

IMPLEMENTATION OF ARTICLE 21 OF CORRUPTION ERADICATION ACT ON ADVOCATES PERFORMING THEIR PROFESSIONAL FUNCTION

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Abstract

The research problem of this study is the implementation of Article 21 of Act No. 31/ 1999 in conjunction with Act No. 20/ 2001 concerning Corruption Eradication on Lawyers performing their profession as legal advisors. It is due to the fact that it is not allowed to prosecute advocates who perform their profession, given their right to immunity. The method used in this study is normative juridical method, referring to the acts of legal regulation as mentioned in legislation, particularly those related to corruption cases, given the implementation of article 21 of Act 31/ 1999 jo 20/ 2001 that concerns on corruption as crime. Conceptual and legislation approaches are both used. The result shows that the implementation of article 21 that deals with corruption eradication may also be well conducted on which advocates do their role to take action against corruption while performing their profession.

Keywords

eradication of corruption, profession, advocate

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Introduction

The attempt to eradicate corruption in Indonesia still encounters many obstacles, including the resistance from many parties who try to prevent the judicial process of corruption, whether in investigation or verification process.

According to an observation by Indonesia Corruption Watch (ICW), there are at least 15 (fifteen) corruptors and other defendant having *obstruction of justice* in corruption cases. For instance, the case of Anggodo Widjojo that tried to do criminalization on the Commission agents of Corruption Eradication Committee (i.e., KPK), Bibit Samad Rianto and Chandra M. Hamzah, in 2010. Another quite interesting case happened in 2008 and dealt with an advocate of a suspected of corruption in West Sumatra, Manatap Ambarita. At that moment, Manatap gave falsified information about the location in which the suspect stayed. It was considered as an attempt to prolong the judicial process of his client's case. Recently, Corruption Eradication Committee (i.e., KPK) defined the advocate Fredrich Yunadi as a suspected of a notion that he had obstructed the investigation of E-KTP case taking Setya Novanto as the suspect.

From those cases, there are at least two patterns commonly used by corruptors to obstruct the judicial process of their cases. First, utilizing public to obstruct the judicial process of their cases, especially on which the law enforcers try to do investigation. Second, utilizing advocates as a shield to cover their actual crime by obstructing the judicial process of their cases.

Meanwhile, after defining Fredrich Yunadi as the suspect, the National Board of Indonesia Advocate Association (i.e., DPN Peradi), Sapriyanto Refa, argued that KPK used *elastic* articles to sentence its client, Fredrich Yunadi. As the ex-advocate of Setya Novanto, Fredrich was suspected against article 21 of Act No. 31/ 1999 about Corruption Eradication, as amended by Act No. 20/ 2001 (i.e., UUPTK) *juncto* Article 55 subsection (1) to (1) Criminal Code. "Article 21 is assumed as an *elastic* act that needs an interpretation," said Sapriyanto Refa who was also the lawyer of Fredrich when he was interviewed by Kompas TV in Kompas Petang on Wednesday, 10th January 2018. KPK interpreted the article into this case, that Fredrich, in performing his profession as lawyer, had obstructed the investigation of Setya Novanto's case (<https://www.msn.com/id-id/berita/nasional/>).

Article 21 of Act No. 31/1999 about Corruption Eradication mentions as follow.

"to whoever intentionally prevent, obstruct, or thwart, either directly or indirectly, an investigation, prosecution, and verification in a court proceeding against a suspected or defendant or witnesses in a corruption case, is sentenced by 3 (three) years at least and 12 (twelve) years at most in prison and/or fined IDR 150.000.000,00 (one hundred and fifty million rupiahs) at least and IDR 600.000.000,00 (six hundred million rupiahs) as most."

The explanation of this article is quite clear. However, the content of this article is still confusing on its limitation and scope in term '*prevent*,' '*obstruct*,' or '*thwart*,' in addition to the phrase '*directly or indirectly*'. Therefore, the implementation of this article is dependent on the interpretation of the investigator, the public prosecutor, and the judge by relying on the argument from legal experts.

