

RECONSTRUCTION OF THE CONTENTS OF INDONESIAN ADVOCATE'S CODE OF ETHICS IN THE PERSPECTIVE OF ISLAMIC LAW

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Abstract: The finding confirms that there are several articles in the Advocate's code of ethics have a contrary character to ethics and religious values. This study aims to (1) examine and analyze the Indonesian lawyers' code of ethics which is not reflect perspective on Islamic law; (2) review and analyze the weaknesses of the contents of the current Indonesian advocate code of ethics, and (3) reconstruct the contents of the Indonesian lawyers' code of ethics in the perspective of Islamic law. The research approach used was normative juridical approach to legislation (statute approach), and conceptual approach (conceptual approach). Data sources consist of primary data such as Law Number 18 Year 2003 Indonesian Advocates Code of Ethics. Secondary law books include Fiqh literature. Data collection techniques include library research techniques. The analysis technique used was qualitative descriptive analysis with inductive and deductive methods. The results of this study found that the first Indonesian advocate's code of ethics has not reflect Islamic law perspective in the provisions of Article 2. The Indonesian Advocates Code of Ethics laid down the taqwa criteria on advocate personalities, but did not mention the taqwa criteria when carrying out advocate duties, then in the provisions of article 4 Indonesian Advocates (ILCE) give absolute freedom to advocates in terms of holding secret positions to their clients; The two weaknesses of the Indonesian advocate's code of ethics are found in the substance, culture and legal structure. The three reconstructions carried out in the Indonesian advocate's code of ethics are to incorporate moral values in accordance with Islamic law in articles that have no Islamic law perspective. Recommendations/suggestions in this study: First, advocate organizations are expected to change the advocates' code of ethics to be devoted and hold on to religious values, and maintain client secrets to realize legal ideals. Second, it is expected that the Government, Legislative and Advocate Organizations will commit to create moral advocates. Third, in the advocacy of advocates not only focus on special education materials for advocate professions. An advocate's exam is not just about answering questions. But by conducting a process of investigation of the behavior of the prospective advocate when the two-year internship that he lived.

Keywords: Code of Ethics, Advocates, Islamic Law.

Background

The advocate's profession cannot be separated from the code of ethics. The advocate's code of ethics is a rule that has been established to be used as a guide by advocates in acting and at the same time ensuring the moral quality of the advocate's profession in the eyes of the public. The code of ethics governing the personality of an advocate is closely related to ethics. Ethics is a moral philosophy to get good guidance, in the form of noble values and good social rules in one's life and personal life.¹

However, the fact is that the norms in the Advocate's code of ethics have character that is contrary or not in line with ethics. For example, lawyers in the country feel proud, because they uphold the client's secrets. They assume that by keeping the client's secret even though "the sky collapses" is the law above all laws, even higher than the constitution.

Further, according to Frans Hendra Winarta, several violations of the code of ethics that are often carried out by advocates include:²

1. Relating to unfair competition among fellow advocates such as seizing clients, placing advertisements, vilifying other advocates, intimidating peers;
2. Relating to the quality of service to clients, such as conspiracy with opposing advocates without involving clients, promising victory against clients, abandoning clients, discriminating against clients based on payments, etc .;
3. Undertaking fraudulent practices such as using fake data, collusion with court employees and others.

Based on the background of the problem outlined above, several problems can be formulated as follows: Why is the content of the advocate's ethics code in Indonesia not yet reflecting the perspective of Islamic Law? What are the weaknesses in the contents of the Indonesian advocate's code of ethics? And how to reconstruct the Indonesian lawyers' code based on Islamic ethics?

