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Professional Ethics of Legal Advisors or Advocates when Proceeding in Court

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ABSTRACT

This study aims to determine the professional ethics of a legal advisor or advocate when proceeding in court. This study uses a quantitative approach. Data were collected using the document study method conducted by the author. The conclusion can be stated that the advocate profession, in which the concept of an advocate is an officer of the court or in the language of Law Number 18 of 2003 concerning Advocates, an advocate is a law enforcer. As a law enforcer, upholding ethics from the perspective of the advocate profession is very contextual and therefore the next discussion will be followed on how the position and role of the advocate professional organization in upholding the ethics. Professional organizations have a Code of Ethics that imposes obligations and at the same time provides legal protection to each of its members in carrying out their profession. Advocates as a respectable profession who in carrying out their profession are under the protection of the law, the law and the Code of Ethics must maintain the image and dignity of the honor of the profession, as well as be loyal and uphold the Code of Ethics and Professional Oath, whose implementation is supervised by the Honorary Council. The Indonesian Advocate Code of Ethics is the highest law in carrying out the profession, which guarantees and protects but imposes an obligation on every advocate to be honest and responsible in carrying out their profession, especially when proceeding in court.

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1. Introduction

Advocate is someone who has a profession to provide legal services to people in court or someone who has a license to practice proceedings in courts throughout the territory of the

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Republic of Indonesia. After the advocate law was enacted, based on Article 1 point 1 of Law No. 18 of 2003 concerning Advocates, it was stated that an advocate is a person who has the profession of providing legal services, both inside and outside the court, who fulfills the requirements and is based on the provisions of the advocate law. Based on Article 32 of the Advocates Law, it is stated that advocates, legal advisors, practicing lawyers, and legal consultants who have been appointed at the time the advocate law comes into force are declared as Advocates as stipulated in the advocate law.

Advocates or legal advisors in the judiciary are very important and have a special position to uphold legal justice. In this case, advocates must put the truth which is the foundation of justice which is used as a benchmark in responding to various existing cases. In essence, every case that is brought to court does not absolutely have to have an advocate (legal advisor), because in Indonesia it adheres to the principle of "*verphiee promvirstlling*". In general, Indonesia adheres to the *ins novit* principle where judges are considered to understand the law.⁴ The advocate profession has a very important role, namely in terms of litigation and proceedings in the courtroom, this is certainly closely related to the legal skills and insights possessed by an advocate in terms of providing legal aid services to each of his clients.⁵

In Article 15 of Law Number 18 of 2003 concerning Advocates, advocates are free in carrying out their professional duties to defend cases that are their responsibility by adhering to the professional code of ethics and legislation. Then, in Article 26 paragraph 2 of Law No. 18 of 2003 concerning Advocates, it is also regulated that advocates must comply with and comply with the code of ethics of the advocate profession and the provisions concerning the Honorary Council of Advocates' Organizations. The advocate profession has a code of ethics that contains norms about morality how to carry out one's practice as an advocate during court proceedings. With this code of ethics, it is hoped that the independence of advocates can be limited and monitored so as not to violate the public interest. Furthermore, the code of ethics can also be a motivation to encourage people to care and be critical of the promotion and respect of law and human rights.

The advocate profession is a very noble profession, advocates have a very important role in providing legal assistance to people in need. However, in various cases that have occurred, it shows that when carrying out their duties there are several advocates who violate the code of ethics. An example of ethical violations reported by advocate Alvin Lim as the complainant against advocate Welfrid Kristian as a defendant to the Jakarta Peradi Honorary Council Assembly. The panel found Welfrid Kristian guilty for violating Article 5 letter c of the Indonesian Advocates Code of Ethics Book IV Relations with colleagues.

To determine whether the advocate's actions violate the code of ethics or not, you can file a complaint with the Honorary Council of the Advocates Organization. Based on Article 26 *jo*. Article 7 and Article 8 of Law No. 18 of 2003 concerning Advocates, if in the Honor Council session, it is proven that the advocate violates the code of ethics, then the person concerned can be subject to action starting from a warning, temporary dismissal, or permanent dismissal from the advocate profession.

