



# Legal Review of Lawyers Who Have Been Fired From One Organization to Another

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## Abstract

*The Chief Justice of the Supreme Court issued Letter No. 73/KMA/HK.01/IX/2015, which regulates related to significant changes in the advocate organization system. The letter of the Chief Justice of the Supreme Court was not accompanied by a revision of the Advocate Law, so the legal uncertainty that led to his profession until now continues and affects the upholding of the ethics of the legal profession itself. The existence of legal uncertainty causes conflicts between members, which can cause members to be fired or resign from one advocate organization and then easily move to another advocate organization. The purpose of this study is to find out and analyze related to the legal rule in Indonesia for advocates who have been fired from one organization to another, as well as to find out the legal impact of unregulated procedures. This type of research is normative legal research with a conceptual approach, a legislative approach and a case approach. From this study, it can be concluded that in terms of the problem of the rule of law in Indonesia for advocates who have been fired from one organization to another, it can be said that there is a legal vacuum (rechstvaccum), in positive law the legal vacuum can be said to be a legislative vacuum. Furthermore, the legal impact resulting from the unregulated procedures on the legal vacuum on the advocate organization causes legal uncertainty in the community and the advocates themselves and further causes chaos to the service in the legal field.*

**Keywords:** *advocate, organization, rechstvaccum*

## Introduction

The rule of law is the key to the main foundation in the Indonesian state as explained in Article 1 of the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution) that "(1) The State of Indonesia is a unitary state in the form of a Republic; (2) Sovereignty is in the hands of the people, and is carried out entirely by the People's Consultative Assembly". Therefore, everyone to carry out their daily life regardless of religion, ethnicity, race, culture and even their position is still obliged to submit to the 1945 Constitution law which aims to create justice and truth (Pengurus Dewan Pimpinan Pusat Perhimpunan Advokat Indonesia (PERADI), 2015). Basically, advocate as a profession that has existed for a long time, advocate can be said to be a noble job (*officium nobile*) because advocates are given trust by the client in defending and fighting for their rights, in carrying out their profession advocates have privileges in the form of immunity rights, as explained in Law Number 18 of 2003 concerning Advocates (hereinafter referred to as the Advocate Law) that

"the right of immunity is a right not to be sued civil or criminally prosecuted with the aim of protecting advocates so that they carry out their professional duties independently and without interference" (Danialsyah, 2021). Advocacy is not only a job but also a profession, with its dedication in helping the community. Advocates can survive until now because the community has problems where the community also needs an expert who is competent in the legal field to solve the problem.

In 1963, an Indonesian advocate organization was formed, namely the Indonesian Advocates Association (PERADIN). However, the regulation of legal aid or the role of legal or advocates in laws and regulations is only symbolic. This has never been explained operationally, causing uncertainty in legal policy and the responsibilities of the legal profession. During the New Order era under President Soeharto, PERADIN succeeded in formulating an advocacy bill. However, efforts to achieve this goal have failed with several factors including internal conflicts within PERADIN and interference from external parties. With the occurrence of conflicts in PERADIN, it led to the formation of various advocacy organizations such as the Indonesian Advocates Association (IKADIN), the Indonesian Legal Advisors Association (IPHI), the Indonesian Lawyers Union (SPI), the Indonesian Legal Consultants Association (AKHI), the Indonesian Advocates and Lawyers Association (HAPI), the Indonesian Advocates Association (AAI), the Indonesian Sharia Lawyers Association (APSI), and the Capital Market Legal Consultants Association (HKHPM).

The enactment of the Advocate Law in 2003 was regulated related to the establishment of advocate organizations with a single system (single bar association), with juridical reasons in strengthening the advocate profession. It has been explained in Article 28 paragraph (1) of the Advocate Law that "The Advocate Organization is the only forum for the free and independent Advocate profession that is formed in accordance with the provisions of this Law, with the intention and purpose of improving the quality of the Advocate profession". With the passage of the law, eight advocate organizations succeeded in uniting and establishing a new advocate organization, namely the Indonesian Advocates Association (PERADI), with the formation of PERADI as a form of the single bar system and had a positive impact because there was a single advocate organization.

