



Establishing Advocate Synergy in the Indonesian Criminal Justice System to Actualize Community Justice

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Abstract. The purpose of the research to understand how to establish the synergy of advocates in the criminal justice system in Indonesia and challenges faced by advocates in their professional lives responding to legal developments in Indonesia. Normative juridical research methodology using statutory, conceptual, and analytical approaches is employed in this article. An advocate movement is expected that is not only individualistic but is a collective movement to move forward conjointly in providing legal services both professionally and free legal aid to the underprivileged regardless of various interests. In addition, it is necessary to build a concept of trust, commitment, and good cooperation to strengthen the position of advocates as law enforcers in the Criminal Justice System in Indonesia. As a law enforcer, an advocate must be able to perceive legal developments in Indonesia. Indonesia is a pluralistic and prismatic country, as a result, respecting the law here does not necessarily mean enforcing the rule of law in its entirety, but rather all elements that are just by means of these principles. Through structural legal assistance, advocates can take a progressive legal approach and are required to be able to combine law, the value of justice, approach to society, organization, and development of science and technology.

Keywords: Advocate, Criminal Justice System, Justice.

1. Introduction

The Indonesian constitution, namely the 1945 Constitution, has assured its citizens to receive guaranteed treatment, recognition, fair legal protection including legal certainty, and equal treatment before the law or equality before the law. The aforementioned is based on the first paragraph of Article 27 of the Constitution of 1945 which reads "all citizens along with their position before the law and their government, are obliged to uphold that law and government". Access to justice is deemed to be ensured for every person by equality before the law[1] Therefore, everyone who is dealing with the law has the right to equal treatment, one of which is the right to obtain legal defense or assistance

The presence of an advocate or legal aid organization as a counterweight in a criminal justice system is one of the initiatives to embody the rule of law principle. In addition to the judiciary and law enforcement bodies such as the police and prosecutors, an advocate's role and function as a free, autonomous, and accountable professional plays an important part in social and governmental life.

Since the Dutch colonial era, there has been an extensive effort to establish the Law on Advocates, as the position of an advocate did not previously have a definite legal function in the legal and judicial systems.[2] In the old order system, advocates played no official role and were only present during the early years of independence (1945–1960), when HIR and Rbg firmly governed the administration of justice. This was driven and influenced by the ideology of legal academics who had previously emerged from extensive Dutch legal education with the title *Meester van Nederlandsch indisch Recht*. This subsequently also resulted in inherited developments in teaching methods in law faculties across Indonesia [3]

The New Order came to power and began to suppress the existence of advocates not as law enforcers. Advocates at that moment were directed at efforts to enrich themselves, as a result of the development program, essential justice was transformed into a program of economic recovery efforts. This polarization is rapidly growing, the existence of shysters begins to erode, the professionalism of advocates begins to be threatened by the existence of government agencies or other bodies working as advocates, for example clerks and even judges often draw up lawsuits against the parties in a case and decide it at the same time [4]. The commencement of the Law on Advocates as a solid foundation for carrying out the duties of serving as an advocate in public life. Therefore, the commencement of the Law on Advocate has provided a clear position for advocates in law enforcement in Indonesia. Pertinent to the general explanation in the advocate law, advocates provide legal services in the course of their work to uphold justice based on the law for the benefit of those seeking justice, including initiatives to enable people to realize their fundamental rights before the law. One of the foundations in defending the rule of law along with human rights is the role of advocates in the judicial system. The Advocate's occupation extends outside of the courtroom and is not limited to participation in the legal system. With the community's growing legal demands, particularly as it enters an increasingly open existence in international interactions, there is currently a greater demand for advocates' legal services outside of the judicial system.

Despite the fact that Law Number 18 of 2003 concerning advocates went into effect, giving the position of an advocate legal certainty, there are a number of concerns or disputes pertaining to the substance of the law that are being contested by a number of advocates, either individually or as part of an organization that oversees them. This has been proven, insofar as since the 2003 enactment of Law on Advocates No. 18 that has apparently been examined twenty times before the Honorable Constitutional Court, some of the case register numbers have the same object norms for review, for example, the most debated issue regarding with advocates as a single bar system or multibar system. The existence of this examination can be perceived from two sides, the first is the spirit of continuous improvement to the quality of constitutional law enforcement or the second is just

"desired" power solely to achieve self-existence and personal gain through professional organizations.

