



System of Recruitment of Legal Profession In A Nation of Law of Pancasila

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Abstrak

Pengaturan sistem dan mekanisme perekrutan profesi hukum seperti Advokat atau Pengacara, masih memiliki sejumlah kelemahan, dan permasalahan. Beberapa organisasi advokat masih menerapkan pendidikan profesi advokat sebagai persyaratan bagi para kandidat untuk mengikuti ujian, dan ada juga beberapa organisasi advokat yang mewajibkan kandidat untuk mengikuti ujian sebelum mendapatkan pendidikan profesional. Beberapa masalah juga ada dalam profesi notaris, dimana calon harus memperoleh Master of Public Notaris. Penelitian bertujuan untuk menganalisis sistem rekrutment profesional hukum di Indonesia yang memiliki dasar negara Pancasila. Hasil penelitian ini menunjukkan bahwa dalam rekrutment profesional hukum di Indonesia, secara normatif mengacu kepada sistem hukum pendidikan nasional yang diharapkan bisa melahirkan profesional hukum yang baik dan berintegritas.

Abstract

The regulatory system and legal profession recruitment mechanisms such as Advocates or Lawyers, still have a number of weaknesses, and problems. Some advocate organizations still apply advocate profession education as a requirement for candidates to take the exam, and there are also some advocate organizations that require candidates to take exams before getting professional education. Some problems also exist in the notary profession, where the candidate must obtain a Master of Public Notary. This research aims to analyze the legal professional recruitment system in Indonesia which has the basic state of Pancasila. The results of this study indicate that in the recruitment of legal professionals in Indonesia, normatively refers to the national legal system of education which is expected to give birth to a good legal professionals and integrity.



1. Introduction

Profession is a position or a job that requires expertise or skills (Nafsiah, 2000). Usually, the term “profession” is always associated with the job or position held by someone, however, not all jobs or positions can be called a profession, it is because that someone who has profession is required to have specific skills and expertise. It means that, a profession should held by specific people with special skills or expertise, which could be obtained through specific education and training. Job is not similar to profession (Gea, 2006). Common people think that every profession is a job but not all jobs could be called profession. Profession has its own mechanisms and rules that must be considered as provision. In the contrary, job does not have complicated or specific rules and provision. It should be clearly explained and straightened to the people because not everybody understand that profession is not similar to job.

Professionalism is the commitment of the members of a profession in order to improve their capabilities continuously (Keraf, 2012). “Professionalism” is a term that refers to the mental attitude in the form of a commitment from the members of a profession to realize and improving their professional quality (George, 2000). Nature works, and every human is required to be professional because professionalism embodied skill or expertise in the optimization of knowledge, skill, time, energy, resources, as well as strategy to achieve a satisfactory condition for everyone. Professionalism is also a mixed of competence and character that shows the importance of moral responsibility.

Professional officials are appointed to meet the increasing market needs, and although the facility and allowance are not provided by government, the professional officials start to handle the public tasks. Legal professions, primarily Advocate and Notary Public are professions that had been created to meet the market needs. Legal professions usually handle the duties that required by the public, and they are required to conduct professionalism in their activities. In order to

reach the level of professionalism in its work, both advocates and notaries require a comprehensive recruitment system to produce responsible and professional personnel.

In the applicable system in Indonesia, there are serious problems in the recruitment of professional organizations such as the organization of advocates and public notaries. In the recruitment system of advocates, there are dual mechanism used by organization of advocates, for example, some organization require their potential members to obtain professional education before taking the advocacy test, and there are also some organization that require their potential members to take exam before requiring them to obtain the educational degree. Another problem also occurs in the profession of notary public that applies the system of educational degree, which is Master of Notary. However, there are some professional education that apply non-degree system, while others apply further education system, which will award a master degree of notary for the notary publics who have completed education and obtained Master of Notary.

In order to answer the question about the system and mechanism of recruitment in legal profession including Advocate and Notary Public, which has been explained above, then the writer would review the recruitment system in both legal profession in the perspective of the Pancasila-based nation of law. This article was aimed to be the input for everyone in order to establish the system of recruitment of legal profession that includes profession of advocate and notary public, which is in accordance with the values and principles of Pancasila-based nation of law.

