

The Role of Advocates in Providing Legal Assistance in Drug Abuse Criminal Cases

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ABSTRACT

The purpose of this study is to analyze: 1) How the role of advocates in carrying out legal assistance to clients in criminal cases; 2) What are the obstacles for Advocates in providing legal assistance to perpetrators of drug abuse crimes? The research method used is the normative legal research method or literature law research.

The results showed that: The enactment of Law Number 18 of 2003 concerning Advocates has provided a strong and solid foundation in the implementation of the duty of advocate service in community life. This law regulates more comprehensively various important provisions that surround the advocate profession. Various principles are also regulated in the implementation of the duties of the advocate profession, especially in its role in upholding justice and the realization of the principles of the rule of law in general. From the results of the study, it can be concluded that the terms and procedures for obtaining legal aid are regulated in Article 14 of Law No. 16 of 2011 concerning legal aid. The role of the Advocate as law enforcement, namely as a supervisor of law enforcement, as a guardian of Judicial Power and as a social worker.

Keywords: Role, Advocate, Law, Abuse, Narcotics, Criminal

INTRODUCTION

Background

Indonesia as a State of Law based on Pancasila and the Constitution of the Unitary State of the Republic of Indonesia Year 1945 has made rules that regulate the order of public life based on law aimed at creating security and order, and the consequence of this is that all actions and behaviors of the community must be in accordance and in line with applicable legal values.¹ With the development of the times, the problem of criminal crime in Indonesia is increasing and becoming increasingly worrying. One of the problems of criminal acts that until now still often occurs and is difficult to eradicate in Indonesia is narcotics.²

The development of the legal apparatus is carried out through the development of the legal profession and the strengthening of all legal organizations and institutions so that the legal apparatus is able to carry out its obligations which include counseling, application, and enforcement as well as professional legal services in the context of strengthening the protectors, the community. The quality and ability of law

¹ Mardani, 2008, *Drug Abuse in the perspective of Islamic Law and National Criminal Law*, Raja Grafindo Persada, Jakarta, p. 78

² O.C. Kaligis, Soedjono Dijjosiworo, 2008, *Drugs and its Judiciary*, O.C. Kaligis & Associates, Jakarta, p5

enforcement officers must be developed through improving the quality of their human beings, both the level of professional ability and welfare, and supported by adequate facilities and infrastructure. The quality of law enforcement must be reflected in an attitude that upholds honesty, truth and justice, is clean, authoritative and responsible in exemplary behavior. Judges as one of the law officers need to continue to improve the quality of their professional abilities and positions to support the judicial power in conducting quality and responsible justice.

Efforts to improve the quality of the legal apparatus towards a professional apparatus need to be supported by an education and training system including the curriculum and management of legal higher education supported by the completeness of libraries, especially in the field of law.

A criminal act is an act or act committed by a person where the act is expressly prohibited by the Criminal Code. Anyone can be a victim or perpetrator of a criminal act. One of the criminal acts that occur in Indonesia is the abuse of narcotics. The term Narcotic is an abbreviation of narcotics, psychotropic and other dangerous substances. Another term is Napza which stands for narcotics, psychotropic and addictive substances. The danger of drug abuse can cause users to experience various health problems which then lead to death.

The number of drug users always increases every year. Based on the results of data from the National Narcotics Agency (BNN) that drug users in Indonesia in 2017 reached 3.5 million people, of which 1.4 million were ordinary users and one million had become drug addicts. Drug use among teenagers is also increasing.³ Many factors can influence teenagers to consume these illegal drugs. They will initially consume narcotics because of the emergence of curiosity what effects occur after consuming them. In addition to having a negative impact on the health of its users, the abuse of narcotics can also have an impact on the economy. The National Narcotics Agency (BNN) estimates that economic losses could reach Rp74.4 trillion and that only comes from drug abuse. This number will continue to increase if drug users always increase every year.

The abuse of narcotics itself was urgent enough which then prompted the creation of Law Number 9 of 1976, then refined in Law Number 22 of 1997 concerning Narcotics, then underwent changes again which was passed by Law Number 35 concerning Narcotics on December 14, 2009.

