

## Reconstruction of the Code of Professional Ethics to Make a Dignified Advocate Practices As an Element of Law Enforcer

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**Abstract:** The purpose of this study is to examine and analyze the Implementation of Advocate Profession Code of Ethics in Advocate Practice, and to reconstruct the Code of Professional Ethics to Realize Advocate Practices as a Dignified Law Enforcement Element. Paradigm used in this research is constructivism, with approach method that is socio legal research. Primary data collection is done by conducting interviews; The collection of secondary legal materials in this study was conducted by documentation studies and literature study. Determination of sample by purposive random sampling method. Data analysis in this research use inductive qualitative analysis method. The results showed that Advocate Behavior in running the profession is still arrogant, disrespecting other law enforcers, on the other hand Advocates do not hesitate to bribe the police, prosecutors and judges for the victory of the case. Ironically the behavior of glamorous want to get rich quickly and quickly popular, as a result of these behaviors the public judge Advocate profession is no more than case brokers / brokers increasingly massive. This is very contrary to the values of the Indonesian Advocate Code of Ethics and Law No.18 of 2003 on Advocates. Reconstruction of Advocate Code of Conduct by giving advocate title as official Nobile and professional multi purpose, therefore an advocate must implement the values of Indonesian Advocates Code comprehensively.

**Keywords:** Reconstruction, Advocate Profession Code, Law Enforcement Dignity.

### INTRODUCTION

In the effort to realize the principles of lawful State in the life of society and state, the role and function of advocate as a free and independent and responsible profession is important, in addition to the Institute of Justice and Law Enforcement Agencies such as Police and Attorney and Justice. Through legal services provided, advocates carry out their professional duties for the upholding of justice based on law for the benefit of the justice seeker community, including the effort to empower the public in realizing their fundamental rights before the law. advocate as one element of the judicial system is one of the pillars in upholding the supremacy of law and human rights. Advocates are law enforcement, separated and independent, guaranteed by law and regulation, further regulating the advocate organization to regulate and protect and improve its professional quality pursuant to Advocate Law Number 18 of 2003 and Indonesian Advocate Code of Conduct [1].<sup>1</sup>

The real condition of the legal process in Indonesia has not reflected Law Enforcement, because legal justice is not felt by every citizen. The unfolding

of the Supremacy of the law thus blowing the scent of "judicial mafia". The enforcement of the rule of law in Indonesia can not be separated from the behavior of the advocates. On the contrary, the smell is more intense and more confirming the "street gossip" that many believe: advocates become one of the mafia chain of justice. With judicial mafia, orderly courts and sublime legal rules end up serving only as a package: a cliché formality that are nothing but "plays". While the process that works in it is the power of money and connections. In this process the advocate becomes the bridge between the suspect and the prosecutor, the police, and even the judge. The success of advocates in defending the suspects is not because of their expertise in exposing the truth, but instead based on his shrewdness to mediate the practice of bribery [2].<sup>2</sup>The more complete the portrait of Indonesian advocate world that chaotic and colorful public scorn.

Not all advocates behave that way, and not all people stigmatize negative behavior in the body of an advocate, because there are still advocates who have a conscience in accordance with the profession it carries. However, the bleak face of the advocate is the real

<sup>1</sup>Himpunan Kode Etika Profesi, Yogyakarta, Pustaka Yustisia, 2006

<sup>2</sup>Asmar Oemar Saleh, *Potret Suram Dunia Advokat Kita*, Indonesian Lawyer Online, 2008

condition of the Indonesian advocate world. It is in this context that the question arises: How can advocates contribute to upholding the rule of law and human rights in this country? Advocates, of course, retain that answer, because advocates know and understand what their rights and obligations are and what are their responsibilities in law enforcement as set out in Law 18 of 2003 and the Code of Indonesian Advocates.

A judge who is a judicial authority must obey his professional code of ethics. As mentioned by Socrates, Professional Ethics, Judge's Code of Ethics is *The Four Commandments for Judges* that is [3]:<sup>3</sup>

- *To hear courteously.*
- *To answer wisely.*
- *To consider soberly.*
- *To decide impartially.*

The professionalism of the law enforcement apparatus in question today is due to the diminution of the meaning of a code of ethics of the legal profession which should be the guideline in the profession. The ethical code of profession raises loyalty and devotion to the work of the profession, related to his professionalism and honor. The Code of Professional Ethics according to Bertens is: "The norms established and accepted by professional groups, which direct or instruct its members how to act and behave while ensuring the moral quality of the profession in the eyes of the public."

The Code of Conduct for professional holders is summarized in the Code of Ethics which contains ethical content, both descriptive, normative, and meta-ethical [4].<sup>4</sup>code of ethics relates to a particular profession so that each profession has its own code of ethics on what is mutually agreed upon such as how to behave in certain matters and relationships with colleagues / fellow Advocates. However, not all jobs can be regarded as a rightful profession and deserve to have its own code of ethics.

There are three criteria that can be used to measure whether a job is said to be a profession or not [5]:<sup>5</sup>

- The profession is carried out on a high level of expertise and therefore can only be accessed by those who have undergone extensive training and technical training. Examples such as doctors and advocates.

