Socio-Juridical Analysis of Advocates Obstructing The Investigation Process of Criminal Acts of Corruption

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Article Info

Received: 2022-12-29
Revised: 2023-03-01
Accepted: 2023-03-31

Keywords:
Authority; Advocate, Corruption, Socio Juridical

Abstract

Advocates are one of the pillars of upholding the rule of law and human rights that provides legal services. They can act as a companion, give legal opinions or become a legal representative for and on behalf of his client. Advocates take refuge behind the right of immunity that they cannot be prosecuted civilly and criminally. They are guaranteed by law that there are advocates who obstruct or impede the investigation of criminal acts of corruption. Advocate immunity rights apply as long as carrying out their duties and profession in good faith but may not conflict with laws. Advocates who obstruct the investigation of criminal acts of corruption are contrary to ethics and contradict Article 21 and Article 22 of Law Number 20 of 2001 concerning the Eradication of Corruption Crimes.

I. Introduction

The Advocate profession is not an honorary title given directly by the public. However, this predicate arises because of the responsibilities assigned to Advocates with all the expertise and knowledge they possess to be used for commercial purposes and dedicated to people who need legal assistance, legal services or justice seekers.

The advocate profession is a free profession (vrij beroep), which is not subject to a hierarchy of positions and is not subject to orders from superiors and only accepts orders or orders or power of attorney from clients. Advocates in carrying out their profession based on written and unwritten free agreements, which are subject to the Advocate Professional Code of Ethics and not subject to a

public authority, such as a Notary who is a public office with public obligations and responsibilities[1].

Even though they work based on an agreement with a client, advocates carry out their professional duties to uphold justice based on the law to benefit justice seekers. The need for Advocates' legal services outside the judicial process is currently increasing, in line with the growing legal needs of the community, especially in entering an increasingly open life in relations between nations[2].

The existence of Advocates in Indonesia as "agents of law development", agents of legal development, especially as "agents of law enculturation", agents cultivating law for the community, or even tends to become "agents of law commercialization", agents of legal commercialization in providing legal services[3]. If an Advocate displays this behavior, the Advocate's notion of being an "official mobile" will be destroyed. This noble profession will be tarnished by bad practices carried out by a handful of advocates providing legal services to clients or the public, which has a tremendous negative impact on the organization and profession.

Several terms are used for people who carry out their duties to assist someone in law. The terms used include Lawyers, Attorneys, Legal Consultants, Legal Advisors, Defenders and Advocates. However, with the enactment of Law Number 18 of 2003 concerning Advocates, several of the above terms are combined with one name, namely Advocate.

An Advocate must adhere to the Advocate code of ethics. However, in reality, in implementing the law in the field, some Advocates violate the Advocate code of ethics. The application of the code of ethics in the legal profession is significant because it is used as a form of moral resilience in the Advocate profession by explaining the function of the code of ethics in society regarding the enforcement and application of the code of ethics.

However, in reality, the behavior of some advocates is often far from being "noble and noble". For example, a lawyer was arrested by KPK officials because he and five Supreme Court employees were trying to bribe the "chief of the Supreme Court", a lawyer was caught on the side of the road after handing over bribes to a PT TUN judge, two groups of lawyers were fighting fist fights during the appointment and taking Advocate oath, a senior Advocate OC Kaligi was arrested

[1] Nurhadi, *Bunga Rampai: Sikap Hakim Terhadap Keabsahan Advokat Beracara Di Pengadilan Berkaitan Dengan Asal Organisasinya*, Hlm. 1, https://www.scribd.com/doc/239396486/Sikap-Hakim-Terhadap-Keabsahan-Advokat-Beracara-Di-Pengadilan-Berkaitan-Dengan-Asal-Organisasinya
[2] *Ibid*
[3] A. Rahmat Rosyadi, dan Hartini Sri, *Advokat Dalam Perspektif Islam dan Hukum Positif*, Ghalia Indonesia, Jakarta, 2003. Hlm. 18

by the KPK for bribery. Incidents like these make the public wonder where the "noble and honorable" nature of the office of nobile and the Advocate's code of ethics lies.