Advocate is a legal enforcer obligated to give legal assistance or services to people or clients that get into legal problems, and thus their existence is necessary. This profession loads lofty tasks, obligations, and responsibility, both for self and client, court and God, as well as for the sake of justness and truth. In their oath, advocates promise to never do any falsity, either in or out of the court. Additionally, they may neither intentionally suggest a falsified lawsuit or indictment with no legal basis, nor giving any assistance for such crime. They may never obstruct anyone for personal interest or bad faith, but solely giving their best to complete their professional function and responsibility with full of loyalty to their clients, court, and God (Frans Hendra Winarta, 1995: 38).

Both advocate and lawyers have a privilege right in the form of legal immunity. In performing their profession with good faith, both in and out of the court, they cannot be sued, either in civil or criminal laws. This phrase emphasizes their immunity right, as well as the equilibrium of their obligation and responsibility. Additionally, based on article 18 subsection (1) of Act No. 18/ 2003 about Advocate, advocates may not be compared to their clients in ways of providing legal assistance on their clients' cases by the authorized party or by public. It seems to be the manifestation of advocates' professional and proportional attitudes, given that they act by trust from their clients to assist them in and out of the court. Therefore, their attitude is under their clients' approval, not based on their own excessive authority.

Problem

In accordance to the research background as described above, the research problem of this study arises: How is the implementation of article 12 of act No. 31/ 1999 *jo* act No. 20/ 201 about Corruption Eradication on advocates performing their profession as a legal assistance?

Advocate Profession in Criminal Court System

The role of advocates is not only as the specialist of case settlement among parties, but also as the specialist in the relationship between public and state, given that this profession is very prominent in the history of modern state as the source of ideas and the warrior of modernization, justness, human rights, constitutionalism, etc. In this case, the independence and autonomy within this profession gives an optimal discretion to effectively perform their roles as the specialist that overcomes people cases.

Act 18/ 2003 about Advocate (i.e., UU Advocate) explicitly defines advocate as individuals whose profession is providing legal assistance, both in and out of the court based on particular provisions (*vide*, article 1 subsection [1]). The status of advocate is a

legal enforcer and thus, they are independent and autonomous (*vide*, article 5 subsection [1]). As the same time, it is set under article 38 subsection (1) of Act of Judicial Power. Therefore, advocate is both a profession in legal field and a legal enforcer.

Basically, law enforcement can be well implemented with the sustainability of public and legal enforcers in upholding the principle and goals of law. In part of legal enforcer, they should comply with every formal and material condition. The formal condition determines the legality of advocate, and material condition represents whether the advocates really perform their profession under their clients' approval. On which a discrepancy is found between those two parties, the material party (i.e., client) may win due to their condition as one with interest (www.lbhamin.org).

In criminal cases, advocates are those providing legal assistance based on Procedural Criminal Code, and thus, they are called Legal advisor. They can be advocate, lawyer, or other people incidentally providing legal assistance. However, in administrative and civil laws, they are called advocate. The importance of advocate in criminal law is not apart from advocates' roles as a legal assistant. In this case, the difference between them lies on their performance, the intensity of relationship with court, and the type of crime they handle.

In relation to the position of legal assistant in the component of criminal law, Romli Atmasasmita argues that legal assistant is an important component due to several considerations as follow: the successfulness of legal enforcement is in fact influenced by the roles and responsibility of legal assistants. Quick, simple, and fair proceeding is not solely referred to four recognized components of legal enforcers, but also referred to the group of legal assistants as the fifth (novel) component (Romli, 1996: 25).

1. The appointment of legal assistant out of criminal law is detrimental, both for the seeker of justice and the mechanism of criminal law system. Such appointment may even endanger the authority of legal enforcers. Ethical code and professional responsibility of legal advisor with less support from applied rules may strengthen the likelihood of decreasing quality on the implementation of quick, simple, and fair legal proceeding.
2. There is an assumption that a good legal advisor may support the realization of fair judicial process with authoritative bearing.