<sup>3</sup>Wildan Suyuthi, *Kode Etik, Etika Profesi dan Tanggung Jawab Hakim*, Jakarta: Pusdiklat MA-RI, 2004, p.. 7.

<sup>4</sup>K. Bertens, *Etika*, Jakarta: Gramedia Pustaka Utama, 2005, p.. 11-15.

<sup>5</sup>Soetandyo Wignyosoebroto, *Hukum: Paradigma, Metode dan Dinamika Masalahnya*, Jakarta: ELSAM dan HUMA, 2003, p.. 316-317.

- The profession requires that the skills it uses are always developed by reason and developed regularly in line with the needs of the people who demanded to be served by the profession that mastered the professional expertise, or in other words there is a certain standard of skill required to be mastered. Examples such as doctors or law graduates.
- The profession always develops an institutions to control for professional skills to be used responsibly, based on sincere and unconditional devotion, and all that is thought of for the benefit of the people.

Law enforcement officers have a code of ethics in running their profession. Judge, Prosecutors, Police and Advocates can not arbitrarily carry out duties and authority without a guideline of behavior. If observed, the provisions in the Code of Professional Ethics each law enforcement officers require that each task and authority run accordingly with legal channels and no abuse of authority. In practice, however, there are still many violations of the code of ethics that ultimately reflect the unprofessional nature of a law enforcer in carrying out his duties and authorities, in short the *das sollen* and *das sein* are very different in everyday practice. In order to maintain the morality and professionalism of performance in upholding the law, law is obliged to obey the rules and norms that exist. According to O. Notohadimidjodjo, there are four important norms in law enforcement, namely: Humanity, Justice, Compliance, and Honesty [6]<sup>6</sup>.

According Soerjono Soekanto, law enforcement is very dependent on several factors that can affect it, namely: Factor law or rule itself; Factor officers who enforce the law; Factor of facilities or facilities expected to support the implementation of law; Factors of the community affected by the scope of the rule of law; and Cultural or legal culture factors;

The morals of the enforcers are largely determined by how legal professionals carry out their duties and responsibilities to preserve social life. The task of preserving social life is formulated in the oath of law enforcement professionals, namely to serve people.

It can not be denied that the power of law enforcers to exercise public trust, will often often clash with the private interests of law enforcement. This is what causes academic anxiety. Yet such a collision can make the benchmarks of every law enforcement in carrying out duties and authority to get the challenge. Prostituting professions for the sake of meeting the necessity or for the reason of greed is both a crime and

<sup>6</sup>E. Sumaryono, *Etika Profesi Hukum (Norma-Norma bagi Penegak Hukum)*, Yogyakarta: Penerbit Kanisius, 1995, p.. 115.

a violation of a loyal promise to serve the community. The law enforcers in their noble profession must have the moral courage to always be faithful to their consciences and express willingness to assume the risk of conflict personal [7].<sup>7</sup>

### MAIN PROBLEM

Based on the problem mentioned above, the authors would like to formulate the main problem discussed in this research, that is:

- How is the Implementation of Advocate Profession Code of Ethics in Advocate Practice currently ?
- What are the Reconstruction of Profession Code of Ethics for Realizing Advocate Practices as Dignified Law Enforcement Elements?

### METHOD OF RESEARCH

This type of research is a qualitative research. Paradigm in research is constructivism. By knowing some concepts and theories first will help researchers see carefully and critically of the symptoms or events associated with Spatial Planning, especially in overcoming slums for reconstruction.

Approach method used in this research is to use sociological juridical or socio-legal research, that is approach of law research which is based on rule of law applying in society by seeing the symptoms and behavior that developed in society by doing direct observation, and interview or Questioner dissemination.

### RESEARCH RESULT AND DISCUSSION

#### Implementation of Advocate Profession Code of Ethics in Advocate Practice

Advocate in carrying out his profession because of negative public opinion about advocate, They see advocates as professions who are deceitful, cunning and wild by others because they experience such things from unscrupulous advocates. This is because there are some advocates who lack moral integrity and commitment to law enforcement because they are more focused on material interests [8].<sup>8</sup> According to him that people do not look negative to advocate then every advocate must [9]:<sup>9</sup>

- Able to unfold the truth;
- Able to Be wise to;
- Able to uphold justice;
- Control yourself in any role.

Advocates as law enforcers should try to make the suspect / victim easier (not 'complicated') in

undergoing their legal process. However, according to him there are some obstacles advocate in carrying out the task are [10]:<sup>10</sup>

- Lack of mastery of foreign languages (eg English, Mandarin and others). Not possible, an advocate in carrying out his professional duties will be faced with a client or a foreign opponent party. This should be considered by every advocate.
- The absence of forceful attempts at obtaining information, such as the difficulty of obtaining documents / documents in the context of defense if the requested party does not want to give it voluntarily.

Advocates play a role in enforcing procedural law with the vision of access to justice and defending the rights of clients / seekers of justice. The weakness of the advocate in carrying out the task is coordination with the wrong law enforcement, that is with law enforcers who do not have a mental law enforcement justice (corrupt). When this happens, then everything goes back to the individual person. As stipulated in the Law Advocates that the position of lawyers as law enforcement is equal to other law enforcers, so in carrying out its duties advocates can work independently while maintaining integrity.