Even though there has been a Law on Advocates and a Code of Ethics which was created as a signpost so that advocates continue to walk straight along the corridors of their profession both legally and ethically, in reality, many advocates are involved in criminal cases, especially the judicial mafia or brokering cases. Based on this thought, it is appropriate that in society, there are hopes and demands for the development and implementation of the legal profession so that it is always based on general moral values, such as the values of justice, human values, honesty, compliance and fairness, the necessity to have quality expertise and knowledge and awareness always to respect and maintain integrity and respect for the profession, and the value of service to the public interest. These values should apply to all professions, which can be directly considered as fields of the Legal profession in defending and assisting their clients in seeking justice.

In practice, it often happens that one or several advocates provide protection to their clients, but make it difficult for law enforcement, such as hiding or keeping the whereabouts of their clients secret, complicating execution, and deliberately obstructing investigations and considered violating Article 21 of Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption which confirms that:

> "Anyone who intentionally prevents hinders, or thwarts directly or indirectly the investigation, prosecution and examination at court hearings against suspects and defendants or witnesses in corruption cases shall be punished with imprisonment for a minimum of 3 (three) years and a maximum of 12 (twelve) years and or a fine of at least Rp. 150,000,000.00 (one hundred and fifty million rupiahs) and a maximum of Rp. 600,000,000.00 (six hundred million rupiahs)."

Based on these provisions, it is known that every profession has a responsibility towards their profession, including the advocate profession. This responsibility is attached to each profession as an integral part. Professional responsibility becomes important when many professionals are not responsible for their profession, such as the advocate profession, which hinders or complicates enforcing the law on corruption.

An advocate by profession provides legal services and resolves his client's legal issues in litigation and non-litigation. In carrying out his profession, he is free to defend anyone, is not bound by client orders and does not discriminate against his client is against, whether he is from a strong group, rulers, officials or even the poor people.

In defending the interests of a client, an advocate must not be overcome by fear and must defend with a sense of security, protected by the state in carrying out his work, and a half-hearted defense will harm the interests of the client he is defending. The conditions are as long as the defense is carried out proportionally, does not violate the law and is relevant to the case. However, the Advocate profession sometimes becomes biased in some communities, especially concerning its role in providing legal services. Some people regard this profession as a person who often distorts facts. This profession is considered the work of people with no conscience because they always defend those guilty.

Based on the previous, this paper examines the socio-juridical because a legal order must have the social basis of the law, commonly referred to as the social basis of law. The main goal of socio-juridical research is to study legal phenomena in society in realizing descriptions, explanations, disclosures and predictions. Then socio-juridical examines the empirical validity of a rule or legal statement to predict whether a law is appropriate or inappropriate in a particular society.

II. Research Method

This study uses normative research to describe and analyze legal principles or legal norms, both in legislation and in reference books, that have relevance to the problem of the object of study under study, namely position and accountability in criminal law enforcement.

III. Results and Discussion

The definition of the word "socio" is a bound form associated with society[4]. Sosio comes from the English word socios/social, which means association/community[5]. for social interests and values related to progress, beliefs, habits and traditions oriented towards society's existing social roots.

The word juridical comes from "juridisch," which means according to or in terms of the law[6]. A juridical review means to study carefully and examine (to understand) a view or opinion from a legal perspective. Law is a set of rules or standards arranged in a system that determines what humans as citizens may and may not do in their social life[7].

Based on the above understanding, it is known that socio-legal studies are another name for the term law and societies studies. The socio-legal study is a

[4] http://kbbi.web.id/sosio-
[5] Echols, John M. dan Shadiliy, Hasan, *Kamus Inggris-Indonesia*, PT Gramedia, Jakarta, 2005
[6] M. Marwan dan Jimmy P, *Kamus Hukum*, Reality Publisher, Surabaya, 2009, Hlm. 651
[7] Achmad Ali, *Menguak Tabir Hukum*, Penerbit Ghalia Indonesia, Bogor, 2008, Hlm. 30

generic term for all the social sciences that study law. Within socio-legal studies, there are several social sciences, such as legal sociology, legal anthropology, legal history, legal politics and legal psychology.

Law is a set of rules or standards arranged in a system that determines what humans as citizens may and may not do in their social life. The law originates both from the community itself and from other sources recognized as valid by the highest authority in the community and actually enforced by the community members (as a whole) in their lives. If these rules are violated, it will give authority to the highest authority to impose external sanctions[8].

