

CHALLENGES AND SOLUTIONS FOR LAWYERS AS LEGAL ENFORCERS IN CRIMINAL CASES (A STUDY IN LEGAL PSYCHOLOGY)

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.Pengacara, Kasus
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Abstrak

Dalam realitasnya advokat sebagai Penegak Hukum dalam Perkara Pidana masih mengalami kendala baik secara internal maupun Eksternal. Karena itu upaya untuk mengoptimalkan fungsi Advokat dalam perkara pidana adalah dengan memberikan pelayanan kepada masyarakat tanpa diskriminatif. Penelitian ini menggunakan metode deskriptif yuridis. Hasil penelitian ini menunjukkan bahwa Upaya yang dapat dilakukan untuk mengoptimalkan pelaksanaan fungsi Advokat dalam perkara pidana : Advokat harus menyadari dan melaksanakan tugas pokok dan fungsinya dalam memberikan bantuan hukum kepada masyarakat tanpa diskriminatif, Aparat Penegak Hukum (Polisi, Jaksa, Hakim) selaku mitra penegak hukum harus memberi dorongan yang positif kepada para Advokat, agar dapat melaksanakan tugas pokok, dan fungsinya, dalam memberi pelayanan bantuan hukum kepada masyarakat tanpa diskriminatif,

Keywords

.Lawyers, Law Cases,
Crime

Abstract

In reality, lawyers as Legal Enforcers in Criminal Cases still face obstacles, both internally and externally. Therefore, efforts to optimize the role of lawyers in criminal cases involve providing services to the public without discrimination. This research uses a descriptive juridical method. The results of this study indicate that efforts that can be made to optimize the implementation of the lawyer's function in criminal cases are as follows: Lawyers must be aware of and fulfill their primary duties and functions in providing legal assistance to the public without discrimination. Law Enforcement Officials (Police, Prosecutors, Judges) as legal enforcement partners should provide positive support to lawyers so that they can fulfill their primary duties and functions in providing legal assistance to the public without discrimination.

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INTRODUCTION

It is a reality in a modern country to have an organization or institution that provides legal services to people or institutions commonly called advocates or lawyers whose existence has been formally recognized in the judicial process in Indonesia. Although this recognition is not specifically and systematically regulated in a regulation, both sporadically in the laws and regulations issued from the Dutch colonial rule until independence. Advocates as one of the elements of law enforcement still experience obstacles, because they have not been aligned with other law enforcers, such as police, prosecutors and judges. This consequence is seen in the increasingly deteriorating law enforcement in Indonesia due to the absence of guidance and supervision and coordination among law enforcers.

In this connection, Bambang Rudolf (2001: 4-5) that:

"Our legal phenomenon, like a wilderness. In the jungle prevails the law of the jungle, who is strong he wins. But the Law of the jungle that is happening now, is no longer a muscle fight like animals in the jungle Raya, but a battle of strength using money. Whoever is able to give the most money to the Law Enforcers in the Court, then he will come out victorious, even if he is on the wrong side. It is this kind of thing today that people call the Judicial mafia."

In reality, especially for the legal profession in the judicial process, lawyers are often compelled to take unscrupulous actions and even exhibit the following behaviors:

- a. Acting as mediators and even directly engaging in negotiations (collusion) with law enforcement authorities (investigators, prosecutors, and judges), as most clients are generally afraid or reluctant to approach law enforcement authorities directly.
- b. Deliberately creating excuses that divert from the core issue, obfuscate legal matters, or violate professional ethics.
- c. Hiding evidence, obstructing investigators from obtaining evidence (both physical and testimonial), and some lawyers even resort to creating fake evidence, among other actions.

Ultimately, the legal profession becomes a victim of money and political power, pressuring and diminishing its opportunity to play a broader role in advocating for truth and justice. If this situation persists within the legal profession, it will lead to feelings of despair, a loss of idealism in pursuing truth and justice, resulting in a breakdown of moral and professional integrity among lawyers. Lawyers are coerced into submission under the grip of money and power, ensnared in the corrupt underworld of the justice system, bribery, and the buying and selling of justice. As a result, negative connotations are attached to certain lawyers by the public. For example, the term "lawyer who never loses" is used to describe lawyers who consistently win cases or acquit clients of legal charges.

