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A Case Study: Advocate that Worked as Permanent Lecturer According to Legal View

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ABSTRACT

The dual position or profession as an advocate and a lecturer sometimes raises doubts about whether the dual position as a lecturer is allowed or not. This doubt has the potential to cause a debate that leads to legal uncertainty conditions. This study aims to determine the prohibition of a lecturer who also being an advocate and vice versa. Is there any prohibition on an advocate who also being a lecturer for eliminating the doubts and creating legal certainty for dual professions of lecturers and advocates. This research uses the normative research or library research method. Legal research conducted by examining library materials or secondary data through normative legal research, in this case referring to a court decision that has permanent legal force, the Decision No: 47/Pdt.SUS-PHI/2016/ PN Pdg. By doing this research, it is expected that it can further straighten the views or opinions that the dual profession of lecturers and advocates may or may not be based on the applicable positive law. From the results of this research, it was concluded that lecturers who were concurrently professions as advocates did not violate the legislation provisions and could not be justified to dismissal the double- professional lecturers.

Keywords: Advocate, Lecturer, Multiple Professions

INTRODUCTION

In the phenomenon of dual professions among legal professionals, some practitioners work as advocates while simultaneously holding positions as university lecturers. These lecturers may teach in law faculties, notary master programs, or other postgraduate programs (Setiawan, 2018). This dual-role arrangement can also occur in reverse, where lecturers concurrently practice as advocates.

The lecturer profession holds high social status and is regarded as a noble profession due to its role in imparting knowledge. However, despite its respected position, it does not always guarantee financial well-being, especially for lecturers at private universities (PTS), many of whom live below the standard of prosperity (Sappa et al., 2015). The economic conditions of private university lecturers are relatively weak, as their welfare largely depends on their take-home pay. This contrasts with civil servant lecturers, whose salaries follow government standards. To enhance lecturers' welfare, regulations are needed to initiate improvements. In response, the government, through the Ministry of Education and Culture, issued Regulation Number 84/2013 concerning the Appointment of Non-Civil Servant Permanent Lecturers at Public and Private Universities. Lecturer placement in higher education institutions is conducted objectively and transparently, in accordance with statutory regulations (Undang-Undang No. 14 Tahun 2005, 2005).

At some universities, particularly those with law faculties or postgraduate law programs, many legal professionals—including notaries, advocates, judges, and other practitioners—are appointed as lecturers due to their academic qualifications. This practice is legally acceptable as long as no laws or ethical codes prohibit it. Ethical considerations regulate the moral behavior and professional conduct of legal practitioners holding concurrent positions as lecturers.

The contributions of dual-role lecturers who are also legal practitioners include fostering a balanced approach between legal theory and practice—bridging the gap between "das sollen" (what the law should be) and "das sein" (what the law is in practice). Students benefit from this by gaining insights into legal rules, real-world legal applications, law enforcement practices, and societal responses to the law (Setiawan, 2018).

In the context of concurrent positions among legal professionals, some advocates also serve as university lecturers in law faculties, notary master programs, or other postgraduate programs.

Based on the above explanation, this study aims to determine whether there are legal prohibitions preventing lecturers from becoming advocates and vice versa. It also seeks to eliminate uncertainties and establish legal certainty regarding the dual professions of lecturers and advocates.

LITERATURE REVIEW

Position, Functions and Lecture Roles

Law No. 14 on Teachers and Lecturers emphasizes that both play a highly strategic role, function, and position in national development within the field of education. Specifically, the role of lecturers in national development is explicitly stated in Article 3, Paragraph (1), which defines them as professionals in higher education, in accordance with statutory regulations.

Additionally, lecturers serve to enhance their dignity and role as learning agents, contributors to the development of science, technology, and the arts, as well as facilitators of community service to improve the quality of national education. Consequently, their duties, main roles, functions, and obligations are closely tied to their professionalism. Moreover, lecturers can serve as motivators and sources of inspiration for students and their environment. Clearly, this is not a task to be taken lightly (Hardiansyah, 2018).

Position, Function and Advocates Role

The role of advocates in the law enforcement system is that of both law enforcers and respected professionals. In carrying out their functions and duties, advocates should be granted the same authority as other law enforcers, such as police, prosecutors, and judges. This authority is crucial to maintaining the independence of advocates in their profession and preventing arbitrariness by other law enforcers.

In terms of judicial power, advocates are regulated to protect and represent society, while judges, prosecutors, and police are tasked with representing national interests.

RESEARCH METHODOLOGY

In this study, the author employs a normative research method, also known as library research. Legal research conducted by examining library materials or secondary data is referred to as normative legal research or library research (Amiruddin & Asikin, 2016). In normative legal research, the law is often conceptualized as what is written in legislation (law in books) or as a set of rules and norms that serve as parameters for appropriate human behavior.

