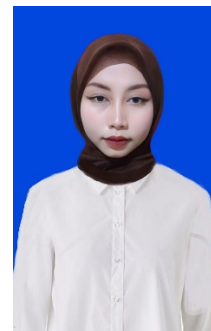




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QUESTIONING THE LEGALIZATION OF THE DISMISSAL OF ADVOCATES BY THE SUPREME COURT

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Abstract:

Background. As one of the main elements in the legal system, advocates have a crucial role in upholding the rule of law in Indonesia. Their duties are not only limited to legal defense, but also include contributions to creating a fair, transparent, and legally certain judicial system.

Aims. This study aims to evaluate in depth the legality of the Supreme Court's actions in removing advocates from their positions.

Methods. This study uses a normative juridical approach, using secondary data as the primary source. The data includes an Ambon High Court Number 44/KPT decree. W27-U/HM. 1. 1. 1/II/2025 and Banten High Court Number 52/KPT. W29/HM. 1. 1. 1/II/2025, Law Number 18 of 2003 concerning Advocates, and various relevant academic references. The data collection method is done through literature studies and legal document reviews. The analysis is carried out qualitatively with a normative

approach to assess the suitability of the actions of judicial institutions with the applicable legal provisions.

Result. The results of the analysis show that there is a disorientation in the application of procedural law, even though facts are found that support the violation of the law and professional ethics.

Conclusion. This indicates that the legal process carried out has not fully prioritized the principles of justice and legal certainty as mandated in the judicial system in Indonesia.

Implementation. The disparity between violations and sanctions enforcement shows that procedural law has not only been procedurally flawed but has also ignored fundamental values such as justice, legal certainty, and institutional accountability. This condition requires a thorough evaluation of procedural law's implementation to build a legal system that is more integrity and responsive to substantive justice.

Keywords: Advocate, Court, Advocate Code of Ethics

INTRODUCTION

Advocates or lawyers are an essential factor in the structure of the Catur House of Law Enforcement in Indonesia, along with other law enforcement officials such as police, prosecutors, and judges. As one of the main elements in the legal system, advocates have a crucial role in upholding the rule of law in Indonesia. Their duties are not only limited to legal defense, but also include contributions to creating a fair, transparent, and legally certain judicial system. The presence of advocates provides a sense of security and a guarantee of legal protection for the community in fighting for justice, upholding the truth, and upholding Human Rights (HAM).¹ In Prof. Subekti's perspective, lawyers serve as advocates and consultants in legal issues. Advocates are considered experts in procedural law who provide professional services to bring cases to court and represent their clients' interests before a panel of judges.² The role of lawyers in society cannot be separated from efforts to create a solid and fair legal system. The freedom and autonomy of the legal profession must be in line with ethical and professional responsibilities, both for lawyers as individuals and for the professional organizations that protect them. Law No. 18 of 2003 concerning Advocates serves as a normative basis that directs the practice of this profession in line with the principles of law enforcement and justice, which contain substance.

Based on Article 4, paragraph (1) of Law of the Republic of Indonesia No. 18 of 2003, every advocate must take an oath or promise according to their religion before carrying out their professional practice. This oath is taken before the Supreme Court in the region where the lawyer practices. With the oath, the lawyer promised to refrain from fraud and not to spread

¹ Artidjo Alkostar, *The Role and Challenges of Advocates in the Era of Globalization* (Yogyakarta: FH UII Press, 2010) p. 11.

² Subekti, *Law and Society* (Jakarta: Erlangga Publisher, 1973), p. 45

misleading information inside and outside the court. In addition, he pledged to behave ethically and fulfill his professional duties by upholding honor, dignity, and responsibility as a law-bearer.

This oath is a promise to God, oneself, and society uttered by those who enter the legal profession. If lawyers not only pronounce this oath as a formality, but also live, follow, and apply it in daily practice, law enforcement will change significantly for the better. As a result, the judicial system will be better able to comprehensively uphold the principles of law and justice.³

Law No. 18/2003 on Lawyers expressly establishes procedures for supervision, handling of violations, and dismissing lawyers by their professional organizations. Article 6 of the law outlines that lawyers proven to have committed violations can be subject to disciplinary sanctions. Violations include, but are not limited to: (1) negligence in protecting and safeguarding the interests of clients; (2) unethical behavior towards colleagues or opponents; (3) actions or attitudes that disregard the law, regulations, or judicial institutions; (4) actions that damage the reputation, integrity, and responsibility of the legal profession; (5) violation of positive laws and moral standards; and (6) violations of the code of ethics and the oath of the advocate profession.⁴

The Lawyer Code of Ethics was drafted as a guide to upholding lawyers' integrity, dignity, and ethical behavior. These rules apply not only to relationships between members of the organization but also to dealing with lawyers from other professional organizations and to activities outside the courtroom. These provisions refer to the principles set out in the Lawyers Act.

