

**ANALYSIS OF RASIOLEGIS OF HONORS AGAINST ETHICS ENFORCEMENT
ADVOCATE PROFESSION**

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ABSTRACT : This paper aims to analyze the legal counselors' advocacy against the enforcement of advocate professional ethics. An advocate Honorary Board as an institution formed by a functioning Advocate Organization and authorized to oversee the implementation of the Advocate's code of ethics. This is so that every advocate as a profession holder remains in professional values, is responsible and upholds the profession he holds, considering that the Advocate's status as Law Enforcement is one of the instruments in the judicial process which has an equal position with other Law Enforcement. This study uses a normative juridical approach, and secondary data as the main data supported by primary data. The secondary data in the form of primary, secondary and tertiary legal materials are analyzed qualitatively. Based on the analysis revealed that in Law No. 13 of 2003 concerning Advocates, stated that Peradi was the sole forum for advocacy organizations but with the presence of KAI coupled with divisions in Peradi's body which finally issued a Circular Letter of the Supreme Court of the Republic of Indonesia No. 73 KMA / HK.01 / IX / 2015 the application or execution of decisions against violations of the code of ethics by advocates is difficult to implement.

Keywords : racolegis; honorary council; enforcement; professional ethics; advocate.

INTRODUCTION

Advocates as one of the elements of the justice system is one of the pillars in upholding the supremacy of law and human rights. Advocates are noble professions that are closely related to humanity.¹ Therefore the legal profession is a professional group that deals with the legal field. The legal profession caretaker works professionally and functionally, besides that it must have a level of thoroughness, prudence, perseverance, critical, and high dedication because they are

1 Munir Fuady, *Profesi Mulia (Etika Profesi Hukum bagi Hakim, Jaksa, Advokat, Notaris, Kurator, dan Pengurus)*, Citra Aditya Bakti, Bandung, 2005, p. 1

responsible to themselves, to the community, even to the Almighty God, and are able work in accordance with the professional code of ethics.²

Advocates are free profession, *vrij beroep*), which are not subject to the hierarchy of positions and are not subject to orders from superiors, and only accept orders or orders or powers from clients based on free agreements, whether written, or unwritten, who are subject to the code of ethics of the Advocate profession, are not subject to political power, which has public obligations and responsibilities.³ The professional code of ethics aims to have a moral guideline for a professional in acting on his professional duties.⁴ The code of ethics is moral principles that are inherent in a profession that are arranged systematically. This means that without a code of ethics that is intentionally arranged systematically, even then a profession can still work because these moral principles are actually inherent in that profession.⁵

Advocate's profession in providing legal services and is 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 always participate in upholding Human Rights, and in carrying out his profession defending anyone, not bound by a client's order and indiscriminately who is against his client, is he from a strong group, rulers, officials or even the poor.⁶

An independence and freedom that is owned by an advocate profession, of course, must be followed by the responsibility of each advocate and professional organization that shelves it. The provisions of Law Number 18 Year 2003 concerning Advocates have provided guidelines so that the advocate profession is carried out in accordance with the purpose of upholding law and justice. The easiest thing to see is from an oath or pledge of an advocate that is carried out before carrying out his profession. The oath is essentially the promise of a person who will undergo a profession as an advocate, to God, himself, and society. If every advocate does not only say it for formality, but absorbs, adheres to it, and runs it, of course the condition of law enforcement will always improve better. Judicial power will truly be able to enforce law and justice.⁷

The authority to oversee the implementation of the Advocate code of ethics is the Honorary Board. Based on the provisions of Law Number 18 of 2003 in Article 1 number (4), it states that