Regarding the advocate professional organization, Article 28 paragraph (1) of the Advocate Law has emphasized that the Advocate Organization "is the only forum for the Advocate profession that is free and independent which was formed in accordance with the provisions of this Law with the intent and purpose of improving the quality of the Advocate profession". While the formation of the Advocate Organization has also been regulated in Article 32 of the Advocate Law, namely for a while before the formation of the Advocate Organization, the duties, and authorities were carried out jointly by the eight advocate organizations that existed at that time and their names were mentioned one by one in the abovementioned law.

The Constitutional Court's Decision Number 36/PUU-XIII/2015, dated September 29, 2015, specifies that an advocate is a multibar system regardless of any inconsistency with the single bar or the multibar system. There is still a demand for the independent, ethical advocate profession. In the Criminal Justice System, advocates perform an essential function as a counterbalance to the current law enforcement. Law Number 18 of 2003 respecting Advocates, as stated in Article 5 paragraph (1), states that "Advocates have the status of law enforcers, free and independent guaranteed by law and statutory regulations." As a result, it is evident that an advocate is *de jure* a component of the criminal justice system as it currently exists. *De facto*, an advocate frequently represents the client's interests.

The emergence of many new advocate organisations has created conflicts due to misunderstandings between the old and new organisations. The number of advocacy organisations is considered to harm the reputation of advocates. Whereas advocacy is a noble profession that requires high standards, the number of advocate organisations outside of PERADI creates its own complexities, one of which will affect the guidance of advocates. When compared between the elements that have made up Indonesia's advocate organisations and their performance so far.[5]

Within the process of law enforcement in Indonesia, anomalies are often found. The anomaly can be a vagueness in the search for justice. According to the President of the Indonesian Advocates Association (Peradi) Branch Leadership for the City of Yogyakarta, there are five vagueness that must be solved:[6]

- a. The vagueness of missing information;
- b. The vagueness of justice;
- c. The vagueness of political sensibility;
- d. Vagueness lessons from the developed countries history; and
- e. The vagueness of the legal reform failure.

Advocates must be able combine law, values of justice, approach to society, organization, and development of science and technology. It is therefore anticipated that it will be able to motivate advocates to serve as progressive law enforcers. Therefore, advocates must transform the notable mindset among the public "move

forward fearlessly defend the money owner" replaced with "move forward fearlessly defend what is right".

Galanter is of the opinion that being a law enforcer is no exception to being an advocate who must be able to alleviating human suffering and become a legal professional who needs to be an evolved person. Upholding the law is not merely rule and logic, but behavior [6] Reflecting on this, for the implementation of a fair trial with legal certainty that upholds the rule of law, truth, justice, and human rights for all those seeking justice requires the synergy of fellow advocates and advocates must also be able to respond to existing legal developments in enforcing the law.

2. Problems

Based on the prior background explanation, the issues that will be discussed in this paper are as follows:

- a. How to build the synergy of advocates in Indonesia's criminal justice system to achieve community justice?
- b. How are the challenges faced by advocates in their professional lives responding to legal developments in Indonesia?

3. Method

This article was written using a normative legal methodology that statute approach, conceptual approach, and analytical approach. The specifications of this research are positive law inventory and legal discovery in concreto. Legal inventory is carried out by setting identification criteria, selecting norms and organising norms. The stage in doing after the inventory of positive law is searching for the relevant facts contained in the legal case at hand and searching for the relevant abstract legal prescription contained in the formulation of the applicable positive law.[7] The data used is secondary data. This secondary data consists of laws and regulations related to the object of research as well as literature or other library materials that support the research. Secondary data is collected through the literature study method. Furthermore, the data obtained is processed by reduction and categorisation. Data analysis is carried out qualitatively with a content analysis model which is then presented in narrative text.