2. Methods of Research

This research was focused (Creswell, 1994) (Nasution, 2011) on the examination of recruitment system of legal profession in the context of Pancasila-based nation of law, which emphasized the study of recruitment of Advocate and Notary Public, in terms of selection, selection mechanism, Privileges in the selection process, and its implementation in Indonesia. The researcher used normative

legal (Hartono, 2006) and sociological/ empirical legal writing method (Soekanto, 1984). Normative legal writing method was based on the analysis of some of the principles of law and legal theory that were related to the issue in this article. This normative legal research was a procedure and research method that used to seek logic-based truth in normative law (Ibrahim, 2006), whereas according to Soerjono Soekanto, sociological legal research/ empirical includes the research of unwritten law and the effectiveness of law (Soekanto, 1984).

The researcher used two approaches, which were literature or library research (Arikunto, 1998) and conceptual research (Ihalalauw, 2000). Literature research (library research) was used to examine and criticizing (Unger, 2001) the legislation and regulation that still lack of norms, which causes some problems relating to recruitment system of Advocate and Notary Public Profession, especially when they were compared to the literatures and references in the discussion. Conceptual approach was used to understand the concepts and theories (Bruggink, 1995) relating to the concerns and problems in the recruitment system of legal profession in Indonesia. Legal materials were the basic materials that used as references in this article. The legal materials comprised of three parts: primary legal materials, secondary and tertiary legal materials. Primary legal materials were obtained from laws and legislation, official notes/ records, and minutes in the process of creation of laws and judges' decision.

Secondary legal materials were composed of materials that explain primary legal materials (Marzuki, 2006). Secondary legal materials that used to explain primary legal materials were obtained from several literatures including text books, legal journals, monographs and other books, which were directly related to the theme of the writing of this article. Tertiary legal materials were legal materials that provided instructions and explanation of the primary as well as secondary legal materials. The tertiary legal materials comprised of legal dictionaries that were directly related to this article.

3. The Results of Research and Discussion

The Problems in Recruitment System of Advocate and Notary Public Profession

Profession of advocate and notary public have similar function of profession, and both are involved in public issues that related to law enforcement efforts. Before taking a profession, a prospective advocate and notary public should take the required steps. However, the steps for prospective advocate are highly correlated with independent education, which conducted and regulated by advocate organization, while the organization of notary public emphasizes on continuing education system, which is in collaboration with universities to organize the graduate school of notary.

In practice, the educational systems among advocate organizations are different to each other, and they have different method and standards in the implementation of education for candidates of advocates. Therefore, they do not have exact standard and criteria in the implementation. For example, there is variety of time of education among institution. Some institution provide 3 months, while other institution provide one week for the candidates. Even some subjects are taught only in two hours. And their subject materials are not standardized and outdated.

Besides, there are also different mechanisms in the recruitment system among advocate organizations. The differences are reflected on some aspects. Some advocate organizations require the candidates to be involved in professional education of advocacy before taking the exam, while other organizations allow the candidates to take the exam before involved in professional education of advocacy. The differences will certainly affect the level of knowledge and skill of advocates who will enter the field of profession with high level of competition.

In the recruitment system of notary profession, the candidates are not required to obtain Master of Notary, and Directorate General of Administration of General and

Private Laws of Ministry of Law and Human Rights has could intervene in the appointment and the placement of candidates. This system is often considered as the source of inequality among notary public to carry out the public interest. Some candidates have more access to become an advocates, while some candidates face difficulty to become notary public. Therefore, the researcher tries to find out the best solution for the recruitment system of legal profession that includes advocates and notary public in order to become in accordance with the value and principles of Pancasila-based nation of law.

Actualization of Recruitment of Legal Profession According to the Principle of Pancasila-Based Nation of Laws

In Indonesia, one of the ideals of a nation that is inherited by 'the founding leaders' of Indonesia is the objective laws of Indonesia that based on Pancasila (Kusuma, 2004). In the explanation, it is stated that Indonesia must obey the idea of 'rechtsstaat', instead of 'machtsstaat'. In RIS Constitution of 1949, the idea of a state of law has been explicitly included. Similarly, in the Provisional Constitution of 1950, the re-formulation of law firmly stated that Indonesia is a law-based nation. Therefore, in 2001, the Third Amendment of the Constitution of the Republic of Indonesia of 1945 also expressly re-stated this provision in Article 1 (3), which stated: "Indonesia is a Nation that based on Law".

