

The Indonesian Advocates Association Country Report 2010

I. General Information about PERADI

Foundation of PERADI

The Indonesian Advocates Association (Perhimpunan Advokat Indonesia) or known as "PERADI" was formed on 21 December 2004 based on an agreement among the leaders of the seven previously existing bar associations and the new Indonesian Syariah Law Association (Asosiasi Pengacara Syariah Indonesia or "APSI"), following the enactment of the first Indonesian Advocates Law (i.e., Law Number 18 Year 2003 concerning Advocates). Shortly after its formation, PERADI was recognized as the only government-sanctioned group for advocates.

Membership of PERADI

Until now PERADI's members throughout Indonesia have exceeded over 22,000 advocates, let alone those who have obtained temporary license. There is only one type of membership issued by the organization (PERADI) and becoming a member is compulsory for every law graduate in order to get a practice license, thus enable him / her to practice as an advocate after passing certain requirements.

Advocates in Indonesia

In Indonesia, we use the term "advocate" for practicing lawyer and under Law No.18/2003 on Advocate, an advocate appointed by an advocate association such as PERADI is eligible to practice law in Indonesia. The Advocates Law defines "advocate" is a person with a profession to provide legal services, either inside or outside the court and has met the requirements set forth in this law (Article 1 paragraph 1 of the Law).

The Law stipulates that an advocate is prohibited from holding or possessing any other position or having any other profession that could cause a conflict of interest with the duties and dignity of his profession or position that may prejudice the advocate's profession, or interfere with or diminish his / her independence and freedom as an advocate in performing his / her duties and responsibilities. It is clearly stipulated in the Law on Advocate that if an advocate accepts a state office appointment or alike and becomes one, he / she must not go on practice and shall not be permitted to practice as an advocate until the time he / she resigns from such appointment.

Code Ethics of Advocate

Pursuant to the Law on Advocate, duties, rights, and privileges of an advocate are set out in the Code of Ethics of Indonesian Advocates and shall be applicable to advocates admitted under the Law.

This Code of Ethics is the ultimate governing rule for a lawyer to uphold in performing legal profession. The Code sets out, among others, the minimum standard of conduct that Indonesian Advocates should seek to observe. This Code imposes obligation on every advocate to act sensibly, responsibly and in proper manner in performing his / her legal profession towards clients, the court, the state, the society, and, of course toward himself / herself.

Indonesian advocates have serious ethical and legal obligations to their clients. The Code specifically governs the advocate's duties to his/her client, which include:

- a. Do not provide misleading information to a client in respect of the case.
- b. Do not guarantee a client for successful outcome.
- c. Do not burden a client with unnecessary expenses and costs.
- d. Must not Refuse to handle a case that lack of legal ground;
- e. Maintaining the confidentiality of all matters informed to him by his client and such confidentiality must be maintained at all times even after advocate-client relationship comes to an end.
- f. Not withdrawing from a case at a time that is inopportune for the client, or when such withdrawal could bring irreparable loss or prejudice against the client.
- g. Not representing a client there is a "conflict of interest". A "conflict of interest" can occur if the lawyer's personal interests, another client's interests, or former client's interests conflict with client's interests.

The Code of Ethics also governs relationship among lawyers. Pursuant to the Code of Ethics, a lawyer shall not be permitted to entice or "poach" clients away from another lawyer. Should a client wishes to change his / her legal representative, then his / her new lawyer may only accept the case after receiving proof that the proxy which was granted to the original lawyer is withdrawn. The new lawyer must also remind the client that the client must fulfill his / her obligations to the original lawyer. Should a case be transferred by a client to a new lawyer, then the original lawyer must furnish all material documents and information pertaining to the case to the new lawyer subject to the right of retention of the lawyer in respect of his client.

Supervision

Advocates are supervised by the Honorary Council as stipulated in article 9 codes of ethics. Advocates are also supervised by the government, which is Minister of Law and Human Rights and the Supreme Court of the Republic of Indonesia, based on Joint Statement Letter of Head of the Supreme Court and Minister of Justice No.KMA/005/SKKB/VII/1987.