4. Discussion

4.1 Establishing Advocate Synergy in Indonesia's Criminal Justice System to Actualize Community Justice

The Criminal Justice System does not always provide advocates status as a Sub-System, since the existence of advocates according to the early pre-independence history was called *Zaakwaarnemer* (Shyster) for the rural area, while for metropolis areas, the status and work of an advocate was carried out by professional legal experts

who his duties were only as colonial administration in government courts and in law schools (*Advocaat en Procureurs*).[8]

The Advocate Organization, as defined in Article 28 paragraph (1) of the Advocate Law, is the "only forum for the Advocate profession that is free and independent and was formed in accordance with the provisions of this Law with the intent and purpose of improving the quality of the Advocate profession," according to the standard. While the formation of the Advocate Organization has also been regulated in Article 32 of the Advocate Law, namely for a while before the formation of the Advocate Organization, the duties and authorities were carried out jointly by the eight advocate organizations that existed at that time and their names were mentioned one by one in this law.

Based on the Constitutional Court's decisions number 112/PUU-XII/2014 and number 36/PUU-XIII/2015, both of which were made on September 29, 2015, relating to the wishes of some members of the Advocates who want the Advocate organization form to remain a single organization (single bar) or there will be changes to the form of a multi-organ (multibar) organization, this has also been confirmed in the decision of 320 of the Court, where the Court has argued that this is part of a legal policy which is the authority of the legislators to determine what is in accordance with the needs of advocate organizations in Indonesia.

Apart from the above in relation to the conflict between advocate organizations, advocates have an important role in law enforcement. In compliance with Law Number 18 of 2003 respecting Advocates, which is based on Article 5 paragraph (1): "Advocates have the status of law enforcers, free and independent guaranteed by law and statutory regulations." Therefore, it is evident that an advocate is *de jure* a component of a subsystem inside the current Criminal Justice System. However, an advocate actually represents the interests of the client more frequently.

Regarding the Criminal Justice System, each legal expert also has a different opinion regarding the components that are consider as law enforcement agencies, in the realm of criminal law. Mardjono Reksodiputro explained that in order to achieve the objectives of the Criminal Justice System, the components included are required to work cooperatively, especially agencies (bodies) known as:[9] 1. Police force (Police); 2. Attorney (Prosecutor) ; 3. Court (Judge); and 4. Penitentiary (Warder).

Romli Atmasmita emphasized that the components of the criminal justice system that are commonly recognized both in theoretical knowledge regarding criminal policy and in the scope of law enforcement practice, consist of elements from the Police, Prosecutor, Courts, and Penitentiary, as well as Legislators.[10] Likewise, Barda Nawawi Arief, in explaining the Integrated Criminal Justice System is implemented in four sub-systems of power, namely investigative power, prosecution power, trial/sentencing criminal power, and criminal execution/implementation power.[11]

According to Lili Rasjidi, the characteristics of a system are:[12]

- a. A complexity of elements formed in a single interaction (process);

- b. Each element is bound in a unified relationship that is interdependent on one another (interdependence of its parts);
- c. The unity of the complex elements forms a larger whole, which includes the whole of its constituent elements (the whole is more than the sum of its parts);
- d. The whole determines the characteristics of each of its constituent parts;
- e. If the pieces are viewed apart from the whole, they barely able to be understood; and
- f. The parts move dynamically, independently or as a whole within the whole (system).

The importance of adopting systemic techniques against the law was noted by Lili Rasjidi and I.B. Wyasa Putra due to three main reasons:[13]

- a. The relationship of an object internally and externally;
- b. The systems approach is a semi-metaphysical method, that is, in addition to being able to define the integrity of the traits of an object, it also has the ability to analyze each component of the object;
- c. This approach is more representative of ontology, epistemology, and axiology of science, in accordance with their essential characteristics.

