



Advocate Immunity Rights in Providing Legal Services to Clients

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ABSTRACT

An advocate is a person whose profession is to provide legal services, both inside and outside the court, who fulfill the requirements under the Advocate law. Advocates are law enforcers, free and independent, guaranteed by laws and regulations." In this way, it has been clearly stated that the position of advocates is equal to that of police, prosecutors and judges as law enforcers. In providing legal aid services to their clients, advocates have the right to immunity and cannot be sued either civilly or criminally, as regulated in Article 16 of Law Number 18 of 2003 concerning Advocates and strengthened by the decision of the Constitutional Court (MK) which states that the right to immunity This applies both inside and outside the court. An advocate's immunity is always limited by good faith, which is defined in the Elucidation to Article 16 of the Advocate Law, namely that what is meant by good faith is carrying out professional duties for the sake of upholding justice based on the law to defend the interests of clients.

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INTRODUCTION

An advocate is someone whose profession is to provide legal services, both inside and outside the court, who meet the requirements based on the provisions of the law. Article 1 paragraph (1) of the Advocate Law states that, "An advocate is a person whose profession is to provide legal services, both inside and outside the court, who fulfill the requirements under this law." It is further emphasized in Article 5 paragraph (1) of the Advocate Law that "Advocate is a law enforcer, free and independent guaranteed by laws and statutory regulations". In this way, it has been clearly stated that the position of advocates is equal to that of police, prosecutors and judges as law enforcers

After Law of the Republic of Indonesia Number 18 of 2003 concerning Advocates came into effect, among the four criminal justice sub-systems, there was an advocate element (with various terms) which had a very important role in the criminal justice system in Indonesia. This can be seen in Article 54 and Article 56 of the Law of the Republic of Indonesia Number 8 of 1981 concerning Criminal Procedure Law. Article 54 states:

"For the purposes of defense, a suspect or defendant has the right to receive legal assistance from one or more legal advisors during the time and at each level of the examination, according to the procedures specified in this law"

Article 56 paragraph (1), reads:

"In the event that a suspect or defendant is suspected or accused of committing a criminal offense that is 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, the official concerned shall All levels of examination in the judicial process are obliged to appoint legal advisors for them."

The role of advocates in their duties and profession as enforcers and legal advisors has noble duties and strategies in implementing legal aid, especially to realize the principles of equality before the law and the presumption of innocence. Article 37 Law no. 14 of 1970 and Article 56 paragraph (2) of the Criminal Procedure Code regulates that "legal advisors are parties who provide legal assistance".

Advocates have rights and obligations in carrying out their profession in accordance with the Advocate Law and the Indonesian Advocate Code of Ethics. One of the rights inherent in advocates is the right to immunity. The Law on Advocates emphasizes that "every advocate has the right to obtain immunity or immunity rights in carrying out his professional duties". Advocates, in carrying out their duties and profession, "can take or not take actions deemed necessary, can give opinions and have the right to obtain information or documents from anyone, without having to bear the legal consequences resulting from carrying out their professional duties." Advocates and their clients must not be pressured, threatened, subjected to obstacles, fear or treatment that demeans the honor and dignity of the advocate profession. As long as the advocate carries out his duties in accordance with the duties delegated to him in accordance with the power given to him while still paying attention to the legal rules of the law and is carried out in accordance with the professionalism of the advocate, then the advocate cannot be prosecuted either civilly or criminally.

The profession of advocate or lawyer has a privilege in the form of immunity (legal immunity), and cannot be prosecuted either civilly or criminally when carrying out their duties both inside and outside the court in good faith. Apart from clarifying the immunity of advocates, this phrase also emphasizes balanced moral obligations and responsibilities. So this research will discuss the immunity rights of advocates in providing legal services to clients.

RESEARCH METHODS

In this research, the author uses a normative juridical legal research approach, namely research that focuses on examining the application of rules or norms in positive law, namely statutory regulations, legal theories related to the problems to be discussed. According to Johnny Ibrahim, there are 7 (seven) approaches in normative legal research, namely: "Statutory approach), conceptual approach, analytical approach, comparative approach, historical approach. approach), philosophical approach, and case approach".

The research specification in this research is analytical descriptive research. Descriptive means that in this research the author intends to describe and explain in detail, systematically and comprehensively everything related to legal aspects that need to be considered in relation to the problems to be studied.