This paper itself will discuss the professional ethics of advocates in court proceedings where in concept an advocate is an officer of the court or in the language of Law No. 18 of 2003 concerning Advocates, advocates are law enforcers. As law enforcers, ethical

⁴ Manan, Abdul. 2001. Penerapan Hukum Acara Perdata di Lingkungan Peradilan Agama. Jakarta: Yayasan Al-Hikmah, p. 47.

⁵ Nurwandi, Andri. 'Problematika Profesi Advokat dalam Beracara di Lingkungan Pengadilan Agama', *Jurnal Penelitian Medan Agama*, 9(1), 2018: 47-66.

enforcement from the perspective of the advocate profession is very contextually discussed and therefore the following discussion will be followed on how the role and function and sanctions of the advocate profession in upholding the ethics will be.

2. Method

The research method used by the researcher is a normative legal research method, with a statutory and case approach. Normative research is research aimed at written regulations so that this research is closely related to the literature because this normative law requires primary and secondary data.⁶ In this study, primary and secondary legal materials were used. the technique of collecting legal materials uses literature and document studies, and is analyzed by identifying facts, interpretations, and legal reasoning in a systematic, logical, and juridical manner.⁷

3. Results and Discussion

3.1. Duties and Obligations of Advocates Based on Law No. 18 Year 2003

As a profession that provides legal assistance to the community, advocates have duties and obligations that have been regulated in accordance with applicable regulations in Indonesia. Based on Article 1 of Law No. 18 Year 2003 it is explained that an advocate is a profession that provides legal aid services, where legal assistance can be provided inside or outside the court. Basically, according to Denny Kailimang that advocates also have the right to defend clients by obtaining information, data documents or in other forms, where the data or documents can be obtained from the government or from other parties needed in terms of defending their clients.⁸

The advocate profession plays an important role, namely in terms of litigation and proceedings in the court room, this is certainly closely related to the legal skills and insight possessed by an advocate by profession in terms of providing legal aid services to each of his clients. The provision of legal aid services by an advocate to his client certainly does not only exist at one level of justice, but the legal aid can be provided by an advocate to his client from the first level, namely in the district court to the next level when submitting an appeal or legal action.

Provisions related to the duties, rights and obligations of advocates are regulated in Article 14 of Law No. 18 of 2003, which explains that advocates have duties, among others, to assist, provide legal advice, exercise power of attorney, defend and carry out other legal actions for the benefit of clients, represent, provide legal assistance. Based on the Law, provisions have also been set which explain that an advocate has obligations, including:

- 1) Advocates are not allowed to be discriminatory or differentiate clients based on their descent, social background, race, ethnicity or religion;
- 2) Have an obligation to keep any client information related to the profession confidential, unless the law requires otherwise;
- 3) Advocates have an obligation to provide free legal aid to underprivileged communities;
- 4) Obliged to submit to and comply with the code of ethics of advocates;

⁶ Soejono and Abdurahman, H. 1999. Metode Penelitian Suatu Pemikiran dan Penerapan. Jakarta: Rineka Cipta.

⁷ Soekanto, Soerjono and Sri, Mamudji. 1995. Penelitian Hukum Normatif Suatu Tinjauan Singkat. Jakarta: Raja Grafindo.

⁸ Rozi, Mumuh M. 'Peranan Advokat sebagai Penegak Hukum dalam Sistem Peradilan Pidana Dikaji menurut Undang-Undang Nomor 18 Tahun 2003 tentang Advokat', *Jurnal Mimbar Justitia*, 7(1), 2015: 628-647.

- 5) Have the right to a relationship with a client, including in terms of protection of files or documents against confiscation and protection against eavesdropping on lawyers' electronic communications; and
- 6) Advocates are entitled to receive an honorarium.

