

Legal Liability of Advocates in Legal Services Contracts

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ABSTRACT

The main role of an advocate is to help clients get a fair legal process. This role gives birth to high expectations of advocates so that clients give full confidence to advocates to represent their interests. But in practice, it is not uncommon for advocates to abuse the trust given by their clients. As recorded in the 2019 PERADI annual report which shows that advocates reported by their clients to the PERADI Honorary Board are increasing. Avocados do have immunity rights as regulated in Article 16 of Law No. 18 of 2003 concerning Advocates jo. the decision of the Constitutional Court through decision No. 26/PUU-XI/2013. But of course, advocates cannot always protect their immune rights, especially if advocates violate the law and harm the interests of their clients. This study aims to analyze the legal responsibilities of lawyers who violate the law while carrying out their profession and are bound in a legal services contract. This research is normative legal research. The approach used in this research is the conceptual approach, the legislation approach, and the case approach. This research concludes that even though law violations were carried out by lawyers while carrying out their profession and based on a contract, advocates remain responsible, both civil and criminal. While the right to immunity can only be used as a basis for legal protection when advocates in good faith in defending the interests of their clients.

Keywords: Advocate; Client; Contract; Immunity Rights.

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INTRODUCTION

Advocates are one of the four pillars of law enforcement in Indonesia. The existence of advocates who are outside the executive and judiciary is expected to be able to bring the court to the process of law enforcement that is free and impartial (fair trial). Law No. 18 of 2003 concerning Advocates (from now on referred to as the Advocate Law) has given authority to advocates to be able to represent the community in seeking justice. The urgency of this power of attorney is necessary because generally the public does not understand the existing legal rules, and does not understand how the court proceedings. This role puts advocates as legal advisors as well as representing the community in dealing with issues related to law. Regarding this matter, Soerjono Soekanto said that advocates will always be considered as a role model by the wider community.¹

¹Soekanto, Soerjono. (2007). *Faktor-Faktor yang Mempengaruhi Penegakan Hukum*. Jakarta: Rajawali Pers, p. 69.



But in practice, advocates are better known as case brokers who stand between their clients and other law enforcement officials, namely judges, prosecutors, and police in the sale and purchase of justice transactions. Advocates who are supposed to play a consistent role in bridging the interests of the community in seeking justice, instead of abuse the authority given to them.

The consequences of abuse of authority by law enforcement officials can automatically disrupt the law enforcement process carried out.² If an advocate does this, then the primary function of an advocate as a law enforcer in defending the legal interests of his clients will be blurred. On the one hand, potential advocates make a blind defense by doing both legal and illegal means, while on the other hand, advocates can harm the interests of their clients.³

Based on the annual report of the Indonesian Advocates Association (PERADI) in 2019, advocates reported by their clients to the PERADI Honorary Board are increasing. Some advocates were even fired from membership in professional organizations.⁴ Disputes between advocates and their clients are also not enough in the realm of ethics, some of which even go to court. Their clients sued advocates with the initials LS and FR in the South Jakarta District Court for withdrawing the lawsuit without the knowledge of their clients. The client did not even sue the city but also reported LS and FR to North Jakarta Police.⁵ While in Gresik, an advocate was reported to the Gresik Regional Police on suspicion of fraud against his client.⁶

The above case at least gives a little picture of the existence of advocates who do not carry out their obligations but instead harm their clients. The practice of distorting trust by advocates may be more than what is revealed to the surface. This happens because the supervision of the advocate profession is less effective and often inconsistent. Especially at this time in the internal advocate profession itself, there has been a split with the formation of several professional organizations, each of which claims to be the party authorized to carry out the mandate of the advocate law.

The advocate profession is one of the most controversial types of professions. This situation does not only occur in developing countries but also developed countries.⁷ Today many advocates lose their idealism and high moral ethics because they are controlled and

²Ali, Achmad. (2002). *Menguak Tabir Hukum: Suatu Kajian Filosofis dan Sosiologis*. Jakarta: Gunung Agung, p. 238

³Hasibuan, Otto. (2008, November 5). Advokat dan Kode Etik. Paper presented in the *Advocate Inauguration Event*, organized by Pengadilan Tinggi Surabaya, at Surabaya.

