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Constitutionalism and the Debate Surrounding the Suspension of the Advocates' Association

Lutfiadi Lutfiadi^{1*}, Win Yuli Wardani², Febrina Heryanti³, Noer Dini Camelia⁴, Agustri Purwandi⁵

^{1,2,3,4,5}Universitas Madura, Indonesia, Indonesia

Correspondence

Lutfiadi Lutfiadi, Universitas Madura, Indonesia, Jl. Raya Panglegur No.Km 3,5, Barat, Panglegur, Kec. Tlanakan, Kabupaten Pamekasan, Jawa Timur 69371, e-mail: lutfiadi@unira.ac.id

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Original Article

Abstract

The suspension of advocates' Oath of Office (BAS) by the High Court raises significant concerns within the framework of Indonesian procedural law and state administration. The core issue stems from the absence of an explicit legal basis authorizing such action, which may contravene the principles of legality, constitutionalism, and the protection of advocates' fundamental rights. This study aims to examine the legal legitimacy of the BAS suspension, evaluate its compliance with constitutional principles, and explore its philosophical implications for the role of advocates as law enforcers on a par with judges, prosecutors, and police officers. Employing a normative juridical approach with a focus on doctrinal analysis of the Advocates Law, the 1945 Constitution, relevant court decisions, and legal literature, the study finds that the BAS suspension constitutes an ultra vires act. Consequently, this measure undermines the rule of law, diminishes the independence of the legal profession, and has the potential to disrupt public access to justice, highlighting the need for more robust regulatory reforms.

Keywords: *Constitutionalism, Court Authority, Advocates, Rule of Law*

Abstrak

Pembekuan Berita Acara Sumpah (BAS) advokat oleh pengadilan tinggi menimbulkan persoalan serius dalam kerangka hukum acara dan tata negara Indonesia. Permasalahan utama terletak pada tidak adanya dasar hukum eksplisit yang mengatur kewenangan tersebut, sehingga berpotensi melanggar prinsip legalitas, konstitusionalisme, dan perlindungan hak-hak dasar advokat. Penelitian ini bertujuan untuk menganalisis legitimasi hukum pembekuan BAS, menilai kesesuaiannya dengan prinsip konstitusionalisme, serta mengkaji implikasi filosofisnya terhadap kedudukan advokat sebagai penegak hukum sejajar dengan hakim, jaksa, dan polisi. Dengan menggunakan pendekatan yuridis normatif yang berfokus pada analisis doktrinal terhadap Undang-Undang Advokat, UUD 1945, putusan pengadilan, dan literatur hukum, penelitian ini menemukan bahwa tindakan pembekuan BAS merupakan bentuk ultra vires. Kesimpulannya, tindakan tersebut bertentangan dengan prinsip negara hukum, mereduksi independensi profesi advokat, dan berpotensi mengganggu akses masyarakat terhadap keadilan, sehingga memerlukan reformasi regulasi yang lebih tegas.

Kata kunci: *Konstitusionalisme, Kewenangan Pengadilan, Advokat, Supremasi Hukum*

1. INTRODUCTION

The legal profession within the Indonesian legal system occupies a strategic position as a pillar of law enforcement, alongside judges, prosecutors, and the police. This role is not merely technical but also constitutional, as advocates ensure the protection and fulfillment of citizens' constitutional rights to fair and impartial legal assistance. Law Number 18 of 2003 concerning Advocates explicitly establishes advocates as an independent and free profession, safeguarded by professional immunity in the execution of their duties. Consequently, any restrictions or sanctions imposed on advocates must be grounded in clear legal provisions and comply with the principle of due process.

Despite this legal framework, the practice in Indonesia reveals complex dynamics. For instance, the Ambon High Court and Banten High Court suspended the oath records (BAS) of two advocates, Razman Arif Nasution and M. Firdaus Oiwo, by orders from the respective Chief Justices, citing the need to maintain judicial dignity after the advocates were deemed to have caused disruptions during trials. This suspension effectively deprived the advocates of their legal authority to practice in court, generating significant controversy.

