

***Advocate Criminal Liability  
Without Advocate Code of Ethics Examination Mechanism***

**By:**

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**ABSTRACT**

Advocates in carrying out their profession are under the protection of the law, laws and codes of ethics, which cannot be prosecuted before the court, either civilly or criminally, as long as Good faith in defending the interests of clients. However, in practice, many advocates are entangled in criminal cases in carrying out their professional duties. The purpose of this study is to analyze the characteristics of good faith referred to in article 16 of Law Number 18 of 2003 which regulates Advocates in terms of law enforcement and legal protection of the advocate profession and criminal liability for the actions of advocates in carrying out their professional duties without going through the mechanism of examining the Code of Ethics. The theories used to analyze are law enforcement theory, legal protection theory, and criminal liability theory. The writing method used is the normative writing method, by analyzing a legal problem through laws and regulations, literature, and materials. Other references. The result of this study is that the work of legal counsel is a work of trust in good faith to straighten out the problems faced by clients whose existence is regulated and protected by law. The criminal liability of an advocate who commits a criminal act in carrying out his profession must be seen from the mistakes made by the advocate so that it is considered to have committed Acts that meet the elements of a criminal act are proven first through an examination of the code of ethics. The government and/or the framer of the law must pay more attention and pay attention to the formation of laws and regulations so that there is no overlap in rules and so as not to conflict with each other between One law with another. And to strengthen the profession, it is hoped that there will need to be firmer and more precise rules that can be used as a legal umbrella in professional life.

**Keywords: Criminal Liability, Advocate, Code of Ethics.**

## **ABSTRACT**

Advocates in carrying out their profession are under the protection of laws, statutes and codes of ethics, which cannot be prosecuted before a court, either civil or criminal, *as long as they have good faith in defending the interests of their clients. However, in practice, many Advocates are caught in criminal cases in carrying out their professional duties. The purpose of this study is to analyze and find out the characteristics of good faith referred to in article 16 of Law Number 18 of 2003 concerning Advocates in terms of law enforcement and legal protection for the advocate profession and criminal liability for the actions of advocates in carrying out their professional duties without going through the mechanism of examining the Code of Ethics. . The theory used to analyze is law enforcement theory, legal protection theory, and criminal responsibility theory. The writing method used is normative writing method, by analyzing a legal issue through laws and regulations, literature, and other reference materials. The results of this study are that the work of a legal advisor is a work of trust in good faith to rectify the problems faced by clients whose existence is regulated and protected by law. The criminal responsibility of an advocate who commits a crime in carrying out his profession must be seen from the mistakes made by the advocate so that he is seen as having committed an act that meets the elements of a crime which must be proven first through an examination of the code of ethics. The government and/or legislators must pay more attention to and scrutinize the formation of statutory regulations so that there are no overlapping rules and so that one law does not conflict with another. As well as to strengthen the profession, it is hoped that there will be a need for stricter and more precise rules that can be used as a legal umbrella in professional life.*

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## **A. INTRODUCTION**

### **1. Background**

The provisions of Article 1 paragraph (1) of Law Number 18 of 2003 which regulates Advocates contain clearly the definition of Advocates, namely; "An advocate is a legal profession whose duty is to provide legal assistance both inside and outside the court based on the values of the Advocate Code of Ethics and fulfill requirements under the provisions of this Act". The decision of the Constitutional Court case number 26 / PUU-XI / 2013 in its consideration, provides the definition of legal services are services provided by advocates in the form of providing legal consultation, legal assistance, exercise power, represent, accompany, defend, and perform other legal actions for the legal interests of clients.<sup>1</sup>

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<sup>1</sup> Court Constitution Republic Indonesia, Wednesday 14 May 2014; *MK Affirm Immunity Lawyer of Deep and in Outside Court*, <https://www.mkri.id//index.php?page=web.berita&id=9899>.

Based on these provisions, according to the Constitutional Court, the role of advocates is in the form of providing legal consultation, legal assistance, exercising power, representing, accompanying, defending, and conducting Other legal actions for the legal benefit of the client may be taken both in and out of court. The role of the advocate outside the court has contributed significantly to community empowerment and national legal reform, including in out-of-court dispute resolution.

Therefore, in understanding, it can be concluded that Advocates are all people who have a profession to provide legal services both inside (litigation) and outside the Court (non-litigation) in accordance with the provisions of the Advocates Law. According to Yahman, advocates carry out their roles and functions independently in representing the interests of clients and are not affected by state power, both judicial and executive. The job of the advocate is to defend the interests of society and its clients. Then the function of the advocate is to maintain objectivity and the principle of equality before the law applicable in the Indonesian judicial system.<sup>2</sup>

In carrying out their profession, the state provides legal protection to ensure legal certainty by providing immunity rights to advocates who are carrying out their profession for the legal defense of their clients. The guarantee given by the country, an advocate cannot be sued civilly, and cannot be criminally prosecuted as stipulated in article 16 of Law No.18 Year 2003 Which regulates Advocates which is expanded by the Constitutional Court decision Number 26/PUU-XI/2013 through the examination of Article 16 of the Advocates Law which expands the right to immunity/protection for advocates when carrying out their professional duties not only in court, but also outside the court, as long as the profession that is being carried out is based on faith Ok.<sup>3</sup>

The right to immunity for advocates is not only regulated in Law Number 18 of 2003 which regulates advocates, but also regulated in the Criminal Code (KUHP), contained in in Article 50, which mentions legal exceptions. Article 50 of the Criminal Code (KUHP) determines in principle a person who commits an act even though it commits a criminal act, but because it is done based on The law dictates that the offender shall not be punished. Provided that the deeds done are not for personal interests, but for the public interest.<sup>4</sup>

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<sup>2</sup> Yahman and Nurtin Tarigan, 2019; *Role Lawyer deep System National Law*, Gold (Divided from Pretone Media Group), Jakarta, h. 79.

