

ADVOCATE CODE OF CONDUCT FOR AGREEMENTS WITH CLIENTS BASED ON LAW NUMBER 18 OF 2003

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ABSTRACT

The position of an advocate as a law enforcer is often referred to as an officer of the court. As Officer of the court, advocates must obey the rules in court; besides that, advocates must have an attitude that follows the dignity and dignity of the court so as not to tarnish the values of honour and dignity. Every lawyer must have work ethics. In carrying out their duties, an advocate needs to fulfil the limitations stipulated in Law Number 18 of 2003 concerning Advocates. However, the community is sometimes trapped in the stigma or the thought that hiring a legal expert or lawyer is very expensive and their ignorance of the judicial process so that many still ignore the law. This research is normative, empirical research wherein legal research examines the direct application of normative law (laws) to any particular law in society.

Keywords: Advocate; Code of Ethics; Law

A. INTRODUCTION

The rule of law is a state based on law, not based on power alone; in a state of the law, the legal position is the highest.¹ The State of Indonesia affirms in the 4th amendment of the 1945 Constitution, which was passed on August 10, 2002, Chapter-I Article 1 paragraph (3); that "the State of Indonesia is a State of Law" reasonable law enforcement is indiscriminate, or favouritism, who is the perpetrator/offender of the law must be tried and decided according to the law. The principle of equality before the law operates under the legal shelter of a general and single law.

The rule of law that develops from time to time sometimes makes some people not understand the laws that apply in a country, so law enforcement is inefficient. Law enforcers, in general, are judges, prosecutors, police, and advocates or more commonly known as the legal profession.²

¹ Abdulkadir Muhammad. *Etika Profesi Hukum*. Jakarta: Citra Aditya Bakti.1997, p. 13

² Suhrawardi K Lubis.2000. *Etika Profesi Hukum Cet 2*. Jakarta: Sinar Grafika, p. 24

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The legal profession is urgently needed because the law is dynamic so that someone who is more focused on exploring a realm of law for a more orderly life and is not entangled in legal problems needs the help of a legal expert. One of the most needed legal professions is advocating as a legal consultant or attorney when proceeding with proceedings.³

The position of an advocate as a law enforcer is often referred to as an officer of the court. As Officer of the court, advocates must obey and obey the rules in court. Also, advocates must have an attitude that follows the dignity and dignity of the court so as not to tarnish the values of honour and dignity. If seen, an advocate must have professional ethics and every advocate in carrying out their duties by the advocate's code of ethics so that each advocate does not elbow each other between other lawyers who can create feuds between lawyers. Every lawyer must have work ethics. In carrying out their duties, an advocate needs to meet the limitations stipulated in the Law on Advocates Number 18 of 2003.⁴

However, from the description above, people are sometimes trapped in the stigma of thinking that hiring a legal expert or advocate is very expensive and their ignorance in the judicial process so that many still ignore the law. The public also needs to know that there is an agreement between the client and the advocate before proceeding. Advocates in carrying out their profession cannot refuse clients who ask for help from them. Therefore, it is necessary to understand the public regarding the role and code of ethics of advocates to broaden their horizons regarding all procedural requirements that must be fulfilled in carrying out the rule of law, especially in Indonesia.

B. METHODS

The type of research used is empirical normative. Empirical normative legal research is legal research on the in-action application of normative legal provisions (laws) to any particular law that occurs in society.

³ Abdulkadir Muhammad. *Etika Profesi Hukum*. Jakarta: Citra Aditya Bakti.1997, p. 112

⁴ Undang-undang Nomor : 18 Tahun 2003 about Advokat

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The normative approach to legal research is based on legal principles, legal concepts, views, and legal doctrines, regulations, and legal systems using secondary data. Empirical legal research by conducting direct interviews with several respondents can provide information about the implementation of law enforcement.⁵

C. RESULTS AND DISCUSSION

1. Advocate Duties and Responsibilities

The state of Indonesia is a constitutional state as affirmed in the 1945 Constitution of the Republic of Indonesia. The principle of the rule of law demands, among other things, the equality of all Indonesian people before the law.