The action has sparked intense debate. Some argue that the high courts' measures were justified to uphold judicial integrity, while others contend that the suspensions lacked a valid legal basis, potentially violating principles of constitutionalism and the rule of law. From a constitutionalism perspective, restrictions on citizens' rights, including those of advocates, must be implemented through valid, written law. The principle of legality requires that any state action be explicitly authorized, not based on unilateral interpretation, and adhere to the rule of law. Therefore, suspending advocates' BAS without a clear legal foundation may constitute both a violation of constitutional principles and an abuse of authority.

Existing scholarship has extensively examined the advocacy profession in Indonesia, particularly following the enactment of Law Number 18 of 2003, addressing issues such as advocates' immunity, professional independence, oath procedures, and institutional controversies. However, the specific matter of high court suspensions of advocates' oath records remains underexplored, offering a significant avenue for further research. Arif emphasizes that advocates, as a respected legal profession (*officium nobile*), are guaranteed immunity rights under the Advocates Law and Constitutional Court Decision No. 26/PUU-XI/2013, enabling them to perform legal defense functions without fear of criminalization.¹ Similarly, Wijaya et al. underscore that immunity rights constitute essential legal protections for advocates in fulfilling their

¹ 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>.

professional duties. These studies collectively demonstrate that suspending advocates' BAS without a clear legal basis undermines professional independence, compromises immunity rights, and contradicts principles of due process and constitutionalism.²

Several studies have investigated the mechanism of swearing-in for advocates as a crucial aspect of professional legality. Prasetyo et al. examine Constitutional Court Decision No. 35/PUU-XVI/2018, which revised the procedure for advocates' oaths from a mandatory public ceremony at the High Court to a more flexible format. While this decision broadens access to justice, it also presents challenges related to professionalism and regulatory harmonization.³ Similarly, Ghozali and Fahrazi discuss the single-bar versus multi-bar debate within advocate organizations. Constitutional Court Decision No. 101/PUU-VII/2009 and Supreme Court Decision No. 73/KMA/HK.01/IX/2015 affirm the obligation of high courts to administer oaths independently of any particular advocate organization, thereby broadening the administrative authority of the high courts in swearing-in procedures. These studies collectively establish the high courts' administrative role in the oath process; however, none have addressed the suspension of an advocate's oath as an administrative sanction, revealing a normative gap that warrants further investigation.⁴

Wahyudi emphasizes that suspending an advocate's oath constitutes an administrative action with direct implications for professional status. He argues that any sanctions against advocates must follow legitimate procedures, including a code of ethics hearing conducted by the Honorary Council of the Advocates Organization. Using a normative juridical approach, Wahyudi demonstrates that suspending an advocate's oath without formal ethical procedures violates the principle of due process. These findings are particularly relevant to the actions of the Ambon and Banten High Courts, where suspensions carried out solely at the discretion of the Chief Justice risk exceeding the authority conferred by the Advocates Law.⁵

Research by Adipratama highlights the ambiguity of norms concerning the authority of intern advocates, especially in representing defendants, illustrating how inconsistent regulations generate legal uncertainty. Analogously, unclear norms

² Cinthia 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 Adib Dwi Prasetyo, Andrie Irawan, and Sumarwoto Sumarwoto, "Implikasi Putusan Mahkamah Konstitusi Nomor 35/PUU-XVI/2018 Terhadap Penyempahan Advokat Dalam Sistem Hukum Pidana Indonesia," *Indonesian Journal of Islamic Jurisprudence, Economic and Legal Theory* 3, no. 3 (2025): 2488–94, <https://doi.org/10.62976/ijijel.v3i3.1299>.

⁴ Imam Ghozali and Mahfudz Fahrazi, "Transformasi Organisasi Advokat Indonesia Dari Single Bar Menjadi Multi Bar: Implikasi Putusan Mahkamah Konstitusi No. 101/PPU -VII/2009 Dan Surat Ketua Mahkamah Agung No. 73/KMA/HK.01/IX/2015," *Mizan: Jurnal Ilmu Hukum* 7, no. 1 (2018): 72–82, <https://xjournals.com/collections/articles/Article?qt=PIGTGW+JGThb3ggI1yui4jYyX2HOrasLceU7ESrZMP32GOvpRuDCLp2jVXvaF9ILeCW5JyypCiQ7TjEiqkqaw==>.