However, in terms of their position with their clients (i.e., the principal), the relationship between them refers to civil relationship by providing authority that may emerge particular consequences. A very specific relationship between advocates and their clients is due to fiduciary. The clients give their trust and confidence to their advocates. Fiduciary relationship intended for an individual's fiduciary duties from an Advocate is tasks by the operation of law of a legal relationship that establishes a fiduciary relationship between advocate and their clients. It put advocate as trustee with very high moral and legal responsibility to their clients, their competence (i.e., duty of care and skill), good faith, loyalty, and honesty to their clients.

This fiduciary relationship establishes the fiduciary duties, on which the advocate provides a legal service. Theoretically, several relationships may emerge as follow.

1. Fiduciaries that establish fiduciary duties, including duty of loyalty from advocates to their clients.
2. Agencies. Advocates, as the recipient of an authority, may not take any action that injures the interest of the bestower. This agency relationship causes a contractual relationship between advocates and their clients, through which the advocates promise that they will do their best in providing legal services to their clients according to the case their clients are facing. This advocate-client relationship should also comply with the provisions of contractual law. In case of providing particular services, such as a a contract of authorization or agency relationship.
3. Authorization relationship. Advocates as the recipient of an authority are not allowed to take action that may injure the bestower interest.
4. Law of evidence by advocates. The facts/data collected from their clients may not be used as evidence in court proceeding the term 'function' refers to position, action/deed, the amount and its utility. However, the most appropriate definition commonly used for the term 'function' is utility. The essence of 'function' in term of 'utility' tends to refer to the primary usefulness or benefits. Tasks and functions in any profession may not be apart from one to another, as the working system of those two terms supports each other.

In criminal cases, clients' subjective interest is to escape from any legal consequence although the suspects realize that they did mistakes. It is almost never found that criminals are voluntarily willing to be sentenced for their crime. On the other hand, people have tendency to do whatever it takes to escape from the crime they have done, and the advocate should win the case on which they decide to take and comply with their client's subjective interest, in case the client states, "must win the case no matter how much it cost." On which such doctrine is complied, it is possible for the advocate to do contemptible things in moral context. Such behavior may not only injure individuals but also disturbing the law enforcement. Given that advocates are considered as a legal expert, such bad behavior is usually wrapped and masked to make people see it officially legal. They slip into a legal gap to be reversed. In this case, law becomes means or instrument to realize the client's interest, including buying the untruth.

Recently, it is often found in both printed and electronic media that an advocate is investigated and determined as the suspect and be sentenced due to his direct and indirect involvement on crime that intentionally obstruct the process of legal enforcement, particularly, on the process of investigation of a corruption case.

However, a problem emerges in case that this crime is conducted by an advocate that performs his professional job assisting his client. Hesitancy exists whether the

advocate's deed corresponds to his professional responsibility or otherwise violating the delict of Article 21 of Act No. 20/ 2001 about Corruption Eradication.

Obstruction of Justice on Corruption Case

Obstructing the judicial process or termed as the obstruction of justice is set under several regulations in Indonesia, both in Criminal Code and Criminal Law out of Criminal Code. In the context of criminal law, the obstruction of justice is the attempt of obstructing a litigation process being held by the legal officials such as cops, prosecutor, judge, and advocate against the witnesses, the suspect, or the defendant. A doctrinaire interpretation on the obstruction of justice refers to doing or not doing things with tendency to adjourn, obstruct, or interfere a litigation process of a case.

In Criminal Code, obstruction of justice is classified into violation against public power as mentioned in Second Book, Chapter VIII. This chapter sets some actions against the state dominance. In other words, the provisions mentioned in this chapter protect the government in case to make the government officials conveniently do their tasks for the sake of public order and security (Shinta, 2015: 9).

Related to the obstruction of justice in Criminal Code, among many articles that analogize the obstruction of justice, there are only two articles that clearly mention its tendency "to obstruct or disturb the investigation or verification or prosecution" as in Article 221 Criminal Code.

(1) Threatened by prison for nine months at most or by fine IDR 4.500 at most.