Apart from prosecutors, judges, and the police as law enforcers, an advocate is also considered law enforcers. Advocates as law enforcers who are not tied to agencies or, in other words, can choose cases to handle. The duty of an advocate means something that an advocate must do in providing legal services to his clients. As for the tasks that must be fulfilled by an advocate that is assigned to him:

- a) *Kewajiban advokat yang menjunjung tinggi sumpah advokat yaitu “advokat Indonesia adalah warga negara Indonesia yang bertakwa kepada Tuhan Yang Maha Esa , bersikap jujur, satria dalam mempertahankan keadilan dan kebenaran yang dilandasi moral yang tinggi , luhur dan mulia dan yang melaksanakan tugasnya menjunjung tinggi hukum, Undang-undang Dasar Republik Indonesia, kode etik advokat serta sumpah jabatannya.”(Pasal 2 UU No.13 Tahun 2008).*
- b) *Advokat harus mendahulukan kepentingan klien daripada kepentingan pribadi serta advokat tidak membedakan kasus yang ditanganinya dikarenakan biaya ataupun kasus tersebut adalah kasus yang cuma-cuma.*
- c) *Advokat tidak diperkenankan untuk merebut kliennya teman sejawatnya.*
- d) *Advokat tidak dibenarkan untuk mempengaruhi saksi pihak lawan sebagaimana diatur dalam Pasal 7 (e).*

⁵ Soerjono Soekanto, *Pengantar Penelitian Hukum*, p. 41

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The duty of an advocate or legal advisor is to provide legal opinion and legal advice to keep clients away from conflicts, while in the judiciary, the legal adviser submits a case as a legal attorney.⁶

In a proceeding before the court, the main task of a legal adviser is to present facts and considerations related to the client he defends in the case so that the judge can give a verdict that is as fair as possible. From a litigation standpoint, that is the job of an advocate. However, apart from that, the duties of an advocate outside of litigation are:

- a) Providing legal services.
- b) Providing legal advice.
- c) Provide legal opinion.
- d) Preparing and drafting contracts.
- e) Defend and protect human rights.
- f) Provide legal information.
- g) Providing free legal assistance to the poor and weak.

According to Law no. 18 of 2003 concerning the advocates' code of ethics, the function of an advocate is to accompany victims to get rights are fulfilled. The law states the general function of an advocate. According to Soebekti in his writing entitled "Legal Aid Ethics," the code of ethics of a profession is in the form of norms that must be heeded by people who carry out the profession's duties.

In general, a code of ethics is a system of norms, values, and professional rules in writing and expressly states what is good and bad for professionals to do. There are many objectives in forming a code of ethics, one of those that are professionals can provide the best possible service to service users.⁷ A code of ethics can protect you

⁶ Winarta, Frans Hendra, *Bantuan Hukum Suatu Hak Asasi Manusia Bukan Belas Kasihan*. Jakarta: Media Komputindo, 2002, p. 46

⁷ Nurul Qamar, Farah Syah Reza, *Etika Profesi Hukum :Empat Pilar*, 2017, Makassar: Cv Sosial Politik Genius, p. 67

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from unprofessional actions. Besides that, professionals' adherence to the existing code of ethics is instinctive obedience, which is already united with these professionals' minds, spirits, and behaviour.

A code of ethics that is one of the elements of a professional attitude in a job is not something exclusive, but how critical thinking arises so that the profession is right and responsible. Therefore, the code of ethics must continue to evolve and cover all the habits in society due to the rapidly developing times.⁸

Law No. 18 of 2003 concerning the Indonesian Advocate Code of Ethics, an advocate can refuse to become a legal attorney. Advocates can refuse to provide legal advice and assistance to people who need legal services and/or assistance, considering that it is not following their expertise and is against their conscience. Advocates must refuse to take care of cases where there is no legal basis according to their beliefs. Furthermore, an advocate who manages the common interests of two or more parties must completely resign from the management of these interests if conflicts arise between the parties concerned.

Based on Article 21 of Law no. 18 of 2003 concerning Advocates, advocates are entitled to receive honorarium/wages for legal services that have been provided to their clients, but the nominal amount of the advocacy honorarium has no standard regulation. So the nominal amount of the advocacy fee depends on seniority. This is quite relevant because users cannot pay the same amount as novice advocates. The quality of an advocate can also be seen from his credibility in society.