RESULTS AND DISCUSSION

An advocate is a person who carries out work based on expertise (knowledge), to serve the community independently within the limitations of a code of ethics determined by the professional community. Article 16 of Law of the Republic of Indonesia Number 18 of 2003 concerning Advocates reads: "Advocates cannot be prosecuted either civilly or criminally for carrying out their professional duties in good faith to defend clients in court hearings."

The Law on Advocates recognizes limited immunity rights, which are regulated in Article 14, Article 15, Article 16 of Law on Advocates Number 18 of 2003. Central to these articles is Article 16 of Law Number 18 of 2003 concerning Advocates. The Immunity Rights contained in the Law on Advocates were then strengthened by Decision Number 26/PUU-XI/2013, where the Constitutional Court added a new interpretation which has full legal force and is binding on the immunity rights of advocates. The essence of the ruling is "the recognition and guarantee of protection for Advocates in non-litigation actions carried out in good faith and for the benefit of client defense inside and outside court".

Advocates as "law enforcers are a profession that is vulnerable to various intervention from interests, loosening of the legal profession from ties of trust, and of course, public supervision." The immunity required by Advocates in carrying out their functions and duties is regulated based on Law Number 18 of 2003 concerning Advocates (UU Advocates), which in the preamble explains that "advocates in carrying out their profession are free, independent and responsible in enforcing the law, and are protected by law for the sake of implementing efforts to uphold the supremacy of the law." One of the guarantees provided by the Advocates Law to advocates is that advocates cannot be prosecuted either civilly or criminally for carrying out their professional duties.

The legal regulations regarding the immunity rights of advocates are clearly and firmly stated in Article 16 of the Indonesian Advocate Law in conjunction with Constitutional Court Decision Number 26/PUU-XI/2013. The implementation of advocates' immunity rights has also been regulated within the scope of Law Number 18 of 2003 concerning Advocates and the Indonesian Advocate Code of Ethics. In both the

law on advocates and the code of ethics for advocates, the most important thing is good faith in implementing the law.

The right of advocate immunity explains that when handling a case the right of advocate immunity can apply inside or outside the trial as regulated in Article 16 of the Law on Advocates. However, in practice the advocate's immunity rights are limited by good faith. This means that in carrying out their duties and profession, advocates do not have absolute immunity rights so they are free from all legal demands.

The explanation of Article 16 of the Law on Advocates explains that what is meant by good faith is "carrying out professional duties for the sake of upholding justice based on the law to defend the interests of one's clients". What is meant by court hearing is "a court hearing at every level of court in all judicial environments". Objective good faith in this case is that an action must be guided by the norms of propriety, namely what is considered appropriate in society. In a subjective perspective, this means the honesty and inner attitude of an advocate when carrying out their duties.

An advocate must feel freedom as his job, not feel afraid and not feel connected to a power that intervenes inherent in the right to freedom, which is why the right to immunity is inherent in the advocate profession. In International Law there are three provisions relating to the issue of advocates' immunity rights, namely:

1. Basic Principles On The Rule of Lawyers, explains that the government is obliged to make advocates in carrying out their professional duties free from all forms of intimidation and intervention, including legal prosecution.
2. International Bar Association (IBA) Standards for Independence of Legal Profession, explains that advocates are not only immune from criminal and civil lawsuits, but also administrative, economic, intimidation, etc. in carrying out their professional duties in defending and providing legal advice to its clients legally.
3. The World Conference of Independence of Justice in Montreal 1983 declared that there must be a fair system in the administration of justice that can guarantee the independence of advocates.

The right to immunity is granted in connection with the recognition that the advocate is not identified with his client by the authorities or the public. Based on the advocate's code of ethics, an advocate in carrying out his professional duties must be free and independent and not influenced by anyone and must fight for human rights.

CONCLUSION

It can be concluded that the right to immunity for Advocates is regulated in Article 16 of the Law on Advocates and is strengthened by the decision of the Constitutional Court (MK) which states that this right to immunity applies both inside and outside the trial. An advocate's immunity is always limited by good faith, which is defined in the Elucidation to Article 16 of the Law on Advocates, namely that what is meant by good faith is carrying out professional duties for the sake of upholding justice based on the law to defend the client's interests. Immunity rights are given to advocates in connection with the role and duties of advocates as law enforcers. However, if an advocate acts outside the interests of defending a client or takes action in his own name, he does not have the right to immunity as regulated in the Advocate Law.

SUGGESTION

All parties must respect the mandate of the Law on Advocates which guarantees the right of immunity for advocates. and advocates in carrying out their profession must pay attention to the code of ethics

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