'Mental revolution' through amendment of Advocate Law

Frans H. Winarta
TANGERANG

The idea to create a single bar association in Indonesia emerged during the New Order era, from then law and human rights minister, Ali Said, in the late 1970s. However, then chairman of Association of Indonesian Advocates (Peradin), Suardi Tasrif, rejected the proposal to unite all attorney organizations into a single organization, pointing to the freedom of association guaranteed by the 1945 Constitution.

Only in 1985, under heavy political pressure, was a single bar association established; the Indonesian Bar Association (Ikadin).

Ikadin was established on Nov. 10, 1985, at Hotel Indonesia in Jakarta and Haryono Tjitrosubono was elected its first chairman. At the time, Haryono also chaired Peradin. Peradin's management was thus made inactive, as most of its management sat on the board of the new Ikadin.

The New Order disliked Ikadin, considering it the old Peradin dressed in new clothes. Peradin had been vocal in its criticism of the establishment of extra-judicial institutions such as the Operational Command for the Restoration of Security and Order (Kopkamtib).

Ikadin also issued repeated criticisms of human rights violations, such as the shootings at Tanjung Priok, North Jakarta, the bloodshed in Santa Cruz, Dili, East Timor and the extra-judicial killings of suspected criminals (*petrus*) that were much discussed in the 1980s.

Then, the New Order supported the establishment of the Indonesian Advocate Association (AAI), whose members had disagreed with the "one man one vote" system used to elect the Ikadin chairman, preferring voting by branches. Both Ikadin and the AII claimed to be Indonesia's single bar association.

The legitimacy of a single bar association was included in the drafting of the 2003 Advocate Law in the late 1990s, on the grounds that it could unite the nation's attorney organizations that had ballooned to eight. But the idea of a single bar association was also drawn from the Netherlands, which united the attorney organizations in the Netherlands in 1952.

However, the law's drafters overlooked the fact that the Netherlands was largely homogeneous at the time, with just 30 million people compared to Indonesia's diverse nation of some 200 million.

The enactment of the Advocate Law did not unite attorney organizations, but instead led to a new conflict: both the Peradin and the Congress of Indonesian Advocates (KAI) claimed to be the legitimate, single bar association. Yet new attorney organizations appeared from these organizations.

Thus, the purpose of the single bar association merger sparked a new kind of conflict related to different motives then the single bar association model of the 1980s.

While previously political intervention caused discord and conflict, following the 2003 Advocate Law, frictions arose related the relative legitimacy of competing single bar associations, the commercialization of the advocate education course, the swearing-in ceremony, and education and examination fees that became a source of income.

In fact, a bar association should live off membership dues, not education and examination fees.

There was an oligarchy of leadership within the bar associations (just as with political parties when leaders resist challenges to its grip on power) whose leaders were elected without term limits or considerations regarding regeneration. Meanwhile, judicial corruption continued.

Bribery, the trading of court judgments; the elimination of evidence and case dossiers; collusion of judges and advocates; and the misappropriation of public facilities continued, whereas in fact a bar association should lead the way for establishing democracy.

The conflict worsened with the release of a June 2010 circular from the Supreme Court, which stated that the swearing-in ceremony could only be conducted by Peradin. This reflected an infringement on the independence of the legal profession by the court, replicating the practices of the New Order. At that time, the exam was organized by the high court and the attorney's card was issued by the law and human rights minister.

While the bar association conflict continued, judicial corruption also became endemic and systemic, which could have been prevented if Indonesian lawyers had been able to unite and stop the bar association commotion.

The amendment of the Advocate Law should aim to improve the quality of attorneys, so that they can give the best legal advice to the public and justice-seekers.

Seeing the above facts, the amendment of the Advocate Law is a necessity. The notion of a single bar association totally fails in a pluralistic Indonesia and does not reflect the philosophy of Pancasila, which is essentially togetherness and cooperation.

The representation of the government in the National Advocate Council should not be a cause for concern because liberal countries such as the Netherlands and the United Kingdom also draft the curriculum and exam under the supervision of the ministers of justice, five governors in the Netherlands; and under the lord chief justice of England and Wales and the lord chief justice (Master of the Rolls) in the United Kingdom, where the lord chief justice and master of the rolls make the training regulations such as the curriculum and exam fee.

The administration of president-elect Joko "Jokowi" Widodo that aims to fight judicial corruption through a "mental revolution" must be supported, because the Advocate Law aims to end the hegemony of the oligarchy, commercialization of attorney education and exams — and, most importantly, the fight against judicial corruption, which has worsened.

This would allow Indonesia to become a constitutional state in the broadest sense. Without such an effort, our legal services will not be able to compete in the international community, especially as we are so close to the launch of the ASEAN Economic Community (AEC) next year, where the Indonesian legal profession will become a cross-border profession.

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The writer is chairman of Peradin, the Indonesian Advocates Association, and a lecturer at the law faculty at Pelita Harapan University (UPH) in Tangerang, Banten. The views expressed are his own.

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Correction:

There were a number of errors in the article titled "'Mental revolution" through amendment of Advocate Law" by Frans H. Winarta published on page 6 on Sept. 26. First, Ali Said served as justice minister, not the law and human rights minister during the New Order era. Second, the acronym for the Indonesian Advocate Association should be AAI in the last sentence of the sixth paragraph, not the AII.

Third, the conflict that arose due to the formation of a single bar association was not between Persatuan Advokat Indonesia (Peradin) and the Congress of Indonesian Advocates (KAI) but between Perhimpunan Advokat Indonesia (Peradi) and KAI. Fourth, the swearing-in ceremony could only be conducted not by Peradin but by Peradi.

We apologize for the mistakes.

— The Editor