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### LEGAL CERTAINTY TOWARD ADVOCATE PROFESSIONAL SPECIAL EDUCATION IN INDONESIA

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#### **ABSTRACT**

The Advocate Law regulates several stages of requirements to become an advocate. One of them is by following a special education for the advocate profession. However, recently, dualism which in principle is recognized as an institution having the authority to provide advocacy education has occurred. The dualism of the institution is the Minister of Research and Technology, and an advocate organization. In this study, a qualitative approach in a normative juridical perspective was applied. Through the normative legal study method with a juridical approach and using secondary legal materials, these problems are answered so as to provide general knowledge to readers and especially to practitioners. Based on the results of the research, it can be concluded that based on the provisions of advocates and the Constitutional Court decisions related to Advocate Professional Special Education have been actively carried out by advocacy organizations in collaboration with universities.

#### **INTRODUCTION**

Advocates are law enforcement actors and protectors of human rights in Indonesia. Advocates in carrying out their profession adhere to professional ethics, laws and regulations and the Advocate's oath (Sunarjo, 2013: 185). One of the roles of an advocate is as a watchdog and guardian of justice. One of the obligations of an advocate to the community is to provide legal assistance to those who are economically disadvantaged. Advocates should be able to act concretely in determining the direction of the development of national law, which is known as legal politics, which includes two things. The first is legal development which consists of making and updating legal materials to suit the

needs; second is the implementation of existing legal provisions, including the affirmation of institutional functions and the guidance of law enforcers (Moh. Mahfud. MD, 2001: 8-9).

Certainty is a matter (condition) that is certain, provisions or provisions. The law must be sure and fair in essence. Certainly as a code of conduct and fairness as a code of conduct that must support an order that is considered reasonable. Only because it is fair and implemented with certainty can the law carry out its function. Legal certainty is a question that can only be answered normatively, not sociologically. (Dominikus Rato: 2010: 59)

Normative legal certainty is when a regulation is made and promulgated in a clear and logical manner. It is clear in the sense that it does not cause doubts (multiple interpretations) and is logical and clearly becomes a norm system so that it does not clash or cause conflict. Legal certainty refers to a clear, permanent, consistent and consequent enforcement of the law, which cannot be influenced by circumstances that are subjective in nature. Certainty and justice are not just moral demands, but factually characterize the law. Laws that are uncertain and unfair are not just bad laws (Kansil.at.all: 2009:385).

According to Utrecht, legal certainty contains two definitions, namely in the form of general rules (individuals know what actions can or cannot be done) and legal security for individuals from government abuse. As a result of these general rules, individuals would know what the State may impose or do against individuals (Riduan Syahrani: 1999: 23).

The doctrine of legal certainty comes from juridical-dogmatic teachings which are based on a positivistic school of thought in the world of law which tends to see law as something autonomous and independent. For adherents of this thought, law is nothing but a collection of legal rules and objectives, but only to guarantee the realization of legal certainty. Legal certainty is manifested by law with its nature that only makes a general rule of law. The general nature of legal rules proves that law does not aim to achieve justice or benefit, but solely for certainty (Achmad Ali: 2002: 82).

Legal certainty is a guarantee regarding the law which contains justice. The norms which promote justice must really function as rules to be obeyed. Advocates with integrity have scientific mastery, both criminal, civil, procedural laws and other practical sciences. In accordance with the mandate of the Advocate Law, becoming an advocate must go through various stages, with the initial stage being following special education for the advocate profession. However, recently there has been a dualism which in principle recognizes as an institution or institution that has the authority to provide advocate education, namely *menristekdikti* (based on *Permenristekdikti* Number 5 of 2019) and advocate organizations (based on Law Number 18 of 2003). According to *Menristekdikti*, professional education includes advocates and cannot be separated from the enactment of Law no. 20 of 2003 concerning the National Education System Law, and Law no. 12 of 2012 concerning Higher Education. "When making *Permenristekdikti* No.5 of 2019, it refers to

the Higher Education Law and Permenristekdikti No. 44 of 2015 concerning National Higher Education Standards.

