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# The Regulatory Reform of Advocate Organizations in Proposing Oath of Prospective Advocates in Indonesia

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**ABSTRACT:** Following the enactment of Advocate Law 18/2003, Indonesian Bar Association must commence a proposal for the advocate's oath before the High Court. As per the rules, the oath should be submitted by a single bar, whereas there has been more than one advocate association in Indonesia. Each association has claimed to be a legitimate "Indonesian Bar Association" in administrating lawyers. In short, while the law demands a single bar system, the reality asserts a multi-bar. This study aimed to portray the entanglement of the dynamics of legal politics during the drafting process of the Advocate Law and, at the same time to analyze the development of the Indonesian Bar Association. This study used the normative juridical legal approach to examine law and other relevant materials. This study showed that the bar organization in Indonesia has long historical roots that can be traced back to the Dutch East Indies era in which Indonesia, in the post-independence period, adopted the Dutch's single bar system. However, a unified single bar system has been hard to achieve and still out of sight. With the growing number of bars in Indonesia, the Supreme Court then recently enacted the Supreme Court Letter 2015, which permitted the whole bars to submit the oath. In conclusion, the Supreme Court Letter 2015 does not only recognize the advocate associations but also marks a legal paradigm shift from single to multi-bar. To end such legal uncertainty, this study suggested that Advocate Law should be amended to accommodate a multi-bar system.

**KEYWORDS:** Advocate Law, Multi-bar, Single-bar.



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## I. INTRODUCTION

Adi Sulistiyono argued that as a state of law, Indonesia guarantees its citizens justice by applying law through judicial power and intermediaries. Article 24(1) of the 1945 Constitution affirms that judicial power is independent to administer the judiciary to uphold law and justice.<sup>1</sup> Law enforcement continues, but the post-reform legal paradigm shift is a phenomenon that significantly influences the political arena and constitutional life in Indonesia. But on the other hand, the law is not yet fully capable of satisfying thirst amid its thirst for justice and the welfare of the people. There are still many legal cases that have not been entirely resolved. It affects people's trust in law enforcement. Such a phenomenon has caused a lot of debate, especially regarding the relevance of law enforcement to the values of social justice and public welfare.<sup>2</sup>

Advocates, as an element of the judicial system, are one of the pillars in upholding the rule of law and human rights. In addition to the judicial process, the role of advocates is also seen in the profession outside the court. The need for legal services of advocates outside the judicial process is currently increasing, in line with the growing legal requirements of the community, especially in entering an increasingly open life in the association between nations. Through the provision of consulting services, negotiations as well as in the making of trade contracts, the Advocate profession contributes significantly to community empowerment and the renewal of national law, especially in the economic and trade fields, including in settlement of disputes out of court.<sup>3</sup>

An advocate is a person who regulates and manages the stages of legal proceedings, from the beginning of the start of case until the completion of the Judge's decision with execution. Meanwhile, a legal consultant does not

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<sup>1</sup> Adi Sulistiyono & Ishariyanto, *Sistem Peradilan di Indonesia dalam Teori dan Praktek* (Depok: Prenada Media, 2018) at 1.

<sup>2</sup> Gunarto, "Agenda Penegakan Hukum dan Relevansinya Bagi Pembangunan Bangsa" (2014) 1:1 *Jurnal Pembangunan Hukum Indonesia* at 1.

<sup>3</sup> Setyo Langgeng, "Peran Advokat Sebagai Penegak Hukum Dalam Mendukung Terwujudnya Sistem Peradilan Pidana Terpadu Dalam Penegakan Hukum Pidana Di Indonesia" (2018) 1:1 *Jurnal Daulat Hukum* at 139.

have to have a license to practice as an Advocate or Lawyer, but he must have good knowledge regarding dispute resolution in the field of law. But, the functions, roles, and responsibilities of advocates, lawyers, and legal advisors are the same.<sup>4</sup>

The history of advocate rules has commenced through three periods. It consists of the periods of the Dutch East Indies colony, Japanese occupation, and Indonesian independence. In the current era, the advocate has grown and developed, unlike in Europe. As in other territories, Indonesian advocates took shape during the Dutch colonial period. So the logical consequence is that the Indonesian Advocate model is like the Dutch Advocate. The magnitude of the colonial influence on the development of the advocate profession is closely related to the differences between the Anglo-Saxon legal tradition (common law) and the continental European legal tradition (civil law). For example, England and America, with common law legal traditions, view a large number of advocates in their colonies as a virtue. At the same time, it is the opposite for France, the Netherlands, and Belgium, which have Continental European law traditions (civil law).<sup>5</sup>

The terminology of advocate was sourced from various terms. In Latin, it is called *Advocaat*. Frans Hendra Winarta in Monika Suhayati explained that Advocate means to defend, to call to one's aid to vouch or warrant. While in English, Advocate means to speak in favor of or depend by argument, to support, indicate, or recommend publicly.<sup>6</sup> While also calling Advocate. An advocate is a person who does the professionally in a court of law and works as a legal expert in court. Although, the advocate meaning as advice, adviser, and legal adviser.<sup>7</sup> Furthermore, the term advocate comes from

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<sup>4</sup> Nikolas Simanjuntak, *Acara Pidana Indonesia dalam Sirkus Hukum* (Bogor: Ghalia, 2014) at 134.

