

The Implementation of Code of Ethics of Advocate as A Profession in Indonesia

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According to Indonesian law, advocate is one of the law enforcers. This means that advocate is one of the elements that uphold the rule of law and human rights. As a professionals, advocates have a set of code of ethics that must be upheld and applied in carrying out their professional duties. In Indonesia, the attitudes, roles and functions of the advocates are stipulated by the code of ethics of Advocate of Indonesia and the Law on Advocates. Nevertheless, there are still many advocates in Indonesia whose behaviour has not yet reflected their professionalism as those with honourable profession. There are some cases showing deviation of the code of ethics of the advocate in Indonesia such as the incompetence in handling a case, negligence of client by advocate, conflict of interest, requesting payment that exceeds the agreement and fight between advocates over client. However, based on the provisions of Article 16 of the Law on Advocate, a client shall not indemnify or ask for compensation from an advocate.

INTRODUCTION

Indonesia still has legal and justice issues that include: the existing law that still refers to the Dutch colonial ideology; overlapping laws; the difficulties for public to access the judicial system; financial burden of bureaucracy; the fact that some law enforcers are committing corruption; and the lack of legal awareness in the society. In order to solve the legal issues, it requires a democratic consolidation supported by a positive legal regulation that fully adopts the principles of equality before the law. Furthermore, it requires equitable legal quality improvement that is relevant to the development and needs of social, cultural, political and economic development dynamics.¹

Support from professional and integrated human resource management is critical in improving the quality of law. To create professional and integrated human resources, it is necessary to develop

conducive legal culture; improvement integration of moral and professionalism of law enforcers; the implementation of the judicial process timely, economically and openly as well as free of corruption, collusion and nepotism while upholding the principles of justice and truth.

The aforementioned law enforcers include judge, prosecutor, police officer and advocate. Advocates, as one of the law enforcers, are required to improve their professionalism and integrity in providing legal assistance to justice seekers. Advocates, as a professional, have a normative standard in carrying out their profession both norms of professional ethics as well as legal norms.

As in Indonesia, the quality improvement of law enforcement personnel in the European Union, especially advocates, is in continual process as mentioned by Camille Chaserant and Sophie Harnay that:²

“During the last decade, the DG Competition of the European Commission (EC) has promoted the “need to modernise the professions in Europe” within Member States, including lawyers’ services. Such modernisation of legal services involves enhancing competition in this market “usually characterised by a high level of regulation.”

Advocate is an honourable profession (*officium nobile*), because it is not merely a profession for a living, but also for enforcing the law for those who seek justice. According to Indonesian law (Law No. 18 of 2003 on Advocates), advocate is one of the law enforcers. This means that advocate is one of the elements that uphold the rule of law and human rights considering the honour of advocate as a profession, the advocates, then, shall keep their good conduct and dignity. In Indonesia, attitude, roles and functions of advocates have been stipulated in the Indonesian Advocate Code of Ethics and the Law No. 18 of 2003 on Advocates. This Law regulates status, rights and obligations, appointment, supervision, enforcement and dismissal of advocates. In addition, it provides guidelines and prohibitions for advocates in providing legal services to clients.

The enactment of this Law on Advocate also eliminates the difference in the use of terminologies in advocate profession. Prior to the Law on Advocate, the term that was widely used is ‘Legal Counsel’. Subsequently, the Criminal Code used the term of ‘Lawyers in Practice’. The Department of Justice in 1984 used the terms ‘Lawyers’. Meanwhile, at that time, the Court of Appeal and the Supreme Court uses the term ‘Lawyers in Practice’ and ‘Advocate’.