Advocates' Rights

In the court, an advocate has the freedom to express his / her views and to perform his / her legal service in defending cases one is responsible for. A suit can not be filed against an advocate either civil or criminal suits, when and during performing his / her professional duties in good faith for the purpose of defending a client in the court.

An Advocate shall have the right to acquire information, data, and other documents, either from government institutions or from other parties to defend their client in accordance with the law.

An Advocate has the right to keep the relationship with a client confidential, in term of protecting the rights and interest of his / her client including protection of the files and documents from seizure or inspection and protection against tapping of any communications by any means.

Advocate' s Privilege

Under the Law, an advocate is obliged to maintain the confidentiality of all matters that come to his / her knowledge or any information given by a client based on their professional relationship, save where otherwise provided for by law.

Article 19 of the Law specifically states that:

"(1) Every Advocate shall maintain the confidentiality of all matters that come to his/her knowledge or which are informed to him/her by his/her Client based on his/her professional relationship, save where otherwise provided by this Law"

(2) "An Advocate has the right to keep confidential anything pertaining to his/her relation with his/her client, including the protection of his/her files or documents from confiscation, investigation and from taping of the Advocate's electronic communication".

It is clear that under the Law an advocate has a privilege not to disclose confidential communications made between or information obtained from his/her client. It is important to note that the Law protects the confidentiality of not only communications made between a client and an advocate but also

any information (including non-written information) pertaining to his/her relation with the client that is obtained by the advocate for the purpose of providing legal assistance or services to the client.

Under the applicable Code of Ethics, the advocate's duty to maintain the confidentiality must continue until after the advocate-client relationship comes to an end.

Advocate's Liability

A breach of engagement agreement or violation of a statutory provisions or ethical rules may be used to establish the advocate's liability.

PERADI statistics indicate that the number of legal malpractice or misconduct complaints made by clients against their lawyers to the Disciplinary Council of PERADI is increasing. Possible reasons for this include better educated clients and higher client expectations. Most of the misconducts that have been reported to the bar association includes:

- Representing one client which causes disadvantage to another client (such as representing another defendant in the same lawsuit)
- Being untruthful to a client about important information in respect to the case;
- Settling client's case for less than it was worth without first obtaining client's approval;
- Inappropriately using money belonging to a client.

Recognition by the Government and Court

After a long court battle, The Constitutional Court in 2006 rejected a judicial review of the law on Advocate and upheld PERADI's status as an organization for Indonesian lawyers. As written in the Consideration of the Decision of The Court, "Whereas Article 28 Paragraph (1) of the Law on Advocate refers to a single bar organization, but from the fact in the hearing according to statements of PERADI and eight organizations holding temporary duty before the establishment of advocate organizations concerned (vide Article 32 Paragraph (3) and (4) of the Law on Advocate) namely IKADIN, AAI, IPHI, SPI, HAPI, AKHI, HKHPM, and APSI, these eight organizations as the founders of PERADI still exist but their authorities as organizations of advocate profession, in making code of ethics, reviewing, monitoring, and removing advocates (vide Article 2 Paragraph (2), Article 12 Paragraph (1), Article 9 Paragraph (1) the Law on Advocate) have been officially declared as to become the authorities of PERADI. The eight advocate organizations founding PERADI still have authorities other than that of PERADI, hence Article 28 Paragraph (1) of the Law on Advocate cannot remove the existence of the eight organizations, and violate the principle of freedom of association

and assembly as regulated by the 1945 Constitution (vide Decision of The Court Number 019/PUU-1/2003)."

Advocate as Officer of the Court

The Law on Advocate regards that an advocate is an officer of the court in the administration of justice. The Law on Advocate specifically states that advocate's independence and autonomy shall be guaranteed by the law. Because of the critical role of advocates in the Indonesian legal and judicial system, the Law on Advocate grants immunity to advocates.

