

Research Article

Advocates' Immunity Rights in Indonesia: Why this Protection is Often Forgotten

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ORCIDD. Djunaedi: <https://orcid.org/0009-0007-2270-7989>**Abstract.**

The right to immunity is a form of legal protection for advocates that guarantees that advocates as legal defenders cannot be prosecuted criminally, civilly, and administratively in carrying out their duties. However, several recent cases have highlighted the application of advocate immunity rights that show inconsistencies with the regulations. The research method used in this paper is normative juridical and data were collected through literature studies. The results of the study indicate that there is state recognition of the right to immunity for advocates through regulations in several laws and regulations. An example is the determination of a suspect by the Yogyakarta Regional Police against Meila, an advocate who was defending the rights of her client who was a victim of sexual violence, and questions regarding the limitations of the use of immunity rights in the case of Fredrich, former attorney for Setya Novanto who was involved in the e-KTP corruption case and was considered to have attempted to obstruct the investigation. These cases reflect the confusion of the concept of the application of immunity rights in Indonesia. This study aims to discuss the provisions of Indonesian law regarding the right to immunity for advocates and the role of immunity rights in supporting advocates in carrying out their professional responsibilities as law enforcers. In addition, this study examines the important role of immunity rights in supporting the legal process to run in an orderly manner in accordance with applicable provisions, which is very necessary for the advocacy profession.

Keywords: advocate, immunity, legal, protection

1. Introduction

Advocate immunity rights are one form of legal protection owned by advocates as law enforcers. Legal protection for the advocate profession is essentially clearly regulated in the Law. Article 16 of Law Number 18 of 2003 concerning Advocates states that the advocate profession basically has immunity rights, where advocates cannot be sued either civilly or criminally during the period during which the advocate is providing his professional services followed by good faith in order to fulfill the interests of the client's defense that is needed both inside and outside the trial.

However, in reality, to this day the right to immunity is a basic right that is still often forgotten and poorly understood, including by law enforcement officers. This can be

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seen from the ongoing cases of inappropriate use of immunity rights, starting from the misuse of immunity rights in the e-ID card case by Setya Novanto's lawyer, Fredrich Yunandi in 2018, to other institutions and law enforcers such as the police who are actually actors who forget the existence of advocate immunity rights, such as in the case of Tony Budidja's determination, in 2023, he was named a suspect in a case of alleged false complaints or slander. In mid-July 2024, Meila, an advocate who handled a case of alleged sexual violence at UII, was named a suspect by the Yogyakarta Regional Police as a defamation suspect.

These cases are only a small part of other cases regarding the inappropriate use of immunity rights. That these cases are a reflection of the poor implementation of immunity rights which are still far from ideal as this right should be intended. The purpose of the Immunity right itself is basically as an important part that provides work space for advocates to be able to be independent in upholding truth and justice. So it can be seen that the implementation that is not in accordance with the objectives will certainly affect the course of the legal process. Therefore, in this study the author will discuss the provisions of Indonesian law that regulate the right to immunity for Advocates and the role of the existence of immunity rights in supporting Advocates in carrying out their professional responsibilities as law enforcers.

2. Research Methods

The research method used is normative juridical with data collection techniques through literature studies. The results of the study indicate that there is state recognition of the right to immunity for advocates through regulations in several laws and regulations. In addition, this study examines the important role of immunity rights in supporting the legal process to run orderly in accordance with applicable provisions, which is very necessary for the advocacy profession.

3. Results and Discussion

3.1. Indonesian Legal Provisions Governing the Right to Immunity for Advocates

The definition of an Advocate is stated in Article 1 paragraph (1) of the Advocate Law which states that "An Advocate is a person whose profession is providing legal services,

both inside and outside the court who meets the requirements based on this law”. This is also stated again in the next article in Article 5 paragraph (1) of the Advocate Law that “An Advocate is a law enforcer, free and independent who is guaranteed by law and statutory regulations”. Through this explanation, it can be concluded that basically an Advocate has an equal position with other law enforcers, namely the police, prosecutors and judges who have the position as the four dynasties of law enforcers.

