

# In The Client's Defense, The Effectiveness of Advocacy's Immune Rights

Zecky Alatas<sup>1</sup>, Faisal Santiago<sup>2</sup>  
{eightysix8608@gmail.com}

Universitas Borobudur, Jakarta, Indonesia<sup>12</sup>

**Abstract.** Advocates' Law No. 18 of 2003 is for Equalize the position of the Advocate profession with that of other legal professions. Advocates are a critical component in the search for material truth in the judicial process, particularly in criminal cases. from the client's perspective Protection is another goal of the settings. The community is protected from substandard legal services given by advocates. The right to immunity is also provided by Law No. 18 of 2003 on Advocates. (immunity) to carry out his professional responsibilities, as well as the interests of clients defended. The immunity rights of advocates are governed by Law no.Advocates' Law No. 18 of 2003 The author can conclude that in the copy of the interim decision on this case Number: 31/Pdt.G/2004/PA.GS concerning advocate Indra Syahfri's inheritance rights, SH has exercised their right of immunity in dealing with this case by express opinions and issuing documents in the form of land titles for the late Muhadi with certificate Number M. 2628 dated 20-02-2003 above the late Muhadi's name.

**Keywords:** Covid 19; Notary; Dedies; Pandemic

## 1 Introduction

In the legal world, of course, everyone is no longer foreign to various law enforcement professions such as police, prosecutors, judges, and advocates who are commonly known as lawyers or lawyers in English, legal advisers, defenders, legal consultants, and so on, by the public at the time. generally. The role of lawyers, advocates or attorneys is not a subjective one, or a role that only a few people who work as advocates want. The role is clearly needed and objectively needed. This is explicitly acknowledged in the weighing section, Letter b of Law Number 18 of 2003 concerning Advocates which states: "that the judicial power which is free from all interference and influence from outside, requires an advocate profession that is free, independent and responsible, for the implementation of a judiciary that is honest, fair, and has legal certainty for all justice seekers in upholding law, truth, justice, and human rights".[1]

It is very important to show the public what the ideal law really looks like, therefore the task of an advocate in a judicial process is to enforce the law, not just seek victory. Advocates must be dignified, respectable, intelligent, courageous, networked, dedicated, and hardworking. Even more than that, advocates must have a love for the profession they are involved in. The main task of an advocate is to enforce the law in order to defend justice seekers, regardless of the risks to their profession.

In practice it is also known as a Legal Consultant. Can mean a person who conducts or provides advice and defense on behalf of another person who relates to a client with the settlement of a legal case. The term lawyer connotes the services of a legal profession that plays a role in a dispute that can be resolved outside or inside a court session. In the legal profession, the term procedural law is known which is related to the regulation of procedural law in the Criminal Procedure Code and the Civil Procedure Code.[2]

Lately, it is not uncommon to have debates within the community and among advocates themselves regarding the immunity rights possessed by an advocate or lawyer, specifically regarding the immunity rights of advocates which are the benchmark for an advocate in carrying out their duties according to the power given by the client in legal defense in cases which he handled. As we have seen in practice, there are not a few advocates who are complained by parties who object to the advocate's statement in carrying out their profession to the Police, there are also those who are examined and arrested by the Police, and even become convicts based on court decisions when defending the interests of their clients.

In carrying out their profession, advocates are always related to the immunity rights attached to them when carrying out their profession in defending or assisting justice seekers. This paper wants to explain about the immunity of advocates against the law in carrying out their profession.

## **2 Research Methods**

This paper uses a qualitative approach with the type of normative legal research. Normative legal research is referred to as library research or document study because this research is conducted or aimed only at written regulations or other legal materials.[3] In essence, research is carried out by examining library materials or secondary data consisting of primary legal materials, secondary legal materials, and tertiary legal materials. This study uses data analysis techniques with deductive logic.[4] Deductive logic or processing legal material in a deductive way, namely explaining something general in nature and then drawing it to more specific conclusions.[5]

## **3 Results and Discussion**

The right to immunity in the advocate profession is nothing new. However, what is interesting is the development of the right to immunity itself. At first, the immunity rights of advocates referred to Article 16 of Law Number 18 of 2003 concerning Advocates that advocates could not be prosecuted both civilly and criminally in carrying out their professional duties in good faith for the defense of clients in court proceedings. [6]

In this case, the immunity of advocates is always limited by good faith, which is defined in the Elucidation of Article 16 of the Advocate Law, namely 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. Good faith that is objective in this case is an action that must be guided by the norms of propriety, namely what is considered appropriate in society. From a subjective perspective, it means the honesty and inner attitude of an advocate when carrying out their duties.