One of the characteristics of rechtsstaat is also embedded to Indonesia as a nation that based on law. The fact that states Indonesia as a nation of law could not be separated from the preamble of the Constitution of Indonesia of 1945 as the ideal of a nation that based on law (Asshiddiqie, 2010), and then it was stated in the contents and explanations of Indonesia Constitution of 1945 (before amendment). The first paragraph of constitution's preamble contains the term 'justice'; second paragraph contains the term 'fairness'; second paragraph contains the word 'Indonesia'; and the fourth paragraph contains the terms 'social justice' and 'just and civilised humanity'. All of these terms refer to the notion of Nation of Laws, because

one of the purposes of Nation of Laws is 'to achieve justice' (Thaib, 1996).

According to the doctoral research that conducted by Azhary, the term "rechtsstaat" is a genus begrip (Darmodiharjo & Shidarta, 2006), then its relationship with 1945 Constitution of Indonesia is a specific meaning of rechtsstaat as genus begrip. The studies on rechtsstaat are often conducted by the Indonesian legal experts, however, their studies have not been fully able to determine that Indonesia is a Nation of Laws in the sense of rechtstaat or the rule of law (Hartono, 1982). Azhari divided the principles of Nation of Laws in Indonesia are as follows (Azhary 1995):

1. The law of nation is based on Pancasila
2. Sovereignty is in the hands of the people
3. Constitution System
4. Equality before law and government
5. Independent power of judiciary
6. President and House of People's Representatives are those who arrange the Law
7. The application of system of People's Consultatives Assembly

According to Azhari, the principle of Nation of Laws is very interesting, it's because that it puts Pancasila as the principles of the law of Indonesia, which is in the highest position. Pancasila-based Nation of Laws does not only have a certain distinctiveness, but it is the special hallmark of any western concept of laws (rechtsstaat and the rule of law) and the so-called socialist legality.

According to Muhammad Tahir Azhary, the use of the term rechtstaat that embedded in the explanation of 1945 Constitution of Indonesia is a genus begrip (a concept), which is still interpreted in general, the term 'Pancasila-based Nation of Laws' is a special meaning. Besides, it is also added that the term 'rechtstaat' in the explanation 1945 Constitution of Indonesia is totally different and un-identical to the European continental's concept of nation of laws as well as to Anglo Saxon's version, especially of the concept of socialist legality. But according to him, the concept of the Pancasila-based Nation of Laws is similar to the concept of Islamic No-

mocracy, especially in the principle of nation of Indonesia (Azahry, 2004).

In addition, Oemar Sanoadji stated that Indonesia as a Nation of Laws does have characteristics, which are unique, it is because that Pancasila should be appointed as a basic principles and the source of law, and Indonesia as a Nation of Laws could be considered as Pancasila-based Nation of Laws. One of the fundamental characteristics of the Pancasila-based Nation of Laws is the guarantee of the freedom of religion (Senoadji, 1980). According to Senoadji, another characteristic of Indonesia is that there is rigid and absolute separation between religion and state. Because according to Senoadji, religion and state are in a harmonious relationship (Senoadji, 1980).

While according to Padmo Wahyono, Pancasila-based Nation of Laws is grounded from the principle of family values that contained in the 1945 Constitution of Indonesia. In the principle of family values, the main priority is "the common people, but the value and dignity of human remains respected" (Wahyono, 1982). Padmo Wahyono understood that the law is a tool or a vehicle to organize the life of nation or public order, and social welfare. In connection with the legal function, Padmo confirms that there are three functions of law that based on the principle of family values, namely (Wahyono, 1982) :

1. Upholding the principles of democracy that is in accordance with the formulation of seven principles of governance, which is stated in the explanation of 1945 Constitution of Indonesia.
2. Actualizing the social justice that is in accordance with Article 33, 1945 Constitution of Indonesia, and
3. Upholding the values of humanity that based on the statement of 'Belief in the one and only God', which is actualized according to justice.

