SETTLEMENT OF ANY CASES BY ADVOCATES AGAINST CLIENTS

Nendyo Agung Legowo¹, Hervina Puspitosari²

Program Studi Ilmu Hukum, Universitas Pembangunan Nasional "Veteran" Jawa Timur
e-mail: nendioagunglegowo@gmail.com

Abstract
The client gives a control of lawyer to the advocate went with by a discourse of the rights and commitments of the parties. Advocates are entitled to an honorarium and clients are entitled to lawful help in a mindful way and in agreement with appropriate law. Article 6 of Law Number 18 of 2003 concerning Advocates (Law on Advocates) emphasizes that disregarding clients and negligence of cases may be a infringement that can be arraigned. The Advocates’ Organisation Board, particularly the PERADI Territorial Organisation Board (DKD) of East Java, is authorized by the Law on Advocates to require activity and endorse advocates who are demonstrated to have damaged advocates profesional ethics. The truth is that there are still numerous advocates who abuse the code of morals, one of which is case disregard. All through 2019-2020, 11 (eleven) cases of infringement of the code of morals were recorded by the DKD PERADI East Java. The detailing of the issue talked about is lawful cures that clients can take against.

Keywords: Negligence of Cases, Advocate, Clients

INTRODUCTION
The current era of globalization and modernization has made ethics a fundamental matter in the life of the nation and state. Ethics is an important thing in the profession, especially the legal profession. Law enforcers in carrying out their duties require a professional code of ethics so as not to lose their way when enforcing the law. Advocates are needed when justice seekers need assistance in solving the legal problems they face. The implementation of a trial that is honest, fair and has legal certainty is one of the reasons for the presence of advocates in the judicial system in Indonesia. Advocate independence aims to support the administration of a justice system that is free from power and political intervention in terms of law
enforcement, and with that independence the advocate profession is said to be a very noble profession (officium nobile). The existence of advocates as law enforcers in the Indonesian justice system is guaranteed by Article 5 of Law Number 18 of 2003 concerning Advocates (Advocate Law). In addition to law enforcers, advocates also act as legal advisers. Counseling about legal issues faced by clients is one of the functions of an advocate.

A power of attorney is an instrument entrusted by a client to an advocate to assist the client in resolving his legal issues. When an advocate accompanies his client in court, the advocate needs a special power of attorney as stated in Article 123 Herzien Inlandsch Reglement (HIR). A power of attorney binds both parties, namely the principal or client and the attorney or advocate. The element of the agreement in the power of attorney is an agreement, so that the power of attorney can be said to originate from an agreement between the client and the advocate. The agreement can be made by the parties orally or in writing. The agreement must meet the requirements for the validity of the agreement contained in Article 1320 of the Civil Code. If one of the parties violates the agreement when submitting the power of attorney, the party commits a default.

Clients and advocates generally discuss their respective rights and obligations when discussing agreements. One of these rights and obligations is regarding honorarium. The parties will agree on an honorarium to be given by the client to the advocate, if the parties really want an honorarium. Clients who do not pay honorarium according to the agreement can be declared in default and the advocate has the right to collect bills and even withhold documents belonging to clients (retention rights). It’s a different matter if an advocate commits a default by not carrying out the affairs entrusted to him. For example, the client has given the promised honorarium to the advocate, but the advocate does not carry out his duties properly, or suddenly disappears somewhere and leaves his client confused. What the advocate did was a
violation of the code of ethics that could be sanctioned by a professional organization in the form of a reprimand, temporary dismissal, or even dismissal.

To maintain client trust in advocates, an advocate organization was formed which aims to improve the quality of the advocate profession and provide oversight of advocates. Law Number 18 of 2003 concerning Advocates (Advokat Law) gives authority to advocate organizations to determine, supervise, and implement a code of ethics for the advocate profession for all of its members. The existence of a code of ethics for the advocate profession is expected to be a protector for clients whose rights have been violated by the advocate concerned. Article 7 of Law Number 18 of 2003 concerning Advocates (Advocates Law) states that against naughty advocates the advocate organization has the authority to impose sanctions if proven to have violated the code of ethics of the advocate profession.

Every advocate in carrying out his profession has an obligation to assist clients in seeking justice and upholding justice in a responsible and in accordance with applicable law. Settlement of cases is also one of the obligations of advocates in helping their clients. Article 6 of the Advocate Law confirms that ignoring and neglecting the interests of clients is a violation that can be prosecuted. Strict sanctions will be imposed on advocates who violate the provisions in Article 6 of the Advocate Law. PERADI’s honorary council which is authorized by the Advocate Law can take action and sanction advocates who are proven to have violated the code of ethics.