A crime results from interaction because of the interrelation between existing phenomena and influencing each other. In crime, perpetrators and victims are both active and passive participants. In other words, each plays an essential and decisive role.[9]

The definition and study of socio-juridical are closely related to the sociology of law. The Sociology of Law introduces the scope and object of socio-juridical study and the influence of the disciplines of legal philosophy, legal science and legal sociology. The philosophy of law became the cause of the birth of legal sociology, namely the flow of positivism, which means that law cannot conflict with provisions of a higher degree.

Advocates in their Profession are subject to legislation, namely Law no. 18 of 2003 concerning Advocates and the Code of Ethics for Indonesian Advocates. These two legal products, it does not only regulate the existence of advocates in carrying out their profession, including legal protection for advocates in carrying out their profession but also regulate the position, function of advocates and responsibilities towards clients defended by the Advocate.

Law no. 8 of 1981 concerning the Criminal Procedure Code confirms that what is meant by law enforcement in Indonesia consists of the Police, Prosecutors' Office, Courts, and Correctional Institutions (Lapas), which are often referred to as the Criminal Justice System (criminal justice system). The provisions of Article 5 paragraph (1) of Law no. 18 of 2003 concerning Advocates state that the status of an advocate as a law enforcer has an equal position with other law enforcers to uphold law and justice. However, apart from being a law enforcer, the status of an advocate also means a profession.

Provisions of Article 5 of Law no. 18 of 2003 concerning Advocates have indeed detailed the position and authority of advocates as law enforcers.

[8] *Ibid*, 30-31
[9] Rena Yulia, *Viktimologi Perlindungan Hukum Terhadap Korban Kejahatan*, Cetakan Pertama, Graha Ilmu, Yogyakarta, 2010, Hlm. 74

However, a problem arises whether the advocate/lawyer only has to defend the interests of the client so that even if he knows that his client is wrong, he will do whatever is allowed so that the judge's decision will not harm the client, or is the task of an advocate the same as that of a judge or other law enforcers, namely to uphold the law in the public interest by holding the title of law enforcer. So as a consequence, advocates may not blindly defend clients' interests because they also have to participate in enforcing the law.[10]

In general, the role of an advocate is in the form of legal services provided by a person who is competent and masters the law, both outside and within the court process, to clients who are involved in a case, both those who are located as suspects/defendants, victims or witnesses (in criminal cases) as well as to plaintiffs, defendants or witnesses (in civil cases or state administrative cases). In a criminal case, a legal aid provider is also called a legal adviser; he can be an advocate, lawyer or any other person who incidentally can provide legal assistance. Legal aid providers are also called legal counsel in civil and state administrative cases.

In Chapter I of the Criminal Procedure Code regarding General Provisions using the term legal adviser[11], a legal adviser is a person who fulfills the requirements determined by or based on the law to provide legal assistance. Hence, a legal adviser is closely related to someone providing legal services and assistance. According to Satjipto Rahadjo[12], only professional advocates accompany clients, have high intelligence, expertise and specialization, extensive personal relationships with various agencies, adhere to the professional code of ethics, credibility and reputation, work optimally with little loss and good litigation skills.

In this regard, as stated by Arief B. Sidharta, that[13]:

> For an advocate to carry out his role as a legal practitioner properly and correctly, he needs to think juridically with the core of legal reasoning and intellectual-scientific mastery of the entire legal entity or legal order, which can be obtained by attending higher education in law.

Many events that occur in society, whether discovered and witnessed with their own eyes or through electronic media or read in various print media, are paradoxical, where law enforcement against perpetrators of crimes often occurs

[10] Mukti Arto, *Mencari Keadilan (Kritik Solusi terhadap Praktik Peradilan Perdata di Indonesia)*, Pustaka Pelajar, Yogyakarta, 2014, Hlm. 131-132.
[11] Pasal 1 Angka 13 KUHAP
[12] Satjipto Rahadjo, *Penegakan Hukum di Indonesia (Suatu Tinjauan Sosiologis)*, Genta Publishing, Yogyakarta. 2009, Hlm. 1
[13] Arief Sidharta. B, *Pengantar Ilmu Hukum Suatu Pengenalan Pertama Ruang Lingkup Berlakunya Ilmu Hukum (Buku I)*, Bandung, Alumni, 1999, Hlm. 19

irregularities [14] . The occurrence of irregularities in carrying out tasks by investigators in the investigation and investigation process creates gaps for the public, some of whom do not understand the law in Indonesia, of course, become victims of the investigator's mistakes.

