

## RECONSTRUCTION OF THE ARRANGEMENTS FOR THE APPOINTMENT OF ADVOCATES

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### Abstract

The quality of advocates is currently in decline. This is due to the absence of similarity of standardization between advocate organizations. In addition, there are also many prospective advocates who have an internship certificate even though they have never done a 2-year internship but are still appointed as advocates. The formulation of the problem in this article is to analyze; (1) Weaknesses of the Advocate Appointment Arrangements in article 2 and article 3 of Law Number 18 of 2003 concerning Advocates and (2) The ideal construction of Advocate Appointment Arrangements in article 2 and article 3 of Law Number 18 of 2003 concerning Advocates. This research uses a conceptual approach with data collection techniques using interviews or filling out questionnaires and for secondary data derived from literature or legal documents then analyzed in a descriptive analysis. The result of the discussion The process of appointing advocates regulated in article 2 and article 3 of the advocate law has weaknesses; There is no obligation of the advocate organization to check the validity in the advocate appointment file, There are commercialization factors in the process of appointing advocates, There is no special institution that guarantees the standardization of the quality of advocates, therefore to overcome these problems it is necessary to regulate the Authority of the Advocate Organization to re-verifying the documents of the Appointment of Advocates, The unity of the system of the cost of appointment of advocates, The establishment of standardization institutions with advocates.

**Keywords:** Appointment of Advocates; Advocates; Commercialization.

### A. INTRODUCTION

After the promulgation of Law Number 18 of 2003 concerning Advocates on April 5, 2003, it became a new spirit for the revival of advocates. This is quite reasonable considering that the birth of the advocate law provides protection, and legal certainty of the rights and obligations possessed by an advocate.

Advocates also give a different color to the legal system in the country. This is quite reasonable considering that the advocate in working is nothing but to

defend the interests/legal rights of the person who gives the power of attorney (*client*) to him. In addition, the presence of advocates is also an effort to subdue the law according to its designation.

Another privilege of the advocate is its jurisdiction which covers the whole of Indonesia, and when carrying out the power of the advocate cannot be disputed. As well as advocates are required to litigate (*prodebo - probono*) for the poor. So it is not surprising that advocates are called noble professions (*Officium Nobile*). In addition, it is also referred to as law enforcement in

addition to the Police, Prosecutors, and Judges.

PERADI as the only advocate organization formed based on the advocate law, of course, has special authority to appoint prospective advocates in Indonesia.

In principle, this constitutional recognition provides a legal basis for PERADI to be able to carry out all the processes of appointing advocates. This administrative requirement must be submitted to the Branch Leadership Council of the Advocate Organization before it is submitted to the National Leadership Council of the Advocate Organization.

To become an advocate is not easy, it takes a long time, full of struggles, and a strong mentality. Take for example during the 2-year internship process, generally the advocate's office does not want to provide salary / wages but the mind and physique are squeezed in such a way. This situation is abused by many prospective advocates to find an instant way to be sworn in as an advocate immediately.

Administrative mall actions Generally, what is often done is to ask / buy an internship certificate, even though they have clearly never done an

internship at the advocate's office, besides that some prospective advocates are suspected of using fake internship letters.

“This case of forgery of internship letters has occurred in the kotabaru area, which was carried out by a lawyer named MHH as revealed by the kotabaru police.”<sup>1</sup>

The process of appointing advocates based on administrative malls by ignoring the precautionary principle is prone to cause legal problems in the future.

This situation is also accompanied by the condition of the division of PERADI into 3 (three) namely; “PERADI, PERADI Suara Advokat Indonesia (S.A.I), PERADI Rumah bersama Advokat (RBA), which are equally valid.”<sup>2</sup> In addition, “this split has an impact on the existence of law enforcement and a decline in the trust of advocate organizations in the community.”<sup>3</sup>

Another impact of the split within the PERADI organization caused the Supreme Court to issue letter number 73/KMA/HK.01/IX/2015 which essentially allowed the High Court to make a statement to all Advocate Organizations that had met the

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<sup>1</sup> Masduki Masduki, “Diduga Palsukan Surat Keterangan Magang, Pengacara Ini Terpaksa Berurusan Dengan Polisi,” *Lintas Kalimantan*, *Lintas Kalimantan* (blog, 2022, <https://lintaskalimantan.co/2022/07/04/diduga-palsukan-surat-keterangan-magang-pengacara-ini-terpaksa-berurusan-dengan-polisi/>).

<sup>2</sup> Maslon Hutabalian and Maria Ferba Editya, “Tinjauan Hukum Terhadap Dualisme Kepengurusan Organisasi Perhimpunan Advokat Indonesia (Peradi) Berdasarkan Uu No. 18 Tahun

2003 Tentang Advokat,” *Iuris Studia: Jurnal Kajian Hukum* 2, no. 18(2021):11-16, <https://doi.org/10.55357/is.v2i1.69>.

<sup>3</sup> Maslon Hutabalian, “Dampak Dualisme Kepengurusan Organisasi Perhimpunan Advokat Indonesia (Peradi) Terhadap Penegakan Hukum,” *Jurnal Justika* 02, no. 01 (2020): 54-60, <http://www.portaluniversitasquality.ac.id:5388/ojsystem/index.php/JUSTIQA/article/view/330>.

administrative requirements in the advocate law.