<sup>5</sup> Fauziah Lubis, *Bunga Rampai Keadvokatan* (Medan: Manhaji, 2020) at 8.

<sup>6</sup> Monika Suhayati, "Pemberian Bantuan Hukum Cuma-Cuma oleh Advokat berdasarkan Undang-undang No.18 Tahun 2003 tentang Advokat" (2012) 3:2 Negara Hukum at 231.

<sup>7</sup> Rosdalina, "Peran Advokat Terhadap Penegakan Hukum di Pengadilan Agama" (2015) 6:2 Jurnal Politik Profetik at 112.

Latin, namely "advocate," which means a legal expert who provides assistance or assistance in legal matters. This assistance or assistance is like advice as good services. It is then requested by anyone who needs it in legal proceedings.<sup>8</sup>

The discussion about the law in Indonesia is undoubtedly inseparable from law enforcement agencies, including advocate organizations. In Article 1(2) Advocate Law 18/2003, the attachment of the Republic of Indonesia, the primary duties of an advocate include defending the interests of clients affected by legal problems and protecting clients' interests during the judicial process.<sup>9</sup> At the beginning of the new order, Indonesian advocates had many advocacy organizations. The one most recognized for its existence in the national sphere was the Indonesian Advocates Association, better known as PERADIN. It is because PERADIN was founded to transform into a larger advocate organization. Then, PERADIN has significantly improved the advocate profession and the Indonesian legal and judicial system. However, in its continuation, PERADIN is weakened in various ways, including by legitimizing the formation of various new advocate organizations such as the Center for Legal Aid and Service (PUSBADHI), Advocate Study and Communication Forum (FOSKO ADVOKAT), the Indonesian Legal Advisors Association (HPHI), and Legal Aid Development (BBH).<sup>10</sup>

After the emergence of various advocacy organizations, the government decided to make the organization into a single, approved forum, namely the Indonesian Advocates Association (IKADIN). This organization was founded in Jakarta on November 10, 1985. Even though Ikadin was born, various new advocate organizations emerged, whether their formation was motivated by internal conflicts or other reasons. Finally, the Indonesian Advocates Working Committee (KKAI) was formed by Ikadin, AAI, IPHI, The Association of Indonesian Legal Consultants (AKHI), the Association of Capital Market Legal Consultants (HKHPM), the

<sup>13</sup> Lasdia Wlas, *Cakrawala Advokat Indonesia* (Yogyakarta: Liberty, 1989) at 4.

<sup>9</sup> Ishaq, *Pendidikan Keadvokatan* (Jakarta: Sinar Grafika, 2010) at 2-3.

<sup>10</sup> Harlen Sinaga, *Dasar-Dasar Profesi Advokat* (Jakarta: Erlangga, 2011) 7-8.

Indonesian Bar Association (SPI), and the Indonesian Bar Association (HAPI), plus the Indonesian Sharia Lawyers Association (APSI).

Jimly Ashidiqqie explained that the types of organizations that work exist in three areas of life together: the state, civil society, and the business world (market). The distinction and separation of the three should be used as a new perspective in understanding the modern organization. Even today, a more vital view is developing that the organizational community in the three domains of the state, society, and the business world must be balanced and support each other to keep the dynamics of the nation's progress. Therefore, in preparing arrangements by the state for various forms and types of organization, it is necessary to pay attention to the importance of (i) the principle of segregation (decoupling) between the realms of the state, society, and the business world, (ii) the principle of "legal and institutional organization," (iii) principles of "good governance," and (iv) the need for "organizational empowerment" in the context of (v) realization the principle of "freedom of association" which (vi) still guarantees, reflects, and does not detract from the meaning of the principles of freedom of belief, freedom thinking, and freedom of opinion (freedom of belief, freedom of thought, and freedom of expression).<sup>11</sup>

The Advocates Organization aims to provide legal protection for the people. Philipus M. Hadjon explained the principle of legal protection for the people against government actions recognizing and protecting human rights. Historically, in the West, the concepts of the recognition and protection of human rights are directed at the limitations and the placing of obligations on the community and the government.<sup>12</sup> However, Advocate Law 18/2003 needs to be studied further. Articles 4(1) and 28(1). Article 28(1) mandates a single forum for advocate organizations. In the end, on December 21, 2004, the eight advocate organizations that are members of the KKAI made up their minds to form an advocate organization through

<sup>11</sup> Jimly Asshidique, "Mengatur Kebebasan Berserikat Dalam Undang-Undang", *JimlySchool*, online: <<http://www.jimlyschool.com/read/analisis/274/mengaturkebebasan-berserikat-dalam-undang-undang/>>.