Although Indonesian advocates possess immunity in theory, but practically speaking, such immunity has not been really honored by other law officers. In Indonesia, an advocate must not only represent his/her client zealously and within ethical guidelines, but must also take care to protect against potential claims.

II. Attorney System in Indonesia

Requirements for an advocate

The requirements to be appointed Advocate based on article 3 of Advocates Law No 18 of 2003, which is as follows:

1. Indonesian Citizen;
2. Residing in Indonesia;
3. Is not as civil servant/ government officials;
4. Aged at least 25 (twenty five) years;
5. Undergraduate with legal high education background;
6. Has passed the examination held by PERADI;
7. Has finished internships for at least 2 years consecutively on Advocates' Office;
8. Has never been penalized due to a criminal acts threatened with an imprisonment for 5 (five) years or more;
9. Has a good conduct, honest, responsible, fair, and high integrity.

Admission Procedure of PERADI's membership

Under the Law No. 18/ 2003, it is required that for someone who wants to be an advocate and obtain a license must follow these steps:

1. Attend Special Education for Advocate Profession ("PKPA");
2. After PKPA, must pass the Advocate Profession Examination;
3. Work as internship for 2 years in a law firm is a compulsory;
4. When the candidate has been intern through a period for 2 years, then will be appointed Advocate at the induction by PERADI.

5. After appointed, an advocate will obtain Advocate Identity card ("KTPA") and this card must be renewed every 3 years.

Foreign Advocates Practicing in Indonesia

The regulation regarding certification of foreign advocates is stipulated under Article 23 of the Law on Advocate. In this article there are several issues, which clearly need to be underlined.

- Foreign advocates are not allowed to appear before any court. Neither are they allowed to practice law and/or set up law firms or branches of their overseas law firms in Indonesia.
- Foreign advocates are only allowed to work in Indonesia if they are employed by a local advocate/law firm as an employee or an expert in foreign laws of their home country. This means that the foreign advocates can only be involved in issues relating to foreign law other than Indonesian law and they are prohibited from rendering legal advice relating to Indonesian law.
- Foreign advocates working in Indonesia have to be hired by an Indonesian firm and have to obtain a working visa from the Indonesian government. A recommendation from PERADI is required.

III. Main Activities of PERADI

Advocates Certification

PERADI has:

- a. Organized PKPA throughout the country;
- b. Organized Examination for Advocate Profession;
- c. Published provision concerning 2 (two) years internships for candidates and advocates office in relation to internship;
- d. Issued practicing license for those who have passed all the requirements;
- e. Provide recommendations for Foreign Advocate working in Indonesian Law firm.

Enforcement Code of Ethics

The Honorary Council or also known as the Disciplinary Committee which has been formed and part of PERADI is an independent body whose task is to examine and evaluate the performance of ethical conduct of an advocate This board reports to the national congress which is the highest authority in PERADI.

Organization

PERADI's activities in organization are:

- a. Continuing in updating and verifying PERADI members;
- b. Establishing branches of PERADI across the country. Until now have been formed 37 branches of PERADI that will help run the program of the National Council of Leaders ("DPN"), decisions and policy making;
- c. Employing Staff to run day-to-day activity at the Secretariat of PERADI.

Advocate training

In addition, in order to maintain as well as to develop the quality of Indonesia advocates, PERADI as bar association also conducted a program called continuing legal education ("CLE") to maintain the quality of its members, especially their legal skill. Several CLE activities already conducted by PERADI for its members, as example: the management law firm training, training of procedural law in the Constitutional Court, etc.

Legal Aid

PERADI has recently formed a new department called Legal Aid Centre in the organization to equip its mission to help those who seek for legal assistance. Although it is new, but the activities have been long implemented.

International

With the number of members of approximately 21,039, PERADI also has built a network with foreign advocates in various countries. PERADI existence and recognition can be seen in the International Bar Association ("IBA"), The Law Association for Asia and the Pacific ("LAWASIA") as well as the President of Law Association in Asia ("POLA").

