

Protection of Advocates Immunity Rights in The Criminal Code: Between Legal Certainty and Justice

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ABSTRACT

The protection of advocates' immunity rights is a fundamental aspect of ensuring their role as independent and equal law enforcers within the criminal justice system. In Indonesia, advocate immunity is regulated under Article 16 of Law No. 18 of 2003 on Advocates and was further interpreted by the Constitutional Court Decision No. 26/PUU-IX/2013 to extend beyond courtroom proceedings. However, the emergence of the Criminal Code (KUHP) raises new debates regarding the explicit recognition and operational guarantees of such rights. This study aims to analyze the normative position of advocate immunity in the KUHP and assess its implications for legal certainty and the pursuit of justice. Employing a normative legal approach and comparative analysis with other legal systems, the research finds that the current lack of clear and explicit provisions protecting advocates' immunity in the KUHP is a notable deficiency. This legal gap may weaken the position of advocates and expose them to risks of criminalization in the performance of their professional duties. Therefore, this paper recommends a clearer normative formulation that ensures adequate protection for advocates while upholding a balanced realization of legal certainty and substantive justice in Indonesia's criminal justice system.

Keywords: Advocate Immunity, KUHP, Legal Certainty, Justice, Legal Protection

Introduction

The profession of advocate is one of the key elements in the criminal justice system, ensuring the implementation of the principle of due process of law (Smokov et al., 2022). In performing their duties as legal counsel for clients, especially in criminal cases, advocates play a crucial role in maintaining the balance of power between the state and individuals. Therefore, the recognition and protection of advocates' immunity rights are essential. This immunity enables advocates to freely and responsibly express opinions, arguments, and defenses without fear of criminalization. In the Indonesian context, the immunity rights of advocates are legally guaranteed under Article 16 of Law Number 18 of 2003 on Advocates, which stipulates that advocates cannot be criminally or civilly prosecuted for performing their professional duties inside or outside the courtroom, provided it is done in good faith (Pande et al., 2024).

However, in practice, these immunity rights often face challenges. Numerous cases have shown criminalization actions against advocates based on statements or actions made while defending clients. Advocates are frequently reported for defamation, unpleasant acts, or even obstruction of justice. This raises concerns over the suppression of freedom of expression and undermines the oversight function carried out by the legal profession. Law enforcement, which should be fair and balanced, becomes skewed when advocates, as one of the pillars of justice, do not receive adequate legal protection. This imbalance directly impacts citizens' constitutional rights, particularly the right to obtain proper legal defense (Bulman-Pozen & Seifter, 2023).

The importance of protecting advocates' immunity rights has also been highlighted in various international legal forums (Tambunan & Supriyanto, 2023). In common law systems

such as Australia and the United Kingdom, advocates' immunity is recognized as a form of professional protection to ensure the defense function is carried out without pressure or intimidation. The High Court of Australia has even ruled that advocates cannot be sued for professional actions performed during judicial proceedings, as this concerns public interest in maintaining the integrity of the justice system (Hartiwiningsih et al., 2023). A comparative study by Siagian et al. (2022) explains that the immunity of advocates in common law countries aims to prevent a chilling effect on freedom of expression and support fair legal proceedings. Similarly, in continental European legal systems, protection of advocates' freedom is part of the human rights standards guaranteed by international legal instruments, such as the *European Convention on Human Rights (ECHR)* (Barabash et al., 2022).

In Indonesia, although the Constitutional Court has expanded the scope of immunity protection through Decision No. 26/PUU-IX/2011 – stating that protection applies both in and out of court – implementation at the practical level remains inconsistent. Law enforcement officials' lack of awareness regarding the substance of the ruling, coupled with the absence of binding operational guidelines, continues to place advocates in a vulnerable position against legal complaints. This reveals a gap between legal norms and reality, threatening the principles of legal certainty and substantive justice (Kalverkämper, 2023).

Following the enactment of the new Indonesian Criminal Code (KUHP) in 2023, which will take effect in 2026, the government is also preparing the *Criminal Code (KUHP)* as part of harmonizing the national criminal justice system. This presents a crucial opportunity to reformulate the protection of procedural rights, including strengthening the role of advocates in the judicial process. Unfortunately, in the circulated, there is no specific article that explicitly regulates advocates' immunity rights. This absence raises concerns of a *legal vacuum* in the protection of the legal profession, particularly in the face of legal conflicts involving advocates and other law enforcement agencies.

