A LEGAL REVIEW OF LAWYERS' IMMUNITY IN CRIMINAL AND CIVIL PROCEEDINGS

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ABSTRACT

Advocate immunity rights constitute a form of legal protection granted to advocates in carrying out their profession as law enforcers. Such protection is regulated under Article 16 of Law Number 18 of 2003 concerning Advocates, which was subsequently expanded through Constitutional Court Decision Number 26/PUU-XI/2013, thereby extending immunity rights not only within court proceedings but also outside the courtroom, provided that such actions are conducted in good faith. However, in practice, the implementation of advocate immunity rights continues to generate various legal issues, particularly regarding the limitations of the principle of good faith and the potential misuse of immunity rights in criminal and civil judicial processes. This study aims to analyze the regulation of advocate immunity rights and their implementation within criminal and civil proceedings in Indonesia. This research employs a normative legal research method using statutory, case, and conceptual approaches. The legal materials consist of primary, secondary, and tertiary legal sources analyzed qualitatively. The findings indicate that advocate immunity rights represent limited legal protection and cannot be interpreted as absolute legal immunity. Advocates may still be held legally accountable if their actions are carried out beyond the scope of professional duties, violate the law, or are not based on good faith. Therefore, strengthening regulations concerning the parameters of good faith and enhancing supervision through the advocate code of ethics are necessary to ensure legal certainty and maintain a balance between the protection of the advocate profession and law enforcement in Indonesia.

Keywords : *Immunity Rights, Advocate, Criminal Justice, Civil Justice, Good Faith*

INTRODUCTION

Advocates are one of the essential elements within the law enforcement system in Indonesia, possessing an equal position with other law enforcement officials such as judges, prosecutors, and the police. In carrying out their profession, advocates function to provide legal services both inside and outside the court in order to ensure the fulfillment of people's rights to obtain justice and legal protection. The position of advocates as officium nobile places this profession as a noble profession because it is oriented toward law enforcement, justice, and human rights. This is affirmed in Law Number 18 of 2003 concerning Advocates, which states that advocates are law enforcers who are free and independent in carrying out their professional duties (Bida et al., 2026; Cahyani et al., 2021; Harahap, 2021; Undang-Undang Nomor 18 Tahun 2003 Tentang Advokat, 2003).

In law enforcement practice, advocates frequently face various legal risks while performing their professional duties, particularly when defending clients in criminal and civil cases. Advocates are often reported criminally or sued civilly by opposing parties or other parties who feel disadvantaged by the legal actions undertaken by advocates in defending their clients' interests. Such conditions have the potential to hinder the independence of advocates in carrying out their professional duties and may create legal uncertainty regarding the protection of the advocate profession itself. Therefore, the state provides legal protection in the form of advocate immunity rights as regulated in Article 16 of Law Number 18 of 2003 concerning Advocates (Harahap & Wiraguna, 2021; Lase, 2021).

Initially, Article 16 of the Advocate Law stipulated that advocates could not be prosecuted either civilly or criminally while performing their professional duties in good faith for the purpose of defending clients in court proceedings. However, this provision later developed following the issuance of Constitutional Court Decision Number 26/PUU-XI/2013. In its ruling, the Constitutional Court expanded the meaning of advocate immunity rights so that such immunity applies not only within court proceedings but also outside the courtroom, as long as the actions are carried out in good faith within the scope of the advocate's professional duties. The decision strengthened the position of advocates as an independent profession free from threats of criminalization when carrying out legal defense duties (Sahbani, 2022; Harahap & Wiraguna, 2021).

Nevertheless, the implementation of advocate immunity rights in practice still gives rise to various legal problems. One of the main issues lies in the absence of clear limitations regarding the meaning of "good faith" in the execution of the advocate profession. This ambiguity creates multiple interpretations in the application of advocate immunity rights, both by law enforcement officials and by advocates themselves. In several cases, advocate immunity rights are viewed as a form of professional protection; however, on the other hand, they are also often considered a loophole to avoid legal accountability for actions that exceed the boundaries of professional authority (Bida et al., 2026; Cahyani et al., 2021; Niode, 2024).

