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THE IMPLEMENTATION OF ADVOCATE IMMUNITY RIGHTS IN THE CRIMINAL OFFENSE OF OBSTRUCTION OF JUSTICE

¹ Fauziah Lubis

Universitas Islam Negeri Sumatera Utara, Indonesia

² M. Iqbal Nasution

Universitas Islam Negeri Sumatera Utara, Indonesia

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B. REVISION

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Our decision is: Revisions Required

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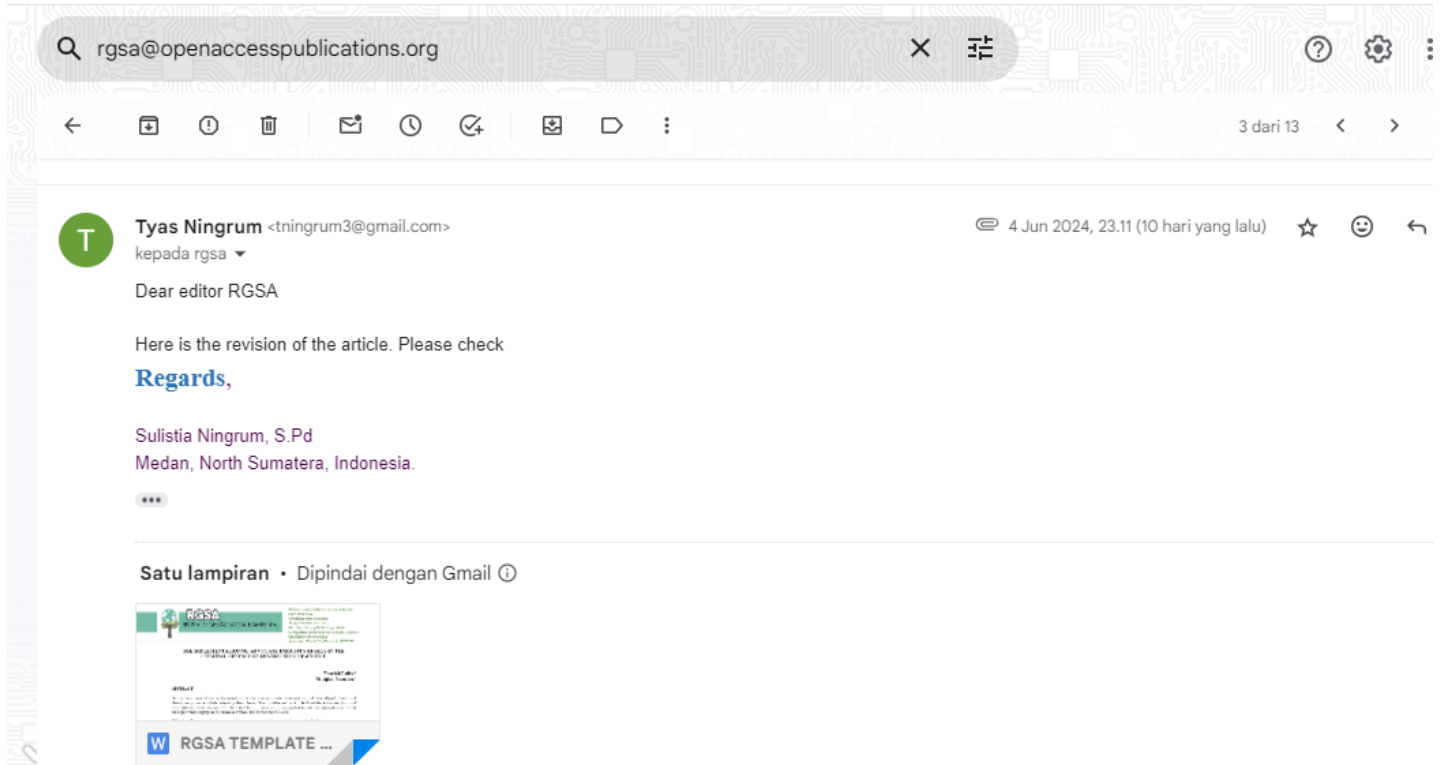
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C. REVISION



D. MANUSCRIPT ACCEPTANCE



Acceptance Letter

We are pleased to announce that, after review by our Editorial Board, the paper “**The Implementation Of Advocate Immunity Rights In The Criminal Offense Of Obstruction Of Justice**” written by **Fauziah Lubis and M. Iqbal Nasution** has been accepted for publication in the Environmental and Social Management Journal (Revista de Gestão Social e Ambiental e-ISSN: 1981-982X Qualis 2017- 2020: A3). After publication, your article will be available on our website (<https://rgsa.emnuvens.com.br/rgsa>).

As the expression of the truth, we state this declaration.

June 7th, 2024.

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E. DECLARATION OF PUBLICATION



Revista de Gestão Social e Ambiental, ISSN 1981-982X evaluated by CAPES as Qualis CAPES 2019 A3, declares for all due purposes, that the article entitled **“The Implementation of Advocate Immunity Rights in the Criminal Offense of Obstruction of Justice”** authored by Fauziah Lubis, M. Iqbal Nasution, was published in v. 18, n .8, p. 01-22.

The journal is online, and articles can be found by accessing the link:

<https://rgsa.emnuvens.com.br/rgsa/issue/view/78>

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Being the expression of the truth, we sign the present declaration.

Deerfield Beach, Florida, United States of America, June 12, 2024.

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THE IMPLEMENTATION OF ADVOCATE IMMUNITY RIGHTS IN THE CRIMINAL OFFENSE OF OBSTRUCTION OF JUSTICE

Fauziah Lubis¹
M. Iqbal Nasution²

ABSTRACT

Introduction: During the course of law enforcement, advocates may encounter interventions and face alleged threats and obstruction processes while defending their clients. This is addressed in Article 16 of the Advocates Law and Constitutional Court Decision No. 26/PUU-XI/2013. However, it is important to note that advocates can forfeit this right if they engage in the criminal offense of Obstruction of Justice.

Objective: This research aims to explain how an attorney's immunity rights can be forfeited when they engage in the criminal offense of Obstruction of Justice.

Method: This research employs a method commonly used in legal academia, focusing on statutory law and conceptual analysis.

Results and Discussion: Understanding the importance of immunity rights is crucial for advocates as they carry out their profession. However, it is essential to be aware of the specific conditions that come with the use of these rights.

Research Implications: The rules can be found in Article 16 of the Advocate Law. If advocates do not act in good faith and their actions are unrelated to their professional duties, they may be prone to committing acts of obstruction of justice. When fulfilling professional obligations, an advocate must prioritize the client's defense and act accordingly. In Article 16, the concept of good faith entails the fulfillment of professional responsibilities intending to promote justice and safeguard the client's interests following the law.

