

SETTING OF ADVOCATES' ORGANIZATION IN INDONESIA WITH THE SINGLE BAR MODEL TO REALIZE ADVOCATES' PROFESSIONALISM

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Abstract:

In various countries, advocate organizations or Bar Associations in practice are not uniform in form (single bar, multi bar, federation), which is influenced by a number of factors including the legal system, history, professional development and choice of professional needs. Institutionally, the form and system with many advocate organizations in a country are acceptable, but the same standards are still needed to create standardized advocate quality. Referring to the UN Basic Principles on the Role of Lanyers, the Government, Advocate Professional Organizations and Educational Institutions must jointly ensure that advocates undergo an adequate education and training system, and have knowledge of the duties and functions of an ideal and ethical advocate. Although the Advocate Law has adopted a single bar to carry out the function of a single regulator, in practice it shows that many organizations when carrying out the function of an advocate organization cannot in fact guarantee the same standards in maintaining the quality of the advocate profession. The process of recruiting advocates, for example, uses different standards between one organization and another, making it difficult to ensure the competence/quality of the same advocate. Enforcement of the Advocate Code of Ethics is also still considered insufficient, because advocates who are suspected of violating ethics when being processed in an advocate organization may still be able to change their membership to another advocate organization.

Keywords:

Advocates Organization; Professionalism; Single Bar

1. Introduction

The idea of an ideal legal state according to Greek philosophers, especially through the thoughts of Plato and Aristotle at that time was not as detailed as the understanding described in the development of the following century. For example, the idea of a legal state that developed during the Greek philosophy era was only limited to the state in the sense of polis, which is different from the modern state with all its complexities. [1]. Many people believe that the idea of a legal state that developed later cannot be separated from the influence of Greek philosophers, especially Plato and Aristotle. The ideal of a legal state initiated by both of them has opened the gates of conception about the importance of law for human life in a social order called the state. [2].

Hilaire Barnett describes 4 (four) essences of a state of law, namely [3]:

- a. Supremacy of law over humans.
- b. Does not see the position and status of people so that they must submit to the law.
- c. Conceptually prospective and protective.
- d. Government actions must be based on law

Advocate as one of the noble and honorable professions (officium nobile). Advocate is one of the law enforcement officers as stated in Article 5 paragraph (1) of Law Number 13 of 2008 concerning Advocates (hereinafter referred to as the Advocate Law) [1]: "Advocates have the status of law enforcers, free and independent, which is guaranteed by law and statutory regulations." This fact has been obtained in addition to one of its duties being to protect the rights

of suspects or defendants, which cannot be denied is also an effort to seek justice and enforce the law. This is also stated in the Constitutional Court Decision No. 014/PUU-IV/2006 dated 30 November 2006 which states:: "That the provisions of Article 5 paragraph (1) of the Advocates Law which grants advocates status as law enforcers who have equal standing with other law enforcers in upholding law and justice shows that because of this position, an organization is needed which is the only forum for the advocate profession..."

In addition to what has been included in the considerations of the Constitutional Court, the government is also fully aware that the existence of advocates in the principles of the Criminal Justice System is one of the links in addition to the Police, the Prosecutor's Office (KPK for certain criminal acts) and the Courts (in addition to Corrections). Regulations regarding the institution of Advocates are still based on statutory regulations left over from the colonial era, as found in the Reglement op de Rechterlijke Organisatie en het Beleid der Justitie in Indonesia (Stb. 1847: 23 jo. Stb. 1848: 57), Articles 185 to Article 192 with all subsequent changes and additions, Bepalingen betreffende het kostuum der Rechterlijke Ambtenaren dat der Advokaten, procureurs en Deuwaarders (Stb. 1848: 8), Bevoegdheid department hoofd in burgelijke zaken van land (Stb. 1910: 446 jo. Stb. 1922: 523), and Vertegenwoordiging van de land in rechten (K.B.S 1922: 522) as stated in section general explanation of the Advocate Law explanation [4].

In line with the increasing need for legal services from Advocates at the present time, and the increasing development of the legal needs of the community, it requires an Advocates profession that is free, independent and responsible, to ensure an honest, fair trial and legal certainty for all justice seekers in upholding the law, truth, justice and human rights. [5]. Therefore, Advocates as a profession that is free, independent, and responsible in enforcing the law, need to be guaranteed and protected by law in order to carry out efforts to enforce the supremacy of law. In relation to this, the government together with the DPR issued a law regulating Advocates, namely the Advocates Law.