*"In a matter of 7 years alone, from 2015 to 2022, there have been 50 Advocate Organizations registered throughout the country. Such a fantastic number, with an estimated seven new Advocate Organizations born each year. It is likely to continue to grow."*<sup>4</sup>

With the increasing number of advocates on the one hand, it can make it easier for the public to get advocate legal services, but on the other hand, it has an impact on reducing the quality of the advocates themselves, where each advocate organization then competes with each other to find as many members as possible. It is because of this competitive factor that the Advocate Organization has lowered its quality sandart, negligently in checking the validity of administrative files. This often happens during the registration process for advocate education, advocate examination, and appointment of advocates.

Normaticallyfe there is indeed not a single article for the Advocate Organization to check the validity of the adm fileinistration of the appointment of the Advocate that wasfiled by the prospective advocate, but If in the future it is found The discrepancy of the data received is purely the fault of the prospective advocate, not the fault of the Advocate Organization. However, advocate organizations have a moral

responsibility to maintain the standardization of advocates. However, when someone is appointed as an advocate without being based on the right process, it is certain that when handling a case they tend to be perfunctory or even will extort / deceive their clients a lot.

This circumstance then worsens public trust in advocates. Of course, such a situation must be understandable to every advocate organization, lest in order to want to have many members, then be willing to mortgage the advocate's marwah.

The collapse of the advocate appointment system is due to the absence of the Advocate Organization's obligation to check the validity in the advocate appointment file, the commercialization in the appointment of advocates and the absence of a standard guarantee agency for the quality of advocates.

In order to realize these ideas, clear rules are needed in the Advocates Act. The main focus of the change is the need for the obligation of the Advocate Organization to check the validity in the advocate appointment file, and the commercialization in the appointment of advocates and the absence of a guarantee agency for the quality of advocates

The hope is that with thenew r egulation that regulates this matter can make the organization of advocates more controlled, careful in carrying out the process of appointing advocates while maintaining the quality and marwah of advocates.

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<sup>4</sup> Alexius Tantrajaya, "Peradi Pecah, Jumlah Organisasi Advokat Meningkat," *TabloidSkandal.com*, 2022,

<http://www.tabloidskandal.com/sorot/peradi-pecah-jumlah-organisasi-advokat-meningkat.html>.

In a study, it cannot be separated from the *novelty* between the research in this paper and the research carried out before, the researcher tries to compare the object of research, research methods and research results.

- 1) Research conducted by Syahrul Sitorus<sup>5</sup> entitled "Authority of the Indonesian Advocates Association in Proposing Advocate Bribery (Juridical Analysis of Constitutional Court Decision Number 35/PUU-XVII/2018)." By using a normative juridical approach, while the results are; PERADI has the authority to foster and supervise the Advocate profession as in the Advocate Law. From the process of education, testing, appointment, supervision of daily practices, everything has become the authority of PERADI.
- 2) Unlike the research conducted by Syahrul Sitorus, Harry Setiawan<sup>6</sup> conducting research on "the authority of PKPA a study PERMENRISTEKDIKTI No. 5 of 2019 concerning the advocate professional program." For the method of approach used is normative juridical. While the results of this study are; the absence of agreement from advocate organizations and the ministry of research, technology and higher education in making policies on

education, resulting in the uncertainty of education. The impact is that there will be uncertainty in Advocate Education later.

- 3) And the last one is the research of Miftah Ulumudin Tsani<sup>7</sup> with the title "Overlapping advocate regulations in Indonesia." Using normative juridical research methods, while the result of this research is that advocate regulations in Indonesia there are ambiguities, state policies related to advocates are not aligned and inconsistent with the Advocate Law. For example, a Civil Servant or State Civil Apparatus who concurrently serves as an Advocate, as in PERKAPOLRI No. 2 of 2017 clearly states that one form of legal assistance provided is in the form of advocacy. Meanwhile, the research conducted by the researcher has a different aspect in the title aspect, namely the Reconstruction of the arrangement of the appointment of advocates, which uses normative-empirical research methods, where later the results of this study will find the ideal construction in the appointment of advocates so as to reduce / prevent the appointment of advocates who use false files or documents.

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<sup>5</sup> Syahrul Sitorus, "WEWENANG PERHIMPUNAN ADVOKAT INDONESIA DALAM PENGUSULAN PENYUMPAHAN ADVOKAT (Analisa Yuridis Atas Putusan Mahkamah Konstitusi Nomor 35/PUU-XVII/2018) Syahrul Sitorus," *Jurnal Hikmah* 16, no. 2 (2019): 85-94.

<sup>6</sup> Harry Setiawan, "Kewenangan Organisasi Advokat Dalam Penyelenggaraan Pendidikan

Advokat Suatu Kajian Permenristekdikti No. 5 Tahun 2019 Tentang Program Profesi Advokat (PPA)," *Jurnal Usm Law Review* 2, no. 2 (2018): 254, <https://doi.org/10.26623/julr.v2i2.2273>.

<sup>7</sup> Miftah Ulumudin Tsani, "TUMPANG TINDIH REGULASI ADVOKAT DI INDONESIA," *Al-Adl: Jurnal Hukum* 13, no. 1 (2021): 153-67.

