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Ratio Legis of Regulation of Single Organizations of Advocates in Law Number 18 of 2003 Concerning Advocates

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Abstract. Article 28 paragraph (1) Law Number 18 of 2003 concerning Advocate mandates a single advocate organization. Based on this provision, PERADI was formed, which is an advocate organization in Indonesia. However, in its development, the Supreme Court issued the Chief Justice Letter of the Supreme Court Number 73 / KMA / HK.01 / IX. / 2015 which authorizes the high court to swear an attorney who meets the requirements of any advocate organization. The enactment of the Chief Justice of the Supreme Court Number 73 / KMA / HK.01 / IX / 2015 is deemed to have damaged the system of appointing advocates and has decreased the quality of the advocate profession. The method used in this research is the normative legal research method. The results of this study are ratio legis concerning the regulation of a single advocate organization as referred to in Article 28 paragraph (1) of Law Number 18 of 2003 concerning Advocates is to maintain the professionalism and moral integrity of Advocates. With an educational function, the advocate professional forum was formed to improve the quality of the profession. This also concerns its position as a free and independent organization. It is hoped that the Advocate organization can become an institution that maintains and helps uphold the values of justice in society by being a counterweight to other law enforcement agencies.

Keywords. Ratio Legis, Single Organizations, Advocate

1. Introduction

The development of this increasingly modern era makes the community need advocate services in Indonesia to solve legal problems that occur in society. In Indonesia, the role and function of an advocate are under a forum, namely PERADI Advocates Organization, which is a professional organization founded based on Law Number 18 of 2003 Concerning Advocates. In addition to acknowledging the existence of Advocates as law enforcers, this law also recognizes the existence of an Advocate Organization as the sole forum for Advocates in Indonesia, which has the authority to carry out special advocate professional education, examination of advocate candidates, the appointment of advocates, making code of ethics, forming a council honor, establish a supervisory commission, supervise, and dismiss advocates.

Article 28 paragraph (1) Law Number 18 of 2003 Concerning Advocates states that the advocate organization system is in the form of a single bar. However, there is a Decree of the

Chief Justice of the Supreme Court Number 73 / KMA / HK.01 / IX / 2015 regarding Advocate Swearing-in its development. This new arrangement contains instructions to the Chairperson of the High Court to swear against lawyers who meet the requirements of any advocate organization so that each management of the advocate organization can propose taking an oath or promise to the High Court under the domicile of their jurisdiction. This Decree impacts the implementation order of the advocate organization system, in the end, using a multi-bar system. It is no longer in line with the mandate of Article 28 Paragraph (1) Law Number 18 of 2003 Concerning Advocates, which regulates the existence of a single forum (single bar) to improve the quality of the Advocate profession. On this background, this research will discuss the ratio legis for the regulation of a single advocate organization as referred to in Article 28 Paragraph (1) of Law Number 18 of 2003 concerning Advocates.

2. Methodology

The type of research carried out in this research is normative legal research, a process to find legal rules, legal principles, and legal doctrines to answer the legal issues at hand (Marzuki, 2001).

3. Result and Discussion

3.1. Advocate Organizations in Indonesia

In its development in Indonesia, there is no single forum for advocate organizations. The absence of an advocate organization as a single forum can also affect the implementation of Law Number 18 of 2003 and the Indonesian Advocate Code of Ethics. For example, an Advocate who an Advocate organization sanctions can move to another organization to avoid sanctions for violations he has committed (Supriadi, 2008).

The Advocate Organization, namely PERADI, is a state organ in a broad sense that is independent (independent state organ) which also carries out the functions of the State. The Indonesian Advocates Association or abbreviated as PERADI, is one of the legal professional organizations of advocates in Indonesia, based on Law Number 18 of 2003 concerning Advocates and was introduced to the public, especially law enforcers April 7, 2005, at Balai Sudirman, South Jakarta. In its journey as an advocate professional organization, PERADI has experienced many disturbances and obstacles in maintaining its existence.

PERADI's long journey to maintain its existence as a single advocate organization finally brought results. For the first time, the Government of the Republic of Indonesia, represented by the Minister of Law and Human Rights, Andi Mattalatta, stated that the Government had no doubts about PERADI as the only professional organization for advocates.

However, the current dynamics of the Chief Justice of the Supreme Court Letter Number 73 / KMA / HK.01 / IX / 2015 states that PERADI should do not only swearing but also other advocate organizations. This cancels the previous letter from the Chief Justice of the Supreme Court, namely the Letter of the Chief Justice of the Supreme Court 089 / KMA / VI / 2010, which states that PERADI is the only organization that can apply for advocate swearing.

Thus, we will not dwell on single bar or multi bar issues at this point. The concrete problem is how an advocate organization, whatever its name, must be able to represent it as an organ that becomes a forum for respectable professions to work, create and work for the upholding of law in Indonesia.