⁵ Iwan Wahyudi, "Pembekuan Berita Acara Sumpah Advokat Tanpa Sidang Kode Etik Organisasi Advokat Yang Dilakukan Pengadilan Tinggi," *Al-Zayn Jurnal Ilmu Sosial & Hukum* 3, no. 2 (2025): 622–30, <https://doi.org/10.61104/alz.v3i2.1126>.

regarding high courts' authority to suspend advocates' oaths create similar risks of illegality.⁶ Fransisko and Alauddin discuss the legal vacuum surrounding technology-based legal services, showing that social and technological developments often outpace regulatory frameworks. This context parallels the issue of oath suspensions, where the absence of clear norms may enable high courts to implement controversial measures potentially constituting abuse of power.⁷ Samosir examines historical controversies surrounding the single advocate organization, rooted in Article 28(1) of the Advocates Law, demonstrating persistent tensions between advocate organizations and high courts that challenge the independence of the legal profession.⁸

Although previous studies have addressed advocates' immunity, oath procedures, and organizational issues, none have specifically examined the freezing of advocate oath minutes by high courts from a philosophical-constitutional perspective. Prior research primarily focuses on normative, administrative, or institutional dimensions, leaving an analytical gap regarding constitutionalism, legality, and potential power abuse. The present study aims to address this gap by connecting the practice of freezing advocate oath minutes with constitutional theory, evaluating whether such actions align with the principles of the Indonesian rule of law. Specifically, this study seeks to:

- 1) Analyze the legal basis for freezing advocate oath minutes by high courts, particularly within the context of the Advocates Law and the principle of legality.
- 2) Examine the compliance of high court actions with constitutional principles, including the limitation of power and protection of advocates' fundamental rights.
- 3) Assess the philosophical implications of freezing oath minutes for the advocate profession as law enforcers, equivalent to judges, prosecutors, and the police.

2. RESEARCH METHODOLOGY

This study employs a normative juridical approach, focusing on the legal analysis of the validity and authenticity of electronic evidence within the Indonesian criminal procedure system. This approach is particularly suitable because the research problem is normative-doctrinal in nature, involving the interpretation of legal norms, the consistency of laws and regulations, and their alignment with principles of evidence law. Primary data sources include primary, secondary, and tertiary legal materials. Primary sources comprise statutory regulations such as the Criminal Procedure Code (KUHP),

⁶ Rinaldy Adipratama, "Advokat Magang Dalam Menerima Kuasa Khusus Mendampingi Terdakwa Dalam Perspektif Kepastian Hukum," *Justitia: Jurnal Ilmu Hukum Dan Humaniora* 9, no. 6 (2022): 2961–71, <http://dx.doi.org/10.31604/justitia.v9i6.2961-2971>.

⁷ Rendra Edwar Fransisko and Alauddin Alauddin, "Legalitas Advokat Dalam Memnberikan Layanan Konsultasi Hukum Daring Di Tinjau Dari Perspektif UU Advokat Dan UU ITE," *Unes Law Review* 6, no. 4 (2024): 12159–64, <https://doi.org/10.31933/unesrev.v6i4.2073>.

⁸ 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>.

Law Number 11 of 2008 concerning Electronic Information and Transactions (ITE) and its amendments, and Constitutional Court decisions, notably Decision No. 20/PUU-XIV/2016, which significantly impacts the legal status of electronic evidence. Secondary sources consist of academic literature, prior research findings, scholarly journals, and expert opinions in criminal law and criminal procedure. Tertiary sources, including legal dictionaries, encyclopedias, and indexes, are employed to clarify relevant foundational concepts.

The analytical method applied is normative qualitative analysis, utilizing legal hermeneutics to interpret statutes and legal doctrines, complemented by conceptual and comparative approaches. The conceptual approach examines principles of validity and authenticity in evidentiary law, including their relationship to legality, justice, and due process. The comparative approach situates Indonesian practices within a broader international context by referencing jurisdictions such as the United States and the European Union, offering insights for enhancing domestic regulations. To further substantiate the analysis, a case study method is employed, examining several court decisions where electronic evidence was used as primary or supporting evidence in criminal proceedings. Additionally, the study underscores the role of digital forensics in ensuring the authenticity and integrity of electronic data and explores how forensic findings are evaluated by judges in assessing evidentiary strength.

