

# Amendment of Advocates Law required

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**C**lose to 10 years since Law No. 10/2003 on advocates was passed, many things have to be discussed, reviewed and revised because the law is no longer in accordance with reality and the needs of the public, especially justice sectors, such as on providing quality legal services.

The existence of various branches of law, including state administration, consumer protection, unfair competition and monopoly, class action, capital market, investment, constitutional, alternative dispute resolution, national and international arbitration and so on, has changed the face of the legal profession in Indonesia.

Moreover, global influences such as cross border investments, international business and commercial disputes, and the World Trade Organization (WTO) and the General Agreement On Tariffs and Trade (GATT) have changed the character of the legal profession, from being conservative to global.

To face the complex and global challenges of the time, we can no longer maintain the old ways; we must be able to compete with other

nations, especially in the legal profession, particularly in cross border matters, such as business law, investment and commercial arbitration. Contracts between multinational companies from various countries and cross border investment, like it or not, will potentially create disputes in business and investment. Thus, the quality of the advocates that we produce must be able to meet such needs.

The Special Education for Advocates (PKPA), which is currently organized by several bar associations, must be put in order and not be a mere duplication of undergraduate studies taught in law schools.

Also, advocate education and bar exams should be organized together; they should not be commercialized by bar associations because the associations are not supposed to get their income from organizing such educational programs or bar exams, as they depend solely on membership dues.

For example, the United Kingdom as a liberal country organizes the education of its solicitors and barristers (attorneys and lawyers) as stipulated in the Solicitors Act of 1974. Two organizations, which are legalized by the Legal Services Board based on the Legal Service

Act of 2007, oversee the implementation, education and appointment of barristers and solicitors, i.e. the Bar Council for barristers and the Law Society for solicitors, under the supervision of the Lord Chancellor, Lord Chief Justice and Minister of the Rule.

Each organization has its own regulatory body that determines the rules for the implementation of education and the appointment of advocates, including graduation standards and codes of conduct.

The Bar Council has the Bar Standard Board as its regulatory body, while the regulatory body of the Law Society is the Solicitors Regulation Authority.

Meanwhile, the Netherlands, as a democratic and liberal country, involves the state government in organizing the bar exam as stated in the Advocates' Act. Article 9 clause (6) of the Advocates' Act states that the Dutch justice minister leads five governors, (three from the Ministry of Justice and two from the bar association), to determine the curriculum for advocate education, and they determine the cost and methods needed to organize advocates.

The governors are appointed by the justice minister for a four-year term and they can only serve twice.

In addition, the educational program must be approved by the government and it is supervised by the justice minister.

As a constitutional state based on Pancasila, the current monopoly and commercialization of the PKPA in Indonesia should be noted in the Advocates' Law and its organization must be convened by involving the law and human rights minister and the Supreme Court, law enforcement organizations, bar associations, consulting organizations for intellectual property rights (IPD), capital market professional organizations, prosecution organizations (PERSAJA), judicial organizations (IKJARDI), university law schools and so forth, so that the curriculum for advocates can be determined together.

This is also needed to end the monopoly by bar associations in determining the curriculum and the commercialization of advocate courses, bar exams and advocate inaugurations. Quarrels, disputes, hostility, disagreements and disintegration in bar associations have happened for too long since the enactment of the Advocates' Law, and this is still going on.

So, the leaders of the bar associations are not able to focus on the bigger problems faced by advocates,

the problems of law enforcement and corruption, which are serious national problems faced by the Indonesian people.

Each leader of the bar association feels that he is right and provides his own arguments and tends to forget that the bar association is established in the interest of its members, which eventually leads to providing legal services in the interest of the public, namely justice sectors, and not for the interest of the bar association leaders.

The chairman of the bar association must be elected by its members through a democratic election. The chairman must also implement the organization's Articles of Association explicitly.

Another important thing is that the chairman of the bar association must prioritize before the plenary meeting that he will act according to the statutes (AM/ART) of the bar association, uphold human rights, prioritize compliance with the law in the context of the constitutional state, and not perform any illegal acts, such as bribery or corruption.

The new Advocates' Law must guarantee that there will be no commercialization or monopoly of the PKPA, and there must be a national

board of ethics led by figures elected by all bar associations who can supervise the behavior of advocates and impose sanctions based on the advocates' code of ethics.

Also, in order to guarantee the existing bar associations, the leaders who are elected by members of their respective congresses must be sworn in and pledge not to become involved in judicial corruption, which includes providing gratifications, gifts, bribery and promises that can be categorized as influencing and interfering with court judgments and law enforcement by judges, prosecutors or police.

In this way, we can be more effective in fighting judicial corruption in our country once bar associations are led by people who are honest, dedicated, oriented toward the constitutional state and prioritize the best interests of the public over their own. Thus, an amendment of the Advocates' Law is inevitable to achieve a fair and prosperous society. *Frans H. Winarta* *Chairman*

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