As a professionals, advocates have a set of code of ethics that must be upheld and applied in carrying out their professional duties. The code of ethics are the obligations attached to an advocate in carrying out his/her duty. The Code of Ethics stipulates the personality of an advocate, relationship between an advocate with a Client, relationship between advocates as well as standard operating procedure in handling a case, including those who are all bound to the Code of Ethics.³

Advocate is an independent profession that is free from the pressure of any party because the duty of the advocate is solely to defend the interest of the clients, who are justice seekers. The position of advocate is explained by Tefan Naubauer as:⁵

“But it is instead to emphasize that an essential feature of the lawyer profession is that it is a liberal profession, in a sense that it depends on an order, by a professional body, his remuneration in nature not having a commercial character. Moreover, the Constitutional Court itself considered fundamental principle that the lawyer profession is a liberal and independent profession.”

Besides, in carrying out their professional duties, advocates are demanded to have expertise in law and skills in handling cases to guarantee the rights of justice seekers. In practice, the legal skills and expertise of an advocate put him/her to in a higher position than the client. This leads the client to be in an inferior position in the client-advocate relationship. In other words, clients with no legal skills and expertise will find it relatively difficult to control and assess whether the advocate has done well in accordance with his/her professional code of ethics or not. This inferiority of the clients are often misused by some advocates.

LITERATURE REVIEW

In the context of philosophy, the discussion of moral teaching is strongly related to ethics. Nevertheless, moral and ethics are considered to be in two different levels. Ethics, as known as moral

philosophy, is part of a philosophy that discusses the goodness and badness in a normative way. Ethics discusses moral predicates such as goodness, badness, virtues, and evil.⁵ Franz Magnis-Suseno explains the differences of ethics and moral (teachings). Ethics is the fundamental and critical thinking of moral teachings and perspectives. Meanwhile, moral teachings are teachings, provisions, clues, and stipulations on how to live as a good human being. Thus, when moral teachings contain command to follow and implement certain teachings, then, ethics tries to understand why human beings should follow certain teachings. Therefore, ethics contains disadvantages in a way that it does not have the authorisation to command, but, it also contains the advantages because it makes people understand why they must follow the command of certain teachings.⁶

According to *Kamus Besar Bahasa Indonesia* (Official dictionary for Indonesian language), ethics is the science of what is good and bad as well as about moral rights and obligations.⁷ The term 'ethics' in Indonesian is also commonly called *susila* or *kesusilaan* (decency/morality) derived from Sanskrit of *su* (beautiful) and *sila* (conduct/attitude).⁸

One of the demands in the current Indonesian reformation era is reformation in the field of law toward the realisation of the supremacy of the legal system. The aspiration is to realise a legal system that is under a constitutional system that serves as an effective basis in organizing the state that percolates in daily life. Several efforts need to be implemented to realise an effective legal system, namely, reorganisation of legal institutions supported by high quality of human resources, culture and legal awareness of the community. This needs also strengthened by reformation of laws that are harmoniously structured and constantly being updated to meet the demands of people's needs.⁹

Provisions on advocates are contained in Law No. 18 of 2003 on Advocates and code of ethics Indonesian advocates includes the personality and behaviour of advocates, the pattern of advocate-client and advocate-advocate relationships. Based on the provisions stipulated in the code of ethics of Indonesian advocates, Indonesian advocates shall be 1) pious, 2) noble, 3) honest in defending justice and truth based on high, noble and sublime morals, and 4) committed to always uphold the law (the 1945 Constitution, the legislation, code of ethics of advocates and official oath) in carrying out their duty. Both in theory and practice, advocates should be independent and impartial in carrying out their duties and are obliged to fight for human rights in the country. Advocates are obligated to provide assistance and legal advocacy to other advocates who are alleged or indicted in a criminal case at their request or the appointment of the advocate professional organisation. Advocates are not allowed to do any other work that may harm the freedom and dignity of the advocate. Advocates must always uphold the profession as respectable (*officium nobile*). Advocates, in carrying out their mandate, should respect all parties while still keeping the rights and dignity of advocates. An advocate who is appointed to a position of state (Executive, Legislative or Judicative) shall not be allowed to practice his/her duty as an advocate. In addition, his/her name shall not be used by any person or by any office in a proceeding case during his tenure (in the state).