Law Number 35 of 2009 concerning Narcotics provides an explanation that every perpetrator of narcotics abuse can be subject to criminal sanctions, so that narcotics abuse can be called a perpetrator of narcotics crimes. It should be understood that the problem of drug abuse is a complex problem. Therefore, efforts and support from all parties are needed to achieve the expected goals. Because the implementation of Law Number 35 of 2009 concerning Narcotics requires participation from all parties, be it the government, law enforcement officials, the community, teachers in schools to families. Because the problem cannot disappear by itself even though there are laws and regulations that regulate it accompanied by harsh sanctions.⁴

Law enforcement related to narcotics is said to be successful and effective determined by the factors of applying sanctions and good investigation and investigation techniques. Criminal sanctions have a *deterrence effect* function for every criminal offender. Criminal sanctions can be imposed with a minimum prison sentence or a maximum threat of imprisonment of up to 20 (twenty) years in prison until the heaviest

³ PUSLIDATIN, Drug Use Among Adolescents Increases, National Narcotics Agency, August 12, 2019, <https://bnn.go.id/penggunaan-narkotika-kalangan-remaja-meningkat/>.

⁴ Riki Afrizal, *Optimizing the Eradication of Narcotics Crimes through the Prosecution of Money Laundering Crimes Against Narcotics Dealers*, Simbur Cahaya Journal, Faculty of Law, Sriwijaya University, June 1, 2020, p. 4,

is categorized as a narcotics crime that is threatened with the death penalty.⁵ With the existence of penal sanctions, it is to prevent and correct the convict, in addition to maintaining the rule of law. While the death penalty aims as retaliation or learning for the community to be deterrent and not to repeat or imitate actions that violate the law.⁶

Article 111 paragraph (1) of Law Number 35 of 2009 concerning Narcotics has regulated who can be charged with crime and fines that must be borne by drug abusers or can be called drug offenders. In ordinary people, in general, there are still many who think that the punishment imposed on drug offenders is the same and the narcotics law also does not distinguish suspects of drug crimes and different sanctions.⁷ A suspect in a criminal case will face the state through his law enforcement officers, Van Bammelen described it as if it were a fight, so he said "the guarantee of human rights must be strengthened, because otherwise there will be inequality in accordance with the active role of judges so the first thing that must be highlighted is human rights."⁸

The Criminal Procedure Code (KUHAP) confirms that a person suspected of being involved in a criminal act still has rights that must be upheld and protected. The Criminal Procedure Code provides protection for the rights of suspects by placing a person who has been suspected of committing a criminal act in the same position as another person according to the law. So with the protection of the rights of suspects, they can provide guarantees and can prevent suspects from arbitrary actions by investigators during the investigation process.

Article 1 number 9 of Law Number 18 of 2003 concerning Advocates defines Legal Aid that "legal aid is legal services provided by advocates free or free of charge to clients who cannot afford it". While the definition of Legal Services is explained in Article 1 Paragraph (2), namely "Legal Services provided by advocates in the form of providing legal consultation, legal assistance, exercising power, representing or accompanying defense and carrying out other legal actions for the legal interests of clients."⁹

In addition to being regulated in Law Number 18 of 2003 concerning Advocates and the Criminal Code, Legal Aid is also regulated in Law Number 39 of 1999 concerning Human Rights Article 71 which states that the government is obliged and responsible to respect, protect, uphold and promote human rights.¹⁰

Legal aid has an important position in every criminal, civil, and administrative justice system, including in Indonesia. In general, it can be said that legal aid has objectives directed at various social categories in society, namely: (1) Guarantee and fulfill the right for Legal Aid Recipients to access justice; (2) Realizing the constitutional rights of all citizens in accordance with the principle of equality in law; (3) Ensure that the implementation of Legal Aid is carried out evenly throughout the territory of the Republic of Indonesia; and (4) Realizing an effective, efficient, and accountable judiciary.

Problem Statement

1. What is the role of Advocates in providing legal assistance to perpetrators of drug abuse crimes?
2. What are the obstacles for Advocates in providing legal assistance to perpetrators of drug abuse

⁵ Ibid.

⁶ Barda Nawawi Arief, 2007, *Law Enforcement Issues and Criminal Law Policy in Crime Reduction*, Kencana, Jakarta, p. 188.

⁷ Erni Widhayanti, 1998, *Rights of Suspects/Defendants in the Criminal Procedure Code*, Liberty, Yogyakarta, p. 34

⁸ M. Yahya Harahap, 2007, *Discussion of Problems and Application of the Code of Criminal Procedure*, Sinar Grafika, Jakarta, p. 323

⁹ M. Yahya Harahap, 2007, *Discussion of Problems and Application of KUHAP*, Sinar Grafika, Jakarta, p. 323

¹⁰ *Ibid*, p. 188

crimes?