The issuance of Permenristekdikti No.5 of 2019 aims to make Advocate Professional Special Education (APSE) from non-formal to formal. Education through APSE is carried out for a maximum of one month while through the Advocate Professional Program (APP) which is organized by universities in collaboration with advocate organizations for the fastest two semesters or one year. Article 2-5 Permenristekdikti regulates APP study period of at least 2 semesters (1 year) and a maximum of 6 semesters (3 years) with a weight of 24 semester credit units (credits) and a minimum Grade Point Average (GPA) of 3.00. After graduating, participants receive an Advocate professional title given by higher education institutions as well as a certification issued by an advocate organization. The contradiction of the rules between the law of advocates and the Ministry of Research, Technology and Higher Education which creates inequality and interests is not expected to occur in the constitutional state of Indonesia. The purpose of this research is to obtain legal certainty so that there is no overlap and contradictory implementation in the field of advocate professional education. The research scope discusses juridical studies on legal certainty in the implementation of advocate professional education. In the discussion, the perspective of the Law on Avocados and the Law on the National Education System with other related regulations are examined and reviewed.

## **METHOD**

The right research method is needed to provide direction in studying and understanding the object being evaluated so that the testing process can run well as planned. Research is a scientific activity related to analysis and construction which is carried out methodologically, systematically and consistently (Soerjono Soekanto: 2007: 42). Law is a scientific activity based on methods, systematics and certain thoughts, which aim to study one or several specific legal phenomena by analyzing them (Soerjono Soekanto: 2007: 42-43). The research method is a procedure or a way of knowing something that has systematic steps (Peter R. Senn 2003: 46). The method used in this research is juridical normative, namely the study is focused on reviewing and testing the application of the rules or norms in positive law, as a consequence of selecting the topic of legal issues (Jhony Ibrahim, 2006: 295). The statutory and conceptual approach in the form of positive law and its application in Indonesia was one of the data sources used. As supporting data, literature studies in the form of primary and secondary laws were used. Primary legal materials are legal materials whose contents have binding power to society. Meanwhile, secondary legal materials are materials that provide information or matters relating to primary legal sources and their implementation. The primary legal materials used were in the form of statutory regulations, including: (i) Law Number 18 of 2003 concerning Advocates; (ii) Law Number 20 Year 2003 Higher Education System; (iii) Law No. 12 of 2012 concerning Higher Education; (iv) Permenristekdikti No.5 of 2019 refers to the Higher Education Law; (v) Permenristekdikti No.

44 of 2015 concerning National Higher Education Standards; (vi) Permenristekdikti No.5 Year 2019 Advocate Professional Program.

Secondary legal materials used were legal materials obtained from text books, journals, articles, seminar materials and other publication materials. Meanwhile, tertiary legal materials were legal materials that can provide guidance and explanation for primary and secondary legal materials in the form of dictionaries or encyclopedias.

## RESULTS AND DISCUSSIONS

### *Legal certainty*

Normative legal certainty is when a regulation is made and promulgated in a clear and logical manner. It is clear in the sense that it does not cause doubts (multiple interpretations), is logical, and becomes a norm system so that it does not clash or cause conflict. Legal certainty refers to a clear, permanent, consistent and consequent application of the law, the implementation of which cannot be influenced by conditions that are subjective in nature.

Definition of Legal Certainty According to Hans Kelsen, law is a system of norms. Norms are statements that emphasize the "should" or *das sollen* aspects by including some rules about what to do. Norms are deliberative human products and actions. Laws that contain general rules serve as guidelines for individuals behaving in society, both in relationships with fellow individuals and with society. These rules become a limitation for society in burdening or taking action against individuals. The existence of rules and their implementation raises legal certainty (Peter Mahmud Marzuki: 2008: 58). According to Gustav Radbruch, law must contain three identity values in the form of the principle of legal certainty (*rechmatigheid*) from a juridical point of view, the principle of legal justice (*gerechtigheid*) from a philosophical point of view (where justice is equal rights for all people before the court), and the principle of legal benefit (*zwechmatigheid*) or *doelmatigheid* or utility.