The ethical conduct for advocate-client relationship is stipulated in the Code of Ethics of Indonesian Advocate that includes:

1. Advocates, in civil cases, should prioritise peaceful settlement;
2. Advocates are not justified to provide information that may mislead clients about the matter being dealt with;
3. Advocates are not allowed to assure their client that they will win the case;
4. Advocates shall consider the client's (financial) ability in determining the amount of their service honorarium;
5. Advocates are not justified to burden the client with unnecessary costs.
6. Advocates, in settling pro bono case, shall pay the same attention as to the case for which they receive the fees;
7. Advocates must refuse to take cases which, according to his conviction, have no legal basis;
8. Advocates shall be confidential on matters which the client notifies by trust and shall keep it despite the advocates-clients relation has come to an end;

9. Advocates shall not relinquish any duty imposed upon them at a time which is unfavourable to the client's position or at the time of that assignment would cause irreversible damage to the client;
10. Advocates who take care of mutual interests of two or more parties shall withdraw fully from the position in the event when a conflict of interest arises between the parties; and
11. Advocates' right of retention to the client is recognized to the extent that no harm will result in the client's interest.

The ethical conduct for advocate-advocate relationship is also stipulated in the Code of Ethics of Indonesian Advocate that includes:

1. The relationship between advocates must be based on mutual respect and trust;
2. In the court, advocates shall not use swear and abusive words either in written or spoken when arguing with or talking about other advocates;
3. Objections against other advocates' actions that are considered contrary to the code of ethics shall be filed to the Honorary Council for review and shall not be broadcasted through mass media or other means;
4. Advocates are not allowed to take a client from other advocates;
5. If the client wishes to change the advocate, then the new advocate can only take the case after receiving evidence of withdrawal of authorisation from the previous advocate and shall be obliged to remind the client to fulfil his/her obligations, if it still exists, to the previous advocate; and
6. If a case is then handed over by the client to a new advocate, the previous advocate shall provide him/her with all necessary letters and statements to settle the case, with due regard to the advocate's right of retention to the client.

A person is said to be legally responsible for a particular legal action if that the person may be subject to a punishment in that case. According to a traditional theory, there are two types of responsibility that are differentiated based on fault and absolute responsibility.¹⁰

Advocates, as law enforcers, while performing their professional responsibilities i.e., to provide legal services to justice seekers is not merely work for a living, instead, there is idealism and morality that are highly valued. Advocate is known to be a noble profession (*officium nobile*), because advocate is granted a mandate to defend all people regardless of race, colour, religion, culture, social-economic background, political beliefs, gender and ideology. Advocates, in handling cases, must genuinely defend the interests of the clients and public. The existence of advocates is urgently required by all people facing legal issues.¹¹

Advocate as a professional has a code of ethics that must be upheld and applied in carrying out its professional duties. The code of ethics generally provides guidance for advocates in performing mandate of the profession, particularly concerning the relationship between client and advocate; the standards of assessment and evaluation implemented in the profession; professional research and publications; consultation and personal practice; general competence; personnel administration as well as standards for training. The main objectives of the formulation of standards into a set of code of ethics of profession are as follows.¹²

1. Ethical standards that clarify and assign responsibilities towards clients, institutions and society at large.
2. Ethical standards help professionals in deciding what to do in the face of a dilemma in their work.
3. Ethical standards give a profession a reputation.
4. Ethical standards reflect the moral expectation of the community, thus, members of the profession abide by the code of ethics of their profession.

5. Ethical standards are the basis for maintaining the behaviour and integrity or honesty of professional experts.

Professional standards are the limits of a competence (knowledge, skill, and professional attitude) required as a prerequisite that must be fulfilled by an individual to be able to independently perform professional activities within a society set by professional organisations. The standards set by professional qualification standards does not always have to be physical actions, but also psychological, usually accommodated in a professional code of ethics.¹³

