

**COMPARISON OF LAWS REGULATION OF PROFESSIONAL
ORGANIZATIONS OF ADVOCATES IN INDONESIA AND
MALAYSIA**

**PERBANDINGAN HUKUM PENGATURAN ORGANISASI PROFESI
ADVOKAT DI INDONESIA DENGAN MALAYSIA**

Gress Selly^{1*}

*Student of Doctoral Program, Faculty of Law The Islamic University of
Indonesia & Lecturer, Faculty of Law, Taman Siswa Palembang
greesselly22932004@students.uii.ac.id

Volume 3, Number 1, March 2025

Received: February 04, 2025 Accepted: February 04, 2025 Online Published: March 27, 2025.

ABSTRACT

Advocates are one of the main pillars in law enforcement in Indonesia. To strengthen the existence of advocates as the main pillar of law enforcement, Law No. 18 of 2003 concerning Advocates was established. The purpose of establishing the Advocates Law is to provide guarantees of professionalism, independence and independence of the profession by upholding the principles of the rule of law and the constitution. Regulating the advocate profession is very difficult. Since the Advocates Law was enacted until now, there have been frequent incidents within the advocate profession that have ended in judicial review to the Constitutional Court. The conflicts that often occur are related to the interpretation of the provisions of the article concerning advocate organizations. Initially, advocates designed advocate organizations with a single organizational system as formulated in Article 28 paragraph (1) of the Advocates Law which states that: "advocates organizations are the only free and independent advocate profession forum formed in accordance with the provisions of this law with the intent and purpose of improving the quality of the advocate profession." This article often covers between advocate organizations that adhere to a single organizational system (single bar system) with advocates who are accommodated by more than one organization (ulti bar system). The conflict between advocate organizations indirectly brings the Supreme Court Institution into a vortex of problems related to the authority

to organize the swearing-in of Advocates. The Supreme Court Letter Number: 73/KMA/HK.01/IX/2015 dated September 25, 2015 has opened up an opportunity for Advocate Organizations other than PERADI to encourage the swearing-in of Prospective Advocates at the High Court in the Advocate's domicile jurisdiction. With its emergence The Supreme Court's letter adds new polemics amidst the division of the Advocates' organization which has not been managed well. Unlike Indonesia, the Advocates' Professional Organization in Malaysia is known as the Malaysian Bar (Badan Peguam Malaysia), which is a Legal Entity established based on the Advocates and Lawyers Act of 1947 and was later revoked and replaced by the Legal Profession Act 1976 or the Legal Profession Act of 1976. The organization is an Independent Lawyer organization that aims to uphold the supremacy of law and justice and protect the interests of the legal profession and the community. Every advocate and lawyer in Malaysia automatically becomes a member of the Malaysian Bar, as long as he or she has a valid Practice Certificate. In Malaysia, an Advocate's License is not based on the Court Oath Report but is sufficient with a Practice Certificate issued by the Malaysian Bar Association. PERADI, which is the sole advocate organization based on the mandate of Law No. 18 of 2003, is in fact very different from the sole advocate profession organization in Malaysia known as the Malaysian Bar Association. This article compares the regulation of the advocate profession in Indonesia which adopts a civil law system with Malaysia which adopts a common law system. The purpose of writing this article is to: first, analyze and compare the rules related to the Advocate Profession and Law Enforcement in Indonesia and Malaysia; second, analyze the regulation of the advocate profession organization in Indonesia by comparing the regulatory system in Malaysia. This normative legal research uses a statute approach and a comparative approach. Based on the results of the study, it was found that the rules related to advocates and advocate organizations have been regulated in Law No. 8 of 1981 concerning the Criminal Procedure Code, Law No. 48 of 2009, Law No. 18 of 2003 concerning Advocates and the Constitutional Court Decision Number 66/PUU-VIII/2010 dated June 27, 2011 and the Constitutional Court Decision Number 35/PUU-XVII/2018. The doctrine of comparative law can be used so that this method can improve the regulation of advocate organizations as law enforcers who provide certainty and justice to the community.

Keywords : Advocates, Bar Association, Law Regulation, Indonesia, Malaysia, Comparative.