An advocate's honorarium is obliged to take into account the client's capabilities. Advocates are not justified in charging clients unnecessary fees. Protected by law, an advocate should be a noble profession and receive an honorarium agreed between the attorney and the power grantor. There are no standard rules regarding honoraria, and law firms have their standard rates in handling legal cases in Indonesia.

⁸ Ari Yusuf Amir. *Strategi Bisnis Jasa Advokat*. Yogyakarta : Niaga Swadaya. 2005.

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Advocates cannot be identified with their clients because advocates in principle are only the power of attorney or agents of their clients; the identical position between the advocate and their clients is following agency law, that agents only act for and on behalf of their principals. Advocates in carrying out legal professionals also refer to Article 4 of the Indonesian advocate code of ethics. Advocates in civil cases must prioritize peaceful settlement. Advocates are not allowed to provide information that can mislead clients about the case they are currently handling. Advocates are not allowed to guarantee to their clients that the case they handle will win.

Because an advocate has rules that have been stated in the Indonesian Advocate Code of Ethics, he is not automatically independent in dealing with clients. In Article 18 of Law No.18 of 2003 concerning Advocates, in carrying out professional duties, an advocate is prohibited from distinguishing treatment of clients based on gender, political religion, descent, race, or socio-cultural background. Here are some things that an advocate must understand in his relationship with clients, including:

- a) An advocate must try to find a solution to reach an agreement from both parties; both the client and the opposing party, to obtain as peaceful a settlement as possible.
- b) An advocate is not allowed to provide information that can plague the client regarding the case he is handling, both oral and written, making it difficult for the client.
- c) During carrying out his duties, an advocate is obliged to consider the client's ability to receive legal services in determining the honorarium.
- d) An advocate is not justified in charging his clients' unnecessary costs.
- e) An advocate is not allowed to guarantee to his client that the case he is handling will win.
- f) During his / her profession, an advocate must be fair.
- g) An advocate must reject a case which he believes has no legal basis.
- h) While carrying out his professional duties, he is obliged to hold position secrets regarding all matters notified by the client to him (trust).



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- i) An advocate is not allowed to let go of responsibilities imposed on him that are not beneficial to the client.
- j) An advocate who manages the common interests of more than two parties must resign from managing those interests.

Principally, an advocate has to provide advice and defense in a broad sense according to the law to his clients. However, in carrying out his role, an advocate has a broader function than just being an advisor and defender, assigned and responsible for advancing the legal profession, judiciary, and law in a broad sense. The tereupatic contract is a legal result that occurred between an advocate and a client. An advocate with legal knowledge represents a client in handling civil disputes, while the client is required to pay legal services or an honorarium as mutually agreed upon.⁹

The advocate's relationship with the client is only the attorney of the client, both the attorney of the plaintiff and the defendant. The client gave him the power to resolve his case, defend his rights inside and outside the court. This empowerment must be based on the trust of both of them. Therefore, an advocate acting or on behalf of his client must have the ability and courage to act, considering that his client has placed great trust in him. Whereas an advocate has a position as a subject because he is appointed by a party to represent his client's interests in court, the function of an advocate is to help resolve cases in court by upholding Pancasila, law, and justice. Besides that, it is also following the Advocate Code of Ethics that advocates do not have to prioritize the interests of their clients only but rather prioritize upholding law, justice, and truth.

Advocates is an independent and private profession where there is no government interference in determining the management. Taking away the sovereignty of an advocate is the same as dictating the advocate profession and degrading an advocate from being free and independent.¹⁰

⁹ Suhrawardi K Lubis, *Etika Profesi Hukum*, 2000, Cet 2. Jakarta: Sinar Grafika, p. 34

¹⁰ Suhrawardi K Lubis, *Etika Profesi Hukum*, p. 36

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With statistical data, advocates can project for future needs. Illustration of statistical data from Adnan Buyung Nasution, there are around 2000 legal justice seekers who came to legal aid institutions with different types of cases:

a) Civil Cases

In civil court, an advocate has the position of power or representative. Advocates as a representative institution compile or filter the incidents that they get from their clients, then they collect them as material to be poured in the form of a lawsuit that will be submitted in court proceedings.

