

Lawyer's Responsibility For Clients And The State

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Abstract: The existence of lawyer profession in Indonesia is legitimated in Act No. 18 of 2003 concerning lawyers. The purpose of the legislation as well as protecting the lawyers as a profession, is also a major advance is to protect the public from the advocate services are not eligible and protected from possible abuse of advocates. This research was conducted in Jayapura, Indonesia. The selection of this site is based on the consideration that the dilemmatic of lawyers who has responsibility for the client and state is homogenous. The results shows that lawyers as law enforcer officers have equal position with other law enforcement agencies in enforcing the law and justice. Lawyers profession has an important role in law enforcement efforts because any proceedings. To realize its role as law enforcer, the lawyers shall comply with the Lawyer and the Code of Ethics Act in synergistic cooperation and mutual respect with the other legal professions such as judges, police and prosecutors.

Index Terms: Ethics, Court, Lawyer, Litigation

1 INTRODUCTION

Indonesia is a constitutional state. It is expressly stipulated in Indonesian constitution aimed to realize life of the nation and the state are orderly, clean, prosperous, and equitable. As a constitutional state is certainly to be equipped with various legislation and components of law enforcement institutions to support and realize the principles of a constitutional state. One component of the law enforcement agencies other than judiciary agency, prosecutors and police are lawyers. In an effort to realize the principles of a constitutional state in the society, nation and state, the role and function of lawyers as a free profession, which means that without pressure, threats, obstacles, without fear or degrading treatment dignity, the dignity of the profession, it becomes very important. Freedom was carried out in accordance with the code of conduct of profession and legislation. Freedom lawyers profession will be very important for the people who need legal services and litigation of the lawyers, so that a member of the community that need to be defended will receive legal services of a lawyers independent, to defend all the interests of his/her client without hesitation. With the freedom of advocate, he/she is free to participate and discuss the legal and judicial system is open for public consumption, and free to set up or join with lawyers' organization of local, national, and international levels. This can be realized if it is really the rule of law and justice to be achieved equitably and impartially. Of course, it supported also by the values proper appreciation for the services of a lawyer, for which accord with the opinion of E.W. Roddenberry, who stated:

"A lawyer's duties are not carried out in a vacuum. While facing financial and competitive pressures, lawyers must fulfill and balance their duties to the client, opposing counsel, the administration of justice and society. A lawyer's duty to the court relates to his or her status as a professional who serves, not only clients, but also the public interest"

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In this era, lawyer professions are growing and interested by the graduates of the Faculty of Law in Indonesia. Cases handled by the lawyers is increasingly diverse as the development of era, because the services provided by lawyers not only in courts. As a noble profession that promises, in essence lawyers not to defense a wrong person, but a law enforcer. Many people still consider sinful profession for defending the guilty. Therefore, in this globalization era just how intelligence and strategies of lawyers are used because if they try to the maximum, then of course a lot of things that can be generated by a lawyer. However, as an ethical profession, lawyers are restricted by the code of ethics used as guidelines in carrying out the profession. Lawyers should not justify any means to be able to meet the clients' wishes. Therefore, it needs the types of development lawyers to enforce the law in Indonesia. To face the competition and increasingly diverse cases, start given the additional requirements to be able to be a lawyer. These additional requirements are not intended to impede or restrict the rights of the Bachelor of Law to be a lawyer, but aims to capture the prospective advocates who can actually function as a true law enforcer, indiscriminately, even against his/her own client, which in fact as source of fortune for him, in accordance with the mandate of the constitutional of lawyer. In performing its duties lawyers often found fact that a legal case is different from the opera story in black and white. The role of the antagonist is always evil, and the role of protagonist is always good like angels. A legal case did not involve the role of antagonist and protagonist. A legal case is a gray area that is filled with all possibilities for exploration, because it involves human beings in relation to human beings or other communities. Therefore, any legal case has its own characteristics, is never similar though may apply articles of the similar law. Now it is often heard that lawyers can be grouped by their ability. There are lawyers who have the ability to proceedings/appear at the trial. There are lawyers who have the ability to proceedings out of court, or in other words, an expert in the field of "approach". There are lawyers who are considered controlled police, prosecutors, and some even there are lawyers that are considered able to break through the doors of the Supreme Court without obstacles from anyone. These groupings can result from damage to the legal system in our country. Each lawyer acknowledges that bribery is an act that became the starting point of destruction in Indonesia legal system. Everywhere the community highlights the role of lawyers as a "linker" between the interests of client with other law enforcement with certain