These issues have become increasingly relevant with the emergence of various cases involving advocates in alleged criminal acts such as defamation, obstruction of justice, and criminal reports related to legal actions conducted outside court proceedings. One notable example is the case involving advocate Tony Budiadjaja in Decision Number 690/Pid.B/2024/PN.Jkt.Sel,

which once again sparked debates concerning the limits of advocate immunity rights within the practice of law enforcement in Indonesia. The case demonstrates that advocate immunity rights still face challenges in their implementation, particularly regarding the boundaries between professional protection and legal accountability of advocates (Hamdani, n.d.; Fasha & Anggara, 2026).

Furthermore, the dynamics of technological developments and modern legal practices also create new challenges for the implementation of advocate immunity rights, particularly in advocates' activities outside court proceedings, such as providing legal opinions, mediation, negotiation, and the use of digital media in carrying out professional duties. This condition indicates that the regulation of advocate immunity rights requires a more comprehensive juridical study in order to provide legal certainty while simultaneously preventing the misuse of immunity rights by unethical advocates (Bida et al., 2026; Winata & Dewanto, 2020).

Based on the foregoing explanation, this research is important to conduct in order to analyze the regulation and implementation of advocate immunity rights in criminal and civil judicial proceedings in Indonesia, particularly after Constitutional Court Decision Number 26/PUU-XI/2013. This study is expected to contribute academically to the development of advocate law while also serving as an evaluation material in realizing legal certainty and fair protection for the advocate profession.

1. The Theory of the Advocate Profession as ***Officium Nobile***

Advocates are legal professionals who hold an important position within the judicial system because they function to provide legal services, defend clients' interests, and uphold the principles of justice. Article 5 paragraph (1) of Law Number 18 of 2003 concerning Advocates affirms that advocates are law enforcers who are free and independent. This position indicates that advocates are not merely representatives of clients' interests, but also an integral part of the law enforcement system.

As *officium nobile*, advocates are required to perform their profession based on ethics, morality, integrity, and legal responsibility. Solehoddin explains that the function of advocates is not an ordinary function, but rather a noble duty to uphold the values of humanity, justice, and freedom within legal processes. Therefore, advocates require legal protection in order to carry out their professional duties freely and independently (Solehoddin, 2015).

2. The Theory of Advocate Immunity Rights

Advocate immunity rights refer to legal protection granted to advocates so that they cannot be prosecuted either criminally or civilly when performing their professional duties in good faith for the purpose of defending their clients. The legal basis for advocate immunity rights is contained in Article 16 of Law Number 18 of 2003 concerning Advocates.

This provision was later expanded through Constitutional Court Decision Number 26/PUU-XI/2013. Prior to this decision, advocate immunity protection was understood to apply only within court proceedings. However, following the Constitutional Court decision, advocate immunity rights also apply outside court proceedings as long as the advocate's actions are carried out within the scope of professional duties and based on good faith (Harahap & Wiraguna, 2021).

Thus, advocate immunity rights do not constitute absolute legal immunity, but rather limited protection attached to the execution of professional duties. Advocates may still be held legally accountable if their actions are conducted outside the interests of client defense, violate the

law, or are not based on good faith.

3. The Theory of Good Faith in the Implementation of the Advocate Profession

An important element within advocate immunity rights is "good faith." Good faith serves as the primary boundary in determining whether an advocate is entitled to immunity protection. In practice, however, the concept of good faith remains controversial because the Advocate Law does not provide a firm operational definition regarding its limitations.

Recent research conducted by Bida, Sinurat, and Masu indicates that Article 16 of the Advocate Law continues to generate debate because it does not clearly define "good faith." As a result, the norm creates broad room for interpretation and has the potential to create legal uncertainty (Bida et al., 2026).

In this context, good faith may be understood as actions undertaken by advocates in a professional and proportional manner, without violating the law, without abusing authority, and solely intended for the legal defense of clients. If advocates engage in intimidating actions, falsify documents, obstruct legal processes, or disseminate statements attacking the honor of other parties without legal basis, such actions cannot be protected by immunity rights.

4. Advocate Immunity Rights in Criminal Proceedings

In criminal cases, advocates play an important role in ensuring that suspects, defendants, or convicts obtain fair legal defense. Advocates are responsible for assisting clients from the investigation stage, prosecution, trial proceedings, up to legal remedies. Therefore, protection for advocates is necessary so that they are not afraid to provide maximum legal defense.