The research approach is a model or method used to obtain information from various aspects in order to find answers based on the examined issue (Jilcha Sileyew, 2020). This research is a normative legal study aimed at examining the phenomenon of dual professions between lecturers and advocates, which can potentially become a legal issue if legal certainty is not promptly established. Once a legal issue is identified, the researcher seeks relevant legal materials based on the examined case. Therefore, the author utilizes legal library materials

categorized by their binding authority, which consist of primary, secondary, and tertiary legal materials.

Primary legal materials refer to binding legal sources such as statutory regulations, jurisprudence, and other legal instruments. The primary legal materials used in this research include Law Number 18 of 2003 on Advocates; Law Number 14 of 2005 on Teachers and Lecturers; Constitution Number 5/2014 on State Civil Apparatus; Government Regulation Number 53/2010 on Civil Servant Discipline; Regulation of the Minister of Education and Culture Number 84 of 2013 on the Appointment of Non-Civil Servant Permanent Lecturers at State Universities and Permanent Lecturers at Private Universities; Regulation of the Minister of Research, Technology, and Higher Education Number 26 of 2015 on the Registration of Educators in Higher Education; and Regulation of the Minister of Research, Technology, and Higher Education of the Republic of Indonesia Number 2 of 2016 on Amendments to the Regulation of the Minister of Research, Technology, and Higher Education Number 26/2015 on the Registration of Educators in Higher Education.

Secondary legal materials provide explanations of primary legal materials. In this research, secondary sources include books and references related to the rights and obligations of lecturers and advocates. Tertiary legal materials offer guidance and explanations for both primary and secondary legal materials. In this study, tertiary legal sources include legal dictionaries.

The process of data collection and analysis is conducted using a normative research approach through the study of legal materials, both primary and secondary. In this regard, understanding various library sources (library review) plays a crucial role in ensuring solid research. Literature review involves critically examining materials related to the research problem, followed by a systematic, detailed, and deductive analysis (Waluyo, 2002). The author manages the obtained literature data for analysis through the following stages: after collecting relevant legal materials, the data is processed as typically done in legal research. This involves legal reasoning, followed by an analysis based on systematic and coherent thought processes. The analytical technique used is a prescriptive normative technique, supported by a descriptive analytical technique (Sivarajah et al., 2017).

RESULT AND DISCUSSION

The Case of Lecturer Who Also Become a Advocates

A lecturer at the University of Muhammadiyah Sumatra carries out his profession with full responsibility and high dedication, never violating applicable regulations. According to the law, every individual, company, or educational foundation, including the Muhammadiyah University of West Sumatra and its employees, must comply with the laws of the Republic of Indonesia, including

Law No. 13/2003 concerning Manpower and Law No. 2/2004 concerning the Settlement of Industrial Relations.

However, the chancellor of the university in question decided to terminate the lecturer's employment without following the procedures stipulated in Article 151, paragraphs (1), (2), and (3) of Law No. 13/2003 concerning Employment.

Furthermore, in an effort to reach a mutual agreement, the University of Muhammadiyah West Sumatra presented the lecturer with two options at that time: If he wished to become a permanent lecturer at the Plaintiff Foundation, he had to resign as an advocate. Conversely, if the Plaintiff chose not to resign as an advocate, he had to resign as a permanent lecturer at the Muhammadiyah Foundation.

However, based on existing regulations, the reasons provided by Muhammadiyah University to the Plaintiff during the meeting on June 27, 2016, were contrary to the Regulation of the Minister of Research, Technology, and Higher Education of the Republic of Indonesia No. 26/2015 regarding the Registration of Educators in Higher Education. According to this regulation, lecturers may come from researchers, practitioners, or full-time lecturers. Lecturers holding an NIDK (Special Lecturer Identification Number) are included in the lecturer-to-student ratio calculation. The NIDK remains valid until the lecturer reaches the age of 70 for professors and 65 for lecturers other than professors. Therefore, it must be stated that the unilateral termination of employment by the university constitutes an unlawful act against the lecturer.

The Settlement Effort

Due to the various efforts made by the Lecturer as the Plaintiff, as stated in the Manpower Regulations—namely, the Bipartite and Tripartite settlement efforts (mediation)—no mutual agreement was reached. Therefore, in accordance with legal provisions, to defend the rights and interests of the Plaintiff, it is appropriate and lawful to file this case with the Industrial Relations Court at the Padang District Court to ensure legal certainty for the Plaintiff.