The ultimate goal of law is justice, as explained by Gustav Radbruch, who teaches that law must fulfill the three basic values that must be integrated into a legal concept. Gustav Radbruch teaches that law must contain three basic values, namely: the value of justice (philosophical aspect); certainty value (juridical aspect); and the value of expediency (sociological aspect).[14] Every legal regulation must be able to restore its validity to these three basic values. Fair is a constitutive element of all understanding of law.[15]

Referring to Aristotle's concept of justice, there are only two types of justice, namely distributive and commutative justice. Distributive justice is the justice that entitles everyone to their share according to their merits. Meanwhile, commutative justice is the justice that entitles each person the same share considering the acts they have done.[14]

With the application of legal theory through the knowledge of the Sociological Jurisprudence stream trying to unite legal science with its environment, namely society, this logical consequence leads to a law enforcement work system. Law enforcement that is chaotic and ignores justice can be mitigated if the law is returned to its original function, namely to create justice, order and comfort.

To establish a good system regarding the implementation of the role and function of advocates in the criminal justice system, synergy is needed. According to the Great Indonesian Dictionary, synergy comes from the words *sinergi* which means joint activities or operations.[16] Synergy is establishing and ensuring productive cooperative relationships and harmonious partnerships with stakeholders, to produce useful and quality work. In a synergy it takes a concept of good cooperation between individuals or organizations or institutions, agencies that are incorporated in a system.

The following are the synergy concepts:

- a. Positive and goal-oriented;
- b. Multiple views replace or enhance paradigms;
- c. Cooperate with each other as well as have the same goals and there is an agreement; and
- d. Efficient progress and part of a process.

Accordingly, to build a synergy of advocates in a criminal justice system, a concept of cooperation, and mutual trust is required between advocates or advocate organizations and legal institutions in which there are also advocates as one of the legal aid providers. Mutual trusteeships must be built even though it takes time. This is important because trust and cooperation have the power to change a situation, indeed, into a better situation. Within the organization, the ability to build, grow, maintain, and restore all the trust of stakeholders and colleagues is the key to synergy.

Providing that trust is considered as a form of risk and threat then nothing positive will be gained. Trust is essential thing for a relationship since it involves opportunity to carry out cooperative activities, knowledge, self-respect, and other moral values.

Apart from that, according to Soerjono Soekanto, law can function properly, it requires harmony in the relationship between four factors, namely: (1) the law itself is a regulation, it requires harmony between existing laws and regulations; (2) adequate legal implementation facilities, as it is frequently difficult to enforce laws that cannot be handled because the facilities for enforcing them are inadequate or not available; (3) legal awareness and certainty as well as the behavior of the community itself; (4) the mentality of law enforcement officers. In this case, direct law actors such as police, prosecutors, lawyers, judges, correctional officers and the rest, for the reason that law enforcement is reliant on the mentality of law enforcement officials.[17]

Lawrence M. Friedman where law must be interpreted as content of law, legal administration (structure of law) and legal culture (culture of law). Therefore, law enforcement is not only limited to being carried out through legislation, which is also important on how to empower legal apparatus and facilities to create a legal culture that is conducive to supporting law enforcement[18]

The establishment of the Integrated Criminal Justice System has consequences for all parties involved to find the right formulation in building a coordination system between institutions within the existing government, when it is to be implemented in Indonesia, it is supposed to have a genuine desire and have the same goal between state institutions (law enforcement).

As regulated in the Criminal Procedure Code, namely in Articles 54 to Articles 57 (which regulates the rights of suspects or defendants to obtain legal counsel) and Articles 69 to Article 74 (regarding the procedures for legal advisers relating to suspects or defendants). The phrase "legal adviser" according to Abdurrahman, is

inappropriate in comparison to the term "legal aid," as it paints a clearer picture of the character of legal aid provided to individuals in need.[19]

The system is not defective but functioning because it still pays attention to the intake of the environment that surrounds it. In case a legal system conflicts with the principles of natural law, it can be predicted that the law will rise to many injustices in its enforcement. Thus, the human legal system must not conflict with natural law and law must be progressive.

A strong desire to build the dignity of advocacy as a noble profession (*officium nobile*) which can be realized by strengthening integrity, competence and professionalism, in addition to providing legal protection for justice seekers (justiciabelen).

