



COMPARISON OF LAWS REGULATION OF PROFESSIONAL ORGANIZATIONS OF ADVOCATES IN INDONESIA AND MALAYSIA

PERBANDINGAN HUKUM PENGATURAN ORGANISASI PROFESI ADVOKAT DI INDONESIA DENGAN MALAYSIA

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Volume 3, Number 1, March 2025

Received: February 04, 2025 Accepted: February 04, 2025 Online Published: March 27, 2025.

ABSTRACT

Advocates are one of the main pillars in law enforcement in Indonesia. To strengthen the existence of advocates as the main pillar of law enforcement, Law No. 18 of 2003 concerning Advocates was established. The purpose of establishing the Advocates Law isto provide guarantees of professionalism, independence and independence of the profession by upholding the principles of the rule of law and the constitution. Regulating the advocate profession is very difficult. Since the Advocates Law was enacted until now, there have been frequent incidents within the advocate profession that have ended in judicial review to the Constitutional Court. The conflicts that often occur are related to the interpretation of the provisions of the article concerning advocate organizations. Initially, advocates designed advocate organizations with a single organizational system as formulated in Article 28 paragraph (1) of the Advocates Law which states that: "advocates organizations are the only free and independent advocate profession forum formed in accordance with the provisions of this law with the intent and purpose of improving the quality of the advocate profession." This article often covers between advocate organizations that adhere to a single organizational system (single bar system) with advocates who are accommodated by more than one organization (ulti bar system). The conflict between advocate organizations indirectly brings the Supreme Court Institution into a vortex of problems related to the authority to organize the swearing-in of Advocates. The Supreme Court Letter Number: 73/KMA/HK.01/IX/2015 dated September 25, 2015 has opened up an opportunity for Advocate Organizations other than PERADI to encourage the swearing-in of Prospective Advocates at the High Court in the Advocate's

domicile jurisdiction. With its emergence The Supreme Court's letter adds new polemics amidst the division of the Advocates' organization which has not been managed well. Unlike Indonesia, the Advocates' Professional Organization in Malaysia is known as the Malaysian Bar (Badan Peguam Malaysia), which is a Legal Entity established based on the Advocates and Lawyers Act of 1947 and was later revoked and replaced by the Legal Profession Act 1976 or the Legal Profession Act of 1976. The organization is an Independent Lawyer organization that aims to uphold the supremacy of law and justice and protect the interests of the legal profession and the community. Every advocate and lawyer in Malaysia automatically becomes a member of the Malaysian Bar, as long as he or she has a valid Practice Certificate. In Malaysia, an Advocate's License is not based on the Court Oath Report but is sufficient with a Practice Certificate issued by the Malaysian Bar Association. PERADI, which is the sole advocate organization based on the mandate of Law No. 18 of 2003, is in fact very different from the sole advocate profession organization in Malaysia known as the Malaysian Bar Association. This article compares the regulation of the advocate profession in Indonesia which adopts a civil law system with Malaysia which adopts a common law system. The purpose of writing this article is to: first, analyze and compare the rules related to the Advocate Profession and Law Enforcement in Indonesia and Malaysia; second, analyze the regulation of the advocate profession organization in Indonesia by comparing the regulatory system in Malaysia. This normative legal research uses a statute approach and a comparative approach. Based on the results of the study, it was found that the rules related to advocates and advocate organizations have been regulated in Law No. 8 of 1981 concerning the Criminal Procedure Code, Law No. 48 of 2009, Law No. 18 of 2003 concerning Advocates and the Constitutional Court Decision Number 66/PUU-VIII/2010 dated June 27, 2011 and the Constitutional Court Decision Number 35/PUU-XVII/2018. The doctrine of comparative law can be used so that this method can improve the regulation of advocate organizations as law enforcers who provide certainty and justice to the community.