⁴Committee, Organization. (2019, November 27 – 28). Laporan Tahunan Perhimpunan Advokat Indonesia 2019. Paper presented in the *National Working Meeting of the Indonesian Advocates Association*, organized by Perhimpunan Advokat Indonesia, at Surabaya.

⁵Editor. (2003, 31 December). Kaleidoskop Januari – Juni 2003. In *hukumonline.com*. Retrieved from <https://www.hukumonline.com/berita/baca/hol9419/kaleidoskop-januari-2013>, at the date of 2019, October 10.

⁶Setiono, Deni Ali. (2019, May 13). Diduga Melakukan Penipuan, Seorang Pengacara Dilaporkan ke Polres Gresik. In *beritajatim.com*. Retrieved from <http://beritajatim.com/hukum-kriminal/diduga-melakukan-penipuan-seorang-pengacara-dilaporkan-ke-polres-gresik/>, at the date of 2019, 10 November.

⁷Darmodihardjo, Darji, & Shidarta. (2000). *Pokok-Pokok Filsafat Hukum: Apa dan Bagaimana Filsafat Hukum Indonesia*. Jakarta: PT. Gramedia Pustaka Utama, p. 294.

influenced by economic interests alone.⁸ So that the image of advocates who had been seen as *officium nobile* (noble profession) shifted to *officium rotten* (rotten business).

Article 16 of the Advocate Law states that lawyers cannot be prosecuted both civil and criminal in carrying out their professional duties in good faith in the interests of the client's defense in court proceedings. The Constitutional Court has even extended the formulation of this article through decision No. 26/PUU-XI/2013 so that the advocacy immunity right not only applies when in court but also when outside the court. However, of course, advocates cannot always protect their immune rights, especially when advocates violate the law and harm the interests of their clients. Moving on from the above description, this study focuses on analyzing the legal responsibilities of lawyers who violate the law while carrying out their profession and are bound by an authorized service contract.

METHODS

This research is normative legal research. The study was conducted to analyze the legal responsibilities of lawyers in legal service contracts. The approach used in this research is the conceptual approach, the legislation approach, and the case approach. While the licensed material used is mainly the Law and scientific works in the form of journals, books, papers, and legal writings in other forms relating to the problem.

ANALYSIS AND DISCUSSION

A. Roles and Responsibilities of Advocates Towards Clients

An Advocate is someone who has fulfilled the requirements based on the provisions of the Advocate Law, has the profession of providing legal services to the public, both litigation, and non-litigation, and is either done by getting an honorarium or is done for free (*prodeo*).⁹ Advocates are also law enforcers that are on par with other law enforcement agencies, namely the police, prosecutors, and judges. This is stated expressly in article 5 paragraph (1) of the Advocate Law, which states that advocates are law enforcement, free and independent, guaranteed by laws and regulations.

Advocates are the only independent law enforcement agencies and are not bound by state institutions. Therefore advocates can work and carry out their profession freely and independently in defending the interests of their clients. The legal relationship that exists between advocates and their clients is based on contractual relationships in the form of legal services contracts. Article 1 number 2 of the Advocate Law states that legal services are services provided by lawyers in the way of providing legal consultation, legal assistance, exercising power, representing, assisting, defending, and carrying out

⁸D., Ratna Sulistami, & Mahdi, Erlinda Manaf. (2006). *Universal Intelligence: Tonggak Kecerdasan untuk Menciptakan Strategi dan Solusi Menghadapi Peradaban*. Jakarta: PT. Gramedia Pustaka Utama, p. 217.

⁹Winarta, Frans Hendra. (1995). *Advokat Indonesia: Citra, Idealisme, dan Keprihatinan*. Jakarta: PT. Pustaka Sinar Harapan, p. 19.

other legal actions for the legitimate interests of clients. The legal services mentioned in this formulation show how broad the authority given to advocates, that is not only accompanying clients in the realm of criminal law but can also represent clients in the sphere of civil law. Advocates also have the authority to represent the interests of their clients in both litigation and non-litigation matters.