ABSTRAK

Advokat merupakan salah satu pilar utama dalam penegakan hukum di Indonesia. Untuk memperkuat eksistensi advokat sebagai pilar utama penegak hukum dibentuklah Undang-Undang No. 18 Tahun 2003 Tentang Advokat. Tujuan dibentuknya Undang-Undang Advokat adalah untuk memberikan jaminan profesionalitas, kemandirian dan independensi profesi dengan menjunjung tinggi prinsip Negara hukum dan konstitusi. Mengatur profesi advokat sangatlah sulit. Sejak undang-undang advokat di sahkan sampai dengan sekarang masih sering terjadi perselisihan diinternal profesi advokat yang berujung pada judicial review ke Mahkamah Konstitusi. Konflik yang sering terjadi adalah terkait dengan penafsiran ketentuan pasal mengenai organisasi advokat. Semula advokat mendesain organisasi advokat dengan system organisasi tunggal (single bar organization) sebagaimana dirumuskan dalam Pasal 28 ayat (1) Undang-Undang Advokat yang menyebutkan bahwa: “organisasi advokat merupakan satu-satunya wadah profesi advokat yang bebas dan mandiri yang dibentuk sesuai dengan ketentuan undang-undang ini dengan maksud dan tujuan untuk meningkatkan kualitas profesi Advokat”. Pasal ini sering menjadi perdebatan antara organisasi advokat yang menganut system organisasi tunggal (single bar system) dengan advokat yang diwadahi lebih dari satu organisasi (ulti bar system). Konflik antar organisasi advokat ini secara tidak langsung membawa Institusi Mahkamah Agung dalam pusaran persoalan terkait dengan kewenangan untuk menyelenggarakan pengambilan sumpah Advokat. Surat Mahkamah Agung Nomor : 73/KMA/HK.01/IX/2015 tanggal 25 September 2015 telah membukakan kesempatan bagi Organisasi Advokat selain PERADI untuk mengusulkan penyempahan Calon Advokat di Pengadilan Tinggi pada wilayah hukum domisili Advokat. Dengan munculnya Surat Mahkamah Agung tersebut menambah polemik baru ditengah-tengah perpecahan organisasi Advokat yang belum terkelola dengan baik. Berbeda dengan Indonesia, Organisasi Profesi Advokat di Malaysia kenal dengan nama Malaysian Bar (Badan Peguam Malaysia), yang merupakan Badan Hukum yang didirikan berdasarkan Undang-Undang Advokat dan Pengacara tahun 1947 dan kemudian dicabut serta digantikan dengan Legal Profession Act 1976 atau Undang-Undang Profesi Hukum tahun 1976. Organisasi itu adalah organisasi Pengacara Independen yang bertujuan untuk menegakkan supremasi hukum dan keadilan serta melindungi kepentingan profesi hukum serta masyarakat. Setiap advokat dan pengacara di Malasia secara otomatis menjadi anggota Malaysian Bar, selama ia memiliki Sertifikat Praktek yang sah. Di Malaysia, Lisensi Advokat tak berdasarkan Berita Acara Sumpah Pengadilan namum cukup dengan Sertifikat Praktek yang dikeluarkan oleh Malaysian Bar Association. PERADI yang merupakan wadah tunggal advokat berdasarkan amanat Undang-Undang No. 18 Tahun 2003, dalam faktanya sangat berbeda dengan Organisasi wadah tunggal profesi advokat di Malaysia yang dikenal dengan Malaysian Bar Association. Artikel ini membandingkan

pengaturan profesi advokat di Indonesia yang menganut system hukum civil law dengan Malaysia yang menganut common law system. Penulisan artikel ini bertujuan untuk: pertama, menganalisis dan membandingkan aturan terkait Profesi Advokat dan Penegakan Hukum di Indonesia dan Malaysia; kedua, menganalisis pengaturan organisasi profesi advokat di Indonesia dengan membandingkan system pengaturan di Malaysia. Penelitian hukum normative ini menggunakan pendekatan statute approach dan comparative approach. Berdasarkan hasil penelitian, ditemukan bahwa aturan terkait advokat dan organisasi advokat, telah diatur dalam Undang-Undang No. 8 Tahun 1981 Tentang KUHAP, Undang-Undang No. 48 Tahun 2009, Undang-Undang No. 18 Tahun 2003 Tentang Advokat dan Putusan Mahkamah Konstitusi Nomor 66/PUU-VIII/2010 tanggal 27 Juni 2011 dan Putusan Mahkamah Konstitusi Nomor 35/PUU-XVII/2018. Doktrin perbandingan hukum dapat digunakan agar metode ini dapat memperbaiki pengaturan organisasi advokat sebagai penegak hukum yang memberikan kepastian dan keadilan kepada masyarakat.

Kata Kunci : Advokat, Ikatan Advokat, Peraturan Hukum, Indonesia, Malaysia, Perbandingan.

I. INTRODUCTION

Law No. 18 of 2003 does not explicitly state that it adopts a single bar system.¹ If reviewed from Article 32 paragraph (4) which states "within a maximum of 2 (two) years after the enactment of this Law, the Advocate Organization has been formed. There are no further provisions explaining which system the advocate organization in Indonesia adopts, and there are no provisions in Law No. 18 of 2003 that advocate organizations in Indonesia merge into one complete organization. In reality, Indonesia has several advocate organizations that still exist today and have the same authority, both in terms of education and advocate management. Advocate organizations that still exist and are mentioned in Law No. 18 of 2003 are (1) IKADIN, (2) IPHI, (3) AKHI, (4) HAPI, (Association of Indonesian Advocates and Lawyers) (5) HKHPM, (6) AAI, (7) SPI, (8) SPI.