In this regard, the importance of an advocate in the criminal justice system is inseparable from the role played by an advocate or legal adviser. In this case, the difference between the two lies in the ways of working, the intensity of the relationship with the Court and the types of cases handled. According to Satjipto Rahadjo, only professional advocates accompany clients, have high intelligence, expertise and specialization, extensive personal relationships with various agencies, adhere to professional codes of ethics, credibility and reputation, and work optimally with little loss and good litigation skills[15].

Advocates carry out their professional duties to uphold justice based on the law for the benefit of justice seekers; apart from the judicial process, the role of the Advocate can also be seen in the professional path outside the Court. The need for Advocates' legal services outside the judicial process is increasing, in line with the growing legal needs of the community, especially in entering an increasingly open life in relations between nations.

In all professions, everyone must be professional in carrying out their profession. Apart from being professional, of course, other criteria that must be met are that the person must have good behavior and ethics, especially for someone who is an Advocate. The Advocate profession is a profession known as official mobile, which means "noble and honorable work, and therefore in carrying out the profession as law enforcers in Court, it is equal to Prosecutors and Judges, who, in carrying out their profession, are under the protection of laws, laws and this Code of Ethics[16].

As a respectable profession associated with the Ethics of the Legal Profession, Ethics in the first and second sense is relevant because both meanings relate to the behavior of a person or group in the legal profession. For example, an advocate is immoral, meaning that the Advocate's actions violate the values and moral norms that apply to the advocate profession group. Connected with the second meaning, Legal Professional Ethics means the Code of Ethics for the Legal Profession[17].

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[14] Ediwarman, *Paradoks penegakan hukum pidana dalam perspektif kriminologi di Indonesia*, Jurnal Kriminologi Indonesia Vol. 8 No.1 Mei 2012

[15] Satjipto Rahardjo, *Masalah Penegakan Hukum: Suatu Tinjauan Sosiologis,* Sinar Baru, Jakarta, tanpa tahun, Hlm. 1

[16] Pasal 8 huruf a Kode Etik Advokat Indonesia

[17] Abdulkadir Muhammad, *Etika Pofesi Hukum*, PT Citra Adity Bakti, Bandung, 2006, Hlm. 13

The legal profession's ethics, spelled out in the code of ethics made by the central professional organization, very clearly regulate actions prohibited by people who work in the law. Nevertheless, in reality, it is not impossible for people who work in the Legal field to violate laws and regulations, such as members of the Indonesian National Police, judges and advocates, even though justice is expected from them and they must set an example in being aware of the law and obeying the law.

An Advocate who violates the code of ethics does not necessarily violate laws and regulations. However, suppose an Advocate violates laws and regulations such as criminal law. In that case, it is inevitable that this also includes violations of the code of ethics of the advocate profession so that Advocates who violate laws and regulations can be subject to sanctions based on court decisions and code of ethics sanctions based on ethical trials imposed by their organizations.

In connection with violations of the code of ethics, an advocate in carrying out his profession can also commit a crime regulated in the Criminal Code and those outside the Criminal Code, such as Law no. 31 of 1999 as amended by Law no. 20 of 2001 concerning the Eradication of Corruption Crimes, advocates who have committed these crimes will be subject to action because the advocates[18].

Even though there is an Advocate Law and an Advocate Code of Ethics as signs for Advocates to walk straight following the corridors of their profession both legally and ethically, in reality, many Advocates have succeeded in winning over their clients but behind their backs, have become bribers, involved in the legal mafia, including working Same with case brokers, abandoning their clients is also included in the category of advocate malpractice.

In reality, courts have sentenced several advocates, such as paying bribes to law enforcers to influence court decisions or being involved in the judicial mafia aiming to win over their clients; these actions are carried out in connection with or when carrying out the advocate profession. Criminal acts that an advocate can commit are embezzlement, fraud, extortion, forgery of letters, and opening secrets; in the Advocate profession, these crimes straightforwardly affect an Advocate they hurt his credibility as an Advocate. One example is the crime of opening secrets which is regulated in Article 322 of the Criminal Code paragraph (1), which confirms that:

> Any person who deliberately discloses a secret that he is obliged to keep because of his position or pursuit, whether present or former, shall be

[18] Pasal 6 kode etik profesi Advokat: huruf e melakukan pelanggaran terhadap peraturan perundang-undangan dan atau perbuatan tercela"

> punished by a maximum imprisonment of nine months or a maximum fine of nine thousand rupiahs.