The authority of advocates in providing legal services is indeed based on a power of attorney given by the client because a power of attorney is the legality of an advocate in representing or accompanying his client. Typically, a power of attorney is made after the advocate and client agree on a legal service contract, which regulates the rights and obligations of the advocate and his client. Legal service contracts as contracts are generally based on the provisions of article 1313 and article 1320 Burgerlijk Wetboek (in the future referred to as BW). A contract or agreement is a legal event in which a person promises to another person or two people promise each other to do or not do something.¹⁰ With a contract, the parties can create a legal relationship consisting of one or more obligations.¹¹

The main role of an advocate is to help his client to get a fair legal process (due process of law).¹² This role gives birth to responsibilities and high expectations of advocates, so that clients give full trust (trust & confidence) to advocates to represent their interests. If related to the client's interests, there are two theories that show the role and responsibilities of advocates, viz:¹³

1. The theory of protection of a person who cannot protect himself;
2. Trust & confidence.

According to the theory of protection of people who can not protect themselves, that the client must be protected because the client is a person who can not defend himself due to lack of information and legal knowledge, and lack of expertise in the field of law due to fairly complex legal rules. Meanwhile, according to the theory of trust (trust & confidence), an advocate has been fully trusted by his client to provide legal services to him, and it is believed that advocates will provide the best legal services for the benefit of their clients.

Referring to the opinion, it can be concluded that a client is no more than a weak person legally, so to protect oneself, one must need others to defend it, especially when dealing with legal issues. This is due to the lack of understanding of the problem being faced, also lacks the capacity and ability to solve it correctly and adequately. Therefore, most people who are facing legal issues have a tendency to give up their solutions to

¹⁰Miru, Ahmadi. (2013). *Hukum Kontrak Bernuansa Islam*. Jakarta: PT. Raja Grafindo Persada, pp. 6 – 7.

¹¹Agustina, Rosa, Nieuwenhuis, Hans, Hijma, Jaap, & Suharnoko. (2012). *Hukum Perikatan (Law of Obligation)*. Denpasar: Pustaka Larasan, p.119.

¹²Winarta, Frans Hendra. (2000). *Bantuan Hukum: Suatu Hak Asasi Manusia, Bukan Belas Kasihan*. Jakarta: Elex Media Komputindo, p. 43.

¹³Fuady, Munir. (2005). *Profesi Mulia*. Bandung: PT. Citra Aditya Bakti, p. 22.

advocates who are considered to be experts in the field of law and can be trusted. The same thing is done when a person submits the problem of his illness to a doctor, which will be provided entirely matters relating to health and even lives because of trust in the expertise of doctors.

Once the amount of trust given by the client, then the interests of the client become something that must be prioritized by the Advocate. As a person who has been given full trust by his client, then the advocate should not ignore the interests of the client.¹⁴ In the general provisions of the Advocate Law, it has explicitly stated that the duties and obligations of an Advocate are to provide legal services in the form of legal consultation, legal assistance, exercising power, representing, assisting, defending, and carrying out other legal actions for the client's legitimate interests. Thus, actions contrary to their duties and obligations can be considered as unlawful acts.

In practice, there are three forms of law violations committed by advocates against their clients, namely violating legal services contracts that have been mutually agreed upon, committing fraud or embezzlement of their clients, and committing criminal acts of corruption. These three forms of violation certainly conflict with the legal obligations of advocates against their clients. Advocates not only harm clients' interests but also disadvantage clients materially.

When an advocate violates the law against his client, the advocate cannot protect his immunity rights because the right to immunity is given if an advocate defends the interests of his clients in good faith. Advocates who are detrimental to the attention of their clients indeed cannot be said to have good intentions. So that advocates who violate the interests of their clients or harm their clients can be held liable, both civil and criminal.

B. Civil Advocate's Legal Liability

Some legal experts use the term civil liability as a liability. This is based on the term claim in the field of public law that uses the term lawsuit. The person who filed the complaint was called the plaintiff, while the person who was prosecuted was called the defendant. The trial in the field of civil law is a lawsuit for compensation, both material and immaterial damages.

Black's Law Dictionary defines a lawsuit as to any proceeding by a party or parties against another in a court of law.¹⁵ The lawsuit is also interpreted as encompassing any proceedings in a court of justice by which an individual pursues that remedy. While the purpose of the trial is to obtain something to which he has a right.¹⁶

¹⁴Rahman, Sufirman, & Qamar, Nurul. (2014). *Etika Profesi Hukum*. Makassar: Pustaka Refleksi, p. 147.

¹⁵Black, Henry Campbell. (1990). *Black's Law Dictionary*. Minnesota: West Publishing, p. 1572.

