Article 56 of the Criminal Procedure Code. The essence of legal aid is to realize the function carried out through the provision of legal aid, namely¹⁰

- a) With legal assistance, equality will be realized in the future law, because a fair and impartial legal process will only occur if the parties to the dispute have a balanced position and power, especially in terms of legal knowledge and skills.
- b) Legal aid provides a space for interaction between experts and the legal profession and the general public, where this interaction will foster understanding and awareness in positioning legal rules that exist in national and state life.
- c) The existence of legal aid can guarantee and fulfill the rights of legal aid recipients to obtain access to justice. So as to realize the constitutional rights of all citizens in accordance with the principle of equality in law through an effective, efficient and accountable judiciary.

The existence of legal assistance by advocates can guarantee and fulfill the rights of legal aid recipients to obtain access to justice. So as to realize the constitutional rights of all citizens in accordance with the principle of equality in law through an effective, efficient and accountable judiciary. However, if legal aid is provided with the condition that the threat of criminal punishment is more than 5 (five) years, then the constitutional rights of every citizen who experiences a legal incident will not be realized. This is also related to the right to an honest and impartial trial, a norm designed to protect individuals from unlawful and arbitrary restrictions, or deprivation of basic rights and other freedoms. The right to legal assistance is divided into four parts, namely: ¹¹

- 1) The right to defend oneself personally or to be assisted by legal advisor of his/her choice;
- 2) The right to obtain free legal assistance in cases where people cannot afford the services of an advocate in the interests of law and justice;
- 3) The right to communicate with advocates;
- 4) The right to be informed of his or her right to obtain legal assistance.

Moreover, during the preliminary examination, the provisions of the Criminal Procedure Code adhere to the principle of Soft Inquisitor examination, meaning that in the examination carried out by the investigator on the suspect, he may be accompanied by a Legal Advisor who participates in the examination process passively, that is, the Legal Advisor is permitted to see, hear and give instructions in the process of examining the suspect. . In practice, during examinations under the Soft Inquisitor system, suspects may ask the Legal Advisor for explanations regarding the meaning of the investigator's

¹⁰ Frans Hendra Winarta, Hak Konstitusional Fakir Miskin Untuk Memperoleh Bantuan Hukum. Gramedia Pustaka, Jakarta, 2009, hlm. 34

¹¹ Agustinus Edy Kristianto, Pedoman Bantuan Hukum Di Indonesia, Yayasan Obor Indonesia, Jakarta 2009, hlm. 3

questions, especially questions that are ensnaring in nature. The suspect in the preliminary examination process is not treated as a defendant (object) who must be examined, but rather the suspect is treated as a subject, which means that the suspect cannot be forced to admit guilt by means of coercion, pressure or threats. This provision is clearly contained in Article 52 and 184 Paragraph (1) of the Criminal Procedure Code, which essentially states that the aim of the preliminary examination by the investigator is not to obtain the suspect's confession but to obtain the suspect's statement regarding the criminal incident of which he is accused. Based on the theory of law enforcement put forward by Lawrence Meir Friedman, which explains that law enforcement is influenced by legal substance, legal structure and legal culture. The existence of advocates in the criminal justice system is seen in Law Number 18 of 2003 concerning Advocates but is limited in carrying out their duties as law enforcers. This is influenced by the legal substance where Article 56 Paragraph (1) of the Criminal Procedure Code is only imperative, legal assistance is provided to suspects or defendants who are incapable of being suspected of committing a criminal offense which carries a sentence of more than 5 years. related to the legal structure where the law cannot operate or be upheld if there are no credible, competent and independent law enforcement officials. How good are the laws and regulations if they are not supported by good law enforcement officials then justice is just a dream?

