

LEGITIMACY OF ADVOCATES RELATED TO THE COURT EXAMINATION PROCESS

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Abstract

Court examination in Indonesia, particularly on the first and second stage, works on examining facts of a disputed case. Ideally, the Judge's decision is made based on consideration about the case. However, one case showed that the legitimacy of the advocate team that worked on that case, interfere the Judge consideration and changed the result of the examination. The problem was, the presumed illegitimate advocate was made based on a vast-changing law about advocate. Indonesia experienced several change from multi-bar to single-bar and to multi-bar system of advocate bar. The question of the legitimacy of the advocate on that case was based on that unfortunate condition of the bar system, not because of the neglect performed by the advocates themselves. This led to a question on how the procedural aspect like the legitimacy of advocate could affect the material aspect, which is the on-going case and resulted to a different verdict.

Keywords: advocates, legitimacy of advocates, advocate license, bar system, court decision

Abstrak

Pemeriksaan perkara di pengadilan Indonesia, khususnya di tingkat pertama dan tingkat banding, dilakukan untuk memeriksa fakta hukum dalam perkara. Idealnya, pertimbangan hakim dalam memutus dilakukan berdasarkan substansi dari perkara. Akan tetapi, terdapat satu kasus dimana keabsahan advokat dalam kasus tersebut mencampuri pertimbangan hakim dalam memutus perkara. Dalam hal ini dipermasalahkan karena advokat berasal dari asosiasi advokat yang pada saat itu dianggap tidak sah, sebagai akibat dari cepat berubahnya Undang Undang Advokat Indonesia. Hal ini menimbulkan kritik dari penulis bagaimana sebuah kendala prosedural yang diakibatkan oleh Undang Undang bisa mempengaruhi putusan materil dari sebuah sidang perkara.

Kata kunci: advokat, keabsahan advokat, asosiasi advokat, putusan pengadilan.

INTRODUCTION

The issue arose after a case regarding the establishment of building permit in Samarinda, Indonesia. The permit was sued by Fusanto Wijaya et al as plaintiff and Mayor of Samarinda as defendant. From the three court proceedings that have been executed and the issuance of a court decision, the Supreme Court Judges in deciding this case only by considering the license of lawyers who advocating the plaintiff from the Administrative Court of Samarinda, appeal level at the Administrative High Court of Jakarta, and cassation at the Supreme Court. It was stated that the lawyers from Plaintiff side don't have legitimacy to advocate in court based on the latest regulation issued by the Supreme Court, namely Circular Letter of Supreme Court (SEMA) Number 052/ KMA/ HK.01/ III/ 2011. This SEMA stated that Advocates who can proceed in court are those who have taken their oath at the local High Court. From that point the question arises whether only with the Judges' consideration of the legitimacy of the Advocate can affect the whole consideration to decide the case

- a. Fusanto Wijaya
Profession : Entrepreneur
Citizenship : Indonesian
Address : Hasan Basri Street Gg. 5 RT. 021 Kelurahan Bandara, Kecamatan Samarinda Utara Kota Samarinda Kalimantan Timur
- b. Suprpto Goey
Profession : Entrepreneur

regardless of other considerations as it is in the case between the Plaintiff side namely Fusanto Wijaya and friends against the Defendant side namely the Mayor of Samarinda.

case is begin on the submission of the lawsuit by the Plaintiff side to sue the Defendant side namely the Mayor of Samarinda city on the issuance of the decree from Mayor of Samarinda city regarding Building Permit (IMB) No: 383/ BPPTSP-KS/ IMB/ C/ III/ 2010 dated March 23, 2010 of H. Rubby Hartono, SH., M. Hum, over the plan to rebuild Segiri Market after the fire incident disaster on September 9, 2009 at the Administrative Court of Samarinda which became the object of dispute in this Administration court trial. The lawsuit was filed by the Plaintiff side on June 10, 2010 and registered in the court registry on June 11, 2010 with the register number of case No. 16/ G/ 2010/ PTUN. SMD and completed on July 29, 2010.