<sup>12</sup> Asrulah Dimas, *The Legal Protection of Advocates for The Interpretation of Obstruction of Justice in the corruption case* (Master Thesis, Universitas Hasanuddin, 2021) at 17.



the Declaration of the Establishment of the Indonesian Advocates Association on December 21, 2004, which later PERADI was born. The formation of PERADIN did not automatically mean that advocates belong to one organization. Over time, various advocate organizations have been established in Indonesia.

On the other hand, Supreme Court Letter number 089/KMA/VI/2010 concerning the swearing of advocates discussing the Head of the High Court can take the oath of lawyers who have met the requirements provided that the PERADI management must submit the suggestion of swearing.<sup>13</sup> According to the explanation above, it turns out that the agreement cannot be fully realized. Even that organization, considered the sole institution, has been divided, and each claims to be the legal committee. From these problems, the Supreme Court, with various considerations, decided by issuing The Supreme Court Letter number 73/KMA/HK.01/1X/2015 (Supreme Court Letter 2015) regarding advocate swearing in the hope of solving the polemic that is happening in advocate organizations that mutually declare themselves as a legal organization according to Advocate Law 18/2003. Regarding this, The Supreme Court Letter 2015 concerning Swearing Advocates and Advocate Law 18/2003 has inconsistency, causing problems among Advocate organizations.

Research on the existence of advocate organizations has been carried out several times, such as 1) Research conducted by Sugiyono with the title "Empirical Juridical Analysis of SEMA No. 73/KMA/HK.01/IX/2015 Against the Peradi Split as a Single Organization for Advocates in the Indonesian Judicial System".<sup>14</sup> This study reveals that the formation of the Advocate Law and the Advocate Code of Ethics does not guarantee the integrity of a single advocate organization. Therefore, this study suggests renewing the Law on Advocates, the Advocates Code of Ethics, and

<sup>13</sup> Supreme Court Chief Justice Letter No. 089 / KMA / VI/2010 concerning Swearing of Advocates from the Republic of Indonesia.

<sup>14</sup> Sugiyono Sugiyono, "Analisis Yuridis Empiris SEMA No. 73/KMA/HK.01/IX/2015 Terhadap Perpecahan Peradi sebagai Wadah Tunggal Organisasi Advokat Dalam Sistem Peradilan di Indonesia" (2018) 9:2 Jurnal Dinamika Hukum 1–22.

revoking the 2015 Supreme Court Letter; 2) Research conducted by Monika Suhayati with the title "Regulation of the Advocate Organization System in the Draft Law on Amendment to Law Number 18 of 2003 concerning Advocates".<sup>15</sup> This study reveals that the single bar association system adopted in the Law on Advocates creates problems. Thus, the authors urge to make changes in the Law on Advocates; and 3) Research conducted by Tjandra Sridjaja Pradjonggo with the title "Impact of the issuance of Letter of the Chief Justice of the Supreme Court No. 73/KMA/HK.01/IX/2015 on the Submission of Advocates to the Advocate Profession in Indonesia".<sup>16</sup> This study reveals that the presence of the 2015 Supreme Court Letter can provide legal protection for advocates in terms of oath and will bring up a higher quality legal basis.

Based on the description and previous research, the aim that the researcher wants to describe the subject matter analytically is to know the *ratio legis*, the previous studies related to this study advocates bar, and the urgency of the government's role in the profession of advocate. There is a misunderstanding entrenched in the Advocate Law, which confounds the understanding of an organization and its formation to the true meaning of the purpose of establishing a single body of advocates professions. It is intended that the formation of a single-bar can avoid the potential conflict between the advocates without prejudice to the freedom and independence of advocates' rights to assembly consistent with the goals of the modern democratic constitutional state, which requires the government's role in the formation of a single-bar.

## II. METHODS

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<sup>15</sup> Monika Suhayati, "Pengaturan Sistem Organisasi Advokat Dalam Rancangan Undang-Undang tentang Perubahan Undang-Undang Nomor 18 Tahun 2003 tentang Advokat" (2017) 20:4 Kajian 317–328.

<sup>16</sup> Tjandra Sridjaja Pradjonggo, "Dampak Diterbitkannya Surat Edara Ketua Mahkamah Agung No. 73/KMA/HK.01/IX/2015 tentang Penyampaian Advokat Terhadap Profesi Advokat di Indonesia" (2016) 10:1 Maksigama | Jurnal Ilmiah Hukum Universitas Wisnuwardhana Malang 33–42.



