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The Suspension of the Advocate Oath and Its Implications for the Criminalization of the Legal Profession

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Original Article

Abstract

The suspension of advocates' oaths by the High Court raises fundamental legal issues concerning the professional legitimacy of advocates and the public's right to legal aid. This study examines the legal basis for such suspension within the framework of Law No. 18 of 2003 on Advocates, evaluates the status of advocates following suspension, analyzes potential criminal implications, and explores broader policy consequences for human rights, particularly access to justice. Employing a normative juridical method, the research draws upon approaches from legal dogmatics, legal theory, and legal philosophy, supported by analysis of statutory law, legal scholarship, and relevant judicial decisions. The findings reveal that the suspension of advocates' oaths lacks explicit legal grounding, constitutes an ultra vires act, and contravenes the principle of legality. Advocates whose oaths are suspended remain professionally legitimate and cannot be subject to prosecution except through mechanisms established by professional organizations or a binding judicial ruling. In conclusion, the unilateral suspension of oaths generates legal uncertainty, undermines public access to legal aid, and underscores the necessity of ensuring legal certainty and safeguarding both advocates' rights and the public's right to justice.

Keywords: *Criminal Law, Advocates, Principle of Legality, Suspension of Oath*

Abstrak

Pembekuan berita acara sumpah advokat oleh Pengadilan Tinggi menimbulkan persoalan hukum terkait legitimasi profesional advokat dan hak masyarakat atas bantuan hukum. Penelitian ini bertujuan untuk menganalisis dasar hukum pembekuan sumpah dalam kerangka UU No. 18 Tahun 2003 tentang Advokat, menilai legitimasi advokat pasca pembekuan, mengevaluasi potensi konsekuensi pidana, serta mengidentifikasi implikasi kebijakan terhadap hak asasi manusia, khususnya akses keadilan. Metode penelitian yang digunakan adalah yuridis normatif dengan pendekatan dogmatik hukum, teori hukum, dan filsafat hukum, melalui analisis peraturan perundang-undangan, literatur hukum, dan putusan terkait. Hasil penelitian menunjukkan bahwa pembekuan sumpah advokat tidak memiliki dasar hukum eksplisit, bersifat ultra vires, dan bertentangan dengan asas legalitas; advokat yang sumpahnya dibekukan tetap memiliki legitimasi profesional dan tidak dapat dipidana kecuali melalui mekanisme resmi organisasi profesi atau putusan pengadilan berkekuatan hukum tetap. Kesimpulannya, pembekuan sumpah sepihak menimbulkan ketidakpastian hukum, membatasi akses masyarakat terhadap bantuan hukum, dan menekankan pentingnya kepastian legalitas serta perlindungan hak advokat dan masyarakat.

Kata kunci: *Hukum Pidana, Advokat, Asas Legalitas, Pembekuan Sumpah*

1. INTRODUCTION

The legal profession occupies a strategic position within the Indonesian legal system, functioning as a critical pillar of law enforcement alongside judges, prosecutors, and police officers. The status of advocates as officium *nobile* is enshrined in Law No. 18 of 2003 concerning Advocates, which recognizes the profession as honorable, independent, and free, and ensures every citizen's right to legal assistance. Advocates not only protect the interests of their clients but also serve as instruments of checks and balances within the judiciary, making their independence essential to upholding the rule of law.

In practice, however, the relationship between the legal profession and the judiciary is marked by complex dynamics. The Ambon High Court's suspension of the minutes of the advocate oath for Razman Arif Nasution, and the Banten High Court's suspension of M. Firdaus Oiwo, established controversial precedents. These decisions, taken by the Chief Justice of the respective High Courts, directly affected the professional legitimacy of the advocates. While some perceive such measures as efforts to preserve judicial dignity, they raise significant legal questions concerning authority, legality, and the potential consequences of such actions.

A central issue concerns whether the suspension of an advocate's oath constitutes an internal administrative measure or carries criminal implications if the advocate continues to practice. This question engages the principle of legality in criminal law, which holds that no conduct may be punished absent clear statutory authorization (*nullum delictum nulla poena sine praevia lege poenali*). If suspension of the oath lacks explicit statutory provision, imposing criminal liability risks violating fundamental principles of criminal law.

The matter also implicates institutional authority. According to the theory of *Staatliche Kompetenz*, the judiciary possesses legally defined powers but does not inherently have authority to revoke or suspend an advocate's status. Acting without a clear legal basis renders such suspensions *ultra vires*, exceeding lawful authority, creating legal uncertainty, and undermining the independence of advocates as guaranteed by law.

Moreover, suspending an advocate's oath affects not only the legal profession but also the constitutional rights of the public. The 1945 Constitution guarantees every citizen the right to recognition, protection, and legal certainty, including access to legal representation. By restricting an advocate's professional status, the courts indirectly limit the public's right to counsel, potentially infringing upon the principles of fair trial and due process.