The weakness of the advocate in carrying out his professional duties. When viewed from perspective of investigators, there are some unscrupulous advocates who place themselves as a suspect / defendant, the existence of advocate when accompanying the suspect / defendant had a subjective position and also argued with consideration subjective. Supposedly, an advocate may place himself in a sub-tactful position (for the sake of the suspect / defendant) but argue with consideration of objective in accordance with facts and laws.

The role and function of advocates for justice seekers is to advise, reconcile and seek material truth. But the obstacles faced by advocates are other law enforcers, feel advocate is not a state official so the advocate profession is given less good response. In addition, the weakness of advocates in carrying out their duties is always the defendant's advocate / defendant is 95% proven guilty so as not to close the possibility of doing lobby (Corruption) with other law enforcement officers [11].<sup>11</sup>

The role of an advocate for a suspect, lest he be punished more than what he is responsible for. While the role of advocate for the victim is for the victim to get justice. But constraints advocate in carrying out its

<sup>7</sup>*Mafia Hukum dan Moralitas Penegak Hukum*, artikel Suara Pembaruan, 3 April 2010, oleh Febiana Rima, Pusat Pengembangan Etika Atma Jaya Jakarta.

<sup>8</sup>Hasil wawancara Penulis dengan Ibu Sulistyowati, Advokat di Kabupaten Ungaran pada tanggal 10 Desember 2014.

<sup>9</sup>*Ibid.*

<sup>10</sup>Hasil wawancara Penulis dengan Sidharta Widiarto Nugroho, Advokat di Kota Semarang, pada tanggal 17 Desember 2014.

<sup>11</sup>Hasil Penelitian Penulis dengan Hakim Sumedi pada tanggal 31 Desember 2014.

duties is sometimes when a client cover up some facts / truth.<sup>12</sup>

The same thing is expressed by senior advocate Adnan Buyung Nasution that as the times change, advocacy activities in Indonesia are growing, many young advocates are proud. But unfortunately, many are forgetting the glorious history of the advocate itself. Those who originally idealized turned into commercial. In fact, many such advocates use shortcuts while sacrificing humanity and human values. For example, deliberately make an agreement to trade a case without a clear legal basis. Unfortunately, many prefer to use the services of such advocates.<sup>13</sup>

According to the author's opinion, that the profession of advocates who is a respectable profession (*officium nobile*) is currently more aimed at something commercial and matrealistic. Many advocates use shortcuts and sacrifice humanitarian and humanistic values. The shortcut is done by way of organizing and completing a case through the lobby. The authors acknowledge that the Advocate profession is very vulnerable to engaging in bribery practices, especially in handling other cases of high commercial value. The influence of the practice of bribery on the implementation of the task of the advocate profession is actually back again to each person. Therefore, moral reform and morality advocate is needed. A high moral will prevent and avoid advocates from unfavorable practices and degrade the dignity of the noble profession of advocates.

This is very possible happen as the position of advocate who is right between his client and law enforcement officers (judges, prosecutors and police). Advocates have the freedom and vast space to do anything in achieving the goal of creating a sense of justice and legal certainty in the community as well as in order to maintain the image and creed of the advocate profession [12]<sup>14</sup>.

Bribery together with embezzlement of public funds are often referred to as the core or basic form of corruption. Corruption itself is universally defined as an unlawful moral deed, or a stain (depravity, perversion or taint); a destruction of integrity, virtue or moral principles (an impairment of integrity, virtue, or moral principles). The criminalization of corruption, including

bribery, has a very strong reason for the crime no longer seen as a conventional crime, but as an extraordinary crime, because of the very criminogenic nature of corruption (it can be a source of other crimes) and victimogen (potentially harming various dimensions of interest). It is no exaggeration to say that our judicial system has encouraged the creation of a new crime by the emergence of a judicial mafia term that acts as a case broker in which the fraudulent practices are systematically committed by law enforcement officials themselves including Advocates who carry out their roles to approach and to seduce other law enforcers, in order that the case may be won in any way by the legal culture of Indonesian society where they prefer to have their case won in any way regardless of the value of justice and truth contained therein.<sup>15</sup>

Judicial mafia is one of the obstacles to the implementation of advocate duties. The existence of this irresponsible advocate, thus indirectly can be interpreted to contribute to the creation of judicial corruption and judicial corruption. Some people recognize the advocate profession as the case broker who is right between the client and law enforcement officers (judges, prosecutors and police) as a buyer and seller of justice rather than a role to provide legal services and represent his clients to bridge the public interest in the judicial system.<sup>16</sup>Whereas within the scope of the work of a modern Advocate, an advocate must demonstrate the function of Advocate in two aspects namely to:

- Represent clients in court. This function is a classic thing whose existence has existed since the birth of the profession within the jurisdiction of the Court to represent its client;
- Represent clients out of court. This function is an advocacy function that evolves with the increasing complexity of public relations..

