



MISCONDUCT IN THE JUDICIAL PROCESS: ADVOCATES AS BRIBERY OFFENDERS

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ABSTRACT

Advocates are one of the law enforcement tools. Meanwhile, in some cases, advocates still commit bribery crimes while carrying out their duties. This study aims to analyze the practice of irregularities in the judicial process carried out by Advocates and analyze the application of sanctions for Advocates who are perpetrators of bribery crimes. The research method used is normative juridical with a regulation-legislation approach and a case approach. The results show that irregularities in the judicial process often occur with advocates involved in bribery crimes, thereby damaging the integrity of the legal system and reducing public trust in law enforcement. In Indonesia's positive law, several criminal provisions can be applied to advocates who commit bribery crimes, namely the Criminal Code (Article 209, Article 418, Article 419, Article 420 (1) and (2)), the TPS Law (Article 3), the PTPK Law (Article 5 (1), Article 6 (1), Article 6 (1) letter b, Article 12 letter d, Article 13). In addition, for Advocates who commit bribery crimes, sanctions can be applied based on the Indonesian Code of Ethics for Advocates as the highest law for the profession in carrying out their duties. As a noble and honorable profession, advocates who are perpetrators of bribery crimes have harmed the dignity and honor of their profession. It can be concluded that the implementation of sanctions for advocates involved in bribery crimes in Indonesia is divided into two types: the application of sanctions based on Indonesia's criminal law and the Indonesian Code of Ethics for Advocates. Both regulate the legal consequences for these crimes from different perspectives but aim to solve irregularities in the judicial process.

Keywords: Advocates. Criminal Sanctions. Bribery.

1. Introduction

In an ideal justice system, the principles of fairness and transparency must always be upheld. However, in practice, various challenges can undermine the integrity of the judicial process. One significant issue is the irregularities resulting from bribery, especially those involving law enforcement professionals such as advocates. These irregularities undermine

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public confidence in the justice system and hurt the rule of law and human rights.²

Advocates, as a profession that plays a crucial role in providing legal defense and representation in court, are responsible for ensuring that the legal process is fair and transparent.³ Advocates serve as intermediaries in the judicial process. Advocates should act with integrity and professionalism to maintain equality before the law.⁴ Equality before the law is the foundation of a fair and effective justice system. It affirms that everyone, regardless of social, economic, or professional status, must be treated equally before the law and entitled to equal and fair treatment.⁵

However, in practice, implementing this principle is often threatened by various forms of irregularities in the judicial process, including the criminal act of bribery involving advocates. For example, a senior advocate (OC Kaligis) was found legally and convincingly proven to have committed a criminal offense. In the case involving him, OC Kaligis and several judges and clerks of the Medan State Administrative Court were known to be involved in a bribery case to influence legal decisions related to testing the authority of the North Sumatra High Prosecutor's Office.⁶

The existence of cases where advocates are involved in criminal acts of bribery indicates irregularities that can undermine the functioning and integrity of the justice system. Criminal acts of bribery by advocates not only

² Muhammad Ali and Farhana, "Legal Protection of Human Rights Against Victims of Unlawful Killing in the Indonesian Criminal Justice System," *Legal Reform* 27, no. 1 (2023), <https://doi.org/10.46257/jrh.v27i1.601>.

³ Volkes Nanis, "Pentingnya Pembelaan Advokat Dalam Perkara Pidana Terhadap Berat Ringannya Hukuman Dalam Putusan Hakim Bagi Kliennya Pada Pengadilan Negeri Kelas 1 A Kupang," *Dewantara : Jurnal Pendidikan Sosial Humaniora* 1, no. 4 (30 November 2022): 46–57, <https://doi.org/10.30640/dewantara.v1i4.366>.

⁴ Hibnu Nugroho, "Peran Advokat dalam Mewujudkan Peradilan yang Berintegritas," *Diktum : Jurnal Ilmu Hukum* 7, no. 1 (31 Mei 2018): 1–12, <https://doi.org/10.24905/diktum.v7i1.7>.

⁵ Asep Suherman, "Prinsip Pertanggungjawaban Advokat Terhadap Pendampingan Hukum Dalam Perspektif Peraturan Perundang-Undangan," *Jurnal Ilmiah Kutei* 21, no. 1 (3 April 2022): 28–50, <https://doi.org/10.33369/jkutei.v21i1.23271>.

⁶ Novrieza Rahmi, "OC Kaligis Didakwa Menyuap Hakim PTUN Medan," *Hukum Online*, 2015, <https://www.hukumonline.com/berita/a/oc-kaligis-didakwa-menyuap-hakim-ptun-medan-lt55e40991a18e5/>.

betray the trust of clients and the public, but can also affect the outcome of court decisions and justice.

Irregularities in the judicial process involving advocates as perpetrators of bribery can take various forms, ranging from giving bribes to judicial officials to influence legal decisions to collusion between advocates and other parties to gain unlawful benefits. This phenomenon indicates a gap in the legal system that must be identified and rectified.

Article 16 of Law No. 18/2003 on Advocates (Advocates Law) states that advocates cannot be prosecuted civilly or criminally in carrying out their duties in good faith to defend clients in court.⁷ This provision is designed to protect advocates in carrying out their profession, given that their role is to defend their client's interests best.⁸ However, this article must be understood wisely and not misused. It should be understood as a protection for advocates to carry out their duties with integrity and not as a shield for actions that undermine justice.

The presence of Advocates involved in bribery can influence court decisions, ignore the principle of equality before the law, and create injustice in the legal process. This is contrary to the intent of Article 16 of the Advocates Law. When advocates narrowly understand and utilize this provision, it can be misinterpreted and possibly abused into a provision that can eliminate an advocate's legal liability for actions that violate ethics and the law. Every criminal act can certainly be held criminally liable and return to the principle of equality before the law. So, an advocate considered to 'know the law' can also be subject to criminal sanctions against him.