However, in practice, advocates may face criminal complaints when their statements, legal arguments, or legal actions are considered detrimental to other parties. Research regarding the implementation of advocate immunity rights in delivering legal arguments emphasizes that immunity is not merely a form of protection, but also a form of responsibility requiring advocates to continue fulfilling their professional obligations properly (Anggraini, 2025).

Thus, in criminal proceedings, advocate immunity rights must be positioned proportionally. On one hand, such rights protect advocates from criminalization. On the other hand, immunity rights must not become a justification for obstructing investigations, manipulating evidence, or committing other criminal acts.

5. Advocate Immunity Rights in Civil Proceedings

In civil cases, advocates act as legal representatives defending clients' interests in civil disputes, such as breach of contract, unlawful acts, business disputes, land disputes, family disputes, and other cases. In this context, advocates may undertake various legal actions, such as drafting lawsuits, answers, replications, duplications, documentary evidence, conclusions, legal warnings, negotiations, and mediation.

Immunity rights in civil proceedings are important because advocates frequently present legal arguments that may be considered detrimental to opposing parties. Without immunity protection, advocates could easily face civil lawsuits merely for carrying out defense duties. Nevertheless, such protection must remain limited by the principles of good faith, propriety, and compliance with the professional code of ethics.

Therefore, in civil proceedings, advocate immunity rights should be understood as protection for legitimate professional actions rather than justification for unlawful conduct. Advocates must still bear responsibility if proven to have committed acts such as formulating false

arguments, using documents known to be invalid, or undertaking actions exceeding the authority granted by clients.

6. The Relationship Between Advocate Immunity Rights and the Advocate Code of Ethics

Advocate immunity rights cannot be separated from the professional code of ethics. The code of ethics functions as a moral and professional boundary in carrying out advocacy duties. In other words, the stronger an advocate's compliance with the code of ethics, the stronger the basis for immunity protection granted to that advocate.

Studies concerning the role of the advocate code of ethics demonstrate that the code possesses a strategic function in maintaining professionalism, morality, and justice in legal practice, including through the imposition of sanctions for ethical violations (Hamdani et al, 2026; Hidayah et al., 2024).

Therefore, immunity rights must not be interpreted as unlimited freedom. Such rights must operate alongside ethical obligations, including maintaining client confidentiality, refraining from providing false statements, not misleading the court, respecting opposing parties, and carrying out the profession honestly and responsibly.

7. Previous Studies

Several previous studies have discussed advocate immunity rights from various perspectives. Research regarding advocate immunity rights following Constitutional Court Decision Number 26/PUU-XI/2013 demonstrates that the decision expanded advocate protection not only within courts but also outside judicial proceedings(Harahap & Wiraguna, 2021).

Another study regarding the limitations of advocate immunity emphasizes that the expansion of immunity based on the Constitutional Court decision still requires restrictions to prevent abuse of rights. Advocate immunity must not be interpreted as absolute immunity, but rather as protection conditional upon professional duties and good faith (Winata & Dewanto, 2020).

Meanwhile, recent research concerning the regulation of advocate immunity rights highlights the issue of the unclear definition of "good faith" within the Advocate Law. This ambiguity may lead to differing interpretations among advocates, law enforcement officials, and society (Bida et al., 2026).

Based on these previous studies, this article positions itself to examine more specifically advocate immunity rights within criminal and civil judicial proceedings, particularly by emphasizing the boundaries between professional protection, legal accountability, and the principle of good faith.

METHOD

1. Type of Research

This study employs normative legal research. Normative legal research is conducted by examining legal norms, legal principles, statutory regulations, court decisions, and legal doctrines related to the legal issues being studied. This research focuses on the examination of advocate immunity rights in criminal and civil judicial proceedings based on positive law provisions in Indonesia.

According to (Soekanto & Mamudji, 2011), normative legal research is legal research

conducted by examining library materials or secondary data as the primary source of analysis. This type of research is used to identify legal rules, legal principles, and legal doctrines in order to address existing legal issues.

In this study, the normative approach was selected because the primary objects of analysis consist of Law Number 18 of 2003 concerning Advocates, Constitutional Court Decision Number 26/PUU-XI/2013, provisions concerning the advocate code of ethics, and court decisions related to advocate immunity rights.