<sup>3</sup> Daddy Treasures, 2021; *Rights Lawyer Dicederai, Threat To Justice*, <https://stih-painan//ac.id/2021/12/hak-imunitas-advokat-dicederai-ancaman-untuk-keadilan>.

<sup>4</sup> H.M. Hamdan, 2010, *Law and Exception Law According to Criminal Code and Code of Criminal Procedure*, Think Press, Medan, h. 71.

If the character of the Advocate is indeed a person who always carries out his duties well, then the reason for criminal removal can apply to him. Based on Article 50 of this Criminal Code, it can be seen that the correlation with Article 16 of Law Number 18 of 2003 regulates Advocates, that Advocates have legal immunity for carrying out his professional duties as stipulated in the Law. According to Article 54 of the Code of Criminal Procedure (KUHAP), which reads "for the purpose of defending suspects or defendants are entitled to legal assistance from a lawyer or legal adviser as long as within the time of the examination level, as prescribed by this Act. The right to immunity (legal immunity) is limited according to Article 74 of the Code of Criminal Procedure, as in Article 70 paragraph (2), paragraph (3), paragraph (4), and Article 71 which is a reduction in freedom the relationship between legal counsel and the suspect, after the case has been transferred by the Public Prosecutor to the District Court for trial, a copy of which is submitted to the suspect or his/her Legal Counsel as well as other parties to the proceedings.<sup>5</sup>

This right of impunity is related to the recognition that an Advocate cannot be identified with his client by the authorities and/or the public. Regulation on the Right to Advocate Immunity can be listened to and understood more deeply in Article 14 to Article 19 of Law Number 18 of 2003 which regulates Advocates, more precisely in Chapter IV on Rights and Obligations. Based on the Advocates Law, recognition of the rights and roles of advocates as part of the legal and judicial system must be respected by all parties and enforcement officials. Other laws, especially in equality in carrying out their respective functions and duties. The existence of a professional code of ethics is very important in order to keep advocates in practice or events not out of professional values. A code of ethics is also needed to keep advocates serving the interests of the community and maintain the trust that has been given by the community to the advocate. The Code of Ethics is intended to maintain the dignity and honor of the Advocate profession, in which case every Advocate must submit to and comply with the Code of Ethics.

Internally, the Advocate organization has an Honor Board that examines and adjudicates violations of the Code of Ethics committed by Advocates, which should be a means effectively supervise the conduct of Advocates in the law enforcement profession. There should be effective ways to control Advocates who do not heed professional ethics and rules to carry out the duties of Advocates properly and correctly. The difficulty of enforcing the code of ethics is influenced by various factors, one of which lies in the material of the advocate's code of

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<sup>5</sup> Ida Wayan Dharma Punia Atmaja, dkk, 2018; *Rights Immunity Lawyer Deep Trial Follow Punishment Corruption*, Journal Law Faculty Law University Udayana, file:///C:/users/ADVAN/Downloads/43617-1045-90651-1-10-20181107-1.pdf.

ethics. Advocate is a position of trust that must be aligned to carry out duties and functions as a person trusted in carrying out his profession to uphold justice, therefore advocates must carry out the principles of *fiduciary duty* towards the client and he has the obligation to keep confidential all information obtained from the client as a disobedience obligation advocate (*verschoningsplicht*).<sup>6</sup>

Although the advocate profession has received legal protection in the form of immunity rights, it is not uncommon for the advocate to stumble into legal problems which are criminal acts in carrying out profession as an advocate, as in the example of the Surabaya District Court Decision Number: 819 / Pid.B / 2016 / Pn.Sby with defendants Sutarjo and Sudarmono, where both are an advocate who is jointly charged with forging a letter as stipulated and threatened with crime under Article 263 paragraph 1 of the Criminal Code and Article 55 paragraph (1) of the Criminal Code. The Defendants have made letter No. II/SS/SP/VIII. 14 dated 08 August 2014 for and on behalf of and lawfully representing Mrs. Khoyana (based on Power of Attorney dated August 8, 2014) regarding Complaint of Violation of Notary Code of Ethics regarding binding Sale and Purchase No. 3 made by Notary Mashudi, addressed to to the Regional Supervision Council (MPD) of Gresik City. Where in this case, considering that advocates inside or outside the court cannot be prosecuted either civilly or criminally if in running His profession is based on acts of good faith. The meaning of good faith in Article 16 of Law Number 18 of 2013 which regulates advocates is in fact still full of vagueness.