## B. RESEARCH PROBLEM

The formulation of the problem in this article is to analyze; (1) what are the weaknesses of the Advocate Appointment Arrangements in article 2 and article 3 of Law Number 18 of 2003 concerning Advocates? and (2) What is the Ideal Construction of Advocate Appointment Arrangements in article 2 and article 3 of Law Number 18 of 2003 concerning Advocates?

## C. RESEARCH METHODS

The main focus in this study is the reconstruction of the arrangements for the appointment of advocates. Therefore, this research is a normative-empirical (applied) legal research. research that examines the implementation or implementation of positive legal provisions (legislation) and "written documents in *action* (factual) on a certain legal event that occurs in society."<sup>8</sup>

Where in this study used primary data (respondents) either through interviews or filling out questionnaires, while the secondary data came from literature or legal documents which were then analyzed in descriptive analysis. In this study, the construction of advocate appointment arrangements is focused, current (*ius constitutum*) or future (*ius constituendum*).

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<sup>8</sup> Abdulkadir Muhammad, "Hukum Dan Penelitian Hukum" (Bandung: Citra Aditya Bakti, 2004).

<sup>9</sup> Muhaimin Muhaimin, "Research Methods," Mataram : Mataram University Press, 2022, 122.

<sup>10</sup> Mahmud Marzuki, *Penelitian Hukum* (Jakarta, 2017).

<sup>11</sup> Binzaid Kadafi, *Pembentukan Organisasi Advokat Indonesia: Keharusan Atau*

In this article, the approach used is a "conceptual approach,"<sup>9</sup> because there is no legal rule for the problem at hand. This approach comes from "the views and doctrines that developed in the legal sciences."<sup>10</sup>

## D. ANALYSIS AND DISCUSSION

### 1. Mechanism of appointment of advocates

#### a) Appointment of advocates before the birth of the advocate law.

Advocates existed during the colonial period. At that time the number of "advocates was only found in major cities that had *Landraad* and *Raad van justitie* with the *Balie Van Advocaten* Organization."<sup>11</sup>

The presence of advocates – *Procueurs* during the Dutch colonial period, where "the appointment of advocates was carried out by the Governor-general as stated in the R.O (*Rechterlijke Organitatie*)."<sup>12</sup>

In dutch times a person who can be appointed as an advocate must comply with the provisions of articles 186 and 192 (R.O) namely; "(1) Dutch citizen, (2) law degree, (3) passed the legal examination, (4) did a 3-year internship."<sup>13</sup>

The above requirements are certainly very difficult to achieve by

*TantanganPusat Studi Hukum & Kebijakan Indonesia Atas Kerjasama Dengan The Asia Foundation* (Jakarta, 2004).

<sup>12</sup> A Sukris Sarmadi, *Advokat Litigasi & Non Litigasi Pengadilan: Menjadi Advokat Indonesia Kini* (Mandar Maju, 2009).

<sup>13</sup> H A Sukris Samardi, "Advokat Litigasi Dan Non Litigasi Pengadilan: Menjadi Advokat Indonesia Kini," *Bandung: CV. Mandar Maju*, 2009.



someone considering that the level of education must be undergraduate. So that someone who is an advocate is very few.

So it's no wonder that dutch advocates are so expensive, that "only people of high status can represent their cases in court."<sup>14</sup>

Meanwhile, after the passing of the colonial era. Emerging The term lawyer practices and prokrol. Both have differences in terms of appointment, practicing lawyers must be appointed by the high court of each region of their competence after passing the graduation examination screen. Unlike the prokrol, his appointment only passes through the clerkship of the general court where he is domiciled, so he cannot be too free to practice law as a representative on appeal with a practicing lawyer. "Pokrol is only permitted to practice in the jurisdiction of the district court he is domiciled in."<sup>15</sup> "The first advocate of the colonial era was Mr. Besar Martokoesomo."<sup>16</sup>

#### **b) Appointment of advocates after the birth of the advocate law**

The number of advocates in this Law is slightly different, both in terms of the appointment mechanism and the administrative requirements that must be completed. As stated in article 2 of Law number 18 of 2003 concerning Advocates says:

1) *"Those who can be appointed as Advocates are undergraduates who*

*have a background in higher legal education and after attending the special education of the Advocate profession implemented by the Advocate Organization;*

- 2) *The appointment of Advocates is made by the Organization of Advocates;*
- 3) *A copy of the decree of appointment of the Advocate as referred to in paragraph (2) shall be submitted to the Supreme Court and the Minister."*

As for the administrative requirements to become an advocate, it is regulated in the provisions of Article 3 paragraph (1) of the Advocate Law, namely:

1. "a citizen of the Republic of Indonesia;
2. residing in Indonesia;
3. has no status as a civil servant or state official;
4. be at least 25 (twenty-five) years old;
5. have a bachelor's degree with a background in legal higher education as referred to in Article 2 paragraph (1);
6. pass exams held by the Organization of Advocates;
7. internship of at least 2 (two) years continuously at the Advocate's office;
8. never been convicted of a felony that carries a penalty of imprisonment of 5 (five) years or more;
9. behave well, be honest, be responsible, be fair, and have high integrity."

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<sup>14</sup> Yayan Riyanto, "MALPRAKTIK PROFESI ADVOKAT DI INDONESIA (ADVOCATE PROFESSION MALPRACTICE IN INDONESIA)" (Universitas 17 Agustus 1945 Surabaya, 2020).