On February 11, 2002, a joint agreement was reached by the Indonesian Advocates professional organization to form an Advocates Working Committee, which finally on December 21, 2004, the eight advocate organizations that were members of the KKAI formed the Advocates Organization as a single forum through the Declaration of the Establishment

¹ Broto Hastono, Rizky Prasetyo, *Sistem Advokat Indonesia dalam Relung Kebhinekaan Tunggal Ika dalam Single Bar : Standar Profesi Advokat Yang Tunggal*, Papas Sinar Sinanti, Depok, 2022, hlm73-81

of the Indonesian Advocates Association (Indonesian Bar Association), abbreviated as PERADI.²

The formation of PERADI did not automatically make advocates under one organizational umbrella, over time there have been many judicial reviews of the single advocate organization mandated in Law No. 18 of 2003 concerning Advocates. A group of advocates who did not agree with the PERADI Board of Directors actually formed several advocate organizations that claimed that they were legitimate advocate organizations and in accordance with the mandate of Law No. 18 of 2003. This had an impact on the implementation of the advocate oath taking at the High Court, which since Law No. 18 of 2003 was enacted is one of the requirements to be considered an advocate.³

Article 4 paragraph (1) of Law No. 18 of 2003 states that "before carrying out his profession, an advocate must swear according to his religion or make a solemn promise in an open session of the High Court in his legal domicile area". Although the authority to propose an advocate's oath is not regulated expressly verbis in the articles of the Advocates Law, this does not mean that this authority does not exist. The process of proposing an advocate's oath really exists factually (de facto) in the practice of swearing in advocates in the field. Viewed based on the sequence, the process of ordering the Advocate's oath is after the process of appointing an Advocate by the Advocate Organization.⁴

Decision Number 66/PPU –IIV/2010 of the Constitutional Court stated that PERADI is one of the Advocate Organizations that has the authority to carry out 8 (eight) authorities of the Advocate Organization as stated:

The only professional body for Advocates as referred to in the Advocates Law is the only professional body for Advocates that has the authority to carry out special education for the Advocate profession [Article 2 paragraph (1)], test prospective Advocates [Article 3 paragraph (1) letter f], appoint Advocates [Article 2 paragraph 2], create a code of ethics [Article 26 paragraph 1], form an Honorary Council [Article 27 paragraph (1)], form a Supervisory Commission [Article 13 paragraph (1)], carry out Supervision [Article 12 paragraph (1)], and dismiss Advocates [Article 9 paragraph (1), Advocates Law.]

The Advocate Law does not determine whether other professional bodies of Advocate that do not exercise these authorities have the right to continue to exist or can still be formed. Judging from all the provisions and norms in the Advocate Law and the reality of the professional body, according to the

² Suparman Marzuki, *Etika dan Kode Etik Profesi Hukum*, FH UII Press, Yogyakarta, 2017, hlm 53-59

³ Khaidir Nasution, *Berita Acara Sumpah Advokat Tidak Sempurna*, *Varia Advokat – Volume 110*, Jakarta, 2009, hlm. 53 dalam Suparman Marzuki, *ibid*.

⁴ Fajlurrahman Jurdil, *Etika Profesi Hukum*, Prenada Media Group, Jakarta, 2022, hlm 95-97

Court, the professional body of Advocate in question is only one professional body of Advocate that exercises the 8 (eight) a quo authorities, this does not rule out the possibility of other professional bodies of Advocate that do not exercise the 8 (eight) authorities based on the principle of freedom of assembly and association according to Article 28 and Article 28E paragraph (3) of the 1945 Constitution. This is reinforced by the fact that in the formation of PERADI, the 8 (eight) Advocate Organizations that previously existed did not disband and did not merge with PERADI.

In the new decision, namely decision No. 35/PPU/XVII/2018 page 381, the Constitutional Court reaffirmed PERADI's position as follows:

That the constitutionality issue of the advocate organization as referred to in Article 28 paragraph (1) of the Advocates Law has in fact been resolved and has been firmly considered by the Court, namely PERADI, which is the abbreviation (acronym) of the Indonesian Advocates Association as an advocate organization which is the only professional body for advocates [vide Constitutional Court decision Number 014/PPU-IV/2016 dated 30 November 2006], which has the authority as stipulated in the Advocates Law to:

- 1. Carrying out special education for the Advocate profession [Article 2 paragraph (1)];*
- 2. Carry out Testing for Candidate Advocates [Article 3 paragraph (1) letter f);*
- 3. Carrying out the appointment of Advocates [Article 2 paragraph (2)];*
- 4. Creating a Code of Ethics [Article 26 paragraph (1)];*
- 5. Establish an Honorary Council [Article 27 paragraph (1)];*
- 6. Establish a Supervisory Commission [Article 13 paragraph (1)];*
- 7. Carry out Supervision [Article 12 paragraph (1)];*
- 8. Dismissing an Advocate [Article 9 paragraph (1)]; [vide Constitutional Court Decision Number 66/PPU-VIII/2010 dated 27 June 2011];*

However, this does not mean that the existence of other advocate organizations such as the National Lawyers Council or other advocate organizations is negated, it is just that this discussion is merely an analytical instrument for enforcing the code of ethics of advocate organizations, which is most importantly related to the code of ethics of the advocate profession.

Advocates in Malaysia are better known as “Peguam”. The duties of an advocate in Malaysia are the same as in Indonesia, including representing and defending clients in court, helping clients negotiate a resolution to a problem, and providing legal advice regarding various cases to clients. Regulations regarding advocates in Malaysia are regulated in the Legal Profession Act 1976 of Malaysia, which also regulates the requirements to

become an advocate in Malaysia, namely: (1) basic requirements, (2) Academic Requirements, (3) Practice Requirements.⁵

The basic requirements for prospective advocates are regulated in Article 11 paragraph (1) of the Legal Profession Act 1976 Malaysia, Prospective advocates in Malaysia must meet the Basic Requirements, namely: minimum age 18 years; good behavior (never been found guilty of a criminal act in Malaysia and other countries that makes him/her incompatible with the profession of advocate, never been declared bankrupt or guilty of something that results in bankruptcy, never did something that caused him/her to be dismissed from the profession of barrister or solicitor in England, never had a license as a legal practitioner revoked in any country); and must be a Malaysian citizen or have Permanent Resident (PR) status. Then in 1984, new basic requirements were added, namely having to pass the Malay Language test.

