

Reconstruction on The Regulations of Advocate Organizational System As Accountability for The Quality of Professions

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Abstract

Historically the organizational system experienced various advocate conflicts. This study aims to review and analyse the dynamics and weaknesses on the regulation of the advocate organization system and formulate the reconstruction of the implementation of the advocate organization system. This research uses normative legal research method by conducting two stages of study simultaneously, first, a survey of normative law, second, the application of the in concreto event. The results of the study indicate that, initially, the advocate organizational system as a single bar association leads to a multi-bar association. Among the weaknesses on the regulation of advocate organizations are the lack of a solid advocate organization, compulsion to establish a new advocacy organization, a judicial intervention, commercialization of special education for advocates without any standardized curriculum and test. Reconstruction is necessary to increase accountability for the profession's quality based on the value of justice.

Keywords: Advocate Organizations; Reconstruction; Systems

Abstrak

Secara historis sistem organisasi mengalami berbagai konflik advokat. Penelitian ini bertujuan untuk mengkaji dan menganalisis dinamika dan kelemahan-kelemahan pengaturan sistem organisasi advokat serta merumuskan rekonstruksi pengaturan pelaksanaan sistem organisasi advokat sebagai pertanggungjawaban kualitas profesi yang berbasis nilai keadilan. Penelitian ini menggunakan metode penelitian hukum normatis dilakukan dalam 2 tahap secara bersamaan, pertama penelitian hukum normative, kedua aplikasi dari kejadian in concreto. Hasil penelitian menyatakan bahwa, semula sistem organisasi advokat sebagai single bar asosiasi mengarah multi bar asosiasi. Kelemahan pengaturan pelaksanaan sistem organisasi advokat antara lain karena tidak solidnya organisasi advokat, keterpaksaan lahirnya organisasi advokat, adanya intervensi yudikatif, komersialisasi pendidikan khusus advokat tanpa adanya standar kurikulum dan standar uji. Rekonstruksi pengaturan pelaksanaan sistem organisasi advokat yang dapat meningkatkan pertanggungjawaban kualitas profesi dengan berbasis nilai keadilan.

Kata kunci: Organisasi Advokat; Rekonstruksi; Sistem

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Introduction

The current phenomenon regarding Advocate organizations is the never-ending quest to recruit as many members as possible, therefore lowering the testing selection standards with the sole purpose is to enable these advocate candidates to be sworn immediately in the High Court. An advocate's oath is consequential since it is a requirement mandated by Law Number 18 of 2003 on Advocates Law (hereinafter referred

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to as the Advocate Law) for all advocates to be bound by Oath to practice law in court regardless of which advocate organization they belong to.

Letter of the Chief Justice of the Supreme Court No.73/KMA/HK01/IX/2015 raises a dilemma, after previously being protested by the Capital Market Legal Consultants Association (HKHPM), it was also opposed by ten advocates from the Indonesian Advocates Association (PERADI) under the leadership of Fauzi Yusuf Hasibuan. The protest goes on by the filing of a judicial review against the Letter of the Chief Justice of the Supreme Court No.73/KMA/HK.01/IX/2015 on the High Court Authority (PT) to Take Advocate Oaths from Any Organization. Advocates asked the Supreme Court to revoke the letter.

This Letter of the Chief Justice of the Supreme Court contains instructions to the Heads of the High Court (KPT) to administer an oath for lawyers who have meet the requirements of any advocate organization so that every management of the advocate organization can request the High Court to administer an oath in accordance with their jurisdiction domicile. This letter has significant implications that advocate organization system is a multi-bar system and, by itself, it is no longer in line with the mandate of Article 28 Paragraph (1) of the Advocate Law, which regulates the existence of a single bar system with the intent and purpose of improving the quality of the profession for Advocates.

In addition, the other implication is related to the 8 (eight) authority of advocate organizations, which are ultimately can be carried out by every advocate organization and not only PERADI. Subsequently, managing the advocate supervision system in enforcing the advocate's code of ethics is unclear on its enforcement.

Research Problems

Based on the focus of the study described above, there are three problem that would be answered in this study this paper. First, how are the dynamics on the regulation of advocate organizations system in Indonesia? Second, what are the weaknesses in the regulation of advocate organization system in Indonesia? Three how to reconstruct the implementing regulation of the advocate organization system as a form of accountability for the quality of the profession based on the value of justice?

Research Methods

Paradigm is a fundamental belief system based on ontological, epistemological, and methodological assumptions (Denzin, 2016). The paradigm in this study is based on the constructive design with hope through this paradigm will construct theories or basic concepts in realizing the idealism of the advocate organization system as accountability for the quality of the advocate profession.

This research uses normative legal research by conducting two stages of study simultaneously. First, a study of normative law that focuses on the Law on Advocates, the Products of the Supreme Court's Decisions, and the Constitutional Court. Second, the

application of the in concreto event to achieve the stated objectives, in this case, looks at the impact and implications of the Advocate Law and the Letter of the Supreme Court, and the Constitutional Court related to this research. Therefore, the focus of the study lies in the factual implementation of the advocate organization system to achieve predetermined goals.

