

DUALISM TOWARDS REGULATIONS ON THE SUPERVISION OF ADVOCATES IN INDONESIA

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ABSTRACT

Advocate is a noble profession that provides assistance to justice seekers. Related arrangements are regulated through Law No. 18 of 2003 and the Advocate's Code of Ethics. However, in both regulations there are inconsistent articles regarding the supervision of advocates. The purpose of this research is to find out how to resolve the different rules regarding the supervision of advocates based on Law No. 18 of 2003 and the Code of Ethics of the Association of Indonesian Advocates Congress. This research is normative juridical research that examines regulations related to the supervision of advocates. The data obtained in this study were sourced from literature studies and interviews. The collected data was then analyzed prescriptively. The results of this study are the Lex Specialist derogate Lex Generalis principle cannot be used in this case so that what can be used is the Lex Superior derogate Legi Inferiori principle because in this principle the highest law can ignore laws with lower status so that the code of ethics itself does not have a position in Law No. 12 of 2011, then advocates should be more subject to the existing laws and regulations.

Keywords: Supervision, Advocate, Code of Ethics.

INTRODUCTION

Today, there is an increasing number of injustices in law enforcement in this country, this is related to a lack of knowledge (Taufik, 2017) and the lack of concern for our society towards the applicable law, causing many people to experience problems when they are exposed to or affected by legal problems. (Maryani, 2015; Ringgi et.al, 2017, Wahdaningsih et.al, 2017, Nur et.al, 2020). People's ignorance of the law causes many problems that are often exploited by perpetrators of law abuse who understand the law, one of which is the land case (Wati, 2021) where other parties can claim what is not their right because they can manipulate data that makes it legal. before the law (Agustino, 2020).

Based on these events, a profession arose that aimed to protect the rights of justice seekers so that there would be no abuse of rights. This profession is a profession with a legal education background which we can usually call an advocate (Ramadhani, 2020). In general, an advocate can be said as a profession in the field of law who has attended legal education with the aim of enforcing the law fairly, correctly, and upholding human rights as regulated in Law No. 18 of 2003. The definition of the Advocate Profession can clearly be found in Article 1 Paragraph 1 of Law No. 18 of 2003 which regulates as follows:

"An advocate is a person whose profession is to provide legal services, both inside and outside the court, who meet the requirements based on the provisions of this Law."

Sudikno Mertokusumo is of the opinion that the position of a lawyer or advocate is subjective because he is appointed by one of the parties to represent him in court and his assessment is very subjective because he must defend the interests of his client. However, it should be remembered that the main function of a lawyer is to help smooth the settlement of cases by upholding the values of Pancasila, the law and the principles of justice (Nugroho, 2019). In addition, it is also in accordance with the advocate's code of ethics that advocates do not have to prioritize the interests of their clients, but rather prioritize the rule of law, justice and truth (Handayani, 2018). In carrying out their role as legal service providers, advocates have duties and functions in defending the interests and rights of their clients, namely providing legal assistance, assisting, defending, and taking other legal actions for the legal interests of their clients based on good faith (Taufik, 2013; Setyowati, 2018; Sutrisni, 2015). In providing legal assistance, an advocate may not look at who will be his client. In addition, an advocate has the freedom to carry out his professional duties as long as it does not conflict with Law No. 18 of 2003 and the Advocates' Code of Ethics, in which they must uphold the responsibilities of each Advocate and the professional organization that oversees it to achieve Nawacita from the Advocate Profession. In Law No. 18 of 2003, provides guarantees for freedom of practice, namely that an advocate may not be punished or threatened with punishment, whether it is criminal law, civil law, administrative law, as well as sanctions or other intimidation in their work to protect and advise their clients. Although an advocate has the freedom to carry out his functions and duties in the judicial process in order to defend the interests of his client, it is not only an advocate that can be free from all lawsuits (Tampi, 2018). Advocates are not a profession that is immune to the law, but rather an advocate is a noble and honorable profession in carrying out their professional duties (Chairani, 2018). In carrying out their professional duties, advocates must be guided by Law No. 18 of 2003 and the Indonesian Advocates' Code of Ethics which is always monitored and evaluated by the Honorary Council of the Indonesian Advocates Congress (KAI).