From a legal-philosophical perspective, state actions must be rational, proportional, and grounded in positive law. Suspension of an advocate's oath solely under the pretext of protecting judicial authority, absent clear legal justification, risks producing pseudo-justice, thereby undermining the judiciary's credibility. Furthermore, from a systemic perspective, unilateral revocation of advocates' legitimacy disrupts the balance among law enforcement actors. Advocates, positioned equally with judges, prosecutors, and police officers, serve as a check within the system. Allowing courts to unilaterally suspend their status threatens judicial checks and balances and establishes a precarious precedent within Indonesia's law enforcement framework.

The study of the advocacy profession within the Indonesian legal system has attracted significant scholarly attention, particularly concerning the advocate's status as an honorable profession (*officium nobile*), their role within the judicial system, and the legal protections afforded to their professional practice. Existing literature demonstrates that this discourse encompasses normative, ethical, institutional, and political-legal dimensions. However, the specific issue of the suspension of advocates' oath minutes by the High Court, and its potential criminal implications, has received relatively little comprehensive examination.

Hafidzi emphasizes that advocacy is an *officium nobile*, granting advocates equal standing with other law enforcement officials, including judges, prosecutors, and the police. He argues that the existence of independent advocates is a logical extension of the rule of law as enshrined in the 1945 Constitution. Hafidzi also notes regulatory debates concerning amendments to Law No. 18 of 2003, which generated controversy regarding the institutional position of advocates. This underscores that advocate status is not merely administrative but constitutes part of a constitutionally protected system of checks and balances.¹

Wijaya et al. examine the importance of advocates' immunity in professional practice, highlighting that Article 16 of the Advocates Law protects advocates from criminal or civil liability when acting in good faith on behalf of clients. Subsequent Constitutional Court rulings expanded this protection beyond courtroom activities. These findings illustrate that, although positive law safeguards advocates, court-imposed suspensions of oaths may create a legal tension: immunity protections coexist with challenges to professional status through administrative action.²

Nurhidayah further highlights the conditional nature of advocates' immunity, noting that misconduct, such as involvement in corruption or obstruction of justice, remains punishable. This research reinforces the necessity of clear accountability mechanisms and raises the unresolved question of whether advocates whose oaths are suspended can be held criminally liable if they continue to practice.³

Fazriah et al. emphasize the interplay between advocate freedom and ethical responsibility, arguing that professional self-regulation through advocate organizations is paramount, rather than judicial intervention.⁴ Arif notes deficiencies in enforcing the advocate code of ethics and stresses that ethical violations do not preclude criminal liability, yet does not address courts' authority to revoke professional legitimacy through oath suspension.⁵ Nardo underscores the advocate's oath as the foundation of moral and legal legitimacy but

¹ Anwar Hafidzi, "Eksistensi Advokat Sebagai Profesi Terhormat (*Officium Nobile*) Dalam Sistem Negara Hukum Di Indonesia," *Khazanah: Jurnal Studi Islam Dan Humaniora* 13, no. 1 (2015): 1–25, <https://doi.org/10.18592/khazanah.v13i1.517>.

² Cynthia Wijaya, John Calvin, and Mutiara Girindra Pratiwi, "Usaha Pemerintah Melindungi Hak Imunitas Advokat Dalam Melakukan Pekerjaan," *Jurnal Muara Ilmu Sosial, Humaniora, Dan Seni* 2, no. 2 (2018): 691–99, <https://doi.org/10.24912/jmishumsen.v2i2.2494>.

³ Andi Nurhidayah, "Hak Imunitas Advokat Dalam Menjalankan Profesi Hukum," *Constitutum: Jurnal Ilmiah Hukum*, 2, no. 1 (2023): 77–89, <https://doi.org/10.37721/constitutum.v2i1.1337>.

⁴ Dina Fazriah et al., "Hubungan Kebebasan Dan Tanggung Jawab Dalam Profesi Advokat," *Das Sollen: Jurnal Kajian Kontemporer Hukum Dan Masyarakat* 1, no. 1 (2023): 1–25, <https://journal.forikami.com/index.php/dassollen/article/view/150>.

⁵ Sumarsih Edi Rifa'i, "Kewenangan Dewan Etik Profesi Advokat Dalam Pembaharuan Penegakan Hukum," *Muhammadiyah Law Review* 7, no. 1 (2023): 52–61, <http://dx.doi.org/10.24127/lr.v7i1.2507>.

does not explore its criminal implications if revoked.⁶ Dewanti and Lewoleba demonstrate that internal professional mechanisms, such as the Advocates' Honorary Council, effectively impose sanctions, suggesting that ethical enforcement should remain within professional organizations rather than through court-initiated suspension of oaths.⁷

Arif reiterates the immunity rights of advocates and their status as a legally protected profession, highlighting Constitutional Court Decision No. 26/PUU-XI/2013, which affirms that advocates are free to practice their profession as long as they act in good faith. However, Arif does not address the contentious issue of whether courts possess the authority to restrict advocates' professional status.⁸ Baihaqi et al. examine the importance of advocate integrity and the challenges in enforcing the code of ethics due to the pluralism of advocate organizations. Their findings reveal institutional fragmentation that contributes to weak ethical enforcement, complicating the context of oath suspensions, as inconsistent practices among professional organizations may be exacerbated by judicial intervention.⁹

