

## Legal Protection of Advocates' Immunity Rights

\*<sup>1</sup>Wieke Dewi Suryandari, <sup>2</sup>Naya Amin Zaini

<sup>1,2</sup> Faculty of Law, Universitas Darul Ulum Islamic Centre Sudirman Guppi

\*Corresponding Author:

\*<sup>1</sup> wieke@undaris.ac.id

### Abstract

The right to advocate immunity is the legal protection given to advocates who can practice their profession freely without the threat of criminal or civil charges. This right to immunity is regulated in Article 16 of Law Number 18 of 2003 concerning Advocates. However, the current legal protection is not yet fully effective because there is still a legal vacuum, especially in the scope of immunity rights outside the trial. As a result, advocates are still vulnerable to criminalization when performing their professional duties. This study aims to analyze the legal protection that is regulated and identify the shortcomings of regulations related to the right to advocate immunity. Using a normative legal approach, this study concludes that revisions and improvements are needed to clarify the limitations and scope of the right to immunity, including expanding the role of advocate organizations and educating law enforcement officers to prevent the criminalization of advocates.

**Keywords:** Advocate immunity rights, Legal protection, Legal vacuum, Advocate Law

### 1. INTRODUCTION

Law enforcement has become a common aspect of society, affecting not only law enforcement officers but also students and the general public. There are striking similarities among these groups regarding the challenges and events that have occurred in the realm of law enforcement. Many opinions indicate a growing dissatisfaction with law enforcement due to its continued failure to deliver a sense of justice. This inevitable shortcoming is manifested in decisions that fail to provide satisfaction or fulfill a sense of justice for those who seek it. (Arif, 2018).

An advocate, in article 1 number 1 of Law No. 18 of 2003 concerning Advocates, is a person whose profession is providing legal services, both inside and outside his profession who meets the requirements based on the provisions of this law. The role of advocates in the judicial system as law enforcers is protected by Article 16 of the Advocates Law. This article provides legal immunity to advocates from civil and criminal

lawsuits so that they can carry out their professional duties in good faith on behalf of their clients during trials without fear of legal consequences (Harahap, 2021). Advocates have the necessary qualifications and authority to provide legal advice and represent their clients in court proceedings. Therefore, the freedom of the advocate profession is important for the community that relies on legal and litigation services from advocates. This freedom ensures that citizens who need legal services can obtain services from independent advocates who can firmly fight for the interests of their clients (Saepudin, 2024).

Article 16 of the Advocate Law explains that "in carrying out their duties, advocates cannot be sued either criminally or civilly in carrying out their professional duties in good faith for the interests of defending clients in court hearings." This article emphasizes the importance of advocates' freedom to carry out their duties without fear of intervention, to maintain the quality and fairness of the judicial process. With this immunity right, advocates can function optimally in protecting clients' rights, as well as maintaining the independence and integrity of the judicial system.

Article 16 of the Advocate Law guarantees the right to immunity for advocates in carrying out their profession. This immunity right is intended to protect advocates from lawsuits or other disturbances arising from statements or actions taken in the context of their defense duties. For example, advocates cannot be held accountable or sued for statements in court or actions taken in their capacity as a client's defender, as long as they are carried out by applicable laws and regulations. The goal is for advocates to carry out their duties professionally without fear of pressure or threats from other parties that could hinder a fair defense process (Prayoga, 2022).

Although the right to immunity is regulated in Article 16 of the Advocate Law, advocates still face the threat of criminalization in practice. This phenomenon arises because there are parties who consider the advocate's defense strategy in certain cases to be inadequate or ineffective. In some cases, statements or actions of advocates that are considered excessive by other parties can result in legal threats, even though they are carried out in the context of legitimate defense. This threat of criminalization is often used

as a means to pressure or silence advocates, which ultimately weakens their ability to carry out their professional responsibilities effectively (Niode, 2024).