Over time, the single bar system has given rise to many pros and cons, thus creating conflicts between members in PERADI, which has resulted in the emergence of several new advocate organizations and caused legal uncertainty related to the advocate organization. There is an opinion that states that the single bar system is irrelevant to the 1945 Constitution Article 28E paragraph (3) "Everyone has the right to freedom of association, assembly, and expression of opinion", thus contradicting the rights to freedom of association that have been guaranteed by the Constitution.

If there is a conflict that arises in PERADI that causes division, the Chief Justice of the Supreme Court issued Letter Number 73/KMA/HK.01/IX/2015, which regulates related to significant changes in the advocate organization system. The letter of the Chief Justice of the Supreme Court was not accompanied by a revision of the Advocate Law, thus the legal uncertainty that led to his profession until now continues and affects the upholding of the ethics of the legal profession itself (Siti, 2025). The existence of legal uncertainty causes conflicts between members, which can cause the member to be fired or even resign from one advocate organization and then easily move to another advocate organization. Therefore, the researcher in this study raised 2 (two) legal issues that will be discussed further in this study, namely related to the rule of law in Indonesia against advocates who have been fired from one organization to another and the legal impact as a result of unregulated procedures.

## Methods

The type of legal research that the author uses is normative legal research, with a legal research method to find solutions to legal issues and problems. Legal research is a process to find legal rules, legal principles, and legal doctrines to answer several legal issues that have been faced (Marzuki, 2015). According to Peter Mahmud Marzuki, there are several approaches in terms of research, namely the statute approach, the case approach, the historical approach, and the conceptual approach. Based on these 4 (four) approaches, this study uses a statute approach, a conceptual approach and a case approach. The statute approach is to examine all regulations or provisions related to legal issues that are being handled (Marzuki, 2008) Conceptual approach is an approach that uses several views and concepts from experts and doctrines that develop in law as a basis for this research to build a legal argument in solving the legal issue being studied. The case approach is an approach by examining cases related to the issues at hand that have become court decisions and have permanent legal force (Marzuki, 2015). The method of collecting legal materials begins with a literature study, which begins with an inventory of all materials related to the problems in this paper, then a classification of related legal materials is carried out, in order to compile these legal materials systematically to make it easier to study and read. Legal analysis is carried out by a deductive method, namely by analyzing the source of legal material, for example national legislation. From the results of the analysis, a core is drawn that will be a general conclusion, from which the conclusion will then be used to solve a legal problem of this writing.

## Results and Discussions

### A. The Rule of Law Indonesia Is Understood By Advocates Who Have Been Fired From One Organization to Another

The existing advocate organizations are diverse and the legal regulations that have regulated them have not guaranteed the position and role of advocates in carrying out their profession in the community. So that it will cause losses for the community to seek justice by using legal services both in court and outside the court, thus an Advocate Law was formed for all advocate professions in Indonesia, namely Law 18 of 2003 concerning Advocates. As explained in Article 1 number 1 of the Advocate Law, "An advocate is a person who is employed in providing legal services, both inside and outside the court who meets the requirements based on the provisions of this Law". Meanwhile, "an advocate organization is a professional organization established based on this Law", as explained in Article 1 number 4 of the Advocates Law.