The main purpose of the implementation of this Rules of Professional Conduct is to provide clear guidance to lawyers in carrying out their duties and responsibilities while still upholding the moral standards of the legal profession in the eyes of the public. Although ideally every lawyer must comply with the principles contained in the Code of Ethics, there are still frequent violations of these values in practice.

Applying the Code of Ethics in the world of lawyers is very important because it provides a solid moral basis for carrying out the legal profession. The Code of Ethics also provides a deeper understanding of the strategic role of lawyers in society, especially those related to law enforcement. This Code of Ethics not only protects members of the profession

³ Law of the Republic of Indonesia Number 18 of 2003 concerning Advocates, Article 4 Paragraph (1).

⁴ Law of the Republic of Indonesia Number 18 of 2003 concerning Advocates, Article 6.

from unfair competitive practices, but also encourages the advancement of the legal profession under the noble values of society. In addition, a harmonious relationship between members of the advocate organization is also a significant concern. In this context, the Code of Ethics protects against external interference and against treatment that is detrimental to the profession.⁵

With a situation like this, the public should hope and demand that Indonesia's legal profession's practice and development is always based on universal moral values. Maintaining the quality of expertise, strengthening integrity, and respecting the dignity of the legal profession is non-negotiable. In addition, the spirit of serving the public interest must be prioritized, as stipulated in the Code of Ethics for Lawyers. However, the reality in the field often shows a gap between public expectations and the implementation of legal professional duties. Many advocates fail to live up to their profession's noble ideals and even violate the code of ethics that should be the main guideline. A concrete example is the dynamics in the RAN and FO cases, where the Supreme Court (OGH) fired a lawyer for violating professional ethics during a trial. This decision highlights the tension between the judicial authorities and the autonomy of the lawyers' professional associations. This action by the Supreme Court triggered a complicated legal discourse. On the one hand, Decision No. 66/PUU-VIII/2010 of the Constitutional Court (MK) explicitly states that PERADI is the only organization with exclusive authority, including supervision, dismissal, and prosecution of lawyers. On the other hand, the Supreme Court unilaterally revoked the BAS without going through the ethical procedure in the Honorary Council, which was supposed to be the internal decision-making channel of professional organizations.

This phenomenon has raised public concern and strengthened criticism of the inadequate condition of law enforcement. The intervention of judicial institutions in the autonomous realm of the legal profession raises a legal paradox that can weaken the judicial system's credibility in the public's eyes. Therefore, a fair, transparent, and impartial solution in law enforcement is needed to maintain the dignity and independence of the legal profession as an essential pillar in national law enforcement.⁶

This situation creates uncertainty and a feeling of injustice in the legal system, which ironically is often caused by law enforcers' actions, including those of lawyers. This situation

⁵ Ibid, p. 17

⁶ Constitutional Court Decision Number 66/PUU-VIII/2010 concerning the Exclusive Authority of Advocate Organizations.

confirms that the existence and implementation of the advocate's code of ethics is not just a formality. Still, it is a crucial basis for successfully implementing their role as law enforcers. Especially in the judicial process, the code of ethics serves as a moral compass that guides advocates to act with professionalism, justice, and responsibility for achieving true justice for all parties.⁷

The novelty in this study lies in the dialectical analysis approach to Article 9 of the Advocates Law, which emphasizes the principle of self-regulation in the legal profession, with the Supreme Court Decision Number 73/KMA/HK. 01/IX/2015, which is used as the legal basis for the revocation of the Advocates' Minutes of the Oath (BAS). This study seeks to reveal the formal inconsistency in the application of procedural law, where the Supreme Court is alleged to have exceeded the limits of its authority (judicial overreach) by taking over administrative authority, which is the domain of the advocate professional organization. The revocation of the BAS without going through the ethical process and recommendations from the Honorary Council is considered to have the potential to violate the principle of *lex specialis derogat legi generali*, because it ignores the special rules regulated in the Advocates Law. In addition, this step can potentially create a harmful precedent that opens up opportunities for intervention from executive institutions or other external parties in the internal decisions of the legal profession that should be independent. This threatens the freedom of advocates to carry out their duties professionally without political pressure or outside intervention.