Theoretical Framework

1. Theory of Justice

Justice comes from the word fair, in the Big Dictionary Indonesian fair has the meaning of not arbitrary, impartial, not partial. Fair means that decisions and actions are based on objective norms.¹¹ Justice is a matter concerning an attitude and action in human relations that contains a demand that others can treat according to their obligations.¹² According to Aristotle, justice is an action that lies between giving too much and also little which can be interpreted as giving something to everyone according to giving what is rightfully his, for example the right to life, the right to choose religion or belief, the right to education, the right to work, the right to have something, the right to express opinions, and others.¹³

Aristotle distinguished justice into two, namely distributive justice and cumulative justice. Distributive justice focuses on distribution, honor, wealth, or other goods that society can equally obtain. The distribution of wealth and valuables is based on the prevailing values among the community. A fair distribution is a distribution that is in accordance with its good value for society. While cumulative justice is justice that gives equally or proportionately to each individual without anyone discriminating. Cumulative justice has the aim of maintaining public order as well as the general welfare,¹⁴

There are several other views according to some world philosophers regarding justice. According to Ulpianus, justice is a will that is fixed and will continue to exist to give each individual what should be for him. Then according to Harbert Spenser gave a statement that justice is a policy that gives results, where each individual will get what has become his part.¹⁵

According to Thomas Aquinas, justice is one of the four fundamental virtues of life in addition to simplicity, constancy, and wisdom. Virtue is defined as a strong attitude of heart to do good and reject all forms of bad and evil. Virtue is done for good that will culminate and relate to justice.¹⁶

2. Law Enforcement Theory

There are quite a lot of laws and regulations governing the protection of migrant workers in Indonesia, ranging from the level of law (UU) to regional regulations. This condition shows that regulators highly value the role of laws and regulations in providing protection for migrant workers. This legislation certainly needs to be enforced. As for what is meant by law enforcement, it is a series of activities in the framework of efforts to implement legal provisions both enforcement and prevention which include all activities, both technical and administrative, carried out by law enforcement officials so as to create a safe, peaceful, and orderly atmosphere to obtain legal certainty in the community.¹⁷

¹¹ M. Agus Santoso, 2014, *Law, Morals & Justice: A Study of Legal Philosophy*, Ctk. J Secondly, Kencana, Jakarta, p. 85.

¹² John Rawls, 2006, *A Theory of Justice Theory of Justice*, Student Library, Yogyakarta, p. 26

¹³ *Ibid*

¹⁴ Ana Suheri, *The Form of Justice in Society in Review from a National Legal Perspective*, Journal of Morality, Volume 4 Number 1, June 2018, p3, Retrieved September 22, 2022, at 22:30 WIB

¹⁵ Amin Subhan, *Justice in the Perspective of Legal Philosophy on Society*, Journal, Volume 8 Number 1, January 2019, p. 6, Retrieved October 10, 2022, at 01.00 WIB

¹⁶ Adhlhiyat Zakki, Achmand, *Tracking Justice in Polygamy Regulation: A Study of Aristotle's Philosophy of Justice, Thomas Aquinas, and John Rawls*, Journal of Law, Volume 2 Number 2, 2019, pp 10-11,

¹⁷ Bima Anggarasena, *Law Enforcement Strategy in order to improve Traffic Safety and Realize a Law-Abiding Society*, Thesis, Semarang: Diponegoro University, 2010

Regarding the purpose of law enforcement, Satjipto Rahardjo argues that law enforcement is not only to obtain legal certainty but also to bring social benefits and justice.¹⁸ Legal certainty can prevent a person from and commit arbitrary acts; Social benefits are related to the results of law enforcement that do not cause unrest in the community; While justice is related to various interests of society. To produce law enforcement that can create legal certainty, expediency as well as justice is very difficult because these three things are difficult to unite. Law enforcement plays a role in synergizing these three things.¹⁹