The Plaintiff side involved in this lawsuit as follow:

- Citizenship : Indonesian
Address : A. Yani Street Number 70 Block B RT. 018 Kelurahan Temindung, Kecamatan Samarinda Utara Kota Samarinda Kalimantan Timur
- c. Ivan Sukmah Tjong
Profession : Entrepreneur
Citizenship : Indonesian
Address : Komp. Pasar Segiri RT. 28 Kelurahan Sidodadi, Kecamatan Samarinda Ulu Kota Samarinda Kalimantan Timur
- d. Lie Wat Sioe
Profession : Entrepreneur
Citizenship : Indonesian
Address : Dermaga street Number 48 RT. 028/002 Kelurahan Pelabuhan, Kecamatan Samarinda ilir Kota Samarinda Kalimantan Timur
- e. Yudi Wijaya
Profession : Entrepreneur
Citizenship : Indonesian
Address : Komp. Pasar Segiri Number 44 RT. 028/000 Kelurahan Sidodadi, Kecamatan Samarinda Ulu Kota Samarinda Kalimantan Timur
- f. Hery Darsono Thio
Profession : Entrepreneur
Citizenship : Indonesian
Address : A.M. Sangaji Street Number 401 RT. 01/000 Kelurahan Bandara, Kecamatan Samarinda Utara Kota Samarinda Kalimantan Timur
- g. Rudi Harto Widjaya
Profession : Entrepreneur
Citizenship : Indonesian
Address : Pahlawan Street Number 9 RT. 00010 Kelurahan Dadi Mulya Kecamatan Samarinda Ulu Kota Samarinda Kalimantan Timur

30 May 2009 (valid until 30 May 2011),

And the representative Advocate of the Plaintiff side who registered in the Administrative Court as follows :

- a. H. J. Jahidin S, SH. MH. by holding the organizational card of KAI registered number 023-00164/KAI-WT/I/2009, 27 April 2009 (valid until 27 April 2012),
- b. Petrus Tiba Negha. SH by holding the organizational card of KAI registered number 023-00034/KAI-WT/I/2008,

- c. Mulyadi, SH. by holding the organizational card of KAI registered number 023-00089/KAI-WT/I/2009, 27 April 2009 (valid until 27 April 2012),
- d. Hj. Sarinah, SH by holding the organizational card of KAI registered number 023-00133/KAI-WT/I/2009, 27 April 2009 (valid until 27 April 2012),

- e. Luturmas James, SH, by holding the organizational card of KAI registered number 023-00064/KAI-WT/I/2008, 30 May 2008 (valid until 30 May 2011).

All Advocates of the Plaintiff side are Indonesian Citizen, Advocate at Legal Consultant Office "H.J. Jahidin S, SH. MH. & Partners" domiciled in Kadrie Oening street number 35 Samarinda based on a special power of attorney dated May 3, 2010.

The Defendant side involved in this lawsuit namely the Mayor of Samarinda City domiciled in Pahlawan Street Number 82 Samarinda, East Borneo. And the representative of the Defendant side who registered in the Administrative Court as follows :

- a. Sugeng Purnomo, SH, M.Hum
- b. H.M. Fadly Illa, SH. M.Si
- c. I Gusti Ayu Sulistiani, SH. M.Hum
- d. Syarifuddin, SH
- e. Asran Yunisran, SE. SH
- f. Andi Muhammad Asdal, SH

All of them are Indonesian Citizen, government employee at City Hall Building Kesuma Bangsa Steet Number 82 Kota Samarinda, East Kalimantan based on a special power of attorney number : 180/117/HK-KS/VII/2010, dated 09 July 2010.