The lack of explicit regulation of advocates' immunity rights in the KUHP may also lead to ambiguity and narrow interpretations of advocates' roles. In the spirit of reforming national criminal law, a comprehensive reconstruction is needed – one that considers not only the legal certainty in statutory texts but also reflects substantive justice in judicial practices. Protection of the advocacy profession must become an integral part of a legal system that upholds the principles of *rechtstaat* and human rights protection (Pech, 2022).

Based on this background, this article aims to examine and analyze in depth the position and protection of advocates' immunity rights in the KUHP. This research also assesses whether existing regulations can provide legal certainty and justice in law enforcement practices in Indonesia. Furthermore, a comparative study with legal systems from other countries is conducted to develop more ideal and progressive normative frameworks. Using a normative juridical and comparative analytical approach, this study is expected to offer constructive recommendations for policymakers and legal communities to ensure the protection of advocates' immunity rights in a firm, proportional, and just manner.

Methods Research

This study employs a normative juridical approach, a legal research method that focuses on the study of written legal norms, legal principles, and relevant court decisions. This approach was chosen because the issues discussed are directly related to the existence of advocates' immunity rights as regulated in Law Number 18 of 2003 on Advocates, as well as their connection to the Criminal Code (KUHP). In addition, this study also adopts a comparative approach by examining the protection of advocates' immunity rights in Indonesia in comparison with legal systems in other countries such as Australia and the

Netherlands, in order to gain a broader perspective on the ideal form of legal protection for the legal profession within the criminal justice system.

The types of data used in this research consist of primary, secondary, and tertiary legal materials. Primary legal materials include applicable laws and regulations, such as the Law on Advocates, the Criminal Code (KUHP), and the Constitutional Court Decision No. 26/PUU-IX/2011, which strengthens the protection of advocates' immunity. Secondary legal materials are obtained from legal literature, scientific journal articles, and the opinions of legal experts discussing the function of immunity in the practice of advocacy. Meanwhile, tertiary legal materials include legal dictionaries, encyclopedias, and other supporting documents used to clarify the meaning and context of legal terms used in this research.

The data collection technique is carried out through library research, involving the review of legal documents and relevant academic references. The collected data is then analyzed qualitatively using deductive reasoning, which draws conclusions based on general legal principles toward a specific analysis of the substance of advocates' immunity rights protection in the Criminal Code. Through this approach, the study aims to identify normative inconsistencies, assess the coherence of legal provisions, and offer recommendations for reformulating related articles to ensure legal certainty and justice for the advocacy profession in Indonesia.

Results and Discussion

The Concept of Advocates' Immunity in Indonesia's Positive Law

In the Indonesian legal system, the right to immunity for advocates is a crucial component of legal protection for the profession that performs a defense function within the criminal justice system (Erwanto & Suparno, 2024). The normative provision regarding this right is stipulated in Article 16 of Law Number 18 of 2003 on Advocates, which states that an advocate cannot be prosecuted either civilly or criminally for carrying out their professional duties, whether inside or outside the courtroom, as long as it is done in good faith. This provision serves as a key pillar in ensuring the freedom of advocates to perform their role without fear of criminalization or pressure from any party, including law enforcement officials.

This provision was further strengthened through the Constitutional Court Decision No. 26/PUU-IX/2011, which emphasized that the phrase "inside or outside the courtroom" must be interpreted broadly, covering all activities related to the execution of an advocate's professional duties. The Court ruled that the defense conducted by advocates should not be restricted solely to the courtroom, but should also include the investigation process, detention, legal consultations, communication with clients, and assistance during out-of-court examinations. This decision expands the scope of protection and clarifies that advocates are an integral part of a fair and equal justice system (fair trial) (McKeever et al., 2022).

