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The Urgency of Harmonizing Advocates with Other Law Enforcement Officers in the Law Enforcement Process

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Abstract

The Advocates are the only law enforcers who can be involved in all law enforcement processes. Advocates can also intersect and conflict with all other law enforcers in the law enforcement process. Therefore, harmonization of advocates with other law enforcers in the law enforcement process is essential. This study aims to determine the urgency of such harmonization and the factors that influence it. This research is a normative juridical research using a statutory and conceptual approach. Primary and secondary legal materials were collected through literature study and analyzed qualitatively. This research found that harmony between advocates, one of the four pillars of law enforcement, and the other three law enforcement agencies is crucial for ensuring justice in the law enforcement process. A lack of harmony will impact the law enforcement process itself. Harmonization of advocates and other law enforcers in the law enforcement process is also influenced by three factors, namely legal factors, authority factors, and interest factors.

A. INTRODUCTION

The law enforcement process cannot be separated from law enforcers because the executors of law enforcement are law enforcers. In the law enforcement system in Indonesia, the chess nation of law enforcement is known as the police, prosecutors, judges, and advocates. However, there are also those who add correctional institutions as law enforcement institutions (Mufti & Riyanto, 2023). However, law enforcement in this study is limited to police, prosecutors, judges and advocates. Although advocates are not part of the state apparatus, their status as law enforcers has been

affirmed in Article 5 paragraph (1) of Law No. 18/2003 on Advocates (Law No. 18/2003), which states, "Advocates have the status of law enforcers, free and independent guaranteed by laws and regulations".

Advocates are the only law enforcers authorized to be involved in all stages of law enforcement. Advocates' existence in the law enforcement process can even be in the opposite position. In a criminal case, an advocate can be the legal advisor of the perpetrator or the legal advisor of the victim. Likewise, in a civil case, an advocate can be the plaintiff's or defendant's attorney. Of course, this does not mean that an advocate can be both the plaintiff's attorney and the defendant's attorney. However, it means that two or more advocates are in opposing positions, representing the interests of their clients as plaintiffs or defendants, respectively.

Advocates always intersect with other law enforcers in the law enforcement process. In criminal cases, advocates can even intersect with all law enforcers. The advocate's relationship with other law enforcers begins with the police when the case is reported to the police. Then with the prosecutor when the case is transferred to the prosecutor's office. And with the judge when the case is submitted to the court. Only advocates can always be involved in all stages of law enforcement. Meanwhile, other law enforcers can only be partially involved in accordance with their authority.

Basically, the law enforcement process has been regulated in sufficient detail in procedural law, both in Law No. 8 of 1981 concerning the Criminal Procedure Code (KUHAP), Herzien Inlandsch Reglement (HIR), Rechtreglement voor de Buitengewesten (RBg), as well as in other laws and regulations. But in its application, it still often causes conflicts, both conflicts between advocates and the police (Pratiwi, 2023), conflicts between advocates and prosecutors (Supendi, 2023), and conflicts between advocates and judges (Natalia, 2023). This certainly disrupts the harmonization of advocates with other law enforcers in the law enforcement process, which results in the law enforcement process cannot run properly, and ultimately cannot present a fair law enforcement process.

According to Soerjono Soekanto, law enforcers have different positions and roles. So that the various positions and roles may give birth to conflicts (Soekanto, 2012, pp. 20–21). If there is a conflict between law enforcers, of course the law enforcement

process will be disrupted. Therefore, harmonization of law enforcement is needed in the law enforcement process. According to the chairman of the Judicial Commission (Komisi Yudisial), the success of law enforcement is highly dependent on the substance of law, legal structure, legal culture, and law enforcement officials. Therefore, law enforcers, such as police, prosecutors, judges, and advocates need to synergize because they play an important role in law enforcement in Indonesia (Yuni & Festi, 2023).

Advocates and other law enforcers are an important part of the law enforcement process, because it is law enforcers who carry out law enforcement. However, conflicts between law enforcers disrupt the law enforcement process. In addition, the applicable procedural law in Indonesia is no longer in accordance with the current situation and conditions. There are even law enforcement processes that have not been regulated by law. So that law enforcers who are given the authority as regulators, namely the Supreme Court, the Police, and the Attorney General's Office often issue procedural laws that are considered detrimental to the interests of advocates.