The Advocates Organization (OA), which is a single forum for the free and independent advocate profession to improve the quality of the professional profession as mandated by Article 28 paragraph (1) of the Advocates Law, currently continues to experience institutional problems that can hinder its mandate, especially regarding ensuring the continuity of efforts to improve the quality of Indonesian advocates. Currently, there are at least 51 organizations, each of which actively carries out the functions of an advocate organization with different standards.

In various countries, advocate organizations or Bar Associations in practice are not uniform in form (single bar, multi bar, federation), which is influenced by a number of factors including the legal system, history, development of the profession and the choice of professional needs. Institutionally, the form and system with many advocate organizations in a country are acceptable, but the same standards are still needed to create standardized advocate quality. Referring to the UN Basic Principles on the Role of Lawyers, the Government, Advocate Professional Organizations and Educational Institutions must jointly ensure that advocates undergo an adequate education and training system, and have knowledge of the duties and functions of an ideal and ethical advocate. [6].

The practice that leads to multi-bar which is currently running de facto, began to be revealed after the Constitutional Court Decision Number 101-PUU-VII-2009 which in essence in the a quo Decision stated that the High Court in taking the oath of advocates does not need to pay attention to the origin of the membership of the advocate organization that at that time existed or existed de facto (referring to PERADI and KAI). In 2015, the Chief Justice of the Supreme Court M. Hatta Ali, also issued Letter Number 73/KMA/HK.01/IX/2015 dated September 25, 2015 which explained that for Advocates who have not sworn in or promised, the Chief Justice of the High Court has the authority to take the oath/promise of prospective advocates who meet the requirements based on the Advocate Law upon the request of the advocate organization, either PERADI or the administrators of other advocate organizations until the formation of a new Advocate Law. This means that the Supreme Court legitimizes the practice of the multi-bar system, which has currently occurred de facto in Indonesia. Although the Advocate Law has adopted a single bar (single container) to carry out the function of a single regulator, in practice it shows that many organizations when carrying out the function of an advocate organization cannot in fact guarantee the same standards in maintaining the quality of the advocate profession. The advocate recruitment process, for example, uses different standards between one organization and another, making it difficult to ensure the same competency/quality of advocates. Enforcement of the Advocate Code of Ethics is also still considered insufficiently strong, because advocates who are suspected of violating ethics when being processed in an advocate organization may still be able to change their membership to another advocate organization. [7].

The victim if the advocate is not professional is the client himself or in other words the justice seeker community who feels the most of the consequences of this. Based on what has been described above, there are several problems that are quite crucial and need to be straightened out regarding the understanding of how the Advocate Organization itself should exist, this is useful so that the ideals and true objectives of the Republic of Indonesia Law Number 18 of 2013 concerning Advocates can be fulfilled. Based on the background of the problem that has been described and presented above, the formulation of the problem that will be discussed in this study is as follows: First, how is the urgency of regulating advocate organizations in Indonesia with a single bar model to realize advocate professionalism. With the aim of knowing and analyzing the urgency of regulating advocate organization of advocate organization bars related to advocate supervision in Indonesia. With the aim of knowing and analyzing the urgency of regulating advocate organization bars related to advocate supervision in Indonesia.

2. Research Method

The research used in this research process uses a type of normative legal research. [8] By using library materials or secondary materials that have been collected. Legal research is also a process to determine legal rules, legal principles, and legal doctrines in order to answer the legal issues faced. [9] The basic materials used in this study came from library data. Everything related to data analysis is narrated holistically so that a complete combination is found and conclusions can be drawn in a balanced and structured manner using a deductive method.

3. Result and Discussion

3.1. Urgency of Regulating Advocate Organizations in Indonesia with a Single Bar Model to Realize Advocate Professionalism

Since the enactment of Law Number 18 of 2003 concerning Advocates, the existence of advocates has become stronger, because the Advocates Law gives full authority to advocate organizations in implementing the determination of an advocate whose terms and conditions are regulated in the Law itself. Therefore, to facilitate supervision of prospective Indonesian advocates, advocates must unite in one professional advocate organization as regulated in Article 28 paragraph (1) of Law Number 18 of 2003 concerning Advocates. [10]. On December 21, 2004, PERADI was the embodiment of the single bar system association, so that it is hoped that the advocate organization will be solid and can improve the quality and professionalism of an advocate. The single organization referred to is stated in Article 28 paragraph (1) of Law Number 18 of 2003 concerning Advocates.