In the concept of Nation of Laws of Indonesia, it is idealized that law should be the primary principle of governance of nation, instead of politics of economics. Therefore, the jargon that is commonly used in English in referring the principles of the Law is 'the

rule of law, not of man' (Asshiddiqie, 2010). Therefore, it is required to distinguish between the law (*rule*), Position (*ambt*) (E. Utrecht/ Moh. Saleh Djindang, 1990) and Position Holders (*ambtsdrager*) (E. Utrecht/ Moh. Saleh Djindang, 1990). (Asshiddiqie, 2007).

Besides, there is new perspective that introduced by Jimly Asshiddiqie, and he stated that in addition to the understanding about the Rule of Law, there must be new definition about the Rule of Ethics (Asshiddiqie, 2014). In the conception of The Rule of Law, there is the notion about legal code (code of law) or civil code and the law courts, whereas in the conception of The Rule of Ethics, there must be code of ethics or code of conduct as well as the notion of ethics court (court of ethics). It also affects the expansion of the understanding on the meaning of constitutional law as the basic law (constitutional law), and the constitution should be interpreted as a source of constitutional ethics. (Asshiddiqie, 2014). Therefore, Pancasila is not only a source of law for Indonesian nation, but it also serves as a source of ethics (Asshiddiqie, 2014). In an effort to build a healthy democracy, it must be supported by the rule of law and rule of ethics simultaneously (Asshiddiqie, 2015).

The selection process starts from receiving the applications and ending with a decision on such applications. Performance is one of the total collection of the work and effort, which is in the employee (Rivai, 1999). Meanwhile, according to Vroom, it is the multiplication of motivation with ability, and it is formulated as follows (Vroom, 1964) :

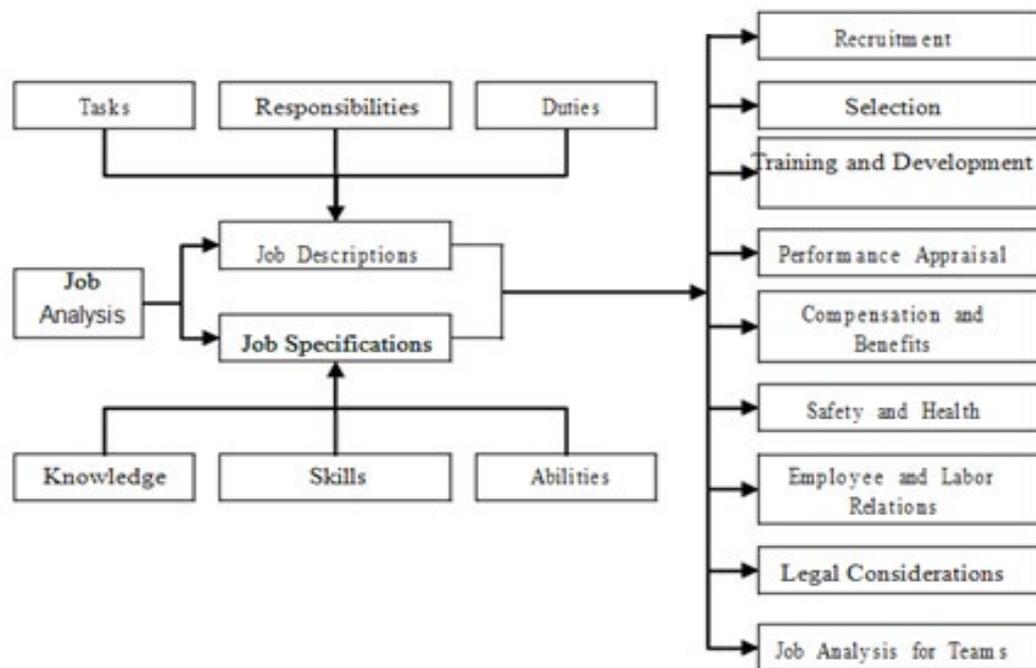
$$\text{PERFORMANCE} = (\text{MOTIVATION} \times \text{ABILITY})$$

Based on the formula, Vroom showed that both are mutually determine each other, and it means that even highest skill level of an employee will not produce optimum performance when it is conducted with low motivation. And vice versa, even the highest levels of motivation of an employee in performing their duties will not be effective without balanced with their ability. Performance is determined by individual or personal factors, such as the ability and effort, and it is

also determined by factors beyond our control, such as the decisions taken by others, the available resources available, the system in which we work, and so on (Darma 2005). Personal performance is basically influenced by: (1) expectations of rewards, (2) encouragement, (3) ability, needs and characters, (4) the perception to the task, (5) internal and

external rewards, (6) the perception on the level of remuneration and (7) job satisfaction (Rivai 1999).