2 Abdulkadir Muhammad, *Etika Profesi Hukum*, Cet. III. Citra Aditya Bakti, Bandung, 2006, p. 62.

3 Rapaun Rambe, *Teknik Praktik Advokat*, Grasindo, Jakarta, 2003, p. 37

4 Munir Fuady, *Op. Cit.* p. 10

5 Shidarta, *Moralitas Profesi Hukum, Suatu Tawaran Kerangka Berpikir*, Refika Aditama, Bandung, 2006, p. 107

6 Hendra Winata, Frans, *Advokat Indonesia, Citra, Idealisme dan Kepribadian*, Sinar Harapan, Jakarta, 1995, p. 14

7 Risalah Sidang MK Nomor 015/PUU-IV/2006 mengenai *Pengujian Undang-Undang Advokat*

"Advocate Organizations are professional organizations established under this Law." Understanding of the Honorary Board contained in the Indonesian Advocates Code of Ethics, namely: Honorary Council is an institution or a body formed by a functioning advocate professional organization which oversees the implementation of the Advocate's code of ethics accordingly by the Advocate and has the right to receive and examine complaints against an Advocate who is considered to violate the Advocate's Code of Ethics. The Advocate Honor Board is an entity formed by an Advocate Organization whose duty is to supervise, examine and prosecute an Advocate who violates the Advocate Code of Ethics.

However, even though in Law No. 13 of 2003 concerning Advocates, has stated that Peradi is the sole forum of advocacy organizations, but with the presence of KAI, it was added with a split in Peradi's body which finally issued Circular Letter of the Supreme Court of the Republic of Indonesia No. 73 KMA / HK.01 / IX / 2015 causes the implementation or execution of decisions on violations of ethics codes by advocates that are difficult to implement. Based on the background above, a problem that must be solved is related to how is the advocate legislature's legislature against the enforcement of a professional ethics advocate?

Research Methods

The research method used in this study is normative legal research, namely legal research that puts law as a building system of norms. The norm system in question is regarding principles, norms, rules of law and doctrine.⁸ In this study a juridical approach method is used, by examining the rule or rule of law as a system building related to a legal event. The type of data used in this study is Secondary Data which consists of Primary Legal Materials, Secondary Legal Materials, and Tertiary Law materials obtained from books, literature, papers, legislation and other data sources. Secondary data collection was carried out using the literature approach method, which is a library research using legal library materials that support in this study. Collection of legal materials is done by way of tracing, collecting, and studying conventional documents such as reading, viewing listening, and information technology (internet media). Secondary data in the form of primary legal materials, secondary legal materials, and tertiary legal materials that have been collected and processed will be analyzed by normative methods which will then be presented descriptively. Data analysis in this study used qualitative analysis.

Discussion

1. Definition of Ethics

Ethics are norms, values or behavior patterns of certain professional groups in providing

8 Mukti Fajar dan Yulianto Achmad, 2010, *Dualisme Penelitian Hukum Normatif & Empiris*, Cetakan I, Pustaka Pelajar, Yogyakarta, p. 36

services to the community.⁹ Ethics is essentially a life view and a guideline about how that person should behave. Ethics comes from human consciousness which is a clue about which actions are good and bad. Ethics is also an assessment or qualification of one's actions.¹⁰

2. Definition of Profession

Each profession contains two aspects, namely professionalism and professional ethics as a guide to morality. In every profession, technics and ethics are found in the profession. Professional ethics plays a role in people's lives and at the same time can be used as an agent of change from the development of a society and its law. Professional ethics has a charge of technics and ethics that are needed to progress development and balance in a society.¹¹

Profession or profession is a type of work which because of its nature requires high knowledge, special and special training. Professional jobs are a type of assignment, occupation or position that requires certain qualification standards of expertise and behavior.¹²

According to Oemar Seno Adji, the code of ethics is "Regulations regarding the profession in general which contain fundamental rights and rules regarding behavior or conduct in carrying out his profession."¹³

In principle, the code of ethics is determined by a professional organization for its members. In it contains a strong influence to plant awareness and awareness of its members, so that he sincerely obeys or adheres to the stipulated provisions, which are useful and have a strong influence in upholding the discipline of its members.

