OFFICIUM NOBILE ADVOCATE AS A BASE FOR ADVOCATE INTEGRITY IN CRIMINAL JUSTICE SYSTEMS IN INDONESIA

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ABSTRACT: The opening of the Indonesian Advocates Code of Ethics (KEAI) states that advocates are an honorable profession (officium nobile). The word nobile officium implies the existence of noble or honorable obligations in carrying out their work. Based on the provisions of Article 2 and 3 of the Advocate Law, a legal scholar who meets the requirements can be appointed as an Advocate and will become a member of the Advocate organization (admission to the bar). This research is a Legal Socio approach. The legal socio approach is used to analyze various laws and regulations and applied law based on legal sociology. The results of this study explain that the Advocate Code of Ethics is basically an ethics or basic norms that become a reference for an Advocate to act in carrying out his/her duties in his daily life. Not only limited to Advocates, every profession both the legal profession and other professions must obey their respective codes of ethics. According to Hendry Panggabean, it was explained that there were at least three (3) uses of the code of ethics in carrying out a profession, specifically: 1) to increase the authority of the profession itself; 2) giving parameters or will to the profession; and 3) allow members of the profession to regulate themselves in addition to obeying regulations issued by the authorities or the government. Suggestions from this research are Advocates not only required to have intellectual intelligence, but also must be established emotional intelligence and spiritual intelligence, so that in carrying out their duties as law enforcers still adhere to independence, honesty, confidentiality and openness. The aptitude IQ, EQ and ESQ are basic knowledge that will shape the moral of Advocates who always uphold the rule of law in every action.

Keywords: Advocates, Justice, and Code of Ethics

1. INTRODUCTION

Advocate is an honorable profession (officium nobile) which in carrying out its profession under legal protection, Constitution and code of ethics, has freedom based on the honor and personality of the Advocate based on independence, honesty, confidentiality and openness. Advocates as law enforcers are in line with other law enforcers such as prosecutors, police, and judges in upholding the rule of law, therefore each other must respect each other between peers and also between other law enforcement.

Advocates as an element of law enforcement officers in Indonesia no longer need to doubt the role, both in the period before and after independence Indonesia. The long history of Advocates in Indonesia has proven that advocates have played a not small role in realizing fair and authoritative law enforcement, even before the reform era, when viewed from the existing legal basis, the existence of Advocates has not been specifically regulated, because it is still scattered in various laws and regulations, both those issued during the Dutch East Indies and those issued
by the Indonesian government. Furthermore, the Advocate is a companion who tries to defend the defendant's interests in the trial. Article 5 paragraph (1) of Law Number 18 Year 2003 concerning Advocates explicitly emphasizes that, Advocate's status is Law Enforcement and as a free and independent law enforcer. From the sound of the article, it can be concluded that even though the advocate is on the side of the defendant (in court), in his capacity as a law enforcer, the Advocate must defend legal interests.

Realities in the community position Advocates as a party that defends the interests of suspects / defendants, so that when in a judicial process, when a defendant based on a judge's decision is declared free, public opinion leads Advocates who defend the suspect's / defendant's personal interests rather than legal interests. In fact, not infrequently, advocates are labeled as parties that bridge the judicial mafia between suspects / defendants and law enforcement officers.

2. RESEARCH METHODS

This research is a Legal Socio approach. The legal socio approach is used to analyze various laws and regulations and applied law based on legal sociology. Meanwhile the socio-legal research approach is research that refers to legal norms and principles contained in legislation and court decisions / facts in the field. Ronald Dworkin called the research method also doctrinal research, which is a study that analyzes both law as law as it is written in the book, as well as law as a law that is decided by the judge through judicial process.

Three reasons for using qualitative, empirical legal research. First, qualitative analysis is based on the paradigm of the dynamic relationship between theory, concepts and data which is a constant feedback or modification of theories and concepts based on those collected. Second, the data to be analyzed in a variety of ways, has basic characteristics that differ from one another, and is not easy to quantify. Third, the basic nature of the data to be analyzed in research is comprehensive and is an integral unit, where it shows the diversity of data and requires deep information (independent information). The three qualitative research criteria are contained in this thesis research, so it is reasonable to use qualitative methods in data analysis. This research is comprehensive because it seeks to explore the whole. This study also seeks to find a harmonious relationship from the concepts found in primary and secondary legal materials using theories or legal doctrines, related to the officium nobile advocate as the basis for the integrity of lawyers in the Indonesian criminal justice system.