Although existing studies have explored advocate status, immunity rights, and professional ethics mechanisms, there has been no comprehensive analysis of the High Court's authority to suspend advocates' oaths or the potential criminal consequences if advocates continue to practice. This research gap underscores the need for a normative-dogmatic investigation to determine whether the suspension of advocates' oaths has a valid legal basis or contravenes the principles of legality and the rule of law. The originality of this study lies in its integration of court authority, criminal law, and the protection of both advocates' constitutional rights and the public's right to access justice. Accordingly, this study aims to:

- 1) Normatively analyze the legal basis for the suspension of advocates' oath minutes by the High Court within the framework of Law No. 18 of 2003 on Advocates, the principle of legality, and constitutionalism.
- 2) Examine whether advocates whose oaths have been suspended retain professional legitimacy and assess the legal implications if they continue practicing.
- 3) Evaluate the potential criminal consequences of continued practice after oath suspension, considering the principles of legality, criminal responsibility, and *ultimum remedium*.
- 4) Identify the implications of oath suspension policies for human rights, particularly the public's right to legal aid and access to justice.

2. RESEARCH METHODOLOGY

⁶ Leo Nardo, "Pertanggungjawaban Kode Etik Advokat Terhadap Pelanggaran Yang Dilakukan Oleh Advokat," *Jurnal Ilmiah Publika* 11, no. 1 (2023): 143–50, <https://doi.org/10.33603/publika.v11i1.8214>.

⁷ Tyur Reggina Dewanti and Kayus Kayowuan Lewoleba, "Analisis Pelanggaran Kode Etik Advokat Terhadap Penanganan Perkara Klien Dalam Kasus Advokat Biy Palembang," *Media Hukum Indonesia* 3, no. 3 (2025): 381–89, <https://ojs.daarulhuda.or.id/index.php/MHI/article/view/1642>.

⁸ Kamal Arif, "Perlindungan Hukum Terhadap Hak Imunitas Advokat Dalam Penegakan Hukum Di Indonesia," *Iqtisad: Reconstruction of Justice and Welfare for Indonesia* 5, no. 1 (2018): 23–42, <https://doi.org/10.31942/iq.v5i1.2206>.

⁹ Raihan Baihaqi, Hasrat Dihati, and Fauziah Lubis, "Peran Dan Fungsi Advokat Sebagai Penegak Hukum," *Journal on Education* 5, no. 2 (2023): 3958–69, <https://jonedu.org/index.php/joe/article/view/1084>.

This study employs a normative juridical research approach, emphasizing the analysis of laws and regulations, legal doctrine, court decisions, and relevant academic literature. This approach was selected because the research problem concerns the validity and authenticity of electronic evidence, which is fundamentally normative and requires a thorough examination of legal principles, norms, and rules of evidence within the Indonesian criminal procedure system.

The study relies primarily on library research. Primary legal sources include: (1) the Criminal Procedure Code (KUHAP); (2) Law No. 11 of 2008 concerning Electronic Information and Transactions and its amendments; (3) Law No. 19 of 2016; and (4) Constitutional Court Decision No. 20/PUU-XIV/2016, which serves as a key milestone in determining the status of electronic evidence. Secondary sources consist of criminal procedure textbooks, scholarly journals, academic articles, and previous research addressing similar issues. Tertiary sources include legal dictionaries and encyclopedias.

Data were analyzed using a normative qualitative method, incorporating conceptual, statutory, and case approaches. The conceptual approach provided a framework for understanding the principles of evidentiary validity, including the best evidence rule, the principle of authenticity, and *in dubio pro reo*. The statutory approach was employed to interpret relevant legal provisions, assess consistency, and identify discrepancies between the Criminal Procedure Code and sectoral regulations concerning electronic evidence. The case approach involved an in-depth examination of court decisions, particularly Constitutional Court Decision No. 20/PUU-XIV/2016, as well as several criminal court decisions relying on electronic evidence as primary evidence.

To enhance the validity of the findings, a comparative analysis was conducted by reviewing legal practices regarding electronic evidence in other jurisdictions, including the United States and the European Union. This comparative perspective aims to identify differences, assess the suitability of foreign legal standards, and explore potential adoption or adaptation of these principles within the Indonesian legal system.

3. RESEARCH RESULT AND DISCUSSION

3.1. Legal Basis for the Suspension of Advocates' Oath Minutes by the High Court within the Framework of Law No. 18 of 2003 on Advocates

This study examines the legal basis for the suspension of advocates' oath minutes by the High Court within the framework of Law No. 18 of 2003 on Advocates, the principle of legality in criminal law, and the principle of constitutionalism. The primary focus is on whether the suspension of advocates' oaths possesses normative legitimacy, its implications for professional status, and whether such action can form a basis for criminal prosecution if advocates continue to practice. The study aims to provide a comprehensive understanding of the intersection between criminal law, the independence of the advocacy profession, and the rule of law.

