



Legal reconstruction of a single-bar advocate organization system as a state organ based on Pancasila justice value

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Abstract

The aim of the research is to examine and analyze the weaknesses of regulations on the Advocate Organization System that is not yet Single-bar, and how to reconstruct the regulations based on the value of Pancasila justice. This research was conducted using socio-juridical research which is a legal research method that functions to see the law in its real sense and examines how the law works in a society that is analytically descriptive using primary and secondary data and using the theory of Pancasila justice as a grand theory.

The Weaknesses of the Advocate Organization as State Organs is that the Advocates organization in the form of an Advocate Organization after the enactment of Law Number 18 of 2003 concerning Advocates is not a state organ (state organs) in the real sense which has a degree of constitutional importance that is equivalent to other law enforcement institutions but only as association organs that are supporting (state auxiliary institutions). Therefore, Law Number 18 of 2003 concerning Advocates needs to be reconstructed in its value including placing an Advocate Organization as a Single Bar, and not in the form of an Association, then forming the Indonesian Advocates Commission as an external Supervisor, that is equivalent to law enforcers but not as enforcers of laws that give rise to gradations of law enforcement but rather that Advocate Education must be in the form of a Special Law Degree in the Advocate Profession therefore, the form of the substantial reconstruction is in the Norms of Article 2 paragraph (1), Article 3 paragraph (1), Article 5 paragraph (1), Article 12 paragraph (1) Chapter 28 paragraph (2) of Law Number 18 of 2003 concerning Advocates.

Keywords: legal reconstruction, single-bar, advocate, justice value

Introduction

Since the founding of Peradi as the sole organization of Advocates, a series of judicial reviews of the Constitutional Court were also often carried out by parties who objected to the existence of PERADI as the sole advocate organization at that time, but the Constitutional Court through its Decision Number: 014/PUU-IV/2006 dated 30 November 2006, Decision Number 14/PUU-IV/2006 dated 30 November 2006, Decision Number 66/PUUVIII/2010 dated 27 June 2011, Decision Number 71/PUU-VIII/2010 dated 27 June 2011 and Decision Number 79/PUU- VIII/2010 dated June 27, 2011, still maintains that the PERADI Organization as the only forum for the advocate profession is a state organ in a broad sense that is independent (*independent state organ*) which also carries out state functions or in other words, it is known as the Single Bar system.

The PERADI organization as a state organ in a broad sense that is independent (independent state organ) as envisioned by the constitution was shattered again as a result of a split in camps to be exact at the time of the Second Peradi National Conference in March 2015 which took place in Makassar.^[1] The First Team of Otto Hasibuan decided to postpone the National Conference no sooner than three months and no longer than six months with the final results of the National Conference according to Otto Hasibuan's version by appointing Fauzi Hasibuan as Chairman of Peradi. Likewise, the Juniver Girsang and Luhut Pangaribuan camps each held a National Conference by appointing themselves as General Chairperson. and Peradi with Chairman Luhut Pangaribuan.

Based on the existing problems, surprisingly the Chief Justice of the Supreme Court issued KMA Letter No. 73/KMA/HK.01/IX/2015 (KMA Letter) dated 25 September 2015 concerning the authority of the High Court (PT) in taking the oath of attorney. One of the points in the letter states that based on the Letter of the Chief Justice of the Supreme Court Number 089/KMA/VI/2010 dated 25 June 2010, in essence, the Chief Justice of the High Court can take an oath of Advocates who have met the requirements, provided that the proposed oath must be submitted by According to the soul of the agreement dated June 24, 2010, the Peradi management could not fully realize the agreement. Peradi, which was considered to be a single organization, had split with each claiming to be the legal administrator. Besides that, various Advocate Managers from other organizations also submitted requests for oaths, as a result the Chief Justice of the Supreme Court explicitly stated that Advocates' oaths could be filed at the request of several Advocate organizations on behalf of Peradi and other Advocate administrators until a new Law was formed, thus construction Advocate container built by the Supreme Court based on KMA Letter No. 73/KMA/HK.01/IX/2015 (KMA Letter) dated 25 September 2015 is the Multi Bar System.

The emergence of multiple interpretations of organizational arrangements between the Single Bar and the Multi Bar system is philosophically contrary to Article 28D paragraph (1) of the 1945 Constitution in particular the phrase which reads "*everyone has the right to recognition, guarantees, protection, and fair legal certainty*".