The purpose of this study is to examine the legality of the dismissal of advocates by the Supreme Court and analyze the distribution of authority between the Supreme Court and advocate professional organizations in the context of the revocation of the vow of advocates (BAS), as stipulated in Law Number 18 of 2003 concerning Advocates. The research focuses on three main points: 1) whether the actions of RAN and FO advocates can be categorized as a form of contempt of court, 2). What procedural legal procedures should be taken in imposing sanctions for violations of the law and professional ethics 3? Is there an imbalance or disorientation of authority between the Supreme Court and advocate organizations in revoking the BAS?

These three aspects are the main basis for preparing policy recommendations to align the mechanism for revoking BAS with the principle of self-regulation of the legal profession in Indonesia, while strengthening the principle of legal certainty in the national judicial system.

⁷ Abdulkadir Muhammad, *Ethics of the Legal Profession*, Bandung: Citra Aditya Bakti, 2006.

METHODS

This research adopts a normative juridical approach, which is a method that focuses on the study of existing legal norms, both in written and unwritten legal formats. This approach allows researchers to explore the legal framework that regulates the revocation of the Minutes of Oath (BAS) of advocates, especially in the context of RAN and FO cases. The data sources in this study were obtained through library *research*, which includes laws and regulations, jurisprudence, legal literature, scientific journals, and articles from relevant mass media and social media. These legal materials are systematically collected and analyzed in depth to comprehensively understand the legal issues discussed. The research stage begins with identifying and collecting primary and secondary legal materials, which are then normatively analyzed to review the legal substance contained in them.

DISCUSSION

Acts Committed by RAN and FO Advocates Contain *Contempt of Court*

In the trial held at the North Jakarta District Court on Thursday, February 6, 2025, the alleged defamation involving the defendant RAN and the whistleblower Hotman Paris Hutapea entered the witness examination stage. The trial was in the public spotlight because of the tension in the courtroom triggered by the decision of the panel of judges to declare the trial closed. The judge took this decision after considering that the material to be disclosed in the trial contains immoral elements, so it is not suitable to be conveyed openly in public to maintain the decency and order of the judicial process. This closed trial policy suddenly caused an uproar, both in the courtroom and among the wider community who followed the development of this case. Some sides questioned the reason for the closure of the trial, while others supported the judge's move as a form of protection for the moral values and privacy of the parties involved in the case. The situation reflects the complexity of the case, which not only concerns legal aspects but also touches on the social and ethical realm of the public.

The defendant RAN opposed the panel of judges' decision because the trial was closed. Not accepting the decision, RAN asked the panel of judges to conduct the prosecution openly to the public. However, the panel of judges still rejected RAN's request and did not change the decision. Then, the panel of judges suspended the trial until the situation was conducive and after the judge left the courtroom. Then, RAN approached Hotman Paris Hutapea, who was sitting as a witness at the time. In the interaction, RAN pointed and held Hotman's shoulder,

triggering another commotion. One of the RAN lawyer team, FO, was carried away by emotions and then climbed onto the table in the trial, adding to the noise. Several police personnel entered the courtroom to disperse the commotion. Then the judge finally decided that the trial was postponed.⁸

Responding to the incident, the Supreme Court considered that the actions taken had exceeded the limits of professional ethics and were classified as a form of *contempt of court*, because it was supposed to injure the dignity of the judicial institution. In response, the Supreme Court instructed the North Jakarta District Court to report this incident to the police, especially related to the chaos caused by an advocate with the initials RAN. As a follow-up to the incident, the Ambon High Court issued a determination to freeze the Minutes of Oath (BAS) on behalf of the RAN, as stated in the Determination of the Chief Justice of the Ambon High Court Number 44/KPT. W27-U/HM. 1. 1. 1/II/2025. Meanwhile, FO advocates were also subject to similar actions based on the Determination of the Chief Justice of the Banten High Court Number 52/KPT. W29/HM. 1. 1. 1/II/2025 states the freezing of BAS on behalf of the person concerned.