An advocate movement is required that is not only individualistic in nature but is a collective movement to move forward together in providing services in the legal field professionally through providing professional legal services and free legal aid to the underprivileged regardless of various interests. The passing of Law Number 16 of 2011 does not mean that the obligation of advocates to provide free legal assistance as stipulated in Article 23 of Law Number 18 of 2003 is abolished but rather strengthens the role of advocates by synergizing with the state's duties in administering legal aid to the community as mandated in the law on legal aid.

4.2 Challenges of Advocates in Their Professional Life in Responding to Legal Developments in Indonesia

A law enforcer, pertinently an advocate, is supposed to be able to perceive and apply existing legal developments to a general case or a particular case he is handling. It is a rampant discussion on how to enforce the law ideally, especially in the country of Indonesia. There is a shift in the paradigm of legal science and legal theory from what was originally legal positive, which gradually shifted towards sociological or living law which is then summarized in a legal pluralism.

Understanding law and how people are assessed in Asia and Africa cannot be tackled using the three traditional techniques of philosophy, normative theory, and socio-legal theory. The legal pluralism approach is Menski's fourth strategy. This strategy is based on connections between the government (positive law), societal elements (social legal approach), and natural law (moral, ethical, and religious principles). An approach to judging that simply considers positive law, which has logic and norms, will only produce needs in the pursuit of substantive justice. The pursuit of perfect justice will only result in non-enforcement of the law if it adopts a pluralistic view of the law.[20]

To achieve legal advances by non-enforcement of the law, law enforcers must develop a new approach method termed legal pluralism. That is because this strategy has produced living law and natural law rather than being constrained by the rules of legal formalism. If we look at the conditions in Indonesia with a pluralistic society, it would not be right if the positivist way of law was absolutely applied without considering the conditions of society or socio-legal and the living law. Therefore, the

legal method of law enforcers, including advocates, must proceed from conventional methods to progressive legal methods in order to bring substantive justice to society.

For instance, in relation to cases involving the underprivileged or marginalized groups, the law should continue to protect them. The presence of an advocate as an officium nobble is needed to defend these people when faced with the law. Law enforcement against these people should prioritize justice that is restorative, not restitutive. Even though the creation of a justice system is not only done by an advocate but also by other law enforcers including police, prosecutors, judges, and correctional officers, the argument and reasoning of an advocate are indeed required to thereafter become a consideration for other law enforcers.

The non-enforcement of law practices in Indonesia is often carried out by law enforcers, and lawyers are no exception. This is especially true during the search for substantive justice, where the vigilante soul of law enforcers is required because they often deal with groups that uphold formal legality. Therefore, there are four areas of legal science that can be used as a basis for judges or other law enforcers such as advocates to carry out non-enforcement of law, namely the philosophical realm, the theoretical realm, the conceptual realm and the practical realm.[6]

Law enforcers collectively demand to make a move towards progressive legal thought, thus, gradually but surely, they must try to become law enforcers who are able to alleviating human suffering and become legal professionals who need to be involved persons. It is this advocate who will become a bridge for those seeking justice to obtain their legal rights before the law to defend the legal cases they face.

Advocates can interpret progressive law at the movement level. Advocates interpret progressive law in the realm of legal research practice or when defend cases. Bringing progressive law brings advocates to defend marginalized people's cases, making legal breakthroughs in defending that person. People who barely afford it should not encounter obstacles and instead need to be facilitated by advocates therefore, they acquire the same legal resources as privileged or powerful people. One of the efforts of advocates to embody progressive law is through the provision of legal assistance, both litigation-related and non-litigation-related, in the form of giving structural legal assistance.

According to Law Number 16 of 2011 Concerning Legal Aid, the provision of legal aid, which was first provided by individuals, then experienced a transition and was carried out by an institution. Legal aid that is given as a result of economic, social, and political structural inequalities that give rise to human rights is known as structural legal assistance. In short, structurally, Legal Aid Provider does not merely provide legal assistance but also educates the public to change the legal system which has been considered to give injustice. One of the approaches used in the application of progressive law by advocates is through Citizen Lawsuit (CLS).[6]

Through structural legal assistance, advocates are able to take a progressive legal approach. Advocates are required to be able to combine law, the value of justice, approach to society, organization, and development of science and technology. In accordance, it is anticipated to be able to initiate advocates to act as progressive law enforcers. Hereafter, advocates demand to transform the mindset "move forward

fearlessly defend the money owner" to be replaced with "move forward fearlessly defend what is right".