¹⁶Pfander, James E., & Birk, Daniel D. (2015). Article III Judicial Power, the Adverse-Party Requirement, and Non-Contentious Jurisdiction. *The Yale Law Journal*, 124(5), 1346.

In general, the reasons underlying the claim in a contract dispute are breach of contract and violation of the terms of the contract validity. The word default is derived from the Dutch language which means poor performance.¹⁷ The lawsuit is also interpreted as encompassing any proceedings in a court of justice by which an individual pursues that remedy. While the purpose of the trial is to obtain something to which he has a right.¹⁸ Debtors are said to default if they do not fulfill their obligations, or violate an agreed contract.

There are 4 (four) types of transactions performed by the debtor, viz:¹⁹

- a. Not doing what he was supposed to do;
- b. To do what he promised, but not as he promised;
- c. Doing what he promised but too late;
- d. Doing something according to the agreement cannot be done.

The existence of defaults carried out by lawyers, giving birth to the right to sue for his clients to claim contractual rights. The client can submit a breach of tort to the court so that the lawyer is sentenced to fulfill his contractual obligations. This refers to the provisions of Article 1267 BW which formulates, the party to whom the agreement is not fulfilled, can choose whether he, if it can still be done, will force the other party to fulfill the deal, or whether he will demand the cancellation of the agreement, accompanied by compensation costs and flower. In the practice of breach of a tort, the claim rights filed by the plaintiff generally take the form of contract fulfillment (*nakoming*) accompanied by compensation (*vervangende vergoeding*) and additional compensation (*aanvullend vergoeding*). From jurisprudence can be found ways of breach of contract, including:

- a. Not fulfilling the entire contents of the contract.²⁰
- b. Only fulfill part of the contents of the contract.²¹
- c. Being late to fulfill the contract.²²
- d. Make payments with crossed checks without funds.²³

¹⁷Vide Subekti, Raden. (1977). *Bunga Rampai Ilmu Hukum*. Bandung: PT. Alumni, p. 45.

¹⁸*Ibid.*

¹⁹*Ibid.*

²⁰The decision of the Supreme Court of the Republic of Indonesia Number: 2567 K/Pdt/2009, on April 29, 2010, in Karto Panjaitan's case against Basrul. The Supreme Court stated that the defendant committed an act of wanprestasi because he did not return the loan money that had been received.

²¹The decision of the Supreme Court of the Republic of Indonesia Number: 413 K/Pdt/2012, on February 25, 2013, in H. Bangkit Dalimunthe's case against Irwan Nainggolan. The Supreme Court stated that the defendant of the rekonsensi had broken its promise because it doesn't pay off the remaining payment for fruit purchase fresh bunches palm oil from the plaintiff's rekonsensi.

²²The decision of the Supreme Court of the Republic of Indonesia Number: 2341 K/PDT/2009, on May 26, 2010, in Ir. Irwanto's case against PT. Adhimix Precast Indonesia Cq. Representative of PT. Adhimix Precast Indonesia, Nanggroe Aceh Darussalam Province. The Supreme Court believes that the defendant broke his promise because it was too late to buy shares for a school project in Aceh based on a work order letter.

²³The decision of the Supreme Court of the Republic of Indonesia Number: 63 K/Pdt/1987, on October 15, 1988, in Susanto's case against Go Wie Tong. The Supreme Court believes that if the defendant pays the price of goods purchased with a transfer form that does not have funds/is empty, it can be interpreted that the defendant has wanprestasi actions.

- e. Doing what the contract says is not possible.²⁴
- f. Contract termination unilaterally.²⁵

If an advocate is proven default, then he is burdened with the obligation to compensate the losses suffered by his client. This is regulated in Article 1239 BW which formulates, each engagement to do something, or not to do something, must be resolved by providing reimbursement of costs, losses and interest, if the debtor does not fulfill his obligations.

C. Criminal Law Liability

Advocates do have the right to receive honoraria from clients.²⁶ Honorarium is a reward for legal services received by an advocate based on an agreement with the client.²⁷ However, from the 2019 PERADI Annual Report, it was found that there were advocates reported by his client for fraud and embezzlement.²⁸ Some advocates are reported to have received money from clients as honoraria to resolve legal issues that are being faced by clients. However, for months the advocate did not also solve the legal problems facing his client. Even in some cases, the advocate can no longer be contacted by his client. For this reason, the client then contains a report reporting his advocate to the authorities using the article fraud and embezzlement as provided for in articles 378 and 372 of the Criminal Code.