In fact, in the above case, although the two Advocates have made good intentions by first making a Letter of Complaint to be requested to be examined by the Notary Regional Supervisory Panel, but Instead, it became the master's eating weapon for himself. The complaint letter caused him to be caught in the criminal charge of forgery of letters so that he sat in the hospital chair as a defendant. In the relationship between an Advocate and a Notary Public as fellow legal professions, the Panel of Judges should not hand down a verdict before the Advocate is examined first through the mechanism of the Code Advocate Professional Ethics because when viewed from the relationship of mutual respect between fellow legal professions, the two advocates have first made good intentions submit a written complaint to the Notary Regional Supervisory Board as the supervisor of the notary code of ethics and then if the notary feels that his rights have been If violated, the appropriate step taken by fellow legal professionals should be to report the two advocates through the Honor Council for a code of ethics review. If in the examination of the code of ethics the two advocates have been proven to have violated the code of ethics and are suspected of committing criminal acts as

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<sup>6</sup> Fauzie Julia Hasibuan, 2019; *Rights Immunity Lawyer Indonesian*, University Jayabaya, Central Jakarta, p. 2.

alleged, then the decision of the Honorary Council of Advocates is used as a foundation stone for reporting a crime in the police.

Advocates in carrying out their profession have the right to immunity or legal immunity by adhering to the code of professional ethics, but the discussion of the problem in this writing is what to be characteristics of good faith in carrying out the profession as referred to in article 16 of Law Number 18 of 2003 which regulates Advocates in terms of law enforcement and protection Law of the Advocate Profession. So that there is no multiinterpretation and blurring of norms that arise in society and so as not to conflict with the principle of legal certainty where there must be no conflicting laws and also The law must be made with a formulation that is understandable to the general public and the absence of norm vacancies arising in terms of good faith in the article. And furthermore, whether advocates can be held criminally responsible for their actions in carrying out their professional duties without going through the mechanism of examining the Code of Ethics by the Honor Council who are authorized to examine and prosecute violations of the Advocate Code of Ethics.

## **2. Problem Statement**

Whether Advocates can be held criminally responsible for their actions in carrying out their professional duties without going through the mechanism of examining the Code of Ethics by the Honor Council which is authorized to examine and prosecute violation of the Advocate Code of Ethics?

## **3. Research Methods**

The type of research used in this writing is a type of normative legal research. Normative legal research is legal research that is conceptualized as what is written in laws and regulations, rules or norms as a benchmark for human behavior that considered appropriate. Research on legal principles is a legal research that aims to find legal principles or positive legal doctrines that apply.<sup>7</sup> In this study, the statutory approach method (*statute approach*) was used. The legislative approach is carried out by reviewing all laws and regulations related to the legal issues being discussed. then also the Conceptual approach (*conceptual approach*) which is a type in legal research that provides an analytical point of view of problem solving in legal research seen From the aspect of the legal concepts behind it, or even can be seen from the values contained in the norming of a regulation in relation to the concepts used. Views/doctrines will clarify ideas by providing legal understandings, legal

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<sup>7</sup> Taufiqurrahman, *Variety Research Law*, Material 1, Variety Research Law deep Lecture Method Research UWP Master Program Law.

concepts, and legal principles relevant to the problem. A concept is an abstraction of an idea or mental image, expressed in a word or symbol. Concepts are also expressed as part of knowledge built from a wide variety of characteristics. The case approach<sup>8</sup> is carried out by reviewing cases related to the issues faced which have become court decisions that have been made has a constant strength. This approach requires researchers to understand ratio decidendi, which is the legal reasons used by judges to arrive at their ruling. The court decision used must have a certain degree of similarity to the issue to be discussed.<sup>9</sup>

## **B. DISCUSSION**

### **1. Procedure for Examining Violations of the Advocate Code of Ethics**

In violation of the code of ethics committed by an advocate, the advocate will get a serious criminal sanction, namely referring to Law Number 18 of 2003 which regulates Advocate Article 7 paragraph (1), an advocate who acts contrary to the obligation, honor, or dignity and dignity of his profession, violates the regulations Laws and/or reprehensible acts, or violating the advocate's oath/promise and/or the advocate's professional code of ethics, may be subject to actions in the form of: oral reprimand; written reprimand; suspension from the profession for 3 to 12 months; and permanent dismissal from the profession. The above enforcement is carried out by the Honor Board of the Bar Organization in accordance with the code of ethics for the advocate profession as stated in Article 8 paragraph (1) of the Law Invite an Advocate.

From this article, we can understand that violations committed by advocates can harm the sustainability of their own careers. Advocate organizations are professional organizations established based on Law Number 18 of 2003 which regulates advocates (Article 1 point 4). The advocate organization is the only free and independent advocate professional forum in accordance with the provisions of the Advocates Law with the aim and purpose of improving the quality of the profession advocate (Article 28 paragraph (1)). For this reason, every advocate appointed under the Advocates Law must be a member of an advocate organization (Article 30 paragraph (2)). In carrying out its duties, advocate organizations form an Honorary Council of Advocates Organizations, both at the central and regional

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<sup>8</sup> Saiful Soul, 28/12/2017, *Pendekatan Legislation (Statute Approach) Deep Research Law, Legal Opinion*, <https://www.saplaw.top>.