Several advocate organizations do not agree with the single bar system, including the Indonesian Advocates Congress and the Indonesian Advocates Association. Where both organizations claim that the multi-bar system is an ideal form because it is considered in accordance with the mandate of Article 28E paragraph (3) of the 1945 Constitution. Then other advocate organizations, namely KAI, IPHI, IKADIN, HAPI and APSI have agreed to urge the holding of an advocate congress throughout Indonesia. This demand arose because the four organizations accommodated advocates' concerns over the existence of PERADI which was considered insensitive to the legal reform program and efforts to eradicate the judicial mafia, and did not fight for the dignity and honor of advocates[11].

The principle of the only single body stated in Article 28 paragraph (1) of the Advocate Law which states "The advocate organization is the only free and independent advocate professional body formed in accordance with the provisions of this law with the intent and purpose of improving the advocate profession" is considered to have eliminated constitutional rights, which since 1985 have fought for organizational freedom, in other words the applicants want the Advocate Law not to have a single principle, namely (single bar system), but rather to be based on a federation (multi bar system). In fact, each advocate organization has data on the number of members that cannot be accessed by the public and the function of the advocate organization in carrying out Advocate Professional Education (PKPA), implementing internships to submitting oaths shows that the advocate organization is not single.

The implementation of PKPA is left to each advocate organization without any clear standardization, so that the impact of the irregularity of the advocate organization institution shows that the advocate organization's function in improving the quality and professionalism of the advocate profession has not been achieved, and there is no standardization in the advocate appointment process that can guarantee that the quality of advocates is at the same

level of competence. Another impact of issuing policies that have an impact on the irregularity of the advocate organization institution shows that the role of the monitoring function aspect of advocates and advocate organizations has not been optimally implemented, even though the state is interested in ensuring access to justice, including the community.[12]

The debate regarding the single bar system and the multi-bar system is still a polemic in the advocate organization to this day. According to the author, the single bar system needs to be applied only in the regulatory realm, such as specifically carrying out the supervisory function, so that there will be no professional organization that carries out its own regulatory and executor functions.

3.2. Regulation of Bar Organization of Advocates Linked to Supervision of Advocates in Indonesia

Philosophically, the presence of an organization is a basic need of humans as social beings because by nature humans cannot live alone, and must live in groups. From this social and group life, humans have goals that can be carried out together through a container or organization. In this organization, ideology, vision, mission, goals, targets and work programs are formulated so that the organization can run well to achieve common goals. No exception for the advocate community in carrying out their professional duties for the sake of upholding justice based on law for the benefit of the justice-seeking community, including efforts to empower the community in realizing their fundamental rights before the law. With the achievement of justice in society, it will also be continuously related to national development in the field of law.

In this context, it is necessary to establish and develop an advocate organization as a forum for advocates to be able to maintain the advocates who participate in it to remain in the corridor of a free, independent and responsible profession in carrying out their profession to uphold justice for the realization of the principles of the rule of law in general. Thus, the establishment of an organization, including an advocate organization, must still be carried out in accordance with procedures based on law.

In relation to the legal basis for forming an organization, the 1945 Constitution has actually mandated and provided basic protection for the freedom to form an organization, including advocate organizations. As time goes by and to provide protection and legal certainty for Advocates, a regulation was formed which became the basis for the formation of an advocate organization, namely Law Number 18 of 2003 concerning Advocates (Advocate Law).

