

# The Role of Advocate Profession in The Enforcement of Justice System in Indonesia

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**Abstract**—Advocate is a law enforcer; a free, independent and responsible profession in enforcing law guaranteed by law. It means that lawyers have rights, obligations and responsibilities in accordance with the rules and law of advocates. Law No.18 Year 2003 concerning Advocates insists that Advocate is a person who provides legal services both inside and outside the court. The enactment of Law No.18 of 2003 on Advocates, advocate profession is increasingly dynamic in the context of law enforcement in Indonesia. Providing a free-of-charge legal assistance for justice seekers is one of the obligations of the Advocate. The obligation to provide a free-of-charge legal assistance by Advocates is mentioned in Article 22 Paragraph (1) Law no. 18 of 2003 on Advocates stating that: "advocates are obliged to provide free legal assistance to unfair justice seekers". This study is a normative research, with the approach to legislations, which review all legislations concerning the regulation of advocate profession. The results of this research show that there are two urgencies of advocate role in criminal justice system: (a) the responsibility of advocate to control and guard the court integrity, (b) law enforcement and the role of advocate in Islamic laws in The Religious Court. The two roles are expected to reinforce and strengthen the role of the advocate as one of the components within the justice system in Indonesia.

**Keywords:** *Advocate, Enforcement, Justice, Indonesia*

## I. INTRODUCTION

The status of advocates as law enforcement is a part of the legal instruments in the judicial process, equal position to other law enforcers in enforcing the law and justice. To be stated more firmly, advocate is one of the pillars of law enforcement and the protector of human rights in Indonesia. Advocates stint their profession for justice under the law for people seeking justice. In addition to the judicial process, the role of the Advocate is also seen out of court. The need for Advocates in legal services outside of the judicial process at the present time is increasing, in line with the growing of legal needs of the community, especially in this day and age when life becomes increasingly open in the association between nations.

Law enforcement is a major focus in the reformation process in realizing justice for the people of the Republic of Indonesia (NKRI).<sup>1</sup> Talking about law enforcement issues is inseparable from the issue of how the law can function as

expected. Law enforcement is essentially a process of adjustment between values, real rules and behavior patterns aimed at achieving peace.<sup>2</sup> The factors that influence on law enforcement are, (1) the law factor itself (2) the actors of law enforcement, the parties who enact and who apply the law (3) Infrastructure and facilities Factors to support the rule of law (4) the public factor that is the environment where the law applies and is implemented; and 5) Cultural factors. Law is human inventiveness (*cipta*), sense (*rasa*) and a passion to create (*karsa*) which is based on human initiative in their interactions.<sup>3</sup>

## II. ADVOCATES' RESPONSIBILITY

Legislation no. 18 year 2003 on Advocates in Article 1 paragraph (1) provides that advocates are persons who have a legal service, whether within or outside the courts, and eligible. Advocates here can also be interpreted as lawyers or legal counsel, or person who provides legal assistance because their main role, duty and responsibility are the same that is to assist clients in upholding justice and truth for.

The duties, obligations, attitudes and responsibilities of an advocate as a law enforcer are all contained in the code of ethics of the advocate profession which is used as the foundation in conducting activities. The fundamental duties and responsibilities of advocates are to combine between representing clients, upholding justice, honesty and human rights, and assisting judges in the process of truth and justice enforcement. To support the functioning of the legal system requires a system of ethics that is positively enforced in the form of ethical code in public sector. In every sector of the state and government, there are always rules of conduct and internal organizational and work guidelines. In community organizations, there is always statutes and bylaws or Household Guidelines of the organization. However, only very few of these organizations or institutions have the Code of Ethics equipped with the institutional infrastructure of the Council of Honor or the Ethics Commission assigned to enforce the code of ethics.

The Advocate regulation determines the obligation to formulate the code of ethics of advocate profession by the Advocate Organization to maintain the dignity and honor of

<sup>2</sup> Esmi Warasih, *Pemberdayaan Masyarakat Dalam Mewujudkan Tujuan Hukum, Pidato Pengukuhan Guru Besar Madya Dalam Ilmu Hukum, Fakultas Hukum Universitas Diponegoro, Semarang, 14 April 2002, 2*

<sup>3</sup> *Ibid*

<sup>1</sup> Widiada Gunakaya, *Pendekatan Sistem dan Kebijakan Dalam Penegakan Hukum di Indonesia*, Jurnal *Wawasan Hukum*, Vol. 7 No. 1 Maret 2002, 58

the advocate profession. Each advocate shall be obligated to obey and comply with the professional code of ethics of advocate and the provision of the Honorary Council of the Advocate Organization. Whether or not the Code implementation is fully depended on Advocates and the Advocates organizations. Therefore, it is necessary to build the infrastructure so that the code of ethics created can be enforced. The infrastructure requires a culture of obedience to the rules within the advocate, both the rules of state law and organizational rules including articles of association, and household and professional code of ethics. The fourth is responsibility to the public. In reality, a human being can not live without the help of other human being, according to his position as a social being. Because needing other human being then a human being must communicate with other human beings.