In the event that an advocate is not far from mistakes, mistakes, whether intentional or unintentional, then an advocate in carrying out his duties is obliged to be responsible to God, the state, society, the court, the client and the opposing party. In addition, an advocate is also a defender of human rights and the legal profession that is closest to the community, so in carrying out his profession an advocate "before carrying out his profession is obliged to swear according to his religion or make a solemn promise in an open session of the High Court in the area of his legal domicile", according to Article 4 paragraph (1) of the Advocates Law. The oath must be upheld by the advocate to uphold the law, justice and truth. The oath or promise of an advocate has been regulated in Article 4 paragraph (2) of the Advocate Law, namely:

By Allah I swear/I promise:

- that I will uphold and practice Pancasila as the basis of the state and the Constitution of the Republic of Indonesia;
- that I am not giving or promising anything to anyone in order to obtain this profession, directly or indirectly by any name or means;
- that in carrying out my professional duties as a legal service provider I will act honestly, fairly, and responsibly based on law and justice;

- that I in the performance of my professional duties in or out of court will not give or promise anything to judges, court officials or other officials in order to win or benefit the Client's case that I am or will handle;
- that I will maintain my conduct and will carry out my duties in accordance with my honour, dignity and responsibilities as an Advocate;
- that I will not refuse to defend or render legal services in a case which in my opinion is part of my professional responsibilities as an Advocate

In the event that the advocate has been sworn in, an advocate in carrying out his duties is obliged to include in consideration his obligations to the client, the court, himself, God and the state. The advocacy group created a code of professional ethics in order to safeguard and preserve the respect and dignity of the advocacy profession from being damaged by the advocacy members themselves. The code of ethics is binding and must be complied with by those who carry out the advocate profession as their job. The existence of a code of ethics can be said to be a criterion of professional principles for both old members, new members or prospective new members, which can later prevent conflicts of interest between fellow members of professional groups.

The polemic of the advocate organization began with the opposition of PERADI as a single forum due to legal defects in its formation according to advocates, because it did not go through national deliberation and had passed the 2 (two) year deadline as mandated by Article 32 paragraph 4 of the Advocates Law and the emergence of KAI as a counter advocate organization. The polemic continued with a lawsuit filed with the Constitutional Court through a judicial review application but the Constitutional Court ruled that PERADI was legitimate as the sole forum for advocate organizations in Indonesia. There are many lawsuits and rulings in the Constitutional Court after PERADI was established that until now have not been able to resolve polemics and conflicts of interest of advocate organizations in Indonesia.

In the event of a conflict of interest between fellow members of the professional group, it will cause one of the advocates to quit or be dismissed from his profession. For example, on Thursday, February 6, 2025, there was a riot in a hearing at the North Jakarta District Court. The trial of the alleged defamation case against Hotman Paris, who is an advocate, with the defendant Razman Arif Nasution, who is also an advocate, became chaotic after the judge decided that the trial was held behind closed doors for the examination stage of Hotman Paris as a witness by the judge because the examination was related to immoral material. The judge's decision was opposed by Razman Arif Nasution until finally the judge decided to suspend the trial until the situation was conducive. After the judge left the trial, Razman Arif Nasution then approached Hotman Paris so that the action triggered the security forces to act to disperse. In the midst of the chaos that occurred, suddenly Firdaus Oiwo, who was one of the advocates from Razman Arif Nasution's legal advisory team, climbed to the table. So that as a result of the chaos that occurred and because there was a video recording of the riot that had circulated on social media, the minutes of the oath of advocate Razman Arif Nasution were frozen by the Ambon High Court who took his oath on November 2, 2015 at the Ambon High Court through a determination letter Number 44/KPT. W27-U/HM.1.1.1/II/2025 on February 11, 2025. In its consideration, the Ambon High Court stated that Razman Arif Nasution had also been sanctioned for ethical violations in the form of permanent dismissal from the advocate organization of the Indonesian Advocates Congress (KAI) through a decree of the KAI Central Executive Board number 081/DPP-KAI/SK/VII/2022 on July 15, 2022.