1. Whomever intentionally protect a criminal or those charged due to a crime, or to whoever providing assistance to the criminal to escape from investigation or arrest by court or police force, or by others, based on law, sustainably or temporarily qualified to execute the police tasks.
2. Whomever-after having a crime and having tendency to cover the crime, or to obstruct or disturb the investigation or prosecution- destroying, eliminating, concealing things related to the crime, or pulling it out from the investigation conducted by court officials or police force or others -based on law- sustainably or temporarily qualified to execute the police tasks.

(2) The above rule is not applied to individuals having a crime to avoid or dispel any prosecution against a blood family, or related by marriage, or at the second and third level of deviate line, or to spouse or ex-spouse.

Article 221 subsection (1) of Criminal Code does not mention the name and classification of crime. However, some authors of criminal law, in a discussion of Article 221 subsection (1) of Criminal Code, have mentioned particular name. J.M. van Bemmelen defined Article 221 subsection (1) of Criminal Code (Article 189 subsection [1] of Dutch Criminal Code) as "evil aid article" (Bermelen, 1986:118). On the other hand, S.R. Sianturi mentioned it simultaneously with crimes mentioned in Article 222 of Criminal Code, which she called "suspect's beneficial action".

Article 221 of Criminal Code contains some elements of delict as follow.

1. The element 'whomever'
2. The element 'intentionally'
3. The element 'concealing the criminal'.
4. The element 'Providing assistance to the criminal in order to escape from investigation or arrest by the court officials or police force, or others –based on law- sustainably or temporarily qualified to execute the police tasks.'

The elements proposed above are discussed in detail as follow. The element 'whomever'. This element is actually related to the subject of a crime. Using the term 'whomever', it indicates that the criminal can be anyone with not particular qualification such as function, profession, and position.

The element of intentionally or opzettelijk is related to internal attitude or default. This element clearly shows that a crime is an intentional action (delict), not negligence. In the theoretical context of criminal law, especially in doctrine and jurisprudence, it classifies intentionality into three types: as an intention, as an obligation, and as an awareness on probability or called *dolus eventualis*.

The element of concealing the criminal. In relation to the term "concealing", S.R. Sianturi clearly argues that, in order to hide something, it should always have evidence of an active action. Furthermore, S.R. Sianturi argues that, in order to comply with this element of "concealing", it should have an active action. Hence, when an individual sees someone concealing a criminal and he/she takes no action on it (e.g., not reporting the incident to the authorized party), he/she can be charged based on this article. As an illustration, when an individual (e.g. with initial A) allows such a concealment in his/her house by B, this article may not be applied to A as he/she does not do any active action. Otherwise, if A connivance with B to conceal S and, coincidentally, the place for concealing S is A's house, (then A is considered as one participating on concealment, as mentioned in Article 55 of Criminal Code. This provision is not applied to ones concealing the criminal (Bemmelen, 1986:136).

The element of providing assistance to the criminal to avoid investigation or arrest by the court officials or police force, or others –based on law- sustainably or temporarily qualified to execute the police tasks. This element is related to the criminal's condition or status in litigation process. As commonly found, the litigation process acknowledges several stages, including: investigation, prosecution, and verification by judge in a court, as well as a legal authority to do arrestment, detention, etc. by the law enforcers. It mentions the notion of providing assistance to avoid from any investigation or arrestment. A question than emerge, when does the investigation begin to start? There is inquiry in prior to investigation, isn't it?

Referring to Hoge Raad jurisprudence (the Supreme Court of Dutch) in its' verdict on 16th November 1948, it considered, "Article 221 subsection (1) number (1) only signals

the danger of investigation or arrestment. However, the danger is not directly threatening." In relation to the officials that are going to do investigation or arrestment, S.R. Sianturi argues that they are civil servants performing judicial tasks started from investigation to verification in court. This interpretation is in accordance to S.R. Sianturi's translation on "justice officials." This translation is almost the same to the translation by National Law Development Institution using the term "judicial officials." Based on those two terms, people may take S.R. Sianturi's interpretation that "civil servants performing judicial tasks started from investigation to verification in court." It is different from Lamintang and Samosir that use a translation "judiciary officials". It seems to be an appropriate translation given the Dutch term "officer an justitie" that refers to prosecutor, not judge (Rendy, 2015:132). Still following Lamintang, therefore, the scope of Article 221 subsection (1) letter (1) of Criminal Code refers to investigation and prosecution, while verification in court proceeding is not included into this article.