Research Methodology

This research uses normative research approach method. This study prioritizes review in terms of legal regulations concerning the advocate profession. The normative approach method used with the starting point of research is the analysis of advocate laws and regulations as positive law in Indonesia²⁰. In addition, it also uses a sociological juridical approach because it is to see the application of laws and regulations on advocates concerning legal assistance for perpetrators of drug abuse crimes. Normative legal research in this study aims to find legal rules regarding the legal responsibility of advocates to clients in terms of the Law on Advocates.²¹ This research uses various approaches, the approaches used in this study are the statute *approach*, the *case approach*, and the conceptual approach.²² *The analysis used is qualitative descriptive analysis*, namely by observing data and linking each data obtained with provisions and legal principles related to the problem under study with inductive logic.²³

RESEARCH RESULTS

The Role of Advocates in Providing Legal Assistance to Perpetrators of Drug Abuse Crimes

The role of an advocate in the criminal case process means how this advocate or the lawyer who as someone has the ability in the legal field provides services in the legal field to people who have problems in the legal field, especially regarding criminal cases. The criminal case referred to here is someone who commits an act that is against the law, whether done intentionally or unintentionally, they have the right to obtain legal services or defense by an advocate or lawyer. Then, the criminal case process referred to here is how the advocate / lawyer accompanies a client who needs legal services starting from the process of investigation, investigation, prosecution, verdict to entry into the penitentiary. Protection of these clients is a manifestation of the provision of human rights protection to clients in an effort to defend their rights that the state wants to deprive.

The presence of advocates is very important in defending the interests of clients (defendants) of corruption in court hearings, so that a clean, fair and honest trial can be held legally and morally accountable. Advocates as an honorable profession (*officium nobile*) in carrying out their profession must obey and comply with applicable legal provisions and the code of ethics of the Advocate profession, are good at

¹⁸ Tonny Rompis, Sociological Study of Law on Declining Public Trust in Law and Law Enforcement Officers in North Sulawesi, *Lex Crimen* Vol. IV/ No. 8/Oct/2015, <http://ejournal.unsrat.ac.id/index.php/lexcrimen/article/view/10302/9888>, retrieved March 29, 2016

¹⁹ *Ibid*

²⁰ Johnny Ibrahim. 2006. *Normative Legal Research Theory and Methodology*. Malang: Bayumedia Publishing. p. 12.

²¹ Suteki and Galang Taufani. 2018. *Legal Research Methods (Philosophy, Theory and Practice)*. Depok: PT. King Grafindo Persada. p. 265

²² Peter Mahmud Marzuki. 2008. *Legal Research*. Cet.2, Jakarta: Kencana. p. 29 .

²³ Abdulkadir Muhammad. 2004. *Law and Legal Research*. Bandung: PT. Image. Aditya Filial piety. p. 127

maintaining the dignity and dignity of the profession, and are not easily influenced / provoked from material temptations that make the advocate profession despised and not trusted by the community.

The advocate profession is a profession that is needed by parties who are in dispute to obtain legal services, in the form of legal consultation, legal assistance, exercising power, representing, accompanying, defending and taking legal actions for the benefit of clients (Suspects / Defendants) in accordance with legal provisions and applicable laws and regulations as well as the code of ethics of the legal profession. Law enforcement *in* Indonesia will not run properly and correctly and fairly, if there is no advocate who plays an important role in conducting legal defense against suspects / defendants, which aims to position the subject matter of the law correctly and fairly. Because, if not, it is not impossible that criminalization will occur by law enforcement officials against someone, so that they are deprived of their independence. The role of advocates in legal defense of the interests of drug abuse defendants is justified by law and ethics, as long as it does not violate legal, moral and ethical rules/norms. Article 1 of Law number: 18 of 2003 concerning advocates, confirms, that: An advocate is a person who provides legal services, both inside and outside the Court that meets the requirements under the Advocates Law.

In addition to the advocate law, the Criminal Procedure Code also regulates the role of advocates in conducting legal defense against suspects/defendants, as referred to in articles 54 and 55, which affirm, that: For the purposes of defense, suspects or defendants are entitled to legal assistance from one or more legal counsel during the time and at each level of examination, according to the procedures prescribed in this law.²⁴

The existence of an advocate in conducting legal defense against parties who have legal defense is regulated in article 115 of the Criminal Procedure Code, which reads, that: paragraph (1) In the event that the investigator is conducting an examination of the suspect, legal counsel may follow the course of the examination by seeing and hearing the examination; (2) In the case of crimes against state security, legal counsel may be present by way of viewing but cannot hear the examination of the suspect.