3. Definition of Professional Ethics

Professional ethics collected in the code of ethics is actually the norms in life together. In this shared life, humans hold on to certain pairs of values, which are views about what is considered bad. Ethics or morality in the broadest sense (if in a narrow sense is called moral which is centered on a clean conscience), shows humans things that are true and what is wrong. As one result of the existence of ethics, the rules emerge which tend to contain orders, prohibitions or permits, while for the wrong things these rules are contained which contain prohibitions. Furthermore, the rules will regulate human behavior that has psycho-social aspects in a broad sense.¹⁴

9 M. Yusuf Hanafiah dan Amri Amir, 1999, *Etika Kedokteran dan Hukum Kesehatan*, E.G.C, Jakarta, p. 2.

10 Sudikno Mertokusumo, 1991, *Mengenal Hukum (Suatu Pengantar)*, Liberty, Yogyakarta, p.2

11 Ridwan Widyadharma, 2006, *Etika Profesi Hukum*, Badan Penerbit Universitas Diponegoro, Semarang, p. 15-16.

12 *Ibid.* p. 65

13 Oemar Seno Adji, 1991, *Etika Profesional dalam Hukum, Profesi Advokat*, Penerbit Erlangga, Jakarta, p. 15.

14 Soerjono Soekanto, 1985, *Efektivitas Hukum dan Peranan Sanksi*, Remaja Rosda Karya, Bandung, p. 53.

Professional ethics is a rule of behavior that has binding strength for every profession holder. The basic concept of professional ethics is oriented towards a goal so that every profession holder remains in professional values, is responsible and upholds the profession he holds. Professional ethics as a norm formulated in a professional code of ethics that contains ethical values is defined as a means of guiding and controlling as it should or should the profession holder act or behave or act in carrying out his profession. The values contained in professional ethical norms are ethical values.

4. Advocates

Advocates in terms of terminology means a legal expert who provides assistance or assistance in legal matters. This assistance or assistance is to provide advice as good services, in its development then it can be requested by anyone who needs it, needs it for legal proceedings. Legal services are services provided by Advocates in the form of providing legal consultation, exercising power, representing, assisting, defending, and carrying out other legal actions for the client's legal interests.

5. Law Enforcement

The function of law is to guarantee the creation of a peaceful and fair society order, so that human interests are protected, that is why law must be carried out and take place normally, but the occurrence of violations of law in a society cannot be avoided, the violated law must be enforced, in basically everyone cannot do legal irregularities.

6. Honorary Board in Enforcing Advocates' Code of Ethics

Supervision of the implementation of this Advocate / Legal Counsel code of ethics is carried out by each Honorary Board of professional organizations namely "IKADIN", "AAI" and "IPHI" with the right to authorize and adjudicate cases of violation of the code of ethics based on the Board of Justice Honor.

The Honorary Council that has the power to examine and hear cases of violations of this code of ethics is carried out by the Honorary Board of each of the professional organizations. The said Honorary Council is the "IKADIN" Honorary Board, the Honorary Board "A.A.I." and the Honorary Board "I.P.H.I.". Aside from the Honorary Board from the three professional organizations, no other body has the power to examine and adjudicate cases of violating the code of ethics of the Advocate / Legal Advisor profession.

The honorary council is an institution or body formed by a professional advocate organization that functions and has the authority to oversee the implementation of the Advocate's code of ethics accordingly by the Advocate and has the right to receive and examine complaints against

an Advocate who is considered to violate the Advocate's Code of Ethics.¹⁵ In another explanation, the Honorary Council is an institution or body formed by a professional Advocate / Legal Advisory organization, which functions and has the authority to supervise, obey and be carried out properly. The code of ethics of the Advocate profession or Legal Counsel in PERADI organization.