There have been various writings that examine advocates who commit the crime of bribery. Assyafitri Lyana and Dini Dewi Heniarti (2020) in their writing explain that advocates categorized as violations of the code of ethics

⁷ Republik Indonesia, "Undang-Undang Nomor 18 Tahun 2003 tentang Advokat" (n.d.).

⁸ Muh Nasir, "Analisis Hukum Terhadap Kriminalisasi Advokat Dalam Menjalankan Profesinya Yang Termuat Dalam Pasal 16 Undang Undang No.18 Tahun 2003 Tentang Advokat," *Nobel Management Review* 2, no. 4 (31 Desember 2021): 523–31, <https://doi.org/10.37476/nmar.v2i4.2472>.

are actions where advocates seek benefits for their own personal interests, thus ignoring the code of ethics. This paper cites the case of Sudarman and Jonson Siburian, legal advisors sentenced under the relevant laws for unethical actions.⁹ Miftahul Jannah (2020) in her writing explains the factors that cause advocates to be involved in bribery in the process of providing legal services in court and the criminal responsibility of lawyers involved in bribery.¹⁰ Hartono (2019) in his writing explains that the Criminal Code, Anti-Corruption Law, and Advocate Code of Ethics regulate the application of criminal sanctions for advocates who commit bribery. Applying criminal sanctions for advocates who commit bribery is necessary to ensure law enforcement and legal certainty in Indonesia.¹¹

In contrast to these three studies, this research focuses on irregularities in the judicial process due to bribery involving advocates. It also explores how the provisions of Article 16 of Law No. 18/2003 on Advocates can be misused and its impact on justice and public trust in the justice system, which has not been explained in depth in previous studies.

This research aims to analyze the practice of irregularities in the judicial process committed by advocates. Through this research, forms of irregularities and their impacts can be studied so that it is hoped that an effective solution can be found to prevent and deal with cases of bribery among advocates. In addition, this research also aims to analyze the application of sanctions for Advocates who are perpetrators of criminal acts of bribery based on Indonesian positive law.

⁹ Assyafitri Lyana dan Dini Dewi Heniarti, "Tinjauan Yuridis Bagi Penasihat Hukum yang Melakukan Tindak Pidana Suap Terhadap Hakim Berdasarkan Kode Etik Advokat," in *Prosiding Ilmu Hukum Seminar Penelitian Sivitas Akademika Unisba (SPeSLA) Tahun 2020* (Pusat Penelitian Universitas Islam Bandung, 2020), <https://doi.org/10.29313/V6I2.23972>.

¹⁰ Miftahul Jannah, "Pertanggungjawaban Pidana Advokat Yang Melakukan Penyuapan Dalam Proses Pemberian Jasa Hukum Di Pengadilan," *Jurnal Indonesia Sosial Sains* 1, no. 2 (21 September 2020): 99–107, <https://doi.org/10.36418/jiss.v1i2.16>.

¹¹ Hartono Hartono, "Penerapan Sanksi Hukum Bagi Para Advokat Pelaku Tindak Pidana Suap Dalam Sistem Hukum Positif Di Indonesia," *JCH (Jurnal Cendekia Hukum)* 5, no. 1 (30 September 2019): 77, <https://doi.org/10.33760/jch.v5i1.181>.

The importance of this research lies in finding effective solutions to prevent existing irregularities and in illustrating the urgency of judicial irregularities committed by people in the legal profession. With a deeper understanding of irregularities involving advocates, it is hoped that appropriate legal and policy reforms can be implemented to minimize the risk of bribery and maintain public trust in the justice system.

2. Research Method

The research method used is normative juridical, which focuses on examining the application of rules or norms in positive law. Normative juridical is an approach that uses the legal positivist conception.¹² This concept views law as identical to written norms made and promulgated by authorized institutions or officials. The methods used in this approach are the statute and case approaches.¹³ This statutory approach examines the laws and regulations governing criminal sanctions related to bribery committed by Advocates and the Indonesian Advocate Code of Ethics, which regulates the ethical principles that need to be obeyed by an Advocate. At the same time, the case approach in question is to elaborate this research with the case of one of the senior Advocates in Indonesia involved in bribery, Otto Cornelis Kaligis (OC. Kaligis), who was proven to have committed a criminal act of corruption (bribery). The method of collecting legal materials in this research was done through library studies from library institutions. Literature study is a technique that conducts a library review and collects books, written materials, and references relevant to the research.¹⁴

¹² Johnny Ibrahim, *Teori dan Metodologi Penelitian Hukum Normatif* (Malang: Bayumedia Publishing, 2006).

¹³ Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana, 2011).

¹⁴ Zainuddin Ali, *Metode Penelitian Hukum* (Jakarta: Sinar Grafika, 2017).

3. Discussion and Research Results

3.1. Irregularities in the Judicial Process by Advocates

Law and justice are universal and touch the development of law in Indonesia, including eradicating corruption and legal mafia. The issue of law and justice has been hot for a long time, and it seems it will not run out of issues all the time.¹⁵

The accountability practices of state administration in Indonesia are not yet satisfactory. Many people consider the existing accountability to fulfill the provisions of mere formality. Thus, the substance and nature of this accountability are not yet encouraging.¹⁶ It is impossible to expect the eradication of corruption and law enforcement to be carried out and ensure the administration of government that is not tainted by the practices of Corruption, Collusion, and Nepotism if Advocates, who are supposed to uphold the law, actually commit corrupt practices (criminal acts of bribery) and become part of the problem itself. Advocates can be a channel to create corruption, but they can also be individuals who can eradicate corruption.¹⁷ Advocates in the litigation process consciously face ethical dilemmas when Advocates are representing their clients. In civil cases, giving something to the judge is not without the possibility of winning the case.¹⁸

Likewise, in criminal cases, starting from the examination by the police, prosecutor's office, and in front of the court, the practice of irregularities in the judicial process to alleviate, even free the suspect or defendant, is not impossible. In the practice of irregularities that occur, there are several modes of bribery often carried out by advocates to

¹⁵ Abdul Kholiq, "Kajian Budaya Hukum Progresif Terhadap Hakim Dalam Penegakan Hukum Pada Mafia Peradilan (Judicial Corruption) Di Indonesia," *Justisi Jurnal Ilmu Hukum* 2, no. 1 (10 Desember 2018), <https://doi.org/10.36805/jjih.v2i1.401>.