THE IMPLEMENTATION OF CODE OF ETHICS OF ADVOCATE

In practice, the code of ethics of the advocate has not been fully implemented by the advocates in performing their professional duties. Some cases of violations of the code of ethics can be seen in several cases, namely, the case reported to the advocate's Honorary Council. The accusations varied for not acting in a professional manner; providing improper and inappropriate legal advice that does not conform with the provisions of the law in Indonesia; and disrupting familial relationship of husband, wife and children; lying to the client regarding facts and actual legal events; and using the services of thugs to carry out their work that violates Article 14 Paragraph 3 Clause 5. Those advocates are proven not to carry out their professional duties honestly, fairly and responsibly. In addition, they do not comply with the law and justice system to maintain the conduct and perform the obligations according to honour, dignity and responsibility as an advocate. Those advocates were proven to violate Article 2 of the Code of Ethics of Indonesian Advocate on the Personality of Indonesian Advocates. Furthermore, the Panel of Judges in the Honorary Council of Advocates with Decision No. 154/DKD/PERADI/DKI-Jakarta/PTS/IX/15 dated 18 September 2015, convicted the advocate with permanent discharge from his/her profession as an advocate and sentenced Ida Bagus Wikantara to pay a fine of 3,500,000 - (three million and five hundred thousand rupiah).¹⁴

Furthermore, there is a case involving a senior advocate who was permanently dismissed by the Honorary Council of Indonesian Advocate Association for Jakarta Region through the decision No. 11/DKP/Peradi/IV/2012 case No. 44GPERADI DK-JATIM/2013 dated on 3 May 2016. The Indonesian Advocate Association dismissed the advocate because he/she is considered not performing his/her duties as a good advocate or violating the code of ethics when handling cases of abuse in the Police Base for Surabaya. The Advocate is proven to violate the Article 6 Letter A of Law No. 18 of 2003 on Advocate as well as the oath and promise of advocate and code of ethics of advocate profession pursuant to Article 6 letter F. In addition, the advocate also violated the double position ban which is contrary to the Article 3 Clause 1 Letter 9 Law No. 18 of 2003 on Advocates in conjunction with Article 3 Letter g of Law No. 2 of 2014 on the Amendment of Law No. 30 of 2004 on the Profession of Notary. The Advocate Association also order that the advocate return the advocate identity card issued by the Secretary of the Indonesian Advocate Association Honorary Council of East Java. The advocate was initially caught in a fraud case stemming from a legal issue filed by a client on charges of maltreatment, assault and malicious damage. The advocate admitted that he/she could stop the case and ask for hundreds of millions as payment to bribe the police. However, once the money was transferred, which amounted to 165,000,000, - (one hundred and sixty-five million rupiah), the client was actually made a suspect by the Police Base for Surabaya. The advocate was eventually reported to the police for fraud. On 2 September 2015, the District Court of Surabaya decided that the advocate was found guilty of fraud and sentenced him/her to 6 months of imprisonment. Subsequently, on 20 January 2016, the High Court Judge of Surabaya sentenced the advocate to more than 2 years of imprisonment.¹⁵

Furthermore, there was also a case involving advocate that resulted in permanent dismissal from the Indonesian Advocate Association for Jakarta Region on 21 March 2014 for violating the advocate oath as set forth in Article 4 Clause 2 in conjunction with Article 6 Letter a and f of Law No. 18 of 2003 on Advocates and Article 4 Letter b, c, d and e of the Code of Ethics of Indonesian Advocate. The Honorary Council of the Advocate decided that the punishment was to permanently dismiss the advocate from the

advocate profession not to practice profession either inside or outside the court. In addition, the Council also sentenced Joko Sriwidodo to pay a fine of 3,500,000, - (three million and five hundred thousand rupiah). The advocate is considered not performing his duties as a good advocate or violating the code of ethics as an advocate when accompanying his client in a bribery case related to the corruption case for Social Aids in Bandung. The advocate was said to have abandoned his client, such as not making a defence plea. He even did not appear when his client, Setyabudi, was examined. He rarely presented in court, even though the advocate has set a high price for his service.¹⁶