An advocate must not only behave honestly and morally, but must also gain public trust that the advocate will always be in such a behaviour. With the appointment of advocate, he or she has been given a noble duty to carry out a noble profession (mobile *Officium*), with some exclusive rights such as; 1) To declare to the public that he or she is an advocate; 2) It is thus entitled to provide legal advice and represent its clients; and 3) Facing upfront court in the proceedings of his or her client's case. However, it should not be forgotten that these privileges also incur the obligation of advocates to the public:

- a. Keeping that those who are willing to be the members of professional advocate are those who always have the competence of professional knowledge, and have integrity in carrying out the respectable profession.
- b. Willing to get rid of those who are proved unworthy to run this honoured profession.

In giving legal services to clients in corruption cases, advocates should remain in the existing legal corridor. Meaning that legal services provided by advocates, both at the level of investigation, and at prosecution and examination in front of the session, should always put forward the principles of law for the uprightness of truth and justice. In addition to defending the interests of clients, the advocate must provide legal protection to the clients in corruption cases. Before a verdict that has the legal power is decided, the suspect should not feel severely disadvantaged because the suspect/defendant has not been legally guilty. Therefore the responsibility of the advocate is very important in the process of upholding the law.

According to Fritz Heider, there are two sources of attribution of human behaviour; (1) Internal attribution or dispositional attribution. (2). External attribution or environmental attribution. In internal attribution, we conclude that a person's behavior is caused by traits or dispositions (psychological elements that precede behavior). In external attribution we conclude that a person's behavior is caused by the place situation or environment where the person is. [40] Therefore, attribution theory is divided into 2 (two) causes in causal perception of a certain action according to individual conclusion namely: Internal

Attribution covering all internal causes, like state of heart, attitude, personality trait, ability, health, preferences or desires. While the External Attribution includes a person's external causes, such as the pressure of others, money, the nature of social situation, weather and so on.<sup>4</sup>

In relation to the roles and responsibilities of advocates, advocates definitely can not avoid influences both internal factors and external factors as mentioned above in providing legal services to clients. In providing legal services to their clients, advocates face technical and non technical factors.

Concerning the technical factors of advocates in providing legal services to their clients such as Article 72 of the Criminal Procedure Code, which reads upon the request of the suspect or his legal adviser, the official gives a derivative hearing for the purpose of defence. Article 17 of Law no.18 Year 2003 states that in accordance with the laws and regulations, in doing their activities, Advocates are entitled to obtain information, data, and other documents, both within Government agencies and other parties related which are necessary for the defense of the interests of his or her clients in accordance with the laws and regulations. This Article remains in question whether it is applicable because advocates are often blocked to gain information. While non-technical factors of advocates in providing legal services to their clients is, whether in practice can be applied, advocates can often be entitled to contact clients without having to give something for example money or goods. Another non-technical factor is when advocates defend trial-by-mass cases (demonstrations) there is pressure from other parties against the advocates. Factors affecting the advocate in handling the clients' cases are very much encountered in practice, for example from external factor, an advocate must provide explanations to the public or society that the client is not necessarily guilty before there is a permanent legal decision. Thus, an advocate in defending, accompanying, representing, acting, and fulfilling his duties and functions must always include in his judgment obligations to the client, society, self, state, especially to God.

### III. LAW ENFORCEMENT AND THE ROLE OF ISLAMIC LAW ADVOCATES IN THE COURTS OF RELIGIONS

Law enforcement in a broad sense includes activities implementing laws and taking legal action against any violations of the law committed by the subject of law, either through judicial procedures or through the procedures of arbitration and other alternative disputes or conflicts resolution. In fact, in a broader sense, law enforcement activities include all activities intended for law as a normative instrument that regulates and binds legal subjects in all aspects of public and statutory life and is strictly adhered to and properly executed accordingly. In a narrow sense, the law enforcement activity is action against any violation or deviation against rules and regulations, especially the more narrow sense, through the criminal

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<sup>4</sup> Sarlito, W. Sarwono, *Teori Teori Psikologi Sosial*, Raja Grafindo Persada, Jakarta 2010, 102.

justice process that involves the role of the police, prosecutor, advocate, and other court agencies. Because of that, in the narrow sense, the main actors whose role is very prominent in the law enforcement process are police, prosecutors, advocates and judges.<sup>5</sup>

These law enforcers can be seen primarily as persons or elements of human beings with their qualities, qualifications, and work culture. In that sense, the issue of law enforcement depends on the actor, and law enforcement officer. Secondly, law enforcers can also be seen as institutions, bodies or organizations with their own bureaucratic quality. In that connection, we see law enforcement from the institutional perspective which, in fact, has not been institutionalized rationally and impersonally. However, the two perspectives need to be comprehensively understood by seeing also the interrelationship of each other and its relation to various factors and elements related to the law itself as a rational system. The legal profession needs to be rearranged and improved in terms of its quality and welfare.

