

## Advocates Role in Assisting the Accused of Embezzlement, Complete Systematic Land Registration

Muhammad Abu Aksan\*) and Sri Kusriyah\*\*)

\*) Student of Master of Law, Faculty of Law, Universitas Islam Sultan Agung (UNISSULA) and Staff of Bawaslu in Pati Regency, E-mail: [abuaksan099@gmail.com](mailto:abuaksan099@gmail.com)

\*\*\*) Lecturer of Faculty of Law, Universitas Islam Sultan Agung (UNISSULA) Semarang

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### Abstract.

*This study aims to determine the role of advocates in assisting defendants in complete systematic land registration embezzlement(PTSL), inhibiting factors. This research method uses an empirical juridical approach. The conclusion of this study is the role of advocates in assisting the accused of embezzling the complete systematic land registration (PTSL) at the Pati District Court, Decision Number: 13/Pid.B/2020/Pn Pti, with the defendant I Subronto, S.Pd . Bin Ngaseri, Defendant II Muh. Gufron Bin Ahmadi, therefore, was sentenced to imprisonment for 6 (six) months each while defendant III Muhlisin Bin Matruri was sentenced to imprisonment of 5 (five) months. Inhibiting factors of the role of advocates in assisting the accused of embezzling the complete systematic land registration (PTSL) at the Pati District Court, the number of witnesses presented by the Public Prosecutor in the trial was the Village Government of Alasdowo, Dist. Dukuhseti Reg.Pati who is involved in the PTSL Program, but in giving their testimony regarding the use of the PTSL application they seem not to know by covering up the real facts, There are no regulations governing the PTSL program in Alasdowo Village, Dist. Dukuhseti Reg. Pati, so it was difficult to present Expert Witnesses.*

*Keywords: Advocates; Embezzlement; Complete Systematic Land Registration.*

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### 1. Introduction

The social interaction of human life in society will always be a guideline for a different legal norm or order. When humans interact, they do not run within the framework of the existing norms or order, there will be bias in the form of conflicts or disputes in the interaction process. Because it is undeniable that humans have a tendency to deviate from the existing norms or order, because they are influenced by the presence of uncontrollable lust and ambition. The same applies to legal professionals or legal aid organizations.

In the development of legal aid, legal aid has also emerged as a legal aid movement in Indonesia because of its dynamic nature and a more professional management method compared to legal consulting management bureaus run by law faculties, both private and public.<sup>1</sup> The increasing human need, the human need for law also increases. This is where the role of advocates is demanded in carrying out their profession for the sake of upholding justice based on law for the benefit of the justice-seeking community. Advocates as providers of legal assistance or legal

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<sup>1</sup>Kusuma, Mulyana. (2008). *Perkembangan Kegiatan Bantuan Hukum, dalam LBH Memperdayakan Rakyatdan Membangun Demokrasi*. Jakarta:YLBHI. p. 13, *Jurnal Daulat Hukum: Volume 2 Issue 3, September 2019: 369-374*, <http://garuda.ristekbrin.go.id/author/view/272658?page=4> accessed on September 20, 2020.

services to the public or clients who face legal problems whose existence is urgently needed. Nowadays it is increasingly important, along with the increasing legal awareness of the community and the complexity of legal problems that have developed until now. Advocate is a person whose profession is to provide legal services, both inside and outside the court who meets the requirements based on the provisions of the Law on Advocates.<sup>2</sup> Suita law is a service provided by an Advocate in the form of providing legal advice, legal assistance, exercising power, representing, accompanying, defending, and taking other legal actions for the client's legal interests.<sup>3</sup> Whereas clients are people, legal entities, or other institutions that receive legal services from Advocates.<sup>4</sup>

Advocate profession is a form of respectable profession (*officium nobile*). In carrying out the profession, an advocate must have freedom based on the dignity and personality of an advocate who adheres to honesty, independence, confidentiality and openness, in order to prevent dishonorable attitudes and behavior less respectful. Advocate profession as law enforcer is based on Law Number 18 of 2003 concerning Advocates and Article 24 Paragraph (1) of the 1945 Constitution. Advocates with the status of law enforcers are one of the legal instruments in the judicial process whose position is equal to other law enforcers, enforcing the law and justice. More firmly, this is one of the pillars of enforcing the rule of law and protecting human rights in Indonesia.