Pursuant to Article 26 and Article 27 of the Advocate Law, an honorary council of advocate organizations under the auspices of PERADI was formed. PERADI, which has ratified the Honorary Council, automatically ratifies a code of ethics that is mutually agreed upon. The Indonesian Advocate Code of Ethics (KEAI) as the highest law in carrying out the advocate profession guarantees and protects advocates. The Indonesian Advocate Code of Ethics (KEAI) is a
guide for advocates in carrying out their obligations to be honest and responsible in carrying out their profession both to clients, courts, the state or society, and especially to themselves. The purpose of the advocate's code of ethics, among other things, is that professional organizations should have a code of ethics that imposes obligations and at the same time provides legal protection to each of its members in carrying out their profession. All PERADI members are expected to maintain an image of professional honor, uphold the code of ethics, and carry out the professional oath.

The creation of a system of professional ethics that is so complex is not a guarantee for the establishment of an officium nobile advocate profession. In practice, some advocates carry out their profession by violating the code of ethics for their own interests. Instead of upholding law and justice, these advocates act for the sake of truth and society needs them, but instead deceive their clients who are legally illiterate for their own interests. This is of course troubling the public because advocates who are actually noble professions even deceive people who are legally illiterate and need help. Even though a system of professional ethics has been created in advocacy organizations, if there are advocates like that, then the advocate's code of ethics and all supporting instruments will be in vain because the ethical and moral education of these people is lacking.

**RESEARCH METHODS**

The type of research used in this legal research review is empirical research. Empirical research is legal research from an external perspective with social attitudes and behavior towards law as its research object. This study uses empirical facts taken directly from human behavior obtained directly through verbal (interviews). This legal research is used to discover the process of occurrence and regarding the working process of law in society by
examining the relationship between law and other social institutions using social science research techniques.

The data sources used are primary and secondary data sources. Primary data sources are data obtained directly from the field based on sources. The author conducted the data collection by conducting interviews with the Secretary of the Regional Honorary Board of PERADI East Java, Ms. Luh Putu Susila Dewi S.H. and Mr. Naen Soeryono S. H., M. H. as Member of the Honorary Council at the Regional Honorary Council of PERADI East Java. The secondary data source used in this legal research is data collection which is carried out by studying and collecting data from documents and literature, laws and regulations, electronic documents and other documents.

RESULTS AND DISCUSSION

Legal Remedies and Refunds of Client Losses Against Advocates Abandoning Cases

According to the code of ethics for the advocate profession compiled by Teguh Samudra, a client is a person or legal subject who, by giving power of attorney, is given legal assistance by an advocate/legal adviser or by those who carry out the function of being an advocate/legal adviser. When a legal subject (natuurlijke persoon or rechtspersoon) experiences a legal issue and fully submits the legal issue to an advocate with a power of attorney, then automatically the legal subject is the client of the attorney receiving the power of attorney. An advocate who has established a legal relationship with his client is prohibited from ignoring and neglecting the client's interests as long as there is a legal relationship between the two, this is stated in Article 6 letter a in the Advocate Law and further regulated in the Indonesian Advocate Code of Ethics (KEAI) Article 4 letter i. Advocates who violate the provisions of the Law on Advocates and KEAI may be subject to sanctions in the form of ordinary warnings, severe warnings, suspension for a certain time, or dismissal from membership in professional organizations.
Clients in granting power of attorney to advocates can be done with a public deed, private letter, verbally, or secretly, but in practice the court usually asks for a power of attorney in the form of a public deed or private letter that has been agreed by both parties with signatures to make it easier trial administration process. Agreements regarding the rights and obligations of each party, namely the client and the advocate, have generally been discussed and agreed upon automatically by granting power of attorney by the client to the advocate. In contrast to a written power of attorney, not all agreements made by clients and advocates are in the form of public deeds or private letters, some agreements are only conveyed orally. This verbal agreement is not only difficult to prove in default cases but can also be detrimental to clients whose cases are abandoned by advocates due to a lack of available documentary evidence, indeed difficult but not impossible.

Based on Article 27 of the Advocate Law, advocate organizations form an Advocate Organization Honorary Council at the regional and central levels whose task is to examine and adjudicate cases of violations of the advocate’s code of ethics. PERADI as an advocate organization has a Regional Ethics Council at the provincial level with legal authority in their respective provinces and a Central Ethics Council located in Jakarta. Regional Honorary Council (DKD) PERADI East Java which is located on Jl. Embong Sawo No. 16-18, Surabaya has the authority to examine and adjudicate cases of violations of the advocate’s code of ethics within the scope of East Java Province.

