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Legal Position of Advocates as Law Enforcers Equal to Judges and Prosecutors in the Indonesian Criminal Justice System

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Abstract: This study aims to analyze the legal position of advocates as law enforcers who are equal to judges and prosecutors in the criminal justice system in Indonesia. Advocates have an important role in the judicial process as defenders of the defendant's rights and in maintaining justice at every trial stage. This study examines in depth the role of advocates based on existing regulations, especially Law Number 18 of 2003 concerning Advocates, and its implications in criminal justice practices. Although advocates are recognized as part of the justice system, in practice, there are still challenges related to their equality and independence in the legal process. The results of this study indicate that although constitutionally recognized, strengthening the position of advocates in the Indonesian criminal justice system still requires more attention, especially about the relationship between advocates, judges, and prosecutors to achieve balanced and impartial justice.

Keyword: Legal Position, Advocates, Law Enforcers, Criminal Justice System

Abstrak: Penelitian ini bertujuan untuk menganalisis kedudukan hukum advokat sebagai penegak hukum yang sejajar dengan hakim dan jaksa dalam sistem peradilan pidana di Indonesia. Advokat memiliki peran penting dalam proses peradilan sebagai pembela hak-hak terdakwa dan menegakkan keadilan dalam setiap tahapan persidangan. Penelitian ini mengkaji secara mendalam peran advokat berdasarkan regulasi yang ada, khususnya Undang-Undang Nomor 18 Tahun 2003 tentang Advokat, dan implikasinya dalam praktik peradilan pidana. Meskipun advokat diakui sebagai bagian dari sistem peradilan, namun dalam praktiknya, masih terdapat tantangan terkait kesetaraan dan independensinya dalam proses hukum. Hasil penelitian ini menunjukkan bahwa meskipun secara konstitusional diakui, penguatan posisi advokat dalam sistem peradilan pidana Indonesia masih memerlukan perhatian lebih, terutama mengenai hubungan antara advokat, hakim, dan jaksa untuk mencapai keadilan yang berimbang dan tidak memihak.

Kata Kunci: Kedudukan Hukum, Advokat, Penegak Hukum, Sistem Peradilan Pidana

INTRODUCTION

In the criminal justice system in Indonesia, the roles of legal actors have intertwined functions with each other to enforce the law fairly and with dignity (Hamid, 2024). However, in practice, there is a striking imbalance between the positions of advocates, judges, and prosecutors. This inequality not only reflects differences in institutional structures but also shows an imbalance in the relationship of power and influence in the judicial space (Hasibuan, 2022). Judges and prosecutors are structurally under the auspices of state institutions that have formal authority, while advocates, although recognized as law enforcers, are often positioned as if they were only complementary in the judicial process (Endira, 2022).

Advocates have a vital role in ensuring a fair and transparent judicial process (Batubara, 2023). As defenders of the rights of the accused, advocates are the last bastion in guaranteeing the principle of a fair trial and maintaining a balance between the power of prosecution and the protection of individual rights (Saepudin, 2024). Without the presence of advocates who function independently and independently, the judicial process can turn into a mere tool of power that only benefits one party, namely the state (Rahman, 2020). In many cases, the role of advocates is crucial to ensure that the voice of the accused is not ignored and that every legal action taken is within the corridor of law and justice (Solehoddin, 2023).

The criminal justice system itself is a structured mechanism, consisting of various elements that work in a series of processes, from investigation, and prosecution, to sentencing (Hanin, 2024). This system is not solely run to impose punishment, but to guarantee substantive justice that protects the rights of every citizen, both victims and defendants (Sunarso, 2022). The purpose of this system is not only formal law enforcement but also to guarantee legal certainty and provide benefits to society at large.

In the context of these goals, the role of each element of law enforcement becomes very important. Judges as judges must be independent and impartial; prosecutors as prosecutors must be professional and objective; and advocates as defenders must be free and not subject to external pressure, including pressure from the state (Abidin, 2025). When one of these elements does not carry out its role optimally, the system will be crippled and the goal of legal justice will never be fully achieved. Therefore, strengthening the advocates does not mean degrading the position of judges or prosecutors, but rather maintaining a healthy balance in the judicial process (Herman, 2025).