<sup>15</sup> Riyanto, "MALPRAKTIK PROFESI ADVOKAT DI INDONESIA (ADVOCATE PROFESSION MALPRACTICE IN INDONESIA)."

<sup>16</sup> Ishaq Ishaq, "Pendidikan Keadvokatan" (Sinar Grafika, 2010).

**c) Appointment of advocates after the birth of the Supreme Court letter letter of the Chief Justice of the Supreme Court number 73 / KMA / HK.01 / IX / 2015**

The appointment of advocates is not much different, be it the lifting mechanism or administrative requirements that must be completed while still referring to article 2 and paragraph 3 of Law Number 18 of 2003 concerning advocates.

The birth of this letter certainly had a significant impact, where any advocate organization could make appointments and then could also propose to be inaugurated in the high court area of its jurisdiction. So that it is no longer the authority possessed by PERADI.

This letter also caused KMA Letter Number 089 / KMA / VI / 2010 dated June 25, 2010 regarding Advocate Counseling and Letter Number 052 / KMA / HK.01 / III / 2011 dated March 23, 2011 regarding the Explanation of KMA Letter Number 089 / KMA / VI / 2010 to be declared invalid.

The KMA letter is the first step in the transformation of advocate organizations into *multi-bar associations* as "fulfilling the human rights of the advocate profession and the community in obtaining legal advocacy."<sup>17</sup>

**2. Weaknesses of Regulating the Appointment of Advocates in Law**

**Number 18 of 2003 concerning Advocates**

As we know, the Arrangements regarding the appointment of advocates are regulated in article 2, and article 3. The birth of this law is a form of state recognition of the importance of the role, position of advocates in the law enforcement system in Indonesia. In addition, the birth of this Law is also an effort to maintain the regeneration of advocate organizations while maintaining the standards of quality and marwah of advocates. But despite this, it turns out that in the process of appointing an advocate has several disadvantages:

**a) The absence of an advocate organization's obligation to check the validity in the advocate's appointment file.**

The Advocate Law states that the Advocate Organization is a professional organization established under this Law. The Advocates Organization is likened to a home for advocates to gather. To maintain the existence of the Advocate Organization, it is necessary to increase human resources (*Regeneration*) both from the quality and quantity of its Members.

That in order to promote the sustainable *regeneration* of advocates, it requires legal guarantees and certainty for advocate organizations. This philosophical foundation became the

<sup>17</sup> IMAM GHOZALI and 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)," *Mizan: Jurnal Ilmu Hukum* 7, no. 1 (2020): 72-82.

forerunner of the holding of advocate appointment activities.

Meanwhile, the administrative requirements that must be completed in order to be appointed as an advocate are as stipulated in article 3 paragraph (1) of Law Number 18 of 2003 concerning Advocates. This condition is an absolute condition that must be submitted before appointment.

The implementation of the appointment of Advocates starting from the initial stage starting from participating in advocate education, taking the Advocate exam, until the appointment of Advocates is carried out by the National Leadership Council (DPN) of advocate organizations through the Branch Representative Council (DPC) as representatives in the region who are assigned to receive administrative files from prospective Advocates.

As the first party to receive and at the same time check the completeness of the advocate's appointment file, it is natural for DPC to be able to act carefully when checking the completeness of the file it receives before it will be sent to DPN. So that if you look at it, there are two stages of checking the completeness of the Advocate appointment file, the first stage of the prospective advocate file is checked by the DPC and if it is deemed that it meets the requirements, the file will then be sent to the National Leadership Council (DPN), while the second stage, namely the DPN then checks the completeness of the

completeness the requirements file sent by the DPC Party, and if the file of the prospective advocate is complete then the DPN Party issues a decree for the appointment of the prospective Advocate, which will later be sent to the Supreme Court and the minister, for further oath to be taken in the territory of the high court of his jurisdiction.

Although there are two stages of checking the completeness of the advocate appointment file, in the field it was found that the Advocate Organization was negligent in examining the administrative file of the prospective advocate, so that it then appointed a prospective advocate who was administratively opposed to article 3 paragraph (1).

*“Cases of alleged fake diplomas by advocates reported to the police are considered to be able to injure the advocate profession. If true, wearing a fake diploma, the reported person should not be worthy of being an advocate because it is contrary to the advocate law Number 18 of 2003.”<sup>18</sup>*

In addition, the most commonly found is that prospective advocates have never interned for 2 consecutive years, but they have an internship certificate. generally they get an internship certificate in a variety of ways; (1) by asking for free to friends who work as advocates, (2) there are also those who get it by buying from advocates, (3) there are also those who get it by falsifying.

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<sup>18</sup> Eko Fataip, “Kasus Ijazah Palsu, Pengamat Hukum Sebut Bisa Cederai Profesi Advokat,” suamerdeka.com, 2022.



