

2022 - Harmonization Model Code of Ethics for Dual Profession of Doctor- Advocate Based on Fair and

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HARMONIZATION MODEL CODE OF ETHICS FOR DUAL PROFESSION OF DOCTOR - ADVOCATE BASED ON FAIR AND CIVILIZED HUMANITY VALUES

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ABSTRACT

The duality profession of Doctors-Advocates is a combination of two social roles in one person that is obtained after someone underwent an education of profession with competencies that are different from one to another. Doctors are subject to the code of ethics meanwhile Advocates are subject to the Regulation of Advocates, and as a profession, it has a code of ethics prepared by the Advocate Organization. Article 18 of the Indonesian Medical Code of Ethics states that a doctor must treat his colleagues as he wants to be treated. Whilst The Advocate's Code of Ethics in Article 3 Letter C states that the Advocates should accentuate the uprightness of the law, truth, and justice. At the time when two codes of ethics could not get along, of course, this would become an obstacle when handling legal cases, when morally the duality profession of doctors – advocates aimed at protecting the dignity of humanity. The above description clearly illustrates a legal problem/issue, specifically the conflict of norms between the Medical Practice Act and the Advocate Law which must be obeyed by a dual professional doctor-advocate, so normative legal guidance is needed which at least can guide its behavior in a long period time as a means of legal protection based on fair and civilized human values, as this is sourced from Indonesian legal rechtsidee, videlicet Pancasila.

Keywords: Dual Profession, Doctors Advocates, Harmonization, Code of Ethics.

INTRODUCTION

Every profession claims to be *officium nobile* so that to attain this profession someone has to go through a series of educational qualification requirements that are not easy to achieve and are faced with a set of norms that limit their actions. The medical profession is a medical work carried out based on knowledge, competencies obtained through tiered education, and a code of ethics that is serving the community, subject to the Medical Practice Act. The way doctors should behave specifically regulated in the Indonesian Medical Code of Ethics, established by Ikatan Dokter Indonesia (Indonesian Doctors Association). Advocates are people who work in providing legal service, both inside and outside the court, who meet the requirements under the Advocate Regulation, and as a profession, it has a professional code of ethics arranged by Advocate Organizations. Ethics is a universal value that is recognized by society for its truth. Although the enactment of ethics basically in a different domain from the law, both are accepted

as behavioral guidelines. When a code of ethics is accepted by but turns out contradictory, this will become an obstacle that should be accounted for, especially for those who undergo this dual profession. At the time when two codes of ethics do not get along, of course, this would become an obstacle when handling legal cases, when morally the duality profession of doctors – advocates aimed at protecting the dignity of humanity. A doctor who is also an advocate is not in the choice to determine which profession he is involved in, because in reality, this dual profession is an interdisciplinary study of norms, which needs to be positive as substance and structure in normative law so that the law does not lose direction in the effort the achievement of fair and civilized human values. Harmonization in all aspects of life is an ongoing effort that does not go hand in hand with the development of living values in society. However, a normative legal guideline is needed which at least can guide behavior for a long time as a means of legal protection based on fair and civilized human values, as this is sourced from Indonesian legal *rechtsidee*, namely Pancasila. This study tries to examine the reasons of harmonization for a dual profession code of ethics and describe kinds of harmonization model for dual profession doctor – advocate code of ethics that reflects fair and civilized human values

RESEARCH METHODOLOGY

This research is prescriptive doctrinal law research, discussing doctrines and principles in legal science. This research is in the dogmatic level of the law, legal theory, and philosophy of law. This research is used to conduct studies on the substance and structure of law, analyze synchronization and systematization of legal arrangements vertically and horizontally which provide maps and directions for the law. The approach used in this legal research is:

1. The Statute Approach used to analyze positive law, in this case, what is meant is the Indonesian Medical Ethics Code, the Indonesian Advocate Code of Ethics, the Law related to the profession of doctors and advocates, as well as the human values contained in positive law.
2. The Conceptual Approach is used to analyze the principles and doctrines that exist to achieve a model of harmonization of the dual code of ethics of the doctor-advocate profession based on fair and civilized human values.
3. The Eclectic Approach is used to build a legal construction of the doctor-advocate profession based on fair and civilized human values to ensure the achievement of the value of justice, expediency, and certainty. This approach is carried out by selecting several aspects of various thoughts and concepts, taking what are considered appropriate and valuable in constructing a thought (Lorens, 1996).

