

Advocate Immunity Is Active When Integrity In The Exercise Of The Profession

Jamillah*

Fakultas Hukum, Universitas Medan Area, Medan, Indonesia.

Maswandi**

Fakultas Hukum, Universitas Medan Area, Medan, Indonesia.

Abstract

In the practice of law enforcement, many advocates who abuse the right of immunity of this profession and similarly in contrast, many other law enforcers do not understand the right of Advocate immunity. This right of immunity will be strong if an advocate carries out his profession in line with his integrity. The results concluded that the application of the right of immunity is successful if between law enforcement agencies work in accordance with the dignity of the law and each legal actor maintains professionalism according to the code of ethics and adheres to the principle of good faith to uphold the law and justice to benefit the wider community and the right of immunity

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1. INTRODUCTION

The role of advocates in their duties and professions as enforcers and legal advisors has a noble task and strategy in implementing legal assistance, especially to realize the principle of equality before the law and the presumption of innocence. Article 37 of Law No. 14 of 1970 and Article 56 paragraph (2) the code of Criminal Procedure provides that “legal counsel as a party providing legal assistance”.

Advocates have rights and obligations in carrying out their profession in accordance with The Advocate Act and the Indonesian advocate Code of ethics. One of the rights that attached to The Advocate is the right of immunity. The Advocate law has affirmed that “every advocate has the right to obtain immunity or the right to immunity in the performance of his

** Email/Corresponding Author: jamillah@staff.uma.ac.id

***Email: maswandi@staff.uma.ac.id

professional duties”. Advocate in menjakankan duties and profession “can do or not do the actions that are considered necessary, can give an opinion and is entitled to obtain information or documents from anyone, without having to bear the legal consequences obtained from the performance of professional duties”. Advocates and their clients should not be pressured, threatened, subjected to obstacles, fears or treatment that degrades the dignity and dignity of The Advocate profession. During the advocate run duties in accordance with the duties delegated to him in accordance with the powers given to him with due regard to the rules of law and carried out in accordance with the professionalism of The Advocate, The Advocate cannot be prosecuted either civilly or criminally.

The Advocate law recognizes the right to limited immunity, which is regulated in Article 14, Article 15, Article 16 of The Advocate Law Number 18 of 2003. Central to these articles is Article 16 of Law No. 18 of 2003 on advocates. Immunity rights that exist in The Advocate Act then reinforced by Decision No. 26/PUU-XI / 2013, where the Constitutional Court added a new interpretation that has full legal force binding on the right of Advocate immunity. The essence of the ruling amar is "the recognition and guarantee of the protection of The Advocate in non-litigation actions carried out in good faith and for the benefit of the client's defense in and out of court". In practice, there are cases where advocates are considered to obstruct the law (obstruction of justice), for example, there are still many lawyers when carrying out their duties as an advocate representing clients in the trial has been reported to the police by the party who felt his good name tarnished. On the one hand, there are cases of advocates reported to the police at the time of performing their duties in order to defend the interests of clients with good faith, on the other hand often use the right advocate advocate immunity which have been given to the law without regard to the good and professional advocates as stipulated in the Code of ethics advocates Indonesia. Many advocates who “fall” in using this right at the time assisting clients. Just look at the case of Manatap Ambarita (2008), advocate Lambertus Palangana (2010), Advokat Haposan Hutagalung (2011), Advocate Fredrich Yunadi (2018) and the most recent is the case of Advocate Eggi Sudjana (2019) who insisted that as an advocate he could not be prosecuted in criminal or civil cases without regard to the actual case suspected to him.

From the description singakt that this study focuses more on the application of rights advocate immunity in Indonesia in general according to the Indonesian advocate Law Number 18 of 2003. The purpose of this study is to analyse application of the right of immunity advocate and analyze the constraints and assess solutions to application of the right of Advocate immunity in accordance with Law Number 18 year In 2003, The Advocate.

2. RESEARCH METHOD

The approach used in this study is a juridical approach normative namely "approach in terms of legislation and norms- legal norms in accordance with existing problems by researching materials library or secondary data". Specifications of this study is descriptive analytical, that is " describe the applicable legislation Associated with legal theories and practice of positive legal implementation that involves problems above". The source and type of data used in this study is "secondary data obtained from legal material consisting of primary legal material, secondary legal material and tertiary legal material". Technique data collection is done by means of library research, namely "research conducted by examining library materials or called secondary data". Data analysis techniques used are qualitative normative, namely "the data obtained are arranged systematically and then analysed qualitatively normative in order to obtain clarity of the issues discussed". The purpose of using this analysis is "to get the views regarding the implementation of laws and regulations in Indonesia governin on the implementation of Law no. 18 year 2003 about advocate in the end will be obtained pembahruan legal framework relating to the problem of applying the right of Advocate immunity".

3. RESULT AND ANALYSIS

In terms of the application of the right to advocate immunity in Indonesia it needs to be seen three components that have been mentioned in Friedman's theory is the theory legal system itself consists of three components, namely the legal structure (in the form of legal institutions); the substance of law(legislation); and culture law or legal culture.

In the application of the right to advocate immunity, institutions involved in directly are the police, prosecutors, courts and advocates themselves. Each of these law enforcement agencies must always respect the duties and functions of each institution. Police in doing investigation/investigation, the prosecutor in the case of prosecution, advocate in the case of Defense or civil lawsuit, each of these institutions must be subject to and comply with the provisions of the law invitation.