Keywords: Code of Ethics, Immunity Rights, Criminal Justice, Criminal Law, Obstruction of Justice.

A IMPLEMENTAÇÃO DOS DIREITOS DE IMUNIDADE DO ADVOGADO NO CRIME DE OBSTRUÇÃO DE JUSTIÇA

RESUMO

Introdução: Durante o curso da aplicação da lei, os defensores podem encontrar intervenções e enfrentar alegadas ameaças e processos de obstrução enquanto defendem os seus clientes. Isto é abordado no artigo 16.º da Lei dos Advogados e na Decisão n.º 26/PUU-XI/2013 do Tribunal Constitucional. No entanto, é importante notar que os defensores podem perder este direito se se envolverem no crime de obstrução à justiça.

Objetivo: Esta pesquisa tem como objetivo explicar como os direitos de imunidade de um advogado podem ser perdidos quando este pratica o crime de Obstrução de Justiça.

Método: Esta pesquisa emprega um método comumente utilizado na academia jurídica, com foco no direito estatutário e na análise conceitual.

Resultados e Discussão: Compreender a importância dos direitos de imunidade é crucial para os defensores no exercício da sua profissão. No entanto, é essencial estar ciente das condições específicas que acompanham o uso destes direitos.

¹ Universitas Islam Negeri Sumatera Utara, Medan, North Sumatera, Indonesia. E-mail: fauziahlubis@uinsu.ac.id

² Universitas Islam Negeri Sumatera Utara, Medan, North Sumatera, Indonesia.
E-mail: iqbalnasution2016@gmail.com



Implicações para a pesquisa: As regras podem ser encontradas no Artigo 16 da Lei do Advogado. Se os defensores não agirem de boa fé e as suas ações não estiverem relacionadas com os seus deveres profissionais, podem estar propensos a cometer atos de obstrução da justiça. No cumprimento das obrigações profissionais, o advogado deve priorizar a defesa do cliente e agir em conformidade. No artigo 16.º, o conceito de boa-fé implica o cumprimento de responsabilidades profissionais destinadas a promover a justiça e a salvaguarda dos interesses do cliente no respeito da lei.

Palavras-chave: Código de Ética, Direitos de Imunidade, Justiça Criminal, Lei Criminal, Obstrução de Justiça.

LA IMPLEMENTACIÓN DE LOS DERECHOS DE INMUNIDAD EN EL DELITO PENAL DE OBSTRUCCIÓN A LA JUSTICIA

RESUMEN

Introducción: Durante el curso de la aplicación de la ley, los defensores pueden encontrar intervenciones y enfrentar supuestas amenazas y procesos de obstrucción mientras defienden a sus clientes. Esto se aborda en el artículo 16 de la Ley de Abogados y en la Decisión del Tribunal Constitucional No. 26/PUU-XI/2013. Sin embargo, es importante señalar que los defensores pueden perder este derecho si incurrir en el delito de obstrucción de la justicia.

Objetivo: Esta investigación tiene como objetivo explicar cómo se puede perder el derecho de inmunidad de un abogado cuando éste incurre en el delito penal de Obstrucción de la Justicia.

Método: Esta investigación emplea un método comúnmente utilizado en la academia jurídica, centrándose en el derecho estatutario y el análisis conceptual.

Resultados y discusión: Comprender la importancia de los derechos de inmunidad es crucial para los defensores en el ejercicio de su profesión. Sin embargo, es fundamental conocer las condiciones específicas que conlleva el uso de estos derechos.

Implicaciones para la Investigación: Las reglas se pueden encontrar en el artículo 16 de la Ley de Abogados. Si los abogados no actúan de buena fe y sus acciones no guardan relación con sus deberes profesionales, pueden ser propensos a cometer actos de obstrucción de la justicia. En el cumplimiento de sus obligaciones profesionales, el abogado debe priorizar la defensa del cliente y actuar en consecuencia. En el artículo 16, el concepto de buena fe implica el cumplimiento de responsabilidades profesionales encaminadas a promover la justicia y salvaguardar los intereses del cliente conforme a la ley.

Palabras clave: Código de Ética, Derechos de Inmunidad, Justicia Penal, Derecho Penal, Obstrucción de la Justicia.

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1 INTRODUCTION

An essential aspect of being an advocate is the privilege of advocate immunity, which serves to safeguard the independence and credibility of the legal profession. This provision grants immunity to an advocate from any potential legal repercussions, whether it be in civil or criminal cases. It is crucial for advocates to possess immunity in order to perform their tasks autonomously, free from external coercion or intimidation.



The legal profession is a highly esteemed field that has a long history of recognition in Indonesia, dating back thousands of years.³ Advocates play a crucial role in the implementation of law enforcement in Indonesia, as the country values the importance of upholding the law. Throughout the course of law enforcement in Indonesia, numerous errors that require rectification persist. It is evident that the current laws in Indonesia have not yet yielded significant positive outcomes, failed to deliver true justice to the people, and have not succeeded in fostering prosperity for the entire population. Undoubtedly, the rule of law in Indonesia continues to inflict agony and suffering on its people. However, in this particular situation, it is important to acknowledge that the root cause of this issue lies within the legal system in Indonesia. Although law enforcement is generally effective and just, its application is hindered by numerous errors committed by individuals who lack self-awareness. Consequently, the pursuit of justice and truth in law enforcement remains elusive, greatly affecting the people of Indonesia, particularly those in the lower socioeconomic classes. Collaboratively addressing this issue is vital to ensure the optimal functioning of law enforcement in Indonesia.

A criminal act refers to an action that is subject to legal sanction, punishment, or prosecution according to the provisions outlined in the statute. Three key elements establish the criminal nature of an act. First, it is outlined in legal regulations. Subsequently, criminal sanctions and penalties are enforced. An act prohibited by criminal law is referred to as a criminal offense. If this act is committed due to negligence, the perpetrator may be subject to criminal penalties.⁴

When a criminal offense is committed, the imposition of criminal penalties requires adherence to the legal procedures outlined in the Criminal Procedure Code as stipulated by Law Number 8 of 1981. This procedure encompasses the stages of preliminary investigation, investigation, trial, and court decision. Preliminary investigation refers to investigative techniques employed to identify and reveal potential criminal incidents. Investigation refers to the systematic process investigators use to search for and gather evidence in compliance with legal guidelines. Prosecution transpires when a public prosecutor, acting within the confines of their jurisdiction, presents a criminal case before a district court. This presentation is strictly adhered to the prescribed legal framework, wherein the prosecutor formally submits an application to the court for thorough examination and ultimate adjudication by a judge. A court hearing is a judicial proceeding when a judge performs various tasks, such as receiving,

³ Fauziah Lubis Bunga Rampai Hukum Keadvokatan (Medan: FEBI UIN-SU Press, 3rd edn, 2023) p 7.