In developing all the duties and responsibilities owned by Advocates as law enforcers, Advocates have several binding rights in their profession, one of which is the right to immunity. The right to immunity is regulated in Law Number 18 of 2003 concerning Advocates in Articles 14, 15 and 16. Article 16 of Law Number 18 of 2003 states that

“Advocates cannot be sued either civilly or criminally for carrying out their professional duties in good faith for defense in court proceedings.”

The right to immunity of advocates is basically a form of legal protection for advocates as protection during the implementation of legal defense duties for their clients which can be done either verbally or in writing during the legal process in court. The purpose of granting immunity rights to Advocates is so that in the process of an advocate carrying out his profession, it is carried out without any intervention or free from all forms of pressure and legal claims that may arise due to his profession. The existence of immunity rights has been regulated in Law Number 18 of 2013 concerning Advocates.

Strengthening of the recognition of immunity rights was reaffirmed by being stated in the Constitutional Court Decision Number 26/PUU-XI/2013 in 2013, which explained that the Constitutional Court had provided an addition to the new interpretation which in this case has had legal force by binding on the immunity rights of advocates. The decision conveyed the recognition and guarantee of protection for advocates in carrying out various non-litigation actions in good faith and with the aim of defending clients in the interests of both inside and outside the court.

Another regulation that also regulates the immunity rights of advocates is in the Law on Sexual Violence Crimes (TPKS) Article 29 which states that companions of victims of sexual violence, including social workers, psychologists, advocates, or paralegals, who are carrying out assistance duties in TPKS cases cannot be prosecuted, either criminally or civilly, for their actions in providing services or assistance to victims. Legal recognition of the right to immunity in the TPKS Law is intended to provide guarantees to companions of victims of sexual violence, including advocates, to carry out actions

free from any form of pressure during the process of working to help victims of sexual violence.

So actually Indonesian law has legally recognized the existence of human rights immunity by regulating this right in several regulations above. In addition, the author considers that in its application the concept of immunity rights still needs to be given attention to its implementation. The emergence of the determination of a suspect by the Yogyakarta Regional Police to Meila for her actions in defending her client as an advocate in a sexual violence case is a reflection that the right to immunity is still ignored by even the police who are also fellow law enforcement officers. In fact, the state has clearly accommodated the right to immunity legally in laws and regulations. So that the validity of the right to immunity becomes legally binding on advocates. Therefore, the author considers that supervision in the form of supervision from all elements of society is an important point that must not be missed in the application of the right to immunity for advocates. This is intended to maintain the legal protection that has been provided by law in the form of immunity rights, so that it is hoped that in the process of carrying out all actions in law enforcement it will be able to maintain the accountability and integrity of advocates.

3.2. The role of immunity rights in supporting advocates in carrying out their professional responsibilities

The advocate profession is known as *Officium Nobile* which means a noble and honorable profession, this is based on the existing objectives, namely as a step to enforce the law and the values of social justice. Enforcement of the values of justice and legal principles is the duty of an advocate which is carried out in the form of providing services such as legal services, legal advice, legal opinions, drafting contracts or agreements, providing legal assistance and defending and protecting human rights.

The various forms of service that exist in the advocate profession are a reflection of how important the role of this profession is in law enforcement efforts in society, both in criminal, civil, state administration, etc. legal processes. The presence of immunity rights as a legal form of protection from the role of advocates as law enforcers in defending their clients, so that advocates may not be subject to criminal, civil, and administrative penalties as long as the defense they carry out does not violate the law.

Although the basic reason for the existence of immunity rights is as protection for advocates, this right is still often used inappropriately for its intended purpose. In some

interpretations, this right can even be given another meaning, such as a “double-edged sword”. This is because there are cases that use immunity rights as a shield to avoid accountability for their actions that are not in accordance with the law. An example of a case like in 2018, where a former attorney for Setya Novanto, namely Fredrich Yunadi, was suspected of committing unethical acts by trying to obstruct a series of investigations by hiding evidence in the e-KTP corruption case. Fredrich Yunadi claimed that as an advocate he could not be sued civilly or criminally. Fredrich Yunadi’s claim for his immunity rights as an advocate was responded to by Abdul Fickar, a criminal law expert at Trisakti University, who said that the advocate’s immunity rights are intended for advocates who act to defend their clients in good faith, which means that the defense he carries out is not by making efforts to obstruct the investigation.