The reason why the Plaintiff side submitting this lawsuit to the Administration Court of Samarinda to sue the Defendant side are all the Plaintiff side own the legal certificates of the shop based on the Building Use Rights (HGB) and other certificates of ownership. Fusanto Wijaya Oeij, Suprpto Goey, Ivan Sukma Tjong, Lei Wat Sioe, and Rudy Hartono Wijaya are shop owner based on Building Use Rights (HGB). Then Yudi Wijaya / Oey Tiong Joe and Hery Darsono Thio are the legal owners of that shop based on the purchase agreement then based on the transitional letter of rights to place of business within the market boundary of the Samarinda City area.

Then the Mayor of Samarinda City issued a Decree from Mayor of Samarinda City concerning Building Permit Number 383/ BPPTSP-KS/ IMB/ C/ III/ 2010 dated March 23, 2010 of H. Rubby Hartono, SH., M. Hum, without pay attention for rights of ownership from the Plaintiffs side that have long been used that shop for business, in accordance with ownership rights based on building rights (HGB) and other certificates of ownership. After the issuance of the Mayor decree make effect for the Plaintiff side to loss the right of the shop also being displaced then don't have right and place to stay. It is clear that the Defendant side to issue the

Decree from Mayor of Samarinda City concerning Building Permit Number 383/ BPPTSP-KS/ IMB/ C/ III/ 2010 dated March 23, 2010 of H. Rubby Hartono, SH., M. Hum, make bad effects to the Plaintiff side and against the rules that regulated it.

The Plaintiff side considers that the Defendant side in issuing the decree from Mayor of Samarinda City concerning Building Permit Number 383/ BPPTSP-KS/ IMB/ C/ III/ 2010 dated March 23, 2010 of H. Rubby Hartono, SH., M. Hum does not observe the administrative procedure from that decree. According to the Plaintiff side view, the Defendant side in issuing Decree from Mayor of Samarinda City concerning Building Permit Number 383/ BPPTSP-KS/ IMB/ C/ III/ 2010 dated March 23, 2010 of H. Rubby Hartono, SH., M. Hum does not observe to get decree of Building Construction Permit must fulfill the requirement with the regulation based on Article 7 paragraph (5) of Regional Regulation no. 34 Year 2004 concerning Buildings around of Samarinda City;

- a. Map of the building
- b. Sketch plan of the building with scale 1: 50; 1: 100; 1: 200.
- c. Calculations of the construction and design of installation for a particular building

- d. Duplicate or copy proof of land ownership
- e. Land Ownership Agreement/ permit for construct the buildings on land not owned by them
- f. ID / identity card of the Applicant of building permit.
- g. The last payment of tax property.

Then with the signing the decree from Mayor of Samarinda City concerning Building Permit Number 383/ BPPTSP-KS/ IMB/ C/ III/ 2010 dated March 23, 2010 of H. Rubby Hartono, SH., M. Hum, the questions arises from the Plaintiff side whether H. Rubby Hartono, SH., M. Hum has paid the tax property of building before the fire disaster at Segiri Samarinda Market and after the issuance of the decree from Mayor of Samarinda City concerning Building Permit Number 383/ BPPTSP-KS/ IMB/ C/ III/ 2010 dated March 23, 2010 of H. Rubby Hartono, SH., M. Hum, the questions arises from the Plaintiff side whether H. Rubby Hartono, SH., M. Hum has done to pay the cost of building permit proposal accordance with article 2 of Samarinda Regional Regulation no. 15 Year 2006 on Retribution of Building Permit jo Article 8 paragraph (4) of Regional Regulation no. 34 Year 2004 on Buildings around of Samarinda City.

According to the Plaintiff side, H. Rubby Hartono, SH., M. Hum as the Head of institute has used the power to take the rights of owner the Plaintiff side, and its against the law and regulation. Then, by the issuance of Decree by the Defendant side is not in accordance with the good principle of Government, therefore from the Plaintiff side the decree from Mayor of Samarinda City concerning Building Permit Number 383/BPPTSP-KS/ IMB/ C/ III/ 2010 dated March 23, 2010 of H. Rubby Hartono, SH., M. Hum, is against the law also the regulation and must be canceled.