<sup>9</sup> Department National Education, *Dictionary Big Indonesian Edition Wed III*, Hall Pustaka, Jakarta, 2005, p. 950. 32. <http://id.wikipedia.org/wiki/Konsep>.

levels (Article 27 paragraphs (1) and (2)), The Honor Council at the local level adjudicates at the first instance; and the Honor Council at the central level adjudicates at the appellate and final level. In the case of an alleged violation of the code of ethics by an advocate, there must first be a report received by the Honor Board in order to be examined. According to Article 12 paragraph (1) of the Indonesian Advocates Code of Ethics, the complaint can initially be sent to the Regional Honor Council according to the Teradu advocate membership area.

The complainant complains the advocate concerned for alleged violation of the Advocate Code of Ethics in writing accompanied by the reasons to the Branch/Regional Honor Council or the Branch/Regional Leadership Council, or The Central Governing Council of which the Respondent is a member. If there is no branch/area of the organization in that place, then the complaint is submitted to the nearest Branch/Regional Honor Council or the Central Leadership Council (Article 12 paragraph (2) of the Code of Ethics Indonesian Advocates). There are a number of parties who can become Complainants to the Honor Board if there is an allegation of violation of an advocate's code of ethics, but noteworthy, who can Complain about this violation is only an interested party and feels aggrieved, namely "Based on Article 11 of the Indonesian Advocates Code of Ethics who can file a complaint is a client, colleagues, government officials, members of the public as well as DPP/DPD/DPC of professional organizations of which the Complainant is a member.

In addition, complaints that can be filed are only regarding violations of the Advocate Code of Ethics, as referred to in Article 11 paragraph (3) of the Indonesian Advocates Code of Ethics. After receiving a written complaint accompanied by evidence letters deemed necessary, within 7 days the Regional Honor Board will first check the completeness of the complaint file. Henceforth it is recorded in the register book and the Regional Honor Council forms a Regional Honor Council that will examine and decide complaints. Furthermore, the Branch/Regional Honor Board submits a notification letter of a maximum of 14 days with a special express letter/recorded to the complainant about the complaint by submitting a copy the complaint letter (Article 13 paragraph (1) of the Indonesian Advocates Code of Ethics). The Honorary Council may conduct preliminary examinations if it deems it necessary. Then the complaint file will be sent to Teradu.

For 21 days, the Regional Honor Council will wait for the answer from Teradu. As according to Article 13 paragraph (2) of the Indonesian Advocates Code of Ethics, a maximum of within 21 days, the complainant must provide his answer in writing to the Branch/Regional Honor Board which concerned, accompanied by letters of evidence deemed necessary. If within 21 days the complainant does not provide a written answer, the Branch/Regional Honor Board shall give a second



notice with a warning that if within 14 days from the date The warning letter he still did not give a written answer, so he was considered to have waived his right to answer (Article 13 paragraph (3) of the Indonesian Advocates Code of Ethics ). If you still do not send it, a decision will be imposed, as stipulated in Article 13 paragraph (4) of the Indonesian Advocates Code of Ethics : "In the case of a complainant failure to submit an answer as stipulated above and deemed to have waived its right to answer, the Branch/Regional Honor Council may immediately hand down a decision without the presence of the parties concerned". Meanwhile, if the Respondent sends its answer, the Tribunal will set the first day of hearing. As referred to in the provisions of Article 13 paragraph (5) of the Indonesian Advocates Code of Ethics ; "In the event that the complained answer has been received, the Branch/Regional Honor Council within a maximum of 14 days sets a hearing day and submits a summons It is appropriate for the complainant and the complainant to appear at the appointed hearing".

According to the provisions of Article 13 paragraph (6) of the Indonesian Advocates Code of Ethics, the summons must have been received by the person concerned a maximum of 3 days before the specified hearing day. In this case, based on the provisions (Article 13 paragraph (7) of the Indonesian Advocates Code of Ethics ) both the Complainant and the Respondent:

- 1) Must be present in person and cannot authorize others, who if desired each may be accompanied by advisors. The right to present witnesses, witnesses and evidence of evidence. The implementation of the First Session if the first is attended by both parties, then according to Article 13 paragraph (8) of the Indonesian Advocates Code of Ethics :
- 2) The Honor Board will explain the procedures for the applicable examination.
- 3) Peace is only possible for complaints of a civil nature or only for the benefit of the complainant and the complainant and has no direct relation to organizational or public interests, where The complainant will withdraw his complaint or make a peace deed as the basis for a decision by the Branch/Regional Honor Council which immediately has definite legal force.
- 4) Both parties are required to present the reasons for their complaints or defenses in turn, while evidence papers will be examined and witnesses will be heard by the Branch/Regional Honor Council. In the event that the Complainant and the Respondent attend all hearings, there are at least 3 hearings until the birth of the assembly decision. But if the Complainant does not come after being duly summoned 2 times in a row, then after Session I a verdict will be issued, as contained in the provisions Article 13 paragraph (9) of the Indonesian Advocates Code of Ethics: However, if one of the parties is not present at the first hearing, then:
  - a. The hearing is adjourned until the next hearing for a maximum of 14 days by summoning the party who is not properly present;
  - b. If the complainant who has been summoned up to 2 times is absent without a valid reason, the complaint is declared void and he/she cannot file another

complaint on the same basis unless the Branch/Regional Honor Board is of the opinion that the complaint material relates to the public interest or the interests of the organization.