The legal research used is normative research by reviewing regulations, principles, and doctrines from a legal perspective.<sup>17</sup> Legal research has a prescriptive nature. The aim is to be able to provide legal arguments from the results of the previous study on this research.<sup>18</sup> The study used normative juridical legal research by examining literature sources in the form of primary and relevant secondary data. This study takes an inventory and identifies several laws and regulations regarding the development of advocate organizations in Indonesia. As a result, rules are collected exclusively at the national level. This study discusses the harmonization of vertical and horizontal laws to see whether there are linkages and interconnections between laws and regulations in developing advocate organizations in Indonesia.

### III. REGULATING ADVOCATES IN INDONESIA

#### *A. Drafting Process of Advocate Law 18/2003*

Advocates are regulated separately in various regulations, among others, Advocate Law 18/2003 listed in Chapter VI <sup>8</sup> "Reglement op de Rechterlijke Organisatie en het Beleid der Justitie in Indonesie" (S 1847 Number 23 jo S. 1848 Number 57), Articles 185 to 192, with all changes and additions, and regarding court clothing (costumes) applies Article 3 "Bepalingen betreffende het Costume der Rechterlijke Ambtenaren en dat der Advocaten, Procureurs en Deuwaarders" (S. 1848 Number 8). This regulation is no longer in the development of public law and <sup>20</sup> the development of the legal service provider profession in <sup>7</sup> the Republic of Indonesia.<sup>19</sup> As the rule of law in Indonesia, Advocate Law refers to the philosophical guidelines (Pancasila) and the 1945 Constitution that protect the community. It is necessary to have legal service providers, namely

<sup>17</sup> Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana Media Group, 2016), at 225.

<sup>18</sup> ND <sup>14</sup> Mukti Fajar & Yulianto Achmad, *Dualisme Penelitian Hukum Empiris & Normatif* (Yogyakarta: Pustaka Pelajar, 2010), at 184.

<sup>19</sup> Agustin Teras Narang, *Proses Pembahasan Undang-Undang Advokat di Parlemen* (Jakarta: Yayasan Pancur Siwah, 2013) at 28.

professional advocates, to provide justice, truth, legal certainty, and legal supremacy to clients and the justice-seeking community.<sup>20</sup>

The ideals of realizing justice, truth, legal certainty, and the rule of law in social life, are strongly influenced by the growth and development of efforts to create a "prosperous, secure, and orderly atmosphere of the nation's life. Based on these ideals, it is paramount to regulate legal service providers, namely advocates who, in carrying out their profession, provide legal assistance to clients, both in the judicial process and outside the judicial process. In addition, with advances in social life, including economic and trade developments, as well as welcoming globalization in all areas of life and better organizing, these areas of life-based on laws and regulations and professional advocates who can work with the development of society are essential towards an advocate profession.<sup>21</sup>

Finally, the issuance of The Advocate Law 18/2003, with the emergence of this law, the existence of Advocates is getting brighter. This law also regulates the minimum age limit for Advocates to carry out their profession. The minimum age limit for an advocate is twenty-five years old, through Constitutional Court Decision Number 84/PUU-XIII/2015. This minimum age limit is aimed to prevent the advocate profession as a side job for other retired law enforcement officers who are feared to be no longer independent in carrying out their duties.<sup>22</sup>

### *B. Critical Debates on Advocate Law 18/2003*

Agustin Teras Narang explained that Advocate Law went through several stages and a long process, from submitting the drafting on the Advocate Profession with Number R.19/Pu/9/2000. The government's statement follows it before the plenary meeting held by the House of Representatives regarding this draft on October 28, 2000. Then, it is turned to the general views of the House factions on the draft at the House plenary session on

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<sup>20</sup> Draft Elucidation of the Law of the Republic of Indonesia on the Advocate Profession.

<sup>21</sup> Agustin Teras Narang, *supra* note 19 at 31.

<sup>22</sup> *Ibid.*

November 15, 2000, before the government's response to the public opinion on the draft on November 21, 2000. Finally, it was continued with a report of the drafting synchronization by the team at the House Commission II; this draft was discussed in Committee Meeting on February 25, 2003. The Commission's report was carried out to discuss and make second-level decisions on the legal drafting of the advocate profession at the Plenary Session of March 6, 2003. Then it is followed by the final opinion of the factions and the government's response to approve the drafting of the law on the advocate profession in the public plenary session of the House.