⁴ Sianturi Asas-Asas Hukum Pidana Di Indonesia Dan Penerapan (Jakarta: Stora Grafika, 2018) p 1.



conducting, and adjudicating criminal investigations. These actions are undertaken in accordance with the sacrosanct principles of freedom, honesty, and justice, as well as the processes outlined in the Criminal Procedure Code.⁵

In legal cases, all parties involved possess the inherent right to legal representation, as stipulated by the hierarchical structure of the Republic of Indonesia, as outlined in Article 28, paragraph (1) of the 1945 Constitution of the Republic of Indonesia. Furthermore, it is crucial to recognize that every individual is entitled to the recognition, assurance, safeguarding, and equitable treatment that accompanies the pursuit of justice. It is a customary practice for the parties involved to engage legal counsel to facilitate the execution and enforcement of the pertinent legislation. Legal counsel, commonly referred to as an advocate, is a party that offers services and aid in the realm of law, both within and outside of the court, while fulfilling the obligations outlined in legal regulations. Advocates bear the solemn duty of upholding the premise of presumption of innocence, offering legal counsel and representation to their clients, and exerting their utmost efforts in advocating for the principles of truth and justice.⁶

The concept of obstruction of justice, originating from the Anglo-Saxon jurisprudence, finds resonance within Indonesian criminal law. It is commonly construed as a criminal act that obstructs the judicial process. Obstruction of justice is a criminal offense that is illegal and punishable by law. The Criminal Code governs the trial process, which regulates any actions that impede or hinder it.⁷

Advocates who provide legal services are frequently suspected of directly or indirectly obstructing the legal process. Advocates who enforce the law with freedom, accountability, and independence require legal assurances and safeguards to preserve the rule of law. Advocates are granted the privilege of immunity when performing their professional obligations, as stipulated in Article 16 of Law Number 18 of the Year 2003. This immunity protects advocates from being prosecuted in civil or criminal cases if they have acted in good faith while carrying out their duties.

Considering the background information provided, this article examines the criminal offense of obstructing the justice system against advocates in their role as legal service providers. It explores the topic through the following research formulations: (1) What are the legal regulations concerning interference, and is it considered equitable in Indonesia? (2) What

⁵ Sri Harijati *Hukum Acara Pidana* (Jakarta: Badan Pendidikan dan Pelatihan Kejaksaan, 2016) p 15.

⁶ Solehodin 'Menakar Hak Imunitas Profesi Advokat' (2015) 10(1) *Rechtidee* 91.

⁷ Muhammad Khambali 'Hak Imunitas Advokat Tidak Terbatas' (2017) 14(1) *Cakrawala Hukum* 25.



are the defining traits of an advocate's actions that may be considered a criminal offense of impeding the judicial process or obstructing justice?

This research utilizes the normative juridical method as the main framework for analyzing and evaluating legal aspects related to the issue under study. An in-depth understanding of the legal concepts and norms contained in relevant regulations is achieved through a qualitative approach. Data collection involves conducting a thorough literature review, where one delves into written sources like books, journals, and legal documents to meticulously examine and analyze the laws on the phenomenon being studied. The data analysis focused on understanding the legal context, interpretation, and application of existing norms using a qualitative approach and descriptive analysis. This research aims to offer a comprehensive understanding of the legal considerations pertaining to the phenomenon under investigation in order to give novel perspectives and profound insights into the field of law.

2 DISCUSSION

2.1 DEFINITION OF ADVOCATE

According to Black's Law Dictionary, the term "advocate" originates in the Latin word "advocatus".⁸ However, according to the definition, "*An advocate is a lawyer who supports or defends someone in a court of law*".⁹ An advocate is an individual who possesses extensive knowledge in the field of law and is recognized as a legal practitioner. They offer advice and legal assistance to clients and represent them in court proceedings. An advocate professionally provides legal assistance based on legislation, whether within or outside the court.¹⁰ The Latin root word "Advocatus" is the origin of the word "advocate," which refers to the act of assisting individuals in resolving legal matters. An advocate is an individual who offers legal aid either within or outside the court and operates in accordance with legal regulations.¹¹ Advocates offer a range of services to support clients, including acting as a power of attorney, providing representation, and offering legal assistance, among other legal-related actions."

⁸ Henry Campbell Black Black's Dictionary (St. Paul, MN: West Publishing Co., 1990) p 66

⁹ John Sinclair Cobuild English Language Dictionary (London: William Collins Sons & Co., Ltd, 1987) p

¹⁰ Soerjono Soekanto Faktor-Faktor Yang Mempengaruhi Penegakan Hukum (Jakarta: Raja Grafindo Persada, 2002).

¹¹ Kelik Pramudya Panduan Praktis Menjadi Advokat (Yogyakarta: Medpress Digital, 1st edn, 2013) p 1



Legal services provided by advocates include advice on the interpretation and implementation of the law, as stated in the Advocates Law (Article 1 paragraph 2),¹² provision of legal assistance, consultation on legal matters, and acting as a representative to protect the client's interests. Legal aid services go beyond being a mere formality for every advocate; they also demonstrate the advocate's social contribution and responsibility. This pertains to the responsibility of advocates to provide legal assistance, not only as a mandatory duty but also as a valuable contribution to society. It is an integral part of their social role and function.

2.2 ADVOCATES' RIGHTS AND OBLIGATIONS

Advocates play a crucial role in ensuring a fair justice system within a democratic society governed by the rule of law. Ensuring a fair and impartial judiciary requires the collaboration of the various pillars of the legal system, working together in their respective roles. The judicial process and due process of law are implemented in an equitable, fair, honest, and objective manner.

Chapter IV of the Advocates Law states that advocates are granted the freedom to provide legal representation for their clients, regardless of whether they are present in a courtroom or not, by abiding by the code of ethics stipulated in the legislation. Among the rights possessed by an advocate are:

- 1) Advocates have the right to present arguments and articulate statements when defending and offering legal services in court, provided that they adhere to professional ethics and relevant legislation (Advocate Law Article 14);
- 2) Advocates have the freedom to fulfill their responsibilities in defending and resolving disputes and managing clients, guided by a set of professional, ethical standards (Article 15);
- 3) Advocates are granted immunity as well. Consequently, an advocate is immune from prosecution in civil or criminal cases due to their obligation to act in good faith and assume full responsibility while carrying out their professional obligations (Article 16):
- 4) Advocates can access information, express opinions, and obtain documents related to their professional duties without facing legal consequences (Article 17).