Discussion

The Dynamics of Advocate and Advocate Organizational System Regulations in Indonesia

According to Article 32 paragraph (4) of Advocate Law, Advocate Organizations must be formed within two years from the promulgation of the law. PERADI is formed and introduced to the public, especially law enforcement circles, on April 7, 2005, in South Jakarta. In the Advocate Law, the Advocate organization must have been formally formed as an organization within 2 years from the time the Law was promulgated. Therefore, within 20 months after the law on lawyers was promulgated, advocate organizations in Indonesia agreed to establish or form a private organization (Ansari, 2019).

The agreement to form PERADI began with a long process. Article 32 paragraph (3) of the Advocate Law states that temporarily the duties and powers of the Advocate Organization are carried out jointly by the Indonesian Advocates Association (IKADIN), the Indonesian Advocates Association (AAI), the Indonesian Legal Advisors Association (IPHI), the Indonesian Advocates and Lawyers Association (HAPI), the Indonesian Bar Association (SPI), the Association of Indonesian Legal Consultants (AKHI), the Association of Capital Market Legal Consultants (HKHPM) and the Indonesian Sharia Lawyers Association (APSI). To carry out these tasks, the eight advocate organizations above, on June 16, 2003, agreed to use the name Indonesian Advocate Work Committee (KKAI). Before finally agreeing to form PERADI, KKAI has completed several preparations. The first is verification to ensure the names and number of lawyers who are still active in Indonesia. The verification process is in line with the implementation of Article 32 paragraph (1) of the Advocate Law which states that advocates, legal advisors, and legal consultants who have been appointed when the law comes into effect are declared as advocates as regulated by law.

The second preparation is the formation of an Organizational Commission in order to prepare the concept of an Advocate Organization in accordance with the situation and conditions in Indonesia. The working paper from the Organizational Commission is then used as the basis for determining the form and composition of the Advocate Organization that is acceptable to all parties.

Another preparation that KKAI has been completed is the formation of a Certification Commission. This commission prepares matters regarding the appointment of new lawyers. To be appointed as an advocate, apart from having to pass the Law Faculty, the Advocate Law requires every prospective advocate to take special education, have an

internship for two years at an advocate office, and pass a bar exam organized by the Advocate Organization. This commission prepares the regulations for the above requirements.

After its formation, PERADI has implemented several fundamental decisions. First, PERADI has formulated a procedure for foreign advocates to submit recommendations to work in Indonesia. Second, PERADI has formed a Provisional Honorary Council based in Jakarta and soon will form a Permanent Honorary Council. The formation of Honorary Councils in other areas is currently a priority for PERADI. Third, PERADI has formed the Indonesian Advocate Professional Education Commission (KP2AI). This commission is task to provide necessary provision of special education for prospective advocates as well as continuing legal education for advocates.

The formation of PERADI caused polemics due to some members of the advocate organization who considered its formation lack transparency, ignorance on its members' rights to choose their own management freely, unfairly and unaccountably, yet PERADI continues to survive even though there have been quite a number of submissions for judicial reviews regarding its status as single forum for advocate organizations. PERADI as a single forum has lasted until 2015, however, ironically its falls began due to internal problems rather than outside interventions, causing PERADI to split into three groups, each claiming to be the legitimate chairman of PERADI.

As for its regulation, ideally, the Law Number 18 of 2003 on Advocates Law, regulate various important provisions covering the advocate profession comprehensively, while maintaining the principles of freedom and independence for advocate, such as in the appointment, supervision, and prosecution as well as provisions for the development of a solid advocate organization in the future. These are the goals and ideals of Advocate Law, namely, to ensure the professionalism of advocate shortly, but alas conflicts among advocate continue to exist. Systematic conflicts among lawyers, certainly, occur not only in the sub-system of the legal structure, and the substance of the law. Advocate Law has been dissected in such a way and had their arms and hearts cut off and is no longer whole.

The various decisions issued by the Constitutional Court are overlapping and inconsistent, resulting in disharmony of laws and regulations. There are at least three legal products, viz. Decision No. 014/PUU-I/2006, Decision No. 066/PUU-VIII/2010 and Decision 71/PUU-VIII/2010 as well as other decisions rejecting judicial review of Article 4 and Article 28 paragraph (1) The Advocate Law that indicate the system to a single bar association. Meanwhile, there are other three legal products, viz. Decision No. 101/PUU-VII/2009, MK Decision No.112/PUU-XII/2014 and No. 36/PUU-XIII/2015 that indicate the system to a multi bar association. In 2006, the Constitutional Court through Decision No. 014/PUU-I/2006 was still in favor with single bar system, which then changed through Decision No. 101/PUU-VII/2009 and it turned out that it changed again with Decision No 066/PUU-VIII/2010 and Decision 71/PUU-VIII/2010. In Conclusion, legal certainty does not exist.

Similarly, the Supreme Court based on its legal product, namely Letter of the Chief Justice of the Supreme Court dated 01 May 2009 No. 052/KMA/V/2009 and Letter of the Chief Justice of the Supreme Court No. 089/KMA/VI/2010 directs advocate organizations to a single bar association. On the other hand, another legal product, namely the Letter of the Chief Justice of the Supreme Court Number 73/KMA/HK.01/IX/2015 indicates to a multi bar association. In Conclusion, the Supreme Court as a judicial institution is inconsistent in providing legal solutions to advocate organizations.