In addition, there were several cases where an advocate was convicted for ordering a witness to lie or making false statements, falsifying letters and even being involved in the mafia of falsifying court decisions to win over his client. Forgery of letters is a crime regulated in Article 263, paragraph (1) of the Criminal Code, which confirms that:

> Whoever makes a fake letter or falsifies a letter that can give rise to a right, agreement or debt relief or which is intended as evidence of something to use or order someone else to use the letter as if the contents were accurate and not forged, is threatened if the user can cause harm, due to forgery of documents, with a maximum imprisonment of six years.

In addition to the above, recently, it is often heard in various print and electronic media that an Advocate is examined, investigated, named a suspect and sentenced for being involved in a criminal case either directly or indirectly obstructing or deliberately obstructing the law enforcement [19], process or intentionally impede the process of investigating corruption.

Advocates are often faced with defending clients involved in corruption, which is part of their duties as part of the criminal justice system. In criminal acts of corruption, the suspect tries as much as possible to be released and free from all charges, so various methods are used, including advocates using various methods that conflict with the law. However, it is not uncommon for advocates to be in a condition where they are faced with the choice of using their abilities to relieve or acquit their clients from allegations of corruption by obstructing investigations of criminal acts of corruption. Obstacles to investigating corruption by advocates must be processed legally, but the process must be based on official procedures so that advocates can be held accountable for their actions. In the criminal justice process for corruption, there are not a few people who intentionally obstruct the judicial process in various ways to hinder the judicial process due to specific interests. Therefore, the role of the witness is required to provide accurate information about what he saw, heard and knew. This can be seen through corruption cases as follows:

[19] Merintangi berarti menghalang-halangi atau mengganggu jalannya sesuatu, dalam pengertian tulisan ini, maka diartikan sebagai melakukan atau turut serta melakukan, dengan sengaja mencegah, merintangi atau menggagalkan secara langsung atau tidak langsung, penyidikan perkara korupsi.

1. Gayus Tambunan, where he bribed Prosecutor Cirus Sinaga and Advocate Haposan Hutagalung to change the sentence plan that the Prosecutor would read out at the trial at the Tangerang District Court [20].
2. Advocate Manatap Ambarita, SH, namely legal adviser from Afner Ambarita, ST, who is a suspect in three cases of alleged corruption in the road and bridge maintenance projects in the Mentawai Islands Regency, which investigators eventually detained from the Tua Pejat State Prosecutor's Office, indicated that he deliberately influenced his client not to attend summons for examination and hide the whereabouts of his clients[21].

Actions that are categorized as obstructing the process of investigating criminal acts of corruption are based on the forms of acts that violate the elements of criminal acts in Article 21 of Law no. 31 of 1999 as amended by Law no. 20 of 2001 concerning the Eradication of Corruption Crimes. Obstructing the process of investigating a criminal act of corruption is not a criminal act of corruption. However, it is a criminal act related to a criminal act of corruption because the perpetrator is not directly involved with the criminal act of corruption. However, a problem arises if this crime is committed by an advocate who is a law enforcer in carrying out his defensive duties against his client, so there is doubt whether the Advocate's actions follow his duties or violate the offenses in Article 21 of Law no. 31 of 1999 as amended by Law no. 20 of 2001 concerning the Eradication of Corruption Crimes[22].

Following the provisions of Article 21 of Law no. 31 of 1999 as amended by Law no. 20 of 2001 concerning the Eradication of Criminal Acts of Corruption[23]. Regulates other criminal acts related to criminal acts of corruption as follows:

> Any person who intentionally prevents, hinders, or thwarts directly or indirectly the investigation, prosecution and examination at court hearings against suspects or defendants or witnesses in corruption cases shall be punished with imprisonment for a minimum of 3 (three) years and a maximum of 12 (twelve) years and or a fine of at least Rp. 150,000,000.00 (one hundred and fifty million rupiahs) and a maximum of Rp. 600,000,000.00 (six hundred million rupiahs).