In addition, there was also a violation of the code of ethics of the advocates occurred in 2008. Several advocates allegedly violated Article 5 Letter c, Article 5 Letter a and Article 3 Letter d of the code of ethics of the Indonesian advocates in conjunction with Article 6 of the Law No. 18 of 2003 on Advocates in conjunction with Article 2, Article 9 Letter a of the code of ethics of the advocates in conjunction with Article 26 Clause 2 of Law No. 18 of 2003 on Advocates. The Advocates were alleged to complain about other advocates not in the Honorary Council, but through another forum. The aforementioned case relates to a case in the Commercial Court of Jakarta. Babbington Developments Ltd. submitted a request for cancellation of a peace agreement between Polysindo Eka Perkasa Ltd. and its creditors. This peace agreement was a follow-up to the Supreme Court decision stating Polysindo was bankrupt. The Jakarta Commercial Court finally rejected the request for the cancellation of the peace treaty, which was later indicted by Babbington Developments Ltd. In court proceedings at the Commercial Court, Polysindo was informed that Babington's existence in Hong Kong was a falsehood. Then, this dispute moved into the criminal case. Polysindo, through their advocate, reported another advocate to the police for allegedly filing evidence of false documents.¹⁷

The Decision of the Honorary Council No. 11/DKP/Peradi/IX/08 stated that the assembly shall impose punishments in the form of written warning or a strong warning to Appeler I. Meanwhile, the Appeler II, III, IV and V shall be subject to spoken warning or as a mild warning. On an equal footing, the Appelers were also required to pay a total case fee of 7,000,000, - (seven million rupiah). The Decision of the Honorary Council No. 11/DKP/Peradi/IX/08 was not unanimous. There were dissenting arguments among the members of the assembly related to the sanctions imposed. Some of the dissenting opinions stated that the alleged advocates had committed criminalisation against advocate profession. Such actions were deemed harmful to the advocate profession and brought the advocate community into a vulnerable state. Therefore, the punishments that were supposed to be granted was a four-month temporary termination for Appeler I. Meanwhile, the Appeler II, III, IV and V, were temporarily suspended for three months.¹⁸

Furthermore, there was a case involving a senior advocate who was reported to the Honorary Council of Indonesian Advocate Association for Jakarta by another advocate of Sugar Group Company (SGC) for conflict of interest. The Honorary Council of Indonesian Advocate Association for Jakarta permanently dismissed the advocate from the profession as it was proven that he/she had violated the code of ethics of advocate. The case began in 2002 when the advocate seated as a member of the Advocate Team of the Financial Sector Policy Committee (TBH KKSK) representing the Indonesian Bank Restructuring Agency (BPPN) cq. the Minister of Finance cq. the government to conduct legal audits of Salim Group, the owner of a holding sugar company: Sugar Groups Companies (SGC).¹⁹

The SGC, which is under BPPN supervision, was sold to a new owner, who then was having a legal dispute against Salim Group and the Government as the defendant. In such case, the advocate became the legal counsel of the Salim Group. It was the foundation of which the Honorary Council of Indonesian Advocate Association decided a permanent dismissal to the advocate, as it related to a conflict of interest. The Indonesian Advocates Association considered that even though the advocate is senior, he/she still violated the code of ethics because of a conflict of interest in the case of SGC. Even though the Assembly of the Honorary Council of the DPP Congress of Indonesian Advocates (KAI) cancelled the decision of the Honorary Council of Indonesian Advocates Association for Jakarta Region. The Indonesian Advocates Association did not acknowledge the decision of the Honorary Council of the DPP KAI, because it is unlikely that the advocate appealed to KAI regarding the Indonesian Advocates Association

decision. Indonesian Advocates Association also regretted the attitude of the advocate who appealed to KAI, which is an advocacy organisation, instead of to the Indonesian Advocates Association.²⁰

Some of the aforementioned cases show that there are still advocates who disregard the professionalism and integrity in providing legal services to justice seekers. The advocates' behaviour that violates the code of ethics may cause loss to the client as a legal service's user. The violation of the code of ethics of Advocate, according to Munir Fuady, can be categorised as a malpractice committed by an advocate. The malpractice committed by an advocate when:²¹

1. providing service under applicable professional standards;
2. providing service by violating of the "fiduciary" obligation law of the advocate;
3. breaching of contract for the provision of legal services;
4. providing service in a manner contrary to applicable law;
5. the advocate's action is equivalent to unlawful acts (by intention or negligent); and
6. in the act of providing legal services, the advocate causes the client a loss.