The legal objectives that are closer to realistic are legal certainty and legal usefulness. Positivism places more emphasis on legal certainty, while functionalists prioritize legal benefits. According to the terminology "*summa ius, summa injuria, summa lex, summa crux*" which means that a harsh law can injure unless justice can help it. Thus, although justice is not the sole objective of law, the substantive objective of law is justice (Dosminikus Rato, 2010: 59). In enforcing the law, there are three elements that must be considered, namely legal certainty, benefit, and justice. These three elements must be compromised and must be given proportionate and balanced attention. But in practice it is not always easy to work out a proportionate and balanced compromise between the three elements. Without legal certainty, people do not know what to do and eventually unrest arises. However, too much emphasis on legal certainty, too strict obeying legal regulations will result in stiffness and will create a sense of unfairness. The existence of legal certainty

is a hope for justice seekers against arbitrary actions by law enforcement officials who sometimes always arrogance in carrying out their duties as law enforcers. Through legal certainty, the public will know the clarity of rights and obligations according to law. Without legal certainty, people will not know what to do, do not know whether their actions are right or wrong, prohibited or not prohibited by law. Legal certainty can be realized through good and clear naming in a law and the application will also be clear. In other words, legal certainty means the accuracy of the law, the subject, and the object as well as the legal threat. However, legal certainty may not be considered as an absolute element at any time but as a means that can be used in accordance with the situation and conditions while paying attention to the principles of benefit and efficiency.

### *Educational Concept*

The development of education today is faced with a variety of internal and external problems in a country which are caused by various kinds of changes such as changes in technology, social and culture which mainly have an impact on various advances and developments in education. The progress and development of education is a factor in the success of a nation. Several indications can be seen from the progress of the international world (such as in developed countries that always become role models when talking about educational issues). This is known from various data that have provided information about excellence in education such as learning models, research results, graduate products and so on. The vision and mission of the National Education System as stipulated in RI Law NO. 20 of 2003 concerning the National Education System is the realization of the education system as a strong and authoritative social institution to empower all Indonesian citizens to develop into qualified human beings so that they are able and proactive in responding to the challenges of the ever-changing times. The mission carried out by the National Education Synthem is to strive to expand and equalize opportunities for quality education for all people. Efforts to realize the vision and mission of national education are made to match existing realities and ideals that are expected by the Indonesian nation in a centralized manner throughout the country. Educational objectives, teaching materials, learning methods, textbooks, education personnel, both students, teachers and employees, admission requirements, promotion levels even until the assessment is regulated by the government applies to all schools throughout the country.

Education is a process of learning knowledge, skills, and habits in a group of humans that have been passed down from one generation to another. through teaching, training, and research. Education is a conscious effort that is carried out systematically in creating a teaching-learning atmosphere so that students can develop their potential. With education, a person can have intelligence, noble character, personality, spiritual strength, and skills that are beneficial to oneself and society.

Pathways, levels and types of education can be realized in the form of educational units organized by the central, regional and / or community governments, consisting of formal education (structured and tiered education consisting of primary, secondary and tertiary education) and non-formal education ( education outside formal education which can be implemented in a structured and tiered manner). Informal education includes among others the family and environmental education channels. Meanwhile, education level is a stage of education which is determined based on the level of development of students, goals to be achieved, and abilities developed. The type of education is also regulated in the higher education system law which includes general, vocational, academic, professional, vocational, religious and special education.

### *History of Advocate Organizations*

Broadly speaking, advocate organizations in Indonesia can be categorized into three important periods. The first period is the initial period in the form of the birth and pioneering of legal organizations, the second period is a period where advocate organizations experience a crisis due to rampant government intervention and conflicts between advocate organizations, and a period known as the period of reconsolidation and reform.

Starting from the colonialism era, the number of lawyers was still small and their existence was limited to big cities that had *landraad* and *raad van justitie*. Advocates belong to an organization known as "Balivan Advocaten". These legal practitioners are generally of European nationality and very few are indigenous (Binziad Kadafi.at.all: 2001: 361). During the period of the Indonesian physical revolution, there was very little record of the development of advocate organizations and it was only in 1959-1960 that advocates from Central Java gathered in Semarang, and founded an advocate organization called "Balie" chaired by Mr. Soejoedi. This was followed by the emergence of various other local scale advocate associations such as the "Advocate Center" in Jakarta, Bandung and Surabaya. The Indonesian Advocates Association (IAA), namely in the 1st congress of the Advocates Conference at the Hotel Dana Solo.