[20] Http://nasional.kompas.com/read/2010/11/12/1931486/Jaksa.Cirus.Sinaga.Tersangka
[21] www.tempo.com/ Menghalangi Pemeriksaan Kasus Korupsi, Pengacara Jadi Tersangka,

[22] Tim MCW (Malang *Corruption Watch*), *Seri Pendidikan Anti Korupsi Mengerti dan Melawan Korupsi, Sentralisme Production*, Jakarta 2005, Hlm 29

In order to conclude whether an act is a criminal offense, according to this article, it must fulfill the elements;

a. Each person;
b. Deliberately;
c. Prevent, hinder, or frustrate;
d. Directly or indirectly;
e. Investigations, prosecutions and examinations at trials of defendants and witnesses in corruption cases.

In the criminal act of corruption, there are several other criminal acts, such as preventing and obstructing or thwarting the court process for corruption related to criminal acts of corruption; this is stated in Law no. 31 of 1999 as amended by Law no. 20 of 2001 concerning the Eradication of Criminal Acts of Corruption which formulates other criminal acts related to criminal acts of corruption. Following the provisions of Article 21, Article 22, Article 28, and Article 29 of Law no. 31 of 1999 as amended by Law no. 20 of 2001 concerning the Eradication of Corruption Crimes is not only for a corruption suspect but specific individuals who deliberately prevent, provide false information, obstruct, or thwart directly or indirectly the investigation, prosecution and examination in a court of a suspect or accused or witnesses in corruption cases, with specific goals and purposes.

Actions that are categorized as obstructing the process of investigating criminal acts of corruption are based on the forms of acts that violate the elements of criminal acts in Article 21 of Law no. 31 of 1999 as amended by Law no. 20 of 2001 concerning the Eradication of Corruption Crimes. Obstructing the process of investigating a criminal act of corruption is not a criminal act of corruption. However, it is a criminal act related to a criminal act of corruption because the perpetrator is not directly involved with the criminal act of corruption.

However, a problem arises if this crime is committed by an advocate who is a law enforcer in carrying out his defensive duties against his client. So there is doubt whether the Advocate's actions follow his duties or violate the offenses in Article 21 of Law no. 31 of 1999 as amended by Law no. 20 of 2001 concerning the Eradication of Corruption Crimes.

In distinguishing between criminal acts of corruption and criminal acts related to criminal acts of corruption, it should be noted that the notion of corruption, according to Kartono, is the behavior of individuals who use authority and position to make personal gains harm public and state interests, so corruption is a symptom of misuse and mismanagement of power for personal

gain and mismanagement of the country's wealth resources by using formal authority and powers to enrich oneself[23].

Corruption occurs due to the abuse of authority and position held by officials or employees for personal gain on behalf of themselves or family, relatives and friends. So even though an advocate is a law enforcement official, if he violates one of the elements of a crime in the law on corruption, he will still be punished even though the Advocate has the right of immunity in carrying out his professional duties but still based on the applicable procedural law. In contrast, criminal acts related to corruption are generally categorized as a criminal act of corruption because it is directly related to criminal act of corruption.

However, the criteria for acts that are categorized as obstructing the process of investigating corruption are also contained in Article 216 of the Criminal Code, which follows the elements of the crime committed. Here there is a lex specialis de right legi generally relationship, but if it is seen that the action hinders the process of investigating corruption. Some experts believe it is a general crime, so the legal product that should be used is the Criminal Code because the perpetrators are not directly involved with criminal acts of corruption.

Following are the criteria for acts that are categorized as obstructing the investigation process of Corruption Crimes based on Article 216 of the Criminal Code concerning Crimes Against Public Authorities, which confirms that:

> Whoever deliberately does not comply with an order or request made according to law by an official whose job is to supervise something, or by an official based on his duties, as well as those who are authorized to investigate or examine a criminal act; Likewise, any person who intentionally prevents, impedes or frustrates the action by one of these officials to carry out the provisions of the law, shall be punished by a maximum imprisonment of four months and two weeks or a maximum fine of nine thousand rupiahs.

Based on Article 216 of the Criminal Code above, the meaning of preventing, obstructing and thwarting is:

1. Preventing means doing something positive to avoid something negative.
2. Obstructing makes it difficult for an action to be carried out.

[23] Andi Hamzah, *Pemberantasan Korupsi Melalui Hukum Pidana Nasional dan Internasional*, PT Raja Grafindo Persada, Jakarta, 2007, Hlm 73

3. To fail is to make an action have no effect or to make an action that has been done a failure.

According to R. Soesilo, those who are threatened with Article 216 of the Criminal Code are[24]:

> Deliberately disobeying orders or demands of civil servants, orders or demands must be carried out based on statutory regulations. Otherwise, they cannot be punished, according to this article. In order to be punished, according to this article, not just any civil servant but orders or demands are carried out by civil servants who are required to supervise and are obliged to investigate or examine acts that can be punished. These civil servants are usually called investigators, as referred to in Article 39 H.I.R/KUHAP.