Regulation of legislation regarding the right of Advocate immunity it has been clearly and unequivocally mentioned in Article 16 of the Indonesian advocate law jo Constitutional Court decision Number 26 / PUU-XI / 2013. Implementation the application of the right of Advocate immunity has also been regulated within the scope of the Act Law No. 18 of 2003 on advocates and the Indonesian advocate Code of ethics. Both in the act and the code of ethics advocate advocate corridor most important is the presence of good faith in terms of implementing the law.

Legal culture is the " mental attitude that determines how the law used, avoided, or even abused". Application of immunity rights The Advocate in this case will depend on the individual of each institution. It is this individual who plays an important role in terms of whether the law / legislation will be used responsibly or will be abused its application.

The three basic values of law according to Gustav Radbruch include; Justice (philosophical), legal certainty (juridical) and benefits to society (sociological). In his own theory, Gustav Radbruch explains that "the principle the priority of the three basic values that are the objectives of the law". This is because in reality, legal justice often clashes with expediency law enforcement and vice versa. Among the three basic values of purpose the law, in the event of a collision, then there must be sacrificed. For this reason, the principle of priority used by Gustav Radbruch must be implemented in the following order: Legal Justice; Legal expediency and legal certainty.

With the order of priority as stated above, then the legal system can avoid internal conflicts. according to the third Radbruch this aspect is relative in nature, it can change. "One time can highlight justice and urgent usefulness and legal certainty to the edge region. In time others can be highlighted certainty or expediency". Relationships that are relative and changing this variable is not satisfactory. Meuwissen chose freedom as foundations and ideals of law. Freedom of speech is not freedom, because freedom has nothing to do with what we want. But with respect to it wants what we want. With freedom we can connecting certainty, justice, equality and so on rather than following Radbruch.

Application of the right of Advocate immunity according to Law No. 18 of 2003 on advocates themselves when reviewed with Gustav's basic theory of law Radburch then more to the value of justice and expediency therefore to own certainty, the right to immunity is firmly and clearly regulated in Article 16 Law No. 18 of 2003 on advocates and court decisions Constitution number 26 / PUU-XI/2013.

By basing the theory of justice with the application of the right to advocate immunity then the application of the right of immunity advocate should not hurt justice for other justice seekers.

Elucidation of Article 16 of The Advocate law explains, that what is meant by good faith is "performing professional duties for the sake of upholding justice based law to defend the interests of its clients". What is meant by trial the court is a " trial court in setiaptingkat court in all judicial environment".

Advocate in carrying out their duties and profession requires the right of immunity remember that an advocate is a noble profession. By having the right privilege in the form of immunity rights in order to carry out their duties advocates can be free and responsible to its clients. Lawyers should

also be able to keep obligations and have a moral responsibility to honor profession.

Legal structure, legal substance and legal culture as mentioned in the theory of LM Friedman the most important role in law enforcement. The structure of the law is its law enforcement agencies, the substance of the law is the rule while the culture of law is culture or the culture of each individual law enforcement and community.

Obstacles to the application of the right to advocate immunity in terms of the three legal systems such are : law enforcement agencies police, prosecutor's office, Judiciary one-sided view of The Advocate profession and has not considered advocates as law enforcers whose position is equal/equivalent to institutions other law enforcement.

The solution that can be done is each law enforcement agency outside the Advocate must understand the advocate profession as a respectable profession uphold the law and uphold the truth. Calling process and action against advocates still put forward the law advocate without prejudice to procedural law.

Advocates work in accordance with the code of ethics, which is the highest rule which must be upheld by The Advocate. The code of ethics deals with moral and ethics of advocates who will eventually give birth to a legal culture it should uphold law and Justice. In law advocate itself, advocate in defending clients by applying the truth above all not solely because it is paid by the client. It is not yet animates the spirit of all advocates who ultimately do not apply the code of ethics and maintain the dignity of The Advocate profession as an honorable profession (*officium nobile*). The solution that must be done is to enforce the code of ethics among advocates, guidance to advocates related to the code of ethics.

Gustav Radburch established the principle of priority in his theory, which is sequential legal justice as the highest rule then occupy legal expediency the second and last position of legal certainty. Constraints on the application of immunity rights advocate more to the principle of justice and benefit of : Justice encompasses legal norms, norms of values, morals and ethics. Constraints that there are often values, morals and ethics are set aside in terms of law enforcement. Law enforcement agencies are sometimes ignoring moral and ethical values. The solution to be done is maintain the code of ethics advocates, code of ethics, police, prosecutors and code of ethics judges can be interpreted more deeply by each individual law enforcement A code of ethics is also required.

The solution that must be done is the Advocate must understand what benefits which should be obtained by applying the right advocate immunity, in this case if the right to advocate immunity is applied correctly then with it

is this weapon that advocates can defend their clients without fear, exposing the truth is there by sticking to the corridor code ethics.

4. CONCLUSION

The application of the right of Advocate immunity should touch on three components of the law form of legal structure, legal substance and legal culture so as to materialize law enforcement that is fair, certain and beneficial to society at large. Application of the right of immunity advocate must also be able to bring law enforcement in the direction of Justice, expediency and certainty. Obstacles in the application of the right to advocate immunity in Indonesia is between law enforcement is not a symbiotic relationship is created mutualism in a positive sense. Lawyer mandatory integrity in carrying out their profession. Right to limited advocate immunity in the corridors of the code of ethics and principles of good faith that must be upheld by advocate. The solution is the Advocate must enter into the criminal justice system for the position of Advocate really equal to other law enforcement and the relationship between law enforcement can be balanced.

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