The PERADI Honor Council is tasked with examining and prosecuting advocates who have been proven legally and convincingly guilty of violating the Advocate Law and KEAI. There are several conditions that must be met to be able to report the Defendant’s advocate and become a Complainant from an advocate violating the code of ethics. Advocates who can be complained to the PERADI Honorary Council are advocates who are members of the Indonesian Advocates Association (PERADI). The requirements for reporting an advocate
who violates the code of ethics according to Article 11 KEAI are clients, advocate colleagues, government officials, community members, and the Central/Branch/Regional Leadership Council of the professional organization where the Defendant is a member.

The Regional Honorary Council decides by the composition of the Honorary Council Assembly which consists of at least three members or more, with an odd number of members, one of whom is also the Chairman of the Assembly. The assembly may consist of an Honorary Board or be added to Ad-Hoc Honorary Council Members, namely people who carry out professions in the field of law and have knowledge and are animate to the Advocate Code of Ethics. The assembly is elected at a special Central Honorary Council meeting chaired by the Chairman of the Central Honorary Council. The Central Honorary Council makes a decision based on the materials contained in the case file, but if deemed necessary, it may request additional material from the parties concerned or be summoned directly. All provisions that apply to examinations at the first level by the Regional Ethics Council, mutatis mutandis apply to examinations at the appellate level by the Central Ethics Council.

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If an advocate who has been sanctioned by a code of ethics still does not have good faith in returning the losses suffered by the client, the client has the right to file a breach of contract against the advocate. According to Mr. Naen Soeryono S.H., M.H. as a Member of the Honorary Council at the East Java PERADI Regional Honorary Council, if an advocate who neglects a case has been sentenced to a code of ethics but he insists on not returning the losses suffered by the client then the client can file a default lawsuit against the advocate on the basis PERADI Honor Council decision. This rarely happens,
but in order to provide certainty for compensation to the client, the decision of the Honorary Council can be used as a basis for a lawsuit for Default. It should be noted that an advocate who violates the code of ethics cannot be subject to direct criminal or civil penalties.

Default is the non-fulfillment of obligations that should be carried out by the parties bound in the agreement. Article 1238 of the Civil Code regulates default, which in essence states that the debtor is declared negligent if within the specified time limit the debtor does not fulfill his achievements. It is the same as the agreement between the client and the advocate, if one of the parties whose rights are violated, he has the right to file a breach of contract to cover his losses. So that if the client has carried out his obligations to the advocate, namely paying a predetermined honorarium fee, but the advocate has not carried out his obligation to assist the client in solving his legal problems, then the advocate can be sued for having committed a default

**Enforcement of the Advocate Code of Ethics and Settlement of Abandonment Disputes Between Clients and Advocates Conducted by PERADI**

Enforcement of the code of ethics is an effort to carry out the code of ethics as it should, monitor its implementation so that no violations occur, and if it is violated, restore the violated code of ethics so that it is upheld again. The form of recovery from violations of the code of ethics is in the form of taking action against violators of the code of ethics in the form of admonitions, isolating violators from professional groups, and enforcing statutory legal action with harsh sanctions. The code of ethics basically boils down to the law, so that violators of the code of ethics who harm the interests of the state or the general public are subject to statutory sanctions in accordance with the severity of the violations committed.
On November 10 2015 there was a survey conducted by Djoko Sumarsono S.H., as Chairman of the Regional Honorary Council of PERADI East Java for the 2011-2015 period. According to Mr. Naen Soeryono S. H., M. H. as a Member of the Honorary Council at the Regional Honorary Council of PERADI East Java. A survey conducted by Djoko Sumarsono S.H., in 2015 was made to find out the importance of a professional code of ethics. The survey was conducted on one hundred lawyers and seventy one clients using legal services.

Based on the survey information, the code of ethics for the advocate profession is indeed needed by advocates, but 57 percent of advocate respondents stated that the current code of ethics for the advocate profession is inadequate, so additional code of ethics for the advocate profession is needed. In a survey on the relationship between an advocate and a client, 43 percent of client respondents stated that they had been disappointed by an advocate. As many as 9.47 percent of client respondents were disappointed because advocates were difficult to contact when needed. Interestingly, only 2.9 percent of client respondents complained about advocates who committed these violations, as many as 97.1 percent of client respondents did not complain on the grounds that they did not provide benefits, did not know where to complain, and their interests were not too harmed. The survey results prove that enforcing the advocate’s code of ethics is an important thing to do considering the high number of client respondents who state that they have been disappointed by advocates.