Legal Methods

Doctrinal law research uses legal material. Legal material is a source of information on legal research (Marzuki, 2006). Legal research sources can be divided into research sources in the form of primary legal materials and secondary legal materials (Marzuki, 2006).

Primary sources of law, which is an authoritative legal material. The primary legal materials used in this study include:

1. Indonesian Regulation Number 29 of 2004 concerning Medical Practice;
2. Indonesian Regulation Number 18 of 2003 concerning Advocate;
3. Indonesian Medical Code of Ethics;

4. Indonesian Advocate Code of Ethics.

Examine primary sources of law to find out whether the existing regulations govern a dual code of ethics for the doctor-advocate profession.

Secondary sources of law are legal material that supports primary sources, including books, journals, papers, and research results that are substantially relevant to the research theme and problem.

The analysis is carried out on the dogmatic level of the law, legal theory, and legal philosophy. The analysis is done by the deduction reasoning method (Arief, 1999). Legal dogmatism starts with positive legal provisions, finding regulations related to the dual code of ethics of the doctor-advocate profession. Legal theory starts with concepts based on views and doctrines. Positivism theory explores the value in existing positive law, whilst Responsive Legal Theory fined a model of contextual harmonization of law. Philosophy of law with the approaches in this research to reflect ideas and ideas about the harmonization model of the dual code of ethics for the doctor-advocate profession based on fair and civilized human values.

LITERATURE REVIEW

Code of Ethics

The code of ethics is a norm or principle that is accepted by a particular group as a basis for daily behavior in the community and workplace (Nuh, 2011). As a set of norms, its validity as a guide to behaving and act is highly internalized by professional groups. The codification of moral rules is then carried out with a format of a code of ethics, the preparation of which is carried out systematically. Like a compass, a code of ethics shows the moral direction of a profession and as an institution that guarantees the moral quality of the profession in the eyes of the wider society (Bertens, 2013). Existing codes of ethics must be reassessed at any time, and if necessary, they can be revised or adjusted (Bertens, 2013). When the professional code of ethics is built based on human values, the acceptable humanitarian values are the test stones, not based on the interests of the professional groups in a parochial manner.

Advocates Code of Ethics

The Indonesian Advocate Code of Ethics is a code of ethics that was constructed jointly by professional advocacy organizations in Indonesia in 2002. The Indonesian Advocate Code of Ethics states that the advocate profession is a respected profession (officium nobile) which is carrying out its profession under legal protection, the law and code of ethics, has freedom based on the honor and personality of advocates who hold fast to independence, honesty, confidentiality, and openness. The advocate profession is also domiciled as law enforcers which are on a par with other law enforcement agencies so they must respect one another between peers and other law enforcers. Advocates as a profession fighting for the interests of justice for the community are also regulated in the Law of the Republic of Indonesia Number 18 of 2003 concerning Advocates. Article 4 paragraph 2 contains advocate oaths.

Medical Code of Ethics

Every profession has a code of ethics as a guide for behavior in the community. The code of ethics is issued by the community (collegium) of each profession. The Indonesian Medical Ethics Code (KODEKI) is a guideline for Indonesian doctors who are members of the Indonesian Doctors Association (IDI) in carrying out medical practices. KODEKI is the result of the national working meeting of the MKEK (Medical Ethics Honorary Council) held on January 3-4, 2012. Ethical norms formulated in the code of ethics are built on the foundation of philosophical teachings on the universality of obligations in the particular social relations of doctors and patients who prioritize the values of the value of professional responsibility, partnership, and proportionality of duties and services of doctors in the context of the continuity of the profession in the global era (Council, 2012). The profession of doctor in Indonesia is regulated in the Law of the Republic of Indonesia Number 29 the Year 2004 concerning Medical Practices. The existence of this Act is a mandate from the Preamble to the 1945 Constitution of the Republic of Indonesia, that the development of the health sector is intended to increase awareness, willingness, and ability to live healthy for everyone to realize optimal health status as one of the elements of health.