Occupants carry out their professional duties for the sake of upholding justice based on law for the benefit of the justice-seeking community, apart from the judicial process, the role of Advocates is also seen in the professional pathway outside the Court. The need for advocate legal services outside the judicial process is currently increasing, in line with the growing legal needs of the community, especially in entering a life that is increasingly open in the interactions between nations today. Another characteristic of the work of the Advocate profession is the giving of trust (usually confidential in nature) from clients (justice seekers) which is expected to be carried out professionally.<sup>5</sup>

In the rule of law, the State recognizes and protects individual rights. Recognition of individual rights is guaranteed on the basis of equality before the law. If there is equality before the law, then there is equal treatment for everyone. Equality before the law guarantees access to justice (access to justice). One form of access to justice is the guarantee of access to lawyers (access to legal counsel), meaning that if people are able to appoint advocates to defend their interests, the poor also have the right to be defended by lawyers or public defenders from legal aid organizations. Obtaining a defense from an advocate or public defender is the human right of every person and is one of the elements to obtain justice for all people (justice for all). For the Indonesian people, human rights, or what are called the rights and obligations of citizens, have been listed in articles 27 to 34 of the 1945 Constitution which are based on Pancasila.<sup>6</sup>

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<sup>2</sup>Article 1 paragraph (1) of Act No. 18 of 2003 concerning advocates

<sup>3</sup> *Ibid.*

<sup>4</sup> *Ibid.*

<sup>5</sup> Alkostar, Artidjo. (2010). *Peran dan Tantangan Advokat dalam Era Globalisasi*, ed. I. Yogyakarta: FH UII Pres.p. 1

<sup>6</sup>Sumarwani, Sri. (2012). *Pidana dan Hak-Hak Manusia*, ed. I, Semarang: UNDIP Pres.p. 37

It needs to be understood together that the creation of an atmosphere of law enforcement that is just and prioritizes objectivity in spaces that are guaranteed and protected by the provisions of laws and regulations. Of course, the point of view between the Prosecutor and the Defendant and/or the Legal Counsel is in a different position. However, in order to find truth and justice, it is fitting that these different arguments be formulated in the form of decisions that truly reflect a sense of justice for all parties. Presumably, we also agree that law enforcement in this country needs to be prioritized while still providing space for equality before the law. However, we also remain bound by the rule of law that a person is found guilty when it is evidently proven legally and convincingly before the court through a judicial decision. This means that the principle of presumption of innocence is still attached to the defendant before the noble panel of judges determines whether the defendant is guilty or not through a later decision. The consequence of a rule of law (*rechtstaat*) is to demand the assurance of human rights based on the provisions of the applicable law.

In the Indonesian legal system, criminal law can be interpreted narrowly and can be interpreted broadly. Criminal law in the narrow sense is only material criminal law, which contains norms that regulate acts which constitute criminal acts and criminal acts. Meanwhile, criminal law in a broad sense consists of criminal law (substantive or material) and criminal procedure law (formal criminal law).<sup>7</sup> Regarding criminal procedural law, it is necessary to put forward Moeljatno's opinion as follows "how to safeguard the procedure for prosecuting a person suspected of committing a criminal act. Therefore, this part of the criminal law is called formal criminal law (criminal procedure).<sup>8</sup> According to Erni Widhayanti, he stated: In facing the alleged violation of the criminal law, the suspect or defendant must face the giants of law enforcement starting from investigators, prosecutors to judges before the court. Upright and strong, they face the suspect or defendant alone, carrying articles, laws, legal principles and so on, which are often not understood by the suspect or defendant. Justice in him includes an element of balance from both parties being balanced in all respects. Then the product of justice from the justice process is only possible if both parties are balanced in all respects. The defense and legal knowledge and experience accompany the suspect or defendant in obtaining a fair decision.<sup>9</sup> Therefore, upholding the criminal law must strictly be based on the applicable legal rules so that there are no mistakes that violate the constitutional rights of citizens, especially for the Defendant.

Such as a criminal case that occurred in Pati Regency and has been tried at the Pati District Court. A defendant accompanied by his legal advisor who was accused by the public prosecutor (JPU) had violated Article 372 of the Criminal Code Jo. Article 55 paragraph (1) First, namely as a person who commits, orders to commit, or participates in the crime of embezzlement related to the implementation of

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<sup>7</sup>Hamzah, Andi. (2005). *Hukum Acara Pidana Indonesia*. Jakarta: Sinar Grafika. p. 9. Jurnal Daulat Hukum, Volume 3 Issue 3, September 2020, ISSN: 2614-560X <http://jurnal.unissula.ac.id/index.php/RH>

<sup>8</sup> Moeljatno. (2002). *Asas-Asas Hukum Pidana*. Jakarta: Rineka Cipta, p. 6 Volume 3 Issue 3, September 2020, ISSN: 2614-560X <http://jurnal.unissula.ac.id/index.php/RH>

<sup>9</sup>Widhayanti, Erni. (1998). *Hak-Hak Tersangka/Terdakwa Di Dalam KUHAP*. Yogyakarta: Liberty.p.22

complete systematic land Registration (PTSL). Even though the defendant had worked well and maximally for the sake of serving the community.