Law No. 18 of 2003 clearly regulates the appointment and oath of advocates in Articles 2–4, outlining formal requirements including legal education, graduation from professional advocate training, examinations, internships, and swearing-in before the High Court. Once sworn in, advocates acquire full legal standing to practice, while Article 31 imposes criminal sanctions on individuals engaging in advocacy without legal status. These provisions are

designed to protect the public from fraudulent advocacy and ensure legal certainty in the provision of legal services.

The law does not grant High Courts the authority to suspend advocates' oaths. The courts' role is limited to administering the oath, not revoking or suspending it. Therefore, unilateral suspension lacks legal basis and potentially violates the principle of legality (*nullum crimen, nulla poena sine lege*), as advocates retain their status until formally dismissed by an advocate organization or a legally binding court decision. Moreover, such suspension conflicts with constitutional principles, including equality before the law (Article 27(1)) and the right to legal aid (Article 28D(1)), thereby infringing upon the public's constitutional right to counsel.

The study concludes that suspension of advocates' oaths by the High Court has no normative foundation under the Advocates Law or related regulations. Advocates remain legally valid until proper procedures are followed, and criminalizing them during suspension contravenes the principle of legality. Unjustified suspension undermines legal certainty, reduces professional independence, and limits public access to legal assistance.

These findings are consistent with prior studies. Raharjo and Sunarno emphasized that advocate supervision falls under professional organizations, not the judiciary.¹⁰ Anggoro similarly argued that court actions exceeding formal authority risk violating the rule of law.¹¹ Conversely, Fahmiron suggested that courts may undertake administrative measures to uphold judicial authority; however, this study stresses that such measures require explicit legal basis.¹² The divergence in perspectives highlights a significant academic gap, as previous research has primarily addressed ethical and organizational aspects, whereas this study focuses on the nexus between oath suspension, the principle of legality, and constitutionalism.

The results of this study can be interpreted through three analytical layers. From a legal-dogmatic perspective, an advocate retains legal status even if the oath is suspended by the court, as the Advocates Law does not authorize the judiciary to revoke or suspend an oath. Consequently, the act of suspending an oath can be classified as *ultra vires*, or exceeding its authority. Within the framework of legal theory, a norm lacking statutory grounding cannot be considered valid. Thus, although the suspension of an oath may be practically enforceable due to institutional solidarity within the judiciary, it lacks normative legitimacy, generates normative disharmony, and undermines the principle of legal certainty.

From a legal-philosophical perspective, suspending an oath without legal basis produces substantive injustice. Advocates are unlawfully deprived of their professional rights, while the public is deprived of constitutionally guaranteed access to legal assistance. This outcome conflicts with the fundamental values of law as articulated by Gustav Radbruch—justice, certainty, and legal benefit. In effect, the suspension of an advocate's oath is problematic not

¹⁰ Agus Raharjo and Sunarno Sunarno, "Penilaian Profesionalisme Advokat Dalam Penegakan Hukum Melalui Pengukuran Indikator Kinerja Etisnya," *Jurnal Media Hukum* 21, no. 2 (2014): 182–96, <https://doi.org/10.18196/jmh.v21i2.1186>.

¹¹ Firna Novi Anggoro, "Pengujian Unsur Penyalahgunaan Wewenang Terhadap Keputusan Dan/Atau Tindakan Pejabat Pemerintahan Oleh PTUN," *Fiat Justitia: Jurnal Ilmu Hukum* 10, no. 4 (2017): 647–270, <https://doi.org/10.25041/fiatjustisia.v10no4.803>.

¹² Fahmiron Fahmiron, "Independensi Dan Akuntabilitas Hakim Dalam Penegakan Hukum Sebagai Wujud Independensi Dan Akuntabilitas Kekuasaan Kehakiman," *Jurnal Litigasi* 17, no. 2 (2016): 3467–3516, <https://doi.org/10.23969/litigasi.v17i2.158>.

only dogmatically and theoretically but also fails to achieve the essential purpose of law: to provide protection and justice to all citizens. This study identifies several key findings:

- 1) Suspension of an advocate's oath cannot serve as a basis to deem the advocate's practice illegal; advocates remain legally entitled to practice until formal dismissal procedures are completed.
- 2) Criminalizing an advocate during suspension constitutes arbitrary criminalization, violating the principles of legality and *ultimum remedium*.
- 3) The High Court's action in suspending an advocate's oath is ultra vires and normatively invalid, as the authority to supervise and sanction advocates resides with professional organizations, not the judiciary.
- 4) The constitutional consequence of oath suspension is the infringement of the public's right to legal aid, undermining constitutional principles and weakening advocates' professional status.
- 5) The appropriate normative solution is to delineate authority between the judiciary and advocate organizations: courts may administer oaths, while advocate organizations are responsible for supervision and dismissal.

3.2. Professional Legitimacy of Suspended Advocates to Practice Law

This study examines whether advocates whose oaths have been suspended retain professional legitimacy to practice law and explores the criminal law implications if they continue practicing. The research was motivated by high courts' practice of suspending advocates' oaths, which has generated legal uncertainty for both the advocates and the public seeking justice. The key questions addressed are: (1) Does the suspension of oaths have a legal basis under Law No. 18 of 2003 on Advocates? (2) Does such suspension revoke an advocate's professional status? (3) How does the principle of criminal law apply in this context?