Regulation regarding the Professional Ethics Code Based on Stufenbau Theory

Knife analysis of Stufenbau's theory that is stated:

"The creation of one norm – the lower one – is determined by another – the higher – the creation of which is determined by a still higher norm, and that this regresses is terminated by a highest, the basic norm which being the supreme reason of validity of the whole legal order, constitutes in unity."

Becomes one of the perspectives that are considered important in matters like this. The Stufenbau theory proposed by Hans Kelsen and developed by Hans Nawiasky states that there is a legal system in the form of a ladder system with tiered rules, where low legal norms must hold to higher legal norms. The highest law becomes the most basic norm (grundnorm), becomes the starting point of the law under it, making the coherence of each existing legal rule.

The application of the law is based on the principle of the lex superior derogate legi inferior (higher rules rule out the lower), lex specialis derogat legi generalis (special rules that override general rules), lex posterior derogat legi priori (the same rule, the highest rule) just override the old rules). In the case of a professional with a dual profession of doctor-advocate who defends the patient's legal interests from his colleague justified legally, considering that advocate as a profession that prioritizes the upholding of law, truth, and justice; free and independent and not influenced by anyone and must fight for human rights in the Indonesian rule of law.

ANALYSIS AND DISCUSSION

Code of Ethics for Dual Profession of Doctor – Advocate in the Indonesian Legal Perspective

The code of ethics is a norm or principle that is accepted by a particular group as a basis for daily behavior in the community and workplace (Nuh, 2011). The code of ethics is also an institution for guaranteeing the quality of professional morals in the eyes of society (Mardani, 2017). As for a doctor, the Hippocratic Oath is pronounced in front of the dean while for an Advocate is pronounced before the Honorary Board, under oath before the High Court Judge. This thing becomes the beginning of the implementation of the code of ethics as a norm. Because the taking is done under the oath, it is naturally lived as a moral principle for the profession. As a product of applied ethics, when in the application of the profession or when the professional works, then ethics which is a moral principle had implications for the law. When the professional code of ethics is built based on human values, the acceptable humanitarian values are the test stones, not based on the interests of the professional groups in a parochial manner. As a product of applied ethics, when in the application of the profession or when the professional works, then ethics which is a moral principle had implications on the law. When the professional code of ethics is built based on humanitarian values, the acceptable humanitarian values are the test stones, and it was not based on the interests of the professional groups in a parochial manner.

In The Indonesian Advocate's code of ethics, it stated that Advocate is an honored profession (*officium nobile*) due to carrying out his profession under legal protection, laws, and code of ethics has freedom based on the honor and personality of advocates who cling firmly to independence, honesty, confidentiality, and openness. The advocate profession also holds the position of law enforcers that are equal with other law enforcement agencies, so they must respect one another between colleagues and other law enforcers. Article 3 letter B of the Indonesian Advocate's Code of Ethics states that *"The advocates in carrying out their duties do not aim solely to obtain material rewards but rather prioritize the establishment of law, truth, and justice."* Meanwhile, Article 3 letter C states that *"The Advocates in carrying out their profession are free and independent and are not influenced by anyone and are obliged to fight for human rights in the Indonesian State of Law."* Articles related to the personality of an advocate reflect how noble the advocate profession is, building a solid foundation in fighting for humanitarian values to achieve justice, certainty, and the benefit of the law. Advocates as a profession that fights for the interests of justice for the community are also regulated in the Law of the Republic of Indonesia Number 18 of 2003 concerning Advocates making the Indonesian Advocate Code of Ethics binding legal force.

The Indonesian Medical Ethics Code (KODEKI) is a guideline for Indonesian doctors who are members of the Indonesian Doctors Association (IDI) in implementing medical practices. The doctor is a profession that is known as the oldest noble profession in history because of its dimension of responsibility in the field of humanity that results in the morals of universal cultural civilization. Ethical norms formulated in the code of ethics are built on the foundation of philosophical teachings about the universality of obligations in the doctor-patient particular social relations that prioritizes the values of professional responsibility, colleagues, and

proportionality of doctors' duties and services to preserve the profession in the global era (Council, 2012). KODEKI regulates peer care in Articles 18 and 19. Article 18 states that *"Every doctor treats his colleagues as he would like to be treated."* The profession of a doctor in Indonesia is regulated in the Regulation of the Republic of Indonesia Number 29 the Year 2004 concerning Medical Practices. The existence of this Regulation is the mandate of the Preamble to the 1945 Constitution of the Republic of Indonesia. The code of ethics in the Law of the Republic of Indonesia Number 29 of 2004 is mentioned as one of the guidelines that must be obeyed by doctors, based on medical disciplines, in addition to being subject to the provisions of applicable law.