Bustanul Arifin said that in a law-enforceable state, a law is effective if three pillars support it, viz.:

- a. a reliable authoritative institution or law enforcement,
- b. clear and systematic legal rules,
- c. public with adequate legal awareness.

It seems that these three indicators of the effectiveness of law as explained by Bustanul Arifin seem to have answer the ineffectivity of Advocate Law. This is due to following reasons:

- a. Organizations or ethical law enforcement within the Advocate Organization are not authoritative and unreliable.

The Decree of the Chief of Justice of the Supreme Court of the Republic of Indonesia Number 73/KMA/HK.01/IX/2015 indicates the recognition to the existence of multi bar for advocate professional organization. Apart from PERADI, there are other advocate organizations such as PERADIN, FERARI, PERADRI, or the Indonesian Advocates Congress (KAI). This diversity can have significant consequences on the uncertainty of the status of the advocate itself. Suppose all professional advocate organizations are recognized and able to ask for a request to administer advocate's oaths. In that case, the advocate will not be afraid if their practice license is revoked when they violate ethics. A PERADI advocate whose license is revoked or disrespectfully dismissed from the PERADI organization can move to another organization, for example KAI. This deludes the honor of the advocate profession itself, consequently an advocate will not be afraid to have his license revoked by an advocate organization because he can just easily move to another organization.

- b. Legal regulations are unclear, overlapping and result in legal uncertainty.

Advocate Law has been dissected in such a way. The various decisions issued by the Constitutional Court are overlapping and inconsistent, resulting in disharmony of laws and regulations. Likewise, the Supreme Court Decrees are also inconsistent, overlapping and result in legal uncertainty.

- c. Low public legal awareness.

The public no longer respects Advocate Law. A riot occurred in 2010 during the inauguration and oath-taking of members of the Indonesian Advocates Association (PERADI), a forgery incident occurred in 2016 after the issuance of Letter of the Chief Justice of the Supreme Court of the Republic of Indonesia Number 73/KMA/HK.01/IX/2015. This means that even though prospective advocates are law graduates who should know

and be aware of the law but due Advocate Law no longer authoritative and obeyed, it leads to an inauguration and oath taking, which is done unlawfully. Advocate Law is the regulation that has had the most judicial reviews. This means that apart from the lack of quality material, the public, especially advocates, refuse to obey the material of Advocate Law.

Weakness in the Regulation of the Advocate Organization System

The problem arises when Advocate Law states that there will only be one advocate organization that is responsible, viz. a single bar, in accordance with the mandate of Article 28 paragraph (1) The advocate organization is the only forum for the advocate profession that is free and independent which is formed in accordance with the provisions of this Law with the aim to improve the quality of the advocate profession (Sudarmono, 2020). Advocates who do not want a single forum eventually to create a mind set for other advocates who will always avoid having a single forum. For example, why should there be a single forum, even though Article 28 of the Constitution regulates freedom of association and assembly. This inherent out of the box thinking characteristic will always lead to a potential conflict, because whether we want it or not or like it or not, advocates are born from the womb of fighters who are attached to conflict.

The formation of PERADI causes polemics in several members of the advocate organization, where because its formation was not transparent enough, did not adhere to the rights of its members to choose their management freely, unfairly, and unaccountably. Naturally, it does not meet the requirements for the formation of a democratic national bar association. This dissatisfaction was finally accommodated in the form of a declaration from the Indonesian Advocates Congress (KAI) (Hutabalian, 2020). KAI emerged as an accumulation of disappointment by advocates against PERADI. As is known, KAI was born from the declaration of four advocate organizations, viz. IPHI, Ikadin (counter), HAPI and APSI, which agreed to urge the holding of an advocate congress throughout Indonesia. The pressure was born because these four organizations accommodated advocates' concerns over the existence of PERADI which deemed insensitive to legal reform programs and efforts to eradicate the judicial mafia and did not stand up for the dignity of advocates.

Accordingly, it causes dispute between the PERADI management and the KAI management, where both claimed to be national bar associations as mandated by the Advocate Law. Until now, the dispute is still ongoing, in which both the PERADI and KAI managements apart from each claiming to be a legitimate national bar association, also claim their rivals to be Unlawful national bar associations. Naturally, KAI considers the formation of PERADI to be invalid because the appointment of the management is carried out in a non-transparent manner, does not adhere to the rights of its members to choose their management freely, is unfair and unaccountable. While on the other hand, the PERADI management considers the existence of KAI to be invalid as national bar association because KAI was formed beyond the timeframe for the formation of a single advocate organization as mandated in the Advocate Law.

These conflicts have resulted in a weak system of education, appointment, and supervision of advocates in Advocate Law. One way to develop Advocate expertise is through advocate professional education. Based on Article 2 paragraph (1) of Advocate Law, advocate professional education is carried out by Advocate Organizations. Furthermore, based on Article 32 paragraph (4) of the Advocate Law, it states that at the latest two years after the enactment of this Law, an Advocate Organization must have been formed.

Currently, there are at least three advocate organizations that claim to be the sole forum for advocate organizations, viz. the Indonesian Advocates Association (PERADI), the Indonesian Advocates Congress (KAI), and the Indonesian Advocates Association (PERADIN). These three organizations provide advocate professional education according to Advocate Law. PERADI has a Special Advocate Professional Education (PKPA), KAI has a Special Education and Training for Advocate Education (DKPA), while PERADIN has Advocate Professional Education (DIKPA).