Based on the above problems, the author identifies legal problems, namely; 1). The Role of Advocates in Assisting Defendants in Criminal Cases of Embezzlement in Complete Systematic Land Registrations (PTSL) in Pati District Court (Criminal Case Study Number 13/Pid.B/2020/Pn Pti). 2). What are the inhibiting factors for the role of Advocates in assisting the accused of embezzling the complete systematic land registration (PTSL) at the Pati District Court (Criminal Case Study Number 13/Pid.B/2020/Pn Pti).

## 2. Research Methods

This research uses an empirical juridical approach, so the specification in this research is descriptive analysis. According to Dyah ochtorina and A'an Efendi, empirical juridical research includes research on legal identification (unwritten law) and research on legal effectiveness.<sup>10</sup> Descriptive research is research that aims to describe something in a certain area and at a certain time.<sup>11</sup> The sources and types of data in this study are primary data obtained from field studies with interviews and secondary data obtained from studies.

## 3. Results and Discussion

### 3.1. The role of advocates in assisting the accused of embezzling the complete systematic land registration (PTSL) at Pati District Court

Based on the decision of the Pati District Court (Criminal Case Number 13/Pid.B/2020/Pn Pti). That Defendant I SUBRANTO, S.Pd. Bin NGASERI, Defendant II MUH. GUFRON Bin AHMADI, and Defendant III MUHLISIN Bin MATRUR accompanied by a Legal Advisor named Dr. RM. ARMAYA MANGKUEGARA, SH, MH and friends, have been filed by the Public Prosecutor in a criminal case of embezzlement, which in essence is as follows: Demand:

- Defendant I SUBRANTO, S.Pd. Bin NGASERI, Defendant II MUH. GUFRON Bin AHMADI, Defendant III MUHLISIN Bin MATRURI was guilty of being the person who committed, ordered to commit, or participated in the crime of embezzlement "as regulated and subject to punishment in Article 372 of the Criminal Code in conjunction with Article 55 paragraph (1) of the 1st Criminal Code as the alternative indictment. the two public prosecutors.
- Defendant I SUBRANTO, S.Pd. Bin NGASERI, Defendant II MUH. GUFRON Bin AHMADI was sentenced to imprisonment of 8 (eight) months each, while Defendant III MUHLISIN Bin MATRURI was sentenced to 6 (six) months imprisonment reduced while the defendants served detention on the orders of the accused.
- Determine the confiscated evidence in the form of:

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<sup>10</sup>Susanti, Dyah Ochtorina & A'an Efendi, 2014, *Penelitian Hukum (Legal Research)*, Sinar Grafika, Jakarta.p.18

<sup>11</sup>Soemitro, Ronny Hanitijo. (1982). *Metodologi Penelitian Hukum dan Jurimetr.* Jakarta: Ghalia Indonesia.p. 93.

- 1 (one) bundle of Complete Systematic Land Registration (PTSL) records in *Alasdowo* Village, Hamlet of Sekrangkong Area in 2019 Rt 04. Rw. 03.
- 1 (one) sheet of proof of deposit/shortage of PTSL money in 2019 Applicant Hamlet of Sengkrangkong Rt.04 Rw.03.
- Charge the defendants to pay a court of IDR 2,500, - (two thousand five hundred rupiah).

How the defendant proposed by the Legal Counsel of the Defendants how a written Note of Defense (*Pledoi*) dated March 24, 2020, which basically states based on the facts of the trial as follows that;