Then from the point of memory of exception the Judge of the administrative court considerate about the validity of the Advocate of Plaintiff side as an Advocate because not take their oath yet as an Advocate in the local High Court and never sign the pledge before. Based on a special power of attorney dated May 3, 2010 And the representative Advocate of the Plaintiff side who registered in the Administrative Court as follows H. J. Jahidin S, SH. MH. by holding the organizational card of KAI registered number 023-00164/KAI-WT/I/2009, 27 April 2009 (valid until 27 April 2012), Petrus Tiba Negha. SH by holding the organizational card of KAI registered number 023-00034/KAI-WT/I/2008, 30 May 2009

(valid until 30 May 2011), Mulyadi, SH. by holding the organizational card of KAI registered number 023-00089/KAI-WT/I/2009, 27 April 2009 (valid until 27 April 2012), Hj. Sarinah, SH by holding the organizational card of KAI registered number 023-00133/KAI-WT/I/2009, 27 April 2009 (valid until 27 April 2012), Luturmas James, SH, by holding the organizational card of KAI registered number 023-00064/KAI-WT/I/2008, 30 May 2008 (valid until 30 May 2011). All Advocates of the Plaintiff side are holding the Advocate Organization Card according to Legal Consultant Office "H.J. Jahidin S, SH. MH. & Partners" domiciled in Kadrie Oening street number 35 Samarinda.

The Judge of Administrative Court observe from the regulation based on Constitutional Court decision number 101/PUU-VII/ 2009 dated 30 December 2009, about Advocate who proceeding in the court trial must taking their oath yet latest 2 years after issuance of Constitutional Court decision without being from where the organizational of Advocate they come from based on the regulation which regulated the Advocate, also the Advocate before taking their oath yet must be fulfill the terms and conditions also the requirement as an Advocate, stated that proposed submitted by PERADI Advocate Organizational. Then

stated that not only PERADI which exist as the Advocate organizational in Indonesia but also KAI Advocate Organization still recognized according to the regulation of an Advocate.

According into Advocate Organizational Card of the Plaintiff side Advocate which issuance of KAI Advocate Organizational, the Judge of Administrative Court of Samarinda stated that if an Advocate holding the Advocate Organizational Card so that Advocate has to fulfill the terms and conditions also the requirement as an Advocate including have been taken their oath yet as an Advocate in the local High Court before proceeding the trial court. So that the responsibility from the Advocate Organizational who issuance the Advocate Organizational Card of the Advocate. Then the memory of exception about the validity of the advocate of Plaintiff side as an Advocate because not take their oath yet as an Advocate in the local High Court and never sign the pledge before in this case must be rejected by the Judge of Administrative court.

ANALYSIS

In court decision by Judge of the Supreme Court Number: 20 K/ TUN/ 2012 explain that in deciding this court to consider

the main point is the Advocate of Plaintiff side not yet taken their oath as Advocate as based on Law number 18 year 2003 concerning Advocate *Jo*. SEMA Number 089 / KMA / VI / 2010 dated June 25, 2010 *Jo*. SEMA Number 052 / KMA / HK.01 / III / 2011 containing Advocates who can proceed in court are those who have taken their oath at the local High Court through a proposal are from the PERADI (Advocate organization), and the Advocates of the Plaintiff side are from the KAI (Advocate organization) and not yet taken their oath in front of the Head of local High Court and therefore don't have formal legitimacy to represent the Plaintiff side for in this case.