However, the function of an advocate is not only within the court but also outside the court. An advocate provides legal assistance based on the law to his clients. For example, a person who has debt and is unable to pay, the lawyer becomes the negotiator for his client to resolve the problem through non-litigation without going to court.

b) Criminal Offence

In law no. 8 of 1981 concerning Criminal Procedure Law does not regulate victims' assistance by advocates, which is regulated only legal assistance for the suspect or defendant during the period and at each level of examination in Article 54.

Another case in Article 25 of Law no. 23 of 2004 concerning Domestic Violence, advocates are obliged to provide legal consultation which includes information on rights and judicial processes; assist victims in every trial and to describe the violence they have experienced and coordinate with fellow law enforcers, volunteer companions, and social workers so that the judicial process runs smoothly.

In general, in criminal acts, the advocate functions to assist victims in examination in court to ensure that existing laws and regulations fulfil the victims' rights.

In general, the function of an advocate in an advocate code of ethics does not explain in detail the function of an advocate, but its function can be detailed in each type of case so that advocates carry out their functions and duties very broadly.



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2. Factors Affecting the Agreement between Advocate and Client

An advocacy agreement, of course, involves more than one party, namely advocates and service users or clients. In this case, of course, advocates and clients have different rights and obligations. Before service users decide to use the services of an advocate, of course, there is an agreement agreed upon by both parties. After an agreement is made, advocates are allowed to carry out their duties by the agreement carried out with real work.

An agreement between an advocate and a client is a reciprocal agreement. The client puts forward their rights and obligations, especially in providing information to advocates regarding the problems they face and advocates.¹¹

The content of an agreement is used as the basis for regulating, binding and compelling, and providing legal certainty to the parties making it. The party making it is obliged to obey and accept the consequences of the agreement made. In agreeing with an advocate and a client, of course, it varies from one advocate to another.¹²

Based on the interview results via the WhatsApp application with Muzakkir, SH from the MZ & Partner office on May 6, 2020, at 11.09 WITA (Central Indonesia Time) and Ahmad Marsuki, SH, MH., From the AMS & Partner office, on May 5, 2020, at 19.30 WITA regarding the making of an agreement between advocate and client found several differences:

Notes	MZ & Partner (Muzakkir, S.H.)	AMS & Partner (Ahmad Marsuki, S.H., MH.)
Making a contract/agreement	The problem is explained in advance, and the lawyer has completed a filing.	The problem is explained first, and then the contract/agreement is made by both parties.
Factors affecting the	1. Payment; because	client's trust in advocates

¹¹ Asshiddiqie, Jimly. "Peran Advokat dalam Penegakan Hukum." *Bahan Orasi Hukum pada acara "Pelantikan DPP IPHI Masa Bakti 2012* (2007).

¹² Winarta, Frans Hendra, *Bantuan Hukum Suatu Hak Asasi Manusia Bukan Belas Kasihan*, p. 53

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agreement	<p>there are clients who ask to pay 50% in advance.</p> <p>2. Client openness; information covered/hidden by clients is usually very influential in proving the trial.</p>	
Honorarium considerations	<ol style="list-style-type: none"> 1. Case difficulty level 2. Operating costs 3. Risk 4. The distance travelled by the object of the case. 	according to the client's ability

From the interview results, it was found that every advocate regarding agreement-making had its standards, one of which affected seniority.

Based on Law No.18, 2003 in Chapter IV Article 21, advocates are entitled to receive honoraria from clients and the number of fees received based on the agreement of both parties, which was discussed earlier. Moreover, for people who cannot afford Chapter V of the law on advocate code of ethics regarding free legal provisions, an advocate is obliged to provide free legal assistance to underprivileged people seeking justice.

D. CONCLUSIONS AND SUGGESTIONS

Apart from prosecutors, judges, and police as law enforcers and advocates are also considered law enforcers. Advocates as law enforcers who are not tied to agencies or, in other words, can choose cases to handle. In general, the code of ethics of an advocate does not explain in detail the function of an advocate, but we can see the function of an advocate in every case, both litigation, and non-litigation.

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The agreement made between the advocate and the client is reciprocal. Clients prioritize their rights and obligations, especially in providing information to advocates regarding the problems they face, and advocates with the principle of trust to make it easier to handle cases.

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