The threat of criminalization against advocates can also be triggered by ignorance or lack of understanding of advocates' immunity rights in carrying out their profession (Hadjar, 2015). Some parties consider that advocates have committed unlawful acts or defamation, whereas these acts are the advocate's right to defend their clients by appropriate laws. The unclear limits of advocate immunity rights and the lack of understanding of the community and authorities regarding the protection given to advocates can lead to the threat of criminalization which can harm the justice system itself (Kresnadinata, 2019).

Therefore, this study will analyze legal protection related to advocate immunity rights. The importance of analyzing legal protection related to advocate immunity rights is to prevent abuse of immunity rights by parties who seek to hinder advocates' duties in defending clients (Wijaya, 2019). This analysis can help identify potential deficiencies in the implementation of immunity rights, thereby strengthening protection for advocates to carry out their profession effectively without fear of criminalization. Through in-depth analysis, abuse of immunity rights by certain parties, both entities and authorities that are harmed, can be minimized, so that advocates can work professionally without external pressure.

## **2. METHOD**

The research method used is normative legal research with a statutory approach. This journal focuses on the study of laws and regulations governing advocate immunity rights. This approach aims to analyze the application of legal certainty to advocate immunity rights by existing legal provisions. With this approach, this study will explore obstacles and solutions in legal certainty to advocate immunity rights.

## **3. RESULT AND DISCUSSION**

### **Problems in Legal Protection Related to Advocate Immunity Rights**

Legal protection for advocate immunity rights is a guarantee given to ensure that advocates can independently carry out their legal defense duties without fear of

criminalization or interference from other parties. This immunity right is regulated in Article 16 of the Advocates Law, which stipulates that advocates cannot be prosecuted either criminally or civilly for statements or actions taken to defend their clients in or outside the trial. This protection is very important to ensure that advocates can carry out their role in the justice system freely, without pressure or intimidation from any party that could hinder efforts to seek justice (Sardinata, 2021).

Even though advocate immunity rights have been regulated by law, their implementation still faces various challenges (Fransiska putri Novi, 2024). Problems in legal protection of advocate immunity rights arise when there is a discrepancy between theory and practice. Although advocate immunity rights have been regulated in the Advocate Law, in reality many advocates still face the threat of criminalization or other legal actions, which have the potential to limit their freedom in carrying out their defense duties (Khambali, 2017). These legal threats often come from parties who feel disadvantaged by the defense carried out by advocates, such as opposing parties, or even law enforcement officers who feel disturbed by the advocate's statements or actions in court. It creates tension between legitimate defense efforts and the risks faced by advocates, which can ultimately disrupt the integrity of the justice system.

Article 16 of the Advocate Law states that "in carrying out their duties, advocates cannot be sued either civilly or criminally in carrying out their professional duties in good faith for the interests of defending clients in court hearings". In this article, there is no such good faith as what, when the trial is over or when the trial has not yet started is good faith to defend the interests of the client. Article 16 is still ambiguous, presenting various interpretations and allowing for different interpretations (Tampi, 2018).

The legal vacuum regarding advocate immunity rights arises when there is inaccuracy or ambiguity in the application of the rules that protect advocate immunity rights (Sembiring, 2025). Although the right to immunity of advocates has been regulated in Article 16 of the Advocates Law, in reality, the implementation of its protection is often inconsistent or inadequate in responding to legal pressure from

external parties. One manifestation of this legal vacuum is the absence of regulations that explicitly provide clear guidelines regarding what is meant by "actions" or "statements" of advocates whose immunity rights are protected (Sitorus, 2023). This ambiguity has led to different interpretations in practice, both among law enforcement officers and in the judicial process itself. (Susanto, 2023).

Article 16 of the Advocate Law, which can be interpreted in various ways, can create legal loopholes that can be exploited by law enforcement officers to target advocates. For example, if an advocate makes a statement in court that is considered detrimental to another party, the injured party can report the advocate for defamation or slander, even though the action was carried out in good faith, namely to defend the rights of his client. Given the broad interpretation of this article, law enforcement officers can easily exploit it to criminalize advocates, even though they have complied with applicable laws. It is worrying because it can deter other advocates. When advocates face the threat of criminalization, they may be more careful in their actions or even reduce their strong defense of their clients to avoid legal consequences (Khalid, 2019). It clearly undermines human rights and the principle of justice, as advocates should be given the freedom to defend their clients without fear of punishment simply for fulfilling their professional duties (Fazriah, 2022).