- c. If the complainant has been summoned up to 2 times without a valid reason, the examination continues in the absence of the complainant.
- d. The Council shall be authorized to make decisions outside the presence of the complainant, which shall have the same powers as ordinary decisions. After examining and considering the complaints, pleadings, evidence papers and witness statements, the Honorary Council takes the decision by a majority vote and pronounces it in an open hearing with or without the presence of the parties concerned, having previously notified the day, date and time of the hearing to the parties who concerned (Article 15 paragraphs (1) and (3) of the Indonesian Advocates Code of Ethics ).

The decision can be in the form of (Article 15 paragraph (1) of the Indonesian Advocates Code of Ethics ), it can be in the form of a decision stating that the complaint from the complainant cannot be accepted, accepting complaints that submitted by the complainant and adjudicating and imposing sanctions on the complainant, or rejecting the complaint submitted by the complainant.

The decision must contain the considerations on which it is based and point to the articles of the code of ethics that are violated (Article 15 paragraph (2) of the Indonesian Advocates Code of Ethics ). As for considering the severity or lightness of the nature of violations of the Code of Ethics, according to the provisions of Article 16 paragraph (2) of the Indonesian Advocates Code of Ethics, Advocates may be subject to sanctions in the form of:

- 1) The usual warning when the nature of the violation is not severe.
- 2) A stern warning if the nature of the violation is severe or due to repeated violations of the code of ethics and/or not heeding the warning sanctions that have been given.
- 3) Suspension for a certain time if the nature of the violation is severe, does not heed and does not respect the provisions of the code of ethics or if after being sanctioned in the form of a stern warning still repeat violations of the code of ethics.
- 4) Dismissal from membership of a professional organization if a violation of the code of ethics is committed with the intention and purpose of damaging the image and dignity of the honor of the advocate profession which must be upheld as a profession Your Excellency and Honor. Based on the provisions of Article 17 of the Indonesian Advocates Code of Ethics, within a maximum of 14 days after the decision is pronounced, a copy of the decision of the Branch/Regional Honor Council must be submitted to:
  - a. Teradu;
  - b. Complainant;
  - c. Branch/Regional Leadership Councils of all professional organizations;
  - d. Central Leadership Council of each professional organization;
  - e. Central Honor Council;

f. Agencies deemed necessary if the decision has definite legal force.

If the Complainant or Complainant is not satisfied with the decision of the Branch/Regional Honor Council, he/she has the right to appeal the decision to the Central Honor Board (Article 18 paragraph (1) Indonesian Advocates Code of Ethics ). The decision of the Central Honor Board is final ( final). As stipulated in Article 10 paragraph (4) of the Indonesian Advocates Code of Ethics , all costs incurred are charged to the Branch/Regional Leadership Council where the complainant is a member at the Board level Honorary Branch/Region; The Central Governing Council at the level of the Central Honor Board of the organization of which the complainant is a member; and, the Complainant or Complainant.

## **2. Criminal liability for advocates who commit criminal acts without going through the mechanism of examining the code of ethics**

The explanation of the right to immunity (legal immunity) of advocates is specifically regulated in Article 16 of Law Number 18 of 2003 which regulates advocates that advocates cannot be prosecuted Both civil and criminal in carrying out their professional duties in good faith for the defense of clients in court hearings. In addition, the regulation of legal immunity or immunity is also known in Article 50 of the Criminal Code which contains legal exceptions. In this article, it is in principle that a person who commits an act even though it commits a criminal act, but because it is done based on the order of the law, the perpetrator does not may be punished.

Based on the context of the arrangement, advocates in carrying out their profession based on the orders of the Law can be exempted from acts committed as long as they protect the interests of their clients. The understanding of immunity rights has developed since the Amar of the Constitutional Court Decision Number 26 / PUU-XI / 2013 which states, that Article 16 of Law Number 18 of 2003 which regulates Advocates have no binding legal force as long as they are not interpreted: Advocates cannot be prosecuted either civilly or criminally in carrying out their professional duties in good faith For the benefit of the client's defense in and out of court hearing.

The Advocate profession is conceptually a job based on expertise (knowledge) in the field of law to serve the community independently with the limits of the code of ethics of the community (organization profession). The quality of expertise in general is usually determined by the community (professional organization) itself including to supervise it through an oversight commission and/or honorary council. In Law Number 18 of 2003 which regulates Advocates, in Indonesia the appointment of advocates is carried out by a professional organization formed under the law, namely the Indonesian Advocates Association ( Peradi). Including the supervision of advocates is also carried out by Peradi in a

division called the Advocates Supervision and Protection Commission. Historically, the work of the advocate profession has been long so that it is touted as one of the oldest professions in the civilization of society. The presence of the profession of Advocate is necessary and central as can be read from the time of Cicero, when the time of the Roman Republic was so famously called "*fiat justitia et ruat caelum*". Even the profession of advocate can be awarded when it is a noble office or "*officium nobile*". Normatively, supervision of advocates is regulated in Chapter II Article 2 to Article 11 as well as Chapter III Article 12 and Article 13 of Law No. 18 of 2003 which regulates regarding Advocates. In Article 12, it is determined that supervision of advocates is carried out by the Advocates Organization, with the aim that advocates in carrying out their profession always uphold Advocate professional code of ethics and laws and regulations.

