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The Meaning of Good Faith in Article 16 of Law Number 18 of 2003 Concerning Advocates

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Abstract. Article 16 of Law Number 18 of 2003 states that Advocates cannot be prosecuted, either civil or criminal, in carrying out their professional duties in good faith to benefit the client's defense in court proceedings. Elucidation of Article 16 of Law Number 18 of 2003 defines what is meant by good faith as carrying out professional duties to uphold justice based on the law to defend the interests of his clients. Then what is meant by a court session is a court session in every level of court in all areas of the judiciary. However, in reality, some of the lawyers in Indonesia, in carrying out their profession, are caught in legal problems, either in bribery or in acts of obstruction of justice. This is due to the vagueness of norms in Article 16 of Law Number 18 of 2003, especially regarding the phrase good faith. The type of research used in writing this article is normative legal research. The results of this study are the meaning of good faith in article 16 of Law Number 18 of 2003. Running the advocate profession must be based on noble values or ethical standards and always obey all the codes of ethics and legal norms. That way, an advocate can be held accountable for the profession and criminal responsibility if, in carrying out his job, the advocate does not have good faith or bad faith, which further violates criminal law and fulfills the elements of criminal responsibility.

Keywords. Meaning, Good Faith, Advocates

1. Introduction

Advocates are a profession that provides legal services, where when carrying out their duties and functions, they can act as a companion, legal opinion provider, or a legal attorney for and on behalf of their clients or citizens who need to be defended will receive legal services from an independent advocate, who can defend all the interests of his clients without hesitation (Winarta, 1995), responsible for fighting for truth and principles of justice. The existence of an advocate profession as an honorable profession (*officium nobile*) and its position as a law enforcer always respects law and justice, which are essential needs for humanity. Advocates can carry out their functions and duties as respectable profession and as law enforcers to create truth and justice. In connection with the honorable professional title of advocate, Satjipto Rahardjo argues that (Rahardjo, 1976), the role that a defender plays is as a guard (bodyguard)

of the power of the court. In this case, the defense must ensure that legal officials do not commit irregularities that harm the rights of the suspect/defendant.

In line with the effort to realize the principle of the rule of law, Law Number 18 of 2003 concerning Advocates (Advocate Law) has been passed, which provides legitimacy for advocates in carrying out their profession and making the advocate profession equal to other law enforcers. In carrying out its duties, the right of advocate immunity is needed to maintain the independence of the advocate profession, which is an honorable profession (*officium nobile*), and its position as a law enforcer to create a good law enforcement system and avoid criminalization of the existence of an advocate in carrying out his profession. The right of advocate immunity is reflected in Article 16 of the Advocate Law, which states that advocates cannot be prosecuted, either civil or criminal, to carry out their professional duties in good faith to benefit client defense in court proceedings.

Elucidation of Article 16 of the Advocate Law states that what is meant by "good faith" is carrying out professional duties for the sake of upholding justice based on the law to defend the interests of his clients. Then what is meant by "trial court" is a court session at every court level in all areas of justice.

The essence of Article 16 of the Advocate Law states that advocates cannot be prosecuted civil or criminal in carrying out their duties in good faith, namely to defend clients' interests in the trial process. This provision explicitly states the protection or immunity of an advocate against all lawsuits if he is carrying out his duties to assist his client on conditions based on good faith. According to the explanation of Article 16 of the Advocate Law, what is meant by good faith is carrying out professional duties for the sake of upholding justice based on the law. In contrast, the phrase court session means trial at every court level in all areas of the judiciary.

In its development, Article 16 of the Advocate Law was expanded after a judicial review was filed through the decision of the Constitutional Court Number 26 / PUU-XI / 2013, which reads: "Advocates cannot be prosecuted either civil or criminal in carrying out their professional duties in good faith for the benefit of the client's defense inside or outside court proceedings".

However, in reality, some of the lawyers in Indonesia, in carrying out their profession, are caught in legal problems, either in bribery or in acts of obstruction of justice. This is because there is no definite benchmark or clear parameter of the right to immunity inherent in advocates in carrying out and protecting advocates in carrying out their profession. Article 16 of the Advocate Law can have multiple interpretations. In this case, several lawyers have been sued by others while carrying out their job. On this basis, this research will discuss the Advocate Law.

2. Methodology

This research's research is normative legal research, which is a process to find legal rules, legal principles, and legal doctrines to answer legal issues at hand (Marzuki, 2001).