The provisions of article 378 of the Criminal Code stipulate that anyone who intends to benefit himself or others by opposing rights, either by using a false name or false circumstances, both with reason and deception or with fabrications of incorrect words, persuades people to give something, making debts or writing off receivables, convicted of fraud, with a prison sentence of up to four years.

The crime formulated in article 378 of the Criminal Code is called fraud. An advocate may be subject to this article if it is proven to deceive his client. Advocates who declare to their clients as if they know other law enforcers,²⁹ And promising to win the case as long as his client gives a certain amount of money, but then it turns out that what was promised did not happen, then it is included in the element of fraud.

²⁴The decision of the Supreme Court of the Republic of Indonesia Number: 1760 K/PDT/2009, on February 2, 2012, in H. Mohammad Taruna Wijaya's case against Kamarudin, *et al.* The Supreme Court believes that the actions of the defendant who had sold the object of the dispute belonged to the plaintiff is a wanprestasi action, because based on agreement No. 7, on May 29, 2000, the defendant promised not to take any action including making arrangements or attempting to own the object of the dispute.

²⁵The decision of the Supreme Court of the Republic of Indonesia Number: 1974 K/Pdt/2010, on December 21, 2010, in Ir. H.M. Arief Soebagyo's case against Regent Head of Regional Government of Bojonegoro Regency Cq. Head of Forestry and Plantation Service of Bojonegoro Regency, *et al.* The Supreme Court confirmed the *judex facti* decision stating that the actions of the defendants in terminating the contract unilaterally which were not in accordance with the procedures and did not carry out the payment of terms for NPK fertilizer, topping drugs and insecticides were wanprestasi action.

²⁶Article 21 of Law No. 18 of 2003 concerning Advocates.

²⁷Article 1 number 7 of Law No. 18 of 2003 concerning Advocates.

²⁸Committee, Organization. (2019, November 27 – 28). *Loc. Cit.*

²⁹Ilyas, Muhammad, Razak, Abdul, Aburaera, Sukarno, & Bola, H. Mustafa. (2018). Supervision of Fair Execution for Civil Case Decision. *Journal of Law, Policy and Globalization*, 70, p. 104.

While the crime formulated in article 372 of the Criminal Code is called embezzlement, the formulation of section 372 of the Criminal Code states that whoever deliberately has the right to oppose the right to something which in whole or part belongs to someone else and the goods are in his hands not for crime, convicted of embezzlement, with a maximum of four years imprisonment or a maximum fine of up to four years Rp. 900 -.

An advocate may be subject to the provisions of article embezzlement if it is proven to embezzle goods or money belonging to his client, which is entrusted or entrusted to him. For example, an advocate receives money from his client, which is intended as the cost of filing an execution for the benefit of the client to the Court. Still, it turns out the money is used for personal advocacy and is not used to submit an implementation to the Court; the advocate's actions have fulfilled the embezzlement element.

In addition to criminal acts of fraud and embezzlement as regulated in Articles 378 and 372 of the Criminal Code, advocates who harm the interests of their clients can also be prosecuted for crimes of corruption. Evils of corruption by advocates were initially being regulated in articles 210 and 420 of the Criminal Code, which was later adopted by Law No. 20 of 2001 concerning Amendment to Law Number 31 of 1999 concerning Eradication of the Criminal Act of Corruption. Advocates who disregard the client's interests are followed by bribery, and then it can be considered as a criminal act of corruption as stipulated in article 6 paragraph (1) letter b of Law No. 20 of 2001.

The establishment of a crime of corruption in advocates of article 6 paragraph (1) letter b of Law No. 20 of 2001 is based on legal protection for clients so as not to be harmed by the wrong advocate's advice or opinion of the case entrusted to him.³⁰ Bribery related to lawyers was originally regulated in the Criminal Code (*Wetboek van Strafrecht*), which is contained in articles 210 and 420. The bribery crimes in both reports have then become criminal acts of corruption since the enactment of Regulation of the Central War Ruler – Chief of Staff of the Army No. Prt/Peperpu/013/1958. When the promulgation of Law No. 24/Prp/1960, articles 210 and 240 of the Criminal Code are still included as corruption. Likewise, in Law No. 3 of 1971 concerning Eradication of the Criminal Act of Corruption.