In practice, lawyers often conspire with rogue law enforcement officials (police, prosecutors, and judges) to act as legal representatives for suspects or defendants in specific cases, such as corruption, narcotics, or banking-related crimes. They recommend specific lawyers to suspects or defendants to serve as their legal counsel if they wish to receive a lenient sentence or even be acquitted. There is also a term, "canned lawyers," which refers to lawyers who lack professional competence as legal representatives. These lawyers, when taking on a case, don't initially seek evidence, facts, or a basis for their

defense strategy or to build an alibi. Instead, their first action is to seek out corrupt police officers, prosecutors, and judges who can be bribed to lighten or completely dismiss charges against their clients.

The reform era, with its important agendas aimed at transforming and rebuilding various aspects of the nation's life, has transitioned from an authoritarian regime to a more democratic one. One of these crucial agendas is legal reform, which has resulted in various forms of change, starting with the amendment of the 1945 Constitution, which became the fundamental spirit and guideline for subsequent legislation. For instance, the Law Number 18 of 2003 concerning Lawyers (UUA). Many people had high hopes that the enactment of the UUA could change the situation of the legal profession as one of the law enforcers.

In practice, achieving effective law enforcement is not easy because it is influenced by various factors, both internal and external. Lawyers, as legal enforcers, also face challenges stemming from the lack of professionalism among lawyers and the actions of other law enforcement entities, such as the police, prosecutors, and judges, who often view lawyers as impediments and restrictions on their freedom to negotiate cases.

RESEARCH METHODS

This study aims to provide an in-depth description and analysis of legal phenomena related to the Regulation Method of Legal Position of Deputy Regional Heads in the implementation of Regional Government. This research methodology is designed to collect, analyze, and interpret relevant data to provide a better understanding of the legal issue.

This research is a type of juridical descriptive research, which aims to describe and systematically analyze legal phenomena that exist in society. A descriptive approach is used to collect data and explain legal phenomena in detail.

The collected data will be analyzed using methods [specify analysis methods such as content analysis, thematic analysis, or statistical analysis]. This analysis will involve the process of classification, coding, and interpretation of data to produce relevant findings.

This research complies with the ethical principles of research, including obtaining consent from respondents and maintaining the confidentiality of the data obtained. All data will be stored securely and used only for research purposes.

RESULTS AND DISCUSSION

1. Definition of advocate

Before the enactment of the UUA, various terms were used interchangeably in Indonesia, such as *advokat*, *pengacara*, and *penasehat hukum*, which had significant differences in meaning in legal practice. In English, all these terms are referred to as lawyers. These terms have different roles, such as trial lawyers in Indonesia, which is equivalent to Attorney at Law in the United States and barrister in the United Kingdom. The term "*konsultan hukum*" in the United States is referred to as "counselor," while in the United Kingdom, it is called "solicitor."

In a general sense, in legal practice in Indonesia, *advokat*, *pengacara*, and *penasehat hukum* are individuals who represent their clients in legal actions based on the power of attorney provided for defense or prosecution in court proceedings (litigators). On

the other hand, konsultan hukum refers to individuals who work outside the court system, providing legal advice and opinions on past and future legal matters (non-litigators).

In Indonesia, similar to the United States, advokat, pengacara, and penasehat hukum can represent clients both inside and outside the court based on a power of attorney. Article 1 of the Indonesian Lawyers Association's Articles of Association stipulates that:

"Advokat includes legal advisors, lawyers, practicing lawyers, legal consultants (paragraph 1);

"Legal consultants are a profession carried out by law graduates from state universities or their equivalents, not civil servants/members of the Indonesian Armed Forces (ABRI), based on special business permits granted for that purpose, authorized, and not practicing in court (paragraph 2);

Paragraph (2) of the article further states, "The profession of lawyer, legal advisor, practicing lawyer is carried out by law graduates from state universities or their equivalents, not civil servants/members of the Indonesian Armed Forces (ABRI), appointed based on the decision of the Minister of Justice of the Republic of Indonesia or by the chairman of the local high court who practice their profession outside and inside the court (paragraph 3)."