Several research discuss law enforcement in the law enforcement process. First is the research by Ali Imron, titled "The Role and Position of the Four Pillars in Law Enforcement Judges, Prosecutors, Police, and Advocates in Connection with Law Enforcement in Corruption Cases". Ali Imron's research focuses on the role and behavior of law enforcers in solving corruption problems. The results of Ali Imron's research show that the involvement of law enforcement officers in corruption crimes greatly affects the creation of the rule of law (Imron, 2016). Meanwhile, this research focuses on finding the urgency of harmonizing advocates with other law enforcers in the law enforcement process and the factors that influence it.

Second, Novriansuah and Syaiful Ahmad Dinar's research entitled "Analysis of the Duties and Authorities of Law Enforcement Officials in Indonesia". Novriansyah and Syaiful Ahmad Dinar's research focused on analyzing the authority of advocates who are not balanced with the authority of judges, prosecutors and police. The results of Novriansyah and Syaiful Ahmad Dinar's research concluded that if advocates are given equal authority with judges, prosecutors and police, the law enforcement system will be better (Novriansyah & Dinar, 2023). Novriansuah and Syaiful Ahmad Dinar's

research is different from this research which focuses on finding the urgency of harmonizing advocates with other law enforcers in the law enforcement process and the factors that influence it.

Based on the description of the background of the problem above, it is necessary to research the factors that influence the harmonization of advocates with other law enforcers in the law enforcement process.

B. METHOD

This research is normative juridical research. The approaches used are statutory approaches and conceptual approaches. The statutory approach and conceptual approach are used to analyze legal materials qualitatively (Bungin, 2017, p. 124). The legal materials used are primary and secondary legal materials. Primary legal materials are authoritative, including KUHAP, HIR, RBg, and other laws and regulations relating to law enforcement and law enforcement. While secondary legal materials are in the form of legal scientific works in journals, reference books, theses, dissertations, and other scientific works. The research begins by collecting legal materials through literature studies, both conventional and electronic libraries (digital library). All legal materials collected were then grouped according to the subject matter, both physically and electronically. Furthermore, legal materials were verified and analyzed qualitatively. The analysis results are then described prescriptively by the prescriptive nature of legal science.

C. RESULTS AND DISCUSSION

The term harmonization comes from the Greek word harmonia which means harmoniously bound (Shadily, 1983, p. 1262). Philosophically, the term harmony is interpreted as cooperation between various factors in such a way as to produce a noble unity (Suhartono, 2011, p. 94). Meanwhile, the word harmonization is defined as the quality of two or more things going well together and producing an attractive result; the process of making systems or rules similar in different countries or organizations (O. E. Dictionary, 2023).

Rudolf Stammler argued that the concept and principles of fair law include harmonization between the goals, objectives and interests of individuals with the goals, objectives and interests of the general public (Alsyam et al., 2021). Harmonization in

law includes the adjustment of laws and regulations, government decisions, judges' decisions, legal systems and legal principles to increase legal unity, legal certainty, justice and equity, usefulness and clarity of law, without obscuring and sacrificing legal pluralism if needed. Legal harmonization brings a very important perspective as a necessity to be able to realize certainty, justice and benefits (Safudin, 2021, pp. 38–39).

The high sectoral ego and intersection of authority are still obstacles in the harmonization process (Widyantari & Sulistiyono, 2020). The function of legal harmonization is to prevent and overcome legal disharmony (Goesniadhie, 2020, p. 11). Harmonization of law is directly proportional to the harmonization of law enforcement. Because law enforcement is the executor of law enforcement. If law enforcement is influenced by its own legal factors, law enforcement factors, factors of means or facilities supporting law enforcement, community factors, and cultural factors (Soekanto, 2012, p. 5), then there are three factors that affect the harmonization of advocates and other law enforcers in the law enforcement process, namely statutory factors, authority factors, and interest factors.

1. Statutory Factor

Statutory is one of the factors that influence the harmonization of advocates with other law enforcers in the law enforcement process (Zamroni & Noor, 2025, pp. 22–23). Leaning on Soerjono Soekanto's opinion (Soekanto, 2012, pp. 17–18), laws and regulations can affect the harmonization of advocates and other law enforcers due to the following matters: a. Law enforcers do not heed the principle of the applicability of the law; b. There are differences in legal interpretation among law enforcers; c. The absence of implementing regulations from the law or procedural law has not regulated.