In the context of the national justice system, maintaining the integrity and honor of the judiciary is a fundamental principle that must be consistently upheld. Unfortunately, in practice, several behaviors still damage the image and the legal process itself. One of the most serious forms of offense is an act that degrades the authority of the court, known as *contempt of court*. This action can be in the form of inappropriate behavior in the courtroom, non-compliance with the judge's orders, or other behaviors that can potentially interfere with the fair and orderly course of the trial process.⁹

The concept of *contempt of court* is a legal institution that originated in the *common law* tradition, which is an unwritten legal system that first appeared in England. This institution exists as a form of protection for the dignity, authority, and integrity of the judiciary. The primary purpose of this institution is to ensure a fair, orderly, and uninterrupted judicial process. Therefore, *contempt of court* provides a legal basis to impose sanctions on anyone, including both parties to the case, legal representatives, or outside parties, who commit acts that interfere

⁸ CNN Indonesia. (2025, February 14). *The tumultuous chronology of Hotman's trial led to the end of Razman's career*. Retrieved March 21, 2025, from <https://www.cnnindonesia.com/nasional/20250214071048-12-1198132/kronologi-ricuh-sidang-hotman-berujung-tamat-karier-razman>.

⁹ Artaji, Anita Afriana, Elis Rusmiati, Efa Laela Fakhriah, and Sherly Ayuna Putri, "The Existence of the Contempt of Court Institution in the Judiciary in Indonesia," Faculty of Law, Padjadjaran University, accessed on March 20, 2025, <https://media.neliti.com/media/publications/332609-contempt-of-court-in-indonesian-regulati-9e52cfe6.pdf>.

with the judicial process or damage the court's honor. Thus, this institution maintains the smooth running of the trial and affirms the rule of law and the judiciary's authority as the guardian of justice.¹⁰

There is no law in Indonesia that specifically regulates contempt of court until now. The absence of clear regulations on this matter often makes the understanding of contempt of court unclear and tends to be interpreted too broadly or inaccurately.

In the context of Indonesian law, contempt of court can be divided into three main categories based on the cause of its occurrence, namely: first, violations of applicable law, which include actions that directly violate the provisions of the law; second, violations of legal procedures, which involve actions that hinder the smooth running of the trial process or predetermined procedures; and third, violations of the law enforcement code of ethics, where this act of contempt is carried out by law enforcement officials such as judges, prosecutors, or advocates who do not carry out their duties under the professional ethical standards that have been set¹¹In Indonesia, the term contempt of court is regulated explicitly in Law Number 14 of 1985 concerning the Supreme Court, which was later updated with Law Number 3 of 2009. In the explanation of the law, it is explained that: *"To ensure the creation of a conducive atmosphere in the implementation of justice based on law and justice by Pancasila, a regulation is needed that regulates the action against actions, attitudes, speech, or deeds that can degrade and damage the authority, dignity, and honor of the judiciary, known as 'Contempt of Court'. Actions, behaviors, attitudes, and words that undermine the judiciary's authority are not limited only to active actions, but also include passive actions or not doing something expected. "*

In this context, there are two categories of contempt of court: direct and indirect. Direct contempt occurs when an act of contempt is committed in front of the court, interfering with the trial process. One example that can be classified as a direct insult is the case involving RAN and FO lawyers, which was carried out in the courtroom and hindered the smooth running of the trial. In contrast, contempt is indirect outside the courtroom. It is usually aimed at

¹⁰ Novita Sri Wulandari, "Enforcement of the Court's Authority Related to *Contempt of Court* Reviewed from Administrative Law," *Strait Journal* 7, no. 1 (2019): 38-49, <https://doi.org/10.31629/selat.v7i1.1520>.

¹¹ Neisa Angrum Adisti, S.H., M.H., Rizka Nurliyantika, S.H., LL.M., and Taslim, S.H., M.H., *Textbook Contempt of Court* (Palembang: UPT Publisher and Printing University of Sriwijaya, 2020).

challenging or disparaging the justice system by refusing to carry out court orders or obstructing the execution of legal decisions.¹²

According to Prof. Oemar Seno Adji, actions that can be classified as *contempt of court* can be separated into several categories, namely: ¹³

- a. Reprehensible and Inappropriate Behavior in Court.
- b. Disobeying *court orders*.
- c. Behavior Attacking the Integrity and Impartiality of the Court (Scandalizing the Court)
- d. *Obstruction of Justice*.
- e. Contempt of Court Behavior through Publication and Notice (*Sub-judice Rule*)

Although no specific legal regulations directly regulate contempt of court in Indonesia, several provisions related to contempt of judicial institutions have been listed in the Criminal Code (KUHP), especially in Articles 207, 217, and 224. These three articles cover various actions that can be categorized as acts of contempt for the judicial institution, including those that can hinder the trial process or degrade the court's authority. Along with the reform of the legal system, the regulation regarding the crime of contempt of court has now been expanded and clarified through Law Number 1 of 2023. In this regulation, especially in Chapter VI, various criminal acts directly related to the judicial process are discussed in detail. Starting from actions that mislead the direction of the trial, interfere with or obstruct the course of the trial, to destruction of court facilities such as courtrooms and court equipment. Not only that, this law also emphasizes the importance of protection for witnesses and victims, as part of efforts to realize a fair and authoritative justice system.¹⁴

