

THE POSITION OF AN ADVOCATE TOWARDS A CLIENT IN ACCOMPANIING THE EXAMINATION OF CRIMINAL CASES AT THE INVESTIGATION LEVEL

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ABSTRACT

The position of advocates in accompanying clients in criminal cases at the investigation level is very urgent because providing legal assistance to suspects is an obligation of Advocates to uphold justice and protect human rights, including the human rights of perpetrators of criminal acts which are constitutional rights. Advocates play their role at all levels of examination, namely the role at the investigation level, advocates have begun to provide assistance and follow the course of the investigation so that the suspect's rights can be fulfilled and there is no pressure or coercion from investigators. Providing legal aid to perpetrators of criminal acts is important in relation to the principle of equality before the law (everyone is considered equal before the law) this principle demands the right to legal aid, through the provision of legal aid for defendants/suspects of criminal acts. It is better to handle problems and provide legal assistance to justice seekers, both those who are able to pay for the performance and those who are unable to pay for the performance.

1. Introduction

The article of the 1945 Constitution relating to the need for state guarantees for the implementation of legal aid is Article 28 D paragraph (1): "Everyone has the right to recognition, guarantees, protection, and certainty of just law, as well as equal treatment before the law." Article 28 D paragraph (1) guarantees that everyone, including individuals, has the right to access justice so that their rights to recognition, guarantees, protection, and certainty of just law, as well as equal treatment before the law, can be realized.

A suspect or defendant has the right to receive legal assistance from one or more legal advisors at every stage of the examination for the purposes of their defense (Article 54 of the Criminal Procedure Code), chosen by the defendant (Article 55 of the Criminal Procedure Code). For suspects or defendants suspected or charged with a crime punishable by death or imprisonment for 15 (fifteen) years or more, or for those who are incapacitated and face imprisonment for 5 (five)

years or more and do not have their own legal counsel, the relevant officials at all levels of the judicial process are required to appoint legal counsel (Article 56 paragraph (1) of the Criminal Procedure Code).

A person's weak status and inability should not prevent them from receiving justice. Legal assistance for perpetrators of criminal acts without discrimination is a manifestation of equal protection and treatment before the law. Without legal assistance for perpetrators of criminal acts, equality before the law, as mandated by the constitution and universal human rights values, will never be fulfilled.

The role of advocates as providers of legal aid or legal services to members of the public (clients) facing legal problems is greatly needed by the community, in line with the increasing public awareness of the law and the complexity of legal issues. Advocates, in carrying out their duties and functions, act as companions, advisors, or legal representatives for and on behalf of clients.

Advocates are considered a noble profession because they can act as mediators for disputing parties in cases, whether criminal, civil, or administrative, or even decisions in the Constitutional Court. Furthermore, advocates can also act as facilitators in seeking the truth and upholding justice, defending human rights and providing free and independent legal representation.

A person's weak status and disability should not prevent them from obtaining justice. Legal assistance for perpetrators of criminal acts without discrimination embodies equal protection and treatment before the law. Without legal assistance for perpetrators of criminal acts, equality before the law, as mandated by the constitution and universal human rights values, will never be fulfilled.

The role of advocates as providers of legal aid or legal services to members of the public (clients) facing legal problems is greatly needed by society, in line with increasing public legal awareness and the complexity of legal issues. In carrying out their duties and functions, advocates act as companions, advisors, or legal representatives for and on behalf of clients.

Being an advocate is a noble profession, as they can act as mediators for disputing parties in cases, whether criminal, civil, or administrative, or even decisions in the Constitutional Court. Furthermore, advocates can also act as facilitators in seeking the truth and upholding justice, defending human rights, and providing free and independent legal representation.

2. Research Method

This type of research utilizes both normative and empirical juridical methods, considering that this approach is deemed sufficiently applicable to this topic.

This research method will obtain comprehensive normative data and information, from primary, secondary, and tertiary legal materials. The data or information obtained will be compared using laws and regulations related to the position of advocates in representing clients in criminal cases at the investigation stage.

The collected data will be thoroughly analyzed using qualitative analysis or described in sentences. Qualitative analysis is based on the paradigm of the dynamic relationship between theories, concepts, and data, which constitutes constant feedback or modification of theories and concepts based on the collected data.

3. Results And Discussion

Results

According to Article 1, number 14 of the Criminal Procedure Code, a suspect is a person who, due to their actions or circumstances, is reasonably suspected, based on preliminary evidence, of being the perpetrator of a crime. According to Article 1, number 15 of the Criminal Procedure Code, a defendant is a person who is prosecuted, examined, and tried in court. Therefore, they must be investigated, interrogated, and questioned by investigators, then prosecuted and questioned in court. If necessary, coercive measures can be taken against the suspect, including arrest, detention, searches, and confiscation of property in accordance with the procedures prescribed by law.