Some IAA members who have enjoyed the material stability they have acquired since the new era of government, feel the need to resign from IAA and establish the Indonesian Legal Advisors Association (ILAA). However, the most fatal of these resolutions is the loss of the government's preference for the IAA. The moral support that was given in 1966 was quietly withdrawn. In addition, the symptoms of the government turning away from the the IAA was formation of the Legal Service and Counseling Institution (LSCI) by Albert Hasibuan in 1979. Then, one by one, new organizations that also acted as advocate organizations, such as the Center for Legal Aid and Service, Study Forum and Advocates Communication, and Legal Aid Development. This situation has made the condition of lawyers in Indonesia become worse. The large number of advocate organizations that exist slowly diminishes the authority of the IAA which is then followed by the decline in the authority of

legal practitioners. In the 1980s, the government began to implement the strategy of merging the IAA and other advocate organizations into a single institution that could be controlled by the government. However, the IAA did not necessarily agree with the initiative. They suspect that this is a plot to put lawyers under government control.

In 1995, the government facilitated two seminars in Jakarta for the three advocate organizations (IKADIN, AAI and IPHI). The result of the seminar was a shared code of ethics which was adopted by the three organizations under the umbrella of the Indonesian Advocate Communication Forum (IACF). Furthermore, the three organizations achieved significant progress. In 1998 the Supreme Court agreed to adopt the IACF code of conduct for use in all courts in Indonesia. The government has also given trust to IACF by including a code of ethics that was recognized during the transition period prior to the creation of a single forum in the draft law on the advocate profession. Thus IACF has shown a signal of reconciliation and opens up the possibility for advocate organizations to develop again in the future. However, this effort seems to be hampered again, IKADIN suddenly revokes its membership in the Communication Forum Charter and does not recognize IACF. IKADIN then withdrew from IACF and returned to enforcing its own code of ethics and leaving the code of conduct with IACF. Without IKADIN, IACF continued to run and at that time the code of conduct was administered by AAI and IPHI until 2001 and at that time IKADIN had never held its own code of ethics examination. (Binziad Kadafi.at.all:2001:361).

### *General Study of Basic Adavocat Law*

The 1945 Constitution of the Republic of Indonesia (UUD 1945), in the preamble to the first paragraph states that in fact independence is the right of all nations and therefore colonialism in the world must be abolished because it is not in accordance with humanity and justice. The purpose and purpose of this statement is that humans, as creatures of the Almighty God, have essentially the same dignity and worth and this dignity cannot be contested and revoked by anyone. Thus all matters relating to the protection of dignity and respect are further regulated as mandated in Article 28 D paragraph (1) of the 1945 Constitution, namely "Everyone has the right to recognition, guarantees, protection and legal certainty that is just and equal treatment before the law" . Article 34 paragraph (2) of the 1945 Constitution states that the state develops a social security system for all people and empowers people who are weak and underprivileged according to human dignity. In this case it can be understood that in fact it is very important for the Constitution that advocates as law enforcers can function as helpers against the former, namely the accused or suspect (Ishaq, 2012:2).

The 1945 Constitution is the basis for the formation of Legislative Regulations such as Law Number 18 of 2003 concerning Advocates and Law Number 16 of 2011 concerning Legal Aid. Based on Article 3 of Law No. 16 of 2011, the basis for the consideration of the Law being issued is that the state is

responsible for providing legal aid for the poor as a manifestation of access to justice as well as regulating legal aid provided by the state which is oriented towards the realization of change. social justice. In order to implement the provisions of Article 15 paragraph (5) of Law No. 16 of 2011 concerning Legal Aid, it is determined that further provisions regarding the terms and procedures for providing Legal Aid are regulated by a Government Regulation. The provisions of Article 18 of Law No. 16 of 2011 concerning Legal Aid stipulate that further provisions regarding the procedures for distributing Legal Aid funds as referred to in Article 16 paragraph (1) of the provision of Legal Aid are regulated in a Government Regulation. In this case, the government issued Government Regulation No. 42/2013 concerning the Terms and Procedures for Providing Legal Aid and Distribution of Legal Aid Funds. Advocates also have to provide a lot of legal assistance. Whereas Legal Aid Providers are Legal Aid Institutions or social organizations that provide legal aid services based on Law No. 16 of 2011, namely Advocates only who can provide legal assistance free of charge to the community.