Procedural Law on the Imposition of Sanctions for Violations of the Law and the Code of Ethics of Advocates

Generally, professional organizations handle violations of the code of ethics through the internal mechanism of the Honorary Council. This institution has the authority to enforce member discipline and provide administrative sanctions, such as reprimands, suspension of membership, and recommendations for revocation of practice licenses for advocates proven to

¹² Anda N, "Recognizing *Contempt of Court* as a Form of Crime in the Judicial Process," *Indonesian Legal Literacy*, published September 29, 2024, accessed March 18, 2025, <https://literasihukum.com/mengenal-contempt-of-court-sebagai-bentuk-kejahatan-dalam-proses-peradilan/>.

¹³ Prof. H. Oemar Seno Adji, *Free Justice and Contempt of Court* (Jakarta: Diadit Media, 2007).

¹⁴ Nelson, F. M. (2025, February). *An examination of obstruction of justice and contempt of court in the case of Hotman Paris Vs Razman Nasution*. Hukumonline.com. Retrieved March 21, 2025, from <https://www.hukumonline.com/berita/a/telaah-obstruction-of-justice-dan-contempt-of-court-dalam-perkara-hotman-paris-vs-razman-nasution-lt67a6491f2f4a1/?page=3>.

be in violation. This step is a real realization of the principle of self-regulation in the legal profession, while ensuring the independence and honor of the advocate profession before the public.

The enforcement of the integrity of the legal profession cannot be separated from the existence of the Advocate Code of Ethics, which acts as a moral and professional guide for every advocate in carrying out their duties. To ensure compliance with the code of ethics, strict sanctions are needed for advocates proven to have violated it. This is regulated in Article 16 of the Indonesian Code of Ethics for Advocates, which explains the types of sanctions and criteria for violations imposed on advocates.

The following are the forms of sanctions against advocates who violate the professional code of ethics:

1. Types of Sanctions That Can Be Imposed Based on the Decision
 - a. Usual warning, for minor violations.
 - b. Stern warning, if the violation is more serious or recurring.
 - c. Temporary stop.
 - d. Dismissal from professional organizations.
2. Sanctions Based on the Seriousness of the Violation
3. Additional Consequences of Temporary Dismissal. A prohibition must accompany the sanction of temporary dismissal on practicing the profession of advocate, both outside and inside the courtroom, during the dismissal period.
4. Follow-up by the Supreme Court. Advocates subject to the sanction of temporary dismissal or dismissal will be reported to the Supreme Court to be recorded and included in the national list of advocates. This aims to maintain public accountability and ensure that advocates who have been sanctioned no longer carry out their profession illegally.

The profession of advocate is known as *officium nobile*, a dignified and honorable profession. In carrying out his strategic role as a law enforcer, an advocate must maintain honor, integrity, and ethics in every judicial process. However, in practice, advocates are often found to violate the Professional Code of Ethics and act outside the limits of professionalism. Therefore, a legal mechanism allows various parties to object to violations of the advocate's code of ethics. This mechanism is regulated in Law No. 18 of 2003 concerning Advocates and the Indonesian Advocate Code of Ethics, which is stipulated and run by advocate professional organizations. The following are the parties who have the right to file complaints or objections to the violation of the code of ethics:

1. **Judges:** Judges have a major role in maintaining order and the smooth running of the judicial process. Therefore, if an advocate acts disrespectfully, unprofessionally, or interferes with the proceedings, the judge is authorized to report the violation to the Honorary Council of Advocate Organizations.
2. **Prosecutor or Opponent in Trial:** The public prosecutor or the opposing party who feels aggrieved by the lawyer's unlawful or unethical actions may file a complaint. For example, if the advocate makes inappropriate statements, conveys misleading facts, or intervenes in legal proceedings unlawfully.
3. **Client (Power Broker):** A party who receives legal services from an advocate has the full right to complain about unprofessional actions, such as negligence in defense, fraud, abuse of power, or denial of legal responsibility. Client complaints are usually of special concern because they are directly related to the implementation of the advocate's function in providing legal assistance.
4. **Advocate Organizations:** Professional organizations such as PERADI, KAI, and others can follow up on code of ethics violations reports. The organization carries out an internal oversight function by establishing an Honorary Council, which is tasked with investigating, verifying, and prosecuting alleged violations of the code of ethics by advocate members.
5. **General Public:** In some instances, members of the public who become aware of an advocate's unethical or deviant actions may file a complaint. This proves the advocate profession is also socially responsible and open to public criticism and control.