Referring to Code of Criminal Procedure (i.e., KUHAP), as set under Act No. 8/ 1981 about KUHAP, it classifies the function of investigation by Indonesia Police Force (i.e., PPNS) and the function of prosecution by public prosecutor. As set under Article 1 subsection (2) of KUHAP, investigation is a set of investigators' endeavors based on this regulation to seek for and collect evidence in order to clarify the crime and find the suspect. The execution of investigation is by investigators from police force and PPNS as set in Article 6 KUHAP, that the investigators are police forces of the Republic of Indonesia or civil servants with specific authority by law.

Furthermore, article 221 subsection (1) mentions a term "arrestment" referring to providing assistance to clients to avoid any investigation or arrestment from judiciary officials or police force. The authority to do arrestment by each of law enforcers should be in the boundaries of their function and authority. Police force, as an authorized instance to conduct investigation has an authority to do arrestment in performing their function. Hence, in case the investigation has been over, the authority to do arrestment must be over as well and shifts to the counsel of prosecution in performing its prosecution.

The authority to conduct arrestment by investigator has been over by filing a police investigation report (i.e., BAP), along with the suspect and the evidence to the office of prosecution. As BAP along with the suspect and the evidence are assigned to the office of prosecution, the authority of conducting arrestment shifts to public prosecutor. Thus, it is totally in prosecutor's hand to do or not to do arrestment based on the judgment and interest of prosecution by public prosecutor (i.e., JPU). As the prosecution ends by assigning the case to the court, JPU is no longer have the authority of conducting arrestment as it shifts to the judge based on each of the judicial level; from Public Court, High Court, and Supreme Court. A consideration to do or not to do arrestment is totally based on the subjective consideration of the judge who handles the case. Therefore, the author argues that the scope of article 221 subsection (1) number (1) of Criminal Code is not only for either investigation or prosecution, but also to the

stage of verification in every level of court (i.e., public court, high court, and supreme court).

A crime that obstructs a litigation process on corruption cases (either in investigation, prosecution, or verification by the court) is associated to corruption. The term “associated” shows that such crime may not exist without the existence of corruption case. Therefore, it is considered as a kind of “derivative” crime which also illustrates the criminalization on particular action, especially related to the successfulness of settling a corruption case (Tjandra, 210:149), as mentioned in Article 21 UUPTK.

To whoever intentionally prevent, obstruct, or thwart, either directly or indirectly, an investigation, prosecution, and verification in a court proceeding against a suspected or defendant or witnesses in a corruption case, is sentenced by 3 (three) years at least and 12 (twelve) years at most in prison and/or fined IDR 150.000.000,00 (one hundred and fifty million rupiahs) at least and IDR 600.000.000,00 (six hundred million rupiahs) as most.

Essentially, Article 21 does not contain a delict of corruption, as it deals with an action of preventing, obstructing, or thwarting an investigation, prosecution, and verification in a court proceeding on corruption case. However, as the suspect obstructs or thwarts the litigation process of a corruption case, it refers to another criminal act associated to corruption. From article 21 UUPTK, several elements are identified, as follow.

- a. The element ‘whomever.’ The subject of delict in article 21 can be anyone since the essence of ‘whomever’ does not point to particular party such as police officers, public prosecutor, judge, advocate, the member of legislative assembly, president, minister, employee of private companies, and the other parties.
- b. The element of action and object to be banned ‘prevent, obstruct, or thwart’, either directly or indirectly, the investigation, prosecution, and verification in a court proceeding against the suspect or defendant or the witnesses in a corruption case.