### *C. Articles 28 and 30 of Advocate Law 18/2003*

Historically, advocate is one of the oldest professions so that it is called honorable profession (*officium nobile*). This terminology is due to the "trust" aspect of the power giver, which is carried out to defend and fight for their rights in Indonesia's designated forums.<sup>23</sup> The function of an advocate is listed in the Elucidation of Advocate Law 18/2003. Advocates carry out their professional duties to uphold justice based on the law for the benefit of the people seeking justice. Advocates are one of the pillars in upholding the rule of law and human rights. A senior advocate once likened the role of an advocate to a father where his son pours out his heart, a teacher to get instructions and advice, and a doctor who heals the afflicted soul. Therefore "advocate" is a calling the noble and noble, *officium nobile*. As a respectable profession, an advocate in carrying out the profession is protected by the law, legislation, and the code of conduct stated in the Preamble to the Indonesian Advocates' Code of Conduct (KEAI).<sup>24</sup>

The meeting minutes on the formation of Advocate Law 18/2003 were found by legal reasons for Article 28(1), described as follows<sup>25</sup>, first, to get

<sup>23</sup> Anwar Hafizi, <sup>4</sup> "Eksistensi Advokat sebagai Profesi Terhormat (*Officium Nobile*) dalam Sistem Negara Hukum di Indonesia" (2015) 13:1 *Khazanah: Jurnal Studi Islam dan Humaniora* at 12.

<sup>24</sup> *Ibid* at 15.

<sup>25</sup> Muhammad Fajar Sidiq Widodo, Sudarsono, & Bambang Winarno, "Kedudukan Organisasi Advokat Sebagai Wadah Tunggal Profesi Pasca Putusan Mahkamah

legal recognition. Insofar as advocates are not positioned on an equal footing with other law enforcers, the current position of an advocate has been institutionalized with this provision. It can be aligned with other law enforcers. With the institutionalization of Advocate organizations into a law, Advocates can form their professional code of conduct along with its enforcement elements, namely the honorary council. Second, to maintain the professionalism and moral integrity of Advocates. The advocate professional forum was established with an educational function to improve the profession's quality. It is also related to its position as a free and independent organization so that the prospect of an advocate organization can become an institution that contributes to upholding the values of justice in society by becoming a counterweight to other law enforcement agencies. Third, unite the various Advocate Organizations that existed before the Law on Advocates 18/2003 was promulgated by stating that the Advocates Organization is a single forum. A single platform is to facilitate the functions of supervision, prosecution, and appointment, which the advocate organization now carries out. In contrast, the government carried out the previous supervisory role and facilitated education, prosecution, and appointment functions.<sup>26</sup> Public interest in this institution will be with a solid advocate organization.

The regulation of advocates was present in 2003 and will bring a new direction for the institutionalization of advocates in Indonesia. Pros and cons are still coloring the journey of advocates, they have not yet found their ideal form, but efforts must be performed better. The problem that has not been resolved to date is the problem of organizations using single-bar or multi-bar systems. Whereas Article 28 of Advocate Law 18/2003 has determined that the form of the Advocates Organization in Indonesia is a Single Bar. Both multi-bar and single-bar have their advantages and

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Konstitusi” (2018) 3:2 Jurnal Ilmiah Pendidikan Pancasila dan Kewarganegaraan 149–158 at 135.

<sup>26</sup> Imam Ghozali & Mahfudz Fahrazi, “Transformasi Organisasi Advokat Indonesia dari Single Bar Menjadi Multi Bar (Implikasi Putusan Mahkamah Konstitusi No. 101/PPU-VII/2009 dan Surat Ketua Mahkamah Agung No. 73/KMA/HK.01/IX/2015)” (2020) 7:1 Mizan: Jurnal Ilmu Hukum 72–82.

disadvantages. So it is necessary to explore more profoundly to opt for the single-bar system, often referred to as a single professional organization.<sup>27</sup>

From the Preamble, the advocate draft states that as a constitutional state, it is not only interpreted narrowly that law is a law but also must be interpreted broadly by law. Narrowly, it can be interpreted as an attempt to form a whole advocate law which has long been regulated separately in various regulations, such as *Reglement op de Rechterlijke Organisatie en het Beleid der Justitie in Indonesia* (S.1847 No.23 jo S.1848 57, Articles 185 to 192, with all its amendments; *Bepalingen betreffende het Costume der Rechterlijke Ambtenaren en dat der Advocates, Procureurs en Deuwaarders* (S.1848/8).