On February 8, 2025, the Indonesian Advocates Congress (KAI) officially fired Firdaus Oiwo as stated in the SK DPP KAI Number 007/DPP-KAI/SK/II/2025. Firdaus Oiwo is considered to have violated the organization's AD/ART and tarnished the authority of KAI as a result of Firdaus Oiwo's behavior in the incident at the North Jakarta District Court. Then on the same day as Razman Arif Nasution on February 11, 2025, the Banten High Court also

freeze the minutes of Firdaus Oiwo's oath through a determination letter Number 52/KPT.W29/HM.1.1.1./II/2025. In consideration, it was stated that Firdaus Oiwo had violated the oath of an advocate to maintain his conduct, honor, dignity and responsibility as an advocate. Firdaus Oiwo then easily moved to another advocate organization named Feradi WPI and considered his dismissal legally flawed because Firdaus Oiwo was not summoned in the ethics hearing. Chairman Feradi WPI stated that an advocate changing organizations is common in the dynamics of the profession that adheres to multiple bars.

Basically, Advocates can quit or be dismissed from their profession by the Advocate Organization, based on the dismissal decree submitted to the Supreme Court, High Court and other law enforcement agencies as explained in Article 9 of the Advocate Law. An advocate quits or may be dismissed from his profession permanently for the following reasons:

- a. self-application;
- b. sentenced to a criminal offense that has permanent legal force, for committing a criminal act that is threatened with a sentence of 4 (four) years or more; or
- c. based on the decision of the Advocate Organization

Advocates who are dismissed based on these Provisions are not entitled to carry out the profession of Advocate, as explained in Article 10 of the Advocate Law.

Basically, after the dismissal and freeze, an advocate should no longer have the right to carry out the profession of advocate based on Article 9 paragraphs (1) and (2) and Article 10 paragraph (1) of the Advocate Law. With the development of the times, advocates who have been dismissed or dismissed from their profession by Advocate Organizations such as PERADI, can then move to other advocate organizations which can then hold public events, but in Indonesia there is no legal rule related to this. In the Letter of the Chief Justice of the Supreme Court Number 73/KMA/HK.01/IX/2015 number 2, instructions have been given, one of which is "That based on the letter of the Chief Justice of the Supreme Court Number 089/KMA/VI/2010 dated June 25, 2010 which basically the Chief Justice of the High Court can take the oath of Advocates who have met the requirements, with the provision that the proposal for the oath must be submitted by the management of Peradi in accordance with the spirit of the agreement dated June 24, 2010, it turns out that the agreement cannot be fully realized, even Peradi which is considered as a single forum has been divided with each claiming to be a legitimate administrator. In addition, various Advocate Administrators from other organizations also submitted an application for oath.

In this case, it can be said that there is a legal vacuum (*rechstvaccum*), in positive law the legal vacuum can be said to be a legislative vacuum. This sometimes happens when the party who has the power to formulate a provision of laws and regulations, both Legislative and Executive, takes a very long time so that when the provisions of the laws and regulations take effect, the conditions and things contained in the provisions are no longer suitable to be implemented considering social dynamics. We also often find inconsistencies in law enforcement by administrative institutions (government) or other institutions to ensure legal certainty in society. We can find this in laws and regulations that require the establishment of implementing regulations, but in reality these implementing regulations are basically just a collection of guidelines for the further implementation of higher laws and regulations and have never existed or been made.

## **B. Legal Impact of Unregulated Procedures**

Legal consequences are consequences given to the law for a legal event, according to Jazim Hamidi, the word legal impact/legal effect contains the intention of a direct, strong or explicit legal impact or consequence (Hamidi, 2006). In terms of legal literature, there are known 3 (three) types of legal consequences, including (Mulyani, 2021):

- a. Legal repercussions, such as the emergence, modification, or extinction of a particular legal status
- b. Legal repercussions, such as the establishment, modification, or termination of a specific legal relationship
- c. Legal repercussions in the form of witnesses, which the law's subject does not want (unlawful acts)