The meaning of the term ‘prevent’ in Indonesia Dictionary refers to: maintain; restrain, not comply with ..; obstruct; forbid. The term ‘prevent’ refers to an individual’s attempt to avoid any investigation, prosecution and judgment for a corruption case. The process of corruption case contained in the term ‘prevent’ does not work yet. In an investigation, for instance, the prevention is on which the investigator is in the state of conducting or about to do investigation on a corruption case, however, the criminal has conducted particular action to avoid the investigation, and it works.

The meaning of the term ‘obstruct’ refers to: inhibit, disturb, harass. It is defined as an attempt to make an action difficult to execute. Such crime refers to on which the legal enforcer is or will conduct a litigation process on a corruption case. The criminal has conducted particular actions to obstruct the litigation process of his/her case, and whether or not such action can be well implemented, not as a prerequisite. Thus, it clearly proves an indication that leads to an action of disturbing or obstructing a litigation process.

The meaning of 'thwart' is: making things fail to conduct. It is on which the law enforcer is or will conduct a litigation process on a corruption case. The criminal has conducted particular actions to obstruct or fail the litigation process of his/her case, and it works. Thwarting refers to making an action have no consequence or making it seen as a default.

The implementation of preventing obstructing, and thwarting a litigation process in a corruption case –whether direct or indirect- are as follow.

1. Directly. The crime is directly conducted by an individual self or in the form of participation with another criminal, as set under article 56 and 57 of Criminal Code.
2. Indirectly. The crime is conducted by borrowing other's power. The criminal approaches the influential and authorized official to shift or transfer the investigator, public prosecutor, and the member of judiciary council that handle the case.

The Implementation of Article 21 UUPK on Advocates performing their Professional Function

As a law enforcer, the authority of advocate is mentioned more clearly in Advocate Law that 'an advocate has right to get information, data, and another document, both from government instances and another party related to the interest of assisting his/her client's interest according to the legislation' (vide Article 17). Furthermore, advocates obligate to conceal any information they get from their clients, given their profession, but the law defines another provision (Article 19 subsection [1]). In case the advocates break this provision, they should be charged with sentences as mentioned in article 322 Criminal Code that "revealing the confidential information they should keep." It is common that there is obligation along with the right. Hence, when an advocate is handling a case, he/she needs things mentioned in article 17 of Advocate Law, and the other law enforcers should provide them all.

Advocates often assist the clients of corruption cases, and it is a part of their professional function in a system of criminal law. in the context of corruption case, the suspect may do their best to escape from any prosecution through such a way, including utilizing their advocate to take particular actions against the legislation and ethical code of advocate. It is a fact that many people (i.e., the suspect and the legal advisor) intentionally obstruct the litigation process through such a way due to particularly personal interest.

Article 21 of UUPK mentions another crime associated to corruption. It is an action of preventing, obstructing, and thwarting the investigation, prosecution, and verification in court proceeding, both directly and indirectly, and the elements of it have been discussed in prior.

The element “whomever” in article 21 of UUPK clearly mentions no qualification of being a suspect. However, in case that the crime is conducted by an advocate performing his/her professional function as a legal advisor in a corruption case, against article 21 of UUPK, should previously consider things related to his/her profession, as Act No. 18/ 2003 about Advocate, particularly in article 16, mentions that advocates may not be sued, either in civil or common laws in performing their function with good faith in order to assist their client in court proceeding. The explanation of article 16 UUA defines ‘good faith’ as performing a professional function for the sake of justice and based on law in order to assist their clients’ interest. It also defines ‘court proceeding’ as a proceeding section in each level of court in every judiciary field. Article 16 UUA explicitly recognizes the advocate’s right to have immunity.

In addition, there are three international provisions that set the right to immunity, as follow.

- a. Basic Principles on the Role of Lawyers. It mentions that government is obligated to make sure that advocates, in performing their function, is independent from any kinds of intimidation, intervention, and obstruction, as well as the legal prosecution within.
- b. International Bar Association (IBA) Standards for Independence of The Legal Profession. It broadly defines that advocates are not only immune from any legal lawsuit either criminal or civil law, but also administrative, economy, and sanction, as well as another intimidation in performing their function of providing assistance and advices to their clients.
- c. A declaration from The World Conference of the Independence of Justice in Montreal, Canada in 1983. It requires a fair system on court administration that may assure the advocates’ independence.