Even before carrying out his profession as an advocate, every advocate is required to take an oath of office as regulated in Article 4 paragraph 2 of Law No. 18 of 2003, which explains that in the pronunciation of the oath the advocate must say, among others:

- 1) Promise to always uphold and practice Pancasila as the basis of the state and the Constitution of the Republic of Indonesia;
- 2) Promise that to obtain the profession of an advocate, directly or indirectly by using any name or method, not to give or promise anything to anyone;
- 3) Promise to act honestly, fairly and responsibly based on law and justice;
- 4) Promise that in carrying out professional duties inside or outside the court will never give or promise anything to judges, court officials or other related officials with the aim of winning the client or his party;
- 5) Promise to always maintain behavior and will carry out obligations as an advocate in accordance with honor, dignity and responsibility; and
- 6) Promise that he will never refuse in terms of defending or providing legal aid services in a case that is part of his responsibilities as an advocate.

Based on several matters related to the duties, rights and obligations of advocates in dealing with the legal interests of their clients, it can be explained that basically the advocate profession is a very respectable profession or in other terms it can be said to be *officium nobile*, so that in carrying out its profession, advocates certainly have very important obligations, sincere and noble in carrying out his work. In carrying out their duties, of course, advocates have the principle of devoting themselves to providing legal aid services to people who need these services, which of course always goes by prioritizing the principle of justice, is discriminatory in every case it handles (according to the Minutes of the Court Session Number 015/PUU-IV/2006 regarding the Judicial Review Advocate).⁹ When providing assistance services to his clients, an advocate is not allowed to violate existing and predetermined laws, it is not permissible and not justified to harm the interests of others.

Advocates have an obligation to provide legal aid services to their clients in the form of playing a role as a companion, providing advice on legal problems that are being experienced, carrying out the interests of their clients based on a power of attorney, besides that advocate can also act as a mediator for the parties in dispute. about a legal case or issue. Advocates are also entitled to receive honoraria in carrying out their work. On the other hand, in carrying out his profession, he is entitled to receive profits or payments from cases handled.

3.2. Code of Ethics for the Advocate Profession

In carrying out their profession, of course, advocates are always supervised by a code of ethics, the regulatory provisions related to the code of ethics for advocates are regulated in Law No. 18 of 2003 concerning Advocates and are also specifically regulated in the Advocates' Code of Ethics.

⁹ Wicaksono, Franciscus Xaverius Raditya. 'Penegakan Kode Etik Profesi Advokat dalam Pendampingan Klien Perkara Pidana Korupsi', E-Journal Universitas Atma Jaya Yogyakarta, see in https://e-journal.uajy.ac.id/6644/1/jurnal.pdf .

Article 14 of Law No. 18 of 2003 explains that: "Advocates in issuing statements or opinions to defend cases in court sessions that have become their responsibility shall continue to adhere to the professional code of ethics and laws and regulations." This implies that even though in defending cases, advocates are free to express opinions but must still adhere to the professional code of ethics.

In addition to Law No. 18 of 2003 concerning Advocates, the provisions of the code of ethics are regulated in more detail in the "Code of Ethics for Advocates" which was ratified on May 23, 2002, signed by the Indonesian Advocates Working Committee:

- 1) Indonesian Advocates Association abbreviated as IKADIN;
- 2) Indonesian Advocates Association abbreviated as AAI;
- 3) Indonesian Legal Advisors Association abbreviated as IPHI;
- 4) Association of Indonesian Legal Consultants abbreviated as AKHI;
- 5) Capital Market Legal Consultant Association;
- 6) Indonesian Bar Association abbreviated as SPI; and
- 7) Association of Indonesian Advocates and Lawyers abbreviated as HAPI.