The existence of advocates in our legal system has a very vital and crucial role because only advocates have access to justice and liaison between the state and the state through its legal institutions. Therefore, in carrying out his profession, advocates must work on the basis of ethics and morality in order not to get involved and become part of judicial corruption and judicial corruption. However, not a few advocates who firmly run their profession through due process (law of procedure). They continue to use legal battle in court to seek real justice. Because without a fight, it is impossible that such intrinsic truth can be achieved. Therefore, advocates should not work to pursue the material alone. Although in this modern era the advocates are entitled to earn more income from the

<sup>12</sup>Hasil wawancara Penulis dengan Roseita, Karyawan Swasta, pada tanggal 12 Desember 2014.

<sup>13</sup>Lawyer Jurnal Profesi dan Hukum Kontemporer, *op.cit.*, p.. 8-9

<sup>14</sup>T. Gayus Lumbuun, *Budaya Suap Sebagai Faktor Penghambat Bagi Unsur Penegak Hukum Menuju Peradilan Yang Bebas dan Bersih dari KKN*, Makalah ini disampaikan dalam Diskusi Panel IKADIN pada tanggal Kamis, 8 Mei 2008, p.. 3

<sup>15</sup>*Ibid.*,p.. 1-2

<sup>16</sup>Berdasarkan hasil wawancara Penulis dengan salah satu Aparat Kepolisian di Kapolda Semarang pada tanggal 18 Desember 2014, Pukul 10.00 WIB.



profession. However, be aware that between the struggles of human values and the search for livelihoods must be truly balanced. One effort to eliminate this "shortcut" disease is to improve the quality of advocate education, to add a strong foundation to the advocate profession as well as to the implementation of the code of ethics of advocates. This kind of thing should be applied to a potential advocate from the beginning. For example, since the candidate advocates concerned carry out internships in legal consultant offices. prospective advocates should be trained to become advocates who uphold their profession to become a mature person. According to the authors of the obstacles or obstacles in the implementation of advocate protection namely the legal substance of Law no. 18 of 2003 on Advocates. During this time, several times the Advocate Law has experienced judicial review in the Constitutional Court. So it is necessary to change the Law on the Advocate. It is very relevant to give thought to the concept and strategy of quality improvement through Education and Advocate Selection. On the one hand, the amendment of the Advocate Law which has been in operation, but not immediately resolved. Obstacles to the implementation of advocate law protection is also due to PERADI's questionable validity. More than 17 (seventeen) times were sued although ultimately none of the lawsuits were able to destabilize PERADI's position. Jimmly who was then Chairman of the Constitutional Court, in the consideration of his verdict affirms that PERADI is a legitimate Organization and which performs the function of the state, namely appointing Advocates. After various ways and efforts are made by groups who are not responsible for dissolving PERADI, they are now trying to destabilize PERADI in collaboration with Todung Mulya Lubis who has been dismissed by PERADI for violating a severe Code of Conduct by using the House Initiative Right by proposing an Advocate Bill without involving PERADI as the only Advocate Organization that runs a part of the state function pursuant to Law No.18 / 2003. These legal facts to all our colleagues and relations so that they understand that the bill can not be arranged discriminatively and ignore the long history of advocate organizations that choose single bar, so that the quality of Indonesian advocates have the same standard of service nationally [13].<sup>17</sup>The classic problem of creating a single and independent advocate organization is becoming increasingly difficult to achieve. The development of problems that occur in the body of this advocate organization also becomes an obstacle to the implementation of advocate duties as law enforcers. As

<sup>17</sup>Leo Tobing, *Ruu Advokat Disusun Secara Diskriminatif & Mengabaikan Sejarah Bangsa*, <http://Ruu-Advokat-Disusun-Secara-Diskriminatif.html>, diakses pada 14 Desember 17.00 WIB.

we know that the current position and role of advocates in relation to judges, prosecutors, police becomes a framework called "CATUR WANGSA PENEGAK HUKUM" or the Five Principle of Law Enforcement. There are still many misconceptions that the advocate's job only defends the case before the court in civil or criminal cases before police, prosecutors and courts, called litigation work. In fact, advocate work lies not only in litigation work but also in non-litigation work. In the explanation of Law no. 18 of 2003 on Advocates mentioned that, Advocates as one element of the judicial system is one of the pillars in upholding the supremacy of law and human rights. In addition to the judicial process, the role of Advocates is also seen in the professional path outside the court. The need for Advocate's legal services outside the judicial process at the present time is increasing, in line with the growing needs of the public law, especially in entering an increasingly open life in the association of nations. Through the provision of consultation services, negotiations and in the production of trade contracts, Advocates' profession contributes significantly to the empowerment of the people as well as the renewal of national laws, especially in the economic and trade sector, including in the settlement of disputes outside the court. In the Dutch era until several decades after independence the advocate profession in Indonesia was very close to the people. Where there are people who are treated unfairly, there is an advocate present, if there is no minimum advocate of bamboo procol (public defender without law degress). So it is no exaggeration to mention that stakeholder advocate Indonesia is the people. In the Old Order until a decade earlier the New Order began, Indonesian advocates still showed the original figure. Characters such as S. Tasrif, Loekman Wiriadinata, and Yap Thiam Hien are prototype advocates who at that time have featured the actual figure of the advocate profession [14].<sup>18</sup>