Advocate special education is legal education to impart knowledge necessary for prospective advocates in practicing law enforcement in society. This education is necessary to make prospective advocates with adequate characteristics, quality, and competency when they have become fully fledged advocates. Therefore, it is a requirement to have an educational institution that has a clear legal basis for administration and has content material with accountable curriculum standards. This is referred to in Article 20 paragraph (3) of Law Number 20 of 2003 on the National Education System, which states "Higher education institutions can organize academic, professional, and / or vocational programs."

Because of this ongoing dispute among advocate organizations about who has legality as organization according to Advocate Law, the Supreme Court then issued a Letter dated 01 May 2009 No.052/KMA/V/2009. The Letter mandated Heads of the High Court to do not administer oath for prospective advocates temporarily, to avoid violating Article 28 of Advocate Law.

Consequently, many questions emerge from the Heads of the High Court in several regions for Supreme Court, essentially questioning the appropriate response to answer the request to administer advocate's oath. Likewise, the Supreme Court of the Republic of Indonesia also received many letters from every Advocate organization, whether from PERADI, KAI or PERADIN, all of which declared themselves legitimate Advocate organizations] the others were illegal. The Chief Justice of the Supreme Court then issued Letter dated May 01, 2009, No.052/KMA/V/2009 that declared this problem is Advocates' internal affairs.

In addition, The Supreme Court (MA) also provides instructions on administering advocate's oath through the Decree from Chief Justice of the Supreme Court of the Republic of Indonesia Number 73/KMA/HK.01/IX/2015. It was made in accordance with Article 4 paragraph (1) Advocate Law that states "before carrying out their profession, an Advocate is obliged to take an oath according to their religion or to swear solemnly at an open hearing of the High Court in their jurisdiction of domicile". In this letter, it is also

stated that the Indonesian Advocates Association (PERADI) and the Indonesian Advocates Congress (KAI) are still allowed to request for administering advocate's oath at the High Court for their de facto members. So far, PERADI has always been a sole forum (single bar) for Advocate organizations. However, this consent seems to erode over time. Ultimately, PERADI, which used to be just a single organization, was divided with each claiming to be its legal administrator. Consequently, because of this Decree, the practice of administering advocate's oath can be carried out by eight other advocate professional organizations that had been made less popular due to the presence of PERADI and KAI. Therefore, administering advocate's oath through a single bar advocate organization has been replaced by multi-bar advocate organization.

Another issue is the supervision of advocates become a crucial point during conflicts between lawyers. Article 12 paragraph (1) of the Advocate Law states that the supervision of advocates is carried out by advocate organizations. This supervision aims to ensure their professionalism. Therefore, the test point of advocate professionalism lies with the advocate's code of ethics. Advocates are profession that need respectful behavior and character who hold tightly to an independent, honest, confidential, and open attitude (Lukman, 2020). Therefore, to protect the dignity and honor of the profession, advocate organization needs to compile a series of code of ethics for every advocate to follow (Pelle, 2012).

Supervision of the implementation of the advocate's code of ethics is carried out by the Advocate Organization with the help of the Honorary Council. They are tasked to examine and adjudicate violations of the Advocate's code of ethics, and thus need authoritative power to be able to make decisive decisions. Without it the supervision system would be extremely inefficient in dealing with deviant behavior among advocates. Emergence of pluralism in advocate organization makes every administrative action rarely effective if there is no mutual agreement on one legitimate code of ethics from every existing organization, since advocate who is subject to administrative sanction can disobey it by becoming member of other organization. Another issue arises if advocates who violate the code of ethics are not belong to any organization. Honorary Council will not be able to make any administrative action against advocates who are not its member.

Trying to mitigate these problem Supreme Court has issued at least 2 legal products of the Supreme Court that indicate to a system of single bar associations advocate organization, namely the Supreme Court Letter dated 01 May 2009 No. 052/KMA/V/2009 and Letter of the Chief Justice of the Supreme Court No. 089/KMA/VI/2010. Contrarily, the Supreme Court also issue another legal product, namely the Letter of the Chief Justice of the Supreme Court of the Republic of Indonesia Number 73/KMA/HK.01/IX/2015 referring to multi bar associations. It can be inferred that the Supreme Court as a judicial institution is inconsistent in providing legal solutions to advocate organizations.

Similarly, Constitutional Court also issues legal products that were overlapping with each other and inconsistent, resulting in disharmony of laws and regulations. There are several legal products that indicate to a single bar association system such as Decision No.

014/PUU-I/2006, Decision No. 066/PUU-VIII/2010 and Decision 71/PUU-VIII/2010 as well as other decisions rejecting judicial review of Article 4 and Article 28 paragraph (1) of The Advocate Law. Meanwhile, there are also three other legal products, namely Decision No. 101/PUU-VII/2009, MK Decision No.112/PUU-XII/2014 and No. 36/PUU-XIII/2015 referring to multi bar associations.