In terms of legal assistance to suspects, it is rare to find coordination and support from law enforcement officials such as police, prosecutors, judges in informing suspects of their rights, one of which is the right to obtain legal assistance. 4 This can be seen from the rare requests made to advocates by authorities. law enforcers, both police and prosecutors, to provide legal assistance when a client who is economically disadvantaged is faced with a criminal case with a penalty of more than 5 (five) years. Investigators prefer suspects not to be accompanied by legal counsel and this is usually justified by statements by suspects who do not want to be accompanied by an advocate when being investigated. It can be said that the existence of advocates as law enforcers in the criminal justice process is reviewed from Article 56 of the Criminal Procedure Code, so advocates are able to act as law enforcers based solely on the client's power of attorney and appointment by investigators when there are cases that meet the criteria as stated in Article 56 of the Criminal Procedure Code. Apart from that, the existence of advocates as law enforcers in the criminal justice process in terms of Article 56 of the Criminal Procedure Code is limited to criminal threats in a criminal act and depends on the legal understanding that investigators have in providing full rights to suspects from the start of the investigation process. So the existence of advocates as law enforcers will influence the judicial process which is limited by the form of criminal acts and criminal threats as well as the subject at each level of examination.

According to Agus Riewanto, conveyed at the National Working Meeting of the Indonesian Advocates Association in December 2023, advocacy is a free, independent and universal profession and is recognized by many countries, especially democratic countries. Independent means not taking sides and is also an absolute requirement for the creation of an independent judiciary. The urgency of the single bar can protect the advocate profession on a par with other professions, its independence from direct government supervision, standardization of competency and professional education, as well as uniformity in the implementation and implementation of the professional code of ethics.¹² The existence of advocates since the multi-bar era has given rise to many conflicts as explained previously. However, on the occasion of an interview with the heads of the PERADI and IKADIN branch leadership councils, including the chairman of the DPC Peradi Sukoharjo Song Sip, stated that the advocate organization returned to the law on advocates, namely the single bar, the chairman of the DPC Peradi Karanganyar and the chairman of the DPC Ikadin Karanganyar, namely Kadi Sukarna, also stated that The advocate organization should be a single bar because based on the applicable law it is stated that the sole forum for advocates is Peradi. Even Ikadin, who agreed to remain a single bar, stated that he was ready to disband the organization in order to achieve a single bar. Melkianus Seran as chairman of the DPC Peradi Belu NTT also stated that

¹² Lilik Mulyadi. "Mediasi Penal Dalam Sistem Peradilan Pidana Indonesia: Pengkajian Asas, Norma, Teori dan Praktik". Yustisia Jurnal Hukum. Vol 2 No.1, Januari 2013

when there is a single bar advocate organization, the monitoring of the quality of advocates, especially in the field of ethical codes, will be better. When the organization of advocates remains multi-bar, weaknesses will arise, especially in monitoring the behavior and code of ethics of advocates, because with so many organizations there will be different assessment standards. Each advocate organization will have its own policy regarding education, recruitment and sanctions for advocates who violate the code of ethics.

Conclusion

The existence of advocates is regulated in Law of the Republic of Indonesia Number 18 of 2003 concerning Advocates. An advocate is a person whose profession is to provide legal services, both inside and outside the court, who meet the requirements under the provisions of the law. Legal Services are services provided by Advocates in the form of providing legal consultations, legal assistance, exercising power of attorney, representing, assisting, defending and carrying out other legal actions for the client's legal interests. Clients are people, legal entities, or other institutions that receive legal services from Advocates. The role of a professional advocate when providing legal assistance to justice seekers is very necessary in order to move towards an integrated criminal justice system to achieve protection of human rights. The criminal justice system is supported by regulations on the right to legal aid which enable the Advocate component as law enforcers to be fully capable in the criminal justice process. The role of a professional advocate when providing legal assistance to justice seekers is very necessary in order to move towards an integrated criminal justice system to achieve protection of human rights. The criminal justice system is supported by regulations on the right to legal aid which enable the Advocate component as law enforcers to be fully capable in the criminal justice process.

Acknowledgments (Optional)

Revocation of KMA Letter No.73/KMA/HK.01/IX/2015 in order to increase coordination and synchronization of law enforcement components in the criminal justice system in Indonesia, especially Advocates because the existence of multi bars has a negative impact on the defense of justice seekers, the position of KMA Letter No. .73/KMA/HK.01/IX/2015 also does not adopt the legal principle of *lex superior derogate legi inferiori*, which means that higher regulations override lower regulations must be implemented, in order to create legal certainty and also of course legal certainty will justice arises for the people seeking justice.

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