Legal professionals include (i) legislators (politicians) (ii) legal drafter, (iii) advocates, (iv) notaries, (v) officials of the land deed, (vi) the police, (vii) prosecutor, (viii) clerks, (ix) the judge, and (x) the arbitrator or umpire. To improve the professional quality of each profession, for now, politicians as legislators in representative institutions can not be categorized as a separate profession. However, in the environment of established political systems, professional roles have been tightly divided, the position of parliamentarians can also grow progressively more and more professionally. Politicians will have been a profession or occupation for being a professional life choice in society.

National certification and standardization system, including prosperity system is needed. Besides, it is also required an integrated education and training programs to continuously develop the mental attitude, increased right knowledge and professional skills of the law enforcement agencies. The agenda of developing professional quality in the legal profession should be separated from administrative employee coaching program within above mentioned law institutions, such as in the courts or in the representative body of the people.

Thus, this quality development orientation in law enforcement can be truly developed in a sustainable and continuous direction. Furthermore, the professional quality of the legal apparatus can also be done through the empowerment of their respective professional organizations, such as the Indonesian Judge Association (Ikatan Hakim Indonesia), Indonesian Advocate Association (Persatuan Advokat Indonesia), Indonesian Notary Association (Ikatan Notaris Indonesia), and so on. In addition, the law enforcement agenda also requires leadership in all levels that meet two conditions. First, leadership is expected to be an effective driver for definite law enforcement actions;

Second, the leadership is expected to be an example for their respective environment for their integrity and the obedient-to-law personality. One important aspect of law enforcement is the process of law socialization and education. Without the support of awareness, knowledge and understanding by legal subjects in society, it does not make sense that a legal norm is expected to be upright and obeyed. Therefore, the agenda of law socialization and law education needs to be developed separately in the framework of the realization of the idea of the state of law in the future. Some of the factors associated with this problem are (a) the development and management of technology-based legal information systems (b) increasing the publication, communication and socialization of law (c) the development of legal education and training (d) image building and exemplary for society in the field of law.

In the framework of legal communications, it needs to be rethought the needs for digital and electronics media, whether radio, television, the internet connection and other media owned and managed exclusively by the government. Regarding the television and radio, it can be said that private radio and television have already been many and therefore, the possibility of unilateral dominance of information flow from the government like during the New Order (Orde Baru) period is unlikely to occur. Therefore, information resources availability from the society and investors are already many and varied.

Article 24 Paragraph (1) of the 1945 Constitution states that judicial power is an independent power to administer justice in order to uphold law and justice. Therefore, beside institutions of judicial power, namely the Supreme Court and the Constitutional Court, other agencies whose functions related to the judicial authorities should also support the implementation of the authoritative independent judiciary. One of them is the profession of advocate that is free, independent and responsible as further regulated in Law Number 18 of 2003. The clause of Article 5 Paragraph (1) of the Advocate Law gives Advocate's status as law enforcers who have equal footing with other law enforcement agencies in enforcing law and justice. Such a position requires an organization which is the sole forum of the Advocate profession as referred to in Article 28 Paragraph (1) of the Advocate Law, namely "Advocate Organization is the only free and independent forum of Advocate profession established in accordance with the provisions of Law with intention and purpose to improve the quality of Advocates". Therefore, the Advocate Organization, PERADI, is essentially an independent state organ that also performs the functions of the State of Indonesia.<sup>6</sup>

Thus, the advocate profession has an important role in law enforcement efforts.<sup>7</sup> Each legal proceedings, either criminal, civil, administrative, even statecraft, always

<sup>5</sup> H.A. Sukris Sarmadi, *Advokat Litigasi dan Non Litigasi Pengadilan menjadi advokat Indonesia kini*. Bandung: CV. Mandar Maju, (Jakarta, Bina Cipta, 2009), 54.

<sup>6</sup> See, *Pertimbangan Hukum Putusan MK Nomor 014/PUU-IV/2006 concerning the review of Undang-Undang Advokat*.

<sup>7</sup> Soerjono Soekanto, *Faktor-faktor yang Mempengaruhi Penegakan Hukum*, PT. Rajawali, Jakarta, 1983, 5.

involves advocate profession whose position is equal to other law enforcement agencies. In the effort to eradicate corruption, especially judicial mafia practice, advocates can play a big role by breaking the chain of judicial mafia practices. That the role is played or not depends on the profession of advocates and the advocate organization whose independence and freedom is guaranteed by the Advocate Law.