These definitions above create a distinction in the scope of roles between legal consultants and advokat hukum, pengacara, and pengacara praktek. The main difference lies in the fact that legal consultants practice their profession based on a special business permit issued by the competent authority outside the court system. Meanwhile, advokat/penasehat hukum, pengacara, pengacara praktek practice their profession based on the decision of the Minister of Justice or the chairman of the local high court, both inside and outside the court.

This definition is somewhat confusing, as it raises questions about whether a legal consultant is also considered an advokat according to paragraph (1) above, or vice versa, or whether the license obtained by an advokat covers practicing as a legal consultant.

However, since the enactment of the UUA, all the terms used for legal practitioners, such as advokat, pengacara, penasehat hukum, and advokat, have been unified. Article 1, number 1 of the UUA states:

"Advokat is a person who professionally provides legal services both inside and outside the court, meeting the requirements of this Law (number 1);

"Legal consulting services provided by advokat consist of providing legal consultation, representing, accompanying, defending, and taking legal actions for the legal interests of clients (number 2)."

Based on the definition of advokat above, questions arise as to whether this term can also be applied to those who, before the enactment of the UUA, only provided legal services outside the court and did not have an appointment letter from the Chairman of the High Court or the Minister of Justice. What about legal consultants who are part of the Indonesian Capital Market Legal Consultants Association (Himpunan Konsultan Hukum Pasar Modal), some of whom only hold permits from the Chairman of the Capital Market Supervisory Board (BAPEPAM)? Can they also be referred to as advokat? However, the permit issued is only a registration or practice permit within the scope of capital market law, which is outside the jurisdiction of procedural law.

Furthermore, Article 32, paragraph (1) of the UUA stipulates that lawyers, legal advisors, practicing lawyers, and legal consultants who were appointed at the time when

the UUA came into effect are declared as Advokat. This makes it difficult to consistently apply the definition of Advokat to the profession of legal consultants (Article 1, number 1 of the UUA). Therefore, the practice of the legal profession creates two main streams: those who practice outside and inside the court. In fact, many legal consultants never enter the courtroom when practicing their profession. This phenomenon occurs in almost every country, especially in the Commonwealth countries, which explicitly differentiate between lawyers working outside the courts (solicitors) and lawyers working inside the courts (barristers).

2. Understanding Legal Psychology

The emergence of the field of legal psychology, also known as "psycholegal" or "legal psychology," as a distinct discipline, came after a relatively long process of development. In earlier stages, legal psychology was typically considered a subfield of social psychology (Achmad Ali, 2009:10).

The field of legal psychology began to take shape in the mid-1960s, particularly in North America, the late 1970s in the UK, and the early 1980s in Australia. Over the past two decades, research and teaching in the "psychology of law" have seen rapid growth on both sides of the Atlantic. Furthermore, the field of "psychology of law" has also developed rapidly in Europe, especially in countries like the Netherlands, Germany, and Spain. Since the 1960s, "psychology of law" has evolved into a distinct applied discipline and a success story frequently cited in applied psychology (Achmad Ali, 2009:10).

Haney, as mentioned in Achmad Ali (2009:10), pointed to legal psychology researchers who have successfully provided answers to significant questions from society, including:

- a) Assisting in improving the way eyewitnesses are interviewed by law enforcement personnel.
- b) Adopting a more critical approach to issues of forensic evidence in court.
- c) Psychologists contributing to the advancement of the legal status and rights of children.
- d) In general, making jury selection fairer (in countries that use a jury system).

All of these contributions have made the impact of legal psychology studies multidirectional. Although Brown published his work titled "Legal Psychology" in 1926, in reality, lawyers in the United States were more familiar with forensic psychology, traditionally dominated by psychiatrists. It wasn't until the 1960s that lawyers in the United States began to acknowledge and appreciate the existence of psychology related to their work.

Psychology is the study of human behavior, and Legal Psychology focuses on human behavior related to the law. This focus requires an initial understanding of the basic philosophy and methods of behavioral sciences and extensive research findings that can be applied to legal processes.

Legal Psychology, also known as "psycholegal" or "legal psychology," is a relatively new field that emerged in the 1960s. It is an empirical study that views law in terms of human behavior within the legal context. When humans behave, whether their behavior is considered "right" or "wrong" according to legal standards, legal psychology seeks to classify that behavior, such as distinguishing between individual and group

behavior, normal and abnormal behavior, and other classifications specific to legal psychology (Soerjono Soekanto, 1986:76).