The Indonesian Advocate's Code of Ethics is the highest law in carrying out the profession as an Advocate, which in addition to guaranteeing and protecting but also imposing an obligation on every advocate to be honest and responsible in carrying out his profession both to clients, courts, the state, or society, and especially to himself. Because the code of ethics is the highest law, every advocate must be able to maintain his obligation to uphold the rights of the defendant/suspect as his client in order to uphold legal protection and have a moral responsibility for the honor of his profession. The Advocate's Code of Ethics serves as a benchmark for whether an advocate has violated the code of ethics or acted against the law in the law enforcement process. All behavior, actions, and words carried out by advocates are regulated in it. In carrying out his profession, the author often finds violations committed by an advocate that are contrary to the obligations, honor, or dignity of his profession, such as:

- 1) Provide information that can mislead the client regarding the case he is taking care of.
- 2) Provide assurance to the client that the case he handles will win.
- 3) Determine the unreasonable honorarium that charges the client.
- 4) Not maintaining the confidentiality of his client, which is the secret of an advocate's position.
- 5) Meeting the judge without being accompanied by the opposing party's advocate (it is feared that there will be indications of bribery)

By looking at the events above, the Honorary Council in this case the Indonesian Advocates Congress (KAI) must always supervise its members. In carrying out its functions and roles, the Honorary Council has 2 powers, namely as follows:

- 1) The party who has the authority to examine and adjudicate advocates in cases of violations of the Advocate's Code of Ethics.
- 2) The party who has the authority to supervise the Advocate.

When viewed based on the results of interviews conducted at the Indonesian Advocates Congress with Adhitya Anugrah Nasution, he explained that the Indonesian Advocates Congress (KAI) was not in line with Article 13 paragraph (2) of Law No. 18 of 2003 which explains that: "Supervision is carried out on a daily basis by forming a Supervisory Commission formed by the Advocates Organization". The explanation in article 13 paragraph (2) of Law No. 18 of 2003 which explains the implementation of supervision is very contrary to Article 9 Paragraph (2) of the Indonesian Advocates' Code of Ethics regarding the supervision of the implementation of the Advocates' Code of Ethics which is carried out explicitly by the Honorary Council. In addition, in carrying out its role, the Honorary Council only waits for complaints from the litigants/opponent parties as well as complaints from the public. It can be said that the Advocates' Honorary Council performs passive supervision in finding cases of violations of the Advocate's Code of Ethics. If there is a violation of the Advocate's Code of Ethics, the new Honorary Council will determine whether what the Advocate has done is an indication of a violation of the Advocate's Code of Ethics. has been regulated in the Indonesian Advocates' Code of Ethics contained in Article 7 paragraph (1) of the Indonesian Advocates' Code of Ethics. Based on the above background, this paper will examine the different arrangements between Article 13 of Law No. 18 of 2003 and Article 9 of the Code of Ethics of the Association of Indonesian Advocates Congress (KAI).

METHOD

This research is a normative juridical research that examines regulations related to the supervision of advocates (Benuf, 2020). Normative research is research based on existing laws and regulations, then a comprehensive analysis is carried out on the regulations that are the problem and then provides views on these problems. The data obtained in this study were sourced from literature studies and interviews. The collected data was then analyzed prescriptively.

RESULTS AND DISCUSSION

In the event that there are differences in the arrangements that occur between the two existing arrangements, it is necessary to first describe the meaning of the arrangement itself. Regulation if it is based on the Big Indonesian Dictionary is a process, method, act of regulating (Dictionary, 2008). If it is based on a general understanding, self-regulation is a process of establishing a procedure in which the procedure is made by an institution with the aim of creating order among its members. If it is based on the notion of regulation in legal science, it can be divided into general understanding and understanding by experts. According to Maria Farida Indrati Soeprapto, legal arrangements have the same meaning as statutory regulations so that they are tasked with providing a sense of security and order in society. If the definition of regulation is described in general it focuses on everything that is to provide order in a written form (Zaman, 2021).