Research Methods

The paradigm used in this study was the constructivist paradigm. Constructivist paradigms are paradigms which are almost an anti-thesis of ideas that place observation and objectivity in finding a reality or science. This research is a library research, it was conducted by examining or reviewing the sources of the library in the form of primary data and secondary data sources that are relevant to this discussion.³

The approach used was normative juridical by conducting a review of legislation (statute approach), and conceptual approach (conceptual approach). Then carried out with a comparative approach to other laws in other countries (Comparative Approach) the legislative approach is carried out by reviewing and analyzing Indonesian lawyers' ethical codes and advocates' ethical codes in Islamic law. The conceptual approach was carried out by examining and reviewing the principles of law and legal theories, especially regarding advocates and

1 Shidarta, 2006, *Moralitas profesi Hukum: Suatu Tawaran Kerangka Berfikir*, Refika Aditama, Bandung, p.15.

2 Frans Hendra Winarta, Dimensi Moral Profesi Advokat dan Pekerja Bantuan Hukum. An article from komisihukum.go.id

3 Soetandyo Wignjosoebroto, 2002, *Hukum, Paradigma, Metode dan Dinamika Masalahnya*, Huma, Jakarta, p. 147.

advocate codes of ethics. In accordance with the problems and objectives of the study, the appropriate form of research is analytical descriptive.⁴

Since this study focuses its study on the contents of the advocate's code of ethics, the discussion material was given a scope limitation specifically related to the content of the advocate's code of ethics. The author described the answers to the three dissertation problems as they are and then analyzed the four dissertation problems by using the Theory of God's Sovereignty, Cultural Theory and the Legal System and Islamic Legal Theory.

The type of data needed in this writing includes primary and secondary data. The primary legal materials in this study are as follows:

1. Primary legal materials, namely norms (basic) or basic rules and basic regulations, such as the 1945 Constitution, as well as legislation relating to advocates, such as Law Number 18 Year 2003 and of course ILCE (Indonesian Advocates Code of Ethics).
2. Secondary law books include Islamic jurisprudence literature which explains advocates and also the code of ethics of advocates in Islamic law.

This research is library research, so the method of data collection was done by finding and collecting data, classifying reference books, relevant laws and regulations governing codes of ethics that are related to the advocate profession, which were then reviewed from sharing existing literature related to this dissertation. Data analysis in this study is descriptive qualitative⁵, it was done by using inductive and deductive methods.⁶

Results and Discussion

1. The contents of the Indonesian Advocates Code of Ethics have not yet Reflected the perspective of Islamic Law

a. About Moral and Advocate Personality

After reviewing the ILCE (Indonesian lawyers' code of ethics, in Indonesian Term is abbreviated as KEAI) above, there are articles that are not appropriate with Islamic law. We can see in Chapter II about the Advocate/Article 2 Personality, as follows: Indonesian Advocates are Indonesian citizens who fear God Almighty, be noble, honest in maintaining justice and truth based on high moral and noble, and who in carrying out his duty is to uphold the law, the Constitution of the Republic of Indonesia, the Advocate Code of Ethics and his oath of office.

In ILCE, the discussion of morals is not too detailed and seems to be just an ink in white paper or can be said to be sweetener/cheerleader at ILCE. The appreciation of the meaning of "piety" in ILCE is not so deeply appreciated by advocates. Plus a number of articles in ILCE contribute to obscuring the meaning of "piety". In addition, Law Number 18 Year 2003 concerning the Right to Immunity or Legal Immunity from Lawyers may be the most adored substance. How

⁴ Soerjono Soekanto dan Sri Mahmudji, 2006, *Penelitian Hukum Normatif, Suatu Tinjauan Singkat*, Penerbit Raja Grafindo Persada, Jakarta.p.11-12.

⁵ Sisca Dyah Octaviani & Andri Winjaya Laksana Sultan, *Implementation Of Law Enforcement Against Crime With Small Motive Patterned Restorative Justice In Police Sector Gayamsari Of Semarang City*, International Journal of Law Reconstruction Volume III, Issue 1, March 2019, p.23.

⁶ Lexy J.Meleong, 2001, *Metodologi Penelitian Kualitatif*, cet. ke-15, Remaja Rosda Karya, Bandung. p.34.

so, by capitalizing on the rights stipulated in Article 16, advocates can become 'powerful' untouched by law, both criminal and civil. Complete, Article 16 of the Advocate Law reads:

"Advocates cannot be prosecuted both civil and criminal in carrying out their professional duties in good faith for the benefit of client defense in court proceedings."