The statement of article 115 of the Criminal Procedure Code above confirms how important the role and function of an advocate / lawyer in the investigation, namely supervising the investigation process of his client, so that it runs *fairly*, and avoids the potential for legal engineering by investigators that can harm clients.

The presence of an advocate is needed by litigants (Suspects / Defendants) or parties who are in legal disputes. However, legal defense by advocates must be in accordance with applicable legal corridors, upholding religious, moral norms and codes of ethics of the legal profession.

This fact is indisputable, because there are also unscrupulous advocates who underestimate the code of professional ethics, then easily violate it just to indulge the lust for momentary pleasure. Even though the Advocate Profession is bound by the professional code at all times, when defending the legal interests of the Suspect / Defendant both inside and outside the court. Because the advocate profession is perfectly attached to a code of ethics that has values and morals in it. Any advocate is bound by a code of ethics and it is mandatory for an advocate to abide by it. The Advocate Code of Ethics is clearly and unequivocally regulated in Law Number 18 of 2003 concerning Advocates.

Based on the theory explained in the previous chapter, advocates have the duty and authority to provide legal assistance for their clients. One of them is the perpetrator of drug abuse crimes. Legal aid is a guarantee for *equality before the law* and *access to legal counsel* to achieve *due process of law* for

²⁴ Hendra, Winata F., 1995, Indonesian Advocate Citra Idealisme dan Keprihatinan, Sinar Harapan, Jakarta. p 56

underprivileged communities. As one part of law enforcement officials, advocates have their own role in carrying out legal assistance in accordance with their capacity and authority in the context of law enforcement in order to create *justice for all*. This role is based on Law Number 18 of 2003 concerning Advocates Article 22 paragraph (1) which explains that an Advocate is obliged to provide free legal assistance to indigent justice seekers.²⁵

The duty of an advocate in providing legal services to the community is not detailed in the line of duty, because he is not a state official as an executor of the law like police, prosecutors, and judges. He is a profession engaged in law to provide defense, assistance, and be a power of attorney for and on behalf of his clients. It is referred to as a bastion of law or guard of justice in carrying out its functions.²⁶

Broadly speaking, the functions and roles of advocates include:

1. As guardians of the constitution and human rights;
2. Fight for human rights;
3. Implement the advocate's code of ethics;
4. Uphold the oath of advocate in order to uphold law, justice and truth;
5. Uphold and prioritize idealism (values of justice, truth, and morality);
6. Protect and maintain the independence, freedom, dignity and dignity of advocates;
7. Maintain and improve the quality of advocate services to the community by continuous learning to broaden horizons and legal knowledge;
8. Handling cases in accordance with the advocate code of ethics, both nationally, namely the Indonesian Advocates code of ethics, and internationally;
9. Prevent misuse of expertise and knowledge that harms the community by supervising the implementation of advocate professional ethics through the Honorary Board of the Bar Association;
10. Maintain the personality of an advocate because the advocate profession is an honorable profession. Every advocate must always maintain and uphold the image of his profession so as not to harm the freedom, independence, degree, and dignity of an advocate;
11. Maintain good relationships with clients and with colleagues;
12. Maintain the unity and unity of advocates to be in accordance with the aims and objectives of the advocate organization;
13. Providing *legal services, legal advice, legal consultation, legal opinion, legal information*, and drafting contracts;
14. Defending the interests of clients and representing clients before the court (*legal representation*);
15. Provide free legal assistance to the weak and underprivileged. Defense for the indigent, both inside and outside the court is part of the function and role of advocates in fighting for human rights.

In legal proceedings, advocates serve to assist judges in discovering legal truth. So that the client's interest in using the services of an advocate is the client's effort to seek protection of his rights which must be legally protected. In carrying out his duties, ideally an advocate does not discriminate between people to be clients ranging from background, origin, religion, culture, skin color, place of residence, economic level, gender, and so on. The role of an advocate can be seen from the initial process of submitting cases to the court cannot be separated from his role as an advocate in providing legal assistance, from starting to deal with administrative matters, until the litigation process is complete.²⁷

²⁵ Law Number 18 of 2003 concerning Advocates

²⁶ Rahmat Rosyadi and Sri Hartini, *Advocates in Islamic Perspective and Positive Law*, Ghalia Indonesia, Jakarta, 2003, p. 84

²⁷ *Loc, Cit.* p. 65

Based on Law Number 18 of 2003 concerning Advocates, Articles 14 and 15 explain that advocates are free in carrying out their professional duties to defend cases, issue opinions or statements in defending cases that are their responsibility in court hearings while adhering to the code of professional ethics and laws and regulations. Then in articles 17 and 19 paragraph (2) of Law No. 18 of 2003 concerning Advocates, it also states that an advocate has the right to obtain information, data, and other documents, both from government agencies and other parties related to the defense of his client's interests.

