

## CULTURE A LAW AS SHARE VALUE SYSTEM ADVOCATE

Mustaqim, Yenny Febrianty\*, Mustika Mega Wijaya, Isep H Insan,  
Asmak Ul Hosna, Angga Perdana  
Faculty of Law, Universitas Pakuan Bogor, Indonesia  
Email: mustaqimsh@yahoo.com, yenny.febrianty@unpak.ac.id\*,  
mustikamega@unpak.ac.id, isep.insan@unpak.ac.id,  
asmak.hosnah@unpak.ac.id, anggaperdana@unpak.ac.id

### ABSTRACT

*Life nation and society in Indonesia must be based on dimensions of culture so that own value system (value system) is something based on life balance between the interests of society and law, meaning the creation of law aims to guard the interest whole society like done by lawyers. The study aims to find out (1) how the role of the advocate in enforcement law, and (2) analyze culture law as a value system for an advocate in enforcement law. The method of the study is juridical normative, that is by conducting a number of studies on regulation legislation as well as references other for can facilitate the explanation process of culture law for advocating in progress enforcement law. Findings from discussion study found that culture law for advocate in enforcement law is profession independent, free, and responsible answer To become an enforcer required law protection and guarantee from the country so Indonesian lawyers can help in a manner law society in need help law without exists discrimination belief, religion, descent, ethnicity, position social or belief politics.*

**KEYWORDS** culture law; value system; advocate; enforcement law



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### INTRODUCTION

The law in a country becomes a vital thing that is useful for protecting citizens from the crimes of other citizens and injustice leaders. The party receiving the disturbance can be protected by law from the party causing the disturbance (Husin

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& Husin, 2016). One of the legal countries is Indonesia. The law is explained as rules regarding sanctions and norms used to regulate the behavior of its citizens. Indonesia has a number of laws such as State Administrative Law, Civil Law, Criminal Law and Constitutional Law.

The Indonesian state is not a country based only on on power mere (*Machtsstaat*), but the state based on law (*Rechtsstaats*). Ideally a rule of law has a concept that it's the law be commander in chief which govern throughout dynamics statehood, (Hutabarat, 1985) so that No field economy or politics (Asshiddiqie, 2007). The ideals of a rule of law state can be realized by active enforcement as characteristic of law. In the midst of the chaos of this nation, the problem regarding enforcement law is an important thing to pay attention to as a priority repair (Arliman, 2015).

Legal problems can be identified through selective cutting down of the law enforcement process in society where it can be said that the law will be sharp downwards and blunt upwards. At present it is known that there are many smart, smart, and tie-dwelling people who become corruptors. They will justify any means to violate law enforcement, thus tarnishing the purpose and meaning of the law which provides benefits, justice, and certainty as a means of regulating life in their society. The appearance of law in Indonesia is still paralyzed when facing increasingly severe political, economic, and social problems. This emergency problem has eroded the nation's social institutions in various aspects of life, starting from the lower classes of society to the ruling elites (Busnarma, 2019).

True law aims to support goodness and justice and must side with the needs of the people at large, but law enforcement in Indonesia is still oriented towards the needs of its rulers. In fact, there are acute problems in our entrenched legal practices, such as when there is a reduction in law that only pays attention to procedural issues, without paying attention to other aspects. This is inseparable from the legal positivism model in influencing actions, perspectives, and the embodiment of the law enforcement process. The law should be placed on broad social goals and objectives in the context of legal reform. For example, with the existence of a critical legal study movement which has become a discursive practice in freeing law from the influence of positivism (Rahardjo, 2008).

Indonesia is a constitutional state, so Indonesia has a legal culture. This status can be used as a basis of reference in carrying out national legal development. Each society plays a major role in maintaining the status of the state, therefore every resident has a national identity that is tied to the identity of the nation. In carrying out national law development it is also related to the legal system in the form of a number of elements that are interrelated to obtain the objectives of the law. Efforts to develop national law are also influenced by the plurality of Indonesia, which has a variety of languages, ethnicities, religions, and cultures. Meanwhile, the establishment of Indonesia as a legal state can be found through Article 1 paragraph (3) of the 1945 Constitution.