To find out the existence of errors in preventing, obstructing, and thwarting those that impede the investigation of criminal acts of corruption. According to Simon, an error is the existence of a particular physical condition in a person who commits a criminal act. A relationship exists between this condition and the act committed, so the person can be blamed and contain an element of error.

Mistakes in the broadest sense can be equated with the notion of responsibility in criminal law; it means that the creator can be reproached (*verwijtbaarheid*) for his actions. So, a person who is guilty of committing a crime means that he can be blamed for his actions. Mistakes in a broad sense, including:

1. Deliberation;
2. Negligence/negligence (culpa);
3. Can be accounted for;

Meanwhile, mistakes in the narrow sense are negligence (culpa). The definition of error according to experts, among others:

1. According to Simons, the error can be said to be a "social ethic", namely: "As a basis for accountability in criminal law it is in the form of the mental state of the perpetrator and its relation to his actions," and in the sense that based on the state of the soul his actions can be blamed on the perpetrator"[25].
2. According to Mezger, wrongdoing is the entire condition that provides a basis for personal reproach against the perpetrator of the crime

[24] R. Soesilo, *Kitab Undang-undang Hukum Pidana (KUHP) Serta Komentar-Komentarnya Lengkap Pasal Demi Pasal*, Politea Bogor, 2013, Hlm. 170-171

[25] Chairul Huda. Dari "Tiada pidana tanap Kesalahan" menuju kepada „Tiada Pertanggungjawaban Pidana Tanpa Kesalahan"; Tinjauan Kritis Terhadap Teori PemisahanTindak Pidana dan Pertanggungjawaban Pidana, Pranada Media, Cetakan VI, Jakarta. 2015, Hlm. 112

(*Schuldist der Erbegriiffder Vcrraussetzungen, die aus der Strafcat einen personlichen Verwurf gegen den Tater begrunden*)[26].

Error in the broadest sense includes the following elements:

1. There is the ability to be responsible for the perpetrator (*schuldfahigkeit or zurechnungsfahigkeit*).
2. The inner relationship between the doer and his actions, intentional (*dolus*) or *negligent* (*culpa*), are called forms of wrongdoing.
3. There is no reason to erase the mistake or there is no reason to forgive and justify it.

If these three elements are met, the person or actor concerned can be found guilty or have criminal responsibility so that he can be sentenced. Therefore it must be remembered that for an error in the broadest sense (criminal liability), the person concerned must also proven beforehand that his actions are against the law.

For the criminal liability of advocates in obstructing or obstructing the investigation of criminal acts of corruption, it can be shown that legal provisions negate the existence of the element of error or the act of carrying out professional duties guaranteed by the Advocate law. In carrying out their professional duties, advocates who are free, independent and responsible for upholding the law are guaranteed and protected by law to implement efforts to uphold the rule of law.

UU no. 18 of 2003 concerning Advocates, the advocacy function carried out by an advocate in carrying out duties as one of the four pillars of law enforcement, including implementing the law. Thus the provisions of Article 50 of the Criminal Code apply to an advocate carrying out his duties. This provision is strengthened by Article 16 of Law no. 18 of 2003 concerning Advocates, more popularly known as the provisions on the immunity of the advocate profession.
Article 50 of the Criminal Code confirms that:

Whoever commits an act to carry out the provisions of the law shall not be punished.

Article 16 Law no. 18 of 2003 concerning Advocates confirms that:

> Advocates cannot be prosecuted civilly and criminally for carrying out their professional duties in good faith to defend clients in court proceedings.

Based on these provisions, an Advocate providing legal assistance to a client even though the client is a suspect/defendant of corruption is a justification for the actions of the Advocate concerned. This justification is sufficient to exclude the advocate profession from obstructing corruption investigations.

[26] *Ibid*, Hlm. 113

The existence of an element of the Advocate's mistake can be said to hinder the investigation process if the Advocate hides the client, makes excuses so that the client cannot be examined, influences the witness to say something untrue, or all actions related to the mafia of the judicial process.