Furthermore, based on the primary considerations above, it is evident that the University's actions as the Defendant—unilaterally terminating (PHK) the Plaintiff—were not due to any fault of the Plaintiff but rather the arrogance of the Defendants. In particular, the Defendant attempted to eliminate the Plaintiff's presence at Muhammadiyah University of West Sumatra by providing unreasonable justifications that contradict applicable laws, resulting in significant losses for the Plaintiff.

The Losses Suffered by Plaintiff

Since the Defendants committed an unlawful act, the Plaintiff suffered immeasurable losses, both materially and morally.

The material losses include the remaining unpaid salary as a permanent lecturer, the remaining salary from the unfulfilled contract, the unpaid salary as a Personnel of the FHUMSB Institution in the position of Head of the LPPM field, severance pay, cash from the service period award, and 15% compensation for rights.

The moral loss suffered by the Plaintiff arose from being treated unfairly by certain elements who attempted to remove and expel the Plaintiff dishonorably from their own institution, using their power without regard for the Plaintiff's human rights. Despite serving as a lecturer since 2009 and becoming a permanent lecturer in 2010, the Plaintiff's honor and dignity were disregarded by the Defendants.

Therefore, the Defendants should be required to pay compensation for the Plaintiff's moral losses, estimated at Rp. 2,125,500,100 (Two billion one hundred twenty-five million five hundred thousand one hundred rupiah), in cash, immediately, and unconditionally.

Judges' Considerations and Decisions

Considering that the Defendants filed an Exception, essentially stating that the Industrial Relations Court at the Class IA Padang District Court lacked absolute competence to examine the case in casu. Considering that the Defendants' Exceptions have been decided in the Interim Decision dated December 15, 2016, which confirmed that the Industrial Relations Court at the Class IA Padang District Court has the authority to hear the a quo case.

Considering the Defendant's Exception, particularly Point II, which argues that the Plaintiff's lawsuit has expired. In the opinion of the Panel of Judges, the Defendants' exceptions relate to the subject matter of the case and should be addressed together with the main case. Therefore, the Defendants' exceptions have no legal basis and are declared rejected. Based on the above considerations, the Defendants' exceptions are not legally justified and must be set aside and declared entirely rejected.

Whereas the *judex facti* decision of the Industrial Relations Court at the Padang District Court, Case Number 47/Pdt.Sus-PHI/2016/PN.PDG, dated March 2, 2016, was erroneous in applying both formal and material law. The *Judex Facti*'s legal considerations were insufficient, shallow, and overly brief in addressing the core subject matter of the case. According to the *Judex Facti*'s legal considerations, which were clearly vague, arbitrary, and a priori, such legal reasoning must be classified as *onvoldoende gemotiveerd* (insufficiently reasoned). A decision based on *onvoldoende gemotiveerd* legal considerations must be declared null and void *ipso jure*.

Upon reviewing the *judex facti* legal considerations in the Industrial Relations Court at the Class IA Padang District Court, the judgment on page 44 states that, based on those considerations, the Defendants' reasoning for not

terminating the Plaintiff's employment (PHK) appears fabricated and lacks legal grounds. Since the Plaintiff was never called back to teach after receiving the letter mentioned above, the Judges conclude that the Plaintiff was legally terminated (PHK) by the Defendants as of February 13, 2016. The Plaintiff is therefore entitled to compensation amounting to twice the provisions stipulated in Article 157 and Article 158 of Law Number 13 of 2003 concerning Manpower, with the following details. The legal considerations of the *Judex Facti* Court at the Industrial Relations Court of the Padang District Court were clearly and unequivocally incorrect in applying both formal and material law.

Furthermore, the prohibition of holding dual positions also applies to Advocates, as stipulated in Article 20 of Law Number 18 of 2003 concerning Advocates, which states that advocates are prohibited from holding other positions that conflict with the interests of their duties and the dignity of their profession. Advocates are also prohibited from holding other positions that require service in a way that harms the legal profession or restricts their freedom and independence in carrying out their professional duties. Additionally, advocates who become state officials must not practice as advocates while holding such positions.

After confirming that the Industrial Relations Court at the Class IA Padang District Court has the authority to examine this case, the Panel of Judges finds that the Termination of Employment (PHK) between the Plaintiff and the Defendant occurred on February 13, 2016. Considering the above elements, the Judges reject the Defendants' argument that the Plaintiff's lawsuit to the Industrial Relations Court at the District Court has expired or lacks legal grounds. Since the Plaintiff's actions do not meet the criteria outlined in Article 171 of Law Number 13 of 2003 concerning Manpower, the Defendants' arguments and responses must be set aside and declared rejected.

CONCLUSION

Based on the description above, holding dual employment as a Lecturer and an Advocate is not permitted under labor law. Advocates are not allowed to hold positions unrelated to their profession. Considering these factors, the termination of employment (PHK) by the University against the involved lecturers is deemed valid and does not violate the law.

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