2. Research Approaches

This research employs several approaches, namely:

a. Statutory Approach

The statutory approach is conducted by examining all laws and regulations related to advocate immunity rights. This approach is used to analyze the legal framework governing advocate immunity rights within the Indonesian legal system.

The regulations analyzed include: Law Number 18 of 2003 concerning Advocates; the Indonesian Criminal Code (KUHP); the Indonesian Civil Code (KUHPerdata); the Indonesian Criminal Procedure Code (KUHAP); and other relevant regulations.

b. Case Approach

The case approach is conducted by examining court decisions and Constitutional Court decisions related to the implementation of advocate immunity rights. This approach aims to identify how advocate immunity rights are applied in law enforcement practices in Indonesia.

In this research, several decisions are analyzed, including: Constitutional Court Decision Number 26/PUU-XI/2013; court decisions related to the criminalization of advocates; and both civil and criminal cases involving advocates in carrying out their professional duties.

c. Conceptual Approach

The conceptual approach is used to understand legal concepts related to: advocate immunity rights; the principle of *officium nobile*; good faith; and the professional responsibility of advocates.

This approach is carried out by examining the opinions of legal scholars, legal doctrines, and legal theories relevant to the research.

3. Sources of Legal Materials

This study uses secondary data consisting of primary legal materials, secondary legal materials, and tertiary legal materials.

a. Primary Legal Materials

Primary legal materials are legal materials possessing binding legal authority, including: Law Number 18 of 2003 concerning Advocates; Constitutional Court Decision Number 26/PUU-XI/2013; the Indonesian Criminal Code (KUHP); the Indonesian Civil Code (KUHPerdata); the Indonesian Criminal Procedure Code (KUHAP); the Indonesian Advocate Code of Ethics; and court decisions related to advocate immunity rights.

b. Secondary Legal Materials

Secondary legal materials are materials that provide explanations regarding primary legal materials, including: legal textbooks; scientific journals; scholarly articles; research findings; conference proceedings; and expert opinions related to advocate immunity rights.

c. Tertiary Legal Materials

Tertiary legal materials are materials that provide guidance and explanations regarding primary and secondary legal materials, such as: legal dictionaries; legal encyclopedias; and legal journal indexes.

4. Legal Material Collection Technique

The technique for collecting legal materials in this study is conducted through library research. Library research is carried out by collecting and studying various legal materials related to advocate immunity rights, including statutory regulations, court decisions, books, journals, and scientific articles.

The collection of legal materials is also conducted through electronic document searches and relevant scientific journal databases in order to obtain the latest references concerning the development of advocate immunity rights in Indonesia.

5. Legal Material Analysis Technique

The analysis of legal materials in this research is conducted qualitatively using a descriptive-analytical method. The descriptive method is used to describe the regulation and implementation of advocate immunity rights within the Indonesian legal system, while the analytical method is used to analyze legal issues related to the limitations of advocate immunity rights in criminal and civil judicial proceedings.

Furthermore, the results of the analysis will be interpreted systematically in order to obtain conclusions regarding: forms of legal protection for advocates; limitations of advocate immunity rights; and the implementation of the principle of good faith in judicial practice.

RESULTS AND DISCUSSIONS

1. Regulation of Advocate Immunity Rights in the Indonesian Legal System

Advocate immunity rights constitute a form of legal protection granted to advocates in carrying out their professional duties as law enforcers. The regulation concerning advocate immunity rights is explicitly stipulated in Article 16 of Law Number 18 of 2003 concerning Advocates, which states that advocates cannot be prosecuted either civilly or criminally while performing their professional duties in good faith for the purpose of defending clients in court proceedings. This provision demonstrates that the state provides guarantees of protection for the advocate profession so that advocates may carry out legal defense functions freely and independently.

The existence of advocate immunity rights is closely related to the position of advocates as *officium nobile*. As a noble profession, advocates are required to maintain integrity and professionalism in defending the legal rights of clients. Therefore, legal protection for advocates is necessary to ensure that advocates do not experience pressure, intimidation, or criminalization while carrying out defense duties. According to Munir Fuady, immunity rights are one of the important instruments for maintaining the independence of the advocate profession within the modern judicial system. Without such protection, advocates would face difficulties in carrying out defense functions optimally due to concerns over criminal sanctions or civil lawsuits.