Advocates who commit criminal acts, significantly obstructing or obstructing the investigation of corruption, must also be processed criminally, even though they are law enforcers carrying out their duties; however, when viewed based on Article 11 of Law No. 16 of 2011 concerning Legal Aid which states that Legal Aid providers cannot be prosecuted civilly or criminally in providing Legal Aid which is their responsibility which is carried out in good faith both inside and outside the court hearing according to the Standards of Aid Law based on statutory regulations or the Advocate Code of Ethics[27].

About the preceding, the Constitutional Court, in its Decision Number 26/PUU-XI/2013 in its decision, the Court stated that Article 16 of the Advocate Law must be interpreted that an advocate cannot be prosecuted criminally or civilly as long as he carries out his duties and profession in good faith both internally and externally outside the Court.

Based on the decision of the Constitutional Court Number 26/PUU-XI/2013, Article 16 of the Advocate Law stipulates that advocates are given protection in carrying out their profession both inside and outside the courtroom and cannot be prosecuted civilly and criminally, but in carrying out their professional duties must be in good faith both for the benefit of the client's defense, both inside and outside the courtroom. Good ethics in the profession does not conflict with applicable laws and regulations.

Advocates have **good faith** in providing legal assistance and, following the legal aid standards they provide, aim to[28]:

a. guarantee and fulfill the rights of Legal Aid Recipients to get access to justice;
b. realizing the constitutional rights of all citizens following the principle of equality before the law;
c. ensure certainty that the implementation of Legal Aid is carried out evenly throughout the territory of the Republic of Indonesia; And
d. realizing an effective, efficient, and accountable judiciary.

From the explanation above, the right of immunity is indeed needed by advocates in carrying out their profession, but it cannot be used at will. The legal provisions in Article 16 of Law no. 18 of 2003 concerning Advocates, Article 11 of Law No. 16 of 2011 concerning Legal Aid and Article 50 of the Criminal Code

[27] Pasal 11 Undang-undang Nomor 16 Tahun 2011 Tentang Bantuan Hukum
[28] Pasal 3 UU No 16 Tahun 2011 Tentang Bantuan Hukum

confirms several ideal conditions that must be considered in the use of an Advocate's immunity right in carrying out his profession cannot be prosecuted. The two main requirements are that the Advocate's actions are related to implementing his professional duties and functions. In addition, the action must also be based on good faith, which can be defined as "an action that does not violate the law."

In practice, the right to immunity is often "used" as a shield by advocates involved in legal problems. Appropriate or not, the application of advocate immunity rights can be tested by referring to the applicable national legal norms. The actions of an advocate who helps his client win a case in an "unlawful" way (breaking the law) cannot be protected by an advocate's right to immunity.

In connection with the law enforcement process against advocates who obstruct the investigation of corruption crimes, it is contrary to good ethics in carrying out their professional duties or with bad ethics or violating the law.

Law enforcement procedures for advocates who hinder the process of investigating corruption must take into account the provisions of the applicable laws and regulations, namely:

1. Investigators who investigate advocates who obstruct the process of investigating corruption are the police because obstructing the process of investigating corruption is an a-quo crime where advocates, in a material sense, do not commit corruption.
2. Investigators must make and be able to show official arrest and detention letters against advocates who obstruct the process of investigating corruption.
3. Investigators must provide an opportunity for advocates to submit reports to the advocate organization concerned in the event of his arrest by investigators for obstructing the process of investigating corruption.

IV. Conclusion

In carrying out their professional duties, advocates always take refuge behind the right of immunity; they cannot be prosecuted civilly and criminally. In carrying out their profession, it is guaranteed by law that advocates obstruct or hinder the investigation of criminal acts of corruption. It is their responsibility to do so in good faith. Or outside court hearings following statutory regulations and the Advocate Code of Ethics. Advocate immunity rights apply as long as carrying out their duties and profession in good faith but may not conflict with laws. Advocates who obstruct the investigation of criminal acts of corruption are contrary to good ethics and contradict Article 21 and Article 22 of Law Number 20

of 2001 concerning the Eradication of Corruption so that they can be held accountable ethically/socially and criminally.

Recommendation

Advocates, in carrying out their profession, should be guided by the ethics of the Advocate profession and prioritize upholding the law and not defending and responding to clients with purely economic motives. The community should play an active role in helping the government's efforts by reporting actions that hinder the judicial process of corruption, which is known that these actions interfere with the course of a judicial process.

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