¹⁶ Febri Herdiansyah Rahmaddhana dan Wike Wike, "Akuntabilitas Kinerja Bidang Pertamanan DISPERKIM Kota Malang dalam Mewujudkan Good Governance," *Jurnal Ilmiah Administrasi Publik* 007, no. 01 (2021): 113–20, <https://doi.org/10.21776/ub.jiap.2021.007.01.14>.

¹⁷ Nugroho, "Peran Advokat dalam Mewujudkan Peradilan yang Berintegritas."

¹⁸ Darwis Manurung, "Tinjauan Yuridis Terhadap Peran Dan Fungsi Advokat Dalam Penyelesaian Perkara Perdata," *Borneo Law Review* 3, no. 1 (28 Oktober 2019): 73–95, <https://doi.org/10.35334/bolrev.v3i1.1014>.

illegally influence the outcome of trials, including:

- 3.1.1. Bribes to Judges: One of the main modus operandi is to give bribes to judges to influence their decisions in trials. These bribes can be in cash, expensive gifts, or other forms of gratification. Advocates may do this to ensure a favorable decision for their clients.
- 3.1.2. Bribes to Court Officials: Advocates may bribe court officers, such as clerks or aides, to access documents they would not otherwise have or to expedite favorable administrative proceedings.
- 3.1.3. Bribes to Public Prosecutors: Advocates may sometimes try to bribe public prosecutors to reduce charges or influence prosecutorial decisions.
- 3.1.4. Bribes to Other Parties Involved: Advocates may also bribe other parties involved in the case, such as witnesses or opposing parties, to obtain certain information or benefits.

Based on the modes mentioned above, advocates' main targets in the criminal act of bribery are the parties involved in the trial, such as judges, prosecutors, court officials, and other parties involved, such as witnesses or opposing parties. There are several examples of cases that show the mode of bribery committed by advocates, including:

- 3.1.1. The Benyamin Lawyer Case: In 2015, Benyamin, a lawyer in Indonesia, was involved in a bribery case where he allegedly gave bribes to judges to influence trial decisions. The lawyer was sentenced to prison and was subjected to heavy sanctions after being found guilty.¹⁹
- 3.1.2. The Michael Cohen case: Michael Cohen, Donald Trump's lawyer, was involved in various illegal acts, including bribery. Cohen was involved in a case where he bribed a

¹⁹ Sabir Lallahu, "KPK Telusuri Peran Airin Lewat Benyamin Davnie di TPPU Wawan," SINDONews, 2015, <https://nasional.sindonews.com/berita/1019136/13/kpk-telusuri-peran-airin-lewat-benyamin-davnie-di-tppu-wawan>.

woman not to discuss a relationship with Trump, as well as engaging in money arrangements to influence the outcome of a trial. Cohen was sentenced to prison for various offenses, including bribery and fraud.²⁰

The mode of bribery practiced by advocates in court proceedings involves various techniques to influence the outcome illegally. The main targets of bribery include judges, court officials, public prosecutors, and witnesses. Real cases show that bribery can undermine the justice system's integrity and result in severe legal sanctions for those involved.

In general, the Advocates committing the crime of bribery can be caused by several causal factors, including:

- 3.1.1. Cultural Factors (related to the custom of giving something as a tribute that has been considered a common thing to return a favor for a job);²¹
- 3.1.2. Individual Advocate Behavioral Factors (greed and greediness that make their profession a tool to meet their primary needs and enrich themselves, lack of strong morals, easily tempted by requests and gifts, a wasteful lifestyle, work environment, and organizational culture that affects their profession);²²
- 3.1.3. Government Bureaucracy Factor (government and judicial bureaucracy that is complicated and long-winded, slow and full of procedural requirements makes Advokat choose the compass road by bribing so as not to be complicated and

²⁰ Southern District of New York U.S. Attorney's Office, "Michael Cohen Pleads Guilty In Manhattan Federal Court To Eight Counts, Including Criminal Tax Evasion And Campaign Finance Violations," U.S. Attorney's Office, Southern District of New York, 2018, <https://www.justice.gov/usao-sdny/pr/michael-cohen-pleads-guilty-manhattan-federal-court-eight-counts-including-criminal-tax>.

²¹ Tigana Barkah Maradona, "Tindak Pidana Gratifikasi Di Indonesia Ditinjau Dari Aspek Budaya Hukum," *Jurnal Hukum dan Pembangunan Ekonomi* 9, no. 1 (17 Juli 2021): 26, <https://doi.org/10.20961/hpe.v9i1.52526>.

²² Dedeng Yusuf Maolani et al., "Sulitkah Korupsi Diberantas: Motif Afiliasi Dan Kekuasaan," *Jurnal Dialektika: Jurnal Ilmu Sosial* 19, no. 3 (9 Desember 2021): 96-105, <https://doi.org/10.54783/dialektika.v19i3.20>.

- facilitate the time);²³
- 3.1.4. Economic Factors (the need for ongoing work to make ends meet by doing everything possible, including giving and receiving bribes);²⁴
- 3.1.5. Position, Power, and Authority Factor (Advocates feel that there is an opportunity to use their profession as law enforcement officials to do everything they can to both receive and give bribes);²⁵
- 3.1.6. Law Enforcement Factors (the law in Indonesia does not have certainty, justice, and usefulness properly and provides a gap so that Advocates dare to commit acts of bribery);²⁶
- 3.1.7. Advocate Organization Supervision Factor (advocate organizations such as the Indonesian Advocates Association have not fully supervised and taken firm action against violations committed by advocates regarding the Advocate code of ethics);²⁷
- 3.1.8. The factor of low public participation (the participation of all Indonesian people not to practice corruption/bribery is needed and the existence of legal knowledge that bribery is also corruption and the lack of participation to the Honorary Council for violations of the Advocate code of ethics that

²³ Fatkhuri Fatkhuri, "Korupsi dalam Birokrasi dan Strategi Pencegahannya," *Jurnal Ilmiah Manajemen Publik dan Kebijakan Sosial* 1, no. 2 (21 Maret 2018), <https://doi.org/10.25139/jmnegara.v1i2.784>.