¹² Sartono and Bhakti Suryani Prinsip-Prinsip Dasar Profesi Advokat (Jakarta: Dunia Cerdas, 1st edn, 2013). p 87



Advocates have professional obligations in addition to their personal and professional rights, including:¹³

- 1) Adhere to and comply with professional ethics (Article 26);
- 2) Maintain adherence to legal principles and strive to protect fundamental human rights;
- 3) Ensure comprehensive safeguarding of the client's interests in relation to the specified legal services committed.

Legal justice must be universally applied to all individuals and societies seeking justice.¹⁴ The crucial role of advocates in the Indonesian judiciary is enshrined in the legal mandate as defenders of human rights within the framework of the rule of law, serving as a fundamental pillar. Advocates are seen as a prestigious and esteemed profession (*officium nobile*) that provides assistance and optimism to the broader society in their pursuit of justice.¹⁵ Consequently, advocates must possess strong moral and ethical standards.¹⁶

Legal services provided by advocates include advice on the interpretation and implementation of the law, as stated in the Advocates Law (Article 1 paragraph 2), Provision of legal assistance, consultation on legal matters, and acting as a representative to protect the client's interests. Legal aid services go beyond being a mere formality for every advocate; they also demonstrate the advocate's social contribution and responsibility. This pertains to the responsibility of advocates to provide legal assistance, not only as a mandatory duty but also as a valuable contribution to society. It is an integral part of their social role and function.

2.3 ADVOCATES' IMMUNITY RIGHTS

The comprehension of the significance of immunity rights stems from the term "rights."¹⁷ Correctly defining right involves allocating authority to an individual through a well-defined system, encompassing both the extent and intensity of power. The etymology of the word "immunity" can be traced back to the Latin word *immunis*, which signifies liberation from societal duties, self-sufficiency, exemption from taxation, relief from strenuous work, and

¹³ Markus Kurniawan and Anton Nainggolan, *Tinjauan Yuridis Ketentuan Hak Dan Kewajiban Advokat Sebagai Kuasa Hukum Klien Berdasarkan Undang-Undang Nomor 18 Tahun 2003 Tentang Advokat* (Jakarta, 2019) p 18

¹⁴ A.A. Ngurah Bayu Kresna Wardana and Nyoman Satyayudha Dananjaya 'Hak Dan Kewajiban Advokat Dalam Memberikan Bantuan Hukum Secara Pro Bono Kepada Masyarakat Kurang Mampu (2022) 10(3) *Kertha Semaya* 31–32.

¹⁵ Ni Komang Sutrisni 'Tanggung Jawab Negara Dan Peranan Advokat Dalam Pemberian Bantuan Hukum Terhadap Masyarakat Tidak Mampu' (2015) 5(2) *Advokasi* 155.

¹⁶ Fiska Maulidian 'Integritas Advokat Dan Kebebasannya Dalam Berprofesi: Ditinjau Dari Penegakan Kode Etik Advokat' (2016) 11(1) *Rechtidee* 15.

¹⁷ Meirza Aulia Chairani, 'Hak Imunitas Advokat Terkait Melecehkan Ahli' (2018) 2(1) *Justitia* 148.



special rights.¹⁸ Applying advocates' immunity rights involves the direct participation of institutions such as the police, prosecutors, courts, and lawyers.¹⁹ The obligations and roles of these law enforcement bodies must be honored. During the investigation process, the police are responsible for carrying out their duties. In the prosecution process, it is the prosecutor's responsibility to handle the case. And when it comes to filing a lawsuit and defending the client, the advocate takes charge.

The advocate code of ethics imposes restrictions on advocates while they do their duties. It also governs the advocate's immunity rights. Advocates in Indonesia hold an equal position with other law enforcement officials, such as police, judges, and prosecutors, in the chessboard of law. However, their ability to act independently of bureaucratic hierarchies sets advocates apart from other law enforcement officials.²⁰ The apparatus is equipped with duties and functions as stipulated by the legislation to fulfill its responsibilities, specifically for proponents of Law No. 18 of 2023 pertaining to legal practitioners.²¹ They have the right to carry out their professional duties without facing legal consequences. This includes expressing opinions, obtaining information, and accessing supporting documents from various parties. Advocates should be exempt from sanctions or threats of punishment.²² Legal safeguards and protection are necessary to ensure that advocates, who possess freedom, responsibility, and independence, can effectively uphold the principles of the rule of law. They are regarded as equals to other law enforcement officers when it comes to handling cases and ensuring legal justice.²³

Advocates are continually engaged with the notion of immunity rights that are bestowed upon them as they fulfill their professional duties, particularly when defending or assisting individuals seeking justice.²⁴ Any actions that involve intervention, pressure, threats, obstacles, or terror towards advocates and their clients, as well as any behavior that undermines the dignity of advocates, are considered violations. It is crucial to safeguard advocates and their clients from any kind of intimidation, threats, hindrances, fear, or actions that undermine the dignity

¹⁸ Satjipto Rahardjo Ilmu Hukum (Citra Aditya Bakti, 2006) p 12.

¹⁹ Fenny Cahyani et al., 'Kedudukan Hak Imunitas Advokat Di Indonesia' (2021) 4(1) USM Law Review 152.

²⁰ Mumuh M Rozi 'Peranan Advokat Sebagai Penegak Hukum Dalam Sistem Peradilan Pidana Dikaji Menurut Undang-Undang Nomor 18 Tahun 2003 Tentang Advokat' (2015) 7(1) Justitia 628.

²¹ Difia Setyo Mayrachelia and Irma Cahyaningtias 'Karakteristik Perbuatan Advokat Yang Termasuk Tindak Pidana Obstruction of Justice Berdasarkan Ketentuan Pidana' (2022) 4(1) Jurnal Pembangunan Hukum Indonesia 21.

²² Frans Hendra Winarta Advokat Indonesia, Citra, Idealisme Dan Keprihatinan (Jakarta: Pustaka Sinar Harapan, 1995) p 106.