Nevertheless, in practice, the implementation of advocates' immunity rights still faces challenges. It is not uncommon for advocates to be criminalized for statements or actions made in the course of defending clients. Cases involving criminal reports against advocates for alleged defamation or obstruction of justice indicate a lack of understanding or even resistance from law enforcement officials toward the legal protections inherently attached to the advocacy profession. According to Herryani et al. (2023), the inconsistency of law enforcement in respecting this immunity right demonstrates a weak understanding of the advocate's role as part of an equal criminal justice system, ultimately threatening the integrity of legal proceedings.

This situation indicates that, although the right to advocates' immunity is normatively

recognized in Indonesian positive law, its implementation remains inconsistent and incomplete. Legal protection for advocates remains superficial in practice if not supported by a uniform understanding among all law enforcement agencies and by clear, explicit provisions in statutory regulations (Pardede et al., 2023). Therefore, strengthening the immunity rights of advocates is an urgent necessity to guarantee the independence of the legal profession and to ensure the fair and balanced functioning of the criminal justice system.

The Position of Advocates' Immunity in the Criminal Code

The Criminal Code (KUHP) of 2023, which has been ratified and will take effect in 2026, indeed brings several reforms to Indonesia's criminal law system (Amrullah, 2024). However, in the context of protecting the legal profession – particularly regarding advocates' immunity rights – there is no provision explicitly guaranteeing such protection in the new Criminal Code. Yet, advocates, as part of the criminal justice system, play a strategic role in ensuring the implementation of fair and balanced trials, where the rights of suspects and defendants are legally upheld.

The absence of an explicit provision on advocates' immunity in the 2023 KUHP raises concerns, especially if the Criminal Code (KUHP) – as the implementing regulation – fails to progressively accommodate such protections. A review of the KUHP and discussions shows no specific norms declaring advocates' immunity rights or clearly outlining the scope of professional protection in the execution of their legal defense duties. Advocates are only mentioned nominally as one of the legal subjects in the judicial process, without elaboration on any special rights attached to their profession (Reiners, 2024).

This lack of regulation is highly counterproductive to the spirit of criminal law reform, which ideally upholds the principle of the adversarial system, in which there is a balance of position between public prosecutors and defense counsel. According to Purnomo & Dewi (2023), many advocates have instead become victims of criminalization for legal opinions, actions, or statements made in defense of their clients. This occurs due to the absence of clear legal norms offering protection for defense functions, particularly when the interpretation of the term "good faith" remains subjective and is often used to exert legal pressure on advocates.

The normative void in the KUHP regarding advocates' immunity also reflects a lack of legislative attention to the structural protection needed for the advocacy profession (Pangaribuan, 2025). In modern legal systems, advocates are positioned as equals to other law enforcement officials such as judges and prosecutors who, in some provisions, are granted limited immunity to support the independence of their roles. If state legal officers are given protective space to perform their duties, it stands to reason that advocates, as justice enforcers outside the state structure, should receive similar legal guarantees.

This situation is worsened by the limited public participation in the process of the KUHP, as highlighted by various civil society organizations and legal professional associations. The Civil Society Coalition for Criminal Justice Reform has voiced criticism over the lack of transparency in the legislative process and the weak involvement of legal practitioners, including advocate organizations, in formulating key provisions related to legal rights including those of advocates.

Thus, the position of advocates' immunity rights in the KUHP remains weak and does not reflect a clear legal commitment by the state to protect the function of the legal profession as part of a fair criminal justice system. Without explicit and enforceable norms, advocates' immunity risks becoming a legal discourse that is neglected in practice, potentially undermining the principle of equality of arms in Indonesia's criminal justice system

(Mansyah et al., 2023).

The Tension Between Legal Certainty and Justice in Practice

The tension between legal certainty and justice is a classic dilemma in legal systems, including in the context of protecting advocates' immunity rights (Pakpahan, 2025). Legal certainty requires clear, standardized, and predictable written rules so that every individual understands their rights and obligations before the law. On the other hand, justice demands that the application of law considers concrete conditions, moral values, and the protection of fundamental human rights, including those related to professional practice. When advocates' immunity is not explicitly regulated in procedural laws such as the Criminal Code (KUHP), it creates a legal vacuum that can lead to uncertainty in legal practice.