Law No. 18 of 2003 mentions the authority of an advocate first in Article 19 paragraph (1), advocates must keep everything known or obtained from their clients confidential because of their professional relationship, unless otherwise stipulated by law. Secondly, article 22 states that advocates are obliged to provide free legal assistance to indigent justice seekers. The obligation of advocates is also mentioned in Law Number 4 of 2004 concerning Judicial Power, where Articles 37 and 39 stipulate that advocates to provide legal assistance for everyone involved in a case, in providing legal assistance, advocates must help resolve cases by upholding law and justice.

An advocate is obliged to provide legal services to economically disadvantaged (poor) people. As mentioned in Article 3 of the KEAI, it is stated that an advocate cannot reject a case on the grounds of social position for the person who needs legal services, and implicitly in Article 4 also mentions "taking care of cases free of charge".²⁸ With this legal basis, advocates are required to be able to allocate time and resources to the poor as people who seek justice and need *pro bono* legal assistance. The provision of legal assistance is not only seen as an obligation but must also be viewed as part of social *contribution and social ability* in relation to the social role and function of the advocate profession. And if you do not carry out in accordance with professional obligations as mentioned in laws and other rules, then advocates can be sanctioned because they can be considered to have committed contrary acts.

Perpetrators of drug abuse are one of the cases provided legal assistance by advocates. Narcotics abuse, which is currently rife, makes law enforcement officials have to be more firm in implementing sanctions and punishments for perpetrators. Correspondingly, an advocate is obliged to accompany the perpetrator to fight for and defend their rights in court, even if they are in the position of a suspect. So that in the trial of drug abuse cases, advocates have a role to accompany and provide defense to their clients, this is based on the principle of presumption of innocence adopted in Indonesian law. This principle of presumption of innocence entitles a suspect or defendant to legal assistance to assist the suspect or defendant either in the course of an investigation or while facing trial in court. Article 54 of the Code of Criminal Procedure states that for the purpose of defending suspects or defendants are entitled to legal assistance from one or more legal counsel during the time and at each level of examination, according to the procedures carried out in this law. A suspect or defendant shall be entitled to legal assistance from one or more legal counsel at each level of examination for the purpose of defense (Article 54 of the Code of Criminal Procedure), personally selected by him (Article 55 of the Code of Criminal Procedure). Thus, the obligation of advocates to provide legal assistance to perpetrators of criminal acts is for the creation of justice. The provision of legal assistance to perpetrators of criminal acts is a form of dedication of advocates in carrying out their profession as one of the elements of law enforcement officials.²⁹

The role of an advocate in investigating his client is broadly speaking, namely accompanying the examination by the investigator which is passive in nature, meaning hearing and seeing the investigation

²⁸ Article 3 of the Indonesian Advocates Code of Ethics

²⁹ Hariyanto, Bayu Puji, 2018, Prevention and Eradication of drug trafficking in Indonesia, Journal of Daulat Hukum. p 45

process. The Advocate may not answer or tell the answer submitted by the investigator, but the Advocate only straightens out something odd if it is not in accordance with the rules, meaning that this suspect is protected and treated according to the regulations, lest there is a coercion or this suspect is harmed in the investigation process. The role of the advocate at the investigation level is to provide assistance to the client / suspect that in the examination there must be no coercion, meaning in the examination of a suspect whether the examining investigator gives/questions to the suspect who is entangled, where it seems as if this suspect has been proven to have committed the criminal act he committed, so it is the duty of the advocate or legal counsel to always set the record straight. Investigators in assisting when there are elements of coercion or pressure on suspects, then the suspect's legal counsel must remind investigators and / or provide input to investigators so as not to pressure or harass suspects.³⁰

Obstacles of Advocates in Providing Legal Assistance to Perpetrators of Drug Abuse Crimes

The existence of advocates increases the guaranteed rights of drug offenders in court. Guarantees for the implementation of human rights are needed in order to protect and prevent abuse of authority and power possessed by the state against its citizens. In fact, not all citizens have the ability to use the services of advocates or legal counsel to defend their interests in obtaining justice. This is because most members of Indonesian society still live below the poverty line and lack of knowledge of the law, coupled with the low culture and level of legal awareness of the community.