3. Result and Discussion

Recognition of the rights and roles of advocates as part of the legal and judicial system must be respected by all parties and other law enforcement officials, especially in terms of carrying out their functions and duties according to Law Number 18 of 2003. With the existence of a legal umbrella for the advocate profession in Law Number 18 of 2003 concerning Advocates, the right of an advocate, which is said to be the most central, is the right of immunity not to be prosecuted either civil or criminal in carrying out his professional duties in good faith in court proceedings, this right of immunity is related to the recognition that an advocate cannot

be identified with clients by the authorities or the public but only agents or power holders of the client (Zulkifli, without year).

Thus, what is meant by the right of immunity is the freedom of an advocate to take or not take any action and issue or not issue an opinion, statement or document to anyone in carrying out his professional duties so that he cannot be punished as a consequence of carrying out his professional duties (Sinaga, 2011).

In carrying out his professional duties in both the litigation and non-litigation fields, an advocate is tasked with defending the rights of individual legal subjects (Naturlijke Persoon) and legal subjects in the form of legal entities (rechtspersoon). The rights that advocates defend are absolute rights and relative rights. Absolute rights are rights that give the owner the authority, in this case, the client, to do something that basically can carry out and involve everyone. Relative rights are the authority of rights holders to sue certain people involved in certain legal relationships (Sinaga, 2011).

In the preamble to Law Number 18 of 2003 concerning Advocates letter b, it is stated that the Advocate profession is an honorable profession or *Officium Nobile* which in carrying out its job is under the protection of the law, laws, and code of ethics. Advocates have freedom based on honor and personality. Advocates who uphold independence, honesty, confidentiality, and openness.

There are two functions of an advocate that need attention, namely, as an enforcer of justice (inquisitor) and defender of clients' interests (accusatoir). In addition to these two functions, Advocates must be able to provide enlightenment in law by providing legal counseling, socialization of various rules and regulations, legal consultation to the public either through print, electronic, or in-person (Solehuddin, 2015).

The position of an Advocate as a non-governmental law enforcement agency which is also confirmed in Article 5 Paragraph (1) of Law Number 18 of 2003 concerning Advocates is one of the legal protection tools for Advocates, significantly strengthen the position of Advocate's right to immunity in practice in court sessions. Article 5 Paragraph (1) Law Number 18 of 2003 concerning Advocates also affirms Advocates' position as part of the legal structure, as explained by Friedman, of the law enforcement system.

Advocate Immunity Rights are regulated in Article 16 of Law Number 18 of 2003 concerning Advocates. In this article, at least three points are limiting the right to immunity contained the article, namely:

1. Good faith in carrying out their professional duties.
2. The interests of the client's defense.
3. In court proceedings.

In Friedman's perspective, these three limitations of advocate immunity rights fulfill the three cores of the functioning of the legal system in society. The context of legal culture in the immunity rights of advocates is attached to "good faith" which is positivistically regulated in the Advocate Professional Code of Ethics.

The legal substance of an advocate's immunity right is the context of an advocate's immunity as a client's legal adviser. This substantial limitation is based on the two principles of advocates in the law enforcement system, namely inquisitorial and accusatory. The essence of this limitation is to emphasize the function of Advocates not only for other law enforcement officers and society but also towards Advocates themselves.

The context of court proceedings as a limit to the legal structure of the application of immunity rights is related to the equal position of advocates as law enforcers. The context of this court trial needs to be emphasized considering the position of advocates as non-

governmental parties who are recognized as law enforcers and other law enforcement government officials.

Advocate immunity rights as regulated in Article 16 of Law Number 18 of 2003 is a provision that further explains the freedom of Advocates as previously regulated in Article 15 of Law Number 18 of 2003, which states, "Advocates are free in carrying out their professional duties to defend cases that are their responsibility by sticking to the professional code of ethics and laws and regulations".

In this regard, the Constitutional Court in Decision Number 26 / PUU-XI / 2013, dated May 14, 2014, stated, "The Court needs to emphasize that the provisions of Article 16 of Law Number 18 of 2003 must be interpreted that advocates cannot be prosecuted either civil or a criminal in carrying out his professional duties in good faith for the benefit of the client's defense inside and outside the court session".

As stated in the Constitutional Court Decision Number 26 / PUU-XI / 2013, the Court's considerations clearly emphasize that advocates are guaranteed and protected their freedom in carrying out their professional duties to defend cases whose responsibilities are extended not only that freedom applies in court but also outside the judge.