Since the early eighties, the advocate profession in Indonesia has come under scrutiny, its image as a public advocate, justice and justice fighter slowly but surely faded along with the decline in the authority of law and the authority of the judiciary. Criticism that we often hear most advocates have been more focused on the business of looking for money through litigation activities and legal consultation rather than fighting for justice. Then there are a handful of searching for clients door to door, even there are also advocates who doubles as a receivable receivables creditors or debt-collector. In the state of chaotic law enforcement today and the advocates instead of pro-justice and pro the interests of the people even advocate participate muddle the atmosphere, then the question arises: where is the social function of advocates who

<sup>18</sup>Otto Hasibuan, *Menanti Bangkitnya Advokat*, disampaikan pada Seminar Rakernas IKADIN di Denpasar Bali 26-28 Februari 2004, p. 1-5

once was very proud of? Is it still true that his stakeholder is Indonesian advocate is the people? Is it still appropriate honorary profession title (*officium nobile*) bears the advocate profession in Indonesia? In the New Order era, the spotlight on the number of advocates who deviated from the essence of his profession can still be ignored by raising two factors. First, the political system built by the New Order government has made almost all organizations and community groups, including advocate organizations to become very weak. Through the Law of Honor (Law No. 8 of 1985), the government has authority over every community organization (organization), where the professional organization is considered as a mass organization. Because advocate organizations are weak plus because there is no obligation for any advocate to enter the advocate organization as well as the licensing is the government, the Advocate Code of Conduct can not be enforced. Whereas Advocate Code of Ethics is the supreme law that can guide and manipulate behavior of advocate in carrying out his profession. Things get worse when advocate organizations are fragmented and each organization makes its own code of ethics. And the split of the advocate organization is also caused by government bleed. Secondly, because of the political system as well, the implementation of the rule of law supported by a free and impartial judiciary becomes very far from expectations. Law enforcement institutions are ultimately not only influenced by political power but also influenced by economic power. Advocates who are supposed to be the guardians of the rule of law because of their professional vocation are powerless in the face of the influence of political power and economic power, which ultimately join in. While there is no institution that effectively oversees the behavior of advocates. The birth of the reform era has brought great changes to the life of Indonesian democracy. In parallel, the government's dominance of the judiciary and the social institutions are free. It can be said that the institutions of the judiciary and post-New Order advocate organizations are no longer controlled by the government. But this condition did not necessarily change the "sad face" of the judiciary. Because although the reform movement has succeeded in reducing the degree of government domination, but the reform movement has not succeeded in implementing law enforcement consistently.

### **Reconstruction of Profession Code of Ethics for Realizing Advocate Practices as Dignified Law Enforcement Elements**

The 5th Pronunciation reads "Social Justice for all Indonesians" has the Coat of Rice and Cotton. With these five precepts, human beings realize the same rights and obligations to create social justice in the life of Indonesian society. Social justice is the nature of a just and prosperous society for everyone, no humiliation, no exploitation, material happiness and spiritual, birth and inner happiness. The fair term is to show that one has to give to others what is rightfully

and know what its own right and know what its obligations to others and themselves [15].<sup>19</sup>Social means being selfless, but giving priority to the common good, not individualistic and egoistic, but acting for the common good. So in the 5th principle is contained the value of Justice is constituted by the essence of human justice that is justice in human relations with himself, human beings with other human beings, people with society, nation and country and human relations with God.

The values underlying the development of Advocate Code of Ethics in the future are values that are in accordance with the values that live and thrive in Indonesian society, in this case that the value of kinship / consensus *mufakat* or the original value of the Indonesian nation needs to be implemented in legal development in the future comes with digging values that are sourced both from religious law and customary law, so that it does not rule out the emergence of dynamic law or the law will not be rigid. Both dynamic laws and rigid laws must both be avoided, as at the time of the new order, where the law becomes rigid, because the law becomes the instrument of power for the ruler, whereas in post-reformation, the law becomes more dynamic so that there are many violations of the law in society, even crime rates are increasing every year [16].<sup>20</sup>Legal reconstruction is needed to re-dig the values that underlie the development of criminal law in the future namely the values that are sourced, lived and developed in the religion and the people of Indonesia such as the value of kinship / consensus *mufakat*.

The pillars of law enforcement manifested by the performance of its apparatus reflect the quality of the interaction that exists between advocates and clients with clear and legal references. Such standards are formulated in the Advocate Law and Code of Ethics that must be implemented with all heart. It is not to be sorted and selected- choose according to self-interest and profit at the expense of honorable profession advocate (*official Nobille*).

The performance of advocates is also based on freedom. The freedom in question is by no means free, according to the will of an advocate. However, as with any profession that requires interaction, all of which must be regulated in clear reference set out in the Code of Ethics of Indonesian Advocates. Thus when there is deviation from the performance will also be clear where

<sup>19</sup>Arti dan Makna Sila Kelima Pancasila, Makalah, <http://tricklik.blogspot.com/2013/12/arti-dan-makna-sila-kelima-pancasila.html>, diposting pada hari Sabtu, tanggal 7 Desember 2016, diakses pada 22 Desember 2016.