This is reflected in the results of the questionnaire through a google form to advocates who often practice in the unfortunate area, where there are about 16 people who voluntarily fill it out, and then the results are obtained, namely;

Table 1

Opinion of Respondents to internship certificates

Category	Number of Respondents	Presented
1. Request an internship certificate	9	60%
2. Buy mail internship description	7	40%
3. Forging an internship certificate	0	0
TOTAL		100%

Based on the table above, out of 16 respondents said that as many as 9 or (60%) respondents said that in the past they obtained an internship certificate by asking a friend who was an advocate. While the rest "As many as 7 or (40%) advocates get an internship certificate by buying from a friend who is an advocate."<sup>19</sup>

This is in line with the opinion of senior advocate yayan rianto who said;

"That the requirement of a 2-year internship in the Advocate's Office is not professionally run by an individual due to proximity factors, so it is easy to have an internship letter."<sup>20</sup>

However, although there were no advocates who forged internship certificates, this phenomenon really exists, as one example "allegedly carried out by MHH which has been revealed by the Kotabaru police."<sup>21</sup>

Seeing the phenomenon of the administrative file of the above participants who do not meet the administrative requirements to be appointed as advocates cannot actually be charged to the Advocate Organization, because in the Advocate Law there is not a single article that requires the Advocate Organization to check the legality of the administrative file for the appointment of prospective advocates, this is in line with that submitted by Fariz Aldiano Phoa SH, one of the DPC Advocates Peradi SAI Kota Malang which says:

"Actually, in the Advocates Act, it is clear that the requirements and mechanism for appointing Advocates, related to administrative files, the DPC only checks the completeness of the appointment files submitted by prospective advocates, while related to the validity of the documents it is purely the responsibility of the prospective

<sup>19</sup> Googel Form, "Hasil Quisoner," 2022, <https://docs.google.com/spreadsheets/d/13oXhi6h2PK7p6eAVcWeL9PuDzYwEJKvfg4DKj9a5aM/edit?usp=sharing>.

<sup>20</sup> Redaksi, "Advokat Senior Malang Ajak Advokat Muda Tingkatkan Kualitas," 2022,

<https://bacamalang.com/advokat-senior-malang-ajak-advokat-muda-tingkatkan-kualitas/>.

<sup>21</sup> Masduki, "Diduga Palsukan Surat Keterangan Magang, Pengacara Ini Terpaksa Berurusan Dengan Polisi," 2022.

advocate. Based on a statement letter signed on a stamp.”<sup>22</sup>

The use of forged documents or internship certificates that are not obtained correctly will certainly have an impact on the cancellation of being appointed as an advocate, besides that it can also ensnare prospective advocates with article 263 of the Criminal Code, which carries a maximum prison sentence of 6 years.

The provision of criminal sanctions will not only befall prospective advocates, advocates who provide fake internship letters can also of course be criminalized, besides that it also violates the advocate's code of ethics and is contrary to article 6 of the Advocate Law.

The Advocate Organization as a gathering place for advocates should be given more responsibility to be able to re-verify the validity of all advocate appointment documents by direct confirmation to the parties who issued the documents. It is important to continue to uphold the noble values of advocates as a respectable profession (*Officium Nobille*)

#### **b) The existence of commercialization factors in the process of appointing advocates**

In the founding of a state cannot be separated from the so-called legal system. The law is often used by the state to be able to create order, security and justice in society. It was then formed by the Police, the prosecutor's office, and the

Supreme Court. These three components have different tupoctions.

The police, prosecutors, and the Supreme Court As state organs in the law enforcement system, of course, have more obligations and responsibilities in maintaining the law. Whether or not the law enforcement system is good in society can be seen from the reflection of the attitudes and behaviors of these state institutions. The better the law enforcement system, the better the community's observance of the law. And vice versa, the more dilapidated the law enforcement system, the worse the public's observance of the law.

So it is not surprising that the state then keeps the marwah of these three institutions in order to stay in the corridors of the existing law (*Rule Of Law*). Not only ethical sanctions, the use of heavier criminal sanctions (*penal Policy*) will also be accepted for those who violate. Although the punishment is more severe, there are still many people who still violate. There are many factors that cause the rampant violations of the law committed by these individuals, ranging from the lack of integrity, weak religious knowledge and work environment factors.

Abuse of authority by law enforcement officials is most often committed to poor people who have problems with the law. Many of their legal Rights are often ignored. This situation is inversely proportional to the rich society. So no wonder then came the term "law

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<sup>22</sup> Fariz Aldiano Phoa, "Wawancara Dengan Fariz Aldiano Phoa," 2022.

blunt up sharply down". It is these phenomena that later became one of the causes of the need for the presence of an advocate.

The presence of advocates as law enforcement outside the police, prosecutors, and the Supreme Court is very necessary, in addition to being an effort to assist judges in finding material truths, the presence of advocates is also an effort to avoid *abuse of power of law enforcement officers* when handling a case. So it is not surprising that advocates are referred to as law enforcement.

Having a status as a law enforcement officer is certainly not easy, there are many administrative requirements that must be completed by a person if he wants to become an advocate. In addition, being an advocate also requires a lot of funds, each Advocate Organization has different details in the process of becoming an advocate, but in general the details of the costs of becoming an advocate are as follows:

Table. 2

Comparison of the costs of being an advocate

No	Advocate requirements	Total Nominal
1.	PERADI <sup>23</sup> (Tuition Fees, Examinations, Oaths/appointments of Advocates)	Rp. 11.500.000

<sup>23</sup>PERADI, "Perhimpunan Advokat Indonesia," 2022, <https://www.peradi.or.id/>.

<sup>24</sup> "Perhimpunan Advokat Indonesia," n.d.

<sup>25</sup> "Perhimpunan Advokat Indonesia."