The next requirement is the Academic Requirements, which are regulated in Article 3 of the Legal Profession Act 1976, namely: having passed the Bachelor of Law exam at the University of Malaya in Malaysia, the University of Malaya in Singapore, the University of Singapore, or the National University of Singapore; having become a barrister in England. After fulfilling the above requirements, a prospective Advocate has achieved the status of "qualified person".

In order to be able to litigate in court based on Article 12 of the 1976 Legal Profession Law, one more requirement is needed, namely the Practice Requirements by carrying out practical work or internship for 9 months under the direct supervision of an advocate who has practiced for at least 7 years. This aims to provide prospective advocates with real world work practices instead of just things learned during education, having to go through the education stage until obtaining a bachelor's degree in law. Recruitment of advocates in Malaysia is carried out through selection by a body consisting of the Chief Justice, Chief Advocate and Chancellor of the University in one team called the Profession Qualifying Board (LPQB).⁶ This reflects that there is a contributive collaboration between the courts, professions, and universities in producing new advocates.

This article compares how advocates and their organizations are regulated in Indonesia and Malaysia. This comparison will certainly provide new learning and practical input for the Regulation of Advocates and Their Organizations which currently in Indonesia are not in accordance with the

⁵ Condraft BLC, *Tanggung Jawab Profesi Advokat di Malaysia*, www.academia.edu/23784580/tanggung_jawab_profesi_advokat_di_malaysia, diakses pada tanggal 18 Februari 2024 pukul 12.00 wib

⁶Malaysian Legal Profession Qualifying Board http://www.lpqb.org.my/index.php?option=com_content&view=article&id=47&Itemid=61 diakses pada tanggal 14 Maret 18:12

spirit of the Advocates Law which requires a single bar system. Therefore, the problems studied in this article are, First, How are advocates and advocate organizations regulated in Indonesia and Malaysia? Second, how is the ideal implementation of the single bar system in Indonesia.

II. METHOD

This research is a normative legal research, also called library research or document study. It is called library research or document study because this research is mostly conducted on secondary data available in the library.⁷ The approach method used is the statute approach and comparative approach. Data analysis is carried out by reviewing and comparing various laws and regulations in Indonesia and Malaysia regarding the Regulation of Advocates and Advocates Organizations in Indonesia and Malaysia, as well as analyzing how ideally the regulation of Advocates Organizations in Indonesia is.

III. ANALYSIS AND DISCUSSION

a. Methods of Arranging Advocate Organizations in Indonesia and Malaysia

One of the main pillars in law enforcement in Indonesia is advocates. To strengthen the advocate profession as the main pillar in law enforcement is the establishment of Law No. 18 of 2003 concerning Advocates. The purpose of establishing this law is to provide a guarantee of equality of Advocates with other law enforcers, as a guarantee of professionalism, independence and independence of the profession by upholding the principles of the rule of law and the Constitution.⁸

Definition of terminology⁹ advocates can be described as follows:

1. In Latin the word Advocate is *advocare* which means "to defend".
2. According to Law Number 18 of 2003 concerning Advocates, an Advocate is "a person whose profession is providing legal services, both inside and outside the court, who meets the requirements, based on the provisions of this Law.
3. In the Criminal Procedure Code, specifically Article 1 point 13 states that "a legal advisor is a person who has fulfilled the requirements determined by law to provide legal assistance.

⁷ Suratman dan Dillah H. Philips, *Metode Penelitian Hukum*, Ketiga (Bandung: Alfabeta, 2015), hlm.51

⁸ Agus Riewanto : Achmad, *Konstitusionalitas Dan Jaminan Kepastian Hukum Organisasi Advokat (Perspektif Hukum Tata Negara)* dalam Kepastian Hukum Single Bar System Organisasi Advokat di Indonesia (*Eksaminasi Putusan MK RI No. 35/PUU-XVII/2018 dikaitkan dengan Surat Ketua MA RI No. 73/KMA/HK.01/IX/2015*, LKBH Fakultas Hukum Universitas Sebelas Maret Surakarta, Oase Pustaka, Surakarta, 2020, hlm. 38-53

⁹ Ari Wahyudi Hertanto, *Kantor Hukum : Pendirian dan Manajemennya (Teori dan Praktik)*, Sinar Grafika, Jakarta, 2016, hlm. 118-143

4. Advocates, lawyers, and legal advisors in legal practice in Indonesia are a profession which represents its clients to take legal action based on a power of attorney given for defense or prosecution. at a trial in court or in court proceedings (litigator). As for legal consultants, they are people who work outside the court who act to provide advice or legal opinions on an action or legal act that will or is carried out by their clients (non-litigator).

The definitions of the term advocate continue to develop rapidly along with the demands of democracy and human rights. In practice, there is often a conflict of opinion regarding the terminology "Lawyer", namely a group of practitioners who assume that lawyers are exclusively practicing lawyers who handle court cases, or what is commonly known as Litigation Lawyers or Litigators.