<sup>20</sup>Mu'in Abdul Kadir, *Rekonstruksi Hukum*, dalam [www.fatkhulmuin1983's.weblog.com](http://www.fatkhulmuin1983's.weblog.com), diakses pada 10 Desember 2013

and how the deviation. Concrete freedom that must be owned profession advocate must be followed by the responsibility of each advocate and professional organization that shelter.

The role and function of advocates is basically defined in Article 1 paragraph (1), from those articles it can be seen that the roles and functions of advocates include good work done in court and outside court on criminal or civil law matters. The scope of court-related advocate work is called litigation work, an area previously advocated, so that the public misunderstands that the advocate's work is limited to the field [17].<sup>21</sup> It is even said that the advocate's work is only entirely related to the lawsuit only [18],<sup>22</sup>an understanding that can arise because the advocate world only deals with civil cases. However, in its development, in fact there is still a lot of advocate work outside the field of litigation, called non-litigation (non-litigious work). The fields have been mentioned in the previous chapter.

The categorization of duties undertaken by advocates into criminal or civil law cases in the courts is actually considered to be inaccurate, because today legal issues have grown rapidly. For example, legal issues arising between citizens and administrative officials of the state and disputes about the results of elections formerly not included in the legal order of Indonesia. Untuk covers all the problems of this law, it can be said that the duties and roles of advocates covering issues of public law and civil law, as in the classical Roman law differentiation [19],<sup>23</sup>although in the distinction can not be drawn clear separation line.

Advocates also have the function and obligation to play a role in legal development (law development; *rechtsontwikkeling*), legal reform, *rechtsvernieuwing*, formulation of legal formulation (law shaping, *rechtsvoming*). Law development is to encourage and direct the development of law through the formulation and formation of laws and the development of customary law in accordance with the demands of the needs of society (rising demand) that evolves toward the modernization. Law reform is reforming, renewing written and unwritten laws that are compatible with changes and advancement of the legal awareness and spirits that live in society. The making and formulation of legal law in law and law which expressly and clearly contain and accommodate the principles, norms and legal requirements that favor the

<sup>21</sup>H. Fauzie Yusuf Hasibuan, *Peran Fungsi dan Perkembangan Organisasi Advokat*, Bahan ajar untuk Pendidikan Khusus Profesi Advokat, 2007, p. 9.

<sup>22</sup>Daniel S. Liev, *Hukum dan Politik Indonesia*, terjemahan Nirwono & A.E.Priyono, Jakarta: LP3ES, p. 310-311.

<sup>23</sup>Lawrence M. Friedman, *American Law*, Newyork: WW Norton & Company, 1984, p. 152

weak, prohibit the abuse of power, prohibit oppressive actions, prohibit monopolistic economic systems, prohibit unfair competition, prohibit the concentration of economic power in the form of cartels, concerns, trusts and other forms of syndicalistic economic power, prohibit anti-democratic acts, protect the rights human rights and justice.<sup>24</sup>

Sociologically, there is a type of law that has a stronger behavior than any other law. The law found as a product of power was not in accordance with the real law of life in society. Based on the phenomenon, then the role of advocates in enforcing the law will be tangible, namely:

- Encourage the application of appropriate laws for each case or case.
- Encourage the application of the law does not conflict with the demands of decency, public order and sense of individual and social justice.
- Encourage the judge to remain neutral in examining and adjudicating cases, not otherwise taking all measures to prevent judges from being neutral in applying the law. Therefore, one important principle in defense, if convicted a client is guilty, then lawyers as law enforcers will offer the principle of "clemency" or simply appeal for justice.

In addition to the above roles, Advocates also have a role in the supervision of law enforcement, the guardians of judicial power and as social workers. the role will be described as follows:<sup>25</sup>

- Role of Advocate as the supervisor of law enforcement The function of law enforcement supervision is mainly run by advocate association. This oversight includes two things: Internal, internally the role of an advocate's association should be an effective means of overseeing the behavior of advocates in the law enforcement profession or the application of law. There should be effective ways to control advocates who disregard professional ethics and the rules to perform good and proper advocate duties based on the Advocate Code of Conduct. Externally, externally both the set of advocates and advocates individually should be supervisors so that the judiciary can run properly and appropriately. Not quite the opposite, advocates become part of the effort to block a judicial process.
- The Role of an Advocate as a Keeper of the Judicial Power An independent judicial protection or guarantee shall not be construed as being free from influence or pressure from the power of the State or government. The independent judiciary power must also be interpreted as free from public

<sup>24</sup>Geshindo (Gerakan Supremasi Hukum Indonesia), *op.cit.*, p. 6

<sup>25</sup>*Ibid.*,

influence or pressure, whether organized in infra structure or incidental. The pressure can be in the form of launching real pressure, forming an unreliable public opinion, threats and destruction of judicial infrastructure and facilities. Such pressure may also be individual in the form of bribing law enforcers to take sides. Advocates as law enforcers, especially those involved in the administration of the judiciary, should take care that the free judicial power can work as it should.

- Role of Advocates as Social Workers Social workers in this case are social workers in the field of law. As is known, how many people are facing legal problems, but are powerless. They are not only powerless economically but may also be powerless in the face of power. Based on this, then the legal issues facing small and weak people who need help, including from advocates. Article 21 of the Advocate Law in this case explains that advocates are obliged to provide free legal assistance to poor justice seekers.