2.	PERADI Suara Advokat Indonesia (SAI) <sup>24</sup> (Tuition Fees, Exams, Oaths / appointment of Advocate)	Rp. 12.500.000
3.	PERADI Rumah Bersama Advokat (RBA) <sup>25</sup> (Tuition Fees, Examinations, Oaths/appointments of Advocates)	Rp. 11.500.000
4.	PERADAN (Perkumpulan Advokat dan Pengacara Nusantara) <sup>26</sup> (Tuition Fees, Examinations, Oaths/appointments of Advocates)	Rp. 11.850.000
5.	PPKHI (Perkumpulan Pengacara dan Konsultan Hukum Indonesia) <sup>27</sup> (Tuition Fee, Examination, Oath/appointment of Advocate)/appointment of Advocate )	Rp. 10.000.000

<sup>26</sup> "Perhimpunan Advokat Indonesia."

<sup>27</sup> "Program | DPN PPKHI | Perkumpulan Pengacara Dan Konsultan Hukum Indonesia (PPKHI)," 2022, <https://ppkhi.or.id/program>.

6.	DPN Indonesia <sup>28</sup> (Tuition Fees, Exams, Oaths / appointment of Advocate)	Rp. 11.750.000
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The imposition of Fees as shown in the table above is actually lawful. One of these factors was then by the Advocates then formed a new advocate organization which then held advocate Education, advocate examinations and appointments of advocates which he managed himself of course at a different cost than usual but they gave a guarantee/guarantee of definitely passing and being sworn in as an advocate. The more participants who register, the more benefits the advocate Organization gets.

Commercialization in the appointment of the advocate profession has indeed been rampant. Advocate organizations today are indeed more concerned with profit / finances solely on producing advocates who have *alita*s. This commercialization then has an impact on decreasing the quality standards of new advocates.

Actually establishing a new organization of advocates is everyone's constitutional right. However, if you set up a professional organization with commercial purposes, it doesn't feel right, and it's really unfortunate. Because after all, advocates are noble jobs (*Officium Nobile*), so in the process of appointing

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<sup>28</sup> "Program | DPN PPKHI | Perkumpulan Pengacara Dan Konsultan Hukum Indonesia (PPKHI).," n.d.

advocates, it is appropriate to prioritize quality improvement for advocates.

**c) The absence of a special Institution that guarantees the standardization of advocates.**

Conflicts in the world of advocate organizations are increasingly unclear in their direction. It has been 7 years since this conflict has not been resolved. Every advocate organization still claims to each other to gain legitimacy only itself is a legitimate advocate organization. The prolonged conflict has drained energy, time, and thoughts, causing the regeneration process to fall apart.

Actually, in the process of regeneration, advocate organizations have been given the authority and responsibility to organize advocate education, advocate examinations and the appointment of advocates.

Prospective advocates have been forged from the beginning when attending Advocate Education, where participants will be trained and taught about material on criminal procedural law, civil, state administration, commercial courts, industrial relations courts, professional ethics of advocates and so on. After attending advocate education, the participants will then be given a certificate by the advocate organization as proof of having attended advocate education.

The second stage that must be passed by a prospective advocate is to take the advocate exam. This process is

slightly different from advocate Education. At this stage, prospective advocates will be tested for their knowledge related to the material that has been taught in the advocate education process. Not all prospective advocates can pass the advocate exam. Only prospective advocates who reach the *passing grade* can be declared passed. Meanwhile, for those who have not been able to take the advocate exam process for the next period.

After a person has attended advocate education and is declared to have passed the advocate exam, prospective advocates can take the appointment / inauguration of the oath to become an advocate in the high court based on their legal domicile.

In fact, advocate education and advocate examinations are a means organized by advocate organizations to maintain advocate signs . The hope is that when you later practice, you can provide legal advice (*Advice*) properly to the community. In addition, it is also an effort to maintain the existence of advocate organizations. So it is not surprising that advocate organizations have special darts booths that must be fulfilled if they want to become advocates.

However, since the emergence of many new advocate organizations after the existence of KMA letter number 73 / KMA / HK.01 / IX / 2015 which allows all advocate organizations to carry out bribery. This is one of the reasons why advocates' standards have decreased. Advocate organizations are competing with each other in finding as many members as possible even though the

prospective advocate does not have the capacity and capability to become an advocate.

### **3. Ideal Construction of Arrangements for the Appointment of Advocates in Law Number 18 of 2003 concerning Advocates**

#### **a) The authority of the Advocate Organization re-verifies the Advocate Appointment document.**

As we know the advocate law is a form of state recognition of PERADI as a single container. In addition, the existence of these regulations provides legitimacy for advocates in carrying out their profession. So it is not surprising that UU Advocate is a guideline for advocate organizations.

Although the Advocate Law and the advocate code of ethics are guidelines for advocate organizations, it does not mean that these regulations are perfect regulations. These two rules still have weaknesses in terms of appointment of advocates, namely; (1) There is no obligation of the advocate organization to check the validity in the file of the appointment of the advocate, (2) There is a commercialization factor in the process of appointing an advocate and (3) There is no special institution that guarantees the standardization of the advocate.