3. RESEARCH RESULT AND DISCUSSION

3.1. Legal Basis for the Suspension of Advocate Oath Minutes (BAS) by the High Court

This study analyzes the legal basis for the suspension of Advocate Oath Minutes (BAS) by the High Court within the framework of Law Number 18 of 2003 concerning Advocates (the Advocates Law) and the principle of legality. The analysis focuses on two dimensions: first, whether the suspension of BAS has a clear legal basis under Indonesia's positive law; and second, the implications of this action for legality, professional independence, and constitutionalism in a state governed by the rule of law. Data were drawn from primary legal materials (the Advocates Law, the Criminal Procedure Code, the 1945 Constitution, and related regulations) and secondary sources (academic literature, court decisions, and documents from advocate professional organizations). The study applies a normative-juridical method with conceptual and comparative approaches.

From a normative perspective, the study finds that the Advocates Law authorizes the High Court solely to administer advocates' oaths and does not grant authority to revoke or suspend an oath once taken. Article 4 of the Advocates Law explicitly frames the oath as an administrative-legal requirement for professional practice. In this context, the court's role is formalistic and ceremonial, without supervisory or enforcement

authority. Institutionally, professional discipline and sanctions are entrusted to advocate organizations through honorary councils, as outlined in Articles 6–7 of the Advocates Law. Consequently, the High Court's suspension of BAS exceeds its statutory authority (*ultra vires*). Legally, such suspension violates the principle of *nulla potestas sine lege* (no authority without legal basis), and constitutionally, it may infringe Article 28D(1) of the 1945 Constitution, which guarantees legal certainty.

The study concludes that no explicit legal provision empowers the High Court to suspend BAS. The court's action constitutes an *ultra vires* act that contradicts principles of legality and constitutionalism, undermining advocates' independence as *officium nobile*, weakening judicial checks and balances, and threatening the public's constitutional right to legal aid. These findings align with prior research, such as Fajri, who notes that courts' functions in administering oaths are purely administrative⁹, and Rimdan, who characterizes freezing advocates' oaths as a form of *eigenrichting* incompatible with the rule of law.¹⁰ This study extends previous work by situating the issue within the broader dimensions of constitutionalism and legal philosophy, demonstrating that the action violates Montesquieu's separation of powers and creates potential for abuse. Comparative analysis further shows that, in both civil and common law jurisdictions, supervisory authority over advocates resides with bar associations or law societies, not courts, highlighting international best practices against concentrating such powers in the judiciary. The suspension of BAS by the High Court represents a legal anomaly in Indonesia, stemming from unclear functional separation between judicial institutions and professional advocate organizations. Constitutionally, this action undermines the rule of law: courts, intended as guardians of legal certainty, are acting beyond their legal bounds, generating a paradox that threatens both legal stability and professional independence.

From a legal-philosophical perspective, suspending an advocate's oath without a valid legal basis clearly violates the principle of legality, which underpins all modern legal systems. This underscores the relevance of Lord Acton's classic observation that "power tends to corrupt, and absolute power corrupts absolutely." Allowing courts to unilaterally control advocates threatens the independence of the legal profession as a vital counterbalance within the judicial system and poses systemic risks to human rights. Article 28D(1) of the 1945 Constitution guarantees citizens' rights to legal certainty and equality before the law; unilateral suspension of advocates' oaths could compromise the public's right to legal representation of their choosing. The findings of this study can be summarized as follows:

⁹ Ilham Fajri, "The Only Organization of Advocating and Its Influence on the Advocate Profession in Indonesia," *Reformasi Hukum* 21, no. 2 (2017): 222–251, <https://doi.org/10.46257/jrh.v21i2.22>.

¹⁰ Rimdan Rimdan, *Kekuasaan Kehakiman Pasca Amandemen Konstitusi*, 1st ed. (Jakarta: Kencana Prenada Media, 2012).

- 1) The suspension of advocates' oaths by the courts lacks legal basis and is therefore invalid under both the Advocates Law and the principle of legality.
- 2) The consequences of this action are significant, including (a) weakening the independence of advocates, (b) undermining equality among law enforcement officials, (c) creating potential for abuse of authority, and (d) threatening citizens' constitutional rights.
- 3) A normative solution is to reaffirm the division of authority between courts and advocate organizations, potentially through revision of the Advocates Law or the issuance of specific regulations that clarify and limit judicial authority.
- 4) From a legal-political perspective, the courts' unilateral suspension of BAS reflects centralization of power, contrary to Indonesian legal reform, which emphasizes democratization, separation of powers, and civil society empowerment.