From several definitions as mentioned previously, we can conclude that Advocate as explained in Law Number 18 of 2003 is a definition and term that is considered very broad, democratic, and aspirational as well as accommodating. Furthermore, Law Number 18 of 2003 is a form of improvement to the advocate profession and various matters related both directly and indirectly to the advocate profession itself.¹⁰

The profession of advocate is not a job (vocation beroep), but more of a profession, because the profession of advocate is not just a place to earn a living, but advocates are known as noble jobs (*officium nobile*) which have a higher spiritual value in society, because they require defending everyone without distinguishing between race, background, skin color, religion, culture, socio-economic, rich and poor, political beliefs, gender, and ideology. Every profession including the profession of advocate uses an ethical system,¹¹ especially to provide a structure that is capable of creating work discipline and providing a boundary line of values that can be used as reference material for professionals to resolve ethical dilemmas faced when carrying out the function of developing their daily professional activities.

Bertens (1995) stated that a professional code of ethics is a norm that is established and accepted by a professional group, which directs or gives instructions to its members on how they should act and at the same time guarantees the moral quality of the profession in the eyes of the public. If one member of the professional group deviates from its code of ethics, then the professional group will be tarnished in the eyes of the public. Therefore, the professional group must adjust based on its own authority.¹²

¹⁰ Ibid.

¹¹ Samuel Saut Martua Samosir, *Organisasi Advokat dan Urgensi Peran Pemerintah dalam Profesi Advokat Advocates Bar and the Urgency of the Government's Role in the Profession of Advocat*, Jurnal Konstitusi Volume 14 No.3 Spetember 2017

¹² Agus Pramono, *Etika Profesi Advokat Sebagai Upaya Pengawasan Dalam Menjalankan Fungsi Advokat Sebagai Penegak Hukum*, Jurnal Ilmu Hukum Volume 12, 8 Januari 2016

The code of ethics of the advocate profession is determined by the Advocates Organization, with ethical standards that have been created with the aim of maintaining the quality and professionalism of advocates themselves. The only Advocates Organization that has compiled the Code of Ethics of the Advocate Profession is PERADI. Law No. 18 of 2003 designs the Advocate Organization with a single organizational system (single bar organization) as referred to in Article 28 paragraph (1) of the Advocates Law which reads "The Advocate Organization is the only free and independent advocate profession forum formed in accordance with the provisions of this law with the intent and purpose of improving the quality of the advocate profession."

The phrase "advocate organization" is multi-interpretable, thus opening up opportunities for advocate organizations that existed before PERADI, namely PERADIN, KAI, IKADIN and even the Supreme Court to provide different interpretations, thus creating unconstitutionality and legal uncertainty, which results in no longer being in accordance with the original intent or teleological purpose of the formation of the phrase "advocate organization" as regulated in the Advocates Law.¹³ Article 30 paragraph (2) of the Advocates Law requires that "every member appointed based on this Law must be a member of an advocate organization". The organization plays a role and also functions as an instrument of professional communication, because the profession must be carried out freely and independently, therefore, to prevent misuse and to protect the community it serves (clients), supervision from the organization is needed.

The Advocates Organization experienced ups and downs from time to time, starting from the Dutch East Indies era, where at that time there was already an advocate profession, although in a very limited scope and community, namely among Dutch and other foreigners. One of the advocate organizations that existed at that time was Balie Van Advocaten which was founded by Mr. Sastromudjono, Mr. Iskak and Mr. Soenarjo. During the New Order, PERADIN was recognized as the only Indonesian advocate organization in 1966 by the government. This statement was considered a political statement in order to facilitate control over advocates at that time. However, the control carried out by the government was only camouflage because at the same time the government also began to encourage the birth of new advocate organizations in order to weaken PERADIN. These organizations are the Legal Aid Institute (LBH), Legal Aid Development (BBH), Legal Assistance and Service Center, and others.

History repeated itself on the initiative of Ali Sahid, as a judicial mentor at that time, an Indonesian advocate organization called the Indonesian Advocates Association (IKADIN) was successfully formed on October 10, 1985,

¹³ Ibid.

and this new organization was also intended as the only advocate organization for the advocate profession. However, the ruler's desire met with strong resistance from various groups, especially from practicing lawyers who could not be accommodated by the IKADIN organization.

On the other hand, with the difference in status between advocates and practicing lawyers, the difference in views on the leadership transformation system and mechanisms within the organization, the intervention of the authorities, to the desire of advocates to specialize their practice in certain legal aspects, have become factors that have accelerated the birth of new advocate organizations, which are respectively the Indonesian Legal Advisors Association established on May 9, 1987, the Indonesian Advocates Association (AAI) established on July 27, 1990, the Indonesian Lawyers' Certificate (HAPI), the Capital Market Legal Consultant Association (HKHPM), established on April 4, 1989, the Indonesian Legal Consultant Association (AKHI) and the Indonesian Sharia Lawyers Association (API).