From various roles the advocate provides an understanding that an advocate is a lawyer who provides services or legal assistance to his clients. Such legal assistance may be legal advice, advocacy or representing (accompanying) his client in a lawsuit and settling the case brought to court. Indonesia as a state of law, the role of the judiciary is absolutely necessary. Because the existence of judicial institutions will be able to accommodate and implement legal issues into tangible form. Thus, interaction within the judiciary will occur legal processes as one form of legitimacy of various behaviors both in the relationships of individuals and social groups of society. From the time the judiciary in Indonesia experienced changes along with the times, both from its institutional and in its law enforcement system [20].<sup>26</sup>

The judiciary has a very important role in the context of Indonesian law enforcement, because the only formal institutions are authorized to manage all legal issues for citizens experiencing legal problems. The judicial institutions are part of a social system that together with communities organize and resolve various problems that occur, so the role of the judiciary should be responsive to the dynamics of society. As Jeremo Frank points out, the main purpose of making the judiciary institution more responsive to social needs is an achievement to encourage the extension of the social function of the law itself. So that the logic of the law can include the value of social justice [21].<sup>27</sup>

The realization of law enforcement proportionally required container whose name is judicial institution and in it there is criminal justice system. Criminal justice system become important component in achieving the purpose of law. Because of the great importance of the position of the criminal justice system, Daniel S. Lev says: "Where cultural values and myths emphasize regulatory and socio-political relationships that are not based on the jurisdiction of autonomous law, the legal institutions) will be less able to develop its self-sustaining power as it has in European countries and the United States. The appearance of mighty bureaucratic powers, essential elements for the existence of a strong legal system, will not create a positive general response to the workings of the law, especially if, for example, patrimonial values also remain firmly entrenched [22].<sup>28</sup>

"Seeing the framework law enforcement, how law enforcement at least in the sense of law enforcement in the broad sense that covers the implementation and application of law against any violation or legal irregularities committed by the subject of law, as well as in a narrow sense is an act of action against any violation or deviation from legislation [23].<sup>29</sup>

The law enforcement behavior that almost undermines the sense of community justice, will inevitably result in the role of judicial institutions that continue to experience a crisis of trust by their own community. The various barriers to enforcement of controls in the examination of cases, particularly criminal cases, basically include communication distortions, lack of internal controls (structures) and external controls, lack of supportive culture and judicial structures, lack of Advocate code of ethics and the need for revision of legal substance. This map explains the issues that are broad enough as well as specific, related to the various standards of behavior outside and in the task, also concerns the issue of control in the examination of cases in court [24].<sup>30</sup>

The issue of law enforcement is complicated, when law enforcement officers (judges, prosecutors, police, lawyers) are also easy to commit disgraceful acts and also against the law. Sometimes the actions are sometimes motivated by one reason for the low welfare of the law enforcement officers. But giving high honorariums is also not a guarantee that the law

<sup>26</sup> Ahmad Mujahidin, *Peradilan Satu Atap di Indonesia*, Bandung: RefikaAditama, 2007, p.. 64

<sup>27</sup> Philippe Nonet & Philip Selznik, *HukumResponsif*, ctk. Pertama, Bandung: Nusamedia, 2007, p.. 83

<sup>28</sup>Yudi Ktristiana, *Menuju Kejaksanaan Progresif; Studi Tentang Penyelidikan, Penyidikan dan Penuntutan Tindak Pidana Korupsi*, Yogyakarta: AntonyLib kerjasama LSHP, 2009, p.. 64

<sup>29</sup>Sabian Utsman, *Menuju Penegakan Hukum Rseponsif*, ctk. Pertama, Yogyakarta: Pustaka Pelajar, 2008, p. 30

<sup>30</sup>Otje Salman, *Wajah Peradilan Kita*, Bandung: Refika Aditama, 2004, p.. 135



enforcement officers no longer commit disgraceful and unlawful acts, since unlawful practices have become part of life at least a common sight. The presence of progressive law is not a coincidence, not just born without cause, nor is it something falling from the sky. Progressive law is part of the searching for the truth process never stops. Progressive law which can be viewed as a self-seeking concept, derives from the reality of the workings of law in society, in the form of dissatisfaction and concern for the performance and quality of law enforcement. The terminology of the progressive word is somewhat alien to all of us. The Dictionary of Webster's New Universal Unabridged Dictionary explains that Progressivism has the base word Progress, which means moving forwardforwardforward, known to the du syllables ie pro (before meaning before) and gradi (to step which means stepping) [25].<sup>31</sup>

Based on the above thinking, it can be said that, in the midst of the great globalization that is crashing all the countries indiscriminately, the global financial crisis that has become (Hot Issue) in the world today is also felt by Indonesia, especially when it talks about the idealism and dignity of the law enforcement profession as well as public officials. Idealism seemed to be a new and strange item in the midst of pragmatism that became a new ideology in society. On the one hand, public officials must be able to maintain their idealism as public servants, especially law enforcement apparatus to guard the justice seekers to obtain justice and truth which they actually strive for, but on the other hand squeezed by the life of materialism to meet the necessities of life, that is, the rule of law itself, the more devastating thought to Satjipo Rahardjo: "Law enforcement has begun when the rule of law is created or created. Law enforcement is a process for realizing legal desires into reality. The law wishes are the minds of the legislatures formulated in the laws of law. The law enforcement process also reaches up to law-making. The formulation of lawmakers' thought as set forth in the rule of law will also determine how law enforcement is carried out. In fact, the law enforcement process culminates in its enforcement by law enforcement officials [26]."<sup>32</sup>