This study makes a significant contribution to delineating the limits of judicial authority over the advocate profession. The freezing of BAS should be recognized as a violation of legality and constitutional principles. Upholding the rule of law requires that all state institutions, including the judiciary, act within the bounds of applicable law. The independence and freedom of the advocate profession are essential for a just and democratic legal system. Consequently, any attempt to weaken advocates' authority, including suspending BAS without legal basis, must be rejected as a deviation from the principles of legality and the rule of law.

3.2. The Appropriateness of the High Court's Actions in Freezing or Intervening in the Legal Status of Advocates

This study critically examines the appropriateness of the High Court's actions in freezing or intervening in the legal status of advocates, specifically through the Minutes of Oath (BAS) mechanism, in relation to the principles of constitutionalism that emphasize the limitation of state power and the protection of fundamental rights. The central question addressed is whether the High Court's suspension of an advocate's oath possesses constitutional legitimacy or whether it contravenes the foundational principles of constitutionalism in the Indonesian legal system.

A normative analysis of Law Number 18 of 2003 concerning Advocates (the Advocates Law) indicates that the court's role in administering advocates' oaths is ceremonial and administrative, without supervisory or enforcement authority. Supervision and discipline are the exclusive prerogatives of professional advocate organizations, implemented through codes of ethics and honorary councils. Consequently, the High Court lacks an explicit legal basis to suspend BAS. Secondary data, including court decisions, official documents from advocate organizations, and constitutional law literature, reinforce the conclusion that the High Court's suspension

of advocates' oaths is problematic. Such actions exceed the authority granted by law (*ultra vires*) and violate the principle of *nulla potestas sine lege*—no power without legal basis. From a constitutional perspective, the unilateral suspension of BAS risks concentrating power within the judiciary, undermining the system of checks and balances, and encroaching upon the structural independence of the legal profession.

The analysis yields several key findings: first, there is no legal provision empowering the High Court to suspend advocates' BAS; its function is strictly limited to administering oaths. Second, suspension of BAS violates constitutional principles, expanding judicial authority without legal basis and infringing on the basic rights of advocates and the public. Advocates have a constitutional right to practice their profession once sworn in, while the public holds the right to legal assistance (Article 28D, 1945 Constitution). Third, permitting the court to suspend an advocate's oath transforms the judiciary into both a judicial and regulatory institution, thereby undermining the independence of advocates as equal partners in the justice system.

These findings align with prior studies. Marzuki underscores that Indonesian constitutionalism is founded on the rule of law, which requires all state actions to be legally grounded; thus, the High Court's BAS suspension clearly violates this principle.¹¹ Solehuddin emphasizes that advocate independence is essential for ensuring fair trials, and court intervention undermines advocates' official capacity.¹² Comparative research in the United States and United Kingdom demonstrates that oversight of advocates is exercised by professional organizations rather than courts, reinforcing the importance of role separation to prevent power abuse.¹³ This study extends previous research by connecting the suspension of BAS directly to constitutionalism, highlighting philosophical and legal dimensions that underpin the rule of law. The results indicate that, from a normative-constitutional perspective, the High Court's suspension of advocates' Oath of Office (BAS) contravenes the principle of constitutional supremacy. The Constitution mandates that all state power be exercised within the law; unilateral judicial actions without legal basis not only compromise the legitimacy of judicial decisions but also weaken courts' role as guardians of the law and ultimate arbiters of justice.

Philosophically, limiting state power is essential for protecting citizens' freedoms, as emphasized in the philosophy of constitutionalism. The High Court's suspension of the BAS threatens to undermine the values of freedom and justice that the judiciary is

¹¹ Muhammad Laica Marzuki, "Konstitusi Dan Konstitusionalisme," *Jurnal Konstitusi* 7, no. 4 (2010): 1–7.