According to Mrs. Luh Putu Susiladewi S.H. as secretary of the East Java PERADI Regional Honor Council, PERADI’s enforcement of the code of ethics has been carried out optimally, both preventive and repressive enforcement. Preventive enforcement of the code of ethics is carried out by conducting socialization regarding the advocate’s code of ethics during the Advocate Profession Special Education (PKPA) and PERADI member meetings.
Advocate Professional Special Education (PKPA) is a professional education carried out by advocate organizations and carried out by prospective advocates as a condition for becoming an advocate. PKPA conducted by PERADI is generally held every year at least twice, while PERADI member meetings are held once a year. PERADI has also held several seminars and outreach regarding the enforcement of the code of ethics online during a pandemic. Enforcement of the code of ethics that is carried out in a repressive manner is by carrying out trials of violations of the code of ethics against advocates who are complained of violating the code of ethics. Efforts to enforce the advocate’s code of ethics carried out preventively and repressively by PERADI have been running optimally, but somehow many unscrupulous advocates are not interested in the topic of discussion regarding the enforcement of the code of ethics. According to Ms. Luh Putu Susila Dewi S.H., this lack of interest is because many advocates underestimate material about upholding a code of ethics.

Material on the code of ethics of advocates is actually not something that should be taken lightly. Advocates have an obligation to advocate for people who need legal assistance. PERADI has organized seminars and outreach regarding the code of ethics, but the lack of interest from unscrupulous advocates has made the seminars and socialization carried out not optimal. This makes the efforts to enforce the code of ethics carried out by PERADI feel futile because of the lack of interest from these advocates. Efforts to enforce the code of ethics are urgent matters to call for, considering that advocates are officium nobile whose job is to help people who are blind to the law so as to create a just and prosperous society.

In contrast to the Civil Procedure Code, in resolving cases of violations of the code of ethics of peace can only be done outside the courtroom. Efforts to make peace outside of the session made the Honorary Council not give special time for the peace agenda in the code of ethics trial. The absence of
peace efforts at the trial made the settlement of cases carried out by the East Java Regional Ethics Council take place quickly. According to the Indonesian Advocate Code of Ethics Article 13 concerning First Instance Examination by the Branch/Regional Ethics Council, settlement of cases in code of ethics trials lasts for a maximum of 115 (one hundred and fifteen) working days.

**Conclusion**

1. Advocate professional organizations, especially PERADI have an important role in enforcing the code of ethics. Enforcement and supervision of the advocate's code of ethics must be carried out jointly, both by advocates, the community, and other institutions. Clients and advocates involved in power of attorney are automatically involved in an agreement. The parties who do not fulfill the agreement in accordance with their obligations commit acts of default. Clients whose rights have been violated by an advocate can make peace with the advocate outside the trial or resolve the case by reporting the advocate to the PERADI Honorary Council. Clients who have been harmed by advocates who abandoned their case can complain about their case to the PERADI Honorary Council.

2. Enforcement of the code of ethics carried out by PERADI has been carried out optimally, both preventive and repressive enforcement. Preventive enforcement of the code of ethics is carried out by conducting socialization regarding the advocate's code of ethics when it is carried out at the Advocate Profession Special Education (PKPA) and PERADI member meetings. Repressive enforcement of the code of ethics is carried out by imposing sanctions on advocates who violate the code of ethics, the types of sanctions contained in Article 16 paragraph (1) of the Indonesian Advocate Code of Ethics

**Suggestion**
1 A process of investigation and investigation is carried out when complaints are received to facilitate the Honorary Council in examining and deciding cases.

2. The costs for reporting violations of the code of ethics should not be borne by the client as the Complainant, but borne by the advocate professional organization, namely PERADI so that the client as the party harmed by the advocate is not burdened with the down payment of the case.

3 Violations of the code of ethics have heavier sanctions to avoid naughty advocates and provide a deterrent effect for advocates who violate the code of ethics.

4 Advocate organizations need to be reunited in accordance with the mandate of Law Number 18 of 2003 concerning Advocates in order to create a single bar system within the advocate organization and to facilitate control of every advocate at trial.

5 Regional Ethics Council PERADI East Java should increase the intensity of holding seminars or webinars related to the enforcement of the code of ethics, as well as conduct regular surveys on the enforcement of the code of ethics in order to find out about the dynamics of the advocate code of ethics and its implementation.

6 The Regional Ethics Council of PERADI East Java should conduct outreach to the community regarding the enforcement of the code of ethics so that people who have been harmed by unscrupulous advocates can know where to complain.
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**THESIS**


**THESIS**

**OBSERVATION**

Soeryono, Naen. Wawancara Pribadi. 1 September 2021.