²⁴ Erlangga Bagus Setiyawan dan Hana Farida, "Kajian Sosiologi Hukum Terhadap Perilaku Suap Oleh Masyarakat Kepada Polisi Lalu Lintas," *VERITAS* 8, no. 1 (21 Maret 2022): 109–21, <https://doi.org/10.34005/veritas.v8i1.1842>.

²⁵ Sumarsih Edi Rifa'i, "Kewenangan Dewan Etik Profesi Advokat Dalam Pembaharuan Penegakan Hukum," *Muhammadiyah Law Review* 7, no. 1 (29 Januari 2023): 52, <https://doi.org/10.24127/lr.v7i1.2507>.

²⁶ Soerjono Soekanto, *Faktor-Faktor Yang Mempengaruhi Penegakan Hukum* (Depok: PT RajaGrafindo Persada, 2021).

²⁷ Fitriyanti Fitriyanti, "Menilik Peran Organisasi Advokat Dalam Rangka Meningkatkan Kualitas Dan Kehormatan Profesi," *Jurnal Ilmiah Hukum dan Keadilan* 9, no. 2 (30 September 2022): 109–21, <https://doi.org/10.59635/jihk.v9i2.271>.

occur).²⁸

Advocates involved in corruption crimes are no longer just intermediaries for bribes; they have become perpetrators of bribery in Indonesia and use any means to carry out their profession. Requires an understanding that the criminal act of bribery is related to legal protection of the smoothness of the task and process of law enforcement in court along with legal protection of confidence in the legal truth of the judge's verdict by granting judges freedom in the judicial process according to the criminal law of corruption in Indonesia, based on where the act that attacks the legal interest comes from. Criminal law policy needs to be carried out with a *policy-oriented approach* that is more pragmatic, rational, and value-oriented (*value judgment approach*) aimed at solving the problem of corruption and protecting the interests of society.²⁹

Functionalism of corruption leads to perfect moral skepticism, increases the spirit of corrupt people, and exacerbates the porousness of the foundation that has become noble values so far. Seeing these things, a conclusion can be drawn regarding the consequences of the criminal act of bribery committed by Advocates, namely as follows:³⁰

- 3.1.1. Undermining the legal order and national security of the Indonesian State;
- 3.1.2. Not achieving and implementing good, clean, and free from all elements of the KKN government service system in Indonesia;
- 3.1.3. Leads to the occurrence of Legal Mafia or Judicial Mafia

²⁸ Fahrudin Andri Yansyah, "Partisipasi Masyarakat Dalam Pelaksanaan Strategi Nasional Pencegahan Korupsi (Stranas PK)," *Yurispruden* 4, no. 2 (30 Juni 2021): 128, <https://doi.org/10.33474/yur.v4i2.10977>.

²⁹ Nunung Nugroho, "Kebijakan Penanggulangan Tindak Pidana Korupsi Dalam Dalam Dinamika Keadilan Restoratif," *Jurnal Ilmiah Dunia Hukum* 3, no. 1 (14 Desember 2019): 20, <https://doi.org/10.35973/jidh.v3i1.1355>.

³⁰ Marwati Ulfah, Eda Laelasari, dan Ismail Mustaqiem, "Urgensi Penegakan Hukum Terkait Kejahatan Tindak Pidana Suap Dalam Etika Profesi Advokat," *AS- SYAR ' I: Jurnal Bimbingan & Konseling Keluarga* 3, no. 1 (2021): 85-94, <https://doi.org/10.47476/assyari.v5i3.2790>.

in the judicial process in Indonesia;

- 3.1.4. Undermine the norms, ethics, and morality of public servants or state administrators, judges, and other law enforcement officials;
- 3.1.5. It creates a bad paradigm in the eyes of society and social, economic, and cultural inequality in Indonesia;
- 3.1.6. There has been an increase in violations of the Advocates' Code of Ethics;
- 3.1.7. Encouraging the rise of other corrupt practices in Indonesia.

Thus, advocates' irregularities in the judicial process can be classified into several forms.

- 3.1.1. Bribery of judicial officials is one of the most common forms. In these situations, advocates give money or other facilities to judges, prosecutors, or court officials to influence the decision or outcome of a trial. This creates injustice as court decisions are not based on objective evidence and arguments but on external influences.
- 3.1.2. Collusion with others is a form of misconduct where an advocate works with certain parties, such as an opposing party or a third party, to commit bribery. For example, an advocate may collude with an opposing party to agree to pay a bribe in exchange for a favorable admission or decision. This collusion exacerbates the unfairness of the judicial process, as it not only disregards the truth and the law but undermines the integrity of the entire legal system.
- 3.1.3. Manipulation of evidence or testimony by an advocate is also a serious form of misconduct. In this case, the advocate presents evidence manipulated or influenced by testimony to support the client's claim. These actions threaten the fairness of the trial, as the court's decision is

based on inaccurate or incomplete information.

The consequences of these irregularities include damage to the legal order and national resilience, failure to realize a clean and fair government, and the formation of a legal mafia that undermines the justice system's integrity. Other impacts include the decline of norms and ethics among law enforcement officials and the emergence of a bad paradigm in society. These deviations also increase violations of the advocate code of ethics and encourage wider corrupt practices.