Another side of the abuse of immunity rights in the Fredrich Yunadi case has attracted quite a lot of attention because it uses immunity rights as a legal shield to avoid legal consequences as an advocate for the violations he has committed. This has led to debate about the limits of the application of advocate immunity rights in providing legal protection. This means that more detailed clarity is needed regarding the provisions that regulate the limits of the use of immunity rights for advocates while still paying attention to the basic principles of the advocate profession.

In other cases, the irony arises from the law enforcers themselves who often forget the existence of advocate immunity rights. Like in 2023, Tony Budidjaja, an advocate who was named a suspect on the basis of Article 220 of the Criminal Code and/or Article 317 concerning the crime of false complaints and/or slanderous complaints.

A similar case also occurred in mid-June 2024, namely advocate Meila Nurul Fajriah who was handling the alleged sexual violence case at UII, was named a suspect by the Yogyakarta Regional Police as a defamation suspect based on Article 27 paragraph (3) and Article 45 of Law Number 11 of 2008 concerning Information and Electronic Transactions. This is clearly not in accordance with the immunity rights that have been regulated in the constitution. One of the bases is in Article 29 of the Law on Sexual Violence Crimes (TPKS) which contains a statement that companions of victims of sexual violence, namely social workers, psychologists, advocates or paralegals who are handling a TPKS case, as parties who cannot be prosecuted, criminally or civilly, for their actions in providing services or assistance in TPKS cases.

Through the description of the cases of siats, it can be seen that in an effort to carry out its function as one of the pillars of law enforcement in the justice system, advocates

need to be given a guarantee of freedom of action in carrying out their professional work as a party appearing during the legal process in providing legal arguments in order to defend the legal interests of their clients. So that this can support the role of advocates to maximize their role in defending the rights of their clients. The right to immunity also acts as a basis that provides a guarantee of certainty that advocates in fighting for the interests of clients have the right to make legal efforts in accordance with applicable legal regulations without interference in any form of activity that can hinder or interfere with the advocate's duties in carrying out legal defense. Through the description of the role of advocate immunity rights, it can be seen that in essence the existence of immunity rights is a main component needed by advocates that can support their role during the legal process in carrying out their professional responsibilities as advocates.

The main challenge in implementing advocate immunity rights is to ensure that this protection is not abused by advocates to cover up violations of the law. Therefore, supervision and enforcement of the Indonesian advocate code of ethics are needed so that the right to immunity is not used carelessly. This is important to ensure that this right remains within the limits that are in accordance with the duties and responsibilities of the advocate profession. Immunity does not mean unlimited freedom, but rather protection that must be balanced with the advocate's obligation to comply with the Indonesian advocate code of ethics and applicable legal regulations. This is important so that the right to immunity can function properly, namely as a tool that ensures that advocates can carry out their duties with full responsibility, while maintaining the integrity of the legal profession.

4. Conclusion

Through the explanation above, it can be seen that the regulation regarding advocate immunity rights has been recognized in Law Number 18 of 2003, Decision Number 26/PUU-XI/2013, and the Law on Sexual Violence Crimes as a form of legal protection for advocates. However, this right is often ignored or even misused. For example, the case where the DIY Regional Police named advocate Meila as a suspect while defending a victim of sexual violence shows that the right to immunity has not been implemented optimally to protect advocates. On the other hand, the misuse of this right, such as in the case of Fredrich Yunadi who was suspected of obstructing the investigation, highlights weaknesses in its implementation. This condition shows that the right to advocate immunity in Indonesia is still vulnerable and not optimal in supporting the

role of advocates as legal defenders. The author views that this immunity right is strengthened through consistent rules that support the professionalism of advocates with an emphasis on their rights and responsibilities. This step must be accompanied by awareness, both from advocate organizations and advocates themselves, about the importance of carrying out their roles with integrity. In addition, advocates need to understand and uphold their identity to maintain public trust in this profession.

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