A professional advocate when providing legal assistance for justice seekers is indispensable in order to lead to an integrated criminal justice system to achieve protection of human rights. The criminal justice system is supported by legal aid rights arrangements that enable the advocate component to be fully capable in the criminal justice process.³¹ The role of a professional advocate who accompanies each client, must have high intelligence, expertise and specialization, extensive personal relationships with various agencies, adhering to the code of professional ethics, credibility and reputation, work optimally with little loss and good litigation skills. As a system, criminal justice has a set of structures or sub-systems that should work coherently, coordinatively and integratively in order to achieve maximum efficiency and effectiveness.

The implementation of legal aid is very necessary to guarantee and realize equality before the law for everyone, especially the poor. This is also intended to create the principle of *fair trial* where legal assistance carried out by an advocate in the context of the process of resolving a case, both from the investigation stage and in the trial process, is very important to ensure the implementation of legal processes in accordance with existing rules, especially when he represents his client in court to provide legal arguments to defend Clients.³² Generally, law enforcement agencies already have data on several names of advocates or lawyers who express their willingness to provide free legal assistance whenever needed. On the basis of data on the names of such advocates or lawyers, at all times at all levels of case examination starting law enforcement just contact to be appointed as legal counsel for suspects / defendants at any time necessary. It's just that sometimes it happens that the name of the advocate / lawyer who has been appointed by law enforcement officials is not in accordance with the wishes of the suspect

³⁰ Bambang Sunoto and Jawade Hafidz, *Legal Advisory Assistance to Suspects and Defendants in Corruption Cases (Legal Case Study of Semarang Corruption Court)*, Khaira Ummah Law Journal, Semarang, 2018, Vol. 13 No. 1, p. 303

³¹ Fabian M. Rompis, *The Authority of Advocates in the Criminal Justice System to Support an Integrated Justice System*, Journal of Lex et Societatis, 2013, Vol. 1 No. 2, p. 134

³² Binziad Kadafi, *Op., Cit.* pp 219-220

/ defendant. The refusal of legal counsel who has been appointed by law enforcement is usually based on various reasons. In general, the reason for this refusal is based on suspicion of the reputation of the legal counsel concerned. If such a thing happens, then law enforcement at all levels of examination must provide a full explanation, that the provision of legal assistance by legal counsel is actually not in the interests of the suspect / defendant alone, but more deeply is the interest of law enforcement, so that the result of the refusal of this legal counsel if not resolved will interfere with the course of the law enforcement process. The provision of legal assistance in principle aims to fight for the enforcement of human rights and human legal rights so that these rights remain guaranteed and protected. In practice, the implementation in the field that legal assistance provided by legal counsel is not easy to do, there are many obstacles faced by legal advisors when they provide legal assistance.

Advocate Irwan Midian Manurung, S.H., who is a Partner of Wardaniman Larosa & Partners (WLP Law firm) said the obstacles in accompanying suspects in the investigation process are as follows ³³:

1. Lack of legal awareness of the accused. Obstacles to the implementation of the function of an advocate actually come from the (*internal*) suspect itself, namely the lack of awareness of the suspect / defendant about the importance of the existence of legal counsel due to incomprehension and desire only to meet the requirements of the trial and quickly finish the case at hand and the assumption or rumor that develops in the community that being accompanied by legal counsel will make it difficult for the defendant before the court, because it is of the opinion that the one who knows the problem is himself. Perpetrators of drug abuse crimes also mostly come from communities that do not have much knowledge about the law. Plus, narcotics cases are cases that can involve many parties.
2. The attitude is not straightforward and there is no honesty of suspects in providing information or chronology and facts of events so that legal counsel is not optimal in determining legal studies and strategies in providing legal advice. That drug cases are cases that can drag many parties, so sometimes the perpetrators want to protect the person behind the case.
3. Lack of smooth examination and investigation process. In the process of investigation and examination, investigators often slow down the process, so that the time to solve the case that occurs becomes hampered. On the other hand, legal counsel is limited to the right to accompany suspects in the examination process only by seeing and hearing the course of the examination, as stipulated in Article 115 paragraph 1 (Code of Criminal Procedure), while in paragraph (2) it is explained that in the case of crimes against state security, legal counsel can be present by seeing but cannot hear the course of the examination.
4. The investigator's sometimes introverted attitude. There is a view of a legal counsel from the investigator that legal counsel will hinder the investigation process. Sometimes they make it difficult and hinder the presence of legal counsel in accompanying a suspect. This is indeed very contrary to existing regulations, especially the Criminal Procedure Code. Where in the Criminal Procedure Code it is said that suspects have the right to contact or be accompanied by legal counsel since arrested or detained.
5. There are different legal interpretations between legal counsel and investigators, causing it to be wrong to apply legal provisions to suspects.