Along with the progress of the times, the pattern of people's lives continues to change. Legal dynamics tend to be slow in responding to changes in society. The most apparent changes are changes to the increasingly globalized economy and trade, so we need a professional advocate who is certainly ready to respond to developments and protect the community. To get a good quality of Advocates, a forum is required to exchange ideas and brainstorm ideas for Advocates and a place to supervise advocates, so they remain per the rules.<sup>28</sup>

#### IV. THE CURRENT ADVOCATE ORGANIZATIONS

##### *A. Supreme Court Letter on Swearing Advocates*

Before Advocate Law 18/2003, there was a State Gazette Number 49 to become the rule for advocates and legal advisors. Even though advocates should refer to various provisions, those from the colonial era to the time of independence, including *Staatsblaad* 1847-23 jo *Stb.*1848-57, on the Composition of the Judiciary and Judicial Policy (*Reglement op Rechterlijke*

<sup>27</sup> Monika Suhayati, “*Pengaturan Sistem Organisasi Advokat dalam Rancangan Undang-Undang Tentang Perubahan Undang-Undang Nomor 18 Tahun 2003 Tentang Advokat*” *Pengaturan Sistem Organisasi Advokat dalam Rancangan Undang-Undang* 2015, 322.

<sup>28</sup> Niru Anita Sinaga, “*Kode Etik Sebagai Pedoman Pelaksanaan Profesi Hukum Yang Baik*” (2020) 10:2 *Jurnal Ilmiah Hukum Dirgantara* 1–34, at 4-9.

*Organisatie en het beleid der justitie*) which is commonly referred to as RO. Decisions 112/PUU-XII/2014 and 36 /PUU-XII/2015, named after the Constitutional Court Decision 101/PUU-VII/2009, which states that an advocate oath must be carried out at the High Court irrespective of the origin of the *facto* exists.<sup>29</sup> In practice, the High Court only wants to take oaths from organizations from PERADI. The Supreme Court also ordered the High Court to reject the open trial of an advocate oath requested by any organization except PERADI.<sup>30</sup> It is the reason for re-examining Article 4(1) Advocate Law 18/2003 against the 1945 Constitution.

According to Wicipto, the request for review of Article 4(1) and (3) of the Advocate Law is more appropriate to be submitted to the general court because it involves the application of norms that are not the authority of the Constitutional Court. The Court Decision 101/PUU-VII/2009 states that in the case of within two years, Article 28(1) has not yet been formed, then disputes regarding advocate organizations are resolved through general courts.

Advocate Law 18/2003, strengthened by the Decision of the Supreme Court Letter 2015, has confirmed that PERADI is the only advocate organization. It has the power to carry out eight authorities for the Guidance and Supervision of the Advocate Profession as regulated in the Law on Advocates, including one of which is the authority to propose an oath of Advocate to the High Court. The Proposed Advocate Oath by Organizations Other than PERADI can still be carried out and allowed by the Supreme Court with a legal basis in the form of the Supreme Court Letter 2015 on September 25, 2015, regarding the Advocate's Oath. Although it has been confirmed that the Constitutional Court is not authorized, Point six on the Supreme Court Letter 2015 expressly permits the proposing of an Advocate's oath by any organization other than PERADI. Although it contradicts the Constitutional Court's decision,

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<sup>29</sup> Muhammad Ali Sariati, "Juridical Analysis of Advocacy Switching Reviewed From Advocate Law" (2022) 16:4 Jurnal Hukum Khaira Ummah 163–169, at 165-167.

<sup>30</sup> Suhayati, *supra* note 15.



there is no sign that the Chief Justice of the Supreme Court will revoke the letter.<sup>31</sup>

### *B. Raison d'être of the Supreme Court Letter on Swearing Advocates*

Historically, there have often been clashes between advocate organizations that claim to be legal organizations. Controversies on advocate organizations started from the union of various advocate organizations into one forum: PERADIN. It was established to transform advocate organizations into bigger organizations. However, PERADIN has become weak due to the legalization of other advocate organizations such as the HPHI, Pusbadi, Fosko Advokat, and others.<sup>32</sup> Furthermore, in the latest development, the advocate organization has become a single-bar or one more single forum, PERADI. However, various advocate organizations are still emerging in Indonesia, some organizations claiming to be legitimate advocate organizations and by the mandate of Advocate Law 18/2003, even in its development.<sup>33</sup> Within the advocate organization, a split occurred with the establishment of KAI and AAI.<sup>34</sup>

In addition, the Supreme Court and the Constitutional Court, the main constitutional institutions, have the judicial power and they are independent from the influence of other powers. The Supreme Court oversees the judiciary within the general courts, the religious courts, the military courts, and the state administrative courts. The Supreme Court, namely the duties

<sup>31</sup> Shalih Mangara Sitompul, "Pengangkatan Sumpah Advokat yang Diusulkan Selain PERADI dan Pelanggaran Sumpah Jabatan Ketua Mahkamah Agung RI", *PERADI* (26 February 2020), online: <<https://www.peradi.or.id/index.php/infoterkini/detail/pengangkatan-sumpah-advokat-yang-diusulkan-selain-peradi-dan-pelanggaran-sumpah-jabatan-ketua-mahkamah-agung-ri>>.