Violations of the code of ethics by advocates can also be in a form of conflicts of interest. The definition and causes of the conflict of interest of the advocate, according to Virginia P Shirvington are:²²

“A conflict of interest may be described also as a conflict of duties or a conflict between interests or as a conflict between interest and duty. All these ways of describing what is essentially the same thing pick up different aspects of the three main ways in which the problem can arise. Conflict of interest can arise broadly where:

- a. you act for both parties in a matter: such as for two or more parties to a conveyancing or commercial transaction; for two parties on the same side of the record in litigation; or for insured and insurer;
- b. you act against a former client having previously acted for that party in a related matter (in which you may also have acted for your present client) (although the description of this as a conflict of interest has been said to be inaccurate when essentially it should be described as involving only the duty of confidentiality owed to a former client);
- c. your own interest is involved, for example where you act in a transaction in which you or a company in which you or an associate is involved or has an interest; or where for some other reason your own interests or an associate's may conflict with your client's, such as where you may be a material witness in your client's matter.”

With the violation of the code of ethics conducted by several advocates, the Indonesian Advocates Association should revise the advocate recruitment pattern, improve the Advocate resources and enforce the code of ethics by giving strict punishments to those who violate the code of ethics of advocate. In instilling responsibility for the implementation of the code of ethics, in addition to the Indonesian Advocates Association and other advocate organisations, it must also be conducted by law schools that educate potential advocates. The importance of a code of ethics education for advocate candidates is mentioned by Christoffel Hendrik van Zyl IV, who states that:²³

“When young law graduates enter the legal profession they will undoubtedly be exposed to difficult situations that will demand of them to make difficult decisions, often having to balance conflicting systems of belief and ideas on what ethical behaviour entails. Legal ethics training in law faculties the world over often neglects teaching aspects of morality to focus on reviews of rules of professional legal conduct. This article argues that if legal education is to adequately prepare law graduates for legal practice, it must offer more than reviews of these codes of conduct. To properly assist law students in avoiding pitfalls which may lead to disciplinary action, they must be taught to appropriately use their moral compasses. This narrative aims to show that the metaphorical moral compass, with the cardinal virtues as possible main points, may serve as the crucial and underlying guide in the avoidance of the

pitfalls which may result in a person being struck from the roll, but more than that, that it may aid in the pursuit of personal dreams or goals.”

Violations of code of ethics of advocate will not occur, if the advocate understands his/her obligations and responsibilities as a professional. The professional responsibility of an advocate on the client in relation to the code of ethics is explained by David Luban, as cited by Daniel Markovits i.e.,²⁴

“Lawyers in an adversary legal system inhabit an extraordinarily subtle and complex ethical position. They represent particular clients rather than justice writ large, and they represent these clients by means of "zealous advocacy," that is, with "warm zeal."³ Unlike legislators, adversary lawyers are not charged fairly to balance the interests and claims of all persons. Instead, they care disproportionately and at times almost exclusively about their clients' interests. And unlike juries and judges, adversary lawyers are not charged to discern a true account of the facts of a case and to apply the law dispassionately to these facts. Instead, they try aggressively to manipulate both the facts and the law into a shape that benefits their clients. In each of these ways, adversary lawyers commonly do, and indeed are often required to do, things in their professional capacities, which, if done by ordinary people in ordinary circumstances, would be straightforwardly immoral. Criticizing, or justifying, or even just explaining this phenomenon is the central preoccupation of academic work on legal ethics”.