The life of the nation, state, and society of the Indonesian state, should be based on the cultural dimension first before other dimensions. The cultural dimension has a value system as the basis for formulating a policy. Furthermore, law-making is carried out to become a code of conduct and a juridical sign for the

daily life of the community and the hope is to be able to describe the noble values of the nation (Purba, 2017).

Community legal awareness plays a role in achieving legal goals, namely ensuring justice and certainty. Society in its life has differences between patterns of behavior society and patterns of behavior regulated by legal norms/rules. This resulted in problems regarding social inequality which at one time had a tendency to become conflicts and other social tensions that could interfere with societal change. This situation is caused by disobedience and unawareness in the implementation of the law which guides all people in behaving (Maryano, 2021).

In social life, the process of implementing and developing law will inevitably face a number of external and internal problems. The law will essentially succeed when people can voluntarily accept it. Conversely, bad law is known from not being accepted by the community because it is not in accordance with the interests of the whole community. Therefore, it is necessary to balance the interests of the community and the law, meaning that the creation of the law aims to safeguard the interests of the entire community, as is done by advocates.

In Article 1 paragraph (1) of Law No. 18 of 2003, it is explained that an advocate is a person who has a profession related to providing legal services (outside or inside) to the court in accordance with the terms and conditions of this regulation. In the code of ethics of the Indonesian Advocate Working Committee, it is explained that 'An advocate is a person who has a profession related to providing legal services (outside or inside) the court in accordance with the terms and conditions of applicable regulations which can be in the form of legal consultants, lawyers, advocates, practicing attorneys, as well as a legal advisor'. An Advocate is tasked with assisting legal issues in court such as representing, accompanying, exercising power, and defending the interests of clients. In addition, advocates are also tasked with assisting with other legal issues such as negotiations, legal consultations, drafting trade contract agreements, and other needs in accordance with the legal interests of their clients. The study aims to find out (1) how the role of the advocate in enforcement law, and (2) analyze culture law as a value system for an advocate in enforcement law.

## **RESEARCH METHOD**

This study uses a normative juridical type, namely by examining a number of laws and regulations as well as other references to facilitate the process of explaining legal culture for advocates in the law enforcement process. The statute-approach (legislation) is the approach used in this research by conducting a review of laws and regulations regarding the legal issues handled or presented.

Research uses legal materials such as; 1) Primary legal materials which are binding legal materials, for example regulations regarding the Advocate profession, namely Law No. 18 of 2003; 2) Secondary legal materials in the form of books on one or a number of legal issues such as dissertations, theses, legal thesis, legal journals, and legal dictionaries. While tertiary legal materials can be in the form of the internet, encyclopedias, and KBBI. This research is presented based on doctrines, theories, principles, and applicable laws. This writing has specifications

that are descriptive and in line with the goals and problems of writing by illustrating several variables related to the problems studied.

## RESULTS AND DISCUSSION

### Role advocate In Law Enforcement

The word advocate can be known to originate from *advocate* which can be interpreted as a person with a profession who become an expert in law on a court. Besides that, it can also be interpreted as advice. True to his work in court, a lawyer can be called an advisor law (Salim, 2013).

Lawyers/advocates, as well as help/adviser law, is a term regarding related work process a companion defendant/plaintiff or whatever accused / suspect than words defender. Defendant terms itself the meaning a person who facilitates the judge's efforts to get truth material although opposite to corner view subjective or in favor of need accused / suspect.

In Article 1 paragraph (1) of Law number 18 of 2003, an advocate is described as someone who has a profession related to giving service law, fine outside or in the court according to terms and conditions provision related to legislation. In the Act Advocate number as long as 2 paragraph (1) has conditions for attorney appointment which forms bachelor with the background behind education tall law as well as Already take education professional advocate from an organization Advocate (Sarmadi, 2009).

Lawyers are a profession concerned with the management and regulation of legal stages, starting from the emergence of case cases to obtaining a judge's decision and execution (Supriadi, 2023). A legal consultant is a person who is not required to have a license to practice as a lawyer/advocate but is still required to have sufficient knowledge on how to resolve disputes in the field of law. In essence, there are similarities in the roles, functions, and responsibilities of legal advisors, lawyers, and advocates. Because they are legal subjects, people need advocates in order to facilitate the process of upholding justice. The use of an advocate has the goal of helping judges obtain the truth and providing legal assistance to defendants. Therefore, advocates can be said to enforce the law (Langgeng, 2018).