The independence and freedom owned by the profession of advocates, of course, must be followed by the responsibility of each advocate and professional organizations that shelter them. The provisions of the Advocate Law have provided guidelines for the advocate profession to be carried out in accordance with the objective of upholding law and justice. It can be seen easily from the oath or promise of an advocate that is done before running their profession, namely:

“In the name of Allah I swear / I promise:

- *That I will hold firmly and practice Pancasila as the basis of the state and the Constitution of the Republic of Indonesia*
- *That I, to acquire this profession, directly or indirectly by any name or by any means, do not give or promise anything to anyone*
- *That I in carrying out the duties of the profession as a legal service provider will act honestly, fairly, and responsibly based on law and justice*
- *That I in performing professional duties inside or outside the court will not give or promise anything to judges, court officials or other officials to win or benefit the client's case that I am or will be dealing with*
- *That I will behave myself and do my obligations in accordance with honor, dignity, and my responsibility as an Advocate*
- *That I will not refuse to defend or provide legal services in a case which I think is part of the responsibility of my profession as an Advocate.*

The oath is essentially a promise to be a lawyer for God, self, and society. If every advocate does not just pronounce it as a formality, but feel, obey, and live it, the conditions of law enforcement will continue to rise better. Judicial power will actually be able to enforce law and justice. In addition, to realize the profession of advocate which functions as law and justice enforcement is also determined by the role of the Advocate Organization. The Advocate Law has provided rules on oversight, acts of offenses, and dismissal of advocates whose implementation is exercised by the Advocate Organization. The clause of Article 6 of the Advocate Law, for example, determines that an advocate may be subject to punishment in the conditions of:

- a) Ignoring the interests of his client
- b) acting or misbehaving against opponents or other colleagues
- c) acting, speaking, or issuing statements that show disrespect towards law, statute or court;

- d) doing things that are contrary to the obligations, honor or dignity of the profession
- e) violating and or misconducting laws and regulations
- f) violating the Advocate's oath / pledge and / or professional code of ethics.

The role of advocates in providing legal services for the interest of clients with the aim at reconciliation for the parties in dispute is decisive.

the role here means how advocates can run their profession in accordance with the duties and functions, and the code of ethics and oath of advocate profession. While the definition of the provision of legal services performed by an advocate is to accompany, represent, give advise to the clients, both for social purpose; *pro bono publico* or on the basis of getting honorarium/fee.

In the Law of Advocate, it is mentioned that to practice the role of providing legal assistance, advocates may conduct litigation and non-litigation. Litigation legal services are legal services relating to legal disputes or cases inside or outside the court and arbitration. While non-litigation legal services are legal services outside the field of legal services litigation.

According Ropuan Rambe, in carrying out their profession, an advocate must hold firmly the advocate oath in order to uphold the law, justice and truth. Advocates are free professions; free profession which is not subject to the hierarchy of office and is not subject to the orders of the superiority, which only accepts orders or authorization from clients under a free written or unwritten covenant, which obeys to the code of ethics of the advocate profession, and does not subject to political power.

Advocates have a very important role in law enforcement in the Courts of Religions. Role of Advocates in the Court of Religions is much needed given the Court of Religions has absolute competence of cases which certainly need role of advocate and support services to help the parties litigating in the Court of Religions. Services provided by advocates to clients include: accompany, authorization, and giving advise.

#### IV. CLOSING

From the above explanation, it can be concluded that: Advocates as law enforcers have a position equal to other law enforcers in enforcing the law and justice. Advocate profession has an important role in law enforcement efforts because every legal process, whether criminal, civil, state administration, even state administration, always involves advocate profession. That the role is played or not depends on the profession of advocates and advocate organizations whose independence and freedom are guaranteed by the Advocate Law. Both juridical and sociological advocates have a very big role in law enforcement. The duties, obligations, attitudes and responsibilities of an advocate as law enforcers are all contained in the code of ethics of the advocate profession which is used as the basis of conducting their activities. The fundamental duties and responsibilities

of advocates relate these actions; representing clients, upholding justice, honesty and Human Rights, as well as assisting the judge in the process of truth and justice enforcement.

Advocates' responsibility in law enforcement is for the sake of God Almighty, Advocate Code of Conduct, the Rules of legislation and lastly to the society. Human responsibility to God also 'applies' to advocates. As a human being, Advocates individually binds himself to always be accountable to his God. The obligations of every advocate are to always stand with the right and just side according to his or her conscience and responsibility to the Law. An advocate must not only behave honestly and morally, but must also gain public trust; that the advocate will always be in behaviour of trustworthiness. An advocate has been given a noble obligation to carry out a respectable job (*mobile officium*). An advocate may also reject those who seek for legal service due to social status but they are obliged to give legal services freely (*prodeo*) for poor people.

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