Furthermore, the inconsistency regarding the Advocate Law seems to be worse in Constitutional Court level compared to in Supreme Court level. The Constitutional Court produces legal products that are not sequential and disharmonious at random times. This means that the inconsistency that happened in Constitutional Court level is not due to things like tenure of leadership, or legal developments that have happened over the years, but are just completely random. For example, in 2006 the Constitutional Court through Decision No. 014/PUU-I/2006 was still referring to the single bar association, then it had changed since Decision No. 101/PUU-VII/2009 to a multi bar association and it turned out that it changed back again with Decision No 066/PUU-VIII/2010 and Decision 71/PUU-VIII/2010. In conclusion, Supreme Court and the Constitutional Court do not produce legal products with legal certainty.

Reconstruction on the Regulations of Advocate Organizational System as Accountability for the Quality of Professions Based on Justice Values

The Advocate Organization System in question is a working mechanism for advocate organization. Advocate organization system that will be discussed among other are types of systems advocacy organization, the system of curriculum and appointment, as well as the system of supervision and the imposition of sanctions, are as follow:

a. Federation of Advocate Organization Systems

A legal product that is a direct interpretation from the will of the community itself. Quoting the opinion of Eugen Erlich, who mentions law as the living law of society or by driving his opinion, Von Savigny who mentions that law is a *volksgeist*-society. In addition, the importance of studying law from a sociological aspect according to Soerjono Soekanto is because one of the factors that influence the law enforcement process is the community itself. So that it is necessary to conduct a social study or the latest conditions in the community towards the efforts to compile any draft laws and regulations. This is because the formation of laws and regulations that are good and easy to apply in society is one of the main pillars for the administration of a country (Indrati, 1988).

The community in question naturally is the stakeholders, which means the advocate itself. This means that the means to mitigate the conflict between advocate organizations comes from the advocate itself. Each advocate organization must realize the need of unification to create a better future for the profession. Every Advocates should be clear from any doubts regarding unclear organizations, unclear curriculum, unclear oath taking, even unclear supervision and sanctions.

A defining moment is needed to be able to form the unification of advocate organizations, although not entirely, at the very least most of the advocate organizations must rise and unite to organize Indonesian advocate law consortium. Frankly, there was a moment that was quite fitting in initiating this bar association. To defend the spirit of the Advocate profession as an Honorable and Noble Profession (*Officium Nobile*), which is increasingly declining in the midst of society with the rampant criminalization of Advocates. Three General Chairs of the National Leadership Council of the Indonesian Advocates Association (DPN PERADI), namely Juniver Girsang, Luhut MP Pangaribuan and Fauzi Hasibuan has united. Efforts to form a single bar association for advocates in Indonesia has always met with challenges and even often preceded by conflicts among professional advocate organizations. Naturally, this is also because Indonesian as a nation is inherently diverse or multicultural (pluralism), in which it is consistent with the manifestation of the spirit within Pancasila, Unity in Diversity.

Supposedly, to be able to form a single forum that is tasked with carrying out 8 (eight) authorities of advocate organizations, it should be a special institution that separate itself from Advocate Organization, because every Advocate has the right to create its own Advocate Organization, if only advocates that able to establish it and no other profession (Samosir, 2017). Fortunately, there is a way to initiate the existence of a single advocate association, necessary to improve the future of advocates while still being able to accommodate the many existing organizations, by looking at the alternative, namely the federation of advocate organizations.

Advocates in Japan decided to create a federation for their advocate organizations rather than single organizations (single bar) because local bars (local level advocacy organization) have already existed before. Local bars were founded before World War II, while federations were founded after World War II. Discussion to combine local bars into one single advocate organization have indeed also occurred in Japan, but finally they decided to form federation instead in 1949. Following Japanese new constitution in 1946, advocate law was then made in 1949 that allows for the establishment of federations. Local bars exist all over Japan, in every part of town with its own rules, therefore it may be easier for them to form a federation rather than creating single bar and make a single pre-existing local bar (Woodruff, 1956).

Similarly, Germany also applies a system of multi bar federations. There are 28 advocate organizations throughout the Federal Republic of Germany but all of them form a joint federation organization called the German Federal Bar (*Bundesrechts-anwaltskammer*). German Federal Bar has the status of a public legal entity and is formed by law so do the 28 advocate organizations. Naturally, The German Federal Bar consists of 28 advocate organizations, while individual advocates are members of one of the 28 organizations. Membership of the 28 organizations on the German Federal Bar is mandatory. Likewise, individual membership of an advocate in one of the 28 organizations is also mandatory once the person is appointed as an advocate.

This is consistent with the situation in Indonesia empirically, where currently many advocate organizations have sprung up and exist. Like what happens with PERADI, there will be new organizations emerging. Therefore, to be able to collaborate with each other it is necessary to reform into the federation system. Through the Federation, organizational freedom will be protected, but bind the vision of supervision, and the provision of sanctions to advocate professions.

Based on the above justification, the reconstruction of advocate organizations system can be done with the proposed article as follows: **Advocate Law**, Article 28 paragraph (1): The Advocate Organization is the only organization for the Advocate profession that is free and independent which is formed in accordance with the provisions of this Law with the intent and purpose of improving the quality of the Advocate profession. **Reconstruction of Advocate Law**, *The Advocate Organization is a forum for the advocate profession that is free and independent with the intent and purpose of improving the quality of the Advocate profession where its formation is determined through a national meeting of advocates and members elect its central management democratically and freely through individual voting.*

b. Curriculum and Advocate Appointment System

The low standard on advocate special education parallel with the decrease in the quality of advocates. Without a proper curriculum, special education given to advocate candidates would snowball into the lack of understanding of procedural law material in practice, the lack of understanding of the functions and responsibilities of advocates, and the lack of understanding their own code of ethics. Competition among advocate organizations regarding who best organizes these education processes negatively impacts the implementation of education and examinations; therefore, it is safe to say that it causes many to be far more concerned with quantity rather than quality of education. Naturally, it means the task of improving the quality of Indonesian advocates has been neglected. Education must be continuous (continuing legal education) following the passage of time, consequently developing advocate organization more and if possible, will lead to more formation of new advocate organization in accordance with the demands and developments of times.