Since the enactment of the Advocate Law on April 5, 2003, the existence of Indonesian advocates has become stronger, because the Advocate Law gives full authority to advocate organizations to appoint advocates whose terms and conditions are regulated in the Advocate Law. Therefore, in order to improve the quality of the Advocate professional organization and to facilitate supervision (control) of Indonesian advocates, advocates must unite in one advocate professional organization as stated in Article 28 paragraph (1) of the Advocate Law, which reads: "The Advocate Organization is the only free and independent advocate professional organization formed in accordance with the provisions of this law with the intent and purpose of improving the quality of Advocates." Article 28 paragraph (1) of the Advocate Law is the legal basis for the establishment of a single advocate profession organization called PERADI on December 21, 2004, so the establishment of PERADI is a manifestation of a single bar association and has implications for the unification of the Indonesian advocate profession in a single advocate professional organization, so that it is hoped that the advocate organization will be solid and can play a role in improving the quality of advocates and regulating violations of the advocate professional code of ethics. The long and dynamic journey towards a single advocate professional organization did not go as mandated by the Advocate Law. The legal position of the advocate organization after the issuance of SKMA Number 73/KMA/HK.01/IX/2015 shows that de facto the advocate organization is represented in a multi-bar model by PERADI and the Indonesian Advocates Congress (KAI) and many new advocate organizations, while de jure it represents the single bar model by the Association of Advocate Organizations (in this case by PERADI). The issuance of SKMA Number 73/KMA/HK.01/IX/2015 concerning Advocate Oath (SKMA Advocate Oath), which is faced with the validity of the Advocate Law, has shifted the institutional system of advocate organizations and even given rise to problems related to the legality of advocates to be able to litigate or stand trial before the Panel of Judges. This is because there has been a shift from the single bar system as mandated by Law Number 18 of 2003 concerning Advocates, to a multi-bar system based on SKMA Number 73/KMA/HK.01/IX/2015 concerning Advocate Oath which has resulted in chaos for the legality of advocates who have not yet taken the oath.

As is known, after the birth of the Indonesian Advocates Association (PERADI) on December 21, 2004, as the implementer of practical law in the realm of law enforcement called advocates, the authority to develop and supervise the advocate profession is fully carried out by a single body (single bar system) as mandated by the Advocate Law. The authority includes:

- a. Implementing special education for the advocate profession;
- b. Testing prospective advocates;
- c. Appointing advocates;
- d. Creating a code of ethics;
- e. Forming an Honorary Council;
- f. Forming a Supervisory Commission;
- g. Conducting supervision; and
- h. Dismissing advocates.

In such a context, the emergence of the SKMA on the Advocates' Oath is a contradictio in terminis, because even though the Advocate Law firmly and clearly adheres to a single body in the advocate organization system (single bar system) which in this case is fully represented by PERADI, however regarding the appointment of an advocate through an advocate professional oath procession, the authority to swear this oath can also be the authority of the Head of the High Court as referred to in Point 6 of SKMA Number 73/KMA/HK.01/IX/2015 on the Advocate Oath, which reads: "That for Advocates who have not sworn in or promised, the Head of the High Court has the authority to swear in Advocates who meet the requirements in Article 2 and Article 3 of Law Number 18 of 2003 upon request from several Advocate Organizations on behalf of Peradi and administrators of other Advocate Organizations until the formation of a new Advocate Law". Therefore, when the authority to appoint advocates' oaths, which was originally based on the single bar system, was actually diverted by the Advocate Oath-taking SKMA, what then happened was maladministration practices caused by the SKMA.

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The conditions regarding the authority to swear in such oaths are increasingly complicated because the issuance of the SKMA on Advocate Swearing in on 25 September 2015 also 'opened the door' for advocate organizations other than Peradi to propose the swearing in of advocates at the High Court in the legal jurisdiction of the advocate's domicile, as stated in the phrase "upon request from several Advocate Organizations on behalf of Peradi and administrators of other Advocate Organizations" which is stated in Point 6 of SKMA Number 73/KMA/HK.01/IX/2015 concerning the Swearing in of Advocates, which reads: "That for Advocates who have not sworn in or promised, the Chief Justice of the High Court has the authority to swear in Advocates who meet the requirements in Article 2 and Article 3 of Law Number 18 of 2003 on request from several Advocate Organizations on behalf of Peradi and administrators of other Advocate Organizations until the formation of a new Advocate Law."

The circular letter of the Chief Justice of the Supreme Court No. 73/KMA/HK.01/IX/2015 concerning the Advocates' Oath will certainly have quite broad implications for the world of the advocate profession in Indonesia with the issuance of the oath of advocates which also raises pros and cons in its implementation, so that it will certainly raise various responses, both positive and negative, from the circular letter of the Chief Justice of the Supreme Court No. 73/KMA/HK.01/IX/2015 concerning the oath of advocates. The impact of SKMA Number 73/KMA/HK.01/IX/2015 on advocate organizations in the judicial system in Indonesia is as follows [14]:

- a. Positive Impacts
- 1)Increasing number of advocates or lawyers;