To address this problem, comprehensive reform measures are needed. Supervision of the practice of advocates must be tightened, and strict sanctions must be applied to prevent abuse. In-depth ethics education for advocates and reform of legal provisions are also essential to maintain the profession's integrity. Strengthening reporting systems and collaboration between legal institutions, bar associations, and the public will help combat corruption and ensure that the principles of justice are consistently upheld. These measures aim to restore public confidence in the legal system and strengthen the foundations of justice in Indonesia.

3.2. Implementation of Sanctions for Advocates Who Become Perpetrators of Bribery Crimes

Applying criminal law sanctions against advocates involved in the criminal act of bribery in Indonesia involves the imposition of criminal law sanctions, which is a strategic step in comprehensive law enforcement, especially regarding criminal law certainty. Bribery is included in the category of corruption, a special criminal offense, and is outside the codification of the Criminal Code (KUHP).

As long as there is no other provision in the special criminal law legislation, the formal criminal law is the implementation of the material law in the special criminal law legislation, and the formal criminal law in

the codification of the Criminal Procedure Code still applies.³¹ In this regard, the regulation of the provisions of the crime of corruption (including the crime of bribery) is emphasized in the provisions of Article 26 of Law Number 31 Year 1999 jo. Law Number 20 of 2001 concerning the Eradication of Corruption (hereinafter referred to as the PTPK Law) states that "Corruption crimes with the mechanism of investigation, prosecution, and examination in court are carried out based on the applicable criminal procedure law unless otherwise provided in this law."³² The process of investigation and prosecution regarding acts of corruption (criminal acts of bribery) in Indonesia is carried out by the Corruption Eradication Commission.

The Corruption Eradication Commission also has an important role: taking measures to prevent corruption. In terms of investigations regulated in the Criminal Procedure Code (KUHAP) and the PTPK Law, in principle, there are differences in the basic provisions of the PTPK Law, namely regarding its specificity regarding investigations, namely in the provisions of Article 28 of the PTPK Law which states that the suspect's information must be given. There are sanctions if the suspect does not give it, and this is not the case in the Criminal Procedure Code. In Article 116 Paragraph (2) of the Criminal Procedure Code, it has been determined that the suspect (perpetrator of the crime of bribery) in the investigation is asked for any information needed to shed light on the alleged criminal act; providing information is mandatory. However, there is no sanction if the suspect is unwilling to provide information.

The threat of punishment sanctions and the purpose of imposing sanctions on the crime of bribery committed by Advocates are contained in the Criminal Code and the PTPK Law, where the threat of legal

³¹ S Supriyadi, "Penetapan Tindak Pidana Sebagai Kejahatan Dan Pelanggaran Dalam Undang-Undang Pidana Khusus," *Mimbar Hukum - Fakultas Hukum Universitas Gadjah Mada* 27, no. 3 (10 Februari 2016): 389, <https://doi.org/10.22146/jmh.15878>.

³² Republik Indonesia, "Undang-Undang Nomor 20 Tahun 2001 tentang Perubahan Atas Undang-Undang Nomor 31 Tahun 1999 tentang Pemberantasan Tindak Pidana Korupsi" (n.d.).

sanctions varies and can be grouped into the following:

3.2.1. The provisions of the Penal Code are:

- (a). Because the Advocate is a legal subject, namely whoever is a bribe giver (Active Bribery), it is included in the category (Article 209 of the Criminal Code) is punishable by imprisonment for a maximum of two years and eight months or a maximum fine of four thousand five hundred rupiahs;
- (b). Because Advocates are officials or law enforcement officers, including officials appointed under the law, namely the Advocates Law (Passive Bribery), it is included in the category (Article 418 of the Criminal Code) subject to a maximum imprisonment of six months or a maximum fine of four thousand five hundred rupiahs;
- (c). Because Advocates are officials or law enforcement officers, including officials appointed under the law, namely the Advocates Law as recipients of bribes (Passive Bribery), then fall into the category (Article 419 of the Criminal Code) subject to a maximum imprisonment of five years;
- (d). Because Advocates are officials or law enforcement officers, including officials appointed under the law, namely the Advocates Law as recipients of bribes (Passive Bribery), then fall into the category (Article 420 paragraph (1) of the Criminal Code) is punishable by a maximum imprisonment of nine years, while (Article 420 paragraph (2) of the Criminal Code) is punishable by a maximum imprisonment of twelve years.

3.2.2. In the Provisions of the TPS Law, because Advocates are

officials or law enforcement officers, including officials appointed under the law, namely the Advocates Law as recipients of bribes (Passive Bribery), it is included in the category (Article 3 of the TPS Law) is punishable by imprisonment for up to three years or a fine of up to fifteen million rupiahs.

3.2.3. In the Provisions of the PRC Law:

- (a). Because the Advocate is a legal subject, namely whoever is a bribe giver (Active Bribery), it is included in the category (Article 5 paragraph (1) of the PTPK Law) is punishable by imprisonment of at least one year and a maximum of five years and or a fine of at least fifty million rupiahs and a maximum of two hundred and fifty million rupiahs;
- (b). Because the Advocate is a legal subject, namely whoever is a bribe giver (Active Bribery), it is included in the category: (Article 6 paragraph (1) letter a of the PTPK Law) is punishable by imprisonment of at least three years and a maximum of fifteen years and a fine of at least one hundred and fifty million rupiah and a maximum of seven hundred and fifty million rupiah;
- (c). Because Advocates are officials or law enforcement officers, including officials appointed under the law, namely the Advocates Law as recipients of bribes (Passive Bribery), then fall into the category: (Article 6 paragraph (1) letter b of the Anti-Corruption Law);
- (d). Because Advocates are officials or law enforcement officers, including officials appointed under the law, namely the Advocates Law as recipients of bribes (Passive Bribery), then fall into the category (Article

12 letter d PTPK);

- (e). Because the Advocate is a legal subject, namely whoever is a bribe giver (Active Bribery), it is included in the category (Article 13 of the PTPK Law). It is punishable by imprisonment for a maximum of three years and or a maximum fine of one hundred and fifty million rupiah. The application of sanctions against Advocates as perpetrators of criminal acts of bribery to date can be limited to 3 (three) provisions of the legislation, namely regulated in the Criminal Code, TPS Law, and PTPK Law.