During the Reformation, the existence of advocates as law enforcers began to be discussed and the idea emerged to equalize advocates with other law enforcers by encouraging the formation of the Advocate Law. The idea began with the formation phase of the Indonesian Advocate Working Committee. This committee was first established on February 11, 2002 by seven advocate organizations, namely:

1. Indonesian Advocates Association (IKADIN)
2. Indonesian Advocates Association (AAI)
3. Indonesian Legal Advisors Association (IPHI)
4. Indonesian Lawyers Union (SPI)
5. Association of Indonesian Advocates and Lawyers (HAPI)
6. Capital Market Legal Consultants Association (HKHPM)
7. Indonesian Legal Consultants Association (AKHI)

With the formation of the Indonesian Advocates Working Committee, the Indonesian Advocates Communication Forum (FKAI) merged into the KKAI, so that the FKAI no longer existed and the KKAI was the only professional organization forum for Indonesian advocates. There were two important things that the KKAI had to do at that time, namely: (1) Taking on the expertise of implementing the advocate exam and the Supreme Court, (2) Fighting for the birth of the advocate law.

After the two heavy tasks were carried out, the first KKAI was declared dissolved by forming a new KKAI, where the new KKAI consisted of eight advocate organizations, namely: Indonesian Advocates Association (IKADIN); Indonesian Advocates Association (AAI); Indonesian Legal Advisors Association (IPHI); Indonesian Lawyers Union (SPI); Indonesian Advocates and Lawyers Association (HAPI); Capital Market Legal Consultants Association (HKHPM); Indonesian Legal Consultants Association (AKHI); Indonesian Sharia Lawyers Association (APSI); The duties and authorities of the Advocate

organization as referred to in Article 32 paragraph 3 of Law Number 18 of 2003, include verifying Indonesian advocates, which began in December 2003, and others.

As mandated by Law No. 18 of 2003, the Advocate Organization agreed upon by all advocates at that time was the Indonesian Advocates Association (PERADI). This organization was first declared on December 21, 2004 and the Launching of PERADI and its management on April 17, 2005. At that time, PERADI had submitted a list of verified Indonesian advocate members to the Chief Justice and the Minister of Law and Human Rights as an embodiment of the provisions of Article 29 paragraph (2) and (3) of Law Number 18 of 2003.

Based on the Decree of the Indonesian Advocates Association No. KEP.03/PERADI/2005, the Indonesian Advocates Professional Education Commission (KP2AI) has been formed and ratified as the implementing body for special education for the advocate profession and further education. As stipulated in Article 3 paragraph (1) letter f of Law Number 18 of 2003.

In accordance with the advancement of science and technology, at least an Advocate Organization as big as PERADI must play a role in three main things, namely First as an agent of legal reform that can accommodate all global interests without eliminating local interests. Second, which is no less important, is as a law enforcer to realize justice and human rights. Third, in the role of this advocate organization, it can be concluded that if this role can be carried out consistently and consequently by advocates, then the welfare of the people that we dream of can be closer to reality.

If understood comprehensively, the Law on Advocates gives a mandate to Advocates to be able to form an Advocates organization which is the only forum that protects their free and independent profession, but in the formation of the Advocates organization in Indonesia, it turns out that it has caused a polemic regarding which Advocates organization is recognized by the law, as is known, the ongoing problem related to this is regarding the formation of the PERADI Advocates Organization and the KAI Advocates Organization, where PERADI states that its organization is the only advocate organization that is legally recognized by law, but this is disputed by KAI with one of the reasons being that the establishment of the PERADI Advocates Organization does not meet the applicable provisions.

b. Advokat di Indonesia

Article 1 paragraph (1) of Law No. 18 of 2003 concerning Advocates defines an advocate as a person whose profession is providing legal services both inside and outside the court, who meets the requirements based on the provisions of this Law. To be appointed as an advocate, the following requirements must be met: (a) citizen of the Republic of Indonesia, (b) domiciled in Indonesia, (c) not have the status of a civil servant or state official, (d) be at least 25 (twenty five) years old, (e) have a bachelor's degree

with a background in higher legal education as referred to in Article 2 paragraph (1), (f) pass an exam held by an advocate organization, (g) have an internship of at least 2 (two) years continuously at a lawyer's office, (h) have never been convicted of committing a crime punishable by imprisonment of 5 (five) years or more, (i) behave well, be honest, responsible, fair, and have high integrity. Before carrying out the profession of advocate, one must swear according to one's religion or make a solemn promise in an open session of the high court in one's legal domicile.¹⁴

The obligation to swear an oath to practice the profession of advocate in an open trial of the high court has implications for the inconsistency of the single organizational system (single bar system) mandated by the Advocates Law.¹⁵ This arises due to the existence of other authorities outside the advocate organization, namely the Supreme Court through the High Court in the legal domicile area of the prospective advocate as per the Supreme Court Letter No. 73/KMA/HK.01/IX/2015 dated September 25, 2015 which provides space for advocate organizations other than PERADI to propose the oath of prospective advocates in their respective legal domicile areas. In fact, the Constitutional Court in decision No. 35/PUU-XVI/2018 concerning the judicial review of the Advocate Law to the Constitutional Court is to review the constitutionality of the advocate law, guarantee the legal certainty of the advocate professional organization and encourage synergy in understanding the norms regulated in the Advocate Law. However, each advocate organization feels that it has legitimacy based on Article 28 paragraph (1) of the Advocate Law, so that the friction of conflict within the Advocate Professional organization continues to grow and until now the Advocate Organization in Indonesia has reached more than 10 advocate organizations.