When someone goes through the profession as a doctor as well as an advocate, it should be regulated separately. At present, there is no concurrent regulation of the doctor-advocate profession not explicitly regulated. Currently, no regulation explicitly regulates the dual profession of doctor – advocate. An advocate doctor who defends a client who is a patient of a colleague, in which the Indonesian medical code of ethics is listed in article 18 that *"Every doctor treats his colleagues as he wants to be treated."* The scope of the article in point 4 states that *"Every doctor is obliged to try to prevent and not initiate ethicolegal conflicts within and/or between professions of any kind and is prohibited from fighting with colleagues during professional duties."*

Knife analysis of Stufenbau's theory becomes one of the perspectives that are considered important in matters like this. The Stufenbau theory proposed by Hans Kelsen and developed by Hans Nawiasky states that there is a legal system in the form of a ladder system with tiered rules, where low legal norms must hold to higher legal norms. The highest law becomes the most basic norm (grundnorm), becomes the starting point of the law under it, making the coherence of each existing legal rule.

The Indonesian Advocate Code of Ethics has binding legal force, was given binding legal force, so that it becomes a rule that is higher than the medical code of ethics. In the case of a professional with a dual profession of doctor-advocate who defends the patient's legal interests from his colleague justified legally, considering that advocate as a profession that prioritizes the upholding of the law, truth, and justice; free and independent and not influenced by anyone and must fight for human rights in the Indonesian rule of law. This theory certainly requires further study, because the existence of a professional code of ethics that is not placed on an equal level can lead to conflicting norms in the future so that legal harmonization is needed.

The application of the code of ethics from this dual profession is aimed at a positive idea that the law must return to its missing sacred, which is to give accountability and transparency to the profession. Mainly in the medical profession to obtain a balance of rights, equality of rights, alleviation of inequality in the therapeutic contractual relationship between doctor-patient. But what often happens is that impartiality towards the client will cause a conflict of interest. The context of the defense of the patient is certainly based on human values, but the conflict that arises is: the doctor-advocate will be questioned by the doctor concerned regarding his loyalty.

In both laws related to the profession of doctor and advocate, there is a conflict of norms on positive legal norms. Concerning dual professions, disharmony occurs and requires legal reform. Theoretically, to resolve this, Remidy (Mangesti & Suhartono, 2020) needs to be more an effort to resolve norm conflicts by making corrections or corrections to norms that are

considered invalid. Invalid norms are subsequently corrected by established procedures so that they are no longer in conflict with other norms.

Harmonization Model Code of Ethics for Dual Profession of Doctor – Advocates Based on Fair and Civilized Values

The definition of harmonization of law according to *Kamus Besar Bahasa Indonesia* is reflected in the basic word, i.e. harmony. Harmony means in tune (Language Center of the Ministry of National Education, 2008). This definition of harmony has implications or the grammatical interpretation of the word harmonization, which is an attempt to harmonize to create harmony. The harmony that is meant in this paper is the positive legal health in the form of horizontal law, namely between the regulation of medical practice and the regulation of advocate.

Harmonization (Murray et al., 1961) is associated with legislation contained in the principle of *lex specialis derogat legi generali*. Both of these laws hierarchically have the same position, but the scope of material content between the legislation is not the same, that is, one is a special arrangement of the other (Marzuki, 2006). The national legal system framework lays harmonization as the basis for the mindset in formulating a legal system (legal system harmonization). Harmonization forms legal linkages with one another, closing potential loopholes of lawlessness as a guidance to create order (Mangesti, 2016).

The building of harmonization of the code of ethics and the doctor-advocate profession in the opinion of the writer is built on the foundation of fair and civilized human values. Harmonization (Boodman, 1991) has become a necessity in the context of finding appropriate legal formulations, in terms of substance, structure, and culture for the achievement of legal objectives, namely justice, certainty, and legal expediency (Tanya, 2013). This harmonization does not neglect loyalty but instead puts someone on the real legal responsibility. Human values cannot be degraded by the arrogance of professional groups by denying honesty in taking responsibility for the officium nobile profession (Artati & Ikhwanisyah, 2018).