Cooperation

Secretariat of PERADI :

PERHIMPUNAN ADVOKAT INDONESIA (PERADI) /
Indonesia Advocates Association

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The History of the Independence of The Legal Profession In Indonesia:

1. In the Colonial era, the role of Advocate were regulated discriminately between Dutch and European people and indigenous Indonesians. An advocate practicing for Dutch and European people was called *Advocaat en procureur* having a qualification for law degree (*Meester in de Rechten*) whereas Advocate for indigenous Indonesians was called *Pokrol Bambu*, only a legal practitioner without Law degree qualification.
2. This was still implemented after the Independence of Indonesia, even though many of Advocate coming from rich indigenous Indonesians and Chinese born Indonesians had realized the need for a qualified advocate for protecting and defending all the law seekers at the time.
3. In 1964, the first national Advocate Association, called PERADIN was established. This Organisation has brought a big role in forcing the government to recognize and appreciate the role of Advocate in Indonesia. But, this association could not stand for long time. Being worsen by the bad reputation of the courts, inconsistency of legal professions and including the intervention of the power, advocates lost a big trust from society, and with many reasons advocate were broken into many associations that made the vision of truth and justice becomes harder to bring to realize.

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4. In one side, the government gave more recognition to the advocate profession, but in another side, the government did not want the advocate stand out of its political frame of legal enforcement.

For example:

Article 36 of the Law no. 14 of 1985 regarding the Supreme Court ("The Supreme Court Law")

"Supreme Court and the government have a supervisory right to Advocate and Notary."

Even though in its elucidation it is among others stated that:

" in doing its supervisory duty the Supreme court and the government shall respect and keep the independency of the Advocate and Notary in doing their job. In the case of the of the Advocate or notary is punished in the form of termination its license, including temporary termination, the Advocate Association where the advocate registered as a member will be first heard."

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Article 54 of the Law no. 2 of 1986 regarding the General Court explains how the above article was implemented:

" (1). The Chairman of the District Court monitors the role of Advocate ... within its area and report his supervisory result to the Chairman of the Supreme Court and the Minister of Law.

(2). Based on the report, the Minister can give a punishment to the Advocate....after first hear to the advice of the Supreme Court and Advocate Association where the Advocate becomes a member.

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The Control of the Court and government to the Advocate Profession showed the fact that fate of the advocate are legally and politically decided by the Court and government. This causes a bad impact to the Advocate Profession:

1. In protecting their license, in practice, many advocates chose to be pragmatically nice the court or the government even though they found breaching of the law conducted by the Court or by the government.
2. Advocate becomes a stranger among the Judges, Police and Prosecutors as they believe that they are the Legal Enforcer of the government.
3. Many Lawyers enjoyed this situation, and event becomes part of the conspiracy of breaching the law (more to be known as "*Mafia peradilan*" (Mafia of the Court)) by providing an excuse that it is very difficult or even impossible to fight for the legal right of the client without becoming part of the bad legal practice.
4. On the other side, Advocate also enjoys playing the games of the uncertainty of the law.

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Bad advocate is very dangerous for the transparency and certainty of the law, since this advocate profession often to be part of the whole legal process, from the beginning to the end.

For example:

In Civil Case: The same lawyer can represent and defense its client in the district court level, High Court Level, Cassation in the Supreme Court level and Civil Review in the Supreme Court Level.

In criminal case: The same lawyer can represent and defense its client from the time the client is investigated by the police, when the client or the case in the hand of the prosecutor, in the District Court Level, in the High court level, in the Supreme Court level for Cassation and Civil Review.

This fact can open the possibility for the bad lawyer to start conspiring with all other law enforcer to create a win even though having to jeopardize or even betray the truth and the justice.