authorities. In the handling of criminal cases, for example, in fact lawyers have no any authority to the force attempts to defend his/her client. This is compounded and exacerbated by a "power oriented" is always conducted by police or prosecutors in handling a case by ignoring the rights of suspects. Similarly, for some specific cases that have been entered into the trial step, the lawyers are cooperate with prosecutors and judges to see gap that can be changed in such a way for the clients' interests. One way is now often done is deliberately interpret the meaning and application of the basic reasons of criminal eraser. In the criminal law, there are several reasons that can be used as the basis for the judge not to sentence/criminal to the perpetrators or defendant submitted to the court. The question, whether such action of lawyers as wrong thing? As a religious person and understand the law, of course we can answer them. But as people who are in a system that is so disturbed, it is quite difficult for lawyers to unravel this. The result emerges gaps and issues regarding how should lawyers' responsibilities be impartial between the interests of client and state in the context of law enforcement in Indonesia.

2. METHOD OF THE RESEARCH

Meyer and Greenwood confirms that research is a common approach towards the phenomenon that has been selected by the researchers. Referring to the opinion, then to find factual information in order to obtain the data in order to justify the state and depicts a reality, the description of research method used is more emphasis on the type of descriptive analytical research. For the sake of it, in order to collect data to answer the problem in this research, needed an approach that can be used to obtain the data, namely through library-research or normative research to provide scientific information on the problem to be investigated, the results can be used to answer the demands of assessment and analysis. Besides the normative research, in order to obtain accurate data is also necessary field research or *action research*. In normative research, an approach used is *statute-* and *historical approach*. Statute approach is done by examining all laws and regulations relevant to the legal issues to be handled. And the historical approach is done by examining the background of what is studied and the development of law/regulation regarding the issues. This research was conducted in Jayapura, Indonesia. The selection of this site is based on the consideration that the dilemmatic of lawyers who has responsibility for the client and state is homogenous, where the dilemmatic role faced by lawyers throughout Indonesia has similar characters.

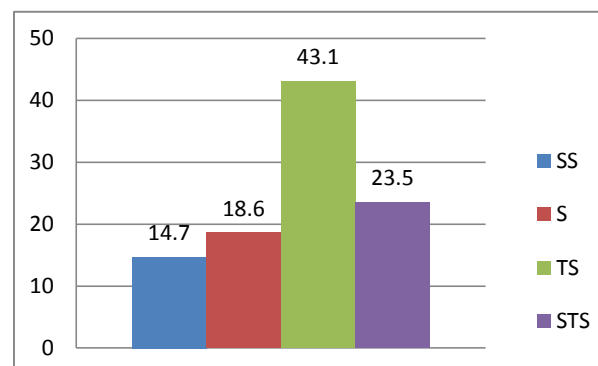
3. RESULTS AND DISCUSSION

3.1 The Role of Lawyers for Handling and Fighting for Client Interests

Lawyers are parties that involved in law as a profession to defend and assist and consultants for those in need. Profession is essentially permanent job and tangible works of service that is performed by the mastery and application of knowledge in different disciplines whose development is lived as a vocation and its implementation is tied to certain values are based on the spirit of devotion to fellow human beings for the sake of public interest and is rooted in respect and efforts to uphold human dignity. The relationship between the carrier of profession with a client or patient is a personal relationship,

the relationship between the subjects of the supporting values that are horizontal, between two parties are formally similar in juridical position. However, the substance of relationship between the carrier of profession and their clients or patients, in socio-psychological, there is an imbalance. He carrier of profession has authority and conduct professional authority fort his/her client that relies on superior technical competence. Clients do not have the technical competence or is not in a position to assess objectively the implementation of a technical competence of profession carrier that requested his/her professional services. Therefore, the client is in a position no other choice but to trust the related professions carrier. Clients must trust that the carrier of profession will provide professional services in quality and dignity and will not abuse the situation, but with dignity. And, with dignity would direct the entire knowledge and expertise in performing their professional services. Therefore, with respect to the values and interests involved in it, then the carrier of profession demands that the carrier of profession in carrying out their professional services is lived with certain ethical attitude. The carrier of profession is called *professional ethics*. Nevertheless, in its implementation, the position and ideal role of lawyers is not necessarily done perfectly. In sociological, the position or status is certain position in the social structure, which may be high, moderate or low. These positions actually have a place, whose contents are the rights and obligations of certain obligation. The rights and obligations are role. A certain role can be translated into the following: 1) ideal role; 2) expected role; 3) perceived role; 4) actual role. The actual role is conducted can also called "*role performance*" or "*role playing*". Thus, it can be understood that the ideal role should come from other parties, while perceived and actual roles should come from themselves. The results showed that the ideal role of lawyers is known very well and always revealed by the lawyers themselves as respondent. Similarly, the legal professions are police, judges and prosecutors. Meanwhile, a number of justice-seekers have quite different views according to their experience with the lawyer who had helped handle their legal matters. In quantitative above glance shows that even in ideal and mandated by legislation to be the ideal role of lawyers in addressing and fighting for the client's interests by upholding truth and justice of law and according to the code of ethics of lawyers, but in fact, the public perception of law on that role shows that the role of an advocate is ideal not seem implementation in practice of the work of lawyers. In quantitative, the perception appears in the graph below:

Graph 1. Average percentage of ideal role of lawyers in relations with clients



Graph 1 above shows that most respondents i.e public and law enforcers itself, 43.1% disagree and 23.5% strongly disagree that lawyers in the ideal role of lawyers in relation to the fight for the clients' interests. Only a small portion that is 18.6% agreed and 14.7% strongly agree. The description of actual role of lawyers needs to be elaborated. Notwithstanding, the information about the actual role is not easily obtained if only with a questionnaire and interviews with respondents, especially those who work in the legal field. But it is possible also that the lawyers also have anxiety about the discrepancies between the ideal with the factual in the implementation of tasks of their profession. Therefore, this section provides a qualitative description of the actual role of lawyers in relation to the fight for the clients' interests. *Kompas* daily, on 16 February 2010 ago, wrote a number of factual things especially criticism related to the actual role of lawyers in Indonesia with a provocative title: *Questioning Lawyer, Black, Stupid and White*. According to the report, a small portion of lawyers seem too loyal to his/her client, so that whatever the particulars of client are always right. The lawyers did not bother whether his/her client as top bandits, conglomerate with trillions of rupiah of state money, anyway defended desperately. Lawyers always come up with a million arguments, why he defended conglomerates who stole trillions of rupiah of state money. Advocates have always said, a good lawyer, may not refuse a request justice-seeker. Clients comes, though it bears the stamp of corruptor, remain to be presumed innocent until a verdict which has permanent legal force. A community leader who met the researchers revealed his anxiety:

As ordinary people, I often wondered why the lawyers were usually defended his/her client only when it was obvious that his/her client, especially officials who exposed corruption problems. Certainly, the corruption Eradication Commission has evidence, meaning there was a strong indication that the official exposed cases of corruption that hurt people. But the lawyers when talking especially in the media, trying to build opinion that their client was innocent. I appreciate their profession, but they should also use their conscience. Not such a good thing into a public spectacle.

From this appear satire among lawyers itself, forward undaunted defense who pay. If there are press wrote too negative about his/her clients, lawyers can be by royal send a summation, as well as the right of reply were impressed presses, and so on. Of course, not all lawyers behave like that. There are still many lawyers, who are willing to live a mediocre, defend the needy and the oppressed. There are still many lawyers' greater emphasis *prodeo* than cases that bring billions of rupiah into their pockets. However, although the number of "good" lawyers is quite a lot, but their existence is truly immersed by the presence of lawyers who emphasize economic factors, the victory of case, and a luxurious lifestyle. Lawyers who emphasize economic factors, although the amount is very small, but because it was on the stage, and case that are held generally is a very interesting case of public attention, then he looked dominant. Like this causing a stigma about lawyers appear in black and white. Lawyers who deadly conscience, defending officers/former state officials are corrupt, or conglomerate, and then pretending to be sick, or fled into hiding abroad, known as black lawyer. Lawyers of this