- 2) The public increasingly understands the law because of the many advocates or lawyers in the community.
- 3)There is no longer any need for disputes regarding the legality of advocates because of different advocate organizations.
- 4)If the KAI (Indonesian Advocates Congress) organization feels good because this is what is awaited by many advocates who cannot be sworn in because they are hindered by the Advocate Law "Advocates from KAI".
- b. Negative Impacts
- 1)The number of advocates in Indonesia is uncontrolled so that monitoring the number of advocates will be difficult;
- 2)The quality of advocates is questionable because there is no common standardization;
- 3)So far, only Peradi has clear standards, a good curriculum and PKPA or special education for the Advocate profession and other organizations do not have clear standards, for example, street thugs who are law graduates can become advocates because it is easy to get an oath, which is also allowed by the courts because the requirement is only an oath;
- 4)The increasing ease of becoming an advocate which results in advocates having uncontrolled behavior outside the trial, ethics and behavior that are tarnished due to the actions of advocates who do not understand ethics (code of ethics).
- 5)It is easy for advocates to move organizations, because it is so easy to become members because now they are competing to find members, when the advocate has problems, when the Peradi organization imposes sanctions / is fired, other advocate organizations will accommodate them.
- 6)Protection of advocates by non-centralized organizations.

Thus it can be understood that the issuance of SKMA Number 73/KMA/HK.01/IX/2015 has caused pros and cons and has given rise to positive and negative impacts, on the one hand the spread and even distribution of the advocate profession throughout Indonesia so that the public's need for advocate services in seeking justice can be obtained easily. However, on the other hand, the public is actually becoming less protected because it seems that Advocates are no longer bound by the Advocate Law and the Code of Ethics which have provided their own standardization for Advocates. In addition, the issuance of the SKMA has also shifted the position of the Advocate organization from a single bar system as mandated by the Advocate Law, to a multi-bar system, this certainly creates a contradictio in terminis, because even though the Advocate Law firmly and clearly adheres to a single container in the advocate organization system (single bar system) which in this case is fully represented by PERADI, it turns out that regarding the appointment of an advocate through an advocate professional oath procession, the authority to swear in can also be the authority of the Head of the High Court as referred to in Point 6 of SKMA Number 73/KMA/HK.01/IX/2015. For this reason, SKMA Number 73/KMA/HK.01/IX/2015 which regulates the justification for the High Court (PT) to swear in advocates from any advocate organization is considered necessary to be immediately revoked [15].

4. Conclusion

The legal status of advocate organizations after the issuance of SKMA Number 73/KMA/HK.01/IX/2015 shows that de facto advocate organizations are represented in a multi-bar model by PERADI and the Indonesian Advocates Congress (KAI) and many new advocate organizations, while de jure they represent a single bar model by the Association of Advocate Organizations (in this case by PERADI). In addition, the issuance of SKMA Number 73/KMA/HK.01/IX/2015 concerning Advocate Oaths (SKMA Advocate Oaths), which is faced with the validity of the Advocate Law, has shifted the institutional system of advocate organizations and even raised problems related to the legality of advocates to be able to litigate or appear in court before the Panel of Judges. This is because there has been a shift from the single bar system as mandated by Law Number 18 of 2003 concerning Advocates, to a multi-bar system based on SKMA Number 73/KMA/HK.01/IX/2015 concerning the Oath of Advocates which has resulted in chaos for the legality of advocates who have not yet taken the oath. For this reason, advocate organizations have collectively asked the Chief Justice to revoke SKMA Number 73/KMA/HK.01/IX/2015 concerning the Oath of Advocates. The issuance of SKMA Number 73/KMA/HK.01/IX/2015 has caused pros and cons and has given rise to positive and negative impacts, on the one hand the spread and even distribution of the advocate profession throughout Indonesia so that the public's need for advocate services in seeking justice can be obtained easily. However, on the other hand, the public is actually becoming less protected because it seems that

Advocates are no longer bound by the Advocate Law and the Code of Ethics which have provided their own standardization for Advocates. In addition, the issuance of the SKMA has also shifted the position of the Advocate Organization from a single bar system as mandated by the Advocate Law, to a multi-bar system, this certainly creates a contradictio in terminis, because even though the Advocate Law firmly and clearly adheres to a single container in the advocate organization system (single bar system) which in this case is fully represented by PERADI, it turns out that regarding the appointment of an advocate through an advocate profession oath procession, the authority to swear in can also be the authority of the Head of the High Court as referred to in Point 6 of SKMA Number 73/KMA/HK.01/IX/2015. For that reason, SKMA Number 73/KMA/HK.01/IX/2015 which regulates the justification for the High Court (PT) to swear in advocates from any advocate organization is considered necessary to be immediately revoked.

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