If it uses systematic interpretation and refers to Article 16 and Article 15 of Law Number 18 of 2003, then if what becomes the limitation of an Advocate's good faith in carrying out their profession is that it must not conflict with the code of ethics, laws, and regulations, Advocate pledge oaths, and the values of worthiness and propriety that exists in the community. If the Advocate's actions are contrary to the code of ethics, statutory regulations, the Advocate's oath or promise, as well as the fit and proper values, then the Advocate is not in good faith.

Advocate immunity rights guaranteed and protected in Law Number 18 of 2003 do not automatically make Advocates immune to the law. Because the right to immunity depends on whether the profession is carried out in good faith or not. In the elucidation of Article 16 of Law Number 18 of 2003 it is stated, "What is meant by good faith is carrying out his professional duties for the sake of upholding justice based on the law to defend the interests of his clients".

So thus, the definition of good faith given in the explanation of Article 16 of Law Number 18 of 2003 requires that in defending the interests of his clients, Advocates must also be based on the rule of law. Furthermore, in consideration of the Court's Decision Number 7 / PUU-XVI / 2018 it was stated, "The keyword for the formulation of immunity rights in this provision is not in" the interests of the client's defense "but in" good faith ". This means that, in a contrario manner, the immunity automatically fails when the said "good faith" element is not fulfilled. So thus, the freedom or immunity rights of the Advocate profession when carrying out legal defense duties to their clients must be based on good faith, namely adhering to the Code of Ethics and laws and regulations. In other words, an advocate's freedom when carrying out his professional duties is regulated in the ethical and legal domains so that an Advocate must comply with professional ethics and obey the law.

Advocates in carrying out their professional duties must comply with the Advocate professional code of ethics and applicable laws and regulations. The next issue that the Court must answer is the good faith intended by the Petitioners whether such good faith is included in violations of the code of ethics or acts of violation of laws and regulations.

The code of ethics is the moral principles inherent in a profession that are systematically arranged. The Advocate Code of Ethics is an ethic or basic norms that become a reference for an Advocate to act in carrying out their daily duties. So that the good faith referred to in the advocate's code of ethics is related to the good intentions carried out by Advocates when carrying out their professional duties. For example, as stated in Article 19 of Law Number 18 of 2003 and Article 4 letter h of the Advocate Professional Code of Ethics, an Advocate may

not use the secrets of his client for his gain or the interests of a third party, and if it is known that an Advocate has violated the Advocate's code of ethics. Then based on Article 26 paragraph (4) of Law Number 18 of 2003 it is the authority of the Honorary Council of Advocate Organizations to carry out supervision, and based on Article 26 paragraph (5) of Law Number 18 of 2003 Honorary Council of Advocate Organizations has the right to examine and adjudicate violations of the Advocate professional code of ethics based on the procedures of the Honorary Council of Advocate Organizations.

Furthermore, in the provisions of Article 26 paragraph (6) of Law Number 18 of 2003 it is stated, "The decision of the Honorary Council of Advocate Organizations does not eliminate criminal responsibility if the violation of the Advocate professional code of ethics contains a criminal element". Thus it is clear that the authority of the Honorary Council of Advocate Organizations is only related to the moral values inherent in the Advocate profession (Advocate Professional Code of Ethics), so that to assess goodwill related to legal actions carried out by Advocates is of course no longer the area of authority Honorary Council of Advocate Organizations. Still, it becomes the authority of law enforcers in concrete cases faced by an advocate, both criminal and civil.

Theoretically, the ideas and concepts of the rule of law have the goal of creating a democratic state that is carried out based on unity in the form of a republic, sovereignty in the hands of the people exercised according to the constitution, providing recognition and guarantee of human rights. This is the basis for the concept of a rule of law that guarantees the state of Indonesia as a democratic country. The 1945 Constitution has emphasized that the ideal state of the law is not just a constitutional state but a law state that is upheld on the principles of democracy and justice.

Article 1 paragraph 2 of the 1945 Constitution states, "Sovereignty is in the hands of the people and is exercised according to the Constitution." Furthermore, article 24, paragraph 1 of the 1945 Constitution, states that "The independent judicial power to administer the judiciary to uphold law and justice" is a state power law administered by the government which is based on democratic principles under the rule of law, which means the recognition and protection of human rights, the rule of law, the rejection of all forms of the arbitrariness of power, as well as equality before the law and independence of judicial power. It is a characteristic and identity of the Indonesian state. Thus all elements of law enforcement must be able to provide support for equal functions in carrying out law enforcement tasks. If there is an independent judiciary power, it is believed that the judiciary will be a strong mechanism to defend the constitution and justice.

