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The urgency of the code of conduct of the professional advocate in Indonesia

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Abstract. This research is a normative legal research, namely research that focuses on the study or study of positive law. The Advocate profession is related to the task of serving the community to help solve the legal problems it faces. In carrying out their duties, advocates are guided by the Law on Advocates, but the norms of the law are considered insufficient, because the advocate profession is related to behavior that is not infrequently influenced by the moral ethics of advocates in every decision making. For this reason, in carrying out their duties, they still need an ethical guide as a guide in carrying out their professional duties. In this regard, the Advocate Professional Code of Ethics is very much needed in guiding the behavior of Advocates in making decisions and ethical behavior.

Keywords. code of conduct; advocate, law

Introduction

The provisions of Article 1 paragraph (3) of the 1945 Constitution of the Unitary State of the Republic of Indonesia states that: "The Republic of Indonesia is a state of law". In a state of law, the existence of the rule of law (*supremacy of law*) is one of the main series. (Waldron, 2021) The supremacy of law. The supremacy of law brings consequences for the limitation of state power and state organs by applying the principle of power sharing and/or separation of state power. In addition, in a legal state that adheres to every use of power, the legal rules must be clearly defined. Deviations from the principle of the rule of law indicate a violation of the law, and therefore must be enforced by law enforcement officials who have to do the authority.

Since the enactment of Law Number 18 of 2003 concerning Advocates (Law on Advocates), Advocates are one of the elements involved in law enforcement. Public expectations of the role of the advocate profession to be able to help solve legal problems in the community. The birth of the Advocate Law is also expected to be able to build a credible and quality Advocate profession through the Advocates organization. This expectation is in accordance with the provisions of Article 32 paragraph (4) of the Advocate Law, which stipulates that within 2 (two) years an Advocates Organization must be formed.

On September 8, 2005, the leaders of 8 Advocate Organizations that existed before the Advocate Law, have been approved by the Indonesian Advocates Association, the Indonesian Advocates Association, the Indonesian Legal Advisors Association, the Indonesian Advocates

& Lawyers Association, the Indonesian Lawyers Union, the Indonesian Legal Consultant Association, the Association of Legal Consultants. The Capital Market has agreed to form the Indonesian Advocates Association, which is expected to carry out 8 organizational functions, namely:

- (1) Carrying out special education for the advocate profession;
- (2) Advocate candidate testing;
- (3) Advocate appointment;
- (4) Creating a code of Ethics;
- (5) Establish an Honorary Council;
- (6) Establishing a Supervisory Commission;
- (7) Carry out Supervision;
- (8) Dismissing an Advocate;

After 3 years the Indonesian Advocates Association was established, on May 30, 2008 a split began to occur which resulted in the birth of a new Advocates Organization, namely through the Indonesian Advocates Congress initiated by senior Advocate Adnan Buyung Nasution, who then after going through the congress elected Indra Sahnun Lubis as President of the Advocates Congress Indonesia. After the National Deliberation in Makassar on 27 March 2011, the Indonesian Advocates Association split into 3 camps, namely the leadership of Fauzie Hasibuan, the leadership of Juniver Girsang and the leader of Luhut M.P. Pangaribuan.

The split of the Indonesian Advocates Association had an internal impact on the advocate profession, because it resulted in the birth of several new advocate organizations. In this regard, the Supreme Court through its chairman issued Letter Number: 73/KMA/HK.01/IX/MA 2015. Based on the letter, the authority of the Advocate Organization to apply for an oath is not absolute belongs to PERADI, thus other advocate organizations has the right to apply for an advocate oath after holding an Advocate Professional Education.

The number of advocates' organizations then creates new problems for professional advocate organizations, related to different professional standards, as well as the authority to enforce discipline and professional code of ethics in each advocate organization. Because the provisions of Article 26 paragraph (1) of the Law on Advocates, authorize the Organization of Advocates to draw up a Code of Ethics for the Advocate Profession. Thus, after the Letter of the Chief Justice of the Supreme Court of the Republic of Indonesia Number: 73/KMA/HK.01/IX/MA 2015, every advocate organization has the authority to create its own code of ethics. This authority is strengthened in Article 33 of the Law on Advocates, which states:

The code of ethics and provisions regarding the Honorary Council for the Advocate Profession that have been established by the Indonesian Advocates Association, the Indonesian Advocates Association, the Indonesian Legal Advisors Association, the Indonesian Advocates and Lawyers Association, the Indonesian Bar Association, the Indonesian Legal Consultant Association, the Capital Market Legal Consultant Association, on 23 May 2002 was declared to have legal force *mutatis mutandis* according to this Law until new provisions were made by the Advocates Organization.