In the provisions of the Criminal Code, the application of criminal law sanctions is regulated in the provisions of Article 209 of the Criminal Code, Article 418 of the Criminal Code, Article 419 of the Criminal Code, and Article 420 paragraph (1) and (2) of the Criminal Code. Furthermore, the TPS Law is also regulated by the provisions of Article 3 of the TPS Law. Meanwhile, the PRC Law is regulated in the provisions of Article 5 paragraph (1) of the PRC Law, Article 6 paragraph (1) of the PRC Law, Article 6 paragraph (1) letter b of the PRC Law, Article 12 letter d of the PRC Law and Article 13 of the PRC Law. However, Advocates will be subject to every judge's decisions in this case. The application of criminal law sanctions is more likely to use the provisions of the articles in the PTPK Law because bribery is a special criminal offense included in the crime of corruption.

Every profession, including advocates, uses a system of ethics primarily to provide a structure that can create discipline and provide a value system boundary line that can be used as a reference for professionals to resolve ethical dilemmas encountered when carrying out

their professional development functions daily.³³ The ethics system can also be a benchmark for professional problems, such as the obligation to maintain the confidentiality of professional client relationships, existing conflicts of interest, and issues related to professional social responsibility. As a law enforcer, advocate analysis is a series of processes to elaborate qualities, concepts, and expectations to become a legal goal, namely truth and justice. The values contained therein must be implemented into reality.³⁴

The existence of law becomes real if the moral values contained in the law can be realized properly. In Frans Hendra Winata's discussion, an advocate must devote himself to the community so that he is required to always participate in upholding human rights. In his profession, he is free to defend anyone, not bound by the client's order and indiscriminately who his client's opponent is, whether he is from the powerful, rulers, officials, or even the poor.³⁵

In Indonesia, advocates have committed several cases of code of ethics violations. Violating the code of ethics violates the obligations of an advocate in carrying out his duties to defend the rights of his clients both inside and outside the court. In carrying out his profession, an advocate is bound by the Advocates Law and the Indonesian Advocates Code of Ethics by the Indonesian Advocates Working Committee. The main purpose of the code of ethics is so that an advocate can carry out his "*official nobile*" profession properly and responsibly, as well as to maintain and improve the professionalism of an advocate. The sanctions are not in the form of corporate sanctions or fines but administrative sanctions such as temporary dismissal or permanent dismissal of a person

³³ Achmad Asfi Burhanudin, "Peran Etika Profesi Hukum Sebagai Upaya Penegakan Hukum Yang Baik," *El-Faqih : Jurnal Pemikiran dan Hukum Islam* 4, no. 2 (30 Oktober 2018): 50–67, <https://doi.org/10.29062/faqih.v4i2.25>.

³⁴ Achmad Asfi Burhanudin.

³⁵ Frans Hendra Winata, *Advokat Indonesia, Citra, Idealisme dan Kepribadian* (Jakarta: Sinar Harapan, 1995).

as an advocate.³⁶

The Indonesian Advocates Code of Ethics (KEAI) preamble states that advocacy is an honorable profession (*officium mobile*). The word "*nobile officium*" means that there is a noble or honorable responsibility in carrying out their work.³⁷

According to the provisions of Article 2 and Article 3 of the Advocate Law, a law graduate who meets the requirements can be appointed as an advocate and will become a member of the advocate organization (*admission to the bar*). A person who has been appointed as an advocate has been given a *noble* obligation to carry out honorable work (*nobile officium*), with exclusive rights: (a) to declare himself to the public that he is an advocate, (b) to be entitled to give legal advice and represent his client, and (c) to appear before the court in the process of his client's case. Every advocate must comply with the advocate code of ethics. Supervising the implementation of the advocate code of ethics is carried out by the Honorary Council. The Honor Council has the authority to supervise and assess cases of violations of the code of ethics committed by advocates.³⁸

A complaint can be examined at two levels: a) Branch/Regional Honor Council level and b) Central Honor Council level. The Branch/Regional Honor Council examines complaints at the first and Central Honor Council at the last levels. The code of ethics is part of written positive law but does not have harsh sanctions; the validity of the code of ethics is solely based on the moral awareness of members of the profession.

³⁶ Komite Kerja Advokat Indonesia, "Kode Etik Advokat Indonesia" (2002).

³⁷ Amalia Nurzannah, Amanda Fildzah Sagala, dan Fauziah Lubis, "Advokat sebagai *Officium Nobile* Berdasarkan Undang-Undang No. 18 Tahun 2003 tentang Advokat," *As-Syar'i: Jurnal Bimbingan & Konseling Keluarga* 5, no. 2 (8 Januari 2023): 533-44, <https://doi.org/10.47467/as.v5i2.2788>.

³⁸ Fitriyanti, "Menilik Peran Organisasi Advokat Dalam Rangka Meningkatkan Kualitas Dan Kehormatan Profesi."

According to Sumaryono, a code of ethics needs to be formulated in writing for three reasons, namely:³⁹ 1. As a means of social control; 2. As a deterrent to interference from other parties in internal matters; 3. As a deterrent to misunderstanding and conflict. The provisions regarding violations and sanctions in the Advocate Code of Ethics must be obeyed, given that advocates are law enforcers equal to other law enforcement agencies. Advocates who violate these provisions are obliged and willing to accept the applicable sanctions.⁴⁰

Based on Article 16 of KEAI, the provisions of Sanctions for violations of the Code of Ethics, among others: ⁴¹

- 3.2.1. The penalties provided in the decision can be in the form of
 - a) Regular warning.
 - b) Severe warning.
 - c) Temporary suspension for a certain time.
 - d) Dismissal from membership of the professional organization.
- 3.2.2. Considering the severity or lightness of the violation of the violation of the Advocate Code of Ethics, sanctions may be imposed:
 - a) Ordinary warning if the nature of the violation is not serious.
 - b) Severe warning if the nature of the violation is serious or because of repeated violations of the code of ethics and not heeding the warning sanctions that have been given.
 - c) Temporary dismissal for a certain time if the nature of the violation is serious, does not heed and does not respect the provisions of the code of ethics, or if, after being sanctioned in the form of a strong warning, still repeats the violation of the code of ethics.
 - d) dismissal from membership of a professional organization if a violation of the code of ethics is committed with the

³⁹ E. Sumaryo, *Etika Profesi Hukum* (Yogyakarta: Kanisius, 1995).