The definition of Legal Psychology is not straightforward, and there are many interpretations by various experts. Each legal psychology expert defines the scope of Legal Psychology research in their own way (Achmad Ali, 2009:10).

According to the Encyclopedia of Psychology & Law, Volume 1 (2008; xxxiii-xxxiv):

Psychology and law play a significant role in post-graduate education and professional development. Psychology-law courses are increasingly common in undergraduate psychology programs, and many such offerings are filled to capacity with undergraduate students weaned on justice and crime-themed media and literature. Attracted by the compelling application of psychology to real-world criminal investigations and trials, undergraduate students frequently volunteer as research assistants in psychology and law laboratories. Master's and doctoral programs focusing on various aspects of psychology and law have been developed and provide the research and service industries with additional intellectual capital. Postdoctoral training and professional certification options in forensic psychology support the development of a profession uniquely qualified to address mental health issues in a wide variety of legal contexts. The development of psychology and law as a field of scholarship, practice, and education has numerous societal benefits and is consistent with the trend toward interdisciplinary inquiry. Although welcome in these respects, the marriage between these two broad disciplines poses several boundary challenges. Psychology and law. It is also interdisciplinary in that it encompasses all the traditional subdisciplines of psychology. Given the lack of "ownership" of this field by any one discipline or subdiscipline, the lack of comprehensive reference sources (e.g., textbooks, handbooks, encyclopedias) is particularly acute. A comprehensive encyclopedia of psychology and law represents an attempt to help fill this substantial gap in the holdings of academic, professional, and personal libraries. It is our hope that this resource will be of immense help for scholars, practitioners, and students of psychology and law.

So, Legal Psychology encompasses empirical studies, i.e., psychological research on law, legal institutions, and people who come into contact with the law. Legal psychologists typically take basic social and cognitive theories and principles and apply them to issues within the legal system, such as eyewitness memory, jury decision-making, investigations, and interviews. The term "legal psychology" has emerged primarily as a way to differentiate the experimental focus of legal psychology from clinically-oriented forensic psychology. These two fields combined are known as "psychology and law."

3. Advocates as Part of Law Enforcement Elements

In Article 5 of the UUA regarding the status of Advocates, it is established that Advocates are legal enforcers, free and independent, guaranteed by law and regulations. Therefore, Advocates are one of the legal enforcer components in Indonesia, responsible for correcting and observing the decisions and actions of other legal practitioners, such as the police, prosecutors, and judges. Consequently, an Advocate must be professional, capable of enhancing their intelligence and knowledge.

In Article 1 paragraph (3) of the 1945 Constitution, Indonesia is defined as a legal state. The principles of this legal state include the guarantee of equality before the law for

every individual (equality before the law). Furthermore, the 1945 Constitution also establishes that every individual has the right to recognition, guarantees, protection, and legal certainty in society and the state. Advocates, as a profession that is free, independent, and responsible, along with the institutions of the Judiciary, Police, and Prosecutor's Office, play a crucial role. Through the legal services they provide, Advocates fulfill their professional duties to ensure justice based on the law for the benefit of the justice-seeking community, including efforts to empower the public to realize their fundamental rights under the law.

Advocates, as one of the elements of the legal system, are one of the pillars of upholding the rule of law and human rights. Their role is not limited to court proceedings but extends to the profession beyond the courtroom. The demand for the services of Advocates outside the judicial process has been increasing, in line with the growing legal needs of society, especially in an increasingly open and interconnected world.

With the existence of laws regulating the institution and profession of Advocates as an integrated subsystem of criminal justice, alongside the police, prosecutors, and judges, the profession of Advocates has a solid legal foundation. Advocates are an integral part of an integrated justice system. Therefore, their presence is essential in ensuring an honest, fair, clean, and just legal system that guarantees legal certainty, justice, and human rights to maintain the independence of the judiciary.

The normative legal framework is the ideological foundation for the creation of an integrated judicial system. It is essential for this framework to be substantively legalistic rather than formalistic. Sociologically, the UUA serves as a means of control and a societal need to guide and color the law enforcement and justice systems both in and out of the court. Advocates, as one of the law enforcement professions that is relatively more accessible to the general public, have played a role in this context.