First, law enforcers do not heed the principle of the applicability of the law. In the law enforcement process, law enforcers often do not heed the principle of the applicability of the law. The principle of the applicability of law that is often ignored by law enforcers in the law enforcement process is the principle of preference consisting of the principle of lex specialis derogat legi generali, the principle of lex posterior derogat legi priori, and the principle of lex superior derogat legi inferiori (Agustina, 2015). The principle of lex specialis derogat legi generali provides a rule that regulations that regulate specifically override regulations that regulate generally.

Meanwhile, the principle of lex posterior derogat legi priori provides a rule that new regulations override old regulations. Meanwhile, the principle of lex superior derogat legi inferiori provides a rule that hierarchically higher regulations override lower regulations.

The principle of lex specialis derogat legi generali is often debated by advocates and other law enforcers in law enforcement practice. This is also triggered by differences in interpreting statutory provisions. The disregard of the principle of lex specialis derogat legi generali can be seen in applying the provisions of Article 310 of Law No. 17 of 2023 on Health (Law No. 17/2023). Article 310 of Law No. 17/2023 states, "In the event that a Medical Personnel or Health Personnel is suspected of committing an error in carrying out their profession that causes harm to the Patient, disputes arising from the error shall first be resolved through alternative dispute resolution outside the court". The above provision actually already exists in the old health law, namely Law No. 36/2009 on Health (Law No. 36/2009). Article 29 of Law No. 36/2009 states, "In the event that health workers are suspected of committing negligence in carrying out their profession, the negligence must first be resolved through mediation".

Some of the above provisions are lex specialis of medical dispute resolution arrangements. Therefore, medical disputes should first be resolved through mediation or out-of-court dispute resolution. But the fact is that law enforcers such as police, prosecutors, and judges never heed them. Often medical disputes are directly prosecuted without going through mediation or out-of-court dispute resolution (Sugiyarto, 2016). One of them is a medical dispute that occurred in Manado. Although in the end the defendant, who is a doctor, was acquitted by the Supreme Court, the law enforcement process that has been carried out has led to detention without going through mediation procedures. The detention that has been carried out against doctors is a violation of legal principles (Nafi, 2023).

Second, differences in legal interpretation. Differences in interpretation are common between advocates and other law enforcers in law enforcement practices, both on clear statutory norms, especially on unclear statutory norms. Differences in interpretation of clear statutory norms can be seen in the practice of legal remedies

against acquittals. Article 67 of KUHAP states, "The defendant or public prosecutor has the right to appeal against a decision of the court of first instance except for acquittal, release from all legal charges concerning issues of inaccurate application of the law and court decisions in a speedy trial". Furthermore, Article 244 of KUHAP states, "Against criminal case decisions rendered at the final level by a court other than the Supreme Court, the defendant or public prosecutor may file a request for cassation to the Supreme Court except for acquittals".

The provisions of Articles 67 and 244 of KUHAP clearly regulate the exclusion of legal remedies against acquittals. If interpreted literally or textually (Zamroni, 2016), then an acquittal verdict cannot be appealed or cassated. However, in reality, in the practice of law enforcement, the prosecutor as the public prosecutor often files a cassation appeal against an acquittal (vrijspraak) on the grounds that the verdict is not pure acquittal. The terms pure acquittal and impure acquittal used by the public prosecutor are of course subjective and do not provide legal certainty. Moreover, the judge's verdict did not use the terms pure acquittal and impure acquittal. However, the legal remedy taken by the public prosecutor was accepted by the Supreme Court, as recorded in decision No. 275 K/Pid/1983 dated December 10, 1983.