Article 13 of the Advocates Law provides that the day-to-day conduct of supervision is carried out by a Supervisory Commission established by an Bar Organization, whose membership of the commission consists of senior advocates, para experts/academics, and society. In Chapter III Article 4 of the Advocate Code of Ethics, the Indonesian Advocates Working Committee regulates the relationship between advocates and their clients in handling client cases where advocates are required to: In civil cases prioritizing settlement by peaceful means, it is not allowed to provide information that can mislead the client about the matter he is handling, it is not allowed guarantee to the client that the case he handles will win, in determining the honorarium must consider the client's ability, it is not justified to charge the client with costs that It is not necessary, in administering a free matter to which he must give equal attention to which he receives an honorarium, obliged to reject the matter which according to his conviction There is no legal basis, the obligation to hold office secrets about matters notified by the client in trust is obliged to keep the secret after the termination of the relationship between the Advocate and that client, it is not justified to discharge the duties imposed on him at a time unfavorable to the client's position or At the time of the task it will be able to inflict irreparable harm to the client concerned and resign completely from the two interests together from two or more parties if in the future a conflict of interest arises between the parties concerned.

In the Advocate Code of Ethics Regulation, several matters related to the obligations of advocates are regulated. The first is related to the personality of the advocate. Indonesian advocates are Indonesian citizens who fear God Almighty, are chivalrous, honest in defending justice and truth based on high, noble morals and noble, and who in carrying out their duties uphold the law, the Constitution of the Republic of Indonesia, the Code of Ethics of Advocates and the oath of office. Advocates may refuse to give legal advice and assistance to any person who requires services and/or assistance in consideration because it is not in accordance

with his expertise and against his conscience, but cannot refuse on the grounds due to differences in religion, belief, ethnicity, descent, gender, political beliefs and its social standing.

Advocates in carrying out their duties do not aim solely to obtain material rewards but rather prioritize the upholding of Law, Truth and Justice, fighting for human rights. Advocates must always uphold the advocate profession as an honorable profession (*officium nobile*), be polite to all parties but must defend the rights and dignity of advocates. An advocate who is later appointed to a state office (executive, legislative and judicial) is not allowed to practice as an advocate and is not allowed His name shall be listed or used by any person by any office in a matter that is being processed during the time he occupies the position. In relations with clients, in civil cases the advocate must prioritize settlement by peaceful means, not allowed to give misleading information The client regarding the case he is dealing with, is not allowed to burden the client with unnecessary costs, determine the amount of honorarium with the client's ability.

In addition, in this relationship with clients, advocates must also pay attention to things including: must not guarantee to their clients that the case they handle will win; The advocate is obliged to give equal attention to the same free matter as in which he receives an honor or service fee; refuse to deal with cases for which he believes there is no legal basis; must hold office secrets about matters notified by the client in trust and must keep those secrets after the end of the relationship between the advocate and the client; It is not justified to release the duties imposed on him at a time of inauspicious position of the Client or at a time when those duties will be able to incur losses that are not can be corrected again for the client concerned; Advocates who manage the common interests of two or more parties must resign completely from the management of those interests, if in the future A conflict of interest arises between the parties concerned. Regarding relationships with peers (between fellow advocates), relationships between advocates must be based on mutual respect, mutual respect, and mutual respect trust.

Advocates when speaking of peers or when confronting each other in court hearings should not use profane words either orally or in writing. Objections to peer actions deemed contrary to the Advocates' Code of Ethics must be submitted to the Honor Board for review and are not allowed to be broadcast through mass media or other means. In this relationship with colleagues, advocates are also not allowed to withdraw or seize a client from their colleagues, if the client wants to change advocates, then advocates The new one can only accept the case after receiving evidence of revocation of the power of attorney to the original advocate and is obliged to remind the client to fulfill his obligations if there is still an advocate again.

When a case is subsequently submitted by the client to a new advocate, the original advocate must provide him with all papers and information necessary to manage the case. From this explanation, it can be concluded that related to the code of ethics of advocates basically only regulates matters including the Personality of the Advocate, the Relationship of the Advocate with His Client and Advocate Relationships with Peers. In the Advocates Code of Ethics, there is no substantial explanation and does not regulate the limitation of good faith as referred to in Article 16 of the Advocates Law related to the Right to Immunity owned by Advocates in carrying out their professional duties. Regarding the criminal liability of Advocates, as referred to in this writing based on the Analysis of Surabaya District Court Decision Number: 819 / Pid.B / 2016 / Pn.Sby, by Therefore, it is necessary to review the Decision of the Panel of Judges at the Surabaya District Court. Based on the decision of the panel of judges at the Surabaya District Court which stated that the defendants in this case were the two advocates on behalf of Sutarjo and Sudarmono have been proven lawfully and conclusively guilty of the criminal offence of making false letters. The panel of judges sentenced the defendants to imprisonment for 3 (three) years and 6 six months, respectively.