From the analysis above, it shows that the implementation of those provisions can be comprehensive, given a unified phrase which meaning may not be apart to one another. Based on such provision, an advocate –in performing his/her professional function, may not be sued, either civil or criminal setting, as long as he/she does a good faith in his/her assistance to his/her clients, and it is translated into his/her routines in an applied legal setting in the range of judiciary. Therefore, the immunity right for an advocate is not only in the range of court proceeding, but also out of the proceeding section as his/her professional performance involves both in and out of the court.

The aim and purpose of providing immunity to an advocate in performing his/her professional function that assists his/her clients’ case should be free from any fear and thus, the state should protect him/her. A-half-heart assistance from the government may injure the clients he/she assists. Hence, advocates have such right of immunity, as long as they perform proportionally according to the case they handle and not against the law.

Advocates' immunity is a freedom for the sake of their convenience and independence to perform their professional function, of course, by considering their good faith. In case an advocate, in performing his/her function, does things against the law, he/she should be investigated by his/her honorary committee in order to sustain the accountability and transparency of the profession. In case an advocate is found conducting a crime, it remains proceeded based on the applied law.

This immunity implies on the principles of equality before the law. However, in some cases, this right of immunity is not for protecting an individual's interest, but for the interest of law enforcer. Advocate's immunity right is a right to be immune by law, both civil and criminal laws, and it is set under the Advocate Law, in order to provide independence and autonomy for advocates to perform their professional function.

This is supported by the verdict of Constitutional Court No. 26/PUU-XI/2013. The Court mentions that article 16 of Advocate Law should be defined that advocates may not be sued by either civil or criminal law in performing their professional function with good faith in and out of the court. Still, based on the verdict of Constitutional Court No. 26/PUU-XI/2013, Article 16 of Advocate Law should define that advocated have such a protection in performing their professional function both in and out of the court. They may not be sued by either civil or criminal law as long as they perform with good faith for the sake of their clients' interests, both in and out of the court. In this case, good faith refers to performing their professional function without violating the applied regulations. A critical question may arise on who has an authority to define whether an advocate has good faith or not, and how should the other law enforcers process the advocate suspected taking action against the law while performing their function?

How is the daily practice of this immunity in Indonesia? Basically, what Indonesian advocate should take into account is that each of their action in assisting their client or performing their professional function must be accompanied with good faith. That is, the immunity right is applied as long as the advocates perform their function in appropriate way without, for instance, bribing another law enforcer, manipulating/falsifying the evidence, slandering the rival of the case they handle, or making falsified decision. In general, they are not allowed to make a plot for the sake of their win. Indeed, advocates cannot be likened to their clients, unless they are the part of the crime such as bribing and distributing some money to help the client escape from the litigation process (Dwi, 2019:85).

Specifically, advocates who are found disturbing or obstructing the process of investigation in a corruption case may lose their immunity right. In other words, they should be investigated through litigation although they are considered as a law enforcer who perform their professional function.

Conclusion

Based on Article 21 of UUPTK, the element "*whomever*" defines that there is no particular qualification for defining a criminal. However, in case that the crime is

conducted by an advocate performing his/her professional function as a legal advisor in a corruption case, against Article 21 UUPTK, it should consider some issues related to his/her profession given that Article 16 of Act No. 18/ 2003 about Advocate mentions that advocates may not be sued by either civil or criminal law as long as they do good faith in performing their professional function for assisting their client during the litigation. Advocates' immunity is a freedom for the sake of their convenience and independence to perform their professional function, of course, by considering their good faith. In case an advocate, in performing his/her function, does things against the law, he/she should be investigated by his/her honorary committee in order to sustain the accountability and transparency of the profession. In case an advocate is found conducting a crime, it remains proceeded based on the applied law.

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