The final goal of attending advocate special education is to gain certification (title) of the advocate profession. Based on Law number 12 of 2012 on the Higher Education, there are 3 (three) types of higher education: academic education, vocational education, and professional education. Professional education as stated in Article 17 paragraph (1), Higher Education after an undergraduate program that prepares students for jobs that require special skills requirements. Furthermore, Article 17 paragraph (2) states that professional education can be organized by tertiary institutions and in collaboration with ministries, other ministries and / or professional organizations that are responsible for the quality of professional services. Article 24 paragraph (1) states that professional programs are special skills education intended for

graduates of undergraduate or equivalent programs to develop their talents and abilities to acquire skills needed in the world of work (Setiawan, 2019).

Currently advocate organization is the one who can organize it, meaning that advocate organization will be the one who gives certification (title) of the advocate profession to prospective candidate, which in turn makes them able to carry out their function as an advocate. On the other hand, the aspect of the granting someone a certification is also an important discussion. Looking at the aspect of legality, advocate organization does not have authority to issue professional certification (title). Article 21 paragraph (2) Law Number 20 of 2003 on the National Education System clearly states that, higher education institution is one that is authorized for granting of professional certificates (title), as follows: "Individuals, organizations, or non-tertiary education providers are prohibited from giving academic degrees, profession, or vocational". Naturally, the implementation of advocate education is not appropriate if it is only carried out by advocate professional organizations without the involvement of higher education institutions, especially regarding the structure of the advocate education curriculum. Advocate professional organizations can provide special education, prepare prospective advocates regarding the code of ethics of the advocate profession and the development of legal substance in today society, and necessary skills to build intellectual, moral, and professional competence. The existence of higher education institution, become important looking at its role especially in the field of law as a centre of excellence is to produce reliable human resources. As a forum to educate and increase the intellectual capacity of academics and practitioners in law, to become skilled and professional in studying and finding solutions to legal and development problems. In addition, it helps them more responsive to the development of legal science, or to have the skills necessary in the field of research and development of legal science, inspiring academic character based on good ethics and morals. Therefore, advocating education as a process of increasing intellectual, moral, or professional competence needs to be carried out synergistically between higher education institutions and advocate professional organizations.

Based on that idea, the authors propose the reconstruction of the law as follows: **Advocate Law**, Article 2 Paragraph (1): Those who can be appointed as Advocates are graduates with a higher legal background and after attending special education for the Advocate profession carried out by the Advocate Organization. **Reconstruction of Advocate Law**, *those who have the right to organize Advocate Professional Special Education are advocate organizations in collaboration with universities whose law faculties are at least B accredited or law colleges that are at least B accredited, with curriculum standards set by the National Advocate Honorary Council.*

National Advocate Honorary Council here plays a significant role in setting up a forum for curriculum consensus and testing standards. Thus, the quality of advocates can be guaranteed. Currently, with many advocate organizations exist, it set up a precedent where many testing standards can be rigged just to get many advocate

memberships. Unfortunately, this has resulted in a decrease in the quality of lawyers. With the existence of a curriculum standard, it is hoped that the quality of advocates will be maintained.

Advocate certainly is a profession that should not be given full freedom due to being subject to certain conditions. Naturally, not everyone can be an advocate, not even those who graduates law school would automatically be qualified as advocates. For someone to obtain this profession, they must go through lengthy processes starting from attending special education and then taking bar exam. Even after passing bar exam, they still must go through practical training, such as internship and so on, then finally after taking advocate's oaths they are officially become one.

Based on Advocate Law, advocates whose function is to give advocacy in the whole process of pre-adjudication, adjudication, and post-adjudication stages, it means that these functions (representing the legal rights of their clients) are part of the advocate's "judicial power" in this case called "counsel of the court" "officer of the court"(Sutarjo, 2019). Naturally, it put emphasis that an advocate is both a profession and a law enforcer, it means that just like other law enforcers who work professionally, freely, and independently, providing services is part of advocate's job. Because its duty is to provide services to the public, it is necessary to have the same standards for their work quality, the same code of ethics, and the same education to provide the best possible service to people who need it.

According to article 16 chapter "Guarantees for the functioning of lawyers" of the UN Convention states that: Basic Principles on the Role of Lawyers, which reads as follows: "Government shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; (b) are able to travel and to consult with their clients freely both within their own country and abroad; and (c) shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics".

Appropriately, government participation should be limited to ensuring proper education process rather than involved in organizational problem, for instance deciding the formation of a single bar organization and the like. It is apparent that not in the government's domain to decide which organization is "Legitimate", because advocate organizations are free and independent institutions. If there is a dispute within the organization, it must be resolved independently without intervention from other institutions as a form of advocate professionalism (Widodo, 2020). However, the government can participate through education institution, to viz universities. Until now, advocate organizations have always acknowledged that universities have no other interest other than increasing educational standards, therefore implementing a standardized curriculum is the right step.