Regarding legal counsel or advocates as referred to in the Criminal Procedure Code, as stipulated in Article 56 paragraph (2) of the Criminal Procedure Code, every appointed legal counsel must provide free assistance. This is also regulated in Article 22 of Law Number 18 of 2003 concerning Advocates, which states that advocates are obliged to provide free legal assistance to justice seekers who cannot afford it. These two articles emphasize that legal assistance provided by advocates is free of charge, and it is even an obligation for advocates.

According to Article 1, point 1 of the Criminal Procedure Code (KUHAP), investigators are officers of the Republic of Indonesia National Police (Polri) or certain civil servants specifically authorized by law to conduct investigations. The KUHAP further regulates investigators in Article 6, which defines the role of investigators in criminal proceedings. These officers are defined as National Police investigators and civil servant investigators.

Regulations regarding investigators, in addition to Article 1, point 1 of the KUHAP and Article 6 of the KUHAP, also include Article 10, which regulates the existence of assistant investigators in addition to investigators. Article 6 of

the KUHAP clearly defines who is entitled to be an investigator, based on agency and rank. This article defines the agency and rank of an investigator. The investigative authority of civil servants is limited to crimes regulated by specific criminal laws. This is in accordance with the limitations of authority stated in Article 7 paragraph (2) of the Criminal Procedure Code which states: "Civil servant investigators as referred to in Article 6 paragraph (1) letter b have authority in accordance with the law which is their respective legal basis and in carrying out their duties are under the coordination and supervision of National Police investigators."

4. Discussion

Investigation is a term intended to align with the meaning of *opsporing* (Dutch) and *investigation* (English) or *penisiasatan* or *strategisat* (Malaysia). Article 1 paragraph (2) of the Regulation of the Chief of the Republic of Indonesia National Police Concerning the Management of Criminal Investigations defines investigation as follows: "A series of investigative actions in the manner and according to the methods stipulated in this law to seek and collect evidence that sheds light on the crime that occurred and to identify the suspect."

As stipulated in Article 1 paragraph (2) of the Criminal Procedure Code above, an investigation is any action by an investigator to seek evidence that can convince or support the belief that a criminal act or an act prohibited by criminal provisions has actually occurred. Gathering information to support the belief that a crime has occurred must be done by carefully considering the true meaning of the law, considering whether the criminal act or incident contradicts the values entrenched in the local community, for example, if the act clearly harms other parties involved.

Regarding the police's primary duty of law enforcement as a process for resolving criminal cases, investigations are conducted by National Police investigators. In this regard, Indonesian National Police officers, in carrying out their duties and authorities throughout the Republic of Indonesia, particularly within their jurisdictions, are assigned in accordance with statutory provisions. This is in accordance with Article 17 of Law Number 2 of 2002 concerning the Indonesian National Police. In carrying out their duties and authorities, the police must adhere to applicable laws and regulations, or in other words, must comply with applicable legal procedures.

Investigation is one of the main duties of the Indonesian National Police (Polri) in enforcing the law, as stipulated in Article 13 letter (b) of Law Number 2 of 2002 concerning the Indonesian National Police. The role of the Polri as

investigators is also stipulated in Article 14 paragraph (1) letter (g) of Law Number 2 of 2002 concerning the Indonesian National Police, which states that the Indonesian National Police is tasked with "conducting inquiries and investigations into all criminal acts in accordance with criminal procedure law and other laws and regulations."

Any Polri officer, without waiting for a warrant, may make an arrest, prohibit someone from leaving a place, conduct a search, and so on, as referred to in Article 5 paragraph (1) letter (b) of the Criminal Procedure Code when a crime is caught red-handed. The officer is required to prepare a report of the actions taken and report it to investigators in the jurisdiction.

Investigators who become aware of, receive a report, or complain about an incident reasonably suspected of being a crime are required to immediately carry out the necessary investigative actions. Anyone who experiences, witnesses, witnesses, or becomes a victim of a criminal act has the right to file a report or complaint with the police, either verbally or in writing. Likewise, anyone who learns of a criminal conspiracy to commit a crime must immediately report the incident to the police.

Civil servants, in the course of carrying out their duties, who become aware of an incident that constitutes a crime are required to immediately report it to the police. Written reports or complaints must be signed by the reporter or complainant. Oral reports or complaints must be recorded by the investigator and signed by both the reporter or complainant and the investigator. Upon receiving the report or complaint, the investigator or investigator must provide a receipt for the report or complaint to the person concerned. If the investigator has begun investigating an incident that constitutes a crime, the investigator shall notify the public prosecutor.

Based on the provisions of Article 111 of the Criminal Procedure Code, in the event of a crime and a person caught in the act, everyone has the right, and everyone with authority in the duties of maintaining public order, tranquility, and security is obliged, to arrest the suspect and hand him over, with or without evidence, to the investigator or investigator. After receiving the suspect, the investigator or investigator is required to immediately conduct an examination and other investigation measures. The investigator or investigator who receives the report immediately arrives at the scene and may prohibit anyone from leaving the premises until the investigation is completed.