#### ***Advocate Professional Education Based on Advocate Law***

Advocate Professional Special Education (PKPA) has been actively carried out by advocate organizations in collaboration with universities. Article 2 paragraph 1 of the Law on Advocates states that those who can be appointed as advocates are scholars who have a higher legal education background and have attended special education for the advocate profession carried out by advocate organizations. Article 2 paragraph 1 of the advocate law has been tested through the constitutional court in 2013 and 2016.

In its consideration, the Constitutional Court considers that "with due observance of legal considerations" to maintain the role and function of an advocate as a free, independent, and responsible profession as mandated by the Advocate Law, PKPA should be carried out by an organization or organization of the advocate profession with the obligation to cooperate with law colleges as described in the above considerations based on the Constitutional Court Decision Number 103 / PUU-XI / 2013 and number 95 / PUU-XIV / 2016.

The stages to be appointed as an advocate include following the Advocate Professional Special Education (PKPA); Take the Advocate Professional Exam (UPA); Continuously participating in an internship at an advocate's office for at least 2 (two) years; Designation; and the Advocate's Oath.

#### ***Advocate Designation and Oath***

To be able to be appointed as an advocate, based on the law, prospective advocates must have met the stages and requirements as outlined earlier. Apart from that, there are other requirements, namely that you are at least 25 (twenty five) years old. After being appointed by an advocate organization, a candidate for an official lawyer has the status of an advocate. However, newly appointed



advocates have not been able to carry out their profession before going through the next stage or requirement, namely taking the advocate's oath. An important point is also that after being appointed as an advocate, the person concerned must become a member of the advocate organization. Every advocate who is appointed under the Advocate Law is required to become a member of the Advocate Organization (see Article 2 paragraph (2) of the Advocate Law). The membership of lawyers is recorded in the membership register and advocate card. The names of lawyers who are members of the Advocate Organization are listed in the list of members. In the member list book, the number of an advocate's ID / membership in the Advocate Organization is stated. The membership certificate in the Advocate Organization is also indicated by an advocate identification card that includes the advocate's ID / membership number. In carrying out his daily professional duties, an advocate's identification card must always be carried as part of an advocate's personal and professional identity.

As the final part of the author's elaboration in the first discussion of the problem formulation and conclusions referred to in Article 2 paragraph (1) of Law No. 18 of 2003 on Advocates. The Constitutional Court affirmed its stance that the party entitled to organize PKPA is an advocate organization. In addition, the Constitutional Court in its decision number 95 / PUU-XIV / 2016 also provides a consideration that "to maintain the role and function of advocates as a free, independent, and responsible profession as mandated by the Law on Advocates, PKPA should be carried out by an organization or an advocate professional forum with the obligation to cooperate with law universities. It is hoped that advocate education should be based on definite rules, not on debatable rules.

### ***Advocate Professional Education Based on the National Education System Law***

The Ministry of Research, Technology and Higher Education (Kemenristekdikti) has promulgated Ministerial Regulation No. 5 of 2019 concerning the Advocate Professional Program. This regulation is based on the consideration of implementing the provisions of Article 14 paragraph (2) of Government Regulation Number 4 of 2014 concerning Implementation of Higher Education and Management of Higher Education. The regulation states that further provisions regarding Study Programs and Higher Education Programs in the types of professional and specialist education (as referred to in paragraph (1)) are regulated in a Ministerial Regulation after coordinating with other Ministries, LPNK, and / or related professional organizations. Kemenristekdikti acknowledges that Permenristekdikti No.5 of 2019 concerning the Advocate Professional Program (APP) contains weaknesses that cause polemics among advocates regarding advocate education. Therefore, Kemenristekdikti plans to revise the Permenristekdikti in the near future. In principle, it will revise the Permenristekdikti and will open up space to receive input from various interested parties. Whereas in the view of the Ministry of Research, Technology and Higher Education,

professional education, including advocates, cannot be separated from the enactment of Law no. 12 of 2012 concerning Higher Education. "When making Permenristekdikti 5/2019 referring to the Higher Education Law and Permenristekdikti No. 44 of 2015 concerning National Higher Education Standards. With the issuance of Permenristekdikti 5/2019 it aims to become Advocate Professional Special Education (APSE) from non-formal to formal. For example, if it is done through APSE, it is a maximum of one month. Meanwhile, through the APP, which is held by universities, in collaboration with advocate organizations, it is the fastest for two semesters or one year. By taking part in APP by the Ministry of Research, Technology and Higher Education, it is a claim that this part is its responsibility and obligation in the world of education (Joko Tri Prasetya, 2004:154)