In Islamic law, the nature of taqwa is mustaqillah (stand alone). Performing acts that damage the piety, or called fisq (fasiq) deeds, regardless of whether the fisq deeds are related to the task of enforcing the law being carried out or not. Moreover, without seeing whether fisq actions carried out harm other people or not.

There needs to be a deepening of "caution" in article 2 of the advocate's code of ethics. Although in national law, the explanation of the law is not a legal norm, but the explanation is something that can be used as a basis for interpreting what is stated in the law.

b. Secret of Advocate Position

In chapter III: Regarding the Relationship of Advocates and Clients, Point H, it is stated that: Advocates must hold confidential positions about matters that are notified by the client in confidence and must keep the confidentiality after the end of the relationship between the Advocate and the client.

In Islamic law, it is forbidden for an advocate to hold the secret of his client, if an advocate knows that his client is guilty. Moreover, it is trying to free him from demands. Because this is included in At-Ta'aawun 'Alal' Itsni wa Al-dUdwan. As the Word of God:

وَلَا تَعَاوَنُوا عَلَى الْإِثْمِ وَالْعُدُوانِ وَاتَّقُوا اللَّهَ إِنَّ اللَّهَ شَدِيدُ الْعِقَابِ

"And do not help in committing sin and transgression. And fear Allah, verily Allah is severe in punishment. "(Surah Al Maidah: 2).

In Islamic law, an advocate may defend his client he knows is guilty, with the aim that his client does not get a verdict that exceeds his actions. Not free from criminal.

2. Weaknesses in the Contents of the Indonesian Advocates Code of Ethics

Of all the authors describe the Indonesian advocate's code of ethics in Chapter III, it is illustrated in the advocate's code of ethics has weaknesses, as follows:

a. Weaknesses of Legal Substance

Regarding the substance of the law, it can be seen from the inability of the norms in the code of ethics to generate compliance with the advocates of its members, so that the honor of an advocate is not good.

The advocate's code of ethics does not regulate "mistresses" or more explicitly the relationship between advocates and their clients. Worse is the prohibited relationship, such as an affair with a client who is still bound by marital status with someone else. Disclosed the Chairman of the East Java Peradi Honorary Board, Trimoelja D. Soerjadi, said the phenomenon of lawyers who like to play women is a personal matter, not a matter of the advocate profession or cannot be associated with a profession.

If we look at an advocate's code of ethics, the second chapter on the personality of an advocate, in the second article is mentioned:

"Indonesian advocates are Indonesian citizens who fear the Almighty God, be noble, honest in maintaining justice and truth based on high moral, noble and noble, and who in carrying out their duties uphold the law, the Constitution of the Republic of Indonesia, Code Advocate Ethics and swearing.

From this article it is very clear that an advocate figure is a religious figure. Fear is the main requirement of an advocate. Not even enough to be cautious, but must be high moral, and noble. So the problem of moral violations is not related to harming people or not harming them. And it has nothing to do with whether moral violations are related to the profession or not. An advocate who plays gambling in a closed place without harming others is a violation of morality and a code of ethics, if we understand this second article on the word "fear God Almighty".

Still related to the substance of the law, in ILCE Chapter III / Article 4 / point h is stated: "Advocates must hold secret positions about matters that are notified by the client in confidence and must keep the secret after the relationship between the Advocate and the client ends".

Article in accordance with Law No. 18 year 2003 concerning lawyers, there are several articles which are often used as shields for lawyers to be free from legal entrapment. In Chapter IV about the Rights and Obligations of Advocates, in articles 15, 16, 18 paragraph (2) and 19 paragraph (1). Here's the explanation:

Advocates are free in carrying out their professional duties to defend cases that are their responsibility by adhering to the professional code of ethics and legislation. (Article 15).