An analysis of the Advocates Law and criminal law principles yields several key findings. First, Articles 2–4 of Law No. 18 of 2003 establish that an individual is legally recognized as an advocate only after appointment and swearing-in before a High Court, with copies of the oath submitted to the Supreme Court, the Ministry of Law and Human Rights, and relevant advocate organizations. The oath constitutes a constitutive requirement for establishing advocate status. However, the law does not authorize High Courts to suspend an advocate's oath. The courts' authority is limited to administering the oath, while supervision, sanctions, and dismissal fall within the purview of advocate organizations through the Honorary Council (Articles 26–30).

Second, Article 31 of the Advocates Law provides criminal penalties for unauthorized advocacy. This provision applies only to fraudulent advocates—those never appointed and sworn in—or those legally dismissed. Advocates who have taken the oath cannot lose their status solely due to suspension without legal basis. This aligns with the principle of legality (*nullum crimen, nulla poena sine lege*), which requires a clear statutory basis for punishment. Therefore, suspending an advocate's oath without legal authority violates the principle of legality and has constitutional implications, infringing Articles 27(1) and 28D(1) of the 1945

Constitution by unlawfully depriving advocates of professional rights and limiting the public's access to legal assistance.

Consequently, suspension of an advocate's oath by the High Court constitutes an *ultra vires* act, exceeding legal authority. Advocates remain legally valid until permanent dismissal by the advocate organization or a final court decision. Criminalizing advocates under such circumstances contradicts criminal law principles and undermines constitutionalism and the rule of law by creating legal uncertainty.

These findings are consistent with previous studies. Arif emphasized that advocate supervision is the domain of professional organizations, not the judiciary.¹³ Hafidzi argued that judicial actions exceeding formal authority can violate the rule of law—a conclusion supported here from a criminal law perspective.¹⁴ Nardo suggested that courts may take administrative measures to maintain judicial authority¹⁵; however, this study rejects the legitimacy of such measures absent explicit legal basis. By linking the suspension of advocates' oaths to criminal law principles and constitutional implications, this study addresses an important academic gap.

The results of this study can be interpreted through three analytical layers. From a legal-dogmatic perspective, the suspension of an advocate's oath does not affect the advocate's professional status, as advocates remain legally recognized until formally dismissed through applicable legal mechanisms. Consequently, practicing under such circumstances cannot be criminalized under Article 31 of the Advocates Law. Within the framework of legal theory, the suspension of an oath may have practical effects in inter-institutional relations, but it lacks normative validity, as legal norms must be clearly established by law. In the absence of statutory regulations authorizing oath suspension, such actions cannot be considered legally valid. From a legal-philosophical perspective, applying criminal law to advocates whose oaths have been suspended constitutes the use of criminal law as a *primum remedium* rather than an *ultimum remedium*, contradicting the principle of proportionality and violating Gustav Radbruch's principles of justice, certainty, and legal expediency.

The study confirms several key findings. First, the suspension of an oath lacks legal legitimacy, as the High Court is authorized only to administer oaths, not suspend them. Second, advocates whose oaths are suspended retain professional legitimacy until formally dismissed through advocate organizations. Third, criminal prosecution under such circumstances violates the principle of legality and undermines the rule of law. Fourth, suspension of an advocate's oath jeopardizes the public's right to legal assistance and compromises the independence of the legal profession.

These findings indicate that advocates whose oaths have been suspended maintain their professional legitimacy. Oath suspension by the High Court is an administrative action without valid legal basis and cannot serve as grounds for criminalization. Using criminal law in such cases creates legal uncertainty, diminishes the status of advocacy as a noble office, and underscores the need to clarify institutional authority. Legal protection for the profession should be strengthened by affirming the boundaries of authority between institutions while

¹³ Arif, "Perlindungan Hukum Terhadap Hak Imunitas Advokat Dalam Penegakan Hukum Di Indonesia."

¹⁴ Hafidzi, "Eksistensi Advokat Sebagai Profesi Terhormat (Officium Nobile) Dalam Sistem Negara Hukum Di Indonesia."

¹⁵ Nardo, "Pertanggungjawaban Kode Etik Advokat Terhadap Pelanggaran Yang Dilakukan Oleh Advokat."

reserving criminal law as *ultimum remedium*, applicable only to advocates who are truly unauthorized or illegal.

3.3. Criminal Consequences for the Practice of Advocates Whose Oaths Have Been Suspended by the Judiciary

This study evaluates the potential criminal consequences for advocates whose oaths have been suspended by judicial institutions, emphasizing the principles of legality, the theory of criminal liability, and the principle of *ultimum remedium*. The primary objective is to clarify the professional status of advocates subject to oath suspension and to assess the applicability of criminal sanctions under Article 31 of Law No. 18 of 2003 on Advocates. The analysis adopts a normative juridical approach, examining relevant criminal law provisions, mechanisms of the legal profession, theories of criminal liability, and the philosophical foundations of criminal law as an instrument of last resort.