²³ Fauzie Yusuf Hasibuan, 'Hak Imunitas Advokat Indonesia' PERADI (9 April 2019), available at <https://www.peradi.or.id/files/materi-hak-imunitas-advokat-indonesia.pdf>

²⁴ Sardinata, Hambali Thalib, and Mulyati Pawennei 'Hak Imunitas Advokat Dalam Menangani Perkara' (2021) 2(3) Journal of Lex Generalis 1075.



and integrity of the legal profession.²⁵ This particular right grants them immunity from prosecution in both criminal and civil proceedings.²⁶ Advocates are granted legal protection when carrying out their professional duties with autonomy, freedom, and accountability in enforcing the law, and the legal system protects them to maintain the principles of justice.²⁷ Advocates, despite their granted power, must adhere to the legal norms on their delegated tasks. They bear the crucial responsibility of upholding the standards of advocate professionalism, ensuring that they are shielded from legal action in both civil and criminal cases. This immunity serves to safeguard the interests of their clients during trial, with the expectation that advocates act in “good faith.”²⁸

As per the explanation of Article 16, "good faith" pertains to carrying out professional duties with sincere intentions to uphold justice under the law while advocating for the interests of clients. Meanwhile, a court hearing refers to the trial process that occurs at different judicial levels and in different judicial settings.²⁹

Friedman's theory posits that when considering the applicability of advocate immunity rights, it is important to examine the various elements of the legal system. In his analysis, Gustav Radburc highlights the fundamental components of legal value, which can be categorized into two main aspects: justice, which encompasses fairness and equity, and community benefit, which refers to the overall welfare and well-being of society. Additionally, Radburc emphasizes the need to ensure clarity in implementing laws. Applying Gustav Radburch's theory can serve as a foundation for evaluating the enforcement of advocate immunity rights as outlined in Law No. 18 of 2003.³⁰

The immunity provisions are stipulated in Article 14, Article 15, and Article 16 of Advocates Law No. 18 of 2002. The Advocates Act's right to immunity is reinforced by decision number 26/PUU-IX/2023 from the constitutional court, which offers a new interpretation and comprehension of advocates' immunity rights that are legally binding and possess complete legal authority.³¹

According to Article 14, advocates can present arguments to defend their cases in the courtroom while still upholding the professional code of ethics. According to Article 15,

²⁵ H.P Panggabean *Manajemen Advokasi* (Jakarta: Alumni, 2010) p 148.

²⁶ V. Harlen Sinaga *Dasar Dasar Profesi Advokat* (Jakarta: Erlangga, 2011) p 60.

²⁷ A. Hafidzi, 'Eksistensi Advokat Sebagai Profesi Terhormat (Officium Nobile)' (2015) 13(1) *Khazanah* 15.

²⁸ *Pertentangan Hak Imunitas Advokat Dengan Obstruction of Justice Dalam Putusan Nomor 9/Pid.Sus/TPK/2018/PN.JKT.PST National Conference on Law Studies* (Jakarta, 2023).

²⁹ Cinthia Wijaya, John Calvin, and Mutiara Girindra Pratiwi, 'Usaha Pemerintah Melindungi Hak Imunitas Advokat Dalam Melakukan Pekerjaan' (2019) 5(1) *Resam* 51.

³⁰ Cahyani et al. above n 17, p 152.

³¹ *Ibid* p 153.



advocates have the freedom to fulfill their responsibilities in defending and finding resolutions for cases and assisting clients. According to Article 16, advocates are exempt from civil and criminal prosecution when they perform their professional obligations in good faith, prioritizing the client's interests during a trial.³² Good faith, as defined in Article 16, entails fulfilling professional obligations with the objective of attaining justice through the lawful execution of defense strategies that prioritize client interests.

When considering the implementation of the law, advocates' immunity rights take into account the consequences that result from its implementation, weighing both the positive and negative outcomes. A new legal provision is deemed favorable when its implementation leads to increased happiness and a decrease in suffering. On the other hand, if the implementation of the provision leads to unjust outcomes, financial setbacks, and heightened distress, it is deemed unfavorable. Advocates possess the privilege of immunity to aid law enforcement by underlining the intent of the law.³³

When utilizing immunity rights, two factors must be taken into consideration. First and foremost, it is crucial that all actions taken by advocates in the course of their professional obligations are pertinent. Furthermore, the activity is predicated on the principle of trust and sincerity. If these two conditions are not fulfilled, an advocate may face criminal liability due to the components of misconduct.³⁴

Advocates are highly regarded as dignified (*officium nobile*) and esteemed professionals who provide crucial support and hope to the broader society in their pursuit of justice.³⁵ Advocates have the duty to act as legal enforcers, ensuring the protection of their clients. They strive to protect their clients' interests and actively seek “win-win solutions” that can positively impact their clients' daily lives.³⁶

In the context of law enforcement, the concept of immunity grants legal protection to an advocate, ensuring that they are exempt from prosecution as long as their actions fall within the boundaries set by relevant regulations. Furthermore, by elucidating advocates' immunity, this right underscores the importance of striking a delicate balance between moral obligation and accountability.³⁷ Advocates benefit from immunity, which provides them with greater

³² Undang-Undang Republik Indonesia Nomor 18 Tahun 2003 Tentang Advokat, Pt IV (s 14).

³³ Cahyani et al., above n 17, p 155.

³⁴ Iswandi Rani Saputra ‘Kepastian Kewenangan Penegakan Hukum Terhadap Advokat Yang Obstruction of Justice Tindak Pidana Korupsi di Indonesia’ (2021) 5(1) Restorative Justice 21.

³⁵ Lawrence M. Friedman Perspektif Sistem Hukum Ilmu Sosial (Bandung: Nusa Media, 2013) p 127.

³⁶ Bambang Heri Supriyanto Mediasi Sebagai Alternatif Penyelesaian Sengketa Bisnis Indonesia (Jakarta: Azzahra Press University, 2014) p 19.

³⁷ Erman Radjagukguk ‘Advokat Dan Pemberantasan Korupsi.’ (2008) 15(3) Ius Quia Iustum 329.



professional protection and enables them to work more efficiently. However, advocates who act arbitrarily may jeopardize their entitlement to immunity in executing their responsibilities. It is as if they exploit this right to shield their clients, resembling a distorted manifestation of the legal system that fosters a detrimental model within society. As a legal expert, it is an advocate's obligation to represent clients vigorously. This requires the advocate to dedicate their utmost personal energy, intelligence, skills, expertise, and abilities to explore legal avenues and find solutions that address the harm caused without exploiting professional efforts for personal gain.³⁸

2.4 LIMITS TO ADVOCATES' IMMUNITY RIGHTS

The concept of advocate immunity is potentially misconstrued, leading to the mistaken belief that all actions taken by an advocate on behalf of a client are legally protected and immune from legal consequences. Thus, it is important to gain a deep understanding of an advocate's right to immunity and the crucial need for advocates to be protected by this legal principle. Advocates are granted immunity primarily because they cannot inflict criminal, civil, or administrative sanctions while representing their clients as long as they adhere to the relevant formal and substantive laws.