In Chapter VI of the Advocate Code of Ethics, supervision of the implementation of an advocate's code of ethics is made explicitly by the Honorary Council if there is a violation of the provisions and Articles of Ethics, as stated in Article 10 paragraph (1) as follows: examine and hear cases of violations of the Code of Ethics conducted by Advocates. Enforcement of regulations in particular The ethical code in the narrow sense is to restore the rights and obligations that have been violated, so as to create a balance like before the violation occurred. The form of restoration of violations of the Code of Ethics is strict enforcement of violators of the Code of Ethics. With the birth of Law No. 18 of 2003 concerning Advocates, of course there is a rule that regulates and monitors the performance of Advocates if the Advocate violates the Code of Ethics of the Advocate, namely the Honorary Board of the Advocate Code of Ethics.

The presence of an Advocate Honorary Board is not only in the enforcement of the daily profession advocated by lawyers, but also oversees advocates in dealing with colleagues and colleagues / clients.

The Honorary Council in the provisions of Article 1 of the Advocate Code of Ethics states as follows: The Honorary Council is an institution or body formed by a Advocate Organization that functions and has the authority to oversee the implementation of the Advocate Code of Ethics accordingly and has the right to receive and examine complaints against an Advocate who is considered to violate the Code Advocate Ethics. The existence of an organization in this case PERADI certainly enforces the code of ethics as a moral for the professional carrier guidelines and for each of its members, so that each PERADI member is given a Code of Ethics in carrying out his profession as an advocate.

In upholding the Advocate Code of Ethics, the Honorary Board has a very active role. In conducting oversight for profession professors, in the process of enforcing the Advocate Honorary Board reflecting on Law No.18 of 2003 concerning Advocates and the Advocate Code of Ethics itself.

7. Procedures for Complaints on Violations of the Professional Code of Ethics to the Honorary Board

Complaints against someone who is considered to violate the professional code of ethics,

15 Kode Etik Advokat Indonesia, Pasal 1 butir (e)

whether he is an Advocate / Legal Counsel as referred to in article 10 paragraph (1), must be filed in writing accompanied by reasons, in the Branch to the Honorary Board of the concerned professional organization and the Center to the Board Honor Center of concerned professional organizations.

The complaint material is only the violation of the code of ethics of the Advocate / Legal Advisor profession. Complaints can be filed by parties who feel disadvantaged are:

- a. client;
- b. peers;
- c. officials / entrepreneurs;
- d. community members;
- e. Central Board; and
- f. Branch Board.

The Honorary Board of the Branch has not yet been formed, the task is carried out by the Honorary Council of the branch of the concerned professional organization.

The Honorary Board of the Branch records the letters of complaint received in the register specifically provided for that and after receipt of written complaints accompanied by letters of evidence and testimonies deemed necessary, no later than within 14 (fourteen) days , copy / copie photo of the complaint letter has been submitted with a special express mail / registered through the post office or directly to the person who was reported personally with the receipt as proof.

The notification letter with the attachment of the full complaint letter must be properly conveyed to the complainant notified so that the answer is submitted in writing to the Branch Honorary Board no later than within 21 (twenty one) days from the date of receipt of the notice.

Written answers from those filed are submitted to the Branch Honorary Board accompanied by letters of evidence and testimonies deemed necessary. If within 21 (twenty one) days the complainant does not give a written answer, the second notification is sent again with a warning so that the written answer is submitted within 14 (fourteen) days from the date of receipt of the second notice and if within the period of 14 (fourteen) days he still does not provide a written answer, then he is deemed to have given up the right of reply.

In the event that the party complained does not submit a written answer or has been deemed to give up the right of reply as stipulated in the provisions of this article, then the Branch Honorary Council has the power to examine and hear and make decisions without the presence of the party who is referred to with the verdict. A receipt has been received or with no written answer received from the one complained in accordance with the deadline specified in

paragraph (2) and paragraph (4) of this article, the Branch Honorary Council immediately determines and determines the trial day and date within 21 (twenty one) days at the latest and submit a notification letter of call to be present at the prescribed hearing, each to the complainant and to the complainant provided that the summons must be received by the interested party at the latest (at least) 3 (three) days the previous day / date of the hearing and the call must be made appropriately.