Advocates cannot be prosecuted both civil and criminal in carrying out their professional duties in good faith for the benefit of the Client's defense in court proceedings. (Article 16)

Advocates cannot be identified with their Clients in defending the Client's case by the authorities and / or the community. (Article 18 paragraph 2)

Advocates must keep everything known or obtained from their clients confidential because of their professional relationship, unless otherwise stipulated by law. (Article 19 paragraph 1).

Article 15 gives the advocate the freedom to defend his client as long as he adheres to the code of ethics and legislation. However, the fact we see is that many advocates try to free their clients from lawsuits, even though they know their clients are guilty. Even advocates hinder the law enforcement process because they take refuge in article 19 paragraph (1) in terms of maintaining the confidentiality of their clients.

All of this is a phenomenon of violating the code of ethics for advocates. What did the two lawyers do is in accordance with the meaning of "piety" which is stated in ILCE article 2 concerning advocate criteria. Then if we look at Article 3 paragraph (1) about the personality of an advocate:

Advocates can refuse to give advice and legal assistance to anyone who needs legal services and assistance with consideration because they are not in accordance with their

expertise and contrary to their conscience, but cannot refuse because of differences in religion, belief, ethnicity, ancestry, type sex, political beliefs and social position.

This article has been largely forgotten by black lawyers. Since conscience is covered in exchange for fees prepared by the client. This article should be analyzed and formulated more sharply, so that it becomes a very important material to be used as a basis for consideration in reforming the law on lawyers. Hence, every advocate who defends his clients blindly can be snared as a violator of the code of ethics.

b. Weakness of Legal Culture

Another factor that determines the effectiveness of enforcement of the code of ethics is the "culture" of Indonesian advocates in looking at and addressing the code of ethics that is applied to it. "Culture" of corps solidarity is alleged to be one of the main obstacles to unsuccessful implementation of the code of ethics. This solidarity is better known as "Spirit of the Corps" which is broadly meaningful as a spirit to defend the group or its corps. In addition to the spirit of defending the group, there are advocate behavioral factors that are seen as more prominent when he discovers a violation of the code of ethics carried out by his colleagues or by other law enforcement officials, namely a skeptical culture. The tendency to behave indifferently is obvious. This is due to the growing distrust of the already very corrupt justice system and the reluctance to act "heroically" individually under the pressure of a community that often depends on the destruction of the justice system itself. As a result, advocates tend to practice outside the court and/or form their own groups.⁷

c. Weaknesses of Legal Structure

As for matters relating to legal structures that hinder the enforcement of lawyers' violations of the code of ethics carried out by advocates, if we look at ILCE in the first part of article 10 paragraph (1)/concerning supervision, the Honorary Board has the authority to examine and hear cases of Code of Ethics violations committed by Advocates. While in Law No.18 year 2003 concerning advocates, the fifth part of article 9 paragraph (1) explains that Advocates can be stopped or be dismissed from their profession by Advocate Organizations. Article 12 of supervision also explains that advocate organizations play a role in advocate supervision. Article 13 paragraph (1) states that the day-to-day supervision is carried out by a Supervisory Commission established by the Advocate Organization. While paragraph (2) states the Membership of the Supervisory Commission as referred to in paragraph (1) consists of senior Advocates, experts/academics, and the community. And paragraph (3) Provisions regarding the procedures for supervision are further regulated by the decision of the Advocate Organization. From the information above, advocates are monitored and dismissed by the corps or fellow advocates. This is what gives rise to what Frans Hendra Winarta called "Spirit of the Corps" which is broadly meaningful as a spirit to defend his group or corps, even though the membership of the Supervisory Commission has elements of experts / academics.

7) Frans Hendra Winarta, Op.Cit.