Nevertheless, Article 16 of the Advocate Law initially gave rise to multiple interpretations because the phrase “in court proceedings” was considered to limit the scope of advocate immunity

protection. In practice, advocates do not only work in court proceedings but also engage in various legal activities outside the courtroom, such as negotiations, mediation, legal consultations, drafting legal documents, and assisting clients during investigation processes. These conditions led to a constitutional review request regarding Article 16 of the Advocate Law before the Constitutional Court.

Through Decision Number 26/PUU-XI/2013, the Constitutional Court subsequently expanded the meaning of advocate immunity rights. The Court declared that legal protection for advocates applies not only within court proceedings but also outside court proceedings, as long as such actions are carried out in good faith within the scope of the advocate profession. This decision provides broader legal certainty for the advocate profession while reaffirming the position of advocates as independent law enforcers (Decision Number 26/PUU-XI/2013, 2013).

The expansion of advocate immunity rights essentially constitutes a form of protection for the constitutional right of society to obtain legal assistance. Advocates who fear criminalization may lose their independence in defending the legal interests of clients. Therefore, immunity rights are viewed as part of the protection of the principles of a fair trial and access to justice.

However, advocate immunity rights do not constitute absolute legal immunity. Advocates may still be held legally accountable if their actions are carried out outside the interests of client defense or are contrary to the law and the professional code of ethics. Thus, advocate immunity rights must be understood as limited immunity attached to the execution of professional duties rather than a form of unlimited freedom.

2. Implementation of Advocate Immunity Rights in Criminal Proceedings

In criminal proceedings, advocates play an important role in ensuring that suspects or defendants obtain fair legal defense. Advocates function to assist clients from the investigation stage, prosecution, and trial proceedings. Therefore, protection for advocates is highly important so that they may carry out their duties without fear of criminal threats.

However, in practice, various cases of criminalization against advocates carrying out professional duties are still found. Several advocates have been reported for alleged defamation, obstruction of justice, or other actions considered detrimental to certain parties. These conditions indicate that the implementation of advocate immunity rights still faces challenges within Indonesian law enforcement practices.

One of the primary issues in implementing advocate immunity rights is the absence of clear limitations regarding the meaning of "good faith." This ambiguity causes law enforcement officials to have differing interpretations in determining whether an advocate's actions constitute part of professional duties or instead constitute unlawful acts.

Research conducted by Bida, Sinurat, and Masu explains that the unclear parameters of good faith in the Advocate Law potentially create legal uncertainty and open opportunities for the criminalization of advocates (Bida et al., 2026).

In criminal judicial practice, advocate immunity rights should be granted as long as advocates:

a. act within their professional capacity as advocates;
b. undertake actions for the purpose of defending clients;
c. do not commit acts that violate the law; and
d. perform their profession based on the advocate code of ethics.

If advocates are proven to have committed acts such as document forgery, bribery, witness intimidation, or obstruction of legal processes, such actions cannot be protected under immunity rights because they exceed the boundaries of professional duties.

Furthermore, developments in information technology also create new challenges regarding the implementation of advocate immunity rights. Currently, advocates frequently provide legal opinions through social media, press conferences, and other digital platforms. Under certain circumstances, advocates' statements in public spaces may give rise to legal disputes related to defamation or dissemination of information considered detrimental to other parties. This demonstrates that regulations concerning advocate immunity rights need to be adjusted to developments in modern legal practice.

3. Implementation of Advocate Immunity Rights in Civil Proceedings

In civil cases, advocates act as legal representatives defending the legal interests of clients in various civil disputes. Legal actions carried out by advocates include drafting lawsuits, answers, legal warnings, negotiations, mediation, and presenting legal arguments during court proceedings.

Immunity rights in civil cases are highly important because advocates frequently present legal arguments or legal claims that may be considered detrimental to opposing parties. Without immunity protection, advocates could easily face civil lawsuits merely for carrying out defense duties on behalf of clients.

Nevertheless, in practice, civil lawsuits against advocates based on unlawful acts (*onrechtmatige daad*) are still found. Such lawsuits generally relate to allegations that advocates conveyed information detrimental to other parties or undertook actions exceeding the scope of their professional authority.