Law No. 18 of 2003 concerning Advocates is a form of legal reform that is carried out in a number of ways such as developing a legal culture, updating and perfecting laws and regulations, and empowering the judiciary and other legal entities. In Indonesia, in terms of law enforcement, there is still a lack of law enforcement morality (police, judges, advocates, and prosecutors) and judicial corruption which has been difficult to eradicate until now, as a result, the judicial mafia has emerged. In the implementation of law enforcement, the role/function of an advocate cannot be ruled out because it deals directly with the police, justice seekers, judges, and prosecutors. The Advocate Law has a new breakthrough that is important to study, namely the granting of equal status to other legal officials to Advocates in the context of upholding justice and law. This is regulated in Article 5 paragraph (1) of the Advocate Law which reads "Advocate with law enforcement status, free and independent who is guaranteed by laws and regulations." After knowing the functions and responsibilities of advocate organizations, they are

required to continue to provide support for legal reform by carrying out strict supervision of the ethics and behavior of each advocate. In this situation, the code of ethics of advocates plays a role in becoming a tool for overseeing the actions of advocates in ensuring integrity, quality of service, and defending the interests of society in the field of law and justice. An advocate organization in maintaining the quality of its members must oversee the intellectual competence of each advocate so that the community can receive a better quality of service. The most important problem in the process of enforcing the law in developing countries, especially Indonesia, is not in the law, but in the quality of the people who implement the law. Therefore, humans play a role in carrying out these laws (law enforcement) occupy a fundamental place, in line with Roscoe Pound's opinion, namely (Winarta, 2015):

*“The law, in its procedural as well as substantive aspects, is essentially made and administered by persons, whose views and interpretations are, buffeted by the winds of change through the years so that it has become a “truism that the quality of Justice depends more on the quality of the (persons) who administers the law than on the content of the law they administer.”*

“ Law in procedures and elements substantive is set rules designed by a number of people who have thinking open on changes. The rule was made in years which illustrates that justice and truth have been tested. those rules refer to the quality of the person who makes it a rule than the content of the rules made.”

Upholding process law only can be executed when institutional law applies the honest, professional, and compliant principles of *good governance*. In the implementation of law enforcement roles/ functions advocate No can be ruled out Because directly related to police, seeker justice, judges, and prosecutors. but in reality, system implementation Justice criminals usually only lead to the perpetrator as well seldom look closely at the interests of the victim at once perpetrator like in action criminal adultery and narcotics (Sudanto, 2017). Therefore study on professional advocates is required to keep an eye on his position when confronted with apparatus law other.

In Indonesia increasing law enforcement can be improved by doing reform law, that is renovating and repairing law to the whole *legal system* (system law) regarding structure, culture, and substance law (Friedman, 2001). In terms of legal reform, there is a renewal of legislation regarding Advocates, namely the Advocate Law. The law is based on the consideration of the independence of judicial power from the influence and interference of outsiders. Advocates whose work is free, independent, and responsible are needed to organize a trial that is fair, honest, and provides legal certainty for all justice seekers with human rights, justice, and truth in upholding the law. Therefore the advocate profession in the law enforcement process requires protection and guarantees from the law.

In the process of legal reform, advocates will not play a good role if they are not closely monitored regarding the ethics and behavior of each advocate. The supervisory task is the obligation of the advocate organization because its existence is related to the extent to which the advocate function can be carried out. Knowing the functions and responsibilities of an advocate organization is required to continue

to provide support for legal reform by carrying out strict oversight of the ethics and behavior of each advocate. In this situation, the code of ethics of advocates play a role in becoming a tool for overseeing the actions of advocates in ensuring integrity, quality of service, and defending the interests of society in the field of law and justice. An advocate organization in maintaining the quality of its members must oversee the intellectual competence of each advocate so that the community can receive a better quality of service.