The Advocate's Code of Ethics, precisely in Article 3, explains the rules regarding the personality of an Advocate that must be possessed, including:

- 1) Advocates have the right to refuse to provide legal assistance and advice to anyone who needs legal services or assistance while still considering that this is not in accordance with their expertise and is against their conscience. However, advocates have no right to refuse due to differences in race, ethnicity or religion;
- 2) Advocates in carrying out their duties aim to further enforce law, justice and truth, not merely to get material rewards;
- 3) Advocates in carrying out their profession are free and independent because they are not influenced by anyone and also advocates are obliged to fight for human rights in the Indonesian rule of law;
- It is obligatory for advocates to develop a sense of solidarity among their professional colleagues;
- 5) It is obligatory for advocates to provide legal defense and assistance to their colleagues who are accused or suspected of committing a criminal case either at their request or at the appointment of their professional organization;
- 6) Advocates are not allowed to do other work so that it can harm the degree, dignity and freedom of advocates;
- 7) As a respectable profession, advocates must always uphold their profession;
- 8) In carrying out the advocate profession, it is obligatory to be polite to all parties but also to maintain the rights and dignity as an advocate; and
- 9) Advocates who have been appointed and occupy a state position, whether Executive, Legislative or Judiciary, are never allowed to practice and are not allowed to be named by any office or by anyone in an ongoing or processed case.

Article 4 of the Advocate's Code of Ethics explains that in carrying out his profession an advocate must have a good relationship with his client, the relationship is with the following provisions:

- 1) In civil cases, advocates must prioritize the settlement by peaceful means;
- 2) It is not permissible for an advocate to provide information that could mislead his client regarding the case he is facing;
- 3) It is not justified for an advocate to guarantee his client that the case being handled will win;

- 4) Advocates are required to consider the ability of their clients to determine the size of the honorarium;
- 5) Advocates are not justified in charging their clients with unnecessary fees;
- 6) Advocates are not allowed to distinguish between attention in handling cases that are free from cases that receive fees;
- 7) An advocate is required to refuse to take care of a case based on his belief that there is no legal basis;
- 8) Advocates are obliged to keep the secrets that are notified by their clients and are obliged to keep the secrets until the end of the relationship between the Advocate and his client;
- 9) It is not justified for an advocate to let go of a task that has been assigned to him where it does not benefit his client or while on duty that will cause irreparable harm to the client;
- 10) When managing the interests of two or more parties, the advocate is required to resign because it is feared that it may create a conflict of interest between the parties concerned; and
- 11) Against clients, Advocates are recognized for their retention rights as long as it does not harm the interests of their clients.

The Advocate's Code of Ethics also applies when handling cases, in Article 7 it has been regulated in detail regarding the provisions for advocates when acting in handling cases, including:

- 1) Letters sent by the advocate to his colleagues in a case can be shown to the judge as deemed necessary, except for the letters in question which are made with the note "sans prejudice";
- 2) Correspondence or content of talks between advocates in an unsuccessful reconciliation effort, is not justified as evidence before the court;
- In the civil cases handled, the advocate can only contact the judge when he is with the advocate of the opposing party, and when submitting a letter including an "ad informandum" it is required that a copy of the letter has been sent to the advocate of the opposing party;
- 4) In the criminal case being handled, the advocate can only contact the judge when he is with the public prosecutor;
- 5) It is not justified for advocates to teach witnesses and even influence witnesses who have been proposed by opposing parties in civil cases and by the public prosecutor in criminal cases;
- 6) The relationship with someone about a certain case when he has appointed one of the advocates can only be done to his advocate if the advocate is aware of it;
- 7) In both civil and criminal cases, advocates are free to issue opinions or statements in a court session because the defense of a case that has become their responsibility remains proportional and not excessive, either in an open trial or a closed trial;
- 8) For someone who can't afford it, advocates have an obligation to provide legal assistance for free (*pro deo*); and
- 9) Advocates are required to submit to their clients the notification of court decisions regarding the cases being handled on time.