Unfortunately, in judicial practice in Indonesia, the relationship between these three elements still shows an unbalanced tendency. Judges and prosecutors are often in a strong institutional current, with greater access to legal and administrative resources (Siregar, 2025). Meanwhile, advocates are often treated as outsiders who are not fully considered part of the law enforcement system (Langgeng, 2018). This view weakens the advocates position in defending their clients optimally and creates obstacles in carrying out their professional duties. In fact, in the principle of equality before the law, everyone has the same position before the law, and the criminal justice system should reflect this principle in real terms (Jitmau, 2025). Equality before the law does not only concern individuals in litigation but also legal actors involved in the trial process (Zham-Zham, 2023). When advocates are not given an equal position with prosecutors and judges in practice, the principle of equality becomes illusory and is not reflected in legal reality.

Furthermore, the principle of fair trial guaranteed in various international and national human rights instruments requires a legal process that is impartial, independent, and respects the rights of each party (Evendi, 2021). Advocates in this case play a central role in ensuring that the legal process is not used as a tool of oppression against someone, especially those in vulnerable positions such as suspects or defendants (Laksono, 2021). Without advocates who

are truly empowered and whose functions are respected, a fair trial is just a normative slogan that has no impact on legal reality.

In the modern legal system, recognition of the role of advocates as law enforcers is not just a formality, but part of the concept of checks and balances in the courtroom (Ismoyo, 2025). The presence of competent advocates who are respected by judges and prosecutors not only protects individual rights but also maintains the integrity of the entire legal system. In many countries with strong legal systems, advocates have the same strategic position as prosecutors and judges in ensuring that the legal process runs honestly, openly, and without manipulation (Wardhana, 2025).

Therefore, recognizing the importance of advocates in the criminal justice system also means respecting human rights, the principle of justice, and building public trust in the legal system itself (Kadri Husin, 2022). True justice can only be realized if all legal actors are treated fairly and equally, and given sufficient space to conduct their duties and responsibilities independently. Without it, the judiciary will only be a stage of formality, not a place where justice is truly upheld.

METHOD

The study uses a normative legal method that relies on the study of functional positive legal norms, both those written in laws and regulations and those reflected in legal principles and doctrines that develop in legal literature. This approach was chosen because the main focus of the study is to analyze and understand the legal position of advocates as law enforcers in the Indonesian criminal justice system based on the existing legal framework, especially that stated in Law Number 18 of 2003 concerning Advocates, the Criminal Procedure Code (KUHAP), and various relevant regulations and jurisprudence. In this method, the data used comes from primary legal materials such as laws, regulations, and court decisions, as well as secondary legal materials in books, scientific journals, articles, and academic writings that discuss related topics.

This study does not involve field studies or interviews but is conducted through library research emphasizing conceptual and normative analysis. The purpose is to identify how the advocate's position has been legally regulated, the extent of recognition of the equality of roles between advocates, prosecutors, and judges in the judicial process, and to find discrepancies between legal norms and the reality of their application. In addition, this study also analyzes universal legal principles such as equality before the law, fair trial, and independence of the legal profession as an argumentative basis in evaluating the effectiveness of legal recognition of the role of advocates. By using this method, it is expected that the study results can provide a deeper understanding of the legal issues raised, and contribute constructive normative recommendations for the renewal of law and criminal justice practices in Indonesia.

RESULT AND DISCUSSION

Legal Position of Advocates in the Criminal Justice System in Indonesia

The legal position of advocates in the criminal justice system in Indonesia has a strong constitutional and normative basis. Explicitly, Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia guarantees that everyone has the right to recognition, guarantee, protection, and certainty of fair law and equal treatment before the law. This constitutional guarantee is the main foundation in building a legal system that respects the existence of every legal subject equally, including the advocate profession. Furthermore, more detailed regulations regarding the advocates position as law enforcers are contained in Law Number 18 of 2003 concerning Advocates. Article 5 paragraph (1) of the

law emphasizes that advocates are free and independent law enforcers, who are guaranteed by law in carrying out their profession to defend the interests of their clients.