Here is the Judge consideration at Supreme Court in deciding this case :

- a. That in accordance with the provisions of Article 49 of Law Number 18 Year 2003 concerning Advocate *Jo*. SEMA Number 089 / KMA / VI / 2010 dated June 25, 2010 *Jo*. SEMA Number 052 / KMA / MK.01 / III / 2011, Advocates who represent in the court who have yet taken their oath at the local High Court.
- b. Whereas the Advocates of the Plaintiff side not yet taken their oath

in front of the Head of High Court based on SEMA and therefore don't have formal legitimacy to represent the Plaintiff side in this case.

- c. Considering that based on the above reason, there is sufficient reason to grant the cassation application from the cassation applicant : Mayor of Samarinda and declare to cancel the court decision of the Administrative High Court of Jakarta Number 61/ B/ 2011/ PT. TUN. JKT dated 14 September 2011 which essentially to strengthened the court decision of the Administrative Court of Samarinda Number: 16/ G/ 2010/ PTUN. SMD dated December 2, 2010 and the Judge of Supreme Court to adjudicate this case by a court decision as mentioned below.
- d. Considering that the Judges of Supreme Court has read the argument of the cassation, but the Judges of Supreme Court did not found the things that collapsed the arguments of the cassation from the cassation applicant.
- e. Based on the article of Law Number 48 Year 2009 regarding judicial authority, Law Number 14 Year 1985 regarding the Supreme Court as

amended by Law Number 5 Year 2004 and the second amendment with Law Number 3 Year 2009, Of Law Number 5 of 1986 concerning the State Administrative Court as amended by Act Number 9 of 2004 and the second amendment with Law Number 51 Year 2009 as well as other related legislation.

Because of that Judge consideration with the main point is about validity of the Advocate for represent in this case then Judge of Supreme Court make a decision that based on that considerations are enough to be the reason to granted the request of cassation from the applicant of cassation that Mayor of Samarinda City and declare to cancel court decision of the Administrative High Court of Jakarta Number: 61/ B/ 2011/ PT. TUN. JKT dated 14 September 2011 which essentially strengthened the court decision of the Administrative Court of Samarinda Number: 16/ G/ 2010/ PTUN. SMD on December 2, 2010.

That the court decision by Judge of Supreme Court in deciding the court decision number : 20 K/ TUN/ 2012 :

Adjudicate :

- a. Granted the request of cassation from the applicant of cassation that the Mayor of Samarinda City.

- b. Declare to cancel the court decision of the Administrative High Court of Jakarta Number: 61/ B/ 2011/ PT. TUN. JKT dated 14 September 2011 which essentially strengthened the court decision of the Administrative Court of Samarinda Number: 16/ G/ 2010/ PTUN. SMD on December 2, 2010.

Self Adjudicate :

- a. Declaring the lawsuit of Plaintiff side are unacceptable.
- b. Punishes the all of cassation applicant to pay court fees at all court levels which are in the cassation court level Rp. 500.000,00 (five hundred thousand rupiah)

The court decision by Judges of the Supreme Court made the cancellation the court decision of the Administrative Court of Samarinda which was essentially strengthen by the Judges of the Administrative High Court Jakarta which :

- a. Postponed :
 - Declare to reject the request for the postponement of the implementation of the Decree from Mayor of Samarinda city regarding Building Permit (IMB) No: 383/ BPPTSP-KS/ IMB/ C/ III/ 2010 dated

March 23, 2010 of H. Rubby Hartono, SH., M. Hum, applicant by Plaintiff side.

b. Exception :

- Declare to refuses the exception from Defendant side completely.

c. Principal Case :

- Accepting the lawsuit of Plaintiff side.
- Declare the cancelation the Decree from Mayor of Samarinda city regarding Building Permit (IMB) Number: 383/ BPPTSP-KS/ IMB/ C/ III/ 2010 dated March 23, 2010 of H. Rubby Hartono, SH., M. Hum,
- Instruct the Defendant side to revoke the Decree from Mayor of Samarinda city regarding Building Permit (IMB) Number: 383/ BPPTSP-KS/ IMB/ C/ III/ 2010 dated March 23, 2010 of H. Rubby Hartono, SH., M. Hum,
- Punish the Defendant side to pay the court fee of Rp. 326.000, - (Three hundred twenty six thousand rupiah)