If referring to the understanding above, it is precisely between obstruction of justice and the right of immunity that advocates have the same elements in their intersection, namely both guiding and upholding the rule of law and the function of the judiciary, both formal and material.

Logically, if two things have the same elements but contradict, it means that one of them is wrong. Obstruction of justice is easily verified if obstruction of justice and good faith have in common, namely the commitment to law enforcement.

Obstruction of justice is generally accepted and objective in nature as an action that has been formulated in the norm so that it can be tested with a good faith component, both objectively and subjectively. Objectively, whether what the advocate is doing is considered appropriate in society and subjectively whether the actions taken by the advocate have honesty in law enforcement practice considering that the Law on Advocates states that advocates are law enforcers. The latest phenomenon is shifting immunity to impunity. As for impunity itself according to the dictionary is freedom from punishment.[7]

One of the instruments to avoid the shift from immunity to impunity is the politics of memory which uses a recording and remembering approach as a collective strategy on how objective truth can be obtained by upholding justice. Impunity is not a right owned by advocates as law enforcers. However, that right is immunity. Immunity rights are given to support the optimal role and duties of advocates in the context of law enforcement.

The right of immunity is granted to advocates in connection with the role and duties of advocates as law enforcers. Furthermore, obstruction of justice is an act against the law which of course does not have good intentions. If obstruction of justice occurs and the right of immunity functions, then what happens is impunity.

Law Number 18 of 2003 was made to realize the principles of the rule of law in the life of society and the state as stated in Article 1 of the 1945 Constitution of the Republic of Indonesia which states explicitly that the Indonesian state is a state of law, which demands, among other things, there is equality for everyone before the law (equality before the law).[8] Therefore, everyone has the right to recognition, guarantee, protection, fair legal certainty, and equal treatment before the law.

The role and function of an advocate as a free, independent, and responsible profession is important, in addition to the judiciary and other law enforcement agencies such as the police, prosecutors, and the judiciary. Therefore, every advocate must maintain the image and dignity of the honor of the profession, and be loyal to and uphold the code of ethics and professional oath whose implementation is supervised by the Honorary Council as an institution whose existence has been and must be recognized by every advocate regardless of which professional organization he comes from and become a member, which at the time of pronouncing the oath of profession implied acknowledgment of and compliance with the applicable code of ethics for advocates.

Article 1 of Law Number 18 of 2003 concerning Advocates, explains that an advocate is a person who has the profession of providing legal services, both inside and outside the courts who meet the requirements based on the provisions of this Law. [8] Based description Based on this, it can be seen that the scope of the advocate covers the profession of work related to the court, also in Law No. 18 of 2003 Te Regarding Advocates, emphasizes that advocates are people who carry out their work both inside and outside the court. 14 As for Article 1 paragraph 13 of Law Number 8 of 1981 concerning the Code of Criminal Procedure, it is stated that "a legal advisor is a person who has fulfilled the requirements determined by or based on the law to provide legal assistance.

Through the legal services provided, advocates carry out their professional duties to uphold justice together with the law for the benefit of the justice-seeking community, including efforts to empower the community to realize their fundamental rights before the law. Advocates as an element of the judicial system are one of the pillars in upholding the rule of law and human rights. In addition to Law Number 18 of 2003 concerning Advocates, the advocate profession

itself is regulated and bound by the Indonesian Advocate Code of Ethics which was ratified on 23 May 2002.

The thing that underlies the existence of this regulation is that advocates as an honorable profession (*officium nobile*) who carry out their profession are under legal protection. The law, the code of ethics, has freedom based on the honor and personality of an advocate who adheres to independence, honesty, confidentiality, and openness. The axis of all these arrangements is to ensure and guarantee that the profession of an advocate as an honorable profession (*officium nobile*), is truly felt in real terms in its work in the midst of society. He is honored because this profession carries out knowledge-based work and is protected by a code of ethics to serve the community in a professional, independent, and accountable manner.

It is the knowledge, code of ethics, professional, independent, and accountable aspects that distinguish the honor of the advocate profession from ordinary jobs. A professional will work with high skills, work on the basis of noble intentions, uphold virtue values, work under the control of a code of ethics, not demean himself as a hired person, and take care of the abundance of honor. Law enforcement is certainly related to law enforcement because this is a series of steps for law enforcement officers to take legal action against each violation that occurs. In this case what is meant by law enforcement itself is the police, prosecutors, judges, as well as lawyers or advocates.