3. Reconstruction of Indonesian Advocates' Code of Ethics in the Perspective of Islamic Law

The Indonesian nation is a nation born out of diversity and difference are held together by the collective consciousness to exist as a sovereign and independent nation. The founder of the state (founding fathers) agreed Pancasila, which is the crystallization of the noble values of the nation, and set it as the statefoundation.⁸

Pancasila is the five teachings of Indonesia. The first principle of Pancasila is trust in God Almighty; the second is a just and civilized humanity; the third is the unity of Indonesia; the fourth is the one who is directed by wisdom in the consideration of representation; and the fifth is social justice for all Indonesians. Indonesians believe that every law; General or law within the Indonesian legal system must always contain the spirit of Pancasila.⁹

Islamic law is one aspect of Islamic teachings that occupy an important position in the view of Muslims, because it is the most concrete manifestation of Islam as a religion. It is impossible to understand Islam without understanding Islamic law. In Islam there is a legal dimension called shari'ah . Shari'a is the most important expression space of religious experience for Muslims and it is the object of the main reflection on the Qur'an and the ideal example of Prophet Muhammad SAW. (As-Sunnah). The Shari'ah presented a religious value system that became the framework of reference for the conduct and deeds of every Muslim.¹⁰ Based on the values of religious wisdom, especially from the perspective of Islamic law¹¹ and Pancasila values become the basis for reforming the law of the Indonesian advocate's code of ethics, because these values are the crystallization of the true value of the Indonesian nation.

⁸ Anis Mashdurohatun, *Constructing And Developing The Social Function Principlesin Utilising Copyright Products Related To The Fundamental Rights*, South East Asia Journal of Contemporary Business, Economics and Law, Vol. 7, Issue 4 (Aug.) ISSN 2289-1560., 2015, p 89.

⁹ Juyanto, Gunarto, Anis Mashdurohatun, *Restorative justice penal system based from value of justice: A study in Kotawaringin city of Indonesia*, International Journal of Law, Volume 3.,Issue 4., July 2017., p.16.

¹⁰ Akhmad Khisni, *Reconstruction Of Islamic Family Law In The Field Of Legal Inheritance In Religious Pluralism And Its Contribution To National Law (Ijtihad Study Of Judges Of Religious Court On Development Of Inheritance Law In The Compilation Of Islamic Law)*, International Journal of Law Reconstruction Volume I, Issue 1, September 2017.p.122.

¹¹ Sri Endah Wahyuningsih and Muchamad Iksan, *Reconstruction of the retroactive principle in the Indonesian criminal Law code based on the value of religious wisdom*, International Journal of Law Reconstruction Volume I, Issue 1, September 2017, p.190.

a. Reconstruction of Contents of Indonesian Advocates Code of Ethics Chapter 1/Article 2

Before Reconstruction	Weaknesses	After Reconstruction
"Indonesian Advocates are Indonesian citizens who believe in the Almighty God, have the character, be honest in maintaining a high moral justice system, noble and noble, and who carry out their duties to uphold the law, the Constitution of the Republic of Indonesia, Advocate Code of Ethics and oath.	Not consistent between advocate's personalities and carrying out his duties as an advocate. In other words, this article places the taqwa criteria on the personality of the advocate, but does not mention the taqwa criteria when carrying out advocate duties	Indonesian Advocates are Indonesian citizens who believe in the Almighty God, have knights, are honest in maintaining a high level of moral independence, noble and noble, and carry out their duties guided by religious values, uphold the law, the Republic of Indonesia Law, Advocate Code of Ethics and oath'.

b. Reconstruction of Indonesian Advocates Code of Ethics Chapter III / Article 4 / points h

Before Reconstruction	Weaknesses	After Reconstruction
<i>Advocates must hold his position secrets about matters that are notified by the client in confidence and must keep that secret after the end of the relationship between the Advocate and the client.</i>	Word content on the material is always extracted and absolute, so that it has been used which can be understood by advocates. And obscuring the aftermath of the law will be brought to an effect on the purpose of the decree and the law.	<i>Advocates must hold on to the office of the matters which are notified by the trustee and must remain in the order of the end of the relationship between the Advocate and the client, but not with regard to the obligation of principal as a law enforcer to uphold the law and justice</i>