This condition has deviated very far from the single bar system design, but in fact the current trend is towards implementing a multi bar system.¹⁶ Constitutional Court Decision No. 66/PUU-VIII/2010 states that: "the only professional body for Advocates as referred to in the Advocates Law is the only professional body for Advocates that has the authority to carry out special education for the Advocate profession (Article 2 paragraph (1)), testing of prospective advocates (Article 3 paragraph (1) letter f), appointing advocates (Article 2 paragraph (2)), creating a code of ethics (Article 26 paragraph (1)), forming an Honorary Council (Article 27 paragraph (1)), forming a Supervisory Commission (Article 13 paragraph (1)), carrying out supervision (Article 12

¹⁴ Undang-Undang No. 18 Tahun 2003 Tentang Advokat

¹⁵ Yolanda Veronika De La Bethionore, *Penerapan Single Bar Sistem Dalam Rancangan Undang-Undang Advokat Pasca Putusan Mahkamah Konstitusi*, Jurnal Equitable Universitas Muhammadiyah Riau Volume 8 No.2 2023

¹⁶ Hafizh Adi Firmansyah, *Problematisa Putusan MK Nomor 35/PUU-XVI/2018 Tentang Pengaturan Organisasi Advokat Terkait Kepastian Hukum Advokat Di Indonesia*, Jurnal Universitas Negeri Surabaya, <https://ejournal.unesa.ac.id/index.php/novum>

paragraph (1), and dismissing Advocates (Article 9 paragraph (1) of the Advocates Law".

Based on the legal considerations of the Constitutional Court, it is very clear that the existence of PERADI as a single organization of advocates has a constitutional basis. The legal policy of the Advocate organization in the Advocate Law is to form a single organization of advocates as the implementer of the eight authorities regulated in the Advocate Law.

The Constitutional Court Decision No. 66/PUU-VIII/2010 is also in line with the Constitutional Court Decision No. 35/PUU-XVI/2018 which emphasizes the single bar system in the governance of advocate organizations as a single forum. Ideally, every Constitutional Court decision must be upheld by every element of the State, citizens, community organizations, professional organizations, state institutions or all existing stakeholders. The current fact is that disobedience to the Constitutional Court decision is also disobedience to the constitution, the consequences are: First, if the Constitutional Court has issued a decision but is not complied with by the parties and institutions concerned, this will disrupt the principle of guaranteeing legal certainty, Second, the realization of constitutional justice will be delayed (constitutionalism justice delay).¹⁷

With that condition, what needs to be done is to establish political communication and consolidation within the advocate profession, so that the advocate profession can unite in upholding the constitution and the Advocate Law. Political communication outside the PERADI organization is also important to do in order to find a solution in upholding the constitution and the advocate law. The consolidation effort is a solution, so that the existence of PERADI as the holder of the mandate of the advocate law gets strong legitimacy among the advocate profession. If harmony within the advocate organization is realized, other institutions, such as the Supreme Court, will fully support the enforcement of the advocate law.¹⁸

c. Advokat di Malaysia

Advocates or Lawyers in Malaysia are known as Lawyers. The professional organization for lawyers in Malaysia is called the Malaysian Bar Organization. In Malaysia, the Lawyers' organization was established based on the Legal Profession Law of 1976, which requires all lawyers to automatically become members of the Malaysian Bar Association.¹⁹

Like other bar associations around the world, the bar in Malaysia has various functions including protecting the reputation of the legal profession,

¹⁷ Luhut M.P. Pangaribuan, *Single Bar : Standar Profesi Advokat Yang Tunggal* , Papas Sinar Sinanti, Jakarta, 2022, hlm. 185-205

¹⁸ Agus Riewanto, op.cit

¹⁹ [Badan Peguam Malaysia - Wikipedia Bahasa Melayu, ensiklopedia bebas](#) diakses pada tanggal 18 Februari 2024 pukul 21.00

upholding justice, expressing views on legislation and others. The management of the affairs of the bar is carried out by a council known as the Bar Council (Majlis Peguam), which consists of 38 (thirty eight) members elected annually to manage the affairs and carry out the functions of the Malaysian Bar. The council consists of the former President and Vice President of the Malaysian Bar, the Chairpersons of each of the 12 (twelve) State Bar Committees to represent them on the Bar Council, and 12 (twelve) members elected from all over Peninsular Malaysia through postal voting. Separate bodies regulate the legal profession in the states of Sabah and Sarawak. Their bar associations are known as the Sabah Law Society and the Sarawak Bar Association respectively.

The Malaysian Bar was established through the Advocates and Solicitors Act 1914 (FMS No. 22/1914) covering legal practitioners in the Federated Malay States. The first annual meeting of the Federated Malay States Bar was held in Kuala Lumpur, attended by representatives of the profession from Selangor and Perak. The elected Federal Bar Committee at that time were Messrs. A.N Kenion, Byrant, H.A. Hope, T.H.I. Rogers and A.P. Robinson.

The 1914 Law was replaced by the Advocates and Lawyers Law of 1940. Non-allied Malay states such as Johor have their own laws, namely the Johore Advocates and Lawyers Law. Lawyers in the Straits Countries of Malacca and Penang together with Singapore are protected by the Straits States Advocates and Lawyers Ordinance.