The advocate as the defendant's legal counsel viewed that the legal remedy against the acquittal decision made by the public prosecutor and accepted by the Supreme Court, in addition to harming the defendant, also did not provide legal certainty. The problem of differences in interpretation was then submitted for judicial review to the Constitutional Court by a defendant who had been acquitted in the Lubuk Sikaping District Court. Despite the dissenting opinion, the Constitutional Court in Case No. 114/PUU-X/2012 dated March 28, 2013 held the view that cassation appeal against acquittal has been accepted and implemented in the practice of law enforcement. Therefore, the phrase "except for acquittals" in Article 244 of KUHAP was declared contrary to the 1945 Constitution of the Republic of Indonesia and has no binding legal force. This means that acquittals can be appealed in cassation. The Constitutional Court's decision also provides a basis for public prosecutors to file cassation appeals against acquittals without the need to use the term acquittal.

Differences in legal interpretation between advocates and other law enforcers on unclear norms of legislation are certainly more common (Zamroni & Noor, 2025, p. 26). One of them is the provision of Article 21 paragraph (1) of KUHAP which states, "Detention or continued detention is ordered for a suspect or defendant who is strongly suspected of committing a criminal offense based on sufficient evidence, in the event that there are circumstances that raise concerns that the suspect or defendant will escape, damage or eliminate evidence and or repeat the criminal offense". The phrase "there are circumstances that raise concerns that the suspect or defendant will escape, damage or eliminate evidence and or repeat a criminal offense" contains ambiguity and is subjective, so law enforcers can interpret as they wish. In law enforcement practice, this vague provision on detention often leads to conflicts between advocates and other law enforcers (Zamroni & Noor, 2025, p. 39).

Law enforcers representing government institutions, namely the police, prosecutors and judges are indeed given discretionary authority to overcome specific problems that arise in the administration of government, especially when laws and regulations are unclear, incomplete or ambiguous (Supriyadi et al., 2024). But the interpretations made by police, prosecutors and judges are often different from those of advocates. So that the differences in interpretation that occur between advocates and other law enforcers in the law enforcement process interfere with the law enforcement process. In the practice of law enforcement, this difference in interpretation also has the potential to give birth to unprofessional and corrupt law enforcement actions. Corruption among law enforcers is done through bribery between advocates and other law enforcers (Sani, 2023).

Third, the absence of implementing regulations from the law or procedural law has not regulated. Basically, laws and regulations can only be made by state institutions that have the authority to form laws (rechtsvorming) (Soeprapto, 1998, p. 54), including implementing regulations. However, state institutions are also regulators, so they are given the authority to make laws and regulations. This is confirmed in Article 8 paragraph (1) of Law No. 11/2011 on the Formation of Legislation (Law No. 12/2011) which states that laws and regulations include regulations stipulated, among

others, by the Supreme Court, agencies, institutions, or commissions of the same level established by law.

The Supreme Court, the Police Force and the Public Prosecutor's Office are state institutions, so they have the authority to make laws and regulations. In addition to being regulated in Law No. 12/2011, the authority of the Supreme Court, the Police and the Public Prosecutor's Office is also affirmed in laws that specifically regulate the institutions of the Supreme Court, the Police and the Public Prosecutor's Office. This authority is regulated in Article 79 of Law No. 14/1985 on the Supreme Court (Law No. 14/1985) which states, "The Supreme Court may further regulate matters necessary for the smooth administration of justice if there are matters that have not been sufficiently regulated in this Law". Thus, the Supreme Court has the authority to make laws and regulations relating to the implementation of law enforcement in judicial institutions. The same applies to the police and the prosecutor's office. Meanwhile, Indonesian Advocates Association (Peradi), although declared by the Constitutional Court as a state organ (Sihombing, 2024), is not given the authority to make laws and regulations.

Implementing regulations and procedural laws are often not issued or issued late in Indonesian constitutional practice, so relevant institutions - including the Supreme Court, police and prosecutors - then make their own implementing regulations and/or procedural laws to regulate the technical implementation of the law. In the practice of law enforcement, the existence of regulations made by law enforcement agencies often disrupts the harmonization of advocates with other law enforcers. This can be seen in the decision of the Constitutional Court No. 92/PUU-XV/2017 dated March 20, 2018, which was submitted by an advocate who felt hindered by technical regulations made by law enforcement, so that he could not carry out his profession in accordance with the provisions of Article 69 and Article 70 paragraph (1) of KUHAP.

Article 69 of KUHAP states, "Legal counsel has the right to contact the suspect from the time of arrest or detention at all levels of examination according to the procedures specified in this law". Furthermore, Article 70 paragraph (1) of KUHAP states, "Legal counsel has the right to contact and speak with the suspect at every level of examination and at any time for the purpose of defending his case".