Conclusion

The code of ethics of advocates is not an Islamic perspective. This can be seen from two things: First, in chapter II about Advocate / Article 2 Personality, In ILCE reads as follows: Indonesian Advocates are Indonesian citizens who fear God Almighty, be noble, honest in maintaining justice and truth based on morals high, noble and noble, and who in carrying out their duties uphold the law, the Constitution of the Republic of Indonesia, the Advocate Code of Ethics and oath. Not consistent between advocate's personality and carrying out his duties as an advocate. In other words, this article places the taqwa criteria on the personality of the advocate, but does not mention the taqwa criteria when carrying out advocate duties. In Islamic law, the nature of taqwa is an absolute requirement for an enforcer of justice. Performing acts that damage the piety, or called fisq (fasiq) deeds, regardless of whether the fisq deeds are related to the task of

enforcing the law being carried out or not. Second, in chapter III: Regarding Advocate and Client Relationship/Article 4/Point h, it is stated that: Advocates must hold job secrets on matters that are notified by the client in confidence and must keep the secret after the relationship between the Advocate and the client ends . In Islamic law, it is forbidden for an advocate to hold the secret of his client, if an advocate knows that his client is guilty. Moreover, trying to free him from demands. Weaknesses in the contents of the advocate's code of ethics in terms of three aspects: Legal Substance, Judging from the inability of the norms in the code of ethics to lead to compliance with its member advocates, the honor of an advocate is not good. Legal Culture, Indonesian advocate culture in looking at and addressing the code of ethics applied to it. "Culture" of corps solidarity is alleged to be one of the main obstacles to unsuccessful implementation of the code of ethics. This solidarity is better known as "Spirit of the Corps" which is broadly meaningful as a spirit to defend the group or its corps. In addition to the spirit of defending the group, there are advocate behavioral factors that are seen as more prominent when he discovers a violation of the code of ethics carried out by his colleagues or by other law enforcement officials, namely a skeptical culture. The tendency to behave indifferently is obvious. Legal Structure, As for matters relating to legal structures that hinder the enforcement of lawyers' violations of the code of ethics carried out by advocates, if we look at ILCE in the first part of article 10 paragraph (1) / concerning supervision, the Honorary Board has the authority to examine and hear cases of Code of Ethics violations committed by Advocates . While in Law No.18 of 2003 concerning advocates, the fifth part of article 9 paragraph (1) explains that Advocates can stop or be dismissed from their profession by Advocate Organizations. Article 12 of supervision also explains that advocate organizations play a role in advocate supervision. Article 13 paragraph (1) states that the day-to-day supervision is carried out by a Supervisory Commission established by the Advocate Organization. While paragraph (2) states the Membership of the Supervisory Commission as referred to in paragraph (1) consists of senior Advocates, experts / academics, and the community. And paragraph (3) Provisions regarding the procedures for supervision are further regulated by the decision of the Advocate Organization. From the information above, advocates are monitored and dismissed by the corps or fellow advocates. This is what gives rise to what is referred to as the "Spirit of the Corps" which is broadly meaningful as the spirit to defend the group or its corps, although the membership of the Supervisory Commission is an element of experts/academics. Reconstruction of the contents of the Indonesian lawyers' code of ethics II about the Advocate / Article 2 Personality, reads: Indonesian Advocates are Indonesian citizens who fear the Almighty God, be noble, honest in maintaining justice and truth based on high moral and noble, and in carrying out their duties guided by religious values, upholding the law, the Law Basis of the Republic of Indonesia, Advocate Code of Ethics and oath. Reconstruction of Indonesian advocate code of ethics chapter III: About Advocate and Client Relations / Article 4 / h Points, reads: Advocates must hold job secrets about matters that are notified by the client in confidence and must keep the secret after the end of the relationship between the Advocate and the client, as long as it does not conflict with the principal obligation as a law enforcer to uphold law and justice.

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