Recently, however, there has been a misinterpretation regarding the right to immunity for advocates. This interpretation posits that all actions taken by advocates to safeguard their client's interests would be afforded complete legal protection, thereby absolving advocates of any legal liability for such conduct.³⁹

Two main factors can impede the enforcement of advocates' immunity rights:

- 1) Internal factors refer to the conduct of advocates who fail to adhere to the principles of legal ethics and the division within legal organizations.
1. External factors refer to individuals inside the law enforcement system (such as investigators, prosecutors, and judges) as well as members of the community (such as families of opponents or victims) who lack knowledge, comprehension, or awareness of the concept of maintaining immunity.⁴⁰

³⁸ Selamat Tambunan and Bambang Heri Supriyanto 'Advocate Immunity Rights in Indonesian Principles, Concepts, Legislation' (2023) 2(5) *International Journal of Social Science* 2275.

³⁹ Ida Wayan Dharma Punia Atmaja, I Wayan Suardana, and A.A. Ngurah wirasila 'Hak Imunitas Advokat Dalam Persidangan Tindak Pidana Korupsi' (2018) 7(5) *Kertha Wicara* 2.

⁴⁰ Tambunan and Supriyanto 'Advocate Immunity Rights In Indonesian Principles, Concepts, Legislation' (2023) 2(5) *International Journal of Social Science* 2286.



Avoiding a broad interpretation of advocate immunity is important, as it can have social ramifications when advocates are granted special privileges as citizens. When advocates carry out their duties, the interpretation of immunity will come into play. Like nobles or aristocrats, advocates possess a certain level of autonomy when fulfilling their responsibilities. This implies that advocates are not constrained by bureaucratic hierarchy.⁴¹

Article 21 of the Law on the Eradication of Corruption Crimes (PTPK Law), which governs impediments to justice, has a vague interpretation, leading to uncertainty over the status of advocate immunity and making it very susceptible to criminalization. This article aims to establish regulations against actions that impede or obstruct the administration of justice in cases involving criminal offenses. The boundary between obstruction of justice and immunity rights underwent a significant shift following the Constitutional Court's judicial review.

The genesis of Article 21 of the PTPK Law is closely connected to Article 221 of the Criminal Code. As per Article 221 (1) number 1 of the Criminal Code, individuals who engage in actions that impede the law enforcement process may face conviction and be subjected to a maximum imprisonment period of nine months. It is crucial to make it a criminal offense for those who obstruct the legal process to uphold the importance of societal respect for judicial decisions.⁴² Articles 216 to 222 of the Criminal Code encompass the normative dimension of corporate attempts to impede law enforcement. These articles stipulate that any act of obstruction can be subject to legal prosecution. The two criminal instruments regulate it in distinct ways. Article 221 of the Criminal Code defines the criminal instrument as an entity that can be understood as encompassing actions that impede the course of justice. This includes engaging in harmful activities, such as evading court proceedings or tampering with evidence, with the intention of impeding the investigative process. Engaging in fabricating evidence to evade responsibility and disregarding fairness and honesty.⁴³

Article 21 of the PTPK Law regulates behavioral tendencies. One may face legal action under Article 21 of the law, whether directly or indirectly. As an expert in the field, an advocate, being a part of the judicial process, has the responsibility to oversee the official aspects of their profession diligently. This is in accordance with the provisions outlined in Article 14 of the Advocates Law, which guarantees freedom. Ensuring the independence of advocates is crucial

⁴¹ Geraldo Alfaro Tambuwun, Refly Singal, and Vecky Yani Gosal 'Tinjauan Yuridis Terhadap Upaya Menghalangi Proses Hukum (Obstruction of Justice) Oleh Advokat Dalam Penyelidikan Dan Penyidikan Tindak Pidana Korupsi 1' (2023) 12(5) *Unsrat Lex Administratum* 7.

⁴² Markhy S. Gareta 'Perbuatan Menghalangi Proses Peradilan Tindak Pidana Korupsi Berdasarkan Pasal 21 UU No. 31 Tahun 1999 Juncto UU No. 20 Tahun 2001' (2015) 4(1) *Lex Crime* 136.

⁴³ Supriadi *Etika Dan Tanggung Jawab Profesi Hukum* (Jakarta: Sinar Grafika, 2010) p 122.



to safeguarding the integrity of the legal profession by preventing any form of intervention, be it threats, hurdles or acts from authorities or law enforcement agencies that could undermine their professional standing. Based on the analysis of Article 16 of the Advocates Law, a provision within the judicial clause outlines the extent of an advocate's immunity. However, the explanation itself does not provide sufficient clarity, so it is called *lex certa*.

Any immunity within the advocate group is limited by the requirement to act in good faith when providing legal services to clients. In addition, the Advocates Law states that criminal prosecution can be pursued against anyone, including advocates. Advocates, however, are not granted immunity if they are found to have directly or indirectly engaged in an act that hinders or obstructs, "Take action against them or prevent their progress." Individuals may face charges under Article 21 of the TPTK Law when legal proceedings reach the courtroom.

The existence of the immunity right does not grant the legal profession exemption from prosecution. The limitation of the right to immunity is contingent upon the use of good faith, or lack thereof, in rendering legal aid to clients. If the advocate is convicted, their right to immunity is immediately revoked. This aligns with the fundamental principle of equal treatment under the law as guaranteed by the Constitution.⁴⁴

Regarding Article 15: This article confirms the legal protection granted to lawyers when they are carrying out their duties on behalf of their clients outside of the courtroom, as well as when they are providing assistance to their clients during proceedings at the Institute. Consequently, individuals requiring legal counsel can obtain legal assistance from an autonomous advocate who can effectively and assuredly plead for the complete spectrum of their client's interests.

Nevertheless, the scope of Article 16 is explicitly restricted by Article 6 of the Advocates Law. One who believes an advocate has acted inappropriately can have the option to file a lawsuit against him. Possible grounds for initiating legal action against an advocate include:

- 1) Disregarding client interests;
- 2) Engaging in unprofessional conduct towards colleagues;
- 3) Engaging in behaviors, expressing opinions, or making statements that go against established laws, regulations, or court decisions;
- 4) Behaving in a manner that disregards professional responsibilities and integrity;

⁴⁴ Kadek Indah Bijayanti, Ngurah Oka, and Yudistira Darmadi 'Pertanggungjawaban Pidana Advokat Pada Obstruction of Justice Dalam Perkara Tindak Pidana Korupsi' (2020) 9(4) Kertha Wicara 47.



- 5) Breaching legal regulations and/or engaging in fraudulent activities;
- 6) Breaching the oath and/or ethical standards of the legal profession.