The complainant and those who are personally complained must come in person at the hearing and if each party wishes to be accompanied by his advisor but cannot be represented or authorized to others. At the first session, the two complainants and the complainants were summoned to be present in court. One of the complainants or the one being complained is not present, the hearing cannot be continued and postponed at the next session no later than 14 (fourteen) days, except because the provisions are stipulated in paragraph (5) of this article.

8. Analysis of the Decision of the PERADI Honorary Board Judging from Dignified Justice Theory

Basically, theory of dignified justice is not only a concrete form of alignment of the values understood in every rule and principle of law governing any applicable statutory provisions, judges' decisions and all agreements made by parties in civil relations, and public law acts, as well as those parties are subject to international law.¹⁶

The dignified approach to justice theory works in a system, it can also be called systemic or philosophical approach. In the theory of justice dignity of the principles and principles of Indonesian law are also seen as being and are part of a legal system structured in a manner that applies to the positive legal system. The dignified theory of justice holds that in the system there is no desire for conflict or conflict between the elements in the system. The theory of dignified justice as a system also adheres to the view that when a conflict is inevitable in the system, conflicts or non conformities, contradictions and overlaps between elements in the system can immediately be resolved by the system itself.

The theory of dignified justice is used to explore the thoughts of legal theories and paradigms put forward by experts who are traced and examined from the political background and social conditions of the people in which the experts think live, so that the proposed paradigm can still be relevant or not in understanding the law when this is the condition and social structure that is very different from the social background where the paradigm is proposed by the experts.¹⁷

Taking into account the basic postulate of the proposed theory as stated by the initiator of the dignified theory of justice, it can be seen that the theory of dignified justice is a philosophical

¹⁶ *Ibid*, h. 51

¹⁷ Teguh Prasetyo dan Abdul Halim Barkatullah, *Op. Cit.*, p.138.

tool or instrument made intentionally, the result of thought processes to find very long truths in order to carry out analysis and justification of symptoms law. In the context of this study, the theory of dignified justice is the result of continuous thinking in explaining and justifying the regulation of legal aid in criminal cases as an effort to fulfill the rights of suspects or defendants who are not capable.

Dignified justice theory notes an attitude in the development of a legal system based on Pancasila. It was stated that the Indonesian legal system does not adhere to the statute law system absolutely, nor does it absolutely adhere to the common law system, even though many support the opinion that the judge-made law system upholds the dignity and dignity of judges as institutions or institutions that create law. Even though the common law system believes that a dynamic society that continues to develop at any time is impossible to accommodate in law and legal cases continue to develop in the midst of society, the legal system based on Pancasila is not easily fooled by such a vision. that.

The Decision of the PERADI Honorary Board in deciding cases for Advocates who violate the code of ethics if linked to the theory of dignified justice both legal considerations and decisions of the Honorary Board have fulfilled legal rules and fulfilled a sense of justice among law workers, namely Advocates but the implementation or execution of decisions is difficult considering in Law No. 13 of 2003 concerning Advocates, that Peradi is a single forum but with the presence of KAI coupled with divisions in Peradi's body which finally issued a Circular Letter of the Supreme Court of the Republic of Indonesia No. 73 KMA / HK.01 / IX / 2015.

9. Analysis of the Decision of the PERADI Honorary Board in terms of Law Enforcement Theory

Law enforcement is an attempt to realize ideas of justice, legal certainty and social benefits into reality. A law enforcement is essentially the process of manifesting ideas. Law enforcement is the process of carrying out efforts to uphold or function legal norms in a tangible manner as a guideline for perpetrators in traffic or legal relationships in public and state life. Law enforcement is an effort to realize legal ideas and concepts that people hope to become a reality.

According to Joseph Goldstein distinguishes enforcement of criminal law into three parts, namely the first part, total enforcement. In total enforcement, the scope of criminal law enforcement is as formulated by substantive law of crime. Enforcement of criminal law in total is not possible because law enforcers are strictly limited by the law of criminal proceedings, which include the rules for arrest, detention, search, confiscation and preliminary examination.