Related to legal consequences, it must start from the existence of legal relationships, legal events and legal objects. Legal consequences arise because of the existence of a legal relationship where there will be rights and obligations (Soedjono Dirdjosisworo, 2017). The impact or legal consequences of the legal vacuum on the advocate organization causes legal uncertainty in the community and the advocates themselves and further causes chaos for services in the legal field. In the sense that as long as it is not regulated, it means that it is permissible, as long as there are clear and regulated procedures, it does not mean that it is not allowed. This causes chaos in advocate organizations regarding how rules are used and applied (Nasir, 2017) Based on the cases of Razman Arif Nasution and Firdaus Oiwoobo, many advocates deviate from the code of ethics of advocates and ignore the rules of their organization and act like thugs in court and in fact there are many more cases that are not seen by the wider community. Starting from buying and selling cases, bribery to criminalization of an individual are serious violations committed by advocates who are not detected by the community and the state does not have instruments such as institutions dedicated to supervising and cracking down on violations of the code of ethics committed by advocates. With the legal vacuum and the many events that have occurred, advocates have become questionable about the designation of officium nobile and made the public lower their trust to appoint advocates to fight for their rights because they are often disadvantaged by their own advocates as clients, especially in the lower middle class because they consider many advocates to be incompetent so they choose the path of resolving cases outside the court without involving advocates.

Similar to the dismissal of an advocate, basically after the dismissal and freeze, an advocate should no longer have the right to carry out the profession of advocate based on Article 9 paragraphs (1) and (2) and Article 10 paragraph (1) of the Advocate Law. However, the two advocates still insisted that they had not received the letter and stated that the determination letter did not stipulate that they should not appear in court. With the existence of individuals it is easy to state that the advocate organization adheres to the multi-bar system, where this statement is caused by the decision of the Constitutional Court Number 101/PPU-VII/2009 and the Letter of the Chief Justice of the Supreme Court Number 73/KMA/HK.01/IX/2015 which directly transformed the advocate organization from Single bar becomes multi-bar and legal void related to the procedure for moving advocates from one organization to another, making supervision and regulation of advocates weak and undirected. Events like this show the impact of the dismissal procedure and the advocate organization itself that has not been concretely and explicitly regulated in the Act.

The above incident occurred because many advocate organizations were very easy to form and in practice advocate organizations whose origins were unclear opened Special Education for the Advocate Profession which is commonly abbreviated as PKPA without a clear and competent curriculum and educators. Then after completing the Education, the advocate organization easily issued an exam certificate which was intended as a requirement to take the oath at the High Court to be inaugurated as an advocate. Practices like this give rise to incompetent advocates who do not understand the code of ethics of their profession, and there are even individuals who involve thugs under the guise of community organizations to support their profession as advocates. This is often detrimental to the people who use the services of an advocate and there are often cases where clients are victims of fraud by their own advocates.

The application of the single bar system in the Advocate Law has not been resolved until now, with the single bar system this kind of thing will not happen because with this system advocates will be easier to supervise and act upon if they violate the professional code of ethics and an advocate is required to submit to one advocate organization in order to carry out the profession always obeying all applicable regulations and procedures. So there is a need for progressive steps by lawmakers to change the Supreme Court's decision in the past through the Advocates Bill with the regulation of *a single bar system* in advocate organizations and the establishment of a state body or institution that supervises advocates.

## Conclusions

Based on the above discussion, it can be concluded that in the event that the rule of law in Indonesia against advocates who have been fired from one organization moves to another, in this case it can be said that there is a legal vacuum (*rechstvaccum*), in positive law the legal vacuum can be said to be a legislative vacuum. This sometimes happens when the party who has the power to formulate a provision of laws and regulations, both Legislative and Executive, takes a very long time so that when the provisions of the laws and regulations take effect, the conditions and matters contained in the provisions are no longer suitable to be implemented considering social dynamics. That the legal impact resulting from the unregulated procedures for legal vacuums on advocate organizations creates legal uncertainty in the community and advocates themselves and further causes chaos for services in the legal field, so there is a need for progressive steps by lawmakers to change the Supreme Court's decision in the past through the Advocates Bill with the regulation of *a single bar system* in advocate organizations and the establishment of a state body or institution that supervises advocates.

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