Furthermore, in Article 8, there are several other provisions relating to the Advocate's Code of Ethics that must be obeyed by advocates in carrying out their profession, including:

- 1) Advocates are an honorable and noble profession (*officium nobile*), because in carrying out their profession they are equal to prosecutors and judges because of this, advocates are also under the protection of the law, the Act and the Advocate's Code of Ethics;
- 2) It is prohibited for Advocates to place advertisements or put up signboards in excessive sizes and shapes in order to attract public attention;
- 3) It is not justified to establish an advocate's office or its branch in a place so that it can harm the dignity and position of the advocate;
- 4) It is not permissible for an advocate to allow someone who is not an advocate to introduce himself as an Advocate and also put his name on the nameplate of the office as an advocate;
- 5) Advocates are not justified in allowing their unqualified employees to take care of cases and provide legal advice to clients both verbally and in writing;
- 6) It is not justified for advocates to seek publicity in the mass media just to attract people's attention about their actions regarding a case being handled, unless it is intended for every Advocate to be obliged to fight for upholding legal principles;
- 7) Advocates are allowed to resign when differences arise from the case being handled and no agreement is reached on how to handle the case; and
- 8) It is not justified for an advocate to handle and hold cases that are examined at the court where he last worked for 3 years before he quits as a judge or registrar at the court.

3.3. Sanctions for Advocates Who Violate the Advocate's Code of Ethics in Proceedings in Court

The advocate profession is a very noble profession or job, advocates have a very important role in providing legal assistance to people in need.¹⁰ However, in various cases that have occurred, it has been shown that while carrying out their duties there are several advocates who violate the Advocate's Code of Ethics. So, to handle and overcome this, a solution or recommendation is needed, one of the right recommendations is the enforcement and application of sanctions for advocates who violate the code of ethics. In Article 6 of Law No. 18 of 2003 concerning Advocates, Advocates may be subject to action on the grounds:

- 1) Advocates ignore and neglect the interests of their clients;
- 2) Advocates behave and act inappropriately to their opponents or colleagues;
- 3) Advocates behave, behave, speak, or show attitudes and issue statements that are not appropriate to the law, statutory regulations, or the court;
- 4) Advocates perform actions that are contrary to their obligations, their honor, and the dignity of their profession;
- 5) The advocate commits a violation of the laws and regulations or a disgraceful act; and
- 6) Advocates violate the oath or promise of an advocate or the code of ethics of the advocate profession.

Basically, more specific regulation is needed regarding the disgraceful behavior of advocates in court. Special rules are needed, as we know that disgraceful acts are increasingly widespread and in fact can also be carried out by an advocate, while on the other hand the authority in the court must always be maintained as well as possible. Based on this, the law plays a very important role in ensuring that a rule changes regularly.¹¹

¹⁰ Normalitasari, Yustisiana. 2013. Peranan Advokat dalam Perlindungan Hukum Bagi Tersangka dan Terdakwa. Yogyakarta: UIN Yogyakarta.

¹¹ Kanter, EY. 2001. Etika Profesi Hukum. Jakarta: Storia Grafika.

With the fact that there are more and more actions that can be said to be classified as "contempt of court" every action or deed, whether active or passive, behavior, attitude, attitude or speech both inside and outside the Court which is intended to undermine the authority, dignity and honor of the judicial institution. Basically, Advocates are obliged to uphold and always obey all codes of ethics that have been regulated either in Law Number 18 of 2003 concerning Advocates or specifically regulated in the Advocate Code of Ethics document. Disgraceful behavior or violations in the Advocates' Code of Ethics committed by advocates in court or during proceedings in the judicial process are contained in the code of ethics which has clearly and clearly regulated the sanctions that can be imposed when there is a violation of the Advocate's Code of Ethics in accordance with Article 16, namely:

- 1) The penalty in the decision, which can be in the form of: ordinary warning, stern warning of temporary suspension for a certain time, dismissal from membership of a professional organization;
- 2) The imposition of sanctions by considering the severity or severity of the nature of the violation of the Advocate's Code of Ethics:
 - a. ordinary warning, can be given if the nature of the violation is not serious;
 - b. a strong warning can be given if the violation is serious or because of repeating a violation of the code of ethics and or not paying attention to the warning sanctions that have been given;
 - c. temporary dismissal for a certain time can be given if the nature of the violation is serious, does not heed and does not respect the provisions of the code of ethics or if after receiving sanctions in the form of a strong warning they still repeat violations of the code of ethics; and
 - d. dismissal from membership of a professional organization can be given if a violation of the code of ethics is committed with the intent and purpose of damaging the image and honor of the advocate profession which must be upheld as a noble and honorable profession.
- 3) The provision of sanctions in the form of temporary dismissal for a certain time must be followed by a prohibition on practicing the profession of an advocate outside or before the court.

The provisions of the code of ethics for the advocate profession are several obligations that must be obeyed by advocates.¹² All the rules and regulations related to the code of ethics must of course be implemented and obeyed by all advocates from any advocate organization in Indonesia. There are several general things contained in the code of ethics of advocates, including provisions related to the personality of advocates, the relationship or relationship of advocates with colleagues, the relationship of advocates with their respective clients, the way advocates behave in handling cases, implementation of the advocate code of ethics, position, position and also the role of the honorary council.¹³

Article 7 point g of Indonesian Advocates' Code of Ethics stipulates that the freedom of an advocate to express his opinion in the courtroom is required to be carried out and expressed proportionally or in other words, the advocate must not act excessively while in the courtroom. Following up on the disgraceful behavior carried out by advocates in carrying out their profession while in the courtroom, it is certainly expected and a firm role is needed by the honorary council, because basically the honorary council has the authority to examine and also adjudicate cases in terms of violations of the code of ethics by advocates. So that

¹² Sumaryono, E. 1995. Etika Profesi Hukum: Norma-norma Bagi Penegak Hukum. Yogyakarta: Kanisius.

¹³ Kadafi, Binziad., et. al. 2002. Advokat Indonesia Mencari Legitimasi: Studi tentang Tanggung Jawab Profesi Hukum di Indonesia. Jakarta: Pusat Studi Hukum dan Kebijakan Indonesia.

every time there is a violation of the code of ethics committed by advocates, the party who knows should immediately report or submit a complaint to the Supervisory Board so that it can be followed up, as well as further, the Supervisory Board must also be alert and responsive to every report and complaint it receives to be followed up immediately so that the Advocates who violate the code of ethics can be given sanctions, and the witness can have a deterrent effect.

Based on the description above, the application and enforcement of strict sanctions is felt to be a solution and recommendation to overcome the problem of violations of the code of ethics by advocates, because legally there are sanctions that can be imposed on advocates who violate the code of ethics. Considering that the court has an important role for the community as a suggestion and a way to claim their rights so that the law can be enforced by creating justice. Therefore, the court must maintain its prestige so that neither party is allowed to take disgraceful actions, whether to protest strongly, make noise in court, or in any form that can be categorized as violating the advocate's code of ethics.

4. Conclusion

Ethics of the legal profession in Indonesia should be enforced, this is one way to balance the law in Indonesia. There are various kinds of legal professions in Indonesia, ranging from judges, prosecutors, advocates, and so on. This study specifically discusses the ethics of the legal profession for advocates or legal advisors, where every advocate in court proceedings is not arbitrary against the rules. This is regulated in the advocate's code of ethics which contains the manner of behaviour and ethics that must be carried out as an advocate both inside and outside the trial. The Advocate's code of ethics also applies when handling cases. This is stated in Article 7 which is detailed regarding the provisions for Advocates when acting in handling cases. If an advocate in the proceedings violates the code of ethics, he will be subject to sanctions based on applicable regulations. Violations committed will be subject to sanctions such as regular warnings, stern warnings, temporary suspension for a certain time, and dismissal from membership of professional organizations.

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Conflict of Interest Statement:

The author declares that the research was conducted in the absence of any commercial or financial relationships that could be construed as a potential conflict of interest.

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