Until now in the Advocates Law, there are no explicit provisions regarding the Indonesian Advocate Professional Standards, the minimum limits that must be mastered by an Advocate to be able to carry out professional activities in the community independently made by professional advocate organizations, for example by the Indonesian Advocates Association, as well as by the Indonesian Advocates Association. Indonesian Advocates Congress. In other words, there has been a void in legal norms (*recht-vacuum*) related to the definition and

qualifications of the Indonesian Advocate professional standards, which is one of the parameters or benchmarks for the malpractice of the Advocate profession, in addition to violations of law and violations of the code of ethics. Considering in general, malpractice of the legal profession can include malpractice due to violation of law, malpractice due to violation of the code of ethics and malpractice due to violation of professional discipline. (Riyanto et al., 2020) Based on the description of the background above, the legal issue in this study is about "The Urgency of the Advocate Professional Code of Ethics in Indonesia".

Research Methods

This research is a normative legal research, namely research that focuses on the study or study of positive law. (Astria Yuli Satyarini Sukendar et al., 2020)

Discussion

Advocate is a legal profession that has existed since Roman times, this position or profession is called *officium nobile* (*noble profession*). (Fadly et al., 2021) Advocates at that time devoted themselves to society and not only to themselves, and were obliged to participate in upholding human rights, and they helped people who were in trouble with the law without expecting anything in return. Most of their orientation towards legal aid is only motivated by the motivation to gain influence from the community. (Nadapdap, 2008) In that era, free legal aid from the authorities was only given, especially to the poor and the blind.

In its position as a noble profession (*officium nobile*), the provision of legal aid is of course an obligation that is legally attached to every advocate, the provision of legal aid by an advocate is not only seen as an obligation *an sich* but must also be seen as part of the contribution and responsibility social relations in relation to the position of Advocates as *officium nobile*. Profession is a more specific concept than work. In other words, work has a broader connotation than a profession. A profession is a job, but not all jobs are professions. (Shidarta, 2009) In the context of this definition, an advocate is a legal profession, and not a legal profession.

Advocate profession licenses are given to law graduates and must take education and exams, as well as internships for a certain period of time. Advocates as one of the legal professions have characteristics in the sense of preventing abuse of the law, while maintaining the legal rights of someone who deals or commits a legal act. The characteristics of the work of the legal profession are as follows:

- 1) Special, which means the field of tasks that cannot be carried out by everyone without being based on separate education and training;
- 2) The breadth of legal knowledge, the legal profession requires the breadth and depth of legal knowledge in line with the broad scope of legal issues;
- 3) Language skills, people who run the legal profession must have good written and spoken language skills to solve complicated and complex legal problems;
- 4) Logical ability, people who run the legal profession must have the ability to think logically. Because law is not only norms but also logic;
- 5) Problem solving, people who carry out the legal profession are essentially professions to solve various legal problems in society;
- 6) In relation to humans and property, the legal profession carries out work related to the rights and obligations of humans and objects;
- 7) Work on a license and mandate basis;

- 8) Active, which means that people who run the legal profession must be active to realize the tasks that have been given;
- 9) Passive, only carrying out professional duties in accordance with what is mandated. Must not exceed the given authority;
- 10) Thorough, people who run the legal profession must have thoroughness and carefulness to avoid mistakes that can be fatal.

When it comes to the judicial power system, advocates are part of the element of the rule of law (Michael, n.d.) which has a function as a pillar of law enforcement and also as a means of *checking and balancing* other law enforcement officers. For this reason, the independence and independence of advocates in carrying out their profession must be protected, one form of protection for the advocate profession is a free and independent advocate organization and a code of ethics that is recognized internally and externally. In the provisions of Article 5 of the Advocates Law, it is stated, "Advocates have the status of law enforcers, free and independent guaranteed by law and legislation" it is clear that the position of the Advocate profession is one of the important parts in the rule of law related to the protection of human rights as well as as an advocate implementation of the principle of *equality before the law*.