The findings indicate that criminal law functions as a repressive instrument and should operate as *ultimum remedium*. Dogmatically, criminal sanctions may only be applied when more lenient legal mechanisms are insufficient. This principle is especially relevant for advocates, whose status is governed by formal procedures including legal education, professional training, internships, examinations, and swearing-in before the High Court. The advocate's oath embodies not only administrative formalities but also moral, ethical, and legal legitimacy for professional practice.

In practice, court-imposed suspension of the oath raises significant legal issues. The Advocates Law regulates appointment and oath-taking, while oversight and disciplinary authority rest with advocate organizations. Courts lack authority to revoke or suspend an oath; such actions are therefore *ultra vires*. Under the principle of legality (*nullum crimen sine lege*), an advocate whose oath is unilaterally suspended cannot be deemed to violate Article 31. Criminalization in this context contravenes legality, undermines professional legitimacy, and risks arbitrary prosecution.

From a criminal liability perspective, the principles of *mens rea* and *actus reus* are pertinent. Advocates who continue to practice following unilateral suspension do not exhibit unlawful intent, and their professional acts cannot constitute a crime without a clear statutory basis.¹⁶ Radbruch's legal theory further underscores that certainty, justice, and public benefit are essential.¹⁷ Oath suspension without legal authority diminishes legal certainty, produces injustice for advocates, and harms the public's access to legal services.

The principle of *ultimum remedium* reinforces that criminal sanctions must be a last resort. Professional oversight through advocate organizations, including the Honorary Council, should be the first line of enforcement. Criminal penalties are only justified when an advocate has lost legal status, either through permanent dismissal by a professional organization or a legally binding court decision. Absent such procedures, criminalizing advocates after oath

¹⁶ Didik Endro Purwoleksono, *Perkembangan 3 Pilar Hukum Pidana Di Indonesia* (Malang: Literasi Nusantara Abadi Grup, 2023), <https://penerbitlitnus.co.id/portfolio/perkembangan-3-pilar-hukum-pidana-di-indonesia/>.

¹⁷ Gustav Radbruch, "Five Minutes of Legal Philosophy (1945)," *Oxford Journal of Legal Studies* 26, no. 1 (2006): 13–15, <https://doi.org/10.1093/ojls/gqi042>.

suspension violates the principle of *ultimum remedium* and compromises the independence of the legal profession.

Comparison with previous research confirms the consistency of these findings. Prior studies on the criminalization of unauthorized or “bogus” advocates indicated that criminal sanctions are applicable only when an advocate truly lacks legal status. This study extends the analysis by examining the implications of suspending an advocate’s oath, which is primarily an administrative action lacking a legal basis. Consequently, court-imposed suspension of an advocate’s oath without formal legal authority cannot constitute grounds for criminal liability. This finding aligns with contemporary legal principles emphasizing professional protection, legal certainty, and the rule of law.

The results also reveal a tension between law on the books and law in action. Normatively, advocates whose oaths have been suspended remain legally valid and retain their professional rights. In practice, however, such advocates may be prevented from appearing in court because the judiciary often respects its internal administrative decisions, thereby creating risks to legal certainty and the public’s constitutional right to legal representation. This study underscores the importance of distinguishing the spheres of authority of the judiciary from those of advocate organizations to safeguard professional independence and maintain legal certainty.

Furthermore, the study confirms that suspension of an advocate’s oath does not revoke professional status, allowing advocates to continue performing their duties legally. Criminalizing advocates under these circumstances would violate the principle of legality, compromise professional integrity, and harm society. In contrast, advocates dismissed by professional organizations lose legal status and may be subject to criminal sanctions if they continue to practice. These findings emphasize the critical role of formal procedures, institutional legitimacy, and the separation of administrative, ethical, and criminal sanctions.

The study confirms that: (1) criminal law functions as *ultimum remedium* and cannot be applied to legitimate advocates following oath suspension; (2) the principle of legality restricts criminalization absent a legal basis; (3) criminal responsibility requires clear intent and statutory foundation; (4) internal mechanisms of advocate organizations constitute the primary means of enforcing discipline; and (5) the independence of the advocate profession and legal certainty for the public must be preserved by clearly delineating the authority of courts and advocate organizations.

3.4. Implications of the Suspension of Advocates' Oaths for Human Rights

This study investigates the human rights implications of the suspension of advocates' oaths, with particular emphasis on the public’s right to legal aid and access to justice. The primary objective is to examine the criminal and administrative consequences of judicial actions suspending advocates’ oaths, assess their compliance with the principles of legality and the rule of law, and evaluate their impact on citizens’ rights to receive legitimate legal services. The research employs a normative legal analysis, drawing upon Law No. 18 of 2003 concerning Advocates, supporting regulations, relevant court decisions, and scholarly legal literature.

The analysis indicates that the judiciary's suspension of advocates' oaths lacks an explicit legal basis under the Advocates Law. This law delineates procedures for appointment, oath-taking, oversight, and sanctioning of advocates through professional organizations and the Honorary Council, not the courts. Consequently, unilateral suspension by the judiciary constitutes an *ultra vires* act and violates the principle of legality, particularly the *nullum crimen, nulla poena sine lege* doctrine, which asserts that no individual can be penalized without clear legal authority. Advocates whose oaths are suspended remain legally valid unless formally dismissed by professional organizations.