From that situation the question arises whether only with the consideration of Judge listed at the court decision in terms of the legitimacy of an Advocate for represent in this case can decide a court decision which put aside the main object of the case about the Decree from Mayor of Samarinda city concerning about Building Permit (IMB) Number : 383/ BPPTSP-KS/ IMB/ C/ III 2010 dated March 23, 2010 of H. Rubby Hartono, SH., M. Hum on the court decision on first level of court and appeal court must be revoked by Defendant side namely the Mayor of Samarinda city, but the Judge of Supreme Court assumes theres can not find the problems to void the Mayor Decree issued by the Mayor of Samarinda city.

In court decision Number : 20 K/ TUN/ 2012 by the Judge of Supreme Court make the legality of an Advocate as the priority consideration. That is about their oath before represent in the court based on applicable regulation which regulated is SEMA Number 089/ KMA/ VII/ 2010. The SEMA Number 089/ KMA/ VII/ 2010, is the applicable regulation which regulated the Advocate in that time after the SEMA Number 052/ KMA/ V/ 2009.

When the Judge of Supreme Court declared that read yet the memory of

cassation, but not found yet anything that brought down the arguments of the cassation appellant in the memory of cassation. Is the Judge of Supreme Court paying attention to the evidence issued by the Defendant/ Appellant/ Cassation Applicant namely evidence T-28 to T-34 for clear information in rebuilding the East Kalimantan Corruption Court Building is not requested a Power of Attorney or a letter from the landowner and the land certificate in which the building will be built in base on laws governing the IMB (Local Regulation of Samarinda City Number 34 Year 2004 About Building In The City Of Samarinda).

Clearly different between the Segiri Market Building and the Corruption Court Building of East Kalimantan. Segiri Market Building is a building intended for the meeting between sellers and buyers in trading transactions. Of course inside the Market Segiri building there is a shop owned by the seller who each has a Building Rights (HGB) and can be proven the validity of their HGB by the shop owner. So the mayor of samarinda city in issuing the decree from Mayor of Samarinda city About Building Permit (IMB) Number : 383/ BPPTSP-KS/ IMB/ C/ III/ 2010 dated March 23, 2010 on behalf of H. Rubby Hartono, SH., M. Hum, not follow the rules that regulate for issuing

the building permit based on Local Regulation of Samarinda City Number 34 Year 2004 About Building In The City Of Samarinda.

Then different from the East Kalimantan Corruption Court Building which is intended as a place for court events in the case of Corruption. However, in the Judge's consideration, the Judge does not consider it maybe only from in terms of the validity of the Advocate which is inconsistent with Law Number 18 Year 2003 concerning Advocate *Jo* SEMA Number 089/ KMA/ VI/ 2010 dated June 25, 2010 *Jo*. SEMA Number 052/ KMA/ HK.01/ III/ 2011 may canceled the previous Court Decision at the Administrative Court of Samarinda which essentially strengthen in the court decision at the Administrative High Court of Jakarta.

The Judge of Supreme Court should paying attention of the laws and regulation that regulated in that time before making the court decision, because if the Judge not carefully there can make the wrong in implementation of laws and regulation. Because based on the submitted evidence by the Plaintiff side there are clear that the Advocate from the Plaintiff side are already taking their oath in the Local High Court by the admission letter. So the Judge of Supreme

Court should be more attention for the making consideration in deciding the case.