3. DISCUSSIONS AND ANALYSIS OF RESULTS

1. Advocates' Code of Ethics in Conducting Profession as Officium Nobile

Opening of the Indonesian Advocates Code of Ethics (KEAI) states that advocates are an honorable profession (officium nobile). The word nobile officium implies the existence of noble or honorable obligations in carrying out their work. Based on the provisions of Article 2 and 3 of the Advocate Law, a legal scholar who meets the requirements can be appointed as an Advocate and will become a member of the Advocate organization (admission to the bar). Someone who has been appointed as an advocate, then he has been given a noble obligation to carry out honorable work (mobile officium), with exclusive rights (a) declaring himself to the public that he guidelines for formulating and clarifying the duties and obligations of advocates can be seen in four sources (a) -The law, (b) court decisions, (c) principles, and (d) the habits and practices of advocate organizations.
The obligation of advocates to the community mentioned above, in the American Bar Association (ABA) ethical principles included in the principle of "Upholding the Honor of Professionalism", in free translation means that the advocate must always try to uphold honor and maintain the authority of the profession and try not only to perfect the law but also to administer the justice system. An obligation for advocates to the community is to provide legal services to those who are economically disadvantaged (poor). In KEAI Article 3 it is stated that an advocate cannot refuse on the grounds of the social position of people who need such legal services, and also in Article 4 of the sentence: "taking care of free cases has implied this obligation". In this principle, it is reaffirmed in article 7 KEAI paragraph 8 that: "the obligation to provide free legal assistance (prodeo) for people who cannot afford it".

2. Synergy of Advocates Code of Ethics Guidelines with Advocates' Professional Responsibilities

An Advocate in carrying out his office duties must always be based on a responsible attitude. This if done, shows that an advocate can be said to have carried out his profession professionally. Responsible here means that every Advocate in carrying out an act will always be based on the right reasons so that his actions can be accounted for. Every Advocate who commits an act that is not based on strong reason (not based on legal or moral basis), means that his actions are not responsible and such actions must not be carried out at all by any Advocate. In addition to law and morals, the right foundation that can be a reference for an Advocate is the Advocate Code of Ethics.

The Advocate's Code of Ethics is basically an ethic or basic norms that become a reference for an Advocate to act in carrying out his office duties in his daily life. Not only limited to Advocates, every profession both the legal profession and other professions must obey their respective codes of ethics. According to Hendry Panggabean, it was explained that there were at least three (3) uses of the code of ethics in carrying out a profession, namely: 1) to increase the authority of the profession itself; 2) giving parameters or will to the profession; and 3) allow members of the profession to regulate themselves in addition to obeying regulations issued by the authorities or the government.

According to the author, it is necessary to synergize the relationship between the code of ethics and professional responsibility, because it is with this ethic that legal professionals can carry out their job duties properly to create respect for human dignity which in the end will bring justice in the community as a form of professional accountability. Behavior of Advocates in Running Professionals as Legal Counsel as Advocate Oversight Efforts in Law Enforcement.

In the process of law enforcement in the trial involving many institutions with one another they have different authorities. The institution in question, among others, is an Advocate, to provide legal services, where when carrying out their duties and functions, they can act as assistants, give legal opinion or become legal counsel for and on behalf of their clients in order to enforce law, justice and truth. Advocates must be able to identify an event by using material legal science and formal law; likewise Advocates know the limits of their authority. This kind of arrangement is to guarantee the rights of clients in the investigation.

These articles in Law No.18 of 2003 only provide immunity to Advocates in carrying out their profession in good faith. In this case, it is proven that the Advocate in carrying out his profession is not in good faith, the person concerned can be prosecuted both in civil and criminal terms. Advocates in litigation defending their clients are prohibited from divulging the secrets of their clients. Advocates may not use the secrets of their clients to harm the interests of these clients.
Advocates may not use the secrets of their clients for the personal benefit of Advocates or for the benefit of third parties. In accordance with Article 19 of Law No. 18 of 2003, and the Advocate Professional Code of Ethics Article 4 letter (h): "Advocates must hold confidential positions about matters that are notified by the client in confidence and must keep the confidentiality after the end of the relationship between the Advocate and the client."

Advocates have the right to obtain information in carrying out their profession, the information can be in the form of data, and other documents needed to defend the interests of their clients both from government agencies and other parties related to these interests. Requesting the necessary information, in carrying out the duties of the obligation requires information from government agencies or government or private organizations. In accordance with Article 17 of the Law on Advocates.