Ideally, to be able to restore the marwah of advocates, inevitably the state through the House of Representatives must step in, immediately issuing new advocate laws to overcome this crisis. Its main focus is on updating the mechanism for appointing advocates;



The advocate bill that is being discussed by the Dpr also still does not accommodate this matter, this can be seen from the existing text, the appointment of advocates is regulated in article 9 of the Advocate Bill which in essence has the sound of the existing article in the advocate law.

In general, documents that are often found to be fake are diplomas or internship certificates. Related to this can be done easily in the current digitalization era.

Checking the strata diploma document (S.1) can actually be done by advocate organizations easily through the site "<http://belmawa.ristekdikti.go.id/ijazah/> or directly coordinating with the Ministry of Research, Technology and Higher Education."<sup>29</sup>

Meanwhile, in the internship process, advocate organizations should be able to model the appointment system in other professions, such as notaries. Because until now the Indonesian Notary Association (I.N.I) as a single organization remains consistent in maintaining the quality standards of notaries.

The notary appointment system is generally guided by "article 3 of Law

Number 2 of 2014 concerning the position of notary or known as UUJN"<sup>30</sup> and article 2 of Permenkumham Number 19 of 2019 concerning Terms and Procedures for Appointment, Leave, Transfer, Dismissal and Extension of Notary Term of Office as well as "article 6 number 1 of the Association Regulation Number: 06 / PERKUM / INI / 2017 concerning internships."<sup>31</sup>

Prospective notary when going to carry out an internship, then

"must first become an extraordinary member of the I.N.I., who then asks for recommendations from the city/district administrators to conduct internships and every six months conducts internships together with I.N.I through regional administrators in each province. Then after completion of the internship report back to the I.N.I organization."<sup>32</sup>

The internship process at a notary office can be recognized as a participant if it has been registered as an extraordinary member. "Participation in the internship is evidenced by the member number issued by the central board of I.N.I."<sup>33</sup>

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<sup>29</sup> Muhammad Eriton, "Muhammad Eriton, Pengoptimalan Peranan Komisi Pemilihan Umum Dalam Verifikasi Vaktual Pada Pencalonan Kepala Daerah," n.d.

<sup>30</sup> Munyarif Abdul . Abdullah, Nawaaf. Chalim, "Kedudukan DAbdullah, Nawaaf. Chalim, Munyarif Abdul . 'Kedudukan Dan Kewenangan Notaris Dalam Membuat Akta Otentik.' Akta 4, No. 4 (2017): 655-64. [Http://jurnal.unissula.ac.id/index.php/akta/article/view/2508](http://jurnal.unissula.ac.id/index.php/akta/article/view/2508).an Kewenangan Notaris Dalam Membuat Akta Oten," *Akta* 4, no. 4 (2017): 655-64,

<http://jurnal.unissula.ac.id/index.php/akta/article/view/2508>.

<sup>31</sup> Ida Bagus et al., "MAGANG TIDAK SEBAGAIMANA MESTINYA" 9, no. 2 (2021): 206-21.

<sup>32</sup> Hasna Shofiya, Abdul Halim Barkatullah, and Ahmad Syaifi, "Tanggung Jawab Calon Notaris Magang Pada Kantor Notaris Dalam Prespektif Undang-Undang Jabatan Notaris," *Banua Law Review* 4, no. 1 (2022): 23-31.

<sup>33</sup> Yetniwati Yetniwati, Ika Mudayana, and Arsyad Arsyad, "Perlindungan Hukum Terhadap Lulusan Magister Kenotariatan Yang Magang Di

The notary internship method if applied to prospective advocates will certainly be very good and structured, so that advocate organizations know correctly how many prospective advocates actually do internships, in addition to that it is also an effort to minimize the misuse of internship letters.

To accommodate this, the National Representative Council of Advocate organizations must give full authority to each DPC in each region.

Based on this contention, the construction of the apprenticeship article should be included in the new advocate bill, which reads as follows;

- (1) Before the appointment of advocates is carried out, the branch Representative Council (DPC) must re-verify the validity of the documents received from prospective advocates
- (2) If there are documents that are suspected to be false, the branch of the Representative Council (DPC) must coordinate with the relevant agency.

#### **b) Unified system of advocate appointment costs**

Since the outbreak of PERADI, and the issuance of KMA letter No. 73 / KMA / HK.01 / IX / 2015 has made a new advocate organization emerge and then make the appointment of advocates.

The change in the authority to appoint advocates which was originally

only owned by PERADI (singgel bar) to the authority of all advocate organizations (multi bar). This has an impact on the increasingly expensive (commercial) lifting costs. They argued that the imposition of such fees was for the cost of renting the building and the consumption of participants.

The state of advocate organizations (*multi bar*) will certainly also become a reality considering that the advocate bill in articles 15 to 31 regulates this.

Therefore, to be able to reduce the cost of appointment in the middle of the advocate organization (multi bar) requires a mutual agreement between each chairman of the advocate organization to determine the cost of appointing an advocate.

In fact, the appointment of advocates by advocate organizations generally coincides with taking oaths. Where first the process of appointing an advocate, then continued by the taking of oaths by the chief justice of the high court which is carried out in the office of the high court.

The Supreme Court has also “barred the high court from levying in the process of appointing an advocate.”<sup>34</sup> In this letter, the Supreme Court also prohibited the process of taking the oath of advocate outside the office of the high court.