If the Judge of Supreme Court only considers about the validity of Advocate who not in accordance with Law Number 18 Year 2003 concerning Advocate *Jo*. SEMA Number 089 / KMA / VI / 2010 dated June 25, 2010 *Jo*. SEMA Number 052 / KMA / HK.01 / III / 2011, it is not possible for the Plaintiff side to sue again with the same point of the lawsuit but with different Advocates who accompany the Plaintiff side according to Law Number 18 of 2003 regarding Advocate *Jo*. SEMA Number 089 / KMA / VI / 2010 dated June 25, 2010 *Jo*. SEMA No. 052 / KMA / HK.01 / III / 2011 because Judge not paying attention of the laws and regulation that regulated in that time before making the court decision, because the Judge already make the wrong in implementation of laws and regulation.

In this case, Advocates of the Plaintiff side who representing the interests in this trial are as follows :

- a. H. J. Jahidin S, SH. MH. by holding the organizational card of KAI registered number 023-00164/KAI-WT/I/2009, 27 April 2009 (valid until 27 April 2012),

- b. Petrus Tiba Negha. SH by holding the organizational card of KAI registered number 023-00034/KAI-WT/I/2008, 30 May 2009 (valid until 30 May 2011),
- c. Mulyadi, SH. by holding the organizational card of KAI registered number 023-00089/KAI-WT/I/2009, 27 April 2009 (valid until 27 April 2012),
- d. Hj. Sarinah, SH by holding the organizational card of KAI registered number 023-00133/KAI-WT/I/2009, 27 April 2009 (valid until 27 April 2012),
- e. Luturmas James, SH, by holding the organizational card of KAI registered number 023-00064/KAI-WT/I/2008, 30 May 2008 (valid until 30 May 2011).

Seeing from the Advocate of the Plaintiff side, the Judge of Supreme Court should pay attention for the applicable SEMA to making consideration for the court Decision. Clearly the Judge in their consideration not see the explanation of the laws and regulation namely Law Number 18 Year 2003 concerning Advocate and the other regulation which applicable SEMA that SEMA Number 089/ KMA/ VI/ 2010 in deciding this case.

However, the Judge of Supreme Court make the consideration with prioritizes to Advocates of the Plaintiff side who have not been sworn yet as Advocate in accordance with the in Law Number 18 Year 2003 concerning Advocate *Jo.* SEMA Number 089/ KMA/ VI/ 2010 dated June 25, 2010 *Jo.* SEMA Number 052/ KMA/ HK.01/ III/ 2011, so the Judge of Supreme Court considered that the Plaintiff side Advocates did not have any formal legitimacy to represent the Plaintiff side for the proceedings in this trial. It was then decided by the Judge that the object of the dispute originally ordered by the Judge of Administrative Court of Samarinda and essentially strengthened by the Judge of Administrative High Court of Jakarta to be revoked by the Defendant side namely Mayor of Samarinda city shall not be canceled for such reasons by the Judge of Supreme Court.

Whereas in the Judge's consideration there is no finding of further consideration on the object of the dispute, but rather prioritizing to the Advocates of Plaintiff side who have not been taking their oath as an Advocate according to the in Law Number 18 Year 2003 concerning Advocate *Jo.* SEMA Number 089/ KMA/ VI/ 2010 dated June 25, 2010 *Jo.* SEMA Number 052/ KMA/ HK.01/ III/ 2011. It is clear that Judge's consideration

is one of the most important aspects in determining the truth so Judge's decision containing justice and containing legal certainty, also containing benefits for the truth so that it must be observed with care, good, and careful by the Judge.

Because there is no consideration by the Judge regarding the clarity of certainty from the ownership of land rights which is at the object of the lawsuit by Plaintiff side which is also not considered by the consideration by the Judge of Administrative Court for the decision on court decision. It make the possibility for the Plaintiff side to lawsuit again the Defendant side on the same subject matter if the Defendant side issues the IMB at the same location due to the ownership of the right from that lawsuit object is not listed is in the consideration by the Judge.