We cannot argue that an advocate organization is an institution. Institutional requirements have been met, especially by the advocate organization PERADI. The running of the advocate organization PERADI is under the mandate of Law Number 18 of 2003, both

relating to becoming an advocate, relations with fellow advocates, both national and foreign, and even about sanctions for advocates who violate laws and the Code of Ethics.

PERADI has also established branches both at the district/city level and at the provincial level. The wheels of the organization are running, the implementation of advocate education and advocate examinations are also running well. However, it still needs consolidation, strengthening with improvement. The drawback is that there is often disharmony between fellow advocates.

Advocates still tend to be apathetic, still lacking the enthusiasm to unite to improve the organization together. It is better if there should be provisions in the form of laws and regulations that regulate the organization's direction and the conditions that must be met to establish an advocate organization. To prevent conflicts of interest from occurring again, so that advocate organizations that are less effective for the law enforcement movement (advocate) in Indonesia will appear again.

Advocate organizations also need to strengthen the honorary board and the supervisory board. These two organs determine the quality and integrity of the advocate organization and the enforcement of sanctions for unprofessional (naughty) advocates. As well as optimization of supervision not only in the upstream (central) but also downstream (regions). The main objective of improving the honorary council and the supervisory board is to create an ideal advocate organization, create reliable advocates, and advance the law in general in the Republic of Indonesia.

3.2. Advocates as Legal Service Providers and Legal Aid Providers

The role of an advocate as a legal service provider and legal aid provider is the duty of an advocate as a professional engaged in the legal field. Advocate is a skilled job based on expertise in law, which is bound by rules of conduct and a professional code of ethics (Manan, 2009). The existence of an advocate profession is felt to be increasingly important over time. This is related to the role of the advocate itself, as referred to in Article 1 paragraph 1 of the Advocate Law, namely people who provide legal services both inside and outside the court. When examined further, several terms are used to describe the task of providing legal services by lawyers, namely what is better known as legal aid. Legal aid itself has the meaning of free or inexpensive legal services provided to those who cannot afford the full price (Garner, 2009).

Meanwhile, legal services are defined as "legal assistance". If we pay attention, both have the same connotation, namely providing legal assistance to justice seekers. However, when translated, both have different pressure points. Legal aid is usually used to show the meaning of legal aid in a narrow sense, namely as the provision of free legal aid services to incapable justice seekers. Meanwhile, the term legal assistance is used to indicate a broad definition of legal assistance, which is used for incapable justice seekers and the provision of legal assistance by advocates who use service fees (Sunggono & Harianto, 2009).

Related to the duties of an advocate in providing legal services and legal aid. So there are at least six dimensions in the role of an advocate in providing legal services, as follows (Kusumah, 2002):

- a) Providing legal assistance is a form of defense for human rights violations;
- b) Legal aid fosters alternative thoughts in resolving legal conflicts with a public dimension;
- c) Through legal counseling and publication, legal aid has a role in legal communication and socialization to contribute to the institutionalization of legal values and norms;

- d) Legal aid develops a critical function through the judiciary, thus indirectly providing input for reforming national law;
- e) Through study activities, legal aid can contribute ideas for law reform and enforcement;
- f) Legal aid re-articulates the legal interests of people who experience injustice.

Based on this, it can be seen that the essence of providing legal services by advocates is not solely based on a sense of humanity, but instead that it is a form of protection of the constitutional rights of citizens, especially in criminal law. In addition, the provision of legal services by advocates is a form of equitable justice so that everyone has the same rights before the law.

3.3. Advocates as a Counterweight to the Domination of Law Enforcement Officials

In carrying out their duties, state institutions such as the police, attorney, and judiciary are reflected in a multilevel system or hierarchy, namely institutions (superiors) and supervision of the system (subordinates). In such a system, work performance is assessed through results, implementation of policies, and norms. So that adherence to such a bureaucratic system cannot be avoided. For example, in carrying out the duties of an investigator experiencing pressure from superiors to resolve certain cases, this can be a separate conflict between acting on orders or acting in a professional manner (Kadafi et al., 2001).

Justice in it contains an element of balance so that justice is symbolized by scales that represent justice or other meanings are balance. So the product of justice from the judicial process is only possible if both parties are in a balanced position (public prosecutor and defendant). In their role as defenders, advocates assist suspects/defendants in obtaining fair decisions (Widhayanti, 1988). Regarding an advocate's position as a law enforcer compared to other law enforcers such as police, prosecutors, and judges. In contrast, advocates are law enforcers who are outside the government. This is as explained by Bagir Manan (Manan, 2009), associated with the theory of separation of powers from Montesquieu, namely the so-called *trias politica*, which divides state power into three branches of power, namely executive power, legislative power, and judicial power (Asshidiqi, 2012), then the police and prosecutors are extensions of the executive power, both of which are state tools in carrying out the functions of investigation, investigation, and prosecution. Then, judges and judicial institutions are representatives of the judicial power that stand alone in exercising judicial power.