In the context of the legal profession, the absence of firm regulation on immunity rights creates a gray area in law enforcement. On one side, advocates have a constitutional and legal mandate to conduct legal defense freely, independently, and responsibly. On the other side, without strong legal protection, advocates' actions in carrying out their duties are vulnerable to misinterpretation as legal violations, such as defamation, insult, or obstruction of justice. Such cases have occurred in Indonesia, where advocacy statements or actions have been interpreted as criminal offenses by law enforcement officers. The disharmony between substantive law (such as the Advocates Law) creates an imbalance that harms advocates both institutionally and individually (Muksin et al., 2025).

From a sociological perspective, the absence of legal certainty regarding immunity rights also affects advocates' willingness to defend clients optimally. According to Slee (2023), many advocates have become overly cautious in presenting their defense, especially in cases involving state actors, due to fears of being reported or criminalized. This cautious attitude ultimately disrupts the principle of equality of arms in the criminal justice process, where the defender's position becomes unequal to that of the prosecutor or judge. This imbalance clearly contradicts the principle of fair trial recognized internationally.

From a justice standpoint, protection for advocates should not be merely symbolic, but rather substantive and operational (Manes-Rossi & Nicolò, 2022). Immunity rights are not personal privileges, but institutional guarantees that allow legal defense processes to function effectively. Therefore, the KUHP must bridge the tension between legal certainty and justice by explicitly formulating procedural rights for advocates, including limitations and mechanisms for protection against criminalization. Without such provisions, the advocacy profession will remain in a vulnerable position, and its role as a social control function in a rule of law state will not operate optimally.

Comparison with Legal Systems in Other Countries

Comparing with legal systems in other countries provides valuable perspectives in formulating the regulation of advocates' immunity rights in Indonesia, particularly within the context of reforming the national criminal and procedural law frameworks. In common law systems, such as those in England and Australia, the immunity rights of advocates have attained a strong and often absolute position, especially within the scope of their professional duties in court.

In Australia, the principle of advocates' immunity has been affirmed through significant case law, as discussed in the study by Pender (2023). The High Court of Australia in this case ruled that an advocate cannot be civilly sued for negligence in the performance of their duties during legal proceedings. The rationale was that such immunity is essential to ensure that advocates have the courage to defend clients without fear of legal retaliation. This

immunity not only reflects protection of the legal profession but also preserves the integrity of the justice system by ensuring that clients receive legal representation that is both free and independent (Maharani et al., 2025).

Meanwhile, in England, a similar doctrine applies. Advocates enjoy legal immunity from lawsuits for statements made in court (Combs, 2024). This protection serves to uphold the adversarial system, wherein lawyers are granted full freedom to assert their clients' rights in the courtroom. The protection is categorized as an "absolute privilege", covering all statements made in the context of litigation, whether oral or written.

In contrast, in Indonesia, advocates' immunity is limited and conditional, as stipulated in Article 16 of Law Number 18 of 2003 on Advocates. Immunity only applies if the advocate's actions are carried out "in good faith" (Roghib & Ma'ruf, 2024). This phrase often becomes a point of interpretive ambiguity, exploited by certain parties to criminalize advocates, particularly in strategic cases involving powerful interests or dominant actors in the legal process. Although the Constitutional Court Decision No. 26/PUU-IX/2011 expanded the scope of immunity beyond the courtroom, it has not yet been effectively integrated into the Criminal Code (KUHP).

Several Continental European countries, such as the Netherlands and Germany, also provide protection for the advocacy profession, but with a stricter ethical approach. In these civil law systems, advocates are granted functional protection as long as their actions are conducted within the bounds of legitimate legal. Abuse of immunity may result in ethical or administrative sanctions, but not automatically in criminal or civil penalties, unless there is clear evidence of intentional legal violations (Chapman, 2023).

From this comparison, it can be concluded that countries with more advanced legal systems generally provide advocates with firm and structured immunity rights, whether through legislation or judicial precedent. This stands in contrast to the situation in Indonesia, where advocates' immunity remains in a gray area due to weak statutory regulation and the continued dominance of repressive approaches toward the legal profession. Therefore, Indonesia needs to adopt best practices from other countries in redesigning the legal provisions governing advocates' protection in the Criminal Code (KUHP), in order to guarantee the independence of the profession and uphold the principle of balanced justice for all parties in the criminal justice system.