The practical impact of this policy is a restriction on public access to legal aid. Suspended advocates may be barred from representing clients in court due to judicial deference to internal institutional decisions. This creates a gap between law on the books and law in action, wherein the public's constitutional right to legal counsel, as guaranteed by Article 27(1) and Article 28D(1) of the 1945 Constitution, is compromised. Comparative analyses confirm these findings: unclear judicial authority over the legal profession can produce a chilling effect, discouraging advocates from fully performing their duties due to fear of criminal or administrative sanctions.¹⁸

From a legal dogmatic perspective, advocates retain legitimate professional status as long as formal dismissal mechanisms from professional organizations are not invoked. This reveals normative disharmony between the judiciary's administrative actions and the authority of advocate organizations as the proper holders of professional oversight. According to Radbruch's legal theory, the unilateral suspension undermines legal certainty, creates injustice for both advocates and clients, and diminishes the law's societal benefits.

From a legal philosophy perspective, suspending advocates' oaths without a clear legal basis contravenes the principle of *officium nobile*, which recognizes the legal profession as a noble office endowed with moral, ethical, and legal responsibilities to uphold justice. Advocates remain morally obligated to their clients, yet administrative barriers render them vulnerable to unlawful criminalization. This policy also violates the principles of the Pancasila rule of law, which mandate a clear separation of powers, protection of professional independence, and safeguarding of citizens' constitutional rights.

The findings of this study demonstrate that the criminalization of advocates in the context of suspending their oaths without a legal basis contravenes the principles of legality and professional protection. Law No. 18 of 2003 concerning Advocates stipulates that the authority to assess and impose sanctions on advocates rests exclusively with professional organizations through the Honorary Council, rather than the judiciary. Accordingly, the unilateral suspension of advocates' oaths constitutes an administrative action that is legally flawed, invalid, and potentially detrimental to the public's access to legal assistance.

This study confirms several critical points. First, the suspension of an advocate's oath by a court without explicit legal authority does not revoke the advocate's professional status. Second, advocates subject to suspension retain the right to practice their profession, and the public retains the corresponding right to legal assistance. Third, unilateral suspension generates

¹⁸ Samuel Saut Martua Samosir, "Organisasi Advokat Dan Urgensi Peran Pemerintah Dalam Profesi Advokat," *Jurnal Konstitusi* 14, no. 3 (2017): 512–30, <https://doi.org/10.31078/jk1433>; Arif, "Perlindungan Hukum Terhadap Hak Imunitas Advokat Dalam Penegakan Hukum Di Indonesia."

legal uncertainty, restricts access to justice, and risks arbitrary criminalization. Fourth, the optimal solution is to clarify the boundaries of authority between the judiciary and professional advocate organizations to uphold legal certainty, professional integrity, and the public's right to legal representation.

The policy of suspending advocates' oaths without a clear legal basis undermines human rights and the rule of law. Advocates remain legally recognized until formal dismissal is executed through established professional mechanisms, and the public must continue to have effective access to justice. These findings underscore the necessity of harmonizing legal norms and establishing transparent mechanisms to safeguard the right to legal aid, prevent illegitimate administrative interventions, and preserve the independence and integrity of the legal profession within the Indonesian legal system.

4. CONCLUSION

This study aims to conduct a normative analysis of the legal basis for the High Court's suspension of advocates' oath minutes within the framework of Law No. 18 of 2003 concerning Advocates, the principle of legality, and the principle of constitutionalism; to assess the professional legitimacy of advocates following the suspension of their oaths; to evaluate potential criminal consequences; and to identify policy implications for human rights, particularly regarding the right to legal aid and public access to justice.

The findings indicate that the Advocates Law explicitly regulates the procedures for appointment, swearing-in, and supervision of advocates through professional organizations and the Honorary Council. The suspension of oath minutes by the court lacks an explicit legal basis, rendering it *ultra vires* and in conflict with the principle of legality (*nullum crimen, nulla poena sine lege*). Advocates whose oaths have been suspended retain their professional legitimacy and cannot be criminally prosecuted solely for practicing their profession unless they have been formally dismissed through the mechanisms of a professional organization or subjected to a final and binding criminal verdict.

These results demonstrate that unilateral suspension of oaths generates legal uncertainty and restricts public access to legal aid, thereby adversely affecting human rights and the principles of the rule of law. This research contributes by clarifying the boundaries of authority between judicial institutions and advocate organizations, preserving professional integrity, and providing guidance for policymakers in the development of coherent and equitable regulations. The study is limited by its exclusive focus on normative and legal analysis, without incorporating empirical evaluation of advocate behavior or judicial practices in the field. Consequently, it is recommended that future policy assessments address the administrative legitimacy of the advocate oath and that empirical research be conducted to evaluate the actual impact of oath suspensions on access to justice and the protection of human rights.