As a doctor-advocate, during a medical dispute between a doctor and a patient, (in fact the patient is a colleague's patient) medically, solely he does not defend the patient, but a legal defense. The argument used is clear, because the defense is intended to provide existence to human values that must not be manipulated on the grounds of an argument for the loyalty of the KODEKI. This will make the advocate-doctor in a vulnerable position (vulnerable person).

Fair and civilized human values are raised by the author as a touchstone and point of departure for a harmonization model of the dual code of ethics for the doctor-advocate profession. This Second moral principle of *Pancasila* implicitly shows the concept of human wholeness in spiritual unity, the existence of conscience is no less important than intelligence (Sudjito, 2018). The existence of conscience is a moral principle. Fair, in the framework of civilized human values, implies that it is not allowing taking something more than the rights that exist in a person. The translation of this value is universal and does not change as a value shared by Indonesian people, but in its implementation it is dynamic.

This interpretation of fair and civilized human values begins with understanding the constellation of fair human values in the context of doctor-patient, advocate-client, and doctor –

advocate-client relationships. In the context of a dual profession, when a doctor-advocate runs his profession, he certainly experiences inner struggles if the construction of the code of ethics is in harmony. There will be quite a long journey in fighting for the value of "Humanity". Humanity which is meant in the legal relationship of a person who has a dual profession with a client is in the universal dimension of human nature, where the dual obligation of the profession is merely to protect the vulnerable in medical services, as each patient or client is a person with all human rights (Wreksosuhardjo, 2014).

The purpose of the law based on the ideals of law (*rechtsidee*) Pancasila is to embody human protection, by protecting humans and creating reasonable conditions to develop their full potential for humanity. Fair and civilized humanity is derived in terms of implications for the reliance of the whole human being with his dignity and freedom. Not as much freedom as he can freely, but freedom in the pursuit and achievement of his life goals (Mangesti, 2015).

Dual professions are a way to accommodate the legal interests of society. The dual doctor-advocate profession is a combination of two social roles in a person that is obtained after he has undergone a professional education with competencies that are different from one another. Every individual has the right to decide on the objectives to be achieved based on morality and sensitivity to human values and justice so that in the harmonization of the dual code of ethics of the doctor-advocate profession, it is stated that the Professional Double is done only to defend the vulnerable (vulnerable person) without having to leave identity and independence of the profession as a doctor - advocate.

This harmonization model will function as an instrument of legal protection. The harmonization model that the authors offer as a solution is to explore the values of humanity that are just and civilized as *rechtsidee*. It can be positive in legislation that will show the harmonization of this code of conduct, substantially, should include:

1. Proposition dual profession of doctor – advocates in the Medical Practice Regulation.
2. There needs to be a sentence or proposition in the medical practice law as follows:
 1. In the general provisions, mentioning the definition dual profession of the doctor-advocate profession, which is people who have graduated from the higher education process, have the competence and are given authority by law.
 2. On the body, it is stated that: "If a doctor is a doctor and advocate, then in carrying out the responsibilities of his profession he is guided by the honesty of his conscience to fight for human values for the sake of justice"
 3. The medical practice law enforces a medical code of ethics in a *mutatis mutandis* manner.
3. Incorporate the Indonesian Medical Code of Ethics into the Medical Practice Regulation, by adding substance to the dual professional requirements with the rights and obligations of the doctor-advocate profession.
4. The mechanism for dual profession dispute settlement.

The harmonization that the author proposed above is only a normative concept or level. Further studies are still needed in terms of the formulation of the language of legislation, but substantially, it requires laws with fair and civilized human norms, in various forms and enforcement efforts.

CONCLUSION

Harmonization of the dual profession's code of ethics is very urgent because there is a need for an arrangement of the doctor-advocate profession to address the existence of conflicting norms in interpreting the Medical Practice Regulation and the Advocate Regulation. It is necessary to clarify the ratiolegis of the Law on Medical Practice regulating the structure (implementing agency) of the Indonesian Medical Code of Ethics but does not include the proposition of the Code of Ethics as the substance of the Act. The Advocate Law enforces the Advocate Code of Ethics in a mutatis mutandis manner as a Law. The improper application of both will harm civilized human values.

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