¹² Solehuddin Solehuddin, "Qua Vadis Independensi Advokat Dalam Sistem Peradilan Di Indonesia," *Perspektif* 16, no. 2 (2011): 95–104, <https://doi.org/10.30742/perspektif.v16i2.73>.

¹³ Grees Selly, "Comparison of Laws Regulation of Professional Organizations of Advocates in Indonesia and Malaysia," *Journal of Constitutional Law Society* 4, no. 1 (2025): 56–72, <https://doi.org/10.36448/cls.v4i01.98>; Ana Speed, "Domestic Abuse and the Provision of Advocacy Services: Mapping Support for Victims in Family Proceedings in England and Wales," *Journal of Social Welfare and Family Law* 44, no. 3 (2022): 347–68, <https://doi.org/10.1080/09649069.2022.2126605>.

meant to uphold. This action contradicts Montesquieu's doctrine of separation of powers and the principle of the rule of law, as articulated by Friedrich and Kay, which stress that unchecked power can become an instrument of oppression.

From a human rights and democratic perspective, suspending the BAS not only directly affects the legal profession but also has broader societal implications. Restricting advocates' right to practice limits public access to legal aid, thereby undermining the principle of equality before the law. Such interference can lead to unequal judicial practices, where citizens may be deprived of adequate legal representation in the pursuit of justice. From a legal-political perspective, the High Court's suspension of BAS may signal a recentralization of power within the judiciary. This is inconsistent with post-Reformasi Indonesian legal politics, which prioritize the distribution of authority, transparency, accountability, and the empowerment of civil society. Thus, the suspension of BAS deviates from constitutional principles and the broader spirit of legal reform. Based on the analysis, this study confirms that:

- 1) The High Court's freezing of advocates' BAS is inconsistent with Indonesian constitutionalism. There is no legal basis for such authority, rendering the action *ultra vires*.
- 2) The principle of limited power is violated, as the court extends its authority beyond its judicial mandate, encroaching upon the function of professional oversight.
- 3) Fundamental rights of both advocates and the public are infringed. Advocates lose professional independence, while the public loses constitutional access to legal assistance.
- 4) The systemic implications are severe. If unchecked, this precedent may encourage other state institutions to expand their authority without legal basis, potentially shifting Indonesia from a law-based state (*rechtsstaat*) to a power-based state (*machtsstaat*).

3.3. Implications of the Suspension of Advocates' Oath of Office (BAS) for the Advocate Profession as Law Enforcers on Par with Judges, Prosecutors, and the Police

This study examines the philosophical implications of the High Court's suspension of advocates' Oath of Office (BAS), particularly regarding advocates' role as law enforcers alongside judges, prosecutors, and the police. The primary objective is to assess the extent to which the suspension aligns with or violates principles of constitutionalism, which mandate limitations on state power, protection of fundamental rights, and adherence to the rule of law. This analysis is crucial because advocates, as a formal legal profession, serve not only as practitioners of law but also as essential elements in the judicial system, safeguarding citizens' constitutional right to access to justice.

A normative analysis of Law Number 18 of 2003 concerning Advocates indicates that the High Court's role in the oath-taking process is purely ceremonial and administrative, without regulatory or supervisory authority. Completion of an advocate's oath, as documented in the BAS, constitutes the legal confirmation of professional eligibility. Consequently, the High Court's unilateral suspension of the BAS without a clear legal basis is *ultra vires*, exceeding its authority.

State power must be constrained to prevent its misuse as an instrument of oppression. Constitutionalism requires that all state organs operate within the bounds of the constitution.¹⁴ The suspension of BAS creates a paradox within the rule of law, as the institution intended to safeguard legal certainty acts without legal justification. Comparative analysis demonstrates that in both civil law and common law jurisdictions, professional oversight of advocates resides exclusively with bar associations or law societies, not courts.

Field findings further reveal that suspending BAS directly affects advocates' capacity as law enforcers. Advocates lose their constitutional right to practice, while the public is deprived of access to legal aid guaranteed under Article 28D of the 1945 Constitution. This undermines the position of advocates as equal partners with judges, prosecutors, and the police, and compromises the principle of checks and balances within the legal system.