When a lawyer violates the Code of Professional Ethics, the public or the aggrieved party has the right to file a formal complaint through a mechanism determined by the lawyer's organization. It is essential to ensure that complaints are drafted, detailed, and based on facts, so that the lawyer organization can professionally act upon them. The complainant can submit a complaint, depending on the region and the severity of the case. Here are the paths that can be taken:

1. **District Honor Hall:** Complaints can be filed with the District Honor Hall (DKD) in the area where the incident occurred or where the lawyer practiced. DKD is under the auspices of an organization such as PERADI and generally works with the Regional Leadership Council (DPD) or Branch Leadership Council (DPC) to process reports locally.
2. **Regional or Branch Leadership Council.** If the lawyer reported is a member of a particular branch, the complaint can also be submitted directly to the DPD or DPC of the lawyer

- organization, such as PERADI. They have the administrative and organizational authority to conduct initial clarifications and forward them to the Honorary Council if necessary.
3. National Leadership Council (DPN): For cases that have a large scale, have a broad impact, or involve serious violations, the complainant can file a complaint directly with the National Leadership Council (DPN). At the national level, complaints will be processed with stricter supervision, potentially leading to severe sanctions for the lawyer concerned.¹⁵

In implementing the hearing regarding violations of the Advocate Code of Ethics, the Regional Honorary Council (DKD) is accompanied by a clerk who has an important role, namely recording the entire series of trials in the form of minutes of the event. These minutes are official documents that must be signed by the Chairman of the Regional Honorary Council and the registrar as a sign of ratification of the validity of the session that has been held. Hearings held in front of the DKD are usually closed to protect the confidentiality and integrity of the examination process. However, the decisions taken during the hearing were publicly announced, regardless of whether the parties involved were present. Complaints filed by the complainant can be withdrawn before the start of the first hearing. However, if the trial has entered the trial stage, withdrawal can only be made with the approval of the Honorary Council. In addition, if the complainant has withdrawn the appeal, the complainant is not allowed to refile the appeal on the same or any other grounds. This provision is enforced to maintain the consistency and seriousness of the legal process and prevent abuse of procedures. Overall, this mechanism aims to ensure that the examination process is carried out fairly, transparently, and accountably, as well as to maintain the professionalism and integrity of the advocate profession as one of the main elements of law enforcement in Indonesia.

Suppose one of the parties disagrees with the decision issued by the Regional Honorary Council. In that case, the party has the right to appeal under the procedure stipulated in Article IV, point 4 of the Decree of the PERADI Central Honorary Council No. 3/2007. Based on these provisions, the Central Honorary Council must complete the appeal examination within a maximum of 45 days from establishing the Central Honorary Council. However, if the appeal process requires additional examination or summoning of related parties, the deadline for settlement may be extended. The Central Honorary Council must approve the extension of the deadline. This appeal process allows parties dissatisfied with the verdict to

¹⁵ Beby Sendy Vania Iftitah, Erisca Sabrina, 'Law Enforcement Against Code of Ethics Violations Committed by Advocates at Dpc Peradi Medan', *Journal of Education and Teaching Review*, 7.3 (2024), pp. 1–7 <<https://journal.universitaspahlawan.ac.id/index.php/jrpp/article/view/31002>>.
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DOI: <https://doi.org/10.62885/abdisci.v3i1.724>

obtain further examination by paying attention to compliance with applicable procedures and maintaining justice for all parties involved. In the appeal process, the Central Honorary Council is authorized to issue a decision that can be in the form of: Strengthening the decision that the Regional Honorary Council has determined;

1. Amend or correct the decision that the Regional Honorary Council has issued; or
2. Annul the decision of the Regional Honorary Council and adjudicate the case independently.¹⁶

The decision of the Honorary Council has permanent legal force because it is pronounced in a hearing open to the public, regardless of whether the parties involved are present. Therefore, the decision is final and binding, and no further legal remedy can be submitted, either in the form of an appeal, cassation, or review on any platform, including the National Conference of Advocate Organizations. As a form of implementation of a decision that has permanent legal force, the National Leadership Council is responsible for implementing the decision of the Central Honorary Council within a predetermined period. In addition, the National Leadership Council must announce the decision to interested parties, including members of advocacy organizations and other stakeholders. The move aims to provide legal certainty and maintain integrity and professionalism in the legal profession, so that every decision of the Central Honorary Council can be appropriately implemented and leaves no room for doubt or deviation from the valid decision.¹⁷