type also are using all resources and efforts to win the case. Of course, efforts to pay bribes to judges, prosecutors, police, or anyone who could potentially decisive victory of cases handled, will do. Even if these lawyers are reluctant to intervene alone, he would close his/her eyes when his/her client approached the police, prosecutors or judges. As for the stigma to the white lawyers are lawyers who spent almost all his/her time to defend the oppressed, the marginalized are difficult to find space for justice. These white lawyers are often ridiculed by the term "nerd" because they do not know the bribery affair, do not know how the opponents' strategy won the case. White lawyers only emphasize his/her defense on legislation, or the lessons gained in college. The phenomenon of black and white lawyers has been suggested critically by a lawyer Amir Syamsuddin, in a discussion about the world of lawyers in a law firm office in Central Jakarta last week (in *Kompas*, February 6, 2010). Amir said the lawyer, now it was in a very difficult situation. If the lawyer defending criminal and civil cases, and always more triumph, it could appear cap that this lawyer as black lawyer. Therefore, it merely won. Can arise unexpectedly, he flirted with prosecutors and judges, so that the client wins. Could arise suspicion, he or his client bribe prosecutors and judges so as to win. The way out for this phenomenon is the enforcement of the code of ethics. If every lawyer has ethics and professionalism that every lawyer will not get caught up in the affairs of bribery, let alone the name of the judicial mafia. To eliminating bribery, is actually very simple. When all lawyers and client stop all of bribery, the judiciary is certainly clean. Cross-chaos and especially various "tensions" in the actual role of lawyers are not only in terms of the role of defending the interests of the client as a form of legal services that bring fee or payment. In terms of defending clients free or *pro bono* also has a number of dynamics that is not easy. Equality in the law and the right to be defended, the lawyer is a human right that should be guaranteed in order to achieve social justice, as well as one way of fighting poverty, especially in the field of law. In reality, not all citizens have the ability to use the services of lawyers or legal counsel to defend their interests in obtaining justice. This is because most members of Indonesian people are still living below the poverty and their lack of knowledge of the law, and coupled with low culture and the level of public awareness. The implementation of legal assistance is necessary to ensure and realize equality in the law for everyone, especially for poor. It is also intended to create the principle of "*fair trial*" in which legal assistance is carried out by a lawyer in effort to resolve a case, both from the stage of investigation and the trial process, is very important in order to ensure the process of law in accordance with existing rules, especially again when he/she represents his/her clients in court proceedings to provide legal arguments to defend his /her client. But in the implementation of a free legal assistance given by the lawyers is not easy to do, many constraints faced by the lawyers when they provide legal assistance. There are some constraints experienced by the lawyers in handling the case of *pro-bono* that preventing them that the constraint often encountered when providing free legal assistance is less funds, where it is due to the economic conditions of clients that are not able and causing the lawyers who handles his/her case must be willing not receive fees/transport of clients, even he/she must be willing also issued his/her own money to pay the case. This occurs because the cost of *prodeo* in a criminal case provided by the government in the District Court on average only Rp. 750.000,

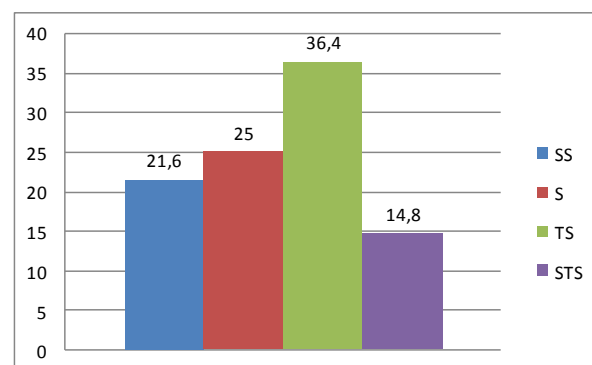
- per case are often not up to people in need. In short, the actual role of the lawyers in fighting the client can be formulated as follows: that in the context of providing legal services, lawyers fight for the client interests with paid by the client, hence the lawyers is very concerned with the clients' interests and even still trying to defend his/her client although according to public opinion his/her client was guilty and betraying the public (e.g corruption cases). This is done for the same reason with the ideal that for the sake of professionalism and respect to the profession of lawyers. Meanwhile, in the context of providing legal assistance *pro bono*, the role of lawyers dealing with the court system in particular and legal system in general that provides limited access to lawyers with *pro bono* motivation.