³³ Harahap, M. Yahya, 2002, Discussion of Problems and Application of the Criminal Code, Sinar Grafika, Jakarta. p 73

In general, there are several obstacles experienced by legal counsel in this case an advocate in handling legal aid cases, including:

1. Internal barriers

Internal obstacles are obstacles that come from within the advocate itself, these internal obstacles such as HR, health, cultural and organizational problems of the advocate itself are divided so that they affect the defense later, for example this HR obstacle that not all advocates have legal skills or other legal expertise and if it is not in accordance with their expertise the advocate or legal advisor concerned can reject the case / case which it will deal with. The internal obstacle in question is the incomprehension or unprofessionalism of the advocate so that he does not understand the case he is handling. Only professional advocates who accompany clients, have high intelligence, expertise and specialization, extensive personal relationships with various agencies, adhere to the code of professional ethics, credibility and reputation, work optimally with little loss and good litigation skills. The obstacles encountered by advocates when providing legal assistance at the investigation level are the obligation for legal assistance at the investigation stage not carried out by the investigator, differences of opinion between investigators and advocates where legal assistance is mandatory and must be fulfilled because if ignored it can result in the examination obtained invalid and null and void. The application of Article 115 of the Code of Criminal Procedure regarding the participation of legal counsel in investigations is facultative and passive. Facultative means that the right cannot be imposed on the investigator, solely depending on the will and opinion of the investigator whether or not to allow the course of the investigation examination. Passive in the sense that the presence of legal counsel follows the course of the examination, only sees and hears the contents of the examination, and this passive nature is increasingly restricted in terms of crimes against state security who can only see and cannot hear the course of the examination. This does not place equal standing and equality between investigators and legal counsel.

2. External barriers

External barriers are often found by Advocates in providing legal services. This external obstacle is seen from situations or circumstances caused by others or not in accordance with laws and regulations. For example, there is a stigma, suspects or defendants have first been convicted by the community as if they had committed a criminal act even though there has been no permanent legal decision against the suspect or defendant. The paradigm that a person who has been presented as a defendant before the court in a criminal case must be found guilty and given a sentence in a court decision, in the facts that exist if an advocate asks someone to be a witness at the trial there is a lot of fear that there will be a fear of being made or included as a suspect or defendant so that if this happens then the advocate is very difficult to find and make evidence for his defense.

CONCLUSION

The results showed that;

- a. In legal proceedings, advocates serve to assist judges in discovering legal truth. So that the client's interest in using the services of an advocate is the client's effort to seek protection of his rights which must be legally protected. In carrying out his duties, ideally an advocate does not discriminate between people to be clients ranging from background, origin, religion, culture, skin color, place of residence, economic level, gender, and so on. The role of an advocate can be seen from the initial process of submitting cases to the court cannot be separated from his role as an advocate in providing legal assistance, from starting to deal with administrative matters, until the litigation process is complete.

- b. The obstacles of an advocate in providing legal assistance consist of internal barriers and external obstacles. Internal barriers are obstacles that come from within the advocate itself, these internal barriers such as human resources, health, cultural issues and the advocate organization itself are divided so as to affect the defense. While external obstacles are seen from situations or circumstances caused by others or not in accordance with laws and regulations.
- c. The possibility of potential bribes between Judges and Advocates and assisted by the Public Prosecutor in handling Corruption crimes at the Corruption Court at the Samarinda District Court is very potential and wide open, but it is very difficult to find sufficient evidence of the existence of bribes. This is corroborated by the confession of one of the Ad hoc judges for the Criminal Act of Corruption, that the judge concerned claimed to have been visited by an advocate who tried to bribe the judge to influence the judge's decision to defend the interests of the client

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