The aftermath of the ambiguity regarding the Advocate organization has caused many Advocate organizations to feel that they have damaged the morality of Advocates who are required to have integrity and standardization as an *officium nobile* (noble position). This is because the problems of selection, recruitment, and supervision of the code of ethics of advocates that arise from these organizations are not bound by a clear standardization of the curriculum, even the worst is that advocate organizations hunt for members by promising convenience to become advocates who tend to prioritize business orientation.^[2] It doesn't stop there, the issue of supervising the Advocate Code of Ethics which has been broken up by the Advocate organization seems to be a mere formality that has no power of execution.

In this case, the uncertainty of the Advocate forum which is currently mushrooming must be resolved immediately with a new reconstruction which is expected to be able to end the field of disputes that exist within the scope of the Advocate so that the quality, accountability, integrity, competence, and professionalism and dignity of the Advocate profession (*officium nobile*) In addition to providing legal protection for justice seekers (*justiciabalen*), more specifically those who use the services of the Advocate profession by justice seekers can be protected by a more measurable legal construction.

Therefore, Based on this description, the author is interested in conducting research and examining the problem in a scientific paper titled "*Legal Reconstruction Of A Single-Bar Advocate Organization System As A State Organ Based On Pancasila Justice Value*" where the main problem discussed in this article is as follows:

1. What are the weaknesses of The Advocate Organization System in Indonesia currently?
2. How is the Legal reconstruction Of The Single-Bar Advocate Organization System As A State Organ Based On Pancasila Justice Value?

Method of research

This study uses a constructivist legal research paradigm approach. The constructivism paradigm in the social sciences is a critique of the positivist paradigm. According to the constructivist paradigm of social reality that is observed by one person cannot be generalized to everyone, as positivists usually do.

This research uses descriptive-analytical research. Analytical descriptive research is a type of descriptive research that seeks to describe and find answers on a fundamental basis regarding cause and effect by analyzing the factors that cause the occurrence or emergence of a certain phenomenon or event.

The approach method in research uses a method (*socio-legal approach*). The sociological juridical approach (*socio-legal approach*) is intended to study and examine the interrelationships associated in real with other social variables^[3].

Sources of data used include Primary Data and Secondary Data. Primary data is data obtained from field observations and interviews with informants. While Secondary Data is data consisting of^[4]:

1. Primary legal materials are binding legal materials in the form of applicable laws and regulations and have something to do with the issues discussed, among others in the form of Laws and regulations relating to the freedom to express opinions in public.

2. Secondary legal materials are legal materials that explain primary legal materials.
3. Tertiary legal materials are legal materials that provide further information on primary legal materials and secondary legal materials.

Research related to the socio-legal approach, namely research that analyzes problems is carried out by combining legal materials (which are secondary data) with primary data obtained in the field. Supported by secondary legal materials, in the form of writings by experts and legal policies.

Research result and discussion

1. Weaknesses of the advocate organization system in Indonesia currently

In the regulation of the Single Advocate forum, there has been an inconsistency of legal products which has caused ambiguity within the body of the Advocate himself which the researcher will describe in the next paragraph.

By referring to Article 32 paragraph (4) of the Advocate Law it states that "*within no later than 2 (years) after the enactment of this Law an advocate organization has been formed*". Then Article 28 paragraph (1) stipulates, "*Advocate organizations are the only forums for the advocate profession that are free and independent which were formed in accordance with this law with the intent and purpose of improving the quality of the advocate profession.*" Even though Article 1 point 4 stipulates that advocates organizations are professional organizations founded on the basis of this Law, Law Number 18/2003 has handed over some of the government's public authorities without making arrangements for the organizational structure, position, authority, method of formation, and accountability, even though as an organization formed under a single law that is part of the Indonesian legal system (administration), the state should have intervened because of its public authority to grant permits and its status or position as a law enforcer whose freedom and independence are guaranteed by laws and regulations and this is the embryo of the problem of legal substance in the body of the Advocate organization.^[5]

The emergence of multiple interpretations of organizational arrangements between Law Number 18 of 2003 concerning Advocates has been carried out by a judicial review at the Constitutional Court which stands by continuing to adhere to a single advocate system as a Single Bar system with KMA Letter No. 73/KMA/HK.01/IX/2015 (KMA Letter) dated 25 September 2015 which prioritizes the Multi Bar system, is philosophically contrary to Article 28D paragraph (1) of the 1945 Constitution, specifically the phrase which reads "*everyone has the right to recognition, guarantee, protection, and fair legal certainty*".

Based on the explanation above, it is concluded that at least 2 legal products of the Supreme Court, namely the Supreme Court Letter dated 01 May 2009 No.052/KMA/V/2009 and the Chief Justice Letter of the Supreme Court No. 089/KMA/VI/2010 directs advocate organizations to single bar associations, while 1 legal product, namely the Decree of the Chief Justice of the Supreme Court of the Republic of Indonesia Number 73/KMA/HK.01/IX/2015 leads to multi-bar associations. This means that the Supreme Court as a judicial institution is inconsistent in providing legal solutions to advocate organizations.