Violation of the law is a common thing in all parts of the world today. In terms of violating the law itself, of course, every party who violates needs a defense or advice regarding the case that happened to him. In this case, of course, the party who violates a law or regulation requires the enforcement of a law against him so that he still gets the justice he deserves. This is supported by many injustices in law enforcement, so of course it requires someone who understands a law to help when they are affected/affected by legal problems. This is supported by the core in obtaining justice after the reform period to date in Indonesia. Because every party who violates a law needs someone to defend them both inside and outside the court, it needs a party who can help them enforce the rights they should get. This defense is something that must be upheld in the law enforcement process in Indonesia (Lubis, 2014), where the core of law enforcement itself has the intention to adjust between rules, norms, and values in terms of obtaining peace between several parties (Salle, 2020). In terms of defending the law enforcement that occurs, broadly speaking, there are several parties who can help provide enforcement of existing laws in Indonesia. The parties themselves are divided into four types that already exist in Indonesia and are regulated according to the applicable laws, including:

- 1) Attorney is a party who accompanies a person in the defense of the disputing party to be able to proceed in court. In the case of a legal attorney, the party can only hold a law degree or can hold the title of Advocate
- 2) A lawyer is a party who accompanies a person in the defense of a dispute he experiences within the scope of the litigation process.
- 3) An advocate is a person who studies how to proceed with the proceedings and assists and defends disputing parties both inside and outside the court who of course are subject to the code of ethics and are sworn in according to applicable laws and regulations.
- 4) Legal advisor is a party based on existing laws and regulations that directly provide legal assistance to the people.

If it is considered in the previous explanation, it is found that in terms of upholding justice carried out by someone who "understands" there are of course four kinds of parties who can enforce a person's rights in the event of a dispute or violation of the law that occurs. However, at this time, the author will only discuss about parties who can uphold justice by the name of an advocate.

Advocates in Indonesia are a new name that is developing among parties who understand the law. Initially, the term advocate in Indonesia was preceded by the name "legal aid or legal advisor" (Sinaga, 2019). Indeed, literally the use of the name of a legal

advisor is appropriate because the essence of the advocate itself is as a party who accompanies and defends the parties in dispute (Hamzah, 2004).

The change of name between legal advisors to become advocates, initially changed in early 2000. This was due to the change in the goals of advocates, which were previously only general in nature, limited to assisting and defending disputing parties to become more complex and structured in devoting themselves to the public interest. In addition, this is confirmed by the change in nickname where previously it was only limited to the party who defended becoming the party officium nobile or a noble profession because it returned to the goal of fighting for justice and truth, both for social problems to those that were directly related to a human right (Kustaryo), (2018).

Based on this explanation, it can actually be found regarding the notion of an advocate itself where an advocate is someone who studies a law with the aim of fighting for justice and truth for the community because it is a party with a noble profession. In addition, if it is based on the explanation contained in Law No. 18 of 2003 is a person with individual goals who provide legal services or consultation which must comply with requirements both inside and outside the court. This law also becomes the legal basis and umbrella for advocates in carrying out their professional duties. If you want to discuss more deeply about the advocates themselves, of course, you must discuss the function of advocates, the rights and obligations of advocates, the code of ethics that serves as guidelines because advocates are a "noble" profession, the same as judges and supervision, so that of course advocates do not conflict with the code of ethics.

In terms of the function of an advocate, an advocate is required to share his or her abilities to hold proceedings both inside and outside the court itself (Ramdan, 2016). When discussing the activities carried out by an advocate in court activities, advocates have a function to foster a judicial process that is impartial and independent, which is categorized in line with the due process of law. When discussing the function of an advocate outside the court, of course, it must be in line with the previous understanding of an advocate as a party providing an explanation of the law as well as in terms of control and criticism of the parties defended by him (Yahman, 2019).