The following picture displays the line of thought of Mondy and Noe in explaining the role of analysis of job as the basic equipment for Recruitment Management, which is as follows (Mondy & Robert M Noe 1996):



According to the flowcharts about recruitment above, the idea is actually in accordance with the values of each principle of Pancasila. When it is correlated with the recruitment of Legal Profession, then first principle of Pancasila (Belief in one and only God) is expected to be a guideline for a person or institution that conducts the recruitment to consider the obedience and faith in God Almighty as the basis and guidelines in the assessment of criteria of candidates, and respecting the freedom religion according to the teachings of each religion, and not imposing one's religion or beliefs to others. Second principle (Just and Civilized Humanity) is aimed to make the leaders to hold the notion about proper tolerance, respecting the principles of humanity, defending the righteousness and justice, and also conducting the good principle of humanity (social activities, community work and helping each other).

The third principle of Pancasila (The Unity of Indonesia) is aimed to be the benchmarks that used as guideline in the process of recruitment, which includes the patriotism, willful sacrifice to the nation, and the value of integrity of the nation as part of the Unified Nation of the Republic of Indonesia. Fourth principle of Pancasila (Democracy guided by the inner wisdom in the unanimity arising out of deliberations amongst representatives) is expected to be the guidance of recruitment of Legal Profession who are able to put the interests of nation/ society above any other interest. Indonesian people should never force their will to others and prioritizing the culture of discussion for the purpose of common interest. And the fifth principle (Social justice for all of the people of Indonesia) is aimed to select or recruit the leaders that are capable to uphold the values of helping others, appreciation of others' idea, rights, willing

to conduct helpful actions for the interest of people and country, and actualizing the justice for all.

In addition, standar and criteria of curriculum of advocate and notary public profession are required in terms of its teaching time and subject materials. Organization of Advocate and Notary Public should be cooperated with higher education institutions in the organization of Advocate Profession Educational System, and therefore that the standard, criteria, time, and its study load can adjust the subject materials with the advocates and notary public's need of knowledge, which is in accordance with actual workplace and profession. Nowadays, it is expected that Advocate and Notary Public will be able to perform their profession internationally, and it increases the needs of more applicable subjects, which are required for those who conduct profession as Notary Public and Advocates. It is not only applicable in the process of professional education, and the process of examination and selection legal profession should involve higher education institutions, and therefore, it will bring the positive impacts on the quality of legal profession that produced by organization of advocate, which is in accordance with the needs of market.

With the existence of common obligation of cooperation between organization of legal profession, which includes advocate and notary public as well as higher education institutions, then it is expected that the monopoly of the administration of professional education and selection of legal profession will be diminished. Consequently, quality based educational system of legal profession could be manifested.

4. Conclusions

The implementation of system of legal profession recruitment that in accordance with the principle of the Pancasila-based Nation of Laws is actualized by at least two things. First, the recruitment procedure must be based on the values that contained in every principle of Pancasila. The assessment of criteria of potential officials or candida-

tes must be based on the principles of belief in one and only God, just and civilized humanism, the unity of Indonesia, [democracy](#) guided by the inner wisdom in the unanimity arising out of deliberations amongst representatives, and [social justice](#) for all of the people of Indonesia. Second, in the recruitment of the legal profession, which includes advocates and notary public, still require the standard and criteria of curriculum of advocate and notary public profession that is in accordance with the National Standard of Higher Education. Therefore, organization of advocate is responsible to involve higher educational institutions in the implementation of system of education and recruitment process of legal profession, it is expected to produce high quality and reliable profession of advocate.

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