Keywords : Advocates, Bar Association, Law Regulation, Indonesia, Malaysia, Comparative

ABSTRAK

Advokat merupakan salah satu pilar utama dalam penegakan hukum di Indonesia. Untuk memperkuat eksistensi advokat sebagai pilar utama penegak hukum dibentuklah Undang-Undang No. 18 Tahun 2003 Tentang Advokat. Tujuan dibentuknya Undang-Undang Advokat adalah untuk memberikan jaminan profesionalitas, kemandirian dan independensi profesi dengan menjunjung tinggi prinsip Negara hukum dan konstitusi. Mengatur profesi advokat sangatlah sulit. Sejak undang-undang advokat di sahkan sampai dengan sekarang masih sering terjadi perselisihan diinternal profesi advokat yang berujung pada judicial review ke Mahkamah Konstitusi. Konflik yang sering terjadi adalah terkait dengan penafsiran ketentuan pasal mengenai organisasi advokat. Semula advokat mendesain organisasi advokat dengan system organisasi tunggal (single bar organization) sebagaimana dirumuskan

dalam Pasal 28 ayat (1) Undang-Undang Advokat yang menyebutkan bahwa: “organisasi advokat merupakan satu-satunya wadah profesi advokat yang bebas dan mandiri yang dibentuk sesuai dengan ketentuan undang-undang ini dengan maksud dan tujuan untuk meningkatkan kualitas profesi Advokat”. Pasal ini sering menjadi perdebatan antara organisasi advokat yang menganut system organisasi tunggal (single bar system) dengan advokat yang diwadahi lebih dari satu organisasi (ulti bar system). Konflik antar organisasi advokat ini secara tidak langsung membawa Institusi Mahkamah Agung dalam pusaran persoalan terkait dengan kewenangan untuk menyelenggarakan pengambilan sumpah Advokat. Surat Mahkamah Agung Nomor : 73/KMA/HK.01/IX/2015 tanggal 25 September 2015 telah membukakan kesempatan bagi Organisasi Advokat selain PERADI untuk mengusulkan penyempahan Calon Advokat di Pengadilan Tinggi pada wilayah hukum domisili Advokat. Dengan munculnya Surat Mahkamah Agung tersebut menambah polemik baru ditengah-tengah perpecahan organisasi Advokat yang belum terkelola dengan baik. Berbeda dengan Indonesia, Organisasi Profesi Advokat di Malaysia kenal dengan nama Malaysian Bar (Badan Peguam Malaysia), yang merupakan Badan Hukum yang didirikan berdasarkan Undang-Undang Advokat dan Pengacara tahun 1947 dan kemudian dicabut serta digantikan dengan Legal Profession Act 1976 atau Undang-Undang Profesi Hukum tahun 1976. Organisasi itu adalah organisasi Pengacara Independen yang bertujuan untuk menegakkan supremasi hukum dan keadilan serta melindungi kepentingan profesi hukum serta masyarakat. Setiap advokat dan pengacara di Malasia secara otomatis menjadi anggota Malaysian Bar, selama ia memiliki Sertifikat Praktek yang sah. Di Malaysia, Lisensi Advokat tak berdasarkan Berita Acara Sumpah Pengadilan namum cukup dengan Sertifikat Praktek yang dikeluarkan oleh Malaysian Bar Association. PERADI yang merupakan wadah tunggal advokat berdasarkan amanat Undang-UndangNo. 18 Tahun 2003, dalam faktanya sangat berbeda dengan Organisasi wadah tunggal profesi advokat di Malaysia yang dikenal dengan Malaysian Bar Association. Artikel ini membandingkan pengaturan profesi advokat di Indonesia yang menganut system hukum civil law dengan Malaysia yang menganut common law system. Penulisan artikel ini bertujuan untuk: pertama, menganalisis dan membandingkan aturan terkait Profesi Advokat dan Penegakan Hukum di Indonesia dan Malaysia; kedua, menganalisis pengaturan organisasi profesi advokat di Indonesia dengan membandingkan system pengaturan di Malaysia. Penelitian hukum normative ini menggunakan pendekatan statute approach dan comparative approach. Berdasarkan hasil penelitian, ditemukan bahwa aturan terkait advokat dan organisasi advokat, telah diatur dalam Undang-Undang No. 8 Tahun 1981 Tentang KUHAP, Undang-Undang No. 48 Tahun 2009, Undang-Undang No. 18 Tahun 2003 Tentang Advokat dan Putusan Mahkamah Konstitusi Nomor 66/PUU-VIII/2010 tanggal 27 Juni 2011 dan Putusan Mahkamah Konstitusi Nomor 35/PUU-XVII/2018. Doktrin perbandingan hukum dapat digunakan agar metode ini dapat memperbaiki pengaturan organisasi advokat sebagai penegak hukum yang memberikan kepastian dan keadilan kepada masyarakat.

Kata Kunci : Advokat, Ikatan Advokat, Peraturan Hukum, Indonesia, Malaysia, Perbandingan.