This study produces several significant findings. First, the absence of an explicit legal basis for the court to suspend an advocate's BAS renders the action normatively illegitimate. Second, the independence of advocates as law enforcers is undermined, as suspension positions them subordinate to judges, despite their intended equality within the judicial system. Third, the principle of constitutionalism is violated, as suspending BAS concentrates power within the judiciary, contrary to the doctrine of limited government. Fourth, public constitutional rights are compromised, since access to legal aid is restricted by reducing the number of advocates legally authorized to practice. Fifth, the suspension mechanism poses a risk of biased judicial practice, as advocates critical of or opposed to the court can be weakened through a procedure that lacks legal justification.

These findings are consistent with Hamzani, who emphasizes that Indonesian constitutionalism is grounded in the rule of law, requiring that all state actions have a legal basis.¹⁵ Wahyudi further highlights that advocate independence is essential for ensuring justice in trials. This study extends these arguments by framing advocate independence not merely as a professional concern, but as a constitutional issue related to equality in law enforcement. By insulating advocates from arbitrary court oversight, the profession can exercise effective checks on state power, including judicial

¹⁴ Jimly Asshiddiqie, *Konstitusi Dan Konstitusionalisme Indonesia* (Jakarta: Sinar Grafika, 2011).

¹⁵ Achmad Irwan Hamzani, "Menggagas Indonesia Sebagai Negara Hukum Yang Membahagiakan Rakyatnya," *Yustisia* 3, no. 3 (2014): 136–42, <https://doi.org/10.20961/yustisia.v3i3.29562>.

authority.¹⁶ Moreover, this research introduces a new perspective: in Indonesia, the suspension of BAS contravenes normative principles and undermines the philosophical values of Pancasila, which mandate balanced distribution of power.

The analysis demonstrates that BAS suspension is not simply an administrative matter, but a philosophical and constitutional issue that threatens the foundations of Indonesia's judicial system. Broadly, continued suspension could shift the Indonesian legal system from a law-based state (*rechtsstaat*) to a power-based state (*machtsstaat*), setting a precedent for other institutions to expand authority unlawfully. To prevent this, it is imperative to reaffirm that advocates are independent law enforcers with parity to judges, prosecutors, and the police. Accordingly, this study recommends regulatory reform to clarify the limits of court authority concerning the advocate's oath and to strengthen the role of advocate organizations in overseeing professional ethics and discipline. Such reforms are essential to maintain judicial balance, uphold constitutionalism, and protect citizens' fundamental rights.

4. CONCLUSION

This study aims to analyze the legal basis for the High Court's suspension of advocates' oaths (BAS), with particular reference to the Advocates Law and the principle of legality; to evaluate the conformity of this action with constitutionalism, which mandates the limitation of state power and the protection of advocates' fundamental rights; and to assess its philosophical implications for advocates as law enforcers on a par with judges, prosecutors, and the police. The findings indicate that the High Court lacks an explicit legal basis for suspending advocates' BAS. The court's role in the oath-taking process is purely ceremonial and administrative, not regulatory. Consequently, the suspension of BAS constitutes an *ultra vires* action that contravenes the principle of legality.

From a constitutional perspective, this action violates the principle of limited power, disregards the protection of advocates' human rights, and adversely affects the public's constitutional right to legal aid. Philosophically, suspending BAS undermines advocates' role as fundamental actors in the judicial system, weakens the principle of checks and balances, and risks creating unequal judicial practices. This study demonstrates that the suspension of BAS is not merely an administrative matter but represents a constitutional and philosophical problem that threatens the foundations of the rule of law.

The study contributes to academic understanding of the position of advocates within the legal system and provides a normative foundation for reinforcing advocate independence. Its limitation lies in its focus on normative-philosophical analysis,

¹⁶ Wahyudi, "Pembekuan Berita Acara Sumpah Advokat Tanpa Sidang Kode Etik Organisasi Advokat Yang Dilakukan Pengadilan Tinggi."

without broader empirical data regarding the social impact of BAS suspension. Future research could examine empirical experiences of advocates and the public in relation to this practice. As a policy recommendation, regulatory reform is required to clearly define the limits of the High Court's authority in the advocate oath process and to strengthen the role of advocate organizations in overseeing professional ethics and discipline. Such reforms are essential to ensure adherence to constitutionalism, the rule of law, and the protection of citizens' fundamental rights in the administration of justice.

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