The freedom and independence of the advocate profession must be accompanied by the responsibilities of each advocate and the organization that covers them. The Advocate Law has provisions as guidelines in the implementation of the advocate profession in harmony with its goals as upholding justice and law. This can be seen from the promise or oath of an advocate before starting his profession which is addressed to God, society and himself. In addition, there are also advocate organizations that play a role in the process of implementing the advocate profession. The Advocate Law explains that advocate organizations also regulate actions that include violations, supervision, and dismissing an advocate. An example is Article 6 of the Advocate Law which contains provisions regarding actions that can be imposed on advocates when:

- 1) Neglect or forget the needs of their client;
- 2) Behaving/behaving inappropriately towards competitors and friends in their profession;
- 3) Act, behave, say, or think in a disrespectful manner towards laws, laws, and courts;
- 4) Doing something contrary to the dignity, prestige, honor, and obligations of the profession;
- 5) Violating laws and regulations and doing bad things;
- 6) Violating Advocate promises/oaths as well as the code of ethics of the Advocate profession.

### **Analysis of Culture Law as a Value System For Advocate In Enforcement Law**

The testing process regarding the effectiveness of implementing a law enforcement system is based on the Legal System Theory from Lawrence M. Friedman. It contains the success or effectiveness of law enforcement is influenced by elements in the form of legal culture, legal material, and legal structure. The legal culture in society is related to living laws that are trusted by the community, legal material related to laws and regulations, and legal structures regarding law enforcers. In strengthening the understanding of legal substance, Friedman explained that “*Another aspect of the legal system is its substance. By this means the actual rules, norms behavioral patterns of people inside the system... the stress here is on living law not just rules in law goods*” (Friedman, 2001).

The legal system has another aspect, namely its substance which is the pattern of human behavior, rules, and norms in the system. Legal substance (legal substance) is related to binding laws and regulations and is used as a guide for legal apparatus. In addition, legal culture is described by Friedman as

*" The third component of the legal system of legal culture. By this we mean people's attitudes toward the law and their legal system belief, in other words, is*

*the elimination of social thought and social force that determines how the law is used attended, and abused.* "(Friedman, 2001). This can mean community behavior and the level of awareness of the law, or it can also gather strength and reduce social inequalities in implementing the law and preventing social deviations is the duty of an advocate.

Advocating is a noble profession because it contains professionalism. Advocate profession is carried out by upholding morality and idealism, so it is not just a profession to make money. Advocates in carrying out their work freely, independently, and responsibly in the law enforcement process need protection and guarantees from the state with the existence of laws and regulations so that they can uphold the rule of law (Rambe, 2001).

People who understand the complexities of the law hope to be able to help other people who do not understand the law or people who are the first to have a case and are dealing with a court because in general, these people will feel nervous when dealing with the law, so they need help from an expert as their representative (Mertokusumo, 2009). Help the No only provide benefits to litigants, but is also very This assistance not only benefits litigants but also greatly assists judges in deciding cases by contributing ideas to resolve a case regarding the law in society or within the court environment. helpful to judges deciding cases with give donation thinking For finish A case about the law in society or in the environment court (Halomoan, 2017).

Before becoming an advocate one is required to prepare himself with all skills, especially regarding his understanding of material law or formal law. Advocates are not only seen through their physical appearance, but what is most important is their attitude, character, character and personality. People with the profession of being an advocate are required to be creative, flexible, have character and substantive qualifications such as a sufficient level of enthusiasm so that work can be carried out optimally. Apart from having to have a good personality, advocates are also required to have the independence to assist them in completing the task of defending their clients without any intervention from other parties. This independence is a guarantor for justice seekers to be able to uphold the law (Halomoan, 2017).