In the second part, namely full enforcement. In full enforcement, after the total scope of criminal law enforcement is reduced this area of enforcement in law enforcement law enforcers are expected to enforce the law to the fullest. The third part, namely actual enforcement. According to Joseph Goldstein, "full enforcement is considered not a realistic expectation, because there are limitations in the form of time, personnel, tools, investigations, funds and so on, all of which result in the necessity for discretion and the rest is called actual enforcement".¹⁸

In a systemic process, the enforcement of criminal law reveals itself as the application of criminal law (criminal law application) that involves various structural sub-systems in the form of police, prosecutors, court, and correctional institutions. This includes, of course, legal advisory institutions. In this case the application of the law must be viewed from three dimensions. The first dimension, namely the dimension of the application of law is seen as a normative system, namely the application of the whole legal rules that describe social values supported by criminal sanctions. The second dimension, namely the application of law is seen as administrative (administrative system) which includes the interaction between various law enforcement officials who are the sub-judicial system above, while the third dimension, namely the application of criminal law is a social system (social system), in the sense that defining criminal acts must also take into account various perspectives that exist within the society. Factors that influence law enforcement according to Soerjono Soekanto are legal factors themselves. The practice of law enforcement in the field sometimes occurs in conflict between legal certainty and justice, this is because the conception of justice is an abstract formulation, while legal certainty is a normatively determined procedure. Thus, a policy or action that is not fully determined based on law is something that can be justified as long as the policy or action is not against the law. In essence the implementation of state law does not only include law enforcement, but also peace maintenance, because the administration of law is actually a process of harmonization between values and real behavior patterns that aim to achieve peace.¹⁹

The second factor, namely law enforcement factors. Intended by law enforcement factors, namely the legal function, the mentality or personality of law enforcement officers play an important role, if the regulations are good, but the quality of the officers is not good, there is a problem. Therefore, one of the keys to success in law enforcement is law enforcement mentality or personality.

The third factor is the factor of supporting facilities and facilities. Intended here, namely the factors of facilities or supporting facilities include software and hardware, one example of

18 *Ibid*, p. 39

19 Soerjono Soekanto, *Op. Cit*, h. 42

software is education. Education received by the police today tends to be on conventional practical matters, so that in many cases the police experience obstacles in their objectives, including knowledge of computer crime, in special crimes which have still been authorized by prosecutors, this is because technically the juridical police are considered not yet capable and not ready. Although it was also realized that the tasks that the police had to carry out were so broad and numerous.²⁰

Community factors also influence law enforcement. Law enforcers come from the community and aim to achieve peace in the community. Every citizen or group has a little legal awareness, the problem that arises is the level of legal compliance, namely legal compliance that is high, moderate or lacking. The existence of a degree of community legal compliance with the law is one indicator of the functioning of the law concerned.

Judgment of the PERADI Honorary Board if it is related to the theory of legal protection, the sanctions policy is in the context of providing legal protection, especially for disadvantaged / neglected parties, because the advocates who have been sanctioned have not been executed because Advocates move to other organizations Advocate organization). So clients who have been harmed by Advocates who are sanctioned still see with their own heads that the Advocate is still working so that the injured clients have not been protected and have not fulfilled a sense of justice.

Conclusion

The Decision of the PERADI Honorary Board in deciding cases for Advocates who violate the code of ethics if linked to the theory of dignified justice both legal considerations and decisions of the Honorary Board have fulfilled legal rules and fulfilled a sense of justice among law workers, namely Advocates but the implementation or execution of decisions is difficult considering in Law No. 13 of 2003 concerning Advocates, that Peradi is a single forum but with the presence of KAI coupled with divisions in Peradi's body which finally issued a Circular Letter of the Supreme Court of the Republic of Indonesia No. 73 KMA / HK.01 / IX / 2015.

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²⁰ *Ibid*, h. 42

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