The panel of judges determined the verdict in Surabaya District Court Decision Number: 819 / Pid.B / 2016 / PN Sby, which basically stated the defendants Sutarjo and Sudarmono whose full identities as The foregoing has been validly and conclusively proven guilty of the criminal offence of making false letters; Sentence the defendants to imprisonment for 3 (three) years 6 (six) months each; stipulate that the crime already served by the defendants be deducted entirely from the sentence imposed; order the defendants to be detained; and establish the evidence of the attached letter. The panel of judges in handing down the decision was based on the considerations contained in the Surabaya District Court Decision Number: 819 / Pid.B / 2016 / PN Sby, which include:

- (1) Considering, that the accused submitted to this trial by the Public Prosecutor is charged with the crime of Article 263 Paragraph (1) jo. Article 55 Paragraph (1) 1st of the Criminal Code; Article 317 jo. Article 55 Paragraph (1) 1st of the Criminal Code; Article 317 jo. Article 55 Paragraph (1) 1st of the Criminal Code;
- (2) ) Considering, that when looking at Article 16 of Law No. 18 of 2013 which regulates advocates, it is true that advocates carry out their duties and professions both inside and outside the court cannot be prosecuted either criminally or civilly with a record "in good faith";
- (3) Considering, that the determination of the pretrial petitioners ( the defendants in the case *a quo*) as suspects by the East Java POLDA investigators is valid and should not wait for the decision of the Council Honor of the Advocate Organization based on the pretrial decision at the Surabaya District Court No. 44/Pra.Per/2015/PN. Sby;
- (4) Considering, that the contents of the complaint letter of the defendants against Notary Mashudi to the Gresik Notary Regional Supervisory Board are based

on a copy of the decision of the Java Regional Notary Examination Panel East No.01/Pts/Mj.PWN Prov. East Java / V / 2016 dated May 16, 2016 and Gresik District Court decision No.42 / Pdt.G / 2015 / PN. GS and Gresik District Court decision No.43/Pdt.G/2015/PN. GS is not true;

(5) Considering, that the complaint of the defendants who complained to witness Mashudi, as Notary to MPD Gresik according to the Panel of Judges the defendants had justified that the report or complainant Mashudi, has given false information, has violated the Notary code of ethics, has violated the PPAT code of ethics, and has violated the Notary Position Law and Law No. 30 Year 2004;

(6) Considering, that the panel of judges is of the opinion that the defendants as legal experts or advocates in carrying out their duties and profession are not careful and not in good faith;

As for what is meant by a criminal act in the form of forgery of a letter, we can find the provisions in Article 263 of the Criminal Code which reads:

(1) Whoever makes a forged letter or forges a letter which may give rise to any right, engagement or discharge of debt, or which is intended as evidence of a matter by The intent to use or instruct others to use the letter as if its contents were true and not forged, is threatened if such use may cause harm, because forgery of letters, with a maximum prison sentence of six years.

(2) Shall be punished with the same offence, whoever knowingly uses a forged or forged letter as if it were true, if the use of the letter is likely to cause harm.

The criminal elements of the criminal act of forgery of letters other than those mentioned above are:

1) At the time of forging the letter must be with the intention of using or instructing others to use the letter as if it were genuine and not forged;

2) Its use must be able to bring harm. The word "can" means that there is no need for the loss to actually exist, just that the possibility of the loss is enough;

3) Those punished under this article are not only those who falsify, but also knowingly use forged letters. Deliberately he meant that the person using it must know very well that the letter he used was fake. If he does not know about it, he is not punished. It is considered "use" i.e. to hand over the letter to someone else who must use it further or deliver the letter where it should be needed.

4) In the case of using a forged letter, it must also be proved that the person acted as if the letter were genuine and not forged, similarly the act must be able to bring harm. Furthermore, according to Article 264 paragraph (1) number 1 of the Criminal Code, the crime of forgery of letters as Article 263 of the Criminal Code carries a heavier penalty if the letter is forged These are authentic letters. An authentic letter, according to Soesilo is a letter made according to the form and conditions stipulated by law, by public employees such as Notaries.<sup>10</sup>

Advocate is *officium nobile* which means it is an honorable profession, that is, in carrying out their professional duties, advocates are under legal protection,

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<sup>10</sup> R. Soesilo, *Book Invite Invite Law Punishment (Criminal Code) And His Comments Complete Article Half Article*, PoliteaBogor; 2013, p.195.

both laws and codes of ethics based on to the honor and personality of the advocate and adhering to honesty, independence, openness, and confidentiality. In carrying out his profession, an advocate is free and independent, which means being responsible for himself, having no superiors and only submitting to God and rules. However, an advocate cannot act all on his own, the actions of an advocate are limited by the code of ethics of the advocate profession. According to Angga Arya Saputra, the criminal responsibility of an advocate who commits a criminal act in carrying out his profession must be seen from the mistakes made by the advocate. So that he is considered to have committed an act that meets the elements of a criminal act.