The existence of legal provisions and code of ethics for advocates in performing their professional mandate will provide protection for the client who incurs losses in the form of giving the client a right to claim the loss to the advocate as a form of professional responsibility. The demand for professional responsibility of an advocates is reasonable, since the implementation of the advocate profession is an activity of taking care of the client's interest to obtain legal assistance. Under the provisions of Article 1354 of the Civil Code, every advocate is obliged to carry out his/her best until the matters are completed. If the service is not done well and incurs losses, then the advocate is obliged to compensate.

The advocate's professional responsibility for client's loss as a result of the his/her professional duties which does not conform to the code of ethics is a form of legal protection for the client. The client's compensation claims against an advocate who violated the Law on Advocate and the code of ethics are in accordance with Article 1354 of the Civil Code. In the advocate-client relationship, the losses demanded are not a loss for the defeat of the case handled by the Advocate, but the client's losses due to the advocate's violation of the code of ethics of advocate.

By observing the provisions of Article 16 of the Advocate Law, however, the client are not entitled to indemnify an advocate. The provisions of Article 16 of the Advocate Law give immunity rights to advocates, since they cannot be prosecuted either in Civil or Criminal Code in performing their professional duties with good faith for the interest of client's defence in the court. The immunity right given to advocates in performing their professional duties, as regulated in Article 16 of Law No. 18 of 2003 on Advocates, has led to advocates to be unpunishable by means of either Civil or Criminal Code as a consequence of performing their professional duties. The provisions concerning the immunity right of an Indonesian advocate that leads to them not punishable either Civil or Criminal Code, from the perspective of consumer protection, may harm the interests of the clients. In other words, in the advocate-client relationship, the client is in the inferior position whose rights are unprotected.

Advocates who violate the code of ethics in some countries, such as in Ukraine, are liable to pay for the damages to the client, although, in practice, the insurance company is the one who pays the client's loss. O Labova, a lecturer from Taras Shevchenko National University of Kyiv, Ukraine, explained about the insurance profession in Ukraine that is:²⁵

“The essence of the professional responsibility concept is determined and it is characterized like specialists material liability of different professions, lack of qualifications, errors and omissions are due to carelessness or negligence may cause harm to the client. The main elements of the professional liability insurance contract, such as insurance objects, insurance compensation, insurance risks are described. The types of professional liability insurance are characterized. There are such types of the professional liability insurance: professional liability insurance of architect, lawyer, auditor (accountant), appraiser, notary, customs broker and doctor. It is determined, that the most widespread in Ukraine is the professional liability insurance of lawyer and customs broker because the policy is purchased for the sole

purpose to obtain a license. The size of insurance rates in the provision of professional liability insurance in different insurance companies of Ukraine are analyzed. It is established that insurance rate depends on the type of professional activity, scope of service, qualifications and the other factors. The development impulse can only provide judicial and legal definition of professions wide list that are subject under mandatory professional liability insurance.”

SUMMARY

The advocates should uphold the behaviour and nobility considering the fact that advocate is an honourable profession. As a professional, advocates have a code of ethics that must be upheld and applied in carrying out their professional duties. Although the advocate's roles and functions have been regulated in the code of ethics of Indonesian advocate and the Law on Advocates, there are still many advocates in Indonesia whose conduct has not reflected professionalism. Some cases show violations of code of ethics of Indonesian advocates, such as the lack of expertise of the advocate in handling a case; negligence of client by an advocate; conflict of interest; overcharging a client; and advocates' fighting over a client. The client, however, may not indemnify the advocate who commits the violation of the code of ethics. The immunity right given to the advocates in performing their professional duties as regulated in Article 16 of Law No. 18 of 2003 on Advocates has led to advocates being unpunishable either by Civil or Criminal Code as a consequence of malpractice in performing their professional duties.

With the violation of the code of ethics by the advocate, the Indonesian Advocates Association should revise the advocate recruitment pattern, improve the advocate resources and enforce the code of ethics by giving strict punishment to those who violate the code of ethics. In instilling responsibility for the implementation of the code of ethics, besides the advocate organisations, the law schools should educate the graduates students who seek career as advocates.

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