Advocates must have a legal culture in assisting clients to resolve a legal case. In law enforcement, there is one important aspect, namely the process of education, correctional, and law culture (law education and law socialization). Without the support of understanding, knowledge, and awareness of the subject of law in society, it is nonsense that a law can be obeyed and stands upright. Therefore the design regarding education, correctional, and legal culture must always be developed to create a rule of law in the future. A number of factors regarding this issue are (a) control and development of infrastructure and legal information systems on the basis of information technology (information technology); (b) increasing socialization, communication, and publication of laws; (c) developing training and legal education; and (d) provide dissemination of exemplary and image in the field of law. So people with the profession of legal advisors, lawyers, or advocates are required to meet special requirements such as (Wlas & Simaha, 1989):

- 1) Expertise in law. someone with the profession of legal adviser, advocate, and lawyer is always in touch with the science of law and the development of public knowledge, therefore a legal expert from a law degree with the ability to carry out juridical obligations in practice or theory is needed in harmony with social developments in the environment rationally and objectively to obtain the truth and legal justice.
- 2) Freedom of profession, namely not having ties in a parent or superior organization, not having a relationship with a superior or official hierarchical level so that one can work freely, not having ties with anyone when carrying out a case but does not mean releasing a sense of solidarity with related agencies or professional friend. This freedom is freedom from a sense of responsibility based on the foundation of the 1945 Constitution and Pancasila.
- 3) Serve the public interest. willing to provide help and assistance to those who experience difficulties when they have problems by legally assisting those in need to avoid problems from justice seekers. This has a limit to the belief that his client is not a victim of injustice and prioritizes the public interest over his personal.
- 4) His profession is not aimed at seeking wealth. An advocate is not a civil servant and not a private employee of an agency, but a private job. Therefore the honorarium is free of services from the client and is incidental only, without being allowed to receive other honorariums that are not related to the case taken and not being allowed to ask for a double honorarium.
- 5) Relationship of trust with its clients. Credibility is an important thing in his work regarding the extent to which client secrets can be kept by him. Before helping his client, he must obtain complete data regarding the problem, the causality of facts, and delict on juridical facts regarding the problem in his case. In legally assisting clients, they must always try their best with their minds and energy in peace efforts or criminal and civil cases. So that the client can give full trust.
- 6) Keeping the personality of his client secret. There must be mutual trust between lawyers and their clients, because all client secrets are secrets that must be kept in the exercise of their profession. Advocates must maintain and protect these secrets as well as everything regarding case issues. Advocates are not allowed to disseminate client information for personal use or to opponents of the case in order to obtain compensation. Therefore, advocates are not allowed to have an interest in a case being carried out. According to the law on protecting client secrets, it is a moral obligation that advocates must uphold, so that when a client is harmed by not protecting his personal secrets, he has the right to sue the advocate.
- 7) The right to professional immunity, is the right to immunity or the right not to be regulated by law and the right not to be disturbed by anyone. A legal adviser, advocate, and lawyer in resolving public interests and defending the truth will receive legal protection.
- 8) The code of ethics, namely ethical signs or writing with a purpose, contains rules of morals, norms of life, morals, attitudes, and nobility according to self-awareness and self-realization. Therefore advocates in supporting justice, dignity, truth, and conscience need to maintain an image of authority and dignity



in carrying out their work. A provision is needed to regulate the procedures for advocates in carrying out their work, which is called a code of ethics.

In order to fulfill the independence requirements and qualifications of an advocate with a legal culture, a selective appointment process is required with tests of legal knowledge and personality in accordance with the law. Advocate organizations have involvement in appointing advocates with a code of ethics. Prospective advocates are required to have taken a code of ethics test from an advocacy organization, then will register themselves as members. Even though registration for the code of ethics test is carried out in every organization, its implementation is carried out simultaneously by all advocate organizations. The existence of requirements for testing the code of ethics from advocacy organizations will give recognition to the existence of the organization by providing conditions to prospective advocates because not all law school graduates can work as advocates. They are required to follow a strict selection process in order to obtain high-quality advocates so that they can serve people who need them.

## CONCLUSION

It is concluded that, the legal culture for advocates in law enforcement is an independent profession, free, and responsible for being law enforcers and requires protection and guarantees from the state with the existence of laws so that upholding the rule of law can be implemented. Advocates in Indonesia are required to have awareness in helping and legally advising those in need without discrimination in belief, religion, ancestry, ethnicity, social position, or political beliefs. The role of professional advocates in providing legal assistance is urgently needed to create an integrated justice system to achieve the protection of human rights. The judicial system supports the right to legal aid so that advocates as professionals that assist law enforcement can carry out their duties optimally in the judicial process in Indonesia.

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