Because the income and expenditure of the advocate organization is actually sourced from the dues of its

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Kantor Notaris,” *Soumatara Law Review* 3, no. 1 (2020): 41–51.

<sup>34</sup> “Diambil Dari

<https://www.Mahkamahagung.Go.Id/Media/85>

75, Pada Tanggal 27 November 2022 Jam 14.27 Wib.,” n.d.

members, not sourced from the process of appointing advocates.

Therefore, the construction of the proposed article is in determining the affordable cost of appointing an advocate, each advocate organization is obliged to conduct deliberations and then set forth in a mutual agreement.

### c) Establishment of standardization institutions with advocates

The polemic of the PERADI split has certainly hurt the advocate as a respectable profession. The Elites have no shame in each other by fighting for power. This situation has been gradually for about 7 years, which finally has an impact on the decline of advocates;

1. "The quality of advocates is doubtful because of the different standardization between advocate organizations;
2. The attitude of the advocate becomes uncontrolled outside the trial;
3. Many advocates switch organizations for circumventing ethical sanctions."<sup>35</sup>

This situation is also not accompanied by a shared responsibility between advocate organizations to be able to implement a rule / mutual agreement to be able to create a special institution to be able to guarantee and maintain the quality of advocates. This institution will later be given the task of

making the right formula in compiling the requirements and mechanisms for the appointment of advocates including advocate education, advocate examinations. In addition, this institution will be responsible in the event of a decline in the quality of advocates.

To improve the standardization of advocates amid the plurality of advocate organizations may be able to adopt in the united states known as the *federation of bar association system*.

The federation form is the best choice for advocate organizations in Indonesia. "This system certainly accommodates freedom of association and assembly as regulated by the constitution."<sup>36</sup>

All advocates in america are required to join the *American Bar Association (ABA)* at the national level, while also "at the state level must join the *Local Bar Bssociation*."<sup>37</sup>

The requirements to be appointed (license) to become an advocate are:<sup>38</sup>

- a. "Must pass a law school that has been accredited by the *American Bar Association (ABA)*;
- b. pass the "bar" exam (*Uniform bar Examination*);
- c. pass Character and Fitness Standards Requirement."

The form of federation is also adopted in japan and europe. Japan is called the *JapanFederation of Bar*

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<sup>35</sup> Tjandra Sridjaja Pradjonggo, "DAMPAK DITERBITKANNYA SURAT EDARAN KETUA MAHKAMAH AGUNG NO. 73/KMA/HK. 01/IX/2015 TENTANG PENYUMPAHAN ADVOKAT TERHADAP PROFESI ADVOKAT DI INDONESIA," *MAKSIGAMA* 19, no. 1 (2016).

<sup>36</sup> Monika Suhayati, "Pengaturan Sistem Organisasi Advokat Dalam Rancangan Undang-Undang," *Journal Kajian* 20, no. 4 (2015): 317-28.

<sup>37</sup> Arif Setiawan et al., "Perbandingan Pengaturan Penyelenggaraan Pendidikan Profesi Advokat (Ppa) Di Indonesia Dan Amerika Serikat," *Arena Hukum* 10, no. 1 (2017): 120-40.

<sup>38</sup>"Ibi 130," n.d.

*Associations/Nihon Bengoshi Rengokai (JFBA), with 52 local advocate organizations. While in Europe it is known as "The European Bars Federation/Fédération des Barreaux d'Europe (FBE). Currently FBE has 250 advocate organizations."*<sup>39</sup>

The application of the federated system in advocate organizations is certainly very suitable to be applied in Indonesia to avoid divisions in the body of the advocate organization and as a function of control over the quality of the advocate profession.

The better the function of professional control, the better the image and role of the profession in society, on the contrary, the non-functioning of the professional control selectivity filter (law) against violations of the code of ethics committed by its members, then "the existence of the professional community will become a social burden for society and seekers of justice."<sup>40</sup>

To be able to accommodate this, it is proposed as follows:

- 1) To be appointed as an advocate, it must first meet the requirements and recommendations that have been determined by the Indonesian advocate federation.
- 2) The process of appointing advocates is carried out by the federation of advocates which is then submitted to the Supreme Court.

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<sup>39</sup> Monika Suhayati, "Pengaturan Sistem Organisasi Advokat Dalam Rancangan Undang-Undang."

## E. CONCLUSION

- 1) That even though the process of appointing advocates has been regulated by the Advocates Act, this regulation still has the disadvantage of namely ; (1) There is no obligation of the advocate organization to check the validity in the advocate appointment file, (2) There is a commercialization factor in the process of appointing an advocate (3) There is no special institution that guarantees the standardization of the quality of advocates. This is also accompanied by the letter of the chief justice of the Supreme Court number 73/KMA/HK.01/IX/2015 which allows the high court to make briefings to all Advocate Organizations that have met the administrative requirements in the advocate law.
- 2) It is necessary to reconstruct the arrangements in the appointment of advocates, namely by the way the government immediately makes a new law in the bill regulating the existence of an advocate standardization guarantor agency (Indonesian advocates federation) which has the authority of advocate organizations to re-verify advocate appointment documents, the order of the advocate appointment fee system, the establishment of standardization institutions with advocates.

<sup>40</sup> Artidjo Alkostar, *Peran Dan Tantangan Advokat Dalam Era Globalisasi* (FH UII Press, 2010).

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