- the position of the defendants as the committee for implementing the 2019 *Alasdowo* Village PTSL program is unclear because the composition of the committee was not stated in the form of a decree, so that the duties and responsibilities of each were unclear.
- the determination of the PTSL application was not an initiative of the defendants (especially Defendant I and Defendant III) but was a decision of a meeting on 3 March 2019 which was attended by implementing officers (committee), RT heads, RW heads, Village officials, BPD, LPMD, religious leaders and society;
- the Defendants were not in contact with the applicants directly and the Defendants were not proven to have ordered directly to the RT head to convey the result of the collective agreement to the applicants;
- the contract of submission and use of the PTSL *Alasdowo* Village application in 2019 is only global in nature and not specific for its designation, this is not only for administrative needs but also for paying the honorarium of executing officers (RT Heads) and for this designation, witnesses as Petitioners have no objection and accept and even refuse to return the funds because they have given up;
- none of the Petitioners felt aggrieved and demanded the return of the 2019 *Alasdowo* Village PTSL application from the Defendants;
- the certificate of ownership rights (SHM) which is the output of the PTSL program has been submitted simultaneously/massively at the *Alasdowo* Village haj building on December 25, 2019 shows the defendants have worked well and maximally for the sake of juridical service to the community there is no evidence of misappropriation of funds PTSL applicant;
- until now there has been no accountability report (LPJ) from the implementer of the PTSL program to the applicants because the defendants are still undergoing legal processes that have not been completed and are not solely unable to account for finances and PTSL, Accountability Report (LPJ) is an important form of the permits of the PTSL applicants referred to in the indictment by the public prosecutor;

Based on the facts of the trial, from the testimonies of witnesses and evidence presented at the trial, the Panel of Judges at the Pati District Court tried:

- Defendant I SUBRANTO, S.Pd. Bin NGASERI, Defendant II MUH. GUFRON Bin AHMADI, and Defendant III MUHLISIN Bin MATRURI, were legally and convincingly proven guilty of committing a criminal act of participating in embezzlement;
- Defendant I SUBRANTO, S.Pd. Bin NGASERI, Defendant II MUH. Therefore GUFRON Bin AHMADI was sentenced to imprisonment for 6 (six) months each

while Defendant III MUHLISIN Bin MATRURI was sentenced to imprisonment of 5 (five) months;

- Defendant I SUBRANTO, S.Pd. Bin NGASERI, Defendant II MUH. GUFRON Bin AHMADI, and Defendant III MUHLISIN Bin MATRURI were all deducted from the sentence imposed;
- Ordered Defendant I SUBRANTO, S.Pd. Bin NGASERI, Defendant II MUH. GUFRON Bin AHMADI and Defendant III MUHLISIN Bin MATRURI are in detention;
- Determine that the evidence presented at the trial is returned to their respective owners:

### **3.2. Factors inhibiting the role of Advocates in assisting the accused of embezzling the Complete Systematic Land Registration.**

Statutory regulations which became the legal basis for the verdict, accompanied by burdensome circumstances that made it easier for the Defendants in Decision Number: 13/Pid.B/2020/Pn Pti, Legal Counsel for Defendant I SUBRANTO, S.Pd. Bin NGASERI, Defendant II MUH. GUFRON Bin AHMADI, and Defendant III MUHLISIN Bin MATRURI have provided maximum assistance to the Defendants, however the Pati District Court Judges have a different opinion so that in declaring their son's amar that the defendant has been legally and convincingly proven to have committed a criminal act and participated in embezzlement as regulated in Article 372 paragraph (1) 1st of the Criminal Code and punishing the Defendants I SUBRANTO, S.Pd. Bin NGASERI, Defendant II MUH.

Based on the results of interviews with Advocates at the office of "MANGKUNEGARA Law Firm" on September 20, 2020, the factors that hinder the role of Advocates in assisting the accused of embezzlement of Complete Systematic Land Registration (PTSL) s in Pati District Court are as follows;

- It seems that the witness presented by the Public Prosecutor in the trial is the Village Government of *Alasdowo*, Dist. Dukuhseti Reg.Pati involved in the PTSL Program, but in giving their testimony regarding the use of the PTSL application they seemed not to know by covering up the real facts;
- There is no regulation governing the PTSL program in the *Alasdowo* Village Dist. Dukuhseti Reg. Pati, so that it was difficult to present an Expert Witness.

### **4. Conclusion**

In the criminal case in Pati District Court Decision Number: 13/Pid.B/2020/Pn Pti, Legal Counsel for Defendant I Subranto, S.Pd. Bin Ngaseri, Defendant II Muh. Gufron Bin Ahmadi, and Defendant III Muhlisin Bin Matruri have provided maximum assistance to the Defendants, starting from presenting mitigating witnesses (a de charge) to proving documents in court, but the Panel of Judges at the Pati District Court has a different opinion. declared his son's warning that the defendant had been legally and convincingly proven to have committed a criminal act of participating in embezzlement as regulated in Article 372 paragraph (1) 1 of the Criminal Code and sentenced Defendants I Subranto, S.Pd. Bin Ngaseri, Defendant II Muh.

## 5. References

### *Journals:*

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### *Regulation:*

Article 1 paragraph (1) of Act No. 18 of 2003 concerning Advocates