The provisions of Article 69 and Article 70 paragraph (1) of KUHAP above expressly regulate that the advocate as legal counsel can contact his client who is a suspect at any time for the purpose of defending his case. However, other law enforcement agencies that detain suspects or defendants make internal regulations on how to contact suspects or defendants who are in detention. As a result, advocates are hindered by these internal regulations, so they cannot freely contact their clients. This view of the Constitutional Court also confirms the existence of problems in applying statutory norms.

2. The Authority Factor

The term authority is defined as the power to influence or command thought, opinion, or behavior (M.-W. Dictionary, 2023). According to Alan Renwick and Ian Swinburn, authority is linked to respect, which creates legitimacy and, therefore, leads to power (Renwick & Swinburn, 1992). Therefore, McMahon argues that authority cannot be separated from the question of power sharing (McMahon, 2017, p. 25). Max Weber divides authority into three types, namely traditional, legal-rational, and charismatic (Renwick & Swinburn, 1992, p. 69). According to Stout, authority as coming from administrative law. Authority as part of the law of government organization in the form of rules relating to the acquisition and use of government authority in public law (Stout, 1994, p. 102). The authority referred to in this research is legal-rational authority based on the rule of law.

Basically, all law enforcers, including police, prosecutors, judges and advocates, have the authority granted by law. However, there are considerable differences between the authority of the police, prosecutors and judges and the authority of advocates, especially in the law enforcement process. The authority of the police as investigators in the law enforcement process includes: a. Conducting investigations into criminal cases; b. Receiving reports or complaints of criminal cases; c. Ordering to stop and checking the identification of suspects; d. Taking fingerprints of suspects; e. Summoning people, either as witnesses, experts, or suspects for examination; f. Bringing in experts for the sake of explaining an offence. Bringing in experts for the sake of illuminating a criminal offence; g. Stopping the investigation of a criminal case where sufficient evidence is not found; h. To arrest a suspect; i. To detain a suspect; j.

To transfer the type of detention of a suspect; k. Conduct searches of a person, house or certain places; l. To confiscate evidence of criminal cases; m. To open, examine and confiscate letters. To open, examine and confiscate letters sent by post.

The authority of the prosecutor as a public prosecutor in the law enforcement process includes: a. Receiving and examining investigation case files from investigators; b. Conducting pre-prosecution of cases submitted by investigators; c. Making indictments in criminal cases; d. Submitting criminal cases received from investigators to the court; e. Prosecuting defendants in court; f. Closing cases submitted to him in the interest of the interests of justice; g. Implementing the judge's decision or judge's determination; h. Detain suspects who investigators have handed over; i. Transfer the type of detention of suspects who have been handed over by investigators.

The authority of judges as a representation of the judiciary in law enforcement, among others: a. To hear, examine, decide and settle cases, whether civil, criminal or administrative; b. Detain the defendant; c. Transfer the type of detention of the defendant; d. Examine and decide on pretrial proceedings. Examine and decide on pretrial proceedings.

Meanwhile, the authority of advocates as law enforcers in the law enforcement process includes: a. Providing legal services both inside and outside the court; b. Issuing opinions or statements in defense of cases in court; c. Carrying out their professional duties to defend the interests of clients; d. Requesting information, data, and other documents from government agencies and other parties for the benefit of clients; e. Contacting and speaking with suspects in criminal cases; f. Request a copy of the minutes of examination of a criminal case; g. Send a letter to the suspect and receive a letter from the suspect.

If we look at the authority of law enforcers mentioned above, the authority of the police, prosecutors and judges The authority of advocates in the law enforcement process is not comparable and even unbalanced when compared to the authority possessed by other law enforcers (Novriansyah & Dinar, 2023). The authority of the police, prosecutors and judges seems superior to the authority of advocates. So that the police, prosecutors and judges are more powerful in the law enforcement process than advocates. In relation to detention, for example, police, prosecutors and judges

have absolute authority to detain or not detain suspects. Detention authority is also only sufficiently based on the subjective reasons of the police, prosecutors and judges. Advocates, on the other hand, do not have the authority to refuse or give consideration to detention. Advocates can only surrender to the detention made by the police, prosecutors and judges. Even if they file a pretrial appeal, they will certainly lose if the detention is in accordance with existing procedures (Zamroni & Noor, 2025, pp. 28–29).