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The problem that may happen in Advocate's relationship with other Legal enforcers, Judges, Police and prosecutors:

With a Judge :

1. The ignorance of time frame in deciding the case
2. compromise the decision for money (could be initiated by the advocate or by a judge)
3. under estimate or does not respect the existence of an Advocate
4. Impartial
5. un-discipline and Arrogant
6. Bad legal consideration

With the Police:

1. Reject or underestimating the existence of an advocate, especially in the examination step.
2. complicating the Investigation process

3. not responsive in following up of the report
5. Threat the advocate as disturbing or not cooperative to the Police investigation
6. Misuse of Legal force
7. Collusion for money (could be initiated by an advocate or by a police)

With a attorney/prosecutor:

1. Under estimate the existence of an advocate
2. Influence the client to not using the Advocate or change to its recommended advocate.
3. complicating the procedure
4. Misuse the legal force
5. Collusion for money

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The Rights of Advocate in the Indonesian judiciary system:

1. The right to accompany the client in the step of examination and investigation.
2. The right to defense the client before the court
3. The freedom and protection in doing its job.
4. The right to get and information and the judiciary administration service relating to the handling of the case
5. The right to monitor and watch the judiciary process and the attitude of the other law enforcers.
6. The right to represent the client in execution of the court decision
7. The right for confidentiality

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The Obligations of Advocate in the Indonesian judiciary system

1. The obligation for having law qualification
2. The obligation to respect the institution and the process of the court
3. The obligation to know and obey the Law of Procedure
4. The obligation to support amicable settlement as possible
5. The obligation to respect confidentiality

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The Independence of Legal Profession is a Fundamental Evidence that an Advocate Must Prove to Exist to Make Sure that the Advocate has done its Professional Role in Representing Public Interest and Playing Important Control in the straighten of the law, Justice and the Truth:

1. The Law no. 18 of the year 2003 regarding Advocate (the Advocate Law) has prepared a very strong legal ground for the independence of legal profession in Indonesia.
 - Advocate is a recognized law enforcer similar with the other law enforcer, namely: Police, Prosecutors and Judges.
 - Confirm the free and independence of the Advocate profession.
 - Confirm the protection of Advocate in doing its duty
2. PERADI as the Single Bar Association that was established due to the implementation of the Advocate Law to be the integral part of the government in pursuing the realization of transparency and certainty of the law and justice in Indonesia.
 - The control of Advocate is not in the hand of the Court anymore, but in the hand of PERADI.
 - Single Code of Etics of Advocate is the highest law (regulation) of the Advocate in doing its profession.

Important Articles of the Advocate Law in confirming the status of Advocate as a free and Independent Legal Profession.

a. Article 5 paragraph (1) of the Advocate law:

“ Advocate has a status as a legal enforcer, free and independent as guaranteed by the law and regulation.”

Article 8 of code of ethics of Advocate:

“ Profession advocate is excellency profession and is respectable (nobile officium) and hence in running its profession as law enforcer in parallel justice with attorney/prosecutor and judge, which is executing its profession is under ageis of law, this ethics Code and law.”

b. Article 14 of the Advocate Law:

“Advocate is free to provide its argument and statement in defending its client if the court holding firmly to code of ethics and regulations”.

Article 16 of the advocate Law:

“Advocate cannot be sued either through civil lawsuit or criminal lawsuit in doing its duty of its professions which is conducted with a good faith for defending its client before the hearing in the court.”

Article 17 of the Advocate Law:

“in conducting its duty, an advocate is entitled to get information, data, and other document, either from the government institution or from other party that has a relationship to the case in defending its client in accordance with the regulation.”

Article 19 of the Advocate Law:

Paragraph (1):

“Advocate is obliged to keep secret all information he gets from his client because of legal profession relationship, except stated differently by the law.”

Paragraph (2) :

Advocate has a right for his secret relationship with his client, including the protection of the documents and other evidence from a confiscation and investigation, protection from interception against the electronic communication of the advocate.”

c. Article 9 of the Advocate Law:

“Advocate can be dismissed from its profession by the Advocate organization”

Article 12 of the Advocate Law:

“The supervisory of the advocate is conducted by the Advocate association”

-THANK YOU -