

Hak Imunitas Advokat pada Perkara Obstruction of Justice dalam Perkara Tindak Pidana Korupsi = Advocate's Immunity on Obstruction of Justice in Corruption Crime Cases

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Abstrak

Pada perkara advokat sebagai pelaku obstruction of justice dalam tindak pidana korupsi, terdapat polemik mengenai eksistensi hak imunitas advokat. Pasal 16 UU Advokat menyebutkan: advokat tidak dapat dituntut baik secara perdata maupun pidana dalam menjalankan tugas profesinya dengan iktikad baik untuk kepentingan pembelaan klien di dalam maupun di luar sidang pengadilan. Undang- Undang Advokat tidak memberikan penjelasan mengenai standar “iktikad baik”. Lebih lanjut lagi, terdapat perdebatan apakah dengan adanya hak imunitas, advokat harus diperiksa terlebih dahulu di Dewan Kehormatan Organisasi Advokat sebelum diproses menurut hukum acara pidana. Dengan menggunakan metode penelitian deskriptif, penelitian ini menjawab dua pertanyaan penelitian: pertama, mengenai keberlakuan hak imunitas advokat pada perkara obstruction of justice dalam tindak pidana korupsi; dan kedua, mengenai peran DKOA pada perkara obstruction of justice dalam perkara tindak pidana korupsi. Penelitian ini menunjukkan bahwa seorang advokat dapat dilindungi oleh hak imunitas apabila ia tetap berpedoman pada peraturan perundang-undangan, kode etik, dan proporsionalitas. Meskipun advokat memiliki hak imunitas, tidaklah diperlukan proses pemeriksaan terlebih dahulu oleh DKOA. Peran DKOA pada perkara tindak pidana korupsi yang melibatkan advokat masih minim, hal tersebut ditandai dengan tidak dipecatnya advokat yang telah dinyatakan bersalah tersebut. Atas permasalahan tersebut, undang-undang perlu mengatur secara rinci mengenai standar “iktikad baik”. Organisasi advokat melalui DKOA seharusnya lebih proaktif dalam mengawasi pelaksanaan kode etik advokat, khususnya mengenai tindak lanjut terhadap advokat yang telah dijatuhi pidana. Selain itu, untuk mencegah berpindah-pindahannya advokat yang telah diberhentikan, diperlukan standar profesi tunggal yang mencakup: pengangkatan advokat, pengawasan advokat, dan dewan kehormatan pusat dari seluruh organisasi advokat yang ada di Indonesia.

.....In the case wherein advocate named as a defendant of obstruction of justice in corruption crime cases, there is a polemic about the existence of advocate's immunity. Article 16 of Advocate's Act stated that advocates shall not be prosecuted either civil or criminal in carrying out their professional duties in good faith for the benefit of the client's defense inside or outside court proceedings. Advocate's act does not provide further explanation about the standard of “good faith”. Furthermore, there is a debate whether with the existence of advocate's immunity, advocate should be examined by The Disciplinary Committee, before being processed according to criminal procedural law. By using the descriptive method, this study aims to answer two questions: first, regarding the enforcement of advocate's immunity in obstruction of justice in corruption crime cases; second, regarding the role of The Disciplinary Committee in obstruction of justice in corruption crime cases. This thesis shows that an advocate shall be protected by adcovate's immunity if he/she take an action in accordance with law and regulations, and Code of Ethics, and proportionality. Despite of the existence of advocate's immunity, there is no need to carry out preliminary examination process by The Disciplinary Committee. The role of The Disciplinary Committee is not good enough towards advocate who has been convicted for committing obstruction of justice in corruption crime cases.

This is indicated by the fact that the advocate is not permanently disbarred from the Bar Association. For this issues, the law and regulation shall regulate clearly the standard of “good faith”. Bar Association should be more proactive in supervising the enforcement of the Code of Ethic, especially when taking action regarding to an advocate who is convicted for committing a crime. Beside that, to prevent the advocate that has been disbarred to join another Bar Association, an integrated professional standard is needed, which is including: registration and qualification of advocates, supervision of advocates, and integrated disciplinary committee for the whole Bar Association.