Another issue that is crucial in discussing implementation of the advocate profession other than education is advocate's oath. Currently this responsibility falls

under Chief Justice of the High Court. Based on the reconstruction above, optimally those who fit to be sworn in court must be based on the recommendation from Honorary Council first while being witnessed by the Court and the Regional Government to full fill coordinative function. This means that after being sworn in to become an advocate, the advocate who can really carry out their duties is registered at the High Court and is also recognized by the executive government, which is witnessed by representatives from the regional government.

c. System for Supervision and Imposition of Advocate Professional Ethics Sanctions

A prolonged dispute (conflict) between the two organizations that each claim to be the legitimate legal professional advocate organization has caused many negative implications, including the lack of supervision and prosecution of advocates who violate the code of ethics for the advocate profession. An advocate's work always must adhere to ethics and morals as a relevant basis for carrying out their profession. Both bases are part of the things that must be monitored because they relate to the actions of an advocate, and when the ethics and morals are harmed then with all the consequences there will be sanctions (Nugroho, 2016). Effectively, the code of ethics for the advocate profession in and of itself is a means of social control or a moral compass for advocates and at the same time guarantees the moral quality of the legal profession in the eyes of the community. Therefore, the code of ethics for the advocate profession is a self-regulation and self-imposed of moral standards for advocates with the aim of preventing unethical behaviour.

Enforcement of the code of ethics is an effort to properly implement the code of ethics, supervise its implementation so that there is no violation, and if there is a violation restoring the violated code of conduct so that it is re-enforced (Sinaga, 2020). The ideal organizational form in this context is a federation system, an umbrella organization that has limited authority over the curriculum, testing standards, and final supervision. Thus, the whole concept of the Honorary Council functions as an internal supervisor and at the same time able to take necessary measure within their advocate organizations. The Honorary Council, previously existed only as a single forum, would change its function to exist in every advocate organization.

For the sake of unification, looking at the current status quo within the advocate society, that many advocates originate from the many advocate organizations and each of them has the legality required as an advocate, it is necessary to form a National Advocate Honorary Council. The Council will act as binding forum for current various advocate organizations. Thus, the unity and association of advocates will still be formed, while maintaining freedom for advocates in organizing.

The need for unification through National Advocate Honorary Council is since there are many types of advocate organizations that need to be coordinated. For example, advocate organizations that specialize in their own field, for example capital market advocate organizations, goods and services procurement advocate organizations, tax advocate organizations and others. Another example is various general

advocate organizations such as PERADI, PERADIN, KAI, AAI, IKADIN and others, and the existence of certain advocate organizations such as the Young Advocate Association, regional advocate organizations and other advocate organizations were founded with their own special characteristics.

The formation of the National Advocate Honorary Council can be carried out through a national meeting/consortium of national advocates. The reason on why it should be called a consortium because it is attended by various advocate organizations with one similar vision. In this forum, the candidates for the National Advocate Honorary Council will then be appointed.

Ideally, The National Advocate Honour Council contains representatives of senior advocates from several advocate organizations. In return, National Advocate Honour Council would embody the value of representation in Pancasila in their structure. Each advocate organization can appoint their representatives based on based on the agreement of its members while still prioritize the values of respect. This means that the selection of representatives in the National Advocate Honour Council is believed to be an advocate who has respectful values, determined by their performance who always maintains the good name of the advocate and the advocate's code of ethics.

Effectively, the honorary council accommodates reports of ethical violations as well as qualifying as prosecutors. After examination, the complaint is processed in accord with the due process of law, namely presenting evidence and witnesses. Suppose it is proven guilty and permanent measure such as permanent dismissal is necessary. In that case, the honorary council within advocate organization will submit it to the National Advocate Honorary Council to be examined in accordance with *judex juris*. After the examination, the national council and permanent dismissal is indeed the appropriate measure, the National Advocate Honorary Council will give a final decision. For it be effective the decisions made by the national council and must be carried out by every advocate organization, court, prosecutor's office, police, or other legal institutions stating that the person concerned is no longer an advocate and must be rejected if he / she is still in his profession. The existence of the National Advocate Honorary Council, signal a national consensus among existing organizations albeit indirectly. Naturally, lawyers whose license has been revoked can no longer just change organizations to continue their profession. Thus, making National Advocate Honorary Council's decision effectively bind Supreme Court and its subordinates to reject former advocates who are still trying to practice in court. Based on that idea, the authors propose the reconstruction of the law as follows:

- a. **Advocate Law**, Article 9 paragraph (1): Advocates can quit or be terminated from their profession by the Advocate Organization. **Reconstruction of Advocate Law**, *Advocates can be dismissed from their profession by the National Advocate Honorary Council.*
- b. **Advocate Law**, Article 9 paragraph (2): Copies of the decision on dismissal as referred to in paragraph (1) shall be submitted to the Supreme Court, High Court,

and other law enforcement agencies. **Reconstruction of Advocate Law**, *Copies of the decision on dismissal as referred to in paragraph (1) shall be submitted to advocate organizations, the Supreme Court, the High Court, and other law enforcement agencies, which are final and binding.*