### **Urgency of Legal Protection Regarding Advocate Immunity Rights**

The urgency of legal protection relating to advocate immunity rights is necessary to maintain the independence of the legal profession and ensure the achievement of justice in the judicial system (Hidayat, 2024). Without adequate legal protection, advocates face the threat of criminalization or other legal interference that could hinder their ability to fulfill their duty to defend their clients. In the judicial process, advocates must be freed to articulate arguments, fight for their clients' rights, and present facts without fear of punishment or legal consequences (Sudewo, 2005). This protection not only applies to the interests of advocates but also to uphold the integrity of the justice system, ensuring that every individual has the right to receive fair defense.

Revising the Advocate Law is important, for several reasons. The first is because of the ambiguity in the Advocate Law, especially in Article 16. The formulation in the article regarding the right to immunity is still unclear and has various interpretations, which can cause legal uncertainty for advocates in carrying out their duties. Then, the protection provided by the current advocate immunity rights is considered inadequate, advocates are still vulnerable to criminalization in their duties. Therefore, a revision of the Advocate Law is needed to expand the scope of advocate immunity rights, so that they are not only protected during trials but also outside trials (Mukhtarzain, 2024).

In addition to revising the Advocate Law, other things can be done. Counseling and education for advocates regarding their immunity rights are essential to equip them with the knowledge and skills needed to safeguard these rights in the event of a violation. Furthermore, the role of professional advocate organizations, such as PERADI, needs to be strengthened to provide legal protection to its members and resolve disputes related to violations of immunity rights efficiently. The application of strict sanctions for parties who violate advocate immunity rights, especially those who commit intimidation, will create a safer environment for advocates to fulfill their professional responsibilities. In addition, increased supervision from institutions such as the Judicial Commission and other supervisory bodies is essential to ensure the impartiality and fairness of the justice system, free from any influence on advocates. Furthermore, public awareness campaigns highlighting the importance of advocate immunity rights will contribute to their protection, thereby fostering a greater understanding of the role of advocates in upholding justice (Harahap, 2021). These steps are expected to increase the legal protection of advocates' immunity rights and improve the quality and integrity of the justice system as a whole.

#### **4. CONCLUSION**

The right to immunity of advocates as regulated in Article 16 of the Advocates Law is crucial to maintain the freedom and independence of advocates in carrying out their professional obligations, especially in providing legal defense for their clients in court. Unfortunately, the phenomenon of the threat of criminalization against advocates

continues to occur, which stems from the lack of awareness of this right and the deliberate efforts to suppress or silence advocates who carry out their duties legally. To address this problem effectively, legal protection for the right to immunity of advocates must be strengthened, to prevent abuse of the right to immunity and to guarantee that advocates can carry out their profession professionally without any pressure or threats that could endanger the integrity of the justice system. Therefore, this right to immunity must be understood and respected by the public and law enforcement officers to carry out their duties effectively and under appropriate laws and regulations.

Although regulated in Article 16 of the Advocates Law, the implementation of the right to immunity still faces various challenges, especially due to the ambiguous and unclear nature of the article, which can give rise to various interpretations. This ambiguity creates loopholes that can be exploited to criminalize advocates, thus hampering their ability to defend clients fairly. Therefore, the revision of the Advocate Law is important to clarify and expand the scope of advocate immunity rights, as well as improve their protection both inside and outside the court. Furthermore, educating advocates about their rights, strengthening the role of professional organizations, implementing sanctions for violations, and increasing supervision and outreach to the community will contribute to reinforcing the legal protection of advocate immunity rights. These steps are expected to improve the quality and integrity of the justice system so that advocates can carry out their duties without threats or pressure that could endanger the justice system.

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