This description shows the correlation between the functions of the judiciary and the process of democratization. In a free court, law enforcers will face a system called law enforcement in carrying out professional duties. In this context, so that the advocate profession can play a maximum role in carrying out law enforcement, a strong, independent, and independent Advocate Professional Organization is needed in the law enforcement system in Indonesia (PERADI, 2013).

The big challenge that continues to overshadow the development of advocates in Indonesia is the effort to place an appropriate function in interactions with society and relations with the state. Ideally, in this reciprocal relationship, the community will provide legitimacy in the form of trust in public promises made by advocates in the oath of office for the sake of seeking law and justice. Meanwhile / on the other hand, the state will ensure that the community's interests are guaranteed in the administration of the judicial system, which also means providing jurisdiction for advocates to be able to fulfill promises to the public.

As a law enforcer, the advocate profession is known as a profession that is *officium nobile* or a respectable profession. Freedom and independence are attributes that cover the duties of an advocate. An advocate has legal obligations and has ethical obligations as a guide for professional behavior. The attitude of an advocate must be able to feel freedom as part of his job. He does not feel afraid. He does not feel tied to a power that intervenes in the right to freedom inherent in this profession. The right of immunity of an advocate is grammatically defined as the right to immunity in doing the profession to defend the client's legal interests due to a legal relationship through a power of attorney between an advocate and a client inside and outside the court. It is believed that as a position of trust, an advocate must carry out the principles of universal duty to the client. He must keep all information obtained from the client confidential as an obligation to refuse an advocate unless the law stipulates otherwise. In their position as law enforcers, advocates have different characteristics from other jobs, as follows (Hasibuan, 2011):

- a. Advocates in work that are based on specific expertise/skills take the oath of office and are applied independently in society.
- b. A code of ethics binds the behavior of advocates in carrying out their duties in applying their expertise in good faith.
- c. A code of ethics formulated by professional organizations is a constitutional authority based on the 1945 Constitution.
- d. Has an organization as a state organ that carries out the functions of state power as a place for advocates to take refuge.

These duties always maintain the relationship of fiduciary duty as a constitutional duty imposed by the state. The duty to fight for the client's legal objectivity rights either through defense or through the client's interest assistance representatives inside and outside the court by contributing thoughts through legal rights, legal arguments to judges, and other bodies, acting to represent the interests of the community.

About their position, in carrying out their professional duties as law enforcers, advocates are given legal protection with various rights, just like any other law enforcer. One of the fundamental rights that have been regulated by Law Number 18 of 2003 is the right to immunity or better known as the right to immunity. In Law Number 18 of 2003, it is further explained that advocates are free to carry out professional duties, including being free to issue opinions or statements in defense of cases that are their responsibility, by still observing the Advocate Professional Code of Ethics and laws and regulations. As for what is meant by being free in relation to carrying out the duties of the advocate profession is without any pressure and threats that will cause fear or treatment that degrading the dignity of the advocate profession as a noble profession (*officium nobile*).

As a consequence of the right to immunity, the duties of the advocate profession inside and outside the court cannot be prosecuted civil or criminal. The right to immunity is also a reflection of the freedom and independence of the Advocate profession, as expressly referred to as Article 14 of the Advocate Law explains that Advocates are free to issue opinions or statements in defense of cases which are their responsibility in court proceedings while adhering to the professional code of ethics and legislation.

By adhering to the professional code of ethics and statutory regulations, advocates have the same position before the law (equality before the law). So that in principle, no party or profession is immune to the law, including the advocate profession.

4. Conclusion

The essence of the principles of good faith is honesty and appropriateness/justice, which denies trust, transparency, autonomy, obedience, without coercion, and without trickery. The essence of the principles of good faith is permanent and unchanging, while the meaning of good faith is dynamic and constantly changes according to the complex and dynamic legal awareness of society. The meaning of good faith in article 16 of Law Number 18 of 2003 is that running the advocate profession must be based on noble values or ethical standards and always obey all the codes of ethics and legal norms. That way, an advocate can be held accountable for the profession and criminal responsibility if, in carrying out his profession, the advocate does not have good faith or bad faith, which further violates criminal law and fulfills the elements of criminal responsibility.

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