The ratification of the Indonesian Advocates' Code of Ethics on May 23, 2002 by the existing Advocate Organizations at that time, was essentially *self-regulation*, which was formulated by itself, then implemented with full awareness, and not forced from outside. So that this code of ethics should be more firmly binding on professional bearers, rather than laws and regulations that come from outside the advocate profession. The main purpose of the code of ethics for the Advocate profession is to prevent unethical behavior, so that Advocates as an *officium nobile* profession can maintain their dignity. However, even though the code of ethics is internal, it must not conflict with the applicable laws and regulations.

The purpose of formulating a code of ethics (Nollkaemper, 2010) is for the benefit of members and the interests of the professional organization itself, in general the implementation of a code of ethics is:

- 1) Upholding the dignity of the profession
- 2) Protect and maintain the welfare of its members
- 3) Increase the dedication of professional members
- 4) Improving the quality of the profession
- 5) Improving the quality of professional organizations (Riyanto et al., 2020)

Based on the Law on Advocates, the Indonesian Advocates Association has 8 functions as the parent organization of Indonesian Advocates, however since 2008 a new Advocates organization was formed from PERADI, which was named the Indonesian Advocates Congress (KAI). In the Congress, KAI claimed to be the holder of the highest sovereignty for the organization of Indonesian Advocates which was carried out constitutionally and democratically, and in its first congress issued a Decree of the Indonesian Advocates Congress I of 2008 Number:08/KAI-I/V/2008 concerning the Code of Ethics for Indonesian Advocates dated May 30, 2008. It's just that the content of the code of ethics approved by the Indonesian Advocates Congress is the same as the code of ethics ratified by the Indonesian Advocates Working Committee.

The ratification of the Advocates' Code of Ethics by the Indonesian Advocates Congress, therefore currently there are 2 (two) codes of ethics that apply within the Advocate's organization, the problem is in the provisions of Article 26 paragraph (1) which states that Advocates' organizations are given the right to draw up a code of ethics for the Advocate profession arranged. So that by looking at the dynamics of the number of new Advocate

organizations emerging so that it can have an impact on the ratification of the code of ethics of the Advocate profession which is different and not uniform between Advocate organizations, which can lead to different rules that bind each Advocate of different organizations. The code of ethics is the highest law in carrying out a profession that guarantees and protects, but imposes an obligation on every advocate to be honest and responsible in carrying out his profession both to clients, courts, the state or society and especially to himself.

The Advocate's Code of Ethics (Hickok, 2021) provides moral guidance to Advocates, in carrying out their duties and professional authority. The Advocate's Code of Ethics guides the moral ethics of the Advocate's profession in carrying out his professional duties. Every profession has ethical guidelines to control the ethical morals of the profession in carrying out its professional duties. The Code of Professional Ethics is a moral code that dictates which way a profession acts depends on its moral and ethical considerations. Ethical control grows from within everyone, ethical control is only carried out by oneself and attacks the profession, not by others. Other people only see when there have been ethical violations and the consequences of ethical violations that have arisen. In this regard, a code of ethics is required for every person with a profession.

The rule of law alone is not strong enough to guide and guide a person's moral and ethical behavior. The rule of law only speaks in the context of a person's real behavior, and doesn't touch the intentions of what someone will do. The rule of law only deals with actual behavior that has already occurred and can be observed, and doesn't speak of a person's future behavior. Laws are coercive regulations that determine human behavior in the community made by authorized official bodies, which violations of these regulations result in action being taken, namely with certain punishments. So, the law has the power to apply, because there is coercion from outside parties that comes from within. Meanwhile, the code of ethics emphasizes self-awareness regarding which actions will be carried out and which should not be done which is ethically incorrect. Therefore, in professional life, a code of ethics is indispensable as a means of self-control in order to prevent ethical violations in carrying out their professional duties.

Conclusion

The Advocate profession is related to the task of serving the community to help solve the legal problems it faces. In carrying out their duties, advocates are guided by the Law on Advocates, but the norms of the law are considered insufficient, because the advocate profession is related to behavior that is not infrequently influenced by the moral ethics of advocates in every decision making. For this reason, in carrying out their duties, they still need an ethical guide as a guide in carrying out their professional duties. In this regard, the Advocate Professional Code of Ethics is very much needed in guiding the behavior of Advocates in making decisions and ethical behavior.

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