The right to receive service fees, Advocates who defend clients both inside and outside the court have the right to receive service fees in return, from the clients they defend. This relates to retention rights, the right not to return the documents held before the honorarium is paid in advance. Including using the right of retention to threaten and reduce the capacity as an Advocate in defending and protecting his clients. Any profession cannot avoid the risk of irregularities in carrying out its duties and functions or is not in accordance with the professional oath it says or violates its code of ethics, so it is necessary to take action both administrative and juridical.

Advocate organizations are usually assigned to a Professional Honorary Board or body. In addition to maintaining the statutory rules and professional code of ethics, the agency is obeyed by all members. Having the authority to carry out control or administrative actions towards its members, which clearly violate the professional code of ethics. In an effort to deal with Advocate malpractice there are 2 (two) kinds of rules written in Law No. Advocate. 18 of 2003 concerning supervision and enforcement. However, the actions taken by the Advocate Organization are not always effective, if members who have been subject to sanctions do not want to obey them and then move to another Advocate Organization or make another Advocate Organization. That is the general weakness of the Advocate Professional Organization.

Every profession has responsibility for the profession, including the advocate profession. These responsibilities are inherent in each profession as an integral part. Talks and studies of professional responsibility are important when many professionals are not responsible for their profession.

So is the advocate profession. Advocates provide legal services and are tasked with resolving clients' legal issues both in litigation and non-litigation. According to Frans Hendra Winata, the advocate's duty is to devote himself to the community so that he is required to participate in the enforcement of Human Rights, and in his profession he is free to defend anyone, not bound by the client's orders and indiscriminately who is against his client, whether he is from a strong group, the ruler, even the poor people. The function of an advocate is not only litigating in court, but very important, representing the interests of citizens in their relations with the government. It is precisely because the advocate profession understands the forms, institutions and rules of the state and has the duty to represent the citizens if they are in conflict with the state or other citizens.

The role of the Advocate actually improves the system and performance of the judiciary in Indonesia which is often said to be very damaged. As law enforcers such as Judges, Prosecutors and Police can hardly be trusted by the public to run the wheel according to their role in law
enforcement and justice. In the provisions of Law Number 18 Year 2003 concerning Advocates, it means that the law enforcement system has increased one element of Advocate which has been considered as one of the elements of the judicial crime chain, therefore Advocates as one of the law enforcement elements are obliged to convince the public. Other law enforcers to create a new atmosphere and horizon in the field of law enforcement and justice by making improvements, both through internal bodies within professional organizations through professional ethical standards that are responsible and externally in relation to the environment of other law enforcers.

The position of Advocates as law enforcers has actually been implied through Law No. 14 of 1970, in the explanation of article 35 it implies the need for a legal aid law to place the Advocate profession as one of the elements of law enforcement to participate in realizing the principles of the implementation of national development in the field of law that guarantees legal certainty in this legal country. Law enforcement can be interpreted as the establishment of a legal system based on philosophical values oriented to truth and justice, social values oriented to the prevailing values and beneficial to society and juridical values that grow in the provisions of legislation that guarantees order and certainty law, then as a law enforcer an Advocate needs to equip himself with comprehensive legal knowledge in relation to the types of crimes that develop along with the progress of society, not only in national scope but also the types of transnational crime. And no less important is the honest and professional attitude of an advocate who needs to be a personality trait that can be trusted by the world community.

Article 5 paragraph (1) of Law Number 18 Year 2003 concerning Advocates explicitly and clearly states that Advocates' status as law enforcer, free and independent guaranteed by law and statutory regulation, therefore the legitimacy of Advocate profession as law enforcer in providing services to public is very needed. 3 (three) conditions which include Scientific, Integrity and Morality. In terms of scientific knowledge, an Advocate does not only require adequate legal knowledge obtained from formal education institutions, but it is also very necessary to have comprehensive insight, not only in dynamic developments in Indonesian society but also in anticipating the pace of world development, especially the intensity of transnational crime as indicated above.