So from this, the existence of an advocate as a counterweight to the domination of law enforcers is an effort to protect the rights of justice seekers and as a form of community representation in a judicial process. Thus, it is hoped that the existence of an advocate can prevent or at least reduce the arbitrariness of other law enforcement officials, especially when it comes to cases involving poor people and the general public.

3.4. Advocates as Defenders of Human Dignity

When talking about the primary duties of an advocate, these duties can be broadly described as follows. There are three primary duties of an advocate, this is as explained by Soemarno P. Wirjanto, there are three main tasks of an advocate, namely (Prakoso, 1986):

- a. As a procurator, namely representing and assisting clients in all the work needed to prepare court cases so that they are ready to be decided by the judge.
- b. As a "pleader" or "pleiter", namely pronouncing a defense, presenting facts, legal arguments, so that judges can get views on the facts of a case.

c. As a jurisconsult, providing legal advice outside the court, assisting with or doing legal deeds, legal reconciliation, and others.

Among the three tasks, an advocate in criminal justice is a defender (pleader) or (pleiter). That role an advocate will argue in court by expressing legal arguments in a case he is handling. The meaning contained in the role of an advocate as a defender is that advocates must defend human dignity in a criminal justice process, including the suspect or defendant. So for that, it is the right of a suspect or defendant to be accompanied by an advocate. It is naivety if the suspect/defendant is without legal assistance in defense from an advocate as a (legal advisor).

As is well known, the nature of criminal procedural law is compelling because it protects the common interest to maintain security, tranquility, and peace of living in the community. But on the other hand, it also has the dimension of protecting human rights, with the protection of fundamental rights, namely the obligation to be accompanied by a legal adviser, the right to be tried openly to the public, the right to present witnesses, take legal action, the principle of presumption of innocence, and avoid error in persona (Mulyadi, 2008).

While the important function of an advocate as the defender is (Abdussalam & Sitompul, 2007):

- a. Protect the rights of justice seekers treated extraordinarily
- b. To be immediately examined and put on trial should not be prolonged without legal certainty.
- c. Strive for the rights of justice seekers as provided by law-paid attention and has not been neglected by law enforcement officials and state officials.
- d. And finally, in accompanying a suspect or defendant at the level of investigation, prosecution, and examination in court, he always tries to provide legal protection as provided by law.

The existence of an advocate in its role to protect the rights of a suspect or defendant so that they are not treated inhumanely is an advocate's duty.

Law Number 18 of 2003 explains that those who can become an advocate are alumni of the law faculty and alumni of the Islamic or sharia law faculties. Based on this, it is known that in Islamic law there is a correlation with the role of advocates in the judicial process and upholding Islamic law, both in terms of function and position.

3.5. Ratio Legis of Establishment of Article 28 paragraph (1) Law Number 18 of 2003

In understanding a law, it must first be found the spirit of the law, the political direction of this law, and why a law was formed and promulgated, likewise, in reading a draft Law, which in this case is a Draft Law on Advocates. Advocates are eagerly awaiting the Advocate Law. Its presence in 2003 brought a new direction for the institutionalization of Advocates in Indonesia.

In the minutes of the meeting on the formation of Law Number 18 of 2003 concerning Advocates, it is found that the Legis Ratio or legal reasons for the construction of Article 28 paragraph (1) of Law Number 18 of 2003 concerning Advocates can be described as follows (DPR RI, 2003):

To obtain legal recognition. Because so far, advocates are not positioned on an equal footing with other law enforcers. With this provision, the current position of an advocate has been institutionalized and can be aligned with other law enforcers. With the institutionalization of Advocate organizations into a law, Advocates can form their professional code of ethics and enforcement elements, namely the honorary council.

To maintain the professionalism and moral integrity of Advocates, with an educational function, the advocate professional forum is formed to improve the profession's quality. This also concerns its position as a free and independent organization. It is hoped that the Advocate organization can become an institution that maintains and helps uphold the values of justice in society by being a counterweight to other law enforcement agencies.

To unite the various Advocate Organizations that existed before Law Number 18 of 2003 concerning Advocates was enacted by stating that the Advocate organization is a single forum. The advantage of a single forum is to simplify the functions of supervision, prosecution, and appointment, which advocate organizations themselves now carry out because they have been constitutionally institutionalized where previously the supervisory function was carried out by the government then also to make it easier to carry out the functions of education, prosecution and appointment. With the existence of a solid advocate organization, public trust in this institution will be built.

4. Conclusion

Ratio legis concerning the regulation of a single advocate organization as referred to in Article 28 paragraph (1) of Law Number 18 of 2003 concerning Advocates is to maintain the professionalism and moral integrity of Advocates. With an educational function, the advocate professional forum was formed to improve the quality of the profession. This also concerns its position as a free and independent organization. It is hoped that the Advocate organization can become an institution that maintains and helps uphold the values of justice in society by being a counterweight to other law enforcement agencies.

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