In the legislation regarding the eradication of corruption that is currently in force, namely Law No. 31 of 1999, articles 210 and 240 of the Criminal Code are still included as corruption. These provisions are regulated in section 6 and article 12 by stating the reports of the Criminal Code. However, after the promulgation of Law No. 20 of 2001, as an amendment of Law No. 31 of 1999, the report on bribery crimes relating to lawyers in the Criminal Code was adopted and included in full and its formulation. Furthermore, sections 210 and 240 are revoked from the Criminal Code and declared no longer valid.

³⁰Chazawi, Adami. (2005). *Hukum Pidana Materil dan Formil Korupsi di Indonesia*. Malang: Bayumedia Publishing, p. 201.

However, the doctrine and jurisprudence regarding the offenses of the former KUHP can still be enforced.³¹

The application of regulations concerning bribery (omkoping) to advocates, which are subsequently declared as criminal acts of corruption, can be described in sequence as follows:

1. The Criminal Law Act (Wetboek van Strafrecht), which took effect on January 1, 1918, and enacted in Stbl 1915 No. 752. Provisions regarding criminal acts of bribery relating to advocates are regulated in articles 210 and 240. The criminal acts of corruption in both columns of the Criminal Code are included in the group Crimes Against General Authority and Position Crimes.
2. Regulation of the Central War Ruler – Chief of Staff of the Army Number Prt/Peperpu/013/1958 concerning Investigation, Prosecution, and Examination of the Criminal Corruption and Ownership of Property. Enacted on April 16, 1958, and contained in State Bulletin of the Republic of Indonesia of 1958 Number 40. This rule also applies to Regulation of the Central War Ruler – The Head of Navy Staff Number Prt/Z.I/1/7. Enacted on April 17, 1958, and contained in State Bulletin of the Republic of Indonesia of 1958 Number 42. Article 2 states that bribery articles relating to lawyers, namely sections 210 and 240 of the Criminal Code are declared criminal acts of corruption.
3. Law Number 24/Prp/1960. Initially this Act was in the form of Government Regulation in Lieu of Law of the Republic of Indonesia Number 24 of 1960 concerning Investigation, Prosecution, and Examination of the Criminal Act of Corruption. State Gazette of the Republic of Indonesia of 1960 Number 72, but based on Law Number 1 of 1961, it was subsequently determined as Law No. 24/Prp/1960. The provisions in this law are relatively the same as the Regulation of the Central War Ruler – Chief of Staff of the Army Number Prt/Peperpu/013/1958. However, in this law, the term "*criminal corruption*" has been changed to "*criminal acts of corruption*".
4. Law of the Republic of Indonesia Number 3 of 1971 concerning Eradication of the Criminal Act of Corruption. Promulgated on March 29, 1971, and contained in State Gazette of the Republic of Indonesia of 1971 Number 19. In this Law articles 210 and 420 of the Criminal Code relating to bribes to lawyers continue to be included as criminal acts of bribery corruption.
5. Law of the Republic of Indonesia Number 31 of 1999 concerning Eradication of the Criminal Act of Corruption. Promulgated on August 16, 1999, and contained in State Gazette of the Republic of Indonesia of 1999 Number 140. Provisions, as regulated in articles 210 and 420 of the Criminal Code, continue to be included as criminal acts of bribery corruption by withdrawing the two items without reformulating the criminal

³¹Hamzah, Andi. (2006). *Pemberantasan Korupsi Melalui Hukum Pidana Nasional dan Internasional*. Jakarta: Rajawali Pers, p. 202.

act. Improvements made in this law include; that the criminal act of corruption is formulated as a formal criminal act; also, the formulation of the reversal of the burden of proof is made and the inclusion of corporations as legal subjects.

6. Law of the Republic of Indonesia Number 20 of 2001 concerning Amendment to Law Number 31 of 1999 concerning Eradication of the Criminal Act of Corruption. Promulgated on November 21, 2001, and contained in State Gazette of the Republic of Indonesia of 2001 Number 134. The formulation of bribery offense as regulated in articles 210 and 420 of the Criminal Code is directly copied by mentioning the elements contained in each report as a whole. The use of the term advisor or adviser, as stated in the Criminal Code, has also been specifically referred to as an advocate. Furthermore, this Law also revokes articles 210 and 420 of the Criminal Code.