3.2 The Role of Advocates in Order to Conduct State Duty as Law Enforcer

The provisions of Article 5, paragraph (1) on lawyer legislation that the status of lawyers as law enforcer having equal position with other law enforcer agencies in an effort to enforce the law and justice. Therefore, in addition to meaningful as a profession, but in essence advocates status is law enforcer. Article 5 paragraph (2) also elaborates the status and authority as of lawyer as law enforcer which equal to other laws enforcer. That way, the advocate profession has an important role in law enforcement efforts because any proceedings, whether criminal, civil, administrative, and even the state administration, always involves the advocate profession. That role is executed or not depending on the profession of lawyer and lawyers organizations that have guaranteed the independence and freedom in the Lawyer Law. Both juridical and sociological, the lawyers have a very large role in law enforcement. Ideally, the role of law enforcement is governed by Lawyer law and ethically by the Code of Ethics of Lawyer. Nevertheless, idealism role is not exactly can be implemented in practice and legal assistance services by the lawyers. Therefore, we need an idea of the actual role of the lawyers. Lawyers profession as a very noble profession and its role is so broad, because it is not limited only in the field of litigation or proceedings in court, but play a role in all sectors of society, nation and state, because the legal system does not only work in an environment element of formal law enforcement alone but to penetrate all sectors of society and the state, because we know that the law is everywhere and manages all aspects of our lives. Therefore, the role of lawyers in their efforts to realize the principles of law in the society and state cannot be ignored or underestimated. Lawyers are guardian of the lives of the state's constitution. In sociological, the problematic of lawyers in the middle of the community. Indisputable fact that lawyers are needed by the community, especially people who stumble lawsuits. But there are also some people considered that the existence of lawyers in the law enforcement system is not required, this negative study is not independent of the lunge of a lawyer himself who sometimes carry out their duties and functions as law enforcement officers are not in line with expectations and the most unfortunate is the fraction advocate be part of the judicial mafia. Lawyers position in the law enforcement system as law enforcer and honorable profession. In carrying out her/his functions and duties the lawyers should be completed by the authority as well as other law enforcement agencies such as police, prosecutors and judge. The authority of lawyers in the law enforcement system is essential in order to maintain independence in her/his

profession and also avoid any arbitrariness committed by other law enforcement. Law enforcer officials such as judges, prosecutors and police in carrying out his/her duties and functions are given authority but lawyers in their profession are not. Given this reality it is necessary to grant authority to the lawyers. The authority is required in addition to creating alignment among law enforcer officials as well as to avoid multiple interpretations among other law enforcer officials and lawyers among themselves associated with authority. While Act No. 18/2003 does not regulate the authority of lawyers in carrying out her/his functions and duties as law enforcement officers. Thus, void of legal norms relating to the authority of the lawyers. Need to be known that the profession of lawyers is a state organ that performs the function of the state. Thus, lawyer profession is similar the police, judiciary as a state organ and perform states' function. The difference is the lawyers as a private institution that serves the public, while the police, judiciary and justice as a public institution. If lawyers in exercise their functions and duties given authority in his/her status as law enforcer officers, the parallelism with the other law enforcement officers. With the alignment, will create a balance in order to create a system that better law enforcement. A description of the role of lawyers in law enforcement as well as other independent legal professionals at the top shows at least three ideals that must be done by the lawyers to assist law enforcement that contributes to creating the justice system are clean, dignified and professional, working with good and healthy for the sake of the law, willing to represent clients at all stages of the legal process so that quality and play a role in educating and civilizing laws for the general public. Based on the description above, the perception of ideal role of the lawyers as law enforcement is quantitatively expressed by the respondents to this study. In general, the description of respondents to the ideal role of lawyers as law enforcement can be seen in Graph 2 that encapsulates all of the quantitative data on the role of lawyers.

Graph 2. Average ideal role of lawyers as law enforcer



Graph 2 illustrates that most respondents 36.4% disagree and 14.8% strongly disagree that lawyers have an ideal role as law enforcement is concerned with the enforcement of applicable state law. Meanwhile, 25% agreed and 21.6% strongly agree. This data shows more doubts of respondent on the implementation of lawyers for the role of law enforcement in the practice of law in Indonesia compared to the number of those who do not doubt the ideal role of the lawyers. Various quantitative data demonstrates that the ideal role of lawyers as legal enforcer is governed by Lawyer and Code of Ethic Act in

public view (respondents), there are still significant differences between those who see positively and negatively. In fact, who see negatively is larger compared with positively.

4 CONCLUSION

Lawyer role in handling and fighting the clients' interests base has been stipulated in Act No. 18 of 2003 concerning lawyers and code of ethics that was signed as a result of a long journey in the historical development of Indonesian lawyers. In the context of the fight for the clients' interests, actually, the role of lawyers needs to be implemented in a clear distinction between the provision of legal assistance or as giving legal consultancy services. Lawyers as law enforcer officers have equal position with other law enforcement agencies in enforcing the law and justice. Lawyers profession has an important role in law enforcement efforts because any proceedings. To realize its role as law enforcer, the lawyers shall comply with the Lawyer and the Code of Ethics Act in synergistic cooperation and mutual respect with the other legal professions such as judges, police and prosecutors. As a honored profession in law enforcement, then the role of lawyers, both for the clients' and state interests are determined by the strength of the good legal culture within the lawyers organization itself. Therefore, the enforcement of the code of ethics of lawyers must become truly championed and implemented. Therefore, the authors also proposed that based on this study, needs to be examined continually the extent to which the effectiveness of the enforcement of the code of ethics of lawyer in practice the role of lawyers in Indonesia.

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