<sup>32</sup> Binziad Kadafi, *Indonesian Advocates Seeking Legitimacy, Study of the Responsibilities of the Legal Profession in Indonesia* (Jakarta: Center for Indonesian Law and Policy Studies, 2001) at 270.

<sup>33</sup> Maya Sari, "Problematika Pengawasan Terhadap Organisasi Advokat di Luar PERADI" (2020) 5:2 *Badalamat Law Journal* 185–200.

<sup>34</sup> In a single-bar system, there is only one Advocate organization in a jurisdiction (jurisdiction). Other organizations may still exist, but the state and lawyers recognize only one is obliged to join them.

of judicial bodies as administrators of judicial power, are carried out by a Supreme Court and the judicial bodies under it and a Constitutional Court.<sup>35</sup>

By considering the function of the Supreme Court above, the Supreme Court should fill the existing legal void, especially within the scope of advocate organizations, to break up disputes. Regarding the problems in advocate organizations, the Chairman of the Supreme Court of the Republic of Indonesia, on September 25, 2015, issued a Decree of Supreme Court Letter 2015 on advocate oath.

### *C. Legal Consequences Supreme Court Letter 2015*

The Supreme Court made legal breakthroughs through the Chief Justice Letter 2015 on advocate oath. This letter has further implications for the increasing number of organizations and advocates from an organization other than PERADI. This letter gives the Head of the High Court great authority to take oaths from prospective advocates without looking at the background of the organization they came from.<sup>36</sup>

Supreme Court Letter 2015 regarding advocate swearing will undoubtedly have quite broad implications for the advocate profession,<sup>37</sup> With the issuance of this circular letter of course a new phenomenon, there are broad implications of the Chief Justice of the Supreme Court, including, the easier legal protection that can be obtained from the services of a lawyer or lawyer by the community; the increasing number of advocates or lawyer's profession; the advocate profession is spread out and evenly distributed throughout Indonesia; the easier it is for the public to seek legal protection from the services of a lawyer or lawyer; increasingly guaranteed legal protection for people who need legal services; the public understands the law more and more because there are many lawyers or lawyers around the

<sup>35</sup> Law No.5 of 2004 concerning amendments to Law no. 14 of 1985 concerning the Supreme Court of the Republic of Indonesia

<sup>36</sup> Pradjonggo, *supra* note 16 at 39-40.

<sup>37</sup> Muten Nuna, Dince Aisa Kodai & Roy Marthen Moonti, Code of Ethics and the Role of Advocates in Providing Legal Aid to the Poor” (2020) 1:2 Indonesian Journal of Advocacy and Legal Services 259–274.

community. There is no need for disputes over the legality of advocates because there are different advocate organizations; the number of lawyers in Indonesia is uncontrolled, so it will be challenging to monitor the number of lawyers; the standardization of advocates is different for each advocate organization; the quality of lawyers is questioned because there is no standardization of the same; the easier it is to become an advocate, which results in an out of control behavior outside the court; It is easy for advocates to change organizations and protection of lawyers by non-centralized organizations.<sup>38</sup>

The pros and cons of Supreme Court Letter 2015 on advocate oath.<sup>39</sup> There are pros and cons, and there is an impact on the polarization of advocates. On the one hand, society is more protected, and there are many options for legal handling of communities that require advocate services. On the other hand, standardization and monitoring the code of conduct of advocates will be difficult because there are many advocate organizations<sup>40</sup> and it is easy for advocates to have more than one advocate organization, so it is feared that there will be many naughty advocates who can avoid their obligations under the Advocate Law 18/2003. The positive impact is the increasing number of advocate professions, and the guarantee of legal protection for the community increases. The negative effect is the different standardization and quality of advocates.

The Chief Justice of Supreme Court Letter 2015 is a new phenomenon for law enforcement in Indonesia. In particular, it deals with how the mechanism for appointing an advocate so that advocates meet requirements, including they should be law graduates. Advocates who have so far held the title of a very respectable profession in the legal world, namely *Officium Nobile* and Free Profession, which is not only for the

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<sup>38</sup> Agus Pramono, "Professional Ethics Advocates As Controlling Efforts In Performing Law Enforcement Functions as An Advocate" (2017) 1:1 UNTAG Law Review 47–57.

<sup>39</sup> Detikcom, "Organisasi Advokat Ramai-ramai Minta Ketua MA Cabut SK Nomor 73", *Detik.com* (26 February 2020), online: <<https://news.detik.com/berita/d-4915341/organisasi-advokat-ramai-ramai-minta-ketua-ma-cabut-sk-nomor-73>>.