Progressive law comes from the background of dissatisfaction with conventional legal methods because they are considered incapable of fostering a sense of fairness in society. When progressive law is practiced by advocates in providing legal aid, subsequently advocates must defend what is right. Consequently, advocates must be involved in providing structural legal assistance to defend people who are marginalized both politically and economically.

Progressive legal theory is part of a never-ending process of seeking truth. Rule breaking is very important in the law enforcement system. Following Satjipto Raharjo, there are three processes for implementing rule-breaking, which are:[21]

- a. Using spiritual intelligence to overcome legal difficulty and avoid letting oneself be limited by outdated practices;
- b. The pursuit of deeper significance ought to be a fresh approach to upholding the rule of law and putting the law into practice; and
- c. The law should be implemented not pursuant to the principles of logic alone, but instead with feelings, concern, and involvement (compassion) for weak groups.

From a progressive legal stance, we ought not to get caught in legal formalism given that it frequently leads to inconsistencies and dead ends in the pursuit of meaningful truth and justice. The following circumstances should be covered by the non-enforcement law policy:[22]

- a. If the law is not familiar with social reality, is not close to the people's sense of justice, is not understood because the legal language is difficult to understand;
- b. If implementing regulations are something that absolutely must exist in a particular legal product. In such circumstances, without implementing regulations, operational legal products will cease to function and can only become material for discussion; and
- c. If the laws and regulations conflict with Pancasila as the guiding principle.

Law enforcers should be truly aware that Indonesia is a pluralistic and prismatic nation, in consequence, upholding the law in Indonesia is not synonymous with enforcing the rule of law, yet all elements that are just by means of these norms. Lawyers must make a move towards progressive legal thinking in order to gradually, but surely, try to tread the pearl as stated by Galanter, namely becoming law enforcers who are capable of alleviating human suffering and becoming legal professionals who need to be evolving persons. Upholding the law is not merely rule and logic, but behavior.[5]

Therefore, law enforcers need to explore the meaning of law, instead of solely reading and studying the regulations. Law is not only for himself but for humans and society. Progressive law is not against positive law or statutes, and is not used as a basis for justifying violations of the law. Positive law remains possible despite the

influence of progressive law. Progressive law still upholds the rule of law but is not bound by that rule when it encounters a formal legal impasse.

Progressive law is defined as "not merely regulations and logic but also behavior, even behind behavior," in line with the ontological aspect. As a result, what is progressive involves both material/substance (laws), including how to apply legal theory, as well as enforcement (behavior). In order to be untainted by the rule of law and to assess the law with a clear conscience and a sharp intellect "in recognition of humanity," we must think logically.[23] Accordingly, a law enforcer, including an advocate, must be able to understand, apply it in a legal practice in Indonesia in order to create justice and happiness for the community.

5. Conclusion

An advocate movement is demanded that is not solely individualistic rather is a collective movement to proceed forward conjointly in providing legal services both professionally and free legal aid to the underprivileged community regardless of various interests. In addition, it is necessary to build a concept of trust, commitment, and good cooperation to strengthen the position of advocates as law enforcers in the criminal justice system in Indonesia. The existence of the Law on Legal Aid and the Law on Advocates must strengthen the role of advocates by synergizing with the state's duties in administering legal aid to the community.

As a law enforcer, an advocate must be able to see the development of existing law in Indonesia to apply it in his profession. Law enforcers should truly be aware that Indonesia is a pluralistic and prismatic nation so enforcing the law in Indonesia is not synonymous with enforcing the rule of law, yet all elements that are just by means of these norms. Through structural legal assistance, advocates can take a progressive legal approach. Advocates are required to be able to combine law, the value of justice, approach to society, organization and development of science and technology.

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