In this context, advocate immunity rights must be understood proportionally. Legal protection is granted for professional actions conducted in good faith, not for all actions undertaken by advocates without limitation. Therefore, advocates still bear legal and ethical responsibilities in carrying out their profession.

According to (Harahap & Wiraguna, 2021), advocate immunity rights cannot be separated from the principles of professionalism and compliance with the professional code of ethics. Advocates who abuse their profession cannot seek protection behind immunity rights.

Moreover, in civil cases, issues often arise concerning the limits of advocate responsibility for clients' actions. In several cases, advocates are accused of sharing responsibility for the legal actions of their clients. In principle, however, advocates merely act as parties providing legal services based on authority granted by clients. Therefore, a clear distinction is necessary between clients' legal actions and advocates' professional actions.

4. Analysis of the Limitations of Advocate Immunity Rights from the Perspective of the Code of Ethics and Legal Certainty

Advocate immunity rights fundamentally cannot be separated from the professional code of ethics. The advocate code of ethics functions as a moral and professional guideline in carrying out advocacy duties. Thus, the implementation of immunity rights must always be based on the principles of integrity, honesty, professionalism, and responsibility.

In practice, one of the weaknesses in the regulation of advocate immunity rights is the absence of clear indicators regarding the limits of "good faith." This ambiguity causes the implementation of immunity rights to depend heavily on the interpretation of law enforcement

officials and judges in each case.

Based on the analysis results, the author argues that reconstruction of advocate immunity regulations is necessary through:

a. clarification of good faith parameters within the Advocate Law;
b. strengthening the role of advocate organizations in ethical supervision;
c. harmonization between advocate immunity rights and the principle of legal accountability; and
d. formulation of technical guidelines regarding the implementation of advocate immunity rights in judicial practice.

Strengthening these regulations is important to ensure that advocate immunity rights are not misused as instruments for avoiding legal accountability while still protecting the independence of advocates in carrying out their profession.

Thus, advocate immunity rights must be positioned in balance between professional protection and law enforcement. Advocates require protection to carry out defense functions freely, yet at the same time they remain subject to legal principles, professional ethics, and professional responsibility.

CONCLUSIONS

Based on the results of the research and discussion concerning advocate immunity rights in criminal and civil judicial proceedings, it can be concluded that advocate immunity rights constitute a form of legal protection granted to advocates in order to enable them to carry out their profession freely, independently, and responsibly in defending the legal interests of their clients. The regulation of advocate immunity rights in Indonesia is stipulated in Article 16 of Law Number 18 of 2003 concerning Advocates, which was subsequently expanded through Constitutional Court Decision Number 26/PUU-XI/2013, thereby extending immunity protection not only within court proceedings but also outside court proceedings, as long as such actions are carried out in good faith within the scope of the advocate profession.

In its implementation, advocate immunity rights in both criminal and civil judicial proceedings still face various challenges, particularly due to the absence of clear limitations regarding the meaning of "good faith." This ambiguity gives rise to multiple interpretations in the application of immunity rights and has the potential to lead to the criminalization of advocates on one hand, as well as the abuse of immunity rights on the other. In criminal judicial practice, advocates may still be reported or subjected to legal proceedings if their actions are considered to exceed the boundaries of the profession, such as committing obstruction of justice, document forgery, or other actions contrary to the law. Meanwhile, in civil cases, advocates may also face civil lawsuits if they are deemed to have committed unlawful acts while carrying out their authority as legal counsel for clients.

Therefore, advocate immunity rights cannot be understood as absolute legal immunity, but rather as limited legal protection attached to the execution of the advocate profession based on the principles of professionalism, good faith, and compliance with the advocate code of ethics. In this context, maintaining a balance between the protection of the advocate profession and the principle of legal accountability is essential in order to achieve legal certainty and uphold justice.

Based on the results of this study, strengthening regulations concerning advocate immunity

rights is necessary, particularly through clarifying the parameters of "good faith" within the Advocate Law and strengthening the role of advocate organizations in supervising professional ethical conduct. With clearer and more comprehensive regulations, it is expected that advocate immunity rights will be able to protect the independence of the advocate profession without neglecting the principles of accountability and law enforcement in Indonesia.

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