This also happened to the Constitutional Court, the various decisions issued were overlapping and inconsistent, resulting in disharmony of laws and regulations. At least three legal products in the form of Decision No. 014/PUU-I/2006, Decision No. 066/PUU-VIII/2010, and Decision 71/PUU-VIII/2010 as well as other decisions which rejected the judicial review of Article 4 and Article 28 paragraph (1) The Advocate Law leads to a single association bar. Meanwhile, three legal products, namely Decision No. 101/PUU-VII/2009, MK Decision No.112/PUU-XII/2014, and No. 36/PUU-XIII/2015 led to multi-bar associations.

Departing from this situation, the researcher will carry out a hermeneutical interpretation to first identify the rule of law using the method: leemten in hes recht or void of norms; antinomy norms or conflicts between legal norms; and vague norm or blurred norms.^[6]

There are 3 (three) conflicts of a legal substance that lead to the weakness of the single advocate body as a State Organ, namely: First, various provisions in Law Number 18 of 2003 concerning Advocates, especially those that regulate and are related to the phrase "*Advocate Organization*" have so far been giving rise to multiple interpretations which according to the researcher refer to one advocate professional institution, in this case, the researcher considers it to be Peradi, but in fact, there are so many advocate organizations that carry out the functions of the advocate organization as stipulated in the law.

Second, the fact is that the basis for the establishment of other advocate organizations other than those regulated under KMA Letter No. 73/KMA/HK.01/IX/2015 (KMA Letter) dated 25 September 2015 and Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 3 of 2016 concerning Procedures for Submitting Applications for Legal Entity Authorization and Approval of Amendments to the Articles of Association Changes are also philosophically referring to the 1945 Constitution in particular; Article 28 which regulates that "*Freedom to associate and assemble, ... is determined by law*"; and Article 28J paragraph (2): "*In exercising his rights and freedoms, everyone is obliged to comply with the restrictions determined by law*". With the sole purpose of guaranteeing recognition and respect for the rights and freedoms of others and to fulfill just demands under the considerations of morality, religious values, security, and public order in a democratic society. Third, there is no standard statement regarding what the name of the Advocate Organization referred to in the Law is different from the Doctor Profession which explicitly states that the Doctor Profession is under the Indonesian Doctors Association (IDI) Organization as well as Notaries under the Indonesian Notary Organization (INI);

The debate about "*Advocate Organizations*" in a single forum is already something that does not need to be debated. In the historical context, the intention of the legislators when they regulated "*Advocate Organizations*" was none other than the conception of a single container. For this reason, Article 1 Point 4 constructs "*Advocate Organizations are organizations established based on this law*". The point is that this law is the entry point for uniting all advocate organizations. This can be seen from the provisions of Article 32 paragraph (3) and paragraph (4) as well as Article 33. These articles provide the authority to operate temporarily jointly between several organizations and regulate the issue of the code of ethics used by existing

organizations. temporarily until new provisions are made by the Advocate Organization.^[7] This contextual interpretation has clearly explained the context of the intent of the legislators when the law was made. Such contextual interpretation should be easier when faced with concrete cases. That is, it remains only to refer to which organization has been formed based on the formation provisions as stipulated in the Advocate Law. Simply put, which institution is formed and is the embodiment of the mechanism regulated in the Advocate Law, that is the institution referred to as an "*Advocate Organization*".

Another thing is the interpretation of the text on "*Advocate Organizations*". All provisions in the Advocate Law write the organization as "*Advocate Organization*", using capital letters for each word. In legal language, capital letters at the beginning of words mean that they have a narrower meaning because they refer to the word specifically^[8]. Meanwhile, lowercase letters indicate a broader interpretation and do not necessarily refer to the single meaning of the word. The Constitutional Court once used this "*uppercase-lowercase*" interpretation to provide context for the interpretation of the text. In the Constitutional Court Decision Number 81/PUU-IX/Tahun 2011 (and see also the Constitutional Court Decision Number 11/PUUVIII/2010), the Constitutional Court gives the meaning "*a general election commission*" because it uses lowercase letters can be interpreted more broadly to include the General Election Commission (KPU), the Election Supervisory Body (Bawaslu) and the Election Organizer Honorary Council (DKPP) as an institutional unit even though it consists of three institutions.

From the interpretation of this type of text and language, there are two understandings. First, "*Advocate Organization*" is a narrower interpretation referring to the Advocate Organization and cannot be other than the Advocate Organization institution. Second, even if the name is not "*Advocate Organization*", it must remain a single institution that is the embodiment of "*Advocate Organization*" as regulated and ordered in the Advocate Law regarding its formation.