As explained above, the provisions regarding bribery corruption in advocates originate from bribery (omkoping) contained in the Criminal Code. In the Criminal Code, bribery-related criminal acts are divided into two types, namely the crime of giving bribes and the crime of accepting bribes. The crime of giving bribes is called active bribing (active omission). The legal subject is the giver of bribes to advisers. These provisions are contained and become part of crimes against the general authorities, and are regulated in article 210 paragraph (1) number 2 of the Criminal Code. Whereas the corruption of accepting bribes is called passive bribery, the legal subject is the adviser who takes bribes. These provisions are contained and become part of a crime of office, and are regulated in article 420 paragraph (1) number 2 of the Criminal Code.

In the Criminal Code formulation, the recipient of a bribe is referred to as an advisor or adviser. However, since the enactment of Law No. 20 of 2001, through the formulation stated in article 6 paragraph (1) letter b, article 6 paragraph (2), and article 12 letter d, the advisor or adviser as referred to in the Criminal Code is then assigned to as an advocate. Regarding who is meant by advocates, in the explanation of article 12 letter d of Law No. 20 of 2001, it is stated that “Advocates are people who work in providing legal services both inside and outside the court that meet the requirements per applicable laws and regulations.”

Bribery, as a collective term outlined in the law, is a gift or promise (gifted or beloften) given or received. The term bribe includes active bribery and passive bribery.³² Law No. 31 of 1999, which was later amended by Law No. 20 of 2001, also formulates bribery corruption in advocates into two types, namely:

1. Acts of active bribery corruption (giving bribes to advocates)
2. corruption passive (advocate accepting bribes)

Corruption bribing the lawyer stipulated in article 6 paragraph (1) letter b formulate, that is liable to a term of imprisonment of 3 (three) years and a maximum of 15 (fifteen)

³²Adji, Oemar Seno. (1984). *Herziening Ganti Rugi, Suap, Perkembangan Delik*. Jakarta: Erlangga, p. 167.

year and a fine of at least Rp. 150,000,000.00 (one hundred fifty million rupiahs) and a maximum of Rp. 750,000,000.00 (seven hundred fifty million rupiah) for each person who: "Gives or promises something to someone who according to the provisions of the law is determined to be an advocate to attend court proceedings with a view to influencing the advice or opinion to be given in connection with cases submitted to the court for trial."

The criminal act of corruption advocates accepting bribes is regulated in two different articles, and firstly, it is regulated in article 6 paragraph (2), which formulates that: "the same as referred to in subsection (1)". Whereas the second corruption act regulated in article 12 letter d, which expresses that is sentenced to life imprisonment or imprisonment for a minimum of 4 (four) years and a maximum of 20 (twenty) years and a minimum fine of Rp. 200,000,000.00 (two hundred million rupiahs) and a maximum of Rp. 1,000,000,000.00 (one billion rupiah): "Someone who according to the provisions of the legislation is determined to be an advocate to attend a court hearing, accept a gift or promise, even though it is known or reasonably suspected that the present or pledge is to influence the advice or opinion that will be given, in connection with cases submitted to the court for trial."

Advice or opinions in the provision of criminal acts of corruption on advocates are advice or ideas for the interests of their clients, whether given outside the court hearing or in a court hearing.³³ Thus, if an advocate is proven to accept bribes - for example from opponents of his clients - to the detriment of the interests of his own clients, then it has fulfilled the element of corruption.

CONCLUSION

Advocates should defend the interests of their clients as agreed in the legal services contract. If an advocate does not carry out his obligations contained in a legal services contract, the advocate is civilly responsible. Likewise, when advocates violate criminal law, advocates are criminally accountable. Although the violation of the law was carried out by lawyers while carrying out their profession and based on a contract. Whereas the right to immunity can only be used as a basis for legal protection when advocates have a good intention in defending the interests of their clients.

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³³Wiyono, R. (2008). *Pembahasan Undang-Undang Pemberantasan Tindak Pidana Korupsi*. Jakarta: Sinar Grafika, p. 79.

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