Wrongdoing has a major effect on criminal liability because culpability is an absolute element of criminal liability. Guilt in the broadest sense includes: first, the perpetrator has the ability to take responsibility (*schuldfähigkeit* or *zurechnungsfähigkeit*), meaning that the perpetrator's condition must be normal. Here it is questioned whether the advocate is able to take responsibility for his actions. Second, the relationship between the perpetrator's actions and the perpetrator's mental attitude in the form of deliberate (*dolus*) or negligence (*culpa*), here is questioned the inner attitude of an advocate towards his deeds. Thirdly, The absence of a reason that erases the error or the absence of a forgiving reason even though what is mentioned is the first element of error and the element of second error is present, It is possible that circumstances affecting the offender so that his guilt is erased may be found guilty or have criminal liability, so that the advocate can be criminally liable. For example, with the exceeding limit of forced defense. If all three elements exist, the advocate concerned can be found guilty or have criminal liability, so that the advocate can be held criminally.<sup>11</sup>

Looking at the elements of error and understanding of good faith that have been described when related to the cases of Advocate Sutarjo and Advocate Sudarmono, first, there is the ability to be responsible from each both Advocates. Second, the inner relationship between Advocate Sutarjo and Advocate Sudarmono with their actions in the form of intentionality (*dolus*) or negligence (*culpa*) stated in the complaint letter. Because there is no phrase "reasonably suspected" so that it seems justifying so as to make the contents of the complaint letter not in accordance with the actual situation. Third, there should be a reason that erases the mistake or there is a forgiving reason because of the actions taken by Advocate Sutarjo, and Advocate Sudarmono is categorized as an action the client's defense

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<sup>11</sup> Angga Arya Saputra; *Accountability Punishment Lawyer Deep Run Profession Associated with Faith Good Deep Article 16 Invite Invite Lawyer*, Article deep E-Journal Science Law Kertha Speech Faculty Law University Udayana, Home/Archives/Vol.06, No. 04, October 2017/Articles, [https://ojs.unud.ac.id/index.php/kertha\\_speech/article/view/33657](https://ojs.unud.ac.id/index.php/kertha_speech/article/view/33657).



based on the information provided by the client, so that the action does not contradict article 16 of Law No. 18 years 2003 which regulates Advocates which states that "Advocates cannot be prosecuted either civilly or criminally in carrying out their professional duties in faith both for the benefit of the Client's defense in and out of court".

In addition, it must be remembered that for there to be guilt in the broadest sense (criminal liability) the person concerned must also be proven in advance that his actions are unlawful. Noteworthy, if the act is not against the law then there is no need to apply guilt to the advocate concerned. If you pay attention to the case in the Surabaya District Court Decision Number: 819 / Pid.B / 2016 / Pn.Sby, namely a conflict involving 2 (two) Legal Professions, namely Advocates and Notaries, in which case each of these professions has legality or laws that regulate it (Advocates are regulated in Law Number 18 of 2003, and Notaries are regulated in Law Number 30 of 2004).

However, the law found that most of them only revolve around the regulation of employment, but very little regulates the protection of both professions. While the existence of the legal profession is actually part of law enforcers who deserve respect and who have the ability to realize functions as a standing profession free, independent and responsible for the presence and upholding of law and justice for society, which is the basic concept of the work of fellow professions is respect, mutual respect respect for others and among professions is always stated in the professional code of ethics of each profession. If respect for fellow professions and / or also between professions is carried out properly, then the image of the law that is enforced will appear real.

Therefore, to strengthen and respect fellow professions or between professions, there needs to be firmer and more precise rules that can be used as a legal umbrella in professional life, it is expected that the government / state to produce and present a Law that regulates the protection of the profession is one and comprehensive. This means that there is a binding provision, not a complaint offense, nor a rule that falls into the category of violation. But it must be protected by the rules of guidelines that are categorized as criminal acts, if there are legal subjects who appear and carry out professional work without fulfilling the rules their profession, as well as those who provide opportunities for the presence of professions that do not meet the provisions of the profession, but are willing to practice or carry out their work of these. Likewise, if there is a provision on professional rights being violated or coerced, it is mandatory for violators to be punished as criminal offences. So that the presence of the Law regulating Professional Protection is expected to be more protective about the presence of the profession, the strength of the profession and the obedience of the profession in serving society and the rule of law. Where in this case it also preserves the meaning

of agent of change and agent of modernization in realizing the path of legal renewal and professional protection as an effort towards legal order who are authoritative and just.

### **C. CONCLUSION**

The criminal liability of an advocate who commits a criminal act in carrying out his profession must be seen from the mistakes made by the advocate so that he is considered to have committed an act that meet the elements of a criminal act. So in this case, if it is related to the case in the Surabaya District Court Decision Number: 819 / Pid.B / 2016 / Pn.Sby , Surabaya District Court Decision Number: 819 / Pid.B / 2016 / Pn.Sby considered inappropriate because of the actions of the advocate regarding the Complaint Report letter whose contents are not in accordance with the truth due to the absence of the use of the phrase "reasonably suspected in the content of the letter so that it seems justified", according to the author should not be proven to violate the provisions of the criminal law Article 263 of the Criminal Code and therefore his actions cannot be Criminal liability is held if the examination of the case does not go through the mechanism of examining the Advocate Code of Ethics first. The decision of the Honorary Board of the Bar Organization does not eliminate criminal liability if violations of the Advocate professional code of ethics contain criminal elements.

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