<sup>40</sup> Samuel Saut Martua Samosir, "Advocates Bar and the Urgency of the Government's Role in the Profession of Advocate" (2017) 14:3 Jurnal Konstitusi 512–530 at 523.

advocate profession itself but also for realizing the broader interests, namely the creation of a free trial. On the other hand, an independent judiciary is required to uphold the rule of law and implement democratic values.<sup>41</sup>

Advocates have the same position as other law enforcers such as prosecutors, judges, and police because they jointly uphold the rule of law in Indonesia by having a high position in the hierarchy of law enforcement in Indonesia. Of course, an advocate or lawyer lacks pride and dignity. It needs to be doubted and questioned again. As a lawyer or advocate, you must have unquestionable credibility.

There are consequences such as non-discrimination, a decision by the Chief Justice of the Supreme Court which instructs all Head of the High Court to take the oath of advocates irrespective of the advocate organization. The judges refused to proceed to court proceedings because the Head of the High Court had not sworn in them, making advocates unable to carry out their primary task of providing legal assistance to justice seekers. Legal Aid to obtain for justice seekers, the Chief Justice of Supreme Court Letter 2015 will certainly make it easier for justice seekers to get legal assistance in all regions of Indonesia. Where the number of advocates at this time has reached hundreds of thousands of people scattered throughout the provinces, cities, and districts throughout Indonesia, and all the problems that sometimes hinder advocates from providing legal assistance to justice seekers are due to the problem of oaths being accommodated and resolved by the Chief Justice Letter. Advocates can now freely proceed to court in all courts in Indonesia.

M Hatta Ali, the former Chief Justice of the Supreme Court, is undoubtedly considered capable of overcoming the movement of advocate organizations so far. PERADI believes to be the sole contested institution, and all advocate organizations are deemed able to accommodate lawyers and be equal to Peradi. The loss of the supposition of the Supreme Court, Supreme Court Letter 2015 has certainly assumed that the Supreme Court

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<sup>41</sup> <sup>1</sup> Frans Hendra Winarta, *Advokat Indonesia Citra, Idealisme dan Keprihatinan* (Jakarta: Pustaka Harapan, 1995) at 14; <sup>2</sup> Rahmat Rosyadi & Sri Hartini, *Advokat dalam Perspektif Islam dan Hukum Positif* (Jakarta: Penerbit Ghalia Indonesia) at 17-18.

sided with one advocate organization, namely Peradi finally disappeared under the leadership of M Hatta in the Supreme Court with an issue of this circular which essentially instructs the Chief Justice of the High Court to swear all lawyers regardless of the background of the lawyer, whether they are from Peradi or not; Indonesian advocate organizations are not single-bar but multi-bar,<sup>42</sup> under the Supreme Court Letter 2015. Overcoming the riots and friction of advocate organizations so far, where Peradi wants a single-bar, only prolongs the advocacy organization and conflict.<sup>43</sup> And one way that is suitable to be applied in Indonesia is multi-bar, where the advocate organization is not a single forum but consists of various organizations such as in India and Japan.

Moreover, as a big country, the multi-bar organization is the most appropriate to be implemented in Indonesia. It is relevant to the decisions of higher judicial institutions, such as the Constitutional Court Decisions 112/PUU-XII/2014 and 36/PUU-XIII /2015 and Supreme Court Letter 2015, while Advocate Law 18/2003 must be revised. The estimates can be used as a basis of reference for the government, in this case, the President and House, to adjust the Advocate Law and clearly state the form of advocate organizations in Indonesia, namely multi-bar.<sup>44</sup>

## VI. CONCLUSION

Advocate Law in Indonesia adopts a single-bar organizational system, where the organization of Advocates is the only free and independent forum for the Advocate profession formed by the provisions of the Act. The law orders PERADI as the sole advocate organization to improve the quality and professionalism of advocates. However, there is a problem when several advocate organizations are born that have the authority to

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<sup>42</sup> Monika Suhayati, *supra* note 6 at 325.

<sup>43</sup> Supreme Court of Indonesia underline Peradi as the only advocate organization. See Mahkamah Konstitusi RI, “MK Kembali Tegaskan Peradi sebagai Satu-Satunya Organisasi Advokat”, *Mahkamah Konstitusi RI* (28 November 2019), online: <https://www.mkri.id/index.php?page=web.Berita&id=16082>.

<sup>44</sup> Multi-bar, namely all Advocate Organizations with legal legitimacy such as single-bar, are recognized by the state.

apply for an advocate oath. The Supreme Court Letter 2015 on advocate oath expressly acknowledges and ratifies all advocate organizations and sets the organizational structure of advocates to be a multi-bar, previously single-bar. In other words, the decision aims to regulate and overcome disputes among advocate organizations.

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<sup>13</sup> Lasdia Wlas, *Cakrawala Advokat Indonesia* (Yogyakarta: Liberty, 1989).

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<sup>18</sup> Marzuki, Peter Mahmud, *Penelitian Hukum* (Jakarta: Kencana Media Group, 2016).

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