2.5 IMMUNITY RIGHTS OF ADVOCATES IN THE CRIME OF OBSTRUCTION OF JUSTICE IN THE INDONESIAN LEGAL SYSTEM

According to Indonesian criminal law doctrine, the concept of "obstruction of justice" is derived from the Anglo-Saxon legal system. It is commonly understood as a criminal act that hinders law enforcement. Obstruction of justice refers to actions that impede or complicate the legal proceedings of a case to the extent that they are deemed criminal offenses. Obstruction of justice is considered an offense as it hinders the prosecution process by failing to provide the necessary assistance from all parties involved.⁴⁵

Article 221 of the Criminal Code outlines the criminal penalties for individuals who engage in criminal activities, deliberately hide a criminal suspect, or assist in their escape from investigation, interrogation, or detention by the police or a judge. Individuals subject to this provision must be aware that the person they are hiding or assisting has committed or been accused of a criminal offense. An individual who eliminates evidence of a crime or other incriminating information to conceal it. For punishment to be applicable, the individual must intend to do the act. Ensuring that those who defy the legal process are criminalized is crucial for maintaining the respect of judicial decisions within society.⁴⁶

Article 22 of the Law No. 21/2007 on the Eradication of the Criminal Acts of Trafficking in Persons and Justice or the Law No.15/2003 on the Implementation of Government Regulation in Lieu of Law No.1/2002 on the Eradication of the Criminal Acts of Terrorism may potentially hinder the procedure, which comprises of three distinct modes of operation:

- 1) The perpetrator of a preventive crime intentionally engages in actions that impede the carrying out of investigations, prosecutions, and interrogations as mandated by the law.
- 2) The perpetrator intentionally hampers the investigation, prosecution, and interrogation processes by obstructing criminal evidence and manipulating certain actions.

⁴⁵ Deni Setya Bagus Yuherawan, 'Obstruction of Justice in Corruption Cases', *Journal of Indonesian Legal Studies* 5, no. 1 (2020): p 225

⁴⁶ Gareda 'Perbuatan Menghalangi Proses Peradilan Tindak Pidana Korupsi Berdasarkan Pasal 21 UU No. 31 Tahun 1999 Juncto UU No. 20 Tahun 2001' (2015) 4(1) *Lex Crimen* 136.



1. If the offender intentionally obstructs the commission of a crime and manipulates the action in a way that hinders the investigation, prosecution, and trial from being conducted in accordance with legal requirements.⁴⁷

2.6 THE LEGAL PARAMETERS OF OBSTRUCTION OF JUSTICE IN RELATION TO ADVOCATES' IMMUNITY RIGHTS

Before delving into the potential application of immunity rights to the offense of obstructing justice, it is crucial to examine the constituent components of the crime thoroughly. As Sudarto explains, the elements of crime encompass aspects that are deemed unlawful in a negative manner. This analysis provides an impartial assessment of the action, focusing solely on its nature rather than the person responsible.⁴⁸ Unlawful behavior can be categorized into two types: actions that violate formal law and actions that violate material law.

- 1) Based on empirical research on formal law-breaking, an action is deemed illegal if it is subject to punishment and officially recognized as a violation of the law. If the act is deemed illegal, it can only be invalidated in accordance with the provisions of applicable laws and regulations. Based on these studies, engaging in illegal activities is equivalent to violating legal regulations (written laws);
- 2) Following a thorough investigation into potential legal violations, it is crucial to determine whether the act in question violates the written law and the implicit principles that govern it. Hence, the essence of the legal infringement is explicitly delineated in the language of the offense and can be deduced from the stipulations of the legislation, as well as from informal norms (extralegal), thereby culminating in a transgression of the law, as well as a breach of unwritten codes, including moral conduct.

It might be inferred that the act of obstructing official duties, commonly known as obstruction of justice, falls under the category of tort. A tort occurs when the act of obstructing justice hides or hinders the proper handling of a crime considered a law violation. This aligns with research on the nature of formal illegality, which refers to the act of operating in contravention of legal regulations. Furthermore, an advocate may face legal action when engaging in activities beyond their expertise or when they go against their profession's

⁴⁷ Sabela Gayo 'Loss of Advocate Immunity Due to Obstruction of Justice Based on Criminal Provisions' (2022) 28(4) SASI 599.

⁴⁸ Sudarto, *Hukum Pidana 1* (Semarang: Yayasan Sudarto, 1990).



obligations, integrity, and prestige. Crimes are classified as obstruction of justice if they encompass:

- 1) This may lead to a delay in the legal process due to ongoing legal proceedings;
- 2) The individual engages in or tries to engage in unlawful activities to obstruct or hinder a lawful or administrative procedure (deliberate acts of corruption);
- 3) The individual engages in or tries to carry out actions that aim to hinder or obstruct legal or administrative procedures (deliberate acts of corruption);
- 4) The individual had a clear motive for carrying out the alleged act, which aimed to impede the legal process.

Hence, when an advocate engages in the actions described, such actions may be deemed as obstructing justice, going against the principle of acting in good faith to protect clients' interests, and consequently forfeiting the privilege of advocate immunity.⁴⁹

2.7 AN EXAMPLE OF THE ENFORCEMENT OF IMMUNITY RIGHTS IN THE CRIME OF OBSTRUCTION OF JUSTICE (FREDRICH YUNADI CASE)

In 2018, a criminal prosecution involved Fredrich Yunadi, who served as an advocate for the former chairman of the House of Representatives. Setya Novanto. Setya Novanto was implicated in the corruption scandal involving the Electronic ID card (e-KTP), resulting in a seven-year sentence. During that period, Setya Novanto's legal representative, Fredrich Yunadi, was suspected of impeding the KPK's (the Corruption Eradication Commission) investigation into the defendant Setya Novanto. He contended that the defendant sustained serious injuries in a car accident, in an attempt to impede the KPK's investigation into the defendant. In addition, he engaged in a dispute with the KPK to protect his client's interests.

Subsequently, following the KPK's investigation at the hospital where the defendant received medical care, it was determined that the defendant was in good health and fully recovered. Indeed, in this scenario, it is accurate to state that an advocate possesses the privilege of immunity. However, it is important to emphasize that this immunity is granted on the condition that the advocate acts in good faith and with proper conduct while representing their client. However, the actions of the defendant's attorney were far from honorable or lawful. Instead of cooperating with the investigation process, he deliberately hindered the investigation

⁴⁹ *Ratio Legis of the Implementation of Obstruction of Justice Regulations in Corruption Towards Advocates in Indonesia* the 2nd International Conference on Law and Human Rights (ICLHR) (Jakarta, 2021)



process that should have been promptly conducted by the KPK. Nevertheless, his collaboration with the defendant demonstrated a lack of sincerity in his actions, even going so far as to confront and resist, much to the prosecutor's displeasure. This constitutes a violation of an advocate's right to immunity, as it is driven solely by their personal interests and the pursuit of financial gain, to the extent that they disregard the fact that their actions undermine the privileges and immunity they should uphold as a legal or justice authority. Eventually, due to his actions under the guise and protection of the right to immunity of an advocate, he was subsequently interrogated and arrested by the KPK one month later.