Disorientation of the Supreme Court's Authority with Advocate Organizations for the Revocation of BAS

Article 1, Point 5 of Law No. 30 of 2014 states, "Authority is the right owned by government agencies and/or officials or other state administrators to make decisions and/or take actions in the context of the administration of government." Meanwhile, Point 6 explains, "State authority, further referred to as authority, refers to the power possessed by government bodies and/or officials or other state administrators to act in the field of public law". Overall, this provision means that authority is the right and power given to government officials or bodies to make decisions and take actions related to the implementation of government, especially in the context of public law. This authority provides a basis for officials or

¹⁶ Decree of the Central Honorary Council of PERADI Number 3 of 2007 concerning Guidelines for the Implementation of Handling Complaint Cases of the Central and Regional Honorary Councils.

¹⁷ *Ibid pp. 4-5*

government bodies to act under their duties and obligations to maintain the smooth implementation of public policies and applicable laws.¹⁸

Law Number 30 of 2014 limits the power possessed by government employees and other state administrators in making decisions and/or taking actions. Every decision or action taken must be carried out by an institution or official who has authority by applicable regulations. In carrying out their duties and authorities, government institutions or officials must follow existing laws and regulations and comply with the general principles of good governance. Therefore, every action or decision taken must comply with the principles of legality and ethics in the administration of the state, to ensure legal certainty and prevent abuse of authority.¹⁹

Regarding withdrawing the RAN and FO oaths, the Ambon High Court and the Banten High Court have decided to postpone the Minutes of Oath (BAS) for the two lawyers. The decision to delay was stated in the Letter of the Chairman of the Ambon High Court Number 44/KPT. W27-U/HM. 1 1. 1/II/2025 officially ordered the postponement of BAS for RAN. On the other hand, the Banten High Court issued the Letter of the Chairman of the Banten High Court Number 52/KPT. W29/HM. 1. 1. 1/II/2025, which also ordered the postponement of the BAS for FO. These two high courts use different legal bases in making decisions. The Ambon High Court referred to the violation of the Advocate Code of Ethics committed by RAN, which was reflected in the decision of the Indonesian Advocates Congress (KAI) requesting the permanent dismissal of the lawyer. This decision became the basis for the Ambon High Court's freezing of BAS. On the contrary, the Banten High Court relied on the freezing of BAS on behalf of FO not only on violations of the Advocate Code of Ethics, but also on actions considered to degrade the court's dignity. This decision refers to the Supreme Court Regulation of the Republic of Indonesia No. 6 of 2020, especially Article 4, paragraph (5). Therefore, the freezing of BAS on behalf of FO has a broader legal basis, including violations of professional ethics and actions that are considered to damage the authority of the court (contempt of court).

The two determination letters clearly state that the relevant High Court has taken steps to freeze the BAS of the two advocates. This has resulted in a legal debate about why the High

¹⁸ Law Number 30 of 2014

¹⁹ Asyura, M., A. Rani, F., & Ismail, I., "The Authority of the Chief Justice of the Supreme Court to Issue the Decree of the Chief Justice of the Supreme Court Number 73/KMA/HK.01/IX/2015 Regarding the Oath of Advocates," *Syiah Kuala Law Journal*, 2019, 3(3), 429-444, accessed March 20, 2025, <https://doi.org/10.24815/sklj.v3i3.12611>.

Court decided to freeze BAS and what the consequences are for the advocate's position in carrying out his profession.

The Minutes of Oath (BAS) is a legal document that must be issued by the Supreme Court (MA). This can be seen from Article 4, paragraph (1) of Law No. 18 of 2003 concerning Advocates, which clearly states this:

"Before exercising his profession, an advocate is obliged to take an oath under his religion or give a promise wholeheartedly before an open hearing in the high court of his jurisdiction. "

Based on these provisions, every advocate is required to take an oath in front of the Supreme Court before being able to start practicing their profession. Thus, both the RAN, sworn in in 2015, and the FO, sworn in in 2016, have gone through the swearing procedure under the provisions applicable in the 2003 Advocates Law. However, it should be noted that the provisions in Article 4, paragraph (1) of the Advocate Law cannot be separated without paying attention to Article 2. Article 2, paragraph (2) states, "*The Advocates Association carries out the appointment of advocates*". Furthermore, Article 2 paragraph (3) emphasizes: "*A copy of the decision to appoint an advocate shall be submitted to the Supreme Court and the Minister.*"