Once it is discovered that an incident is suspected or constitutes a crime, an investigation shall be immediately conducted through investigative activities, prosecution, examination, completion, and submission of case files, which may be carried out by the Criminal Procedure Code (KUHP). The legal basis for this

is: Article 5 of the Criminal Procedure Code; Article 9 of the Criminal Procedure Code; Article 75 of the Criminal Procedure Code; Articles 102 to 105 of the Criminal Procedure Code; and Article 111 of the Criminal Procedure Code.

A report shall be prepared for every action involving the examination of a suspect, arrest, detention, search, entry into a house, confiscation of property, examination of documents, examination of witnesses, examination of the scene of the incident, implementation of court decisions and rulings, and the implementation of other actions in accordance with statutory provisions. The report shall be prepared by the official responsible for carrying out the action and shall be duly signed by the official and by all parties involved in the action.

An investigator who becomes aware of, receives a report, or complaint about an incident reasonably suspected of being a crime is obliged to immediately undertake the necessary investigative action. If a person is caught red-handed without waiting for an investigator's order, the investigator is obliged to immediately take the necessary action for the investigation and must prepare a report and report it to investigators in the jurisdiction.

Written reports or complaints must be signed by the reporter or complainant. Oral reports or complaints must be recorded by the investigator and signed by both the reporter or complainant and the investigator. If the reporter or complainant is unable to write, this must be stated in the report or complaint. When carrying out investigative duties, investigators are required to show their identification. In carrying out investigative duties, investigators are coordinated, supervised, and instructed by the investigator.

Legal counsel in providing legal assistance is stipulated in Law Number 8 of 1981 concerning the Criminal Procedure Code, specifically Article 54, which states that for the purposes of defense, a suspect or defendant has the right to receive legal assistance from one or more legal counsel during and at every stage of the examination, according to procedures determined by law.

Fulfillment of the right to legal assistance for suspects during the investigation process must be carried out to prevent further violations of their rights by law enforcement officials. The provision of legal assistance that is not serious constitutes a violation of human rights, thus contradicting the constitutional rights of citizens.

Providing legal assistance during the advocacy process: legal counsel plays a crucial role in every criminal justice system. Legal counsel (advocates) must be able to collaborate with law enforcement officials, namely the police, prosecutors, and courts, to achieve their shared goals: preventing crime, preventing recurrence of crime, rehabilitating perpetrators and reintegrating them into society. The legal profession, as part of the legal aid profession, must

be able to fulfill its role in defending the underprivileged and those who lack legal knowledge, who are often subjected to torture, unfair, inhumane, and degrading treatment and punishment.

Advocates' obligation to provide legal assistance to perpetrators of criminal acts is to ensure justice. Providing legal assistance to perpetrators of criminal acts is a form of advocates' dedication in carrying out their profession as a member of the law enforcement apparatus.

The right to legal counsel in providing advocacy is stipulated in Law Number 8 of 1981 concerning the Criminal Procedure Code, specifically Article 54, which states: "For the purposes of defense, a suspect or defendant has the right to receive legal assistance from one or more legal counselors during and at every stage of the examination, according to the procedures determined in this law."

Article 54 of the Criminal Procedure Code grants suspects the right to receive legal assistance from one or more lawyers at the beginning of the investigation. Legal assistance at this stage remains a right, not yet mandatory. Therefore, legal assistance from a legal counsel is only a right. Receiving legal assistance still depends on the suspect's willingness to be assisted by legal counsel. The suspect may exercise this right or may not. Consequently, not being assisted by legal counsel does not hinder the suspect's examination.

The provisions of Article 54 of the Criminal Procedure Code may become mandatory in its implementation. This can be seen in Article 114 of the Criminal Procedure Code which states: In the event that a person is suspected of committing a crime before the investigation by the investigator begins, the investigator is obliged to inform him of his right to obtain legal assistance or that he must be accompanied by a legal advisor in his case as referred to in Article 5656 of the Criminal Procedure Code.

5. Conclusion

The role of advocates in representing clients in criminal cases at the investigation stage is crucial because providing legal assistance to suspects is an advocate's obligation to uphold justice and protect human rights, including the constitutional rights of perpetrators of criminal acts. Advocates play a role at all levels of the examination process. At the investigation stage, advocates have begun to provide assistance and follow the investigation process to ensure the suspect's rights are fulfilled and there is no pressure or coercion from investigators. Providing legal assistance to perpetrators of criminal acts is crucial in accordance with the principle of equality before the law, which requires the right to legal assistance through the provision of legal assistance to defendants/suspects.

Obstacles to providing legal assistance to suspects include obstacles stemming from legislation, obstacles from fellow law enforcement officers, and obstacles stemming from legal culture. One obstacle stemming from legislation is the lack of a legal basis for advocates to obtain legal protection if they experience threats to their lives, property, and/or property, a situation that differs from other law enforcement agencies. Efforts to overcome obstacles in providing legal aid include allocating funds for the implementation of providing legal aid for suspects, increasing the availability of legal aid for suspects and improving Human Resources.

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