Theoretical Analysis of the Need for Reformulation

From the perspective of procedural justice theory, as stated by Marasabessy et al. (2025), a fair legal system must ensure that all parties are treated equally before the law and have equal access to mechanisms for self-defense. The immunity rights of advocates are one of the essential instruments to uphold this principle. When advocates are not guaranteed the freedom to carry out their profession, the judicial process becomes imbalanced and may lead to structural injustice. This indicates that immunity rights are not merely about professional protection but also represent an integral part of human rights protection within the legal process.

In addition, under the framework of legal protection theory, the existence of a rule-of-law state obliges the government to provide legal certainty and security for every citizen, including those who perform law enforcement functions, such as advocates. Without strong protection for the legal profession, there is a significant risk of abuse of authority by law enforcement officers, particularly in the form of criminalization of advocates' professional actions when defending their clients. This threatens the principle of the rule of law and damages public trust in the integrity of the judicial system (ALOZIE, 2024).

Legal functionalism theory, which views law as a social mechanism to maintain order

and balance, emphasizes the importance of every legal institution functioning according to its role (Andri et al., 2024). As one of the pillars of law enforcement, advocates have a control function over state power in criminal proceedings. Therefore, this function can only be carried out optimally if immunity rights are clearly defined, firmly established, and protected by binding legislation, including in the Criminal Code (KUHP). The reformulation of these provisions should include boundaries, criteria for good faith, and procedures for resolution in case these rights are violated.

Thus, the need to reformulate advocates' immunity rights in the KUHP arises not only from a normative gap, but also as a logical consequence of theoretical perspectives that view law as a tool for justice, protection, and balanced social function. Unclear legal norms not only jeopardize legal certainty but also undermine procedural and substantive justice. Therefore, an explicit, systematic, and balanced regulation of advocates' immunity rights is an urgent necessity in the reform of Indonesia's criminal justice system.

Conclusion

Based on the results of normative studies and comparative analysis, it can be concluded that the regulation regarding advocates' immunity rights in the Criminal Code (KUHP) has not yet been explicitly and comprehensively addressed. This creates the potential for imbalance within the criminal justice system, particularly concerning the position of advocates as law enforcers who should be legally protected in the exercise of their profession. The lack of clarity regarding the scope and limitations of immunity rights can lead to legal uncertainty and open the door to the criminalization of advocates acting professionally and in good faith.

Comparisons with legal systems in countries such as Australia and the Netherlands show that advocates' immunity is regulated more clearly and in a balanced manner, in order to safeguard the independence of the profession and the integrity of the judicial system. Meanwhile, in Indonesia, although Constitutional Court Decision No. 26/PUU-IX/2011 has expanded the scope of advocates' immunity protection, the implementation of this norm remains weak due to the absence of clear legal sanctions and a lack of institutional synchronization among law enforcement agencies. Therefore, there is a pressing need to strengthen regulations within both the Criminal Code (KUHP) and the to better ensure the protection of advocates' immunity rights.

Based on the analysis and conclusions outlined above, several strategic recommendations can be proposed to strengthen the protection of advocates' immunity rights within Indonesia's criminal legal system, particularly in the context of the KUHP, to support legal certainty and the principle of substantive justice:

1. The government and Parliament (DPR) must incorporate explicit provisions within the KUHP regarding advocates' immunity rights, including the scope of protection, limitations, and supervisory mechanisms for their implementation.
2. The "good faith" principle, which serves as the basis for immunity, should be provided with a measurable and objective interpretation to avoid multiple interpretations and the potential for misuse by law enforcement officials.
3. Advocates' protection institutions, such as PERADI, the Judicial Commission, and the National Commission on Human Rights (Komnas HAM), must be given a stronger role in receiving and following up on reports of violations against advocates' immunity rights.
4. Cross-regulatory harmonization and integrated training are needed for police officers, prosecutors, and judges to enhance understanding of advocates' immunity as an essential part of the due process of law principle.

5. Periodic evaluative studies should be conducted on the implementation of immunity rights to ensure their effectiveness and to prevent misconduct or violations that may harm both advocates and the broader community seeking justice.

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