Based on the descriptions mentioned above, it can be concluded that there has been disharmony in legal substance which has caused the regulation of a single advocate unit as a state organ not to be based on justice.

2. Legal reconstruction of the single-bar advocate organization system as a state organ based on Pancasila justice value

Indonesia has had Pancasila as a philosophy legally agreed upon since 2003 based on MPR Decree No. 1/MPR/2003 there are 45 points of guidelines for the practice of Pancasila which are divided into each of the Pancasila precepts. The second precept is Just and Civilized Humanity. Whereas the second precept of Pancasila has the meaning of coherence of characteristics and circumstances and the position of an Advocate Forum as a State Organ must be mono plural in nature which means a being that has many natural elements (plural), but is a unified whole (mono).

The value of justice mentioned above can create social order because social order creates an orderly situation between members of society in one country. Social order in society does not mean there are no disputes and legal problems, but all disputes or disputes that occur within the Advocate body are resolved under applicable law based on Pancasila^[9]. Because of the value of justice based on Pancasila, we can

take a benchmark that unfair law is not law. Because legal justice lies in the essence of law, while our laws must be under Pancasila.

Based on this, the reconstruction as meant by the author is Article 2 paragraph (1) of the Advocate Law being updated to: *"Those who can be appointed as Advocates are graduates with a higher legal education background specifically in the field of the Advocate Profession Program organized by a College and after participating in Advanced Advocate Profession Special Education, Advocate Profession Examination held by Advocate Organizations, Apprenticeship for 2 (two) years and fit and proper test by the Indonesian Advocate Commission"*.

Article 3 paragraph (1) of the Advocate Law is amended to become: To be appointed as an Advocate, one must meet the following requirements:

- a. citizen of the Republic of Indonesia;
- b. residing in Indonesia;
- c. does not have the status of a civil servant or state official or is not currently holding other positions which are prohibited by law or other regulations from concurrently with the Advocate Profession;
- d. at least 25 (twenty-five) years old;
- e. a bachelor's degree with a background in higher education in the legal profession program of the Advocate as referred to in Article 2 paragraph (1);
- f. attend advanced Advocate Profession Special Education and pass exams held by Advocate Organizations;
- g. an internship for at least 2 (two) continuous years at an Advocate's office who has been practicing for 7 (seven) years;
- h. Pass the fit and proper test by the Indonesian Advocates Commission
- i. never been sentenced for committing a crime punishable by imprisonment for 5 (five) years or more;
- j. behave well, be honest, responsible, fair, and have high integrity.

Then, Article 5 paragraph (1) of the Advocate Law was updated to become: Advocate has the status of a legal aid service profession to uphold law and justice that is equal to other law enforcers who are free and independent and guaranteed by law and statutory regulations.

Finally, Article 28 paragraph (2) of the Advocate Law was updated to become: Provisions regarding the formation and composition of Advocate Organizations are stipulated based on a Presidential Regulation.

Conclusion

Based on the results of the research, the following conclusions can be drawn:

1. The weakness referred to is the lack of clarity in the interpretation and application of Law Number 18 of 2003 concerning Advocates, the legal product of the Supreme Court Letter dated May 1 2009 No.052/KMA/V/2009 and Letter No. 089/KMA/VI/2010 directs advocate organizations to single-bar associations, while 1 legal product, namely the Decree of the Chief Justice of the Supreme Court of the Republic of Indonesia Number 73/KMA/HK.01/IX/2015 leads to multi-bar associations, and legal products in the form of Decisions No. 014/PUU-I/2006, Decision No. 066/PUU-VIII/2010 and Decision 71/PUU-VIII/2010

as well as other decisions which rejected the judicial review which led to a single bar association. Meanwhile, there are 3 legal products, namely Decision No. 101/PUU-VII/2009, MK Decision No.112/PUU-XII/2014, sand No. 36/PUU-XIII/2015 that lead to multi-bar associations.

2. The value of Pancasila justice as used by the author is the value of justice that can create social order, because social order creates an orderly situation between members of society in one country. Social order in society does not mean there are no disputes and legal problems, but all disputes or disputes that occur within the Advocate body are resolved in accordance with applicable law based on Pancasila. Therefore, The legal reconstruction referred to by the author by adhering to the fifth precept of justice from Pancasila as the Indonesian nation's philosophy of life is in Article 2 paragraph (1), Article 3 paragraph (1) Article 5 paragraph (1), and Article 28 paragraph (2) of the Advocate Law by reconstructing the law, the goal as intended by the author, that is, the single bar system can be achieved.

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