At the end of the Japanese Occupation, the Advocates and Solicitors Ordinance of 1947 replaced all laws covering the Unfederated and Federated Malay States and the Straits Settlements of Malacca and Penang. The 1947 Act can be called the starting point for the formation of the 1st Bar Council covering Malaya which was the first Bar Council elected and regulated and formed by Lawyers themselves. However, its role was very limited, namely:

1. Representing Lawyers in matters affecting the legal profession as a whole;
2. Create rules regarding professional practices and etiquette.
3. Check and report on applicable laws and regulations.
4. Handle the requirements for acceptance and entry into the profession.
5. Monitor standards and discipline among Bar members.

In 1976 there was a change in the rules regarding the legal profession. Initially the rules related to lawyers were regulated in the 1947 Act and then changed to the Legal Profession Act 1976 which regulates lawyers who are truly independent. The Bar Council represents Malaysian Lawyers in: a) The Qualification Board which decides the qualifications for admission to the Profession, b) The Disciplinary Board all advocates and solicitors are subject to the control of this board in all matters relating to discipline, c) the lawyers' fees committee which makes general orders regulating the remuneration of

advocates and solicitors in connection with business that does not give rise to disputes, d) the rules of procedure committee which is authorized to make regulations governing the procedure in court.²⁰

There are significant differences between Advocates and Advocates Organizations in Indonesia and Malaysia, the differences lie in the procedures for recruiting advocates and the governance of advocate organizations, including legal instruments that regulate Advocates and Advocates Organizations in Malaysia. With the governance of advocate organizations implemented by the Malaysian Bar, of course, advocates are bound to submit to and comply with the rules that have been set, in addition, the independence of the Professional Organization is not influenced by state power, except when recruiting lawyers involving government elements through the representation of the Leadership of Higher Education Institutions as required by the Law. After prospective advocates are declared to have passed, they automatically and are required to become members of the Bar with the provisions that have been made in the Legal Profession Act 1976.

IV. CONCLUSION

Comparison of regulations related to the Advocate Profession and Law Enforcement in Indonesia and Malaysia found that the regulations related to advocates and advocate organizations have been regulated in Law No. 8 of 1981 concerning the Criminal Procedure Code, Law No. 48 of 2009, Law No. 18 of 2003 concerning Advocates and Constitutional Court Decision Number 66/PUU-VIII/2010 dated June 27, 2011 and Constitutional Court Decision Number 35/PUU-XVII/2018. The comparative law doctrine can be used so that this method can improve the regulation of advocate organizations as law enforcers who provide certainty and justice to the community.

REFERENCE

- [Badan Peguam Malaysia - Wikipedia Bahasa Melayu, ensiklopedia bebas](#) di akses pada tanggal 18 Februari 2024
- De La Bethionore Veronika Yolanda, *Penerapan Single Bar Sistem Dalam Rancangan Undang-Undang Advokat Pasca Putusan Mahkamah Konstitusi*, Jurnal Equitable Universitas Muhammadiyah Riau Volume 8 No.2 2023
- Firmansyah Adi Hafizh, *Problematika Putusan MK Nomor 35/PUU-XVI/2018 Tentang Pengaturan Organisasi Advokat Terkait Kepastian Hukum Advokat Di Indonesia*, Jurnal Universitas Negeri Surabaya, <https://ejournal.unesa.ac.id/index.php/novum>

²⁰ [Badan Peguam Malaysia - Wikipedia Bahasa Melayu, ensiklopedia bebas](#) di akses pada tanggal 18 Februari 2024

Hertanto Wahyudi Ari, *Kantor Hukum : Pendirian dan Manajemennya (Teori dan Praktik)*, Sinar Grafika, Jakarta (2016)

Jurdi Fajlurrahman ; *Etika Profesi Hukum*, Kencana, Jakarta (2022)

Marzuki Suparman, *Etika & Kode Etik Profesi Hukum*, FH UII Press, Yogyakarta, (2017)

Pangaribuan Luhut M.P.; *Single Bar : Standar Profesi Advokat yang Tunggal*, Papas Sinar Sinanti, Jakarta (2022)

Pramono Agus, *Etika Profesi Advokat Sebagai Upaya Pengawasan Dalam Menjalankan Fungsi Advokat Sebagai Penegak Hukum*, Jurnal Ilmu Hukum Volume 12, 8 Januari (2016).

Putusan MK No. 66/PUU-VIII/2010

Putusan MK Nomor 35/PUU-XVI/2018

Riewanto Agus ; *Kepastian Hukum Single Bar System Organisasi Advokat di Indonesia (Eksaminasi Putusan MK RI No.35/PUU-XVII/2018 Dikaitkan dengan Surat Ketua MA RI No. 73/KMA/HK.01/IX/2019*, Oase Pustaka, Surakarta (2020)

Samuel Saut Martua Samosir, *Organisasi Advokat dan Urgensi Peran Pemerintah dalam Profesi Advokat Advocates Bar and the Urgency of the Government's Role in the Profession of Advocat*, Jurnal Konstitusi Volume 14 No.3 Spetember (2017)

Surat Ketua MA RI No. 73/KMA/HK.01/IX/2019

Undang-Undang No. 18 Tahun 2003 Tentang Advokat