The phenomena of arbitrariness, arrogance, and anarchy frequently committed by authorities and law enforcement have led to a phenomenon of vigilantism, simmering vendettas, harbored hatred, apathy, pessimism, and reluctance to engage with legal institutions to resolve issues faced by the public. Often, what people encounter when dealing with law enforcement is not a fair and just legal resolution that satisfies their sense of justice and legal certainty. Instead, people often find that their rights as citizens, which should be served by law enforcement agencies, are being violated. The lack of understanding among the public about the legal process they should follow when facing issues is a significant factor in why their rights are neglected by law enforcement agencies.

In the context of protecting these rights, the presence of a third party is highly needed by those seeking justice and legal certainty through law enforcement agencies. This third party is the legal advisor/Advocate. However, the hope for these rights is not as straightforward as it sounds or is determined. In many ways, the presence of Advocates also poses challenges, including cultural, structural, psychological, material, political, and social aspects. The contradictory reality concerning the existence of Advocates and everything related to it can be overcome through the discipline of Advocates in adhering to legal provisions and the Code of Ethics of the profession. With the enactment of the UUA, it brings new hope for the development and construction of the justice system in Indonesia. This is because there is an official recognition (legitimacy) of the Advocate profession as an integral part of the Indonesian justice system. Reforming the UUA to create high-performance Advocates with high moral and intellectual integrity, who can be

relied upon as independent legal enforcers in the context of law enforcement and justice, is an urgent necessity (condition sine qua non).

4. Obstacles of Advocates / Legal Advisors as Law Enforcement Elements, in Providing Legal Assistance to Defendants in Court.

Advocates/Legal Advisors, as Law Enforcement Elements and part of the subsystem of justice in Indonesia, ideally should have a mutually supportive relationship with other legal enforcers, namely the police, prosecutors, and judges, who are part of the Criminal Justice Subsystem. However, the real-world situation does not always reflect this ideal scenario.

Several indicators suggest that there are still opinions that downplay the role of advocates/legal advisors in the law enforcement system. One glaring example of this is the Mahkejapol forum from the past. This forum consisted of representatives from the Supreme Court, the Prosecutor's Office, and the Police, without including advocates/legal advisors. In connection with this, Luhut M.P. Pangaribuan suspected that advocates/legal advisors were not included in this forum because they were perceived as "informal" law enforcers, different from the other three elements, which were considered formal law enforcers.

Given the above-mentioned phenomenon, which undoubtedly represents one of the obstacles faced by legal aid providers, advocates/legal advisors, in providing legal assistance to Suspects/Defendants in all stages of examination, especially in court, the Author conducted a questionnaire survey with 100 (one hundred) advocates/lawyers practicing in the Makassar District Court area.

In general, the field research data indicates that these obstacles do indeed exist and are not merely anecdotal. Respondents, who were advocates/legal advisors that had experienced obstacles in providing legal aid, reported various forms of obstacles they encountered.

CONCLUSION

Based on the discussions above, the following conclusions can be drawn:

1. The obstacles faced by Advocates in performing their role as legal enforcers in criminal cases after the enactment of Law Number 18 of 2003 concerning Advocates are as follows:
 - a. Internal Obstacles, including Advocates who may not fully understand their core duties and functions as legal enforcers according to the Advocates Law (UUA), resulting in suboptimal performance of their profession. Psychological aspects may also influence Advocates who do not realize that their core duties and functions constitute a noble profession (*officium Nobile*) that goes beyond mere financial gain. Their profession upholds humanitarian aspects, and therefore, Advocates should provide legal assistance to those in need without discrimination.
 - b. External Obstacles stemming from law enforcement agencies (Police, Prosecutor's Office, and the Judiciary) that may not provide optimal support to

Advocates to carry out their core duties and functions in providing legal assistance to the public without discrimination.

2. Efforts that can be made to optimize the role of Advocates in criminal cases:
 - a. Advocates must be aware of and fulfill their core duties and functions in providing legal assistance to the public without discrimination.
 - b. Law enforcement agencies (Police, Prosecutors, Judges), as partners in law enforcement, should provide positive encouragement to Advocates to enable them to carry out their core duties and functions in providing legal assistance to the public without discrimination.
 - c. The public should understand and accept the presence of Advocates as legal enforcers who provide legal assistance without discrimination.

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