- c. **Advocate Law**, Article 26 paragraph (1): To maintain the dignity and honour of the Advocate profession, an Advocate Professional Code of Ethics is compiled by the Advocate Organization. **Reconstruction of Advocate Law**, *to maintain the dignity and honour of the Advocate profession, an Advocate Professional Code of Ethics is compiled by the Advocate Organization and established by the National Advocate Honorary Council.*
- d. **Advocate Law**, Article 26 paragraph (2): Advocates must comply with the Advocate's professional code of ethics and the provisions on the Honorary Council of Advocate Organizations. **Reconstruction of Advocate Law**, *Advocates must comply with the Advocate professional code of ethics and the provisions on the National Advocate Honorary Council.*
- e. **Advocate Law**, Article 26 paragraph (5): The Advocate Organization's Honorary Council shall examine and adjudicate violations of the Advocate's professional code of ethics based on the procedures of the Advocate Organization's Honorary Council. **Reconstruction of Advocate Law**, *The National Advocate Honorary Council examines and adjudicates violations of the Advocate's professional code of ethics submitted by the Honorary Council in each Advocate Organization in stages with demands for permanent dismissal.*
- f. **Advocate Law**, Article 26 paragraph (6): Decision of the Advocate Organization Honorary Council does not eliminate criminal responsibility if the violation of the Advocate's professional code of ethics contains a criminal element. **Reconstruction of Advocate Law**, *the decision of the National Advocate Honorary Council does not eliminate criminal responsibility if the violation of the Advocate professional code of ethics contains a criminal element.*
- g. **Advocate Law**, Article 26 paragraph (7): Provisions regarding procedures for examining and adjudicating violations of the Advocate professional code of ethics shall be further regulated by the Decision of the Honorary Council of Advocate Organizations. **Reconstruction of Advocate Law**, *Provisions regarding procedures for examining and adjudicating violations of the Advocate professional code of ethics shall be further regulated by the Decision of the National Advocate Honour Council.*
- h. **Advocate Law**, Article 27 paragraph (2): The Honorary Council at the regional level adjudicates at the first level and the Honorary Council at the central level judges at the appeal and final level. **Reconstruction of Advocate Law**, *The Honorary Council at the regional level hears at the first level and the Honorary Council at the central level hears at the appellate level.*

Conclusion

1. The current implementation of the advocate organization system in Indonesia is implemented through Law 18 of 2003 on Advocates and its amendments through various decisions of the Constitutional Court. According to Article 28 paragraph (1) of Law 18 of 2003 on Advocates, the advocate organization system is a single bar association/single forum. Article 32 paragraph (4) of Law Number 18 Year 2003 on Advocates (Advocate Law), Advocate Organizations must be formed within two years from the promulgation of the law, however, it turns out that there are several advocate organizations claiming to be the sole organization. This resulted in many judicial review claims to the Constitutional Court that resulted in the development of new laws. Several decisions and sources of the new law include, to viz. Decision No. 101/PUU-VII/2009 states that, the High Court is obliged to take the oath of advocates without linking the membership of the advocate organization (Ghozali, 2020), MK Decision No.112/PUU-XII/2014 and No. 36/PUU-XIII/2015 stated that, only PERADI and KAI have the right to request for administering advocate's oath at the High Court. KMA Letter no. 73/KMA/HK.01/IX/2015 also allow High Court to administer advocate's oath without linking membership of advocate organizations.
2. Weaknesses of the current regulation on the implementation of the advocate organization system, causing many conflicts and decreasing the quality of the advocate profession, among others:
 - a. Article 28 paragraph (1) of the Advocate Law results in a prolonged conflict of advocates regarding the claims of a single forum for advocates. Advocate organizations do not focus on improving the quality of advocates and eradicating judicial corruption, because the advocate organizations are not solid and in constant conflict.
 - b. After the amendment of Article 28 paragraph (1) of the Decision Advocate Law No. 101/PUU-VII/2009, MK Decision No.112/PUU-XII/2014 and No. 36/PUU-XIII/2015 Letter of Chief Justice of Supreme Court No. 73/KMA/HK.01/IX/2015 resulted in "fleas" advocate who was subject to reprimands, suspension (temporary dismissal) or permanent dismissal, but still able to practice in court by moving to another advocate organization.
 - c. Article 32 paragraph (1) of the Advocate Law forces the establishment of an advocate organization.
 - d. Article 4 paragraph (1) of the Advocate Law results in judicial intervention in the administration of an advocate's oath.
 - e. Article 2 paragraph (1) of the Advocate Law results in the commercialization of special education for advocates without any curriculum standards and testing standards.
3. Reconstruction of the implementation of an advocate organization system that can increase accountability for the quality of a profession based on the value of justice can be carried out through the formation of a National Advocate Honorary Council. Which

concentrates on three reconstructions, to viz the unity of the Advocate Organizational System in the form of a federation, a curriculum standardized education system and test standards, monitoring and prosecution of violations with a centralized code of conduct and final and binding decisions.

Suggestion

1. It takes momentum for the implementation of a national advocate consultation/consortium/congress to create a consensus on the organization of advocate organizations.
2. It is necessary to amend Law No. 18 of 2003 concerning Advocates by incorporating the concept of a National Advocate Honor Council.

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