The freedom and independence of advocates are not just symbolic attributes, but essential principles to ensure a fair justice system. In the context of criminal procedural law, advocates play a crucial role from the early stages of the legal process, namely at the investigation stage. This is in line with Article 56 paragraph (1) of the Criminal Procedure Code, which states that every suspect or defendant who is threatened with a sentence of five years or more, or who is incapacitated, has the right to receive legal assistance from a legal advisor from the time of the investigation. The presence of an advocate from the beginning of this process is not only important to accompany his client technically, but also to ensure that the legal process runs according to the principle of due process of law and to ensure that the basic rights of the suspect are not violated.

The function of an advocate does not stop at assisting in the investigation process alone but continues until the trial. In the courtroom, an advocate is present as a legal representative of the defendant who has an equal position with the public prosecutor. In this position, an advocate not only defends the legal interests of his client, but also plays a role in examining evidence, presenting witnesses, and ensuring that the judge has fair and balanced considerations in making a decision. This task puts advocates in a very strategic position in maintaining the principle of a fair trial, namely a judicial process that is carried out honestly, openly, and without bias.

The role of supervision of human rights principles is an inseparable part of an advocate's duties. In many criminal cases, violations of the basic rights of suspects or defendants still occur, ranging from torture during the investigation process to illegal detention. Advocates, in their professional capacity, have a moral and legal obligation to bring these violations to the surface and advocate for the restoration of rights for their clients. In this case, advocates are defenders of individuals and protectors of human values in a criminal justice system that is ideally not repressive.

Although the Advocates Law has emphasized that advocates are part of law enforcement, in practice there is still often doubt about this recognition. The working relationship between advocates and other law enforcement officers such as judges and prosecutors is often factually subordinate, although normatively equal. This is reflected in the treatment received by advocates in the courtroom, including limited access to case files or witnesses to be presented, as well as the tendency of other officers to doubt the credibility of advocates who are too vocal in their defense.

Law Number 18 of 2003 firmly states that in carrying out their profession, advocates cannot be prosecuted criminally or civilly for statements and opinions conveyed in and outside the trial relating to the case being handled (Article 16). This guarantee is a form of legal protection that allows advocates to work freely and without fear of facing pressure. However, without consistent respect for this norm, advocates will continue to be in a vulnerable position and not optimal in carrying out their functions as part of the criminal justice system.

From the perspective of a healthy legal system, advocates should be seen as equal partners of judges and prosecutors in achieving the goals of justice. When advocates are positioned as an external part of the justice system, the balance of power in the legal process will be disrupted. On the other hand, if the three elements—judges, prosecutors, and advocates—can carry out their respective roles professionally and with mutual respect, the integrity of the criminal justice system will be stronger and able to provide a true sense of justice to the community.

To realize the equal position of advocates does not only depend on normative arrangements alone but also on the transformation of legal culture in the law enforcement

environment itself. A deep understanding is needed from all parties that advocates are not obstacles, but rather guardians of the legal process so that it does not deviate from the principles of justice. With this awareness, advocates are not only valued as a legal profession but also as an important element in the democratization of law and protection of human rights in Indonesia.

Problems of Equality and Independence of Advocates in Reality

In the practice of criminal justice in Indonesia, there is often a void between the normative recognition of the advocates and the reality faced in the field. Although advocates are legally recognized as law enforcers who are equal to judges and prosecutors, the treatment of advocates still does not reflect this equal position. One of the most common forms of inequality is discriminatory treatment from other law enforcement officers who consider advocates to be outsiders or even disruptors of the legal process. When advocates carry out their duties to defend defendants, it is not uncommon for investigators and prosecutors to display a cynical attitude or negative prejudice, especially in criminal cases that are sensitive or involve high public pressure. The stigma against advocates who defend defendants in serious cases is also a separate problem. The public often misunderstands the function of advocates and assumes that defending defendants is the same as justifying their actions. This view often spreads to law enforcement officers themselves, who then treat advocates in an unprofessional manner. In cases such as corruption, narcotics, or terrorism, advocates often have to deal with great social pressure and a heavy moral burden, even though their role in the legal system is very important to ensure that justice is upheld with proper procedures and the rights of the accused are respected.