Integrity aspect is the main requirement of the Advocate's personality as a law enforcement figure who usually also carries a respectable position as Offium Nobille, so the presence of Law No. 18 of 2003 concerning Advocates referred to as the Code of Law complements previous rules that are internal to Advocates' organizations concerning order, the usual attitudes and behavior of members are referred to as the Code of Ethics or Code of Conduct, which is a rule regarding inner characteristics or conscience and behavior of Advocates according to organizational provisions, so that as an Advocate in the midst of society there will be more Advocates as officium nobille law enforcement. Likewise the morality of an Advocate will be a reflection of an Advocate who is trusted, both by Indonesian and foreign communities in this era of globalization. Advocates as law enforcement figures, especially in participating in filling and improving judicial performance in Indonesia are said to be very damaged, while law enforcers such as Judges, Prosecutors and Police can hardly be trusted by the public, hence Advocates' role as law enforcers amid the deterioration of law and justice is a serious challenge, not to mention the increasing intensity of transnational crime that is increasingly prevalent.

Advocate's profession is a state organ that carries out state functions. The Advocate's profession is the same as that of the Police, Prosecutors and Justice as state organs that carry out state functions. The difference is that Advocates are private institutions that have public functions while the Police, Prosecutors and Judiciary are public institutions. If an Advocate in carrying
out his functions and duties is given authority in his status as a law enforcement officer, his position is equal to other law enforcement officers. This balance will create a balance in order to create a better law enforcement system. Furthermore, as a distinguished profession Advocates are not only required to have intellectual intelligence, but also must be well-established emotional intelligence and spiritual intelligence, so that in carrying out their duties as law enforcers, they still adhere to independence, honesty, confidentiality and openness. IQ, EQ and ESQ are basic knowledge that will shape the moral of Advocates who always uphold the rule of law in every action.

Advocate analysis as a law enforcer is a series of processes of describing values, ideas, and ideals to become a legal goal of justice and truth. The values contained in it must be realized into real reality. The existence of law becomes evident if the moral values contained in the law can be implemented properly. Law enforcement in principle must provide benefits or benefits to the community. Besides that the community also hopes for law enforcement in order to achieve justice. However, it cannot be denied, that what is considered useful (sociologically) is not necessarily fair, and vice versa what is perceived as fair (philosophically), is not necessarily useful for the community. Basically, law enforcement can be carried out well if between elements of society and law enforcement elements are mutually sustainable in upholding the principles and objectives of the law. An element of law enforcement must fulfill formal requirements and material requirements. Formal requirements determine whether or not the legal counsel is valid while the material requirements describe what the attorney has done really is the will of his client. If there is a difference between the formal party and the material parties, then what is won is the material, namely the client, as the party concerned. In essence, the role of an advocate in law enforcement is not to win the case he faces but to fight for the truth of justice for the client (the litigant) due to the position of his client who is still a suspect who needs help to prove his guilt or not. In addition to reform from the side of law enforcement in this case an advocate, also needs improvement from the elements of society. People as law enforcers and justice seekers should not silence law enforcement officials for their interests, including silencing lawyers to win the cases they face.

4. CONCLUSIONS

As an honorable profession Advocates are not only required to have intellectual intelligence, but also must be well-established emotional intelligence and spiritual intelligence, so that in carrying out their duties as law enforcers they stick to independence, honesty, confidentiality and openness. IQ, EQ and ESQ are basic knowledge that will shape the moral of Advocates who always uphold the rule of law in every action.

5. REFERENCES
A. Books
Chai Podhisita, et al, Theoritical Terminological, and Philosophical Issues in Qualitative Research, Qualitative Research Methods.
HR. Otje Salman S dan Anton F Sutanto, Teori Hukum, (Bandung: Refika Aditama, 2005)
Law Review, Fakultas Hukum Uttiven Advokat sebagai penegak hukum berdasarkan Undang-Undang Nomor 18 Tahun 2003 tentang Advokat, peran Advokat haruslah tidak menjadi Bad Man.

Marwan Mas, Pengantar Ilmu Hukum, (Jakarta: Ghalia Indonesia, 2004)
Mukti Arto, Mencari Keadilan (Kritik Solusi terhadap Praktik Peradilan Perdata di Indonesia), (Yogyakarta: Pustaka Pelajar, 2001)
Satjipto Raharjo, Penegakan Hukum di Indonesia (Suatu Tinjauan Sosiologis), (Yogyakarta: Genta Publishing, 2009)
Soerjono Soekanto, Pengantar Penelitian Hukum, (Jakarta: UI Press, 1986)

B. Rule of Laws

Undang-Undang No. 18 Tahun 2003 tentang Advokat Kode Etik Profesi Advokat

C. Website