According to the provided information, Defendant Fredrich Yunadi intentionally impeded, obstructed, and thwarted the investigation and questioning during the trial, either directly or indirectly. Fredrich Yunadi's acts can be categorized as obstruction of justice, specifically on

- 1) Every individual involved;
- 2) Intentional behaviour;
- 3) Avoid, disrupt, or hinder, either directly or indirectly;
- 4) Conducting a thorough investigation, initiating legal proceedings, and overseeing the trial process;
- 5) Directed against the individual accused/charged/testifying in the legal matter;
- 6) Implemented the provisions of Article 55, Paragraph 1, into Paragraph 1 of the Criminal Code;
- 7) Inclusion (Dernemming).

Criminal liability stems from the presence of culpability in the action resulting from the negligence perpetrated by the advocate. Consequently, there will be accountability for the criminal offense done. The crux lies in determining whether advocates may be held accountable for their acts. The second factor is the connection between the action and the internal mindset, which can either be deliberate (*dolus*) or negligent (*culpa*). This pertains to the internal emotions on the conduct of the advocate. Furthermore, while acknowledging the presence of a fault in the first element, the presence of a fault in the second element should not be disregarded or accepted. Various factors can impact the individual responsible, potentially leading to the mitigation of their culpability, for instance, by surpassing the boundaries of a mandated defense.

Criminal accountability refers to enforcing legal rules to address criminal activities, intending to safeguard societal rights, resolve problems arising from such acts, promote social harmony, and facilitate the rehabilitation of convicts through commission orientation. The purpose of this is to cultivate moral character and alleviate inmates from their sense of



culpability. There are two distinct categories of fault: intentional (*opzet*), which refers to actions done on purpose, and negligent (*culpa*), which refers to actions done without proper care or attention. In Indonesian criminal law, the theory posits the existence of three distinct categories of intentional acts:

- 1) The intention is focused on achieving something (*Opzet Als oogmerk*), i.e. the main reason for the threat of punishment is the perpetrator's strong desire to achieve the desired result (*Mengapalen*). If an individual shoots another person, the consequence will be the death of the person who was shot. According to the testamentary hypothesis (*Whites' theory*), the perpetrator purposefully murders with the intention of causing the death of another person. Additionally, it is plausible that the perpetrator commits the crime to obtain a specific object;
- 2) Specific Intent (*Opzet bij Zeker HeidsBewustzijn*). This implies that the perpetrator's acts are not directed towards attaining the intended purpose of the crime but rather with a complete understanding that a specific behavior will occur as a consequence of their actions (*The concept of the Will Theory*). This result is also seen as aligning with the perpetrator's intention. For instance, an individual places an object inside a ship's engine. As the ship sails, it suddenly explodes, causing it to sink and tragically take the lives of its crew. The ship owner purchases insurance. When the crew faces a tragic fate, the responsible party may face charges of murder. However, even if the intention is not to destroy the ship, it is still deemed criminal if the act ensures the collection of insurance funds. They have the capability to destroy the ship;
1. Potential intentionality (*Opzet Bij Mogelijkheids-Bewustzijn*), meaning that there is no deliberate intention but rather the potential for negligent conduct, such as violating Article 259 of the Criminal Code and incurring the penalty of death due to a lack of caution and the potential consequences of harm or loss of life for others.⁵⁰

In this situation, there is a misinterpretation of the advocate's immunity privileges due to the failure to act in good faith and comply with relevant laws or regulations. In this scenario, it is appropriate to investigate his motives and for the authorities to detain him if necessary.⁵¹

⁵⁰ Dita Avivah Al'Hamdah 'Tinjauan Yuridis Tentang Obstruction of Justice Oleh Advokat Dalam Perkara Pidana Korupsi (Studi Putusan Nomor 9/Pid.Sus/TPK/2018/Pn. Jakartapusat)' (Universitas Islam Sultan Agung, 2023).

⁵¹ Manartiur Meiliana Lubis and Dita Tania Pratiwi 'Analisis Imunitas Hukum Profesi Advokat Dalam Penanganan Kasus Pidana' (2019) 8(2) *Binamulia Hukum* 179.



3 CONCLUSION

Advocate is a profession strictly regulated by the Law of the Republic of Indonesia, specifically Law No.18 of 2003 concerning advocates. Advocacy is considered a noble profession, also known as *Officium Nobile*, as it involves providing legal services to individuals involved in legal cases. These services may include consultations, legal advice, or drafting contracts to ensure justice is upheld.

Advocates performing their duties as legal service providers are frequently perceived as obstructing or hindering the course of a trial, a situation known as obstruction of justice. Advocates assert their need for immunity while practicing their profession, and they make use of it. Article 12 of the Advocates Law outlines specific standards that must be adhered to to qualify for exemption rights. If an advocate's activities are unrelated to their professional duty and lack good faith, they should be regarded as potential obstruction of justice. The behaviors of an advocate, within the framework of good faith, in connection to their professional activities encompass the following definitions: This action is undertaken to safeguard the client's interests. Article 16 of the law defines the concept of good faith, which governs the proper execution of professional duties to ensure justice and safeguard clients' interests.

The right to advocate immunity is a crucial element of the legal system that safeguards advocates' legal activity within the framework of civil and criminal cases. This immunity encompasses preserving client confidentiality, exercising freedom of speech within the courtroom, and safeguarding against unjustified legal actions. While advocates may have certain protections, they are nonetheless accountable for any ethical or legal transgressions. Within the court system, advocates fulfill distinct functions while also enjoying specific privileges of immunity. Nevertheless, the advocate's immunity may be forfeited if the advocate partakes in unlawful conduct or exploits the client's confidence. Hence, it is imperative to uphold the advocate's entitlement to immunity while ensuring accountability and compliance with legal regulations and the professional code of ethics.

In the criminal justice system, every law enforcer bears individual obligations. For instance, the police are responsible for conducting investigations and bringing criminal charges, the prosecution is responsible for presenting the case in court, judges have the ultimate authority in making legal decisions, and advocates serve as representations for their clients. Given the logical implications of this concept, it is crucial to ensure that advocates have ample opportunities to fully engage in the criminal justice process, both through regulatory measures



and the provision of legal aid. Advocates possess both personal and professional entitlements to engage in their occupation by upholding a code of ethics.

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