The unbalanced authority of the police, prosecutors, judges and advocates often disrupts the harmonization of advocates with the police, prosecutors and judges. In relation to detention, for example, police, prosecutors and judges consider that they have absolute authority to detain or not detain suspects based only on subjective reasons. Detention authority by law enforcers other than advocates is also often carried out arbitrarily (Marpaung & Moeliono, 2021). Meanwhile, advocates consider the subjective reasons used by the police, prosecutors and judges do not have a clear measure, thus harming the interests of advocate clients. The authority of advocates who are not equal to other law enforcers will be difficult to create a better law enforcement system (Novriansyah & Dinar, 2023).

3. Interest Factor

Law enforcers certainly each have an interest in law enforcement. The interests of the police, prosecutors and judges may be different from those of advocates. In the matter of detaining a suspect or defendant, for example, the police, prosecutors and judges may detain a suspect or defendant in the interest of a smooth law enforcement process. On the other hand, the advocate who accompanies the suspect or defendant also has an interest that the suspect or defendant is not detained during the law enforcement process. On the other hand, the police, prosecutors and judges may also not detain a suspect or defendant because they consider the suspect or defendant to be cooperative. On the other hand, advocates who assist victims have an interest in having the suspect or defendant detained during the law enforcement process.

The different interests of the police, prosecutors and judges with advocates can certainly affect harmonization among law enforcers in the law enforcement process. In the practice of law enforcement, the interests of law enforcers are not only related

to the interests of law enforcement, but also often colored by the personal interests of law enforcers (Nikhio et al., 2023). This is not only a result of the existence of absolute authority, but also due to the existence of unclear and multi-interpretation laws and regulations. So that law enforcers can use their authority for personal gain.

The authority of the police as investigators to make someone a suspect, for example, or the authority of the police as investigators and prosecutors to detain or not detain a suspect. Or the authority of the judge to decide whether the defendant is guilty or not guilty. In the practice of law enforcement, the absolute authorities granted by the law often give birth to corruptive behaviour, both bribery and gratuities. This can be seen in several corruption cases involving law enforcers.

Corruption case verdict No. 92/Pid.Sus-TPK/2019/PN.Smg. involving a prosecutor, corruption case verdict No. 66/Pid.Sus-TPK/2021/PN Jkt.Pst. involving the police, corruption case verdict No. 66/Pid.Sus-TPK/2022/PN.Sby. involving a judge, and corruption case verdict No. 84/Pid.Sus-TPK/2022/PN.Sby. involving a judge. 84/Pid.Sus-TPK/2023/PN.Jkt.Pst. involving advocates shows that the interests of law enforcers are not only related to the fulfilment of law enforcement procedures but also the personal interests of law enforcers in order to gain benefits. Therefore, the interest factors that can affect the harmonization of advocates with other law enforcers can be in the form of law enforcement interests, as well as the personal interests of law enforcers.

Interest factors, both law enforcement interests and the personal interests of law enforcers can affect the harmonization of advocates and other law enforcers in the law enforcement process. The existence of interest factors, especially personal interests, is not only a violation of the law but also detrimental to the justice-seeking public and cannot present a fair law enforcement process.

The three factors above are crucial to consider in the law enforcement process, which is a novelty of this research. The interest factor in particular is quite difficult to harmonize, necessitating the need for strong and independent oversight bodies within each law enforcement agency.

D. CONCLUSION

Harmonization of advocates with other law enforcers in the law enforcement process is needed to be able to realize a fair law enforcement process (fairness). There are three factors that affect the harmonization of advocates with other law enforcers, namely statutory factors, authority factors, and interest factors. Statutory factors include law enforcement not heeding the principles of law, the existence of unclear statutory norms, and the absence of implementing regulations or procedural laws that have not yet been regulated. The authority factor, among others, occurs because of the unbalanced authority between advocates and other law enforcers. The interest factor, among others, occurs due to differences in the interests of law enforcers, both for the sake of law enforcement as well as the personal interests of law enforcers.

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