Another significant challenge arises in the trial process, especially access to clients and case documents. Many advocates complain about the limited time and space to meet with their clients who are being detained, and in some cases, communication between advocates and clients is complicated by technical administrative, or security reasons. Furthermore, the difficulty in obtaining copies of case files is also a serious obstacle, which causes advocates to be unable to prepare their defense optimally. These obstacles weaken the function of advocates in defending the legal interests of their clients and indirectly erode the principles of fair trial that should be upheld in every trial process.

The technicalities of the trial are also a space where the independence of advocates is often eroded. Dependence on the schedules and technical policies of judges and prosecutors often makes the position of advocates less flexible. It is not uncommon for unilateral schedule changes, limitations on plea time, or interruptions when advocates are delivering arguments in court. This imbalance in courtroom dynamics gives the impression that advocates do not have equal space for their functions. In fact, the courtroom should be a place where all parties have the right to speak and an equally important role in upholding justice.

In terms of regulation, the advocates in the criminal procedure law system have not yet received adequate strengthening. The Criminal Procedure Code as the legal basis for criminal procedure has not comprehensively regulated the rights and obligations of advocates in all stages of the criminal process. This creates legal loopholes that can be exploited to unilaterally limit the role of advocates, especially in the early stages of the criminal process such as investigation and detention. This ambiguity makes protection of the advocate's function weak and often depends on subjective interpretations from other law enforcement officers.

The lack of harmonization between regulations regarding the advocate profession and criminal procedure law also contributes to the issue of equality. Although the Advocate Law regulates the principles of freedom and independence, these regulations have not been fully integrated with the Criminal Procedure Code and other implementing regulations. As a result,

there are still frequent clashes of norms or unclear authority in practice. For example, the absence of technical regulations that ensure advocates' free and professional access to detainees creates a gray area that can be exploited to limit the role of advocates in the name of "security" or "order". To overcome these various problems, one step that can be taken is to revise the Criminal Procedure Code to be more responsive to the needs of the advocate profession. This revision should explicitly regulate the rights of advocates at every stage of the criminal process, including strengthening the right to access information, protection against intimidation, and guaranteeing independence in trials. In addition, a cultural and educational approach is also needed. Increasing the understanding of other law enforcement officers about the function and role of advocates is an important step in building a working relationship that is mutually respectful and not suspicious.

Finally, the role of professional advocate organizations is crucial in strengthening the position of its members. Professional organizations are not only administrative bodies, but must also protect the integrity of the profession through the enforcement of codes of ethics, provision of internal legal assistance, and advocacy of policies that support the existence and autonomy of advocates. The existence of an active Honorary Council and a responsive reporting system for violations against advocates need to be brought to life more realistically. Thus, strengthening the advocate's position in the criminal justice system is not only a normative ideal but can be truly realized in fair and dignified legal practices.

CONCLUSION

The conclusion of this discussion shows that normatively, the position of advocates as law enforcers parallel to judges and prosecutors has been recognized through various laws and regulations, especially in Law Number 18 of 2003 concerning Advocates and their recognition in the national criminal justice system. Advocates play an important role in ensuring the principle of fair trial and the protection of human rights, especially for suspects and defendants. However, in practice, this recognition is still far from ideal implementation. Many challenges are still faced by advocates in carrying out their duties, in the form of structural barriers, discriminatory treatment from other legal apparatus, and lack of concrete regulative protection. The inequality in the relationship between advocates and judges and prosecutors also exacerbates this condition, and can indirectly damage the integrity of the criminal justice system which should uphold the principles of justice, certainty and expediency.

In view of these conditions, suggestions that can be put forward include the importance of revising the Criminal Procedure Code (KUHAP) which is substantially able to accommodate the role of advocates more fairly and equally in every stage of the legal process. This revision must contain provisions that explicitly protect the rights of advocates, guarantee full access to clients, documents and case information, and establish sanctions against officials who hinder the role of advocates. In addition, there should be concrete steps to improve legal protection for advocates who face intimidation or unfair treatment while practicing their profession. Last but not least, continuous education for all criminal justice actors on the importance of fair trial principles and the right to defense must become a national strategic program in order to build healthy synergy and mutual respect among law enforcers. This is an essential step in realizing a truly fair, balanced and dignified judiciary.

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