The regulation on the advocate profession in the version of the national education law is accommodated through a drafting regulation Permenristekdikti 5/2019 does not make the Constitutional Court decision No. 95 / PUU-XIV / 2016 as a basis. Advocate professional education should refer to Law No.18 of 2013 concerning Advocates which was published earlier than the Higher Education Law. In this case, Kemenristekdikti does not need to further regulate the issue of advocate education. This is because the process of recruiting advocates is clearly regulated in the Advocate Law and the Constitutional Court Decisions.

If Kemenristekdikti wants to be involved in advocate professional education, it will not be a problem. It's just that it should be limited to compiling an advocate professional education curriculum. And the matter of recruiting and administering education is the authority of advocate organizations. It should be that the implementation of advocate professional education is one unit in one regulation. In this context, APSE refers to the Advocate Law, while APP refers to the Higher Education Law. This is certainly confusing for the APSE or PPA pathway advocates as regulated by Permenristekdikti 5/2019. In principle, the authority for advocate education lies in the Advocate Law, based on the Court's decision. namely PMK No. 95 / PUU-XIV / 2016.

The issuance of Permenristekdikti No.5 of 2019 concerning the Advocate Professional Program (APP) caused protests from existing advocate organizations. The advocate education system in the Permenristekdikti has exceeded the Advocate Law regarding the process of appointing advocates that has been running so far. Starting from taking special education for the advocate profession (APSE), the advocate professional exam (UPA) held by an advocate organization, an internship for 2 years at an advocate office, to taking an advocate's oath at the local High Court. On the basis of consideration of several laws and other regulations concerning National Education, higher education institutions can organize academic, professional, and / or vocational programs (Article 20 paragraph 3), and tertiary institutions that meet the requirements of establishment and are declared entitled to organize certain educational programs can provide academic, professional, or vocational degrees in accordance with the education program it provides

(article 21 paragraph 1 of Law No. 20 of 2003 on national education). Likewise with Articles 2-5 of the Ministry of Research, Technology and Higher Education which regulates the length of the APP study period, the fastest is 2 semesters (1 year) and a maximum of 6 semesters (3 years) with a weight of 24 semester credit units (credits) with a minimum Grade Point Average (GPA) of 3.00. After graduating, he gets an Advocate professional title given by a tertiary institution along with a certification issued by an advocate organization.

The next problem is the view that the implementation of advocate education in the national education law has legitimized the special law for advocates. Article 21 paragraph 2 Law no. 20 of 2003 concerning the national education system, states that individuals, organizations, or education providers that are not tertiary institutions are prohibited from giving academic, professional, or vocational degrees. Meanwhile, based on advocate law, advocate has the best status as a law enforcer, who is independent and is guaranteed by law and statutory regulations, namely Article 5 paragraph 1 of Law No. 18 of 2003.

If these laws are collided, it is certain that advocates in recruitment, education and development will be increasingly difficult and contrary to the nature of the desire and existence of people who are thirsty for justice in the field of law, advocates will also find it difficult to build positive values (Supriadi, 2006: 9) for Public. As a rule of law with the legal basis of the people, especially society, in state life, it should and ideally give birth to a society that is equal in law, without being wronged (Abdul Hamid, 2016, : 32). Ensuring the people of legal justice or legal equality and providing legal assistance is categorized as a form of social protection, which in the Article "Social protection is intended to prevent and manage risks from shocks and social vulnerability of a person, family, group, and / or community in order to continue life can be fulfilled in accordance with the minimum basic needs "(Article 14 of Law No. 11 of 2009 Law on Social Welfare). It is believed that this will be difficult to obtain considering that law enforcers / advocates are still being debated with contradictory rules.