In addition, because it has a function for inside and outside the court, of course this must be balanced with the responsibilities that must be upheld by every advocate where the responsibility is carried out in terms of

- 1) Legal responsibilities in formal matters through existing judicial channels
- 2) Legal responsibilities in resolving conflicts outside the court, either through mediation or negotiation
- 3) Responsibilities in the legal field regarding providing legal opinions
- 4) Legal responsibilities regarding the application of the law itself

When discussing the responsibilities of an advocate, it is also necessary to discuss the rights and obligations of an advocate as a whole. In terms of the rights of an advocate itself is regulated in Chapter IV Articles 14-17 and in terms of the obligations of an advocate it is regulated in Article 19 of the Law on Advocates No. 18 of 2003 which when summarized can be concluded as follows. In terms of the right of advocates to be free to issue opinions or statements in defense of cases for which they are responsible, free to carry out their professional duties in accordance with the code of ethics, advocates in the implementation of their profession are immune to demands made both criminal and civil. In terms of the obligations he has, the advocate is obliged to keep everything that is known or obtained from his client and is obliged to keep the relationship with his client confidential.

In discussing a code of ethics, it is better to first explain the meaning of the code of ethics itself. The code of ethics is a guideline that must be upheld by both individuals and companies that must be adhered to and obeyed in terms of carrying out an activity. In terms of a code of ethics that must be upheld by an advocate, every advocate of course without exception is obliged to comply with this, this is due to the specificity of the activities carried out by advocates that require an in-depth understanding of the law and the obligation to carry out a special task, of course a license is needed. in carrying out these obligations. However, regarding the code of ethics itself in the laws and regulations regarding Advocates, if you pay attention to it, it has not included the Advocate's code of ethics itself. In addition, if it is based on the explanation of the results of the interview, it is explained that until now there is no code of ethics described in Law Number 18 of 2003 for Advocates, but it has been explained in the Code of Ethics of the Association of Indonesian Advocates Congress (KAI) (Results of Interview with the Chair of the DPC KAI).

Regarding the code of ethics regulated in the Association of Indonesian Advocates Congress, it is explained in article 8 regarding activities that advocates are not allowed to do, including:

- 1) Advocates are prohibited from placing advertisements in both mass media and written media with the intention of seeking fame and are prohibited from placing advertisements regarding themselves as advocates
- 2) Advocates in court proceedings have the same position in terms of law enforcement so that they are equated with other professions in court.
- 3) Advocates are not justified in allowing non-advocates to describe themselves and their names as advocates on the Advocate's office billboard or allow non-advocates to introduce themselves as advocates.
- 4) An advocate who has worked as a judge or a clerk is prohibited from serving as an advocate within a period of 3 (three) years from the time he quits a court of law.
- 5) Advocates are allowed to no longer be advocates in the case they are working on if there is an inequality between themselves and the client regarding the handling of cases.

When discussing the code of ethics in each profession, an institution is needed to oversee the continuity of the code of ethics regarding the professions that are the scope of the code of ethics. Supervision of advocates itself can be divided into two kinds of scope, both in terms of laws and regulations and directly carried out by the Advocates Association itself. In terms of supervision that is carried out directly, the Advocates Association directly states that the matter of supervision carried out before the formation of the Law on Advocates is carried out with the contents:

- a) Fear God Almighty.
- b) Mandatory in accordance with his expertise to provide advice to everyone without distinguishing the party who asks for help from him as a client.
- c) In terms of achieving its goals, advocates must aim to uphold law, justice and truth in accordance with applicable laws and regulations.

After discussing the direct supervision before the establishment of Law No. 18 of 2003, the author also argues that in terms of supervision, it should also be discussed in terms of laws and regulations and implementing regulations that support these laws and regulations. In the supervision of advocates if guided by Article 9 of Law No. 18 of 2003 clearly explains that:

- 1) The day-to-day supervision is carried out by the Supervisory Commission established by the Advocates Organization.
- 2) The membership of the Supervisory Commission as referred to in paragraph (1) consists of elements of senior advocates, experts/academics, and the public.
- 3) Provisions regarding supervision procedures are further regulated by a decision of the Advocates Organization.