"Further Satjipto Rahardjo says:" The machinal and deterministic nature of the law will lead to a crisis in the realm of science and humanity, and the crisis will get a turning point when there is a development of the notion

of relativity, chaos and complexity as something worthy of acceptance in science including law [26]."<sup>33</sup>

"According to Satjipto Rahardjo, since modern law has relied on the dimensions of form that make it formal and procedural, there has also been a distinction between formal justice or justice according to law on the one hand and justice true or substantial justice on the other. Given these two dimensions of justice, we can see that in practice they can be used to subvert substantial justice. The use of such a law does not imply a violation of the law, but merely indicates that it can be used for purposes other than achieving justice. Described by Satjipto Raharjo, progresivism departs from a humanitarian perspective, that human beings are essentially good, have compassion and caring for others as important capital for building a life of punishment in society. But if the law becomes as bad as it has been in our country, the target is its law enforcement officers, namely police, prosecutors, judges and lawyers. Although, if we think clearly and sustainably, they are not fully blamed and positioned as the sole defendant for the destruction of the authority of the law in Indonesia. Advocates as one of the law enforcement officers have tried to perfect themselves in the implementation of law enforcement. As we know, prior to 2003 the advocate profession in performing its duties did not have the standard of standard but has been made agreement in the form of Advocate Code of Conduct. The diversity of advocate organizations and the rule of law that govern it certainly does not guarantee the position and the role of advocates in carrying out their profession in society.

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<sup>31</sup>Mahmud Kusuma, 2009, *Menyelami Semangat Hukum Progresif; Terapi Paradigmatik atas Lemahnya, Penegakan Hukum Indonesia*, ctk. Pertama, AntonyLib Bekerjasama LHSP, Yogyakarta

<sup>32</sup>Satjipto Raharjo, *Penegakan Hukum Suatu Tinjauan Sosiologis*, op. Cit, hal. 24

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<sup>33</sup>Satjipto Raharjo, *Merombak dan membangun Hukum Indonesia, Sebuah Pendekatan Lintas Disiplin*, Yogyakarta: Genta Publishing, 2009, hal. 13

**Table-1: Reconstruction of Advocate's Code of Conduct for Realizing Advocate Practices with Dignity as Law Enforcement Elements**

Before	Weakness	Reconstruction
Chapter III Relationships With Clients Article 4 letter b Advocates are not provided with information that may mislead clients about the case they are dealing with.	The client is not clear about what the case will be and how to solve it and how long it will take	The client should be informed of the case and provide the position of the case and be given an opinion legal and how to handle and what steps are being undertaken as well as how long it will take in completion of the cashier, and fee agreement
Chapter IV Relationships With Friends Article 5 letter a The relationship between peers Advocates must be based on mutual respect, mutual respect and mutual trust	Often degrading peers because they still distinguish between junior and senior.	Advocates should value the profession as a whole and peers do not look to juniors and seniors, and value the mutual cooperation.
Chapter VI How to Act in Handling Cases Article 7 letter g Advocate is free to issue statements or opinions expressed in court for the difference in a case which is his responsibility both open session and closed session which is proposed proportionally and not excessively and for this has law immunity on both civil and Penal cases	In the delivery of good opinion as well as differences in congregations often occur inappropriate words and tend to underestimate both to the Prosecutor and to the Judge	Add a new Chapter on Chapter VII Advocate Relationships with other Law Enforcement namely : Article 8 a. Advocates appreciate the existence of other law enforcement professions namely Police, Prosecutors and Judges as a whole. b. Advocates in assisting clients at the level of investigation and prosecution should respect the rights of investigators in conducting an investigation of the Client and respect the right of subjectivity and objectivity to the results of the investigation. c. In the proceedings of the Advocate shall respect the Prosecutor as the Public Prosecutor in conducting investigations and prosecution of the client as the Defendant d. In the Advocate Trial should respect the Judge as chairman of the session, in arranging the proceedings a. e. At trial the Advocate should apply proportionally and professionally show a respectable, not arrogant attitude

**CONCLUSION**

- Advocate behavior in running the profession is still arrogant disrespect and do not respect other law enforcers, on the other hand Advocates do not hesitate to bribe the police, prosecutors and judges for the victory of the case. Ironically the behavior of glamorous want to get rich quickly and quickly

popular, as a result of these behaviors the public assess Advocate profession is no more than case brokers / brokers increasingly massive. This is very contrary to the values of the Indonesian Advocate Code of Ethics and Law No.18 of 2003 on Advocates.

- Reconstruction of the Advocate Code of Conduct by awarding advocate as official Nobile and professional multi purpose, therefore an advocate shall be obliged to comprehend the values of the Indonesian Advocates Code of Ethics comprehensively.

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