In Article 2, paragraph (2) of Law No. 18 of 2003 concerning Advocates, it is stated that "Advocate Organizations carry out the appointment of Advocates." Furthermore, Article 2 paragraph (3) emphasizes that "A copy of the decree on the appointment of Advocates shall be submitted to the Supreme Court and the Minister. " Based on these provisions, and if associated with Article 4 paragraph (1), it can be concluded that the Supreme Court (MA) and the High Court only have authority related to the process of taking the oath of an advocate, not the appointment of the status of the advocate itself. The status of an advocate is legally obtained through appointment by the authorized Advocate Organization, not just because of the swearing-in process in the High Court. Thus, although the High Court carries out the swearing-in process, the role of the Supreme Court in this context is limited to the execution of the oath. At the same time, the appointment and validity of the status of an advocate is determined by the advocate professional organization that has the authority to do so. This decision ensures that advocacy organizations have primary authority when appointing their members as advocates.²⁰

²⁰ Muhammad, "Freezing of Advocate BAS Should Have a Clear Deadline," *hukumonline.com*, February 2025, accessed March 21, 2025, <https://www.hukumonline.com/berita/a/pembekuan-bas-advokat-seharusnya-ada-batas-waktu-yang-jelas-lt67b303e41a63e/>.

The authority to dismiss an advocate becomes clearer if it refers to the provisions of Article 9, paragraph (1) of Law Number 18 of 2003 concerning Advocates, which states that "Advocates may resign from their profession or be dismissed by the Advocate Organization." Furthermore, Article 9 paragraph (2) adds that "A copy of the dismissal letter shall be sent to the Supreme Court, the High Court, and other law enforcement agencies." From this provision, it can be concluded that the position and status of the advocate are entirely within the authority of the advocate organization that appointed him. Advocate organizations not only have the right to appoint, but also have the authority to reject or revoke someone's status as an advocate. On the other hand, the Supreme Court and the High Court only have administrative and ceremonial functions, namely organizing the taking of the advocate's oath as stated in Article 4, paragraph (1) of the Advocate Law. Therefore, the act of dismissal or revocation of advocate status is not included in the scope of the Supreme Court's authority, but is the exclusive authority of the advocate professional organization. The functions of the Supreme Court are limited to receiving and recording administrative notices from the organization.

Regarding the revocation of the Minutes of Oath (BAS) by the High Court against RAN and FO, juridical issues arise regarding the legal basis for the action. The Supreme Court or the High Court cannot unilaterally freeze or revoke the BAS without a formal ethical process from the Honorary Council of the Advocate Organization. Such revocation should follow the principles of due process of law, namely, fair, open, and non-arbitrary examination. Before the revocation, an ethics hearing should have been held by the Advocate Honorary Council, which resulted in a permanent dismissal decision against the advocate concerned. Only after that can the Supreme Court follow up by revoking or suspending the BAS. However, in the case of RAN and FO, it is known that both are still registered as active members in other legal advocacy organizations. So as long as the membership status is still recognized, both remain valid as advocates and have the right to carry out their profession, including *officium nobile*.

Thus, the revocation of the BAS carried out by the High Court on behalf of the Supreme Court is questionable in its legality and procedure. The Supreme Court should first consult with the advocacy organizations that oversee the RAN and FO to avoid conflicts of authority and ensure that the methods and principles of justice are followed in the legal action taken. The incompatibility between the institution's authority and the legal procedure has set a bad precedent in law enforcement and weakened the advocate profession's independence principle in Indonesia.

CONCLUSION

This study's results show serious inconsistencies in implementing the criminal procedure law, especially at the investigation and prosecution stages, which should be an essential basis in ensuring a fair, objective, and transparent judicial process. This inconsistency can be seen in various procedural irregularities committed by law enforcement officials, such as the actions of investigators that are not under the normative provisions in the Criminal Code, as well as the intervention of outside parties that weaken the independence of the judiciary.

Even though there are factually and empirically proven violations of substantive law and professional ethics, the legal response to these violations is disproportionate. This shows the weak enforcement of integrity in the criminal justice system in Indonesia. The disparity between violations and the enforcement of sanctions shows that procedural law has not only been procedurally flawed but has also ignored fundamental values such as justice, legal certainty, and institutional accountability. This condition requires a thorough evaluation of the implementation of procedural law to build a legal system that has more integrity and is responsive to substantive justice.

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