To protect the dignity and importance of the advocate profession, the law provides for the right of immunity, so that advocates can be free in carrying out their profession in order to carry out the defense and other tasks related to the advocate profession itself. As a grant of rights, of course, there are restrictions on moral values, the essence of good faith, honesty, greater legal interests, and responsibility, because advocates must be loyal as the contents of the advocate's professional oath are loyal to the state, the 1945 Constitution, Pancasila and the values of honesty as stated in the code of ethics of the advocate profession.

In addition to the affirmation in the Law of the Republic of Indonesia Number 18 of 2003 concerning Advocates, in 2012 the Head of the Indonesian National Police signed a memorandum of understanding with the General Chairperson of the National Leadership Council of the Indonesian Advocates Association (Peradi). The purpose of the memorandum of understanding is mutual respect as fellow law enforcers, among others, if an advocate is summoned as a witness or suspect by the Indonesian National Police, the summons shall be submitted through the National Leadership Council of the Indonesian Advocates Association (Peradi).

Advocates need an immunity right in carrying out their professional duties. In international law, it is known that there are three provisions relating to the issue of the immunity rights of advocates, namely: Basic Principles on The Rule of Lawyers, which states that the government is obliged to become an advocate in carrying out his professional duties free from all forms of intimidation and intervention, including legal demands. The International Bar Association (IBA) Standards for Independence of Legal Profession more broadly defines that advocates are not only immune from criminal and civil lawsuits, but also administrative, economic, intimidating, and so on in carrying out their professional duties to defend and provide legal advice to their clients. legally. The World Conference of Independence of Justice in Montreal in 1983 declared demand for a fair system in the administration of justice that could guarantee the independence of advocates.[9]

Therefore, to avoid the criminalization of advocates, the Law of the Republic of Indonesia Number 18 of 2003 concerning Advocates provides protection for advocates as immunity rights. This is stipulated in Article 16 of the Law of the Republic of Indonesia Number 18 of 2003 concerning Advocates which reads as follows: "Advocates cannot be prosecuted both civilly

and criminally in carrying out their professional duties in good faith for the benefit of the client's defense in court proceedings."

The guarantee of freedom and immunity given to advocates is a guarantee against any party who exerts pressure, threats, manipulation, obstacles, intimidation, and other actions or treatments that are degrading to the dignity of the advocate profession when carrying out their professional duties. All steps that are in the form of resistance, especially if they are carried out in good faith, namely for the sake of upholding justice based on the law to defend the interests of their clients, are absolutely protected by the right of immunity.

#### **4 Conclusion**

The right to immunity is regulated in Article 16 of the Advocate Law and strengthened by the decision of the Constitutional Court (MK) which states that this right to immunity applies, both inside and outside the trial. The immunity of advocates is always limited by good faith, which is defined in the Elucidation of Article 16 of the Law on Advocates, namely 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. The right of immunity is granted to advocates in connection with the role and duties of advocates as law enforcers.

#### **References**

- [1] T. Y. Parera, *Advokat dan Penegakan Hukum*. Yogyakarta: Genta Publishing, 2016.
- [2] P. M. Marzuki, *Pengantar Ilmu Hukum*. Jakarta: Kencana Prenadamedia Group, 2006.
- [3] P. M. Marzuki, *Penelitian Hukum (Edisi Revisi)*. Jakarta: Prenada Media Group, 2014.
- [4] I. M. P. Diantha, "Metodologi Penelitian Hukum Normatif," *Teor. Metodol. Penelit. a.*, 2017.
- [5] J. Ibrahim, "Teori dan Metode Penelitian Hukum Normatif," Bayu Media, Malang, 2006.
- [6] H. V Sinaga, *Dasar-Dasar Profesi Advokat*. Jakarta: Penerbit Erlangga, 2011.
- [7] M. Fuady, *Profesi Mulia (Etika Profesi Hukum Bagi Hakim, Jaksa, advokat, Notaris, Kurator, dan Pengurus)*. Bandung: PT. Citra Aditya Bakti, 2015.
- [8] "Undang-Undang Nomor 18 Tahun 2003 tentang Advokat. Lembaran Negara Nomor 49 Tahun 2003, Tambahan Lembaran Negara Nomor 4288."
- [9] L. Tedjosaputro, *Etika Profesi dan Profesi Hukum*. Semarang: Aneka Ilmu, 2003.