⁴⁰ Devi Mardiana dan Puti Priyana, "Penerapan Sanksi Kode Etik Terhadap Advokat Yang Melakukan Pelanggaran Profesi di Indonesia," *Humani (Hukum dan Masyarakat Madani)* 12, no. 1 (2022): 75–85, <https://journals.usm.ac.id/index.php/humani/article/download/3077/pdf>.

⁴¹ Komite Kerja Advokat Indonesia, Kode Etik Advokat Indonesia.

intention and purpose of damaging the image and dignity of the honor of the advocate profession, which must be upheld as a noble and honorable profession.

3.2.3. The sanction of temporary dismissal for a certain time must be followed by a prohibition to carry out the advocate profession outside and in front of the court.

3.2.4. Those sanctioned with temporary dismissal for a certain time and/or dismissal from membership of professional organizations are submitted to the Supreme Court to be known and recorded in the register of advocates.

Soelaiman Djoyoatmojo is one of the advocates proven to have violated the Advocate Code of Ethics. The Regional Honor Council decided that Soelaiman Djoyoatmojo violated the KEAI during the PKPU judicial process involving PT Mahakarya Agung Putera. The case began when Soelaiman Djoyoatmojo asked for money to settle a dispute between PT Mahakarya Agung Putera and its customer, Jhon Candra, which was considered a violation of the advocate code of ethics by the judge. The Chairman of the Panel of Judges stated that Soelaiman Djoyoatmojo violated Article 3 letters b and d of the KEAI, which stipulates that: b) Advocates in carrying out their duties do not solely seek material rewards but rather prioritize the enforcement of the law, truth, and justice; d) Advocates must maintain solidarity among colleagues. As a result of this violation, Soelaiman Djoyoatmojo was sanctioned with a temporary suspension for twelve (12) months from the advocate profession. In the judicial context, although the goal of the litigants is to obtain a judge's legally binding decision, the decision does not always fulfill the elements of justice and truth. Given that judges are human beings who may make mistakes, the law provides a mechanism for parties who feel aggrieved by a judge's decision to file legal remedies

to correct errors in the decision.⁴²

According to the above definition, a legal remedy is a right granted by law to individuals or legal entities to challenge a judge's decision when the outcome is deemed inappropriate or does not fulfill a sense of justice. The purpose of this remedy is to correct errors in the decision.⁴³ Article 18 of KEAI stipulates that if the complainant or complainant is dissatisfied with the decision of the Branch/Regional Honor Council, they have the right to appeal to the Central Honor Council. The appeal request and the required Appeal Memory must be submitted through the Branch/Regional Honor Council within 21 (twenty-one) days after receiving the decision. The Branch/Regional Honor Council must send a copy of the Appeal Memorandum to the appellant within 14 (fourteen) days of receiving the Appeal Memorandum. The appellant has 21 (twenty-one) days to file a Counter Appeal Memorandum after receiving the Appeal Memorandum. If, within that period, the appellant does not file a Counter Appeal, they are deemed to have waived that right. The decision of the Central Honor Council is final and binding and cannot be contested in any forum, including in MUNAS.⁴⁴

An example can be seen in the OC Kaligis case.⁴⁵ KPK conducted a sting against young advocate M. Yagari Bhastara, three judges, and Medan State Administrative Court clerks. A few days later, senior advocate OC Kaligis was arrested by the KPK at a five-star hotel in Jakarta. OC Kaligis, M. Yagari Bhastara, and three judges and clerks of Medan State Administrative Court were allegedly involved in a bribery case. OC Kaligis, named a suspect and detained by the KPK, filed a pretrial appeal. OC Kaligis was eventually acquitted after a lengthy legal process, including appeals and a judicial review. In the first instance, the

⁴² Mardiana dan Priyana, "Penerapan Sanksi Kode Etik Terhadap Advokat Yang Melakukan Pelanggaran Profesi di Indonesia."

⁴³ Mardiana dan Priyana.

⁴⁴ Komite Kerja Advokat Indonesia, Kode Etik Advokat Indonesia.

⁴⁵ Rahmi, "OC Kaligis Didakwa Menyuap Hakim PTUN Medan."

Jakarta Corruption Court (PTPK) sentenced Kaligis to 5.5 years and a fine of Rp 300 million instead of 4 months imprisonment. The judge found Kaligis and Moh guilty. Yagari Bhastara Guntur, alias Gary, gave money totaling USD 27,000 and SGD 5,000 to Gatot Pujo Nugroho and Evy Susanti.⁴⁶

Presiding judge Sumpeno revealed that OC Kaligis was legally and convincingly proven to have committed the crime of corruption. The money was given to three PTUN judges: Tripeni Irianto Putro received SGD 5,000 and USD 15,000, Dermawan Ginting and Amir Fauzi USD 5,000 each, and Syamsir Yusfan, clerk of PTUN Medan, USD 2,000. The bribes were intended to influence the decision on a request to review the authority of the North Sumatra High Prosecutor's Office to investigate alleged corruption crimes related to Social Assistance Funds (Bansos), Subordinate Regional Assistance (BDB), School Operational Assistance (BOS), arrears of Revenue Sharing Funds (DBH), and Capital Participation in BUMDs in the North Sumatra Provincial Government. The request for testing the authority was motivated by a summons from the North Sumatra High Prosecutor's Office to the Regional Treasurer of the North Sumatra Provincial Government related to the 2012 APBD.⁴⁷

Concerned about being implicated in the Bansos corruption investigation, Gatot sought legal assistance from Kaligis. Kaligis then attempted to facilitate the North Sumatra Kejati's request for a judicial review to the State Administrative Court. On April 29, 2015, Kaligis, Gary, and Yurinda Tri Achyuni alias Indah met with Medan State Administrative Court Chairman Tripeni Irianto Putro regarding the application, with the assistance of Syamsir Yusfan. At that time, OC Kaligis was found guilty of corruption under Article 6, paragraph 1, letter a of the Anti-Corruption Law in conjunction with Article 55, paragraph 1 to 1 of the Criminal Code in conjunction with Article 65, paragraph 1 of

⁴⁶ Rahmi.