In modern times law, law enforcers, and society are destined to become modern. These three components (society, law and law enforcers) can occur in a forum called advocate education. The basic thing in advocate education is to keep the breaths and objectives of a law. For this purpose, those who have completed the series of processes to become an advocate are expected to be able to implement one of the contents of the advocate law, namely article 56 paragraph (1) of Law No.18 of 2003 concerning Advocates. This Law regulates and explains about free legal assistance to the community, especially those who are less able to pay for Advocate services.

The next hope of the APSE is to create how to understand, and apply the law in the aspects of life between the law as Social Control (where every community group always has problems as a result of differences between the ideal and the actual, between the standard and the practical). The expected

effect of participating in advocate education from the perspective of the national education law or the spirit of the birth of Permenristekdikti no. 5 of 2019 concerning advocate professional education is to achieve general educational goals. The role of law in social change is arguably not value free. Every law once issued will change either through formal changes or through the methods the bureaucracy takes when acting. Laws change due to changes in social, cultural, economic, political and other forces surrounding them. Changes can also be caused by the role holders of the lawmakers and the enforcement bureaucracy, and vice versa.

The essence of advocate education is to be wise and wise. In principle, to be a wise advocate is to know and understand many things in this case about law and its development, even on developing issues or problems. Wisdom is a wise behavior in solving or seeing a problem, by prioritizing the law on its goal. With a wise and wise view that in essence, knowing that the law grows and is used as a result of events that arise in society, at that time there are still doubts and doubts in solving the problem. The law enters and integrates with the life of every human being whose territory is regulated by it (customary / unwritten law). There is even an expert from Greece who stated that *Ubi societas ibi iusticia* "where there is a community and life there is law (justice). From this statement it can be concluded that law and society are one and inseparable part so that there will be no society if there is no law, on the contrary; there can be no law without society. With a deep understanding, advocates can carry out their profession in the midst of society, and can quickly explain problems that occur from a legal point of view.

## CONCLUSIONS

Based on the provisions of Article 2 paragraph (1) of Law no. 18 of 2003 concerning advocates and the Constitutional Court decisions related to Law no. 18 of 2003 concerning advocates, Advocate Professional Special Education (APSE) has been actively run by advocate organizations in collaboration with universities. Article 2 paragraph 1 of the Law on Advocates states that those who can be appointed as advocates are scholars who have a higher legal education background and have attended special education for the advocate profession carried out by advocate organizations. The Constitutional Court in its decision number 95 / PUU-XIV / 2016 also provides a consideration that "to maintain the role and function of an advocate as a free, independent, and responsible profession as mandated by the Advocate Law, PKPA must be organized by an advocate professional organization or organization with must cooperate with law colleges ”.

Law No. 20 of 2003 which became the reference for the Ministry of Research, Technology and Higher Education (Kemendikbud) issued Permenristekdikti No.5 of 2019 concerning the Advocate Professional Program (APP) containing weaknesses that led to polemics among advocates regarding advocate education. In this case Kemendikbud is of the view that professional education including advocates cannot be separated from the enactment of Law No. 20 of 2003 concerning the National Education System,

Law no. 12 of 2012 concerning Higher Education. The enforcement of Permenristekdikti 5/2019 refers to the Higher Education Law and Permenristekdikti No. 44 of 2015 concerning National Higher Education Standards. The issuance of Permenristekdikti 5/2019 is intended to become Advocate Professional Special Education (PKPA) from non-formal to formal. The drafting of Permenristekdikti 5/2019 did not make the MK decision No. 95 / PUU-XIV / 2016 as a basis. Advocate professional education should refer to Law No.18 of 2003 concerning Advocates which was published earlier than the Higher Education Law. Kemenristekdikti does not need to further regulate advocate education.

### RECOMMENDATIONS

The integration of advocate organizations with the ministry in the implementation of advocate professional education must be maintained because if there is a chaos and other interests it will set a bad precedent for legal practice and culture in Indonesia. Integration and harmonization as well as an agreement based on deliberation to reach a consensus of all related elements must be put forward. In a broader context in modern times it is adjusted to the applicable law with a note that it is built on the principle that the concept or basis does not cause ongoing conflict.

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