However, if you look at the explanations described in Article 9 of the Code of Ethics of the Indonesian Advocates Association, the explanations regarding the supervision of advocates are:

Article 9

- 1) Every Advocate must comply with and comply with this Advocate Code of Ethics.
- 2) Supervision of the implementation of the Advocate's Code of Ethics is carried out by the Honorary Council.

When viewed from the two underlying legal provisions regarding the supervision of the code of ethics for advocates, there has been a discrepancy between the legislation and the implementing regulations regarding the code of ethics for advocates. Many advocates are only subject to the code, because this association's code of ethics directly discusses the individual personality of an advocate and the procedures for an advocate to hold proceedings both inside and outside the court. (Results of an interview with the chairman of the DPC Association of Indonesian Advocates Congress). The information presented by him does not violate the applicable laws and regulations in Indonesia, this is because there is a principle that supports this, namely the *Lex specialis derogat legi generalis* principle where this principle means that special laws can override existing laws. general in nature. But keep in mind, if you look at Law Number 12 of 2011 concerning the Establishment of Legislations, in Indonesia the sequence of laws and regulations recognized by the government begins with:

- 1) The 1945 Constitution of the Republic of Indonesia,
- 2) MPR Decree
- 3) Laws/Government Regulations in Lieu of Laws
- 4) Government regulations
- 5) Presidential decree
- 6) Provincial Regulations
- 7) Regency/City Regional Regulation

So if the code of ethics for advocates is used as the highest guideline in terms of supervision of advocates based on the *Lex specialis derogat legi generalis* principle, then this directly violates the position of the existing laws and regulations. Why this is so, This is based on the explanation described above regarding the composition of laws and regulations recognized by the government. In the explanation above, it is not explained about the location of the advocate's code of ethics or implementing regulations. Thus, there is an assumption that implementing regulations that have clear legal force and can be equated with legislation are only those formed by the government directly. Thus, the code of ethics for advocates cannot be equated with statutory regulations. So the principle of *Lex specialis derogat legi generalis* cannot be used in this case. In this case, the principle that can actually be used is the *Lex Superior derogate Legi Inferiori* principle, this principle can only be used because in this principle the highest law can ignore laws of lower status so that the code of ethics itself does not have a position in the regulations recognized in Indonesia. advocates should be more subject to existing laws and regulations.

Based on this, the regulation that should occur regarding the advocates supervisory commission is regulated in Law No. 18 of 2003 and the Code of Ethics of the Association of Indonesian Advocates Congress regulated through an honorary council, it is fitting that the arrangement regarding the supervisory commission should be established in accordance with Article 13 of Law No. 18 of 2003 which membership consists of senior advocates, experts and the public. Senior Advocates here can be elected through elections or deliberation held by the Advocates Council itself.

However, even though at this time in reality a supervisory commission has been formed in accordance with the provisions contained in the Advocates' Code of Ethics in the form of a body run by an honorary council, still if the government orders each organization to form a supervisory commission then this must be carried out by an advocate organization. This is intended because the supervisory commission was formed on the basis of statutory regulations whose status is directly under the 1945 Constitution if you look at the composition of the laws and regulations so that in this case the arrangement of the honorary council must give up the supervisory task to be handed over to the supervisory commission. In discussing the regulation itself, the supervisory commission which should carry out supervision is basically based on the laws and regulations regarding advocates. Although indeed in the organizational structure listed there are differences in membership composition where in the honorary council can only be filled by advocates while in the supervisory commission it must be filled by senior advocates, experts and the public, but it does not rule out the possibility that arrangements regarding the supervisory commission can occur in the future and regarding honorary council can be explained in the following discussion.

CONCLUSION

The difference in the regulation that is devoted to Article 13 of Law No. 18 of 2003 with the Code of Ethics for Advocates Article 9, the use of the *Lex Specialist derogate Lex Generalis* principle does not apply in this case. In terms of the use of the *Lex Specialist derogate Lex Generalis* principle, it cannot be used in this case so that what can be used is the *Lex Superior derogate Legi Inferiori* principle because in this principle the highest law can ignore laws of lower status so that because the code of ethics itself does not have a position in regulations that It is recognized that in Indonesia, advocates should be more subject to the existing laws and regulations.

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