⁴⁷ Rahmi.

the Criminal Code. Kaligis then filed an appeal to the Jakarta High Court. Instead of getting leniency, Kaligis' sentence was increased to 7 years in prison, even though the KPK prosecutor demanded 10 years. Thus, the decision of the Jakarta High Court changed the court's verdict of the first instance from 5.5 years in prison to 7 years.⁴⁸

The following is a comparison of the judge's consideration of the differences in sanctions in the OC Kaligis case.

3.2.1. Decision of the Corruption Court of First Instance:

- (a). Sanctions: 5.5 years in prison and a fine of IDR 300 million instead of 4 months imprisonment.
- (b). Judge's Consideration: In this verdict, the judge considered that OC Kaligis was guilty of committing a corruption crime by giving bribes to judges and clerks of PTUN Medan. The judge considered OC Kaligis' role as the mastermind of the bribery plan but still gave a relatively light sanction on the grounds of remorse and a guilty plea from the defendant.

3.2.2. High Court Decision

- (a). Sanction: 7 years in prison.
- (b). Judges' Considerations: The Court of Appeal aggravated OC Kaligis' sentence, considering that his actions as a senior lawyer severely undermined the integrity and public trust in the justice system. In addition, the CA considered that a heavier sentence was necessary to provide a deterrent effect.

3.2.3. Judgment of Cassation:

- (a). Sanctions: 10 years in prison and a fine of IDR 500 million instead of 6 months imprisonment.
- (b). Judges' Considerations: The Supreme Court, in its cassation decision, increased the sentence because OC

⁴⁸ Rahmi.

Kaligis' role in the case was significant, and his actions had tarnished the image of the legal profession. The Supreme Court emphasized that a harsher punishment was needed as a form of resistance to bribery in the judiciary.

3.2.4. Judgment of Judicial Review (PK):

- (a). Sanctions: 7 years in prison and a fine of IDR 300 million instead of 4 months imprisonment.
- (b). Judge's Consideration: In the PK decision, the sentence was again reduced to 7 years by considering several mitigating aspects, including OC Kaligis' elderly health condition and demonstrated remorse. The PK judges also considered the previous sentence severe and had a deterrent effect.

The different sanctions at each level of the court indicate that each stage of the judiciary considers different aspects, such as the level of the crime, the role of the defendant, the impact of the defendant's actions on the integrity of the judiciary, as well as other mitigating or aggravating factors. The more severe sentences at the cassation level indicate law enforcers' desire to impose harsher corruption penalties. In contrast, the reduced sentences at the judicial review level reflect consideration of the personal circumstances of elderly defendants.

The lawyers involved in this case, including OC Kaligis and his subordinates, had different roles in the bribery attempt. OC Kaligis, as the leader of the team of lawyers, had the main role in directing and deciding on the bribery strategy. His subordinates caught in the OTT were given lighter sentences because their roles were considered more subordinate to OC Kaligis. Lighter sentences can also be caused by guilty pleas and cooperation with law enforcement in uncovering the case.

The OC Kaligis case shows the serious impact of corruption in the judicial system, where Kaligis, along with several judges and clerks of the Medan State Administrative Court, was involved in a bribery case to influence a legal decision related to testing the authority of the North Sumatra High Prosecutor's Office. Kaligis was initially sentenced to 5.5 years in prison, which was later increased to 7 years in prison after an appeal process. This case reflects a serious violation of the advocate code of ethics, which requires advocates to prioritize law enforcement, truth, and justice and maintain solidarity among peers. In comparison, the code of ethics violation committed by Soelaiman Djoyoatmojo-who, who solicited money in the judicial process-was sanctioned with a temporary suspension from the advocate profession, demonstrating the strict application of the KEAI. The lengthy legal process that Kaligis went through, including pre-trial, appeal, and judicial review, illustrates the mechanisms for correcting errors in legal decisions, affirming the right to pursue legal remedies to correct errors and seek justice. The case emphasizes the importance of integrity and fairness in the advocacy profession and the justice system.

4. Conclusion

Irregular judicial practices in Indonesia, particularly in the role of advocates, have seriously impacted the integrity of the legal and justice system. Advocates, supposed to be the protectors of justice, are often involved in bribery practices that undermine the legal order and impede fair law enforcement. Causal factors such as a culture of bribery, individual behavior, cumbersome bureaucracy, and weak oversight of advocate organizations contribute to these corrupt practices. The impact of these irregularities includes damage to the legal order, the formation of legal mafias, and a decline in ethical norms among law enforcement officials. Reforms, strict supervision of advocates, and the application of strict sanctions are needed to restore public confidence and improve the legal system.

Various laws, including the Criminal Code and the Corruption Eradication Law, regulate the application of legal sanctions against advocates involved in bribery. The sanctions include imprisonment and fines, depending on the severity of the offense. In addition, the Indonesian Advocates Code of Ethics also stipulates administrative sanctions such as warnings, temporary suspension, or dismissal from membership of professional organizations. Oversight by the Honor Council and consistent application of sanctions are crucial steps to maintaining the integrity of the advocate profession and preventing corrupt practices. Deeper reform efforts, including ethics education and collaboration between legal institutions, are expected to improve the situation and ensure fair and effective law enforcement.

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