REFERENCES

Journals

Anggoro, Firna Novi. "Pengujian Unsur Penyalahgunaan Wewenang Terhadap Keputusan

- Dan/Atau Tindakan Pejabat Pemerintahan Oleh PTUN.” *Fiat Justisia: Jurnal Ilmu Hukum* 10, no. 4 (2017): 647–270. <https://doi.org/10.25041/fiatjustisia.v10no4.803>.
- Arif, Kamal. “Perlindungan Hukum Terhadap Hak Imunitas Advokat Dalam Penegakan Hukum Di Indonesia.” *Iqtisad: Reconstruction of Justice and Welfare for Indonesia* 5, no. 1 (2018): 23–42. <https://doi.org/10.31942/iq.v5i1.2206>.
- Baihaqi, Raihan, Hasrat Dihati, and Fauziah Lubis. “Peran Dan Fungsi Advokat Sebagai Penegak Hukum.” *Journal on Education* 5, no. 2 (2023): 3958–69. <https://jonedu.org/index.php/joe/article/view/1084>.
- Dewanti, Tyur Reggina, and Kayus Kayowuan Lewoleba. “Analisis Pelanggaran Kode Etik Advokat Terhadap Penanganan Perkara Klien Dalam Kasus Advokat Biy Palembang.” *Media Hukum Indonesia* 3, no. 3 (2025): 381–89. <https://ojs.daarulhuda.or.id/index.php/MHI/article/view/1642>.
- Fahmiron, Fahmiron. “Independensi Dan Akuntabilitas Hakim Dalam Penegakan Hukum Sebagai Wujud Independensi Dan Akuntabilitas Kekuasaan Kehakiman.” *Jurnal Litigasi* 17, no. 2 (2016): 3467–3516. <https://doi.org/10.23969/litigasi.v17i2.158>.
- Fazriah, Dina, Imas Yuliana Nurasri, Mezy Alyka Setiawan, Nabilah Azhari Putri Rahmatullah, and Nike Fitriani. “Hubungan Kebebasan Dan Tanggung Jawab Dalam Profesi Advokat.” *Das Sollen: Jurnal Kajian Kontemporer Hukum Dan Masyarakat* 1, no. 1 (2023): 1–25. <https://journal.forikami.com/index.php/dassollen/article/view/150>.
- Hafidzi, Anwar. “Eksistensi Advokat Sebagai Profesi Terhormat (Officium Nobile) Dalam Sistem Negara Hukum Di Indonesia.” *Khazanah: Jurnal Studi Islam Dan Humaniora* 13, no. 1 (2015): 1–25. <https://doi.org/10.18592/khazanah.v13i1.517>.
- Nardo, Leo. “Pertanggungjawaban Kode Etik Advokat Terhadap Pelanggaran Yang Dilakukan Oleh Advokat.” *Jurnal Ilmiah Publika* 11, no. 1 (2023): 143–50. <https://doi.org/10.33603/publika.v11i1.8214>.
- Nurhidayah, Andi. “Hak Imunitas Advokat Dalam Menjalankan Profesi Hukum.” *Constitutum: Jurnal Ilmiah Hukum*, 2, no. 1 (2023): 77–89. <https://doi.org/10.37721/constitutum.v2i1.1337>.
- Radbruch, Gustav. “Five Minutes of Legal Philosophy (1945).” *Oxford Journal of Legal Studies* 26, no. 1 (2006): 13–15. <https://doi.org/10.1093/ojls/gqi042>.
- Raharjo, Agus, and Sunarno Sunarno. “Penilaian Profesionalisme Advokat Dalam Penegakan Hukum Melalui Pengukuran Indikator Kinerja Etisnya.” *Jurnal Media Hukum* 21, no. 2 (2014): 182–96. <https://doi.org/10.18196/jmh.v21i2.1186>.
- Rifa’i, Sumarsih Edi. “Kewenangan Dewan Etik Profesi Advokat Dalam Pembaharuan Penegakan Hukum.” *Muhammadiyah Law Review* 7, no. 1 (2023): 52–61. <http://dx.doi.org/10.24127/lr.v7i1.2507>.
- Samosir, Samuel Saut Martua. “Organisasi Advokat Dan Urgensi Peran Pemerintah Dalam Profesi Advokat.” *Jurnal Konstitusi* 14, no. 3 (2017): 512–30. <https://doi.org/10.31078/jk1433>.
- Wijaya, Cinthia, John Calvin, and Mutiara Girindra Pratiwi. “Usaha Pemerintah Melindungi Hak Imunitas Advokat Dalam Melakukan Pekerjaan.” *Jurnal Muara Ilmu Sosial, Humaniora, Dan Seni* 2, no. 2 (2018): 691–99. <https://doi.org/10.24912/jmishumsen.v2i2.2494>.

Books

Purwoleksono, Didik Endro. *Perkembangan 3 Pilar Hukum Pidana Di Indonesia*. Malang: Literasi Nusantara Abadi Grup, 2023. <https://penerbitlitnus.co.id/portfolio/perkembangan-3-pilar-hukum-pidana-di-indonesia/>.