Ownership status from the object of disputed namely Segiri Market Samarinda, is a question of this case. However, the Judge in the consideration to decide this case is not concerned with the status of land ownership or buildings in the object of dispute that Decree from Mayor of Samarinda city concerning Building Permit (IMB) No: 383 / BPPTSP-KS / IMB / C / III / 2010 dated March 23, 2010 of H. Rubby Hartono, SH.,

M. Hum. However, the consideration from Judge of prioritizes the Plaintiff side Advocates who have not taking their oath as an Advocates in proceeding at the court trial.

Seen the court decision from Administrative court of Samarinda which essentially strengthen by the Judge of administrative high court of Jakarta, not found the existence of the weirdness of what has been considered by Judge of Administrative court of Samarinda for made a court decision. The Judge of Administrative court of Samarinda have been to observe from the beginning of this lawsuit from Plaintiff side for the Defendant side issued the object of dispute that Decree from Mayor of Samarinda city concerning Building Permit (IMB) No: 383 / BPPTSP-KS / IMB / C / III / 2010 dated March 23, 2010 of H. Rubby Hartono, SH., M. Hum until the validity of the Plaintiff side advocates who represent in this case.

After the Supreme Court published Circular Letter of the Supreme Court concerned about Advocated namely SEMA Number 052/ KMA/ HK.01/ III/ 2011, what things that makes the Judge of Supreme Court declare that the Advocate who accompanies the Plaintiff side in this case there is no legal legitimacy. In fact, an

advocate who holds a membership card of an Advocate organization is deemed to have fulfilled all requirements to become an Advocate including taking an oath before an Advocate candidate to be Advocates who proceeding in court, so it is the responsibility from that Advocate itself and the Advocate organization to the validity of the membership card of the Advocate organization.

If the Judge of Supreme Court argued based on their consideration before decided the court decision, how can Advocates of Plaintiff side can represent at this case to accompany the Plaintiff side in administrative court and also handling cases at the court trial before proceeding in this case. The Plaintiff side Advocates are an Advocate who holds an Advocate Organization card from KAI Advocate organization clearly stated that already fulfilled all requirements to become an Advocate including taking their oath as an Advocate before proceeding in the court trial. Can proven theirs validity of Advocates with evidence from Plaintiff side. If the Advocates who accompany the Plaintiff side have not yet formal legitimacy to represent the plaintiff side to proceed in this case, then what about the evidence submitted by Plaintiff side to administrative court of

Samarinda. That's clear in considered the court decision, the Judge of Supreme Court already wrong in implementation of laws and regulation based on Law Number 18 Year 2003 concerning Advocate and the other regulation which applicable SEMA that SEMA Number 089/ KMA/ VI/ 2010 in deciding this case.

With the Judge of Supreme Court declaring at their consideration that the Plaintiff's Advocates have not taking their oath as an Advocates therefore Advocate of the Plaintiff side don't have formal legitimacy to represent the Plaintiff side to proceeding in this case. Thus Advocates of the Plaintiff side have lost their profession as an Advocates and the consideration from Judge of Supreme Court certainly violated the Human Rights of Advocates of the Plaintiff side because they have lost their jobs according to the 1945 Constitution that every person has the right to work and to be rewarded and treated fairly.

Then if looking at Law Number 18 Year 2003 concerning Advocates, then whether the Judge of Supreme Court has been wrong by considering article 49 of Law Number 18 Year 2003 concerning Advocate *Jo.* SEMA Number 089/ KMA/ VI/ 2010 dated June 25, 2010 *Jo.* SEMA Number 052/

KMA/ HK.01/ III/ 2011, Advocates who can represent in court are those who have taken their oath at the local High Court. Whereas in Law Number 18 Year 2003 concerning Advocates only contains 36 articles. It is clear that Judge's consideration is one of the most important aspects in determining the truth so Judge's decision containing justice and containing legal certainty, also containing benefits for the truth so that it must be observed with carefully by the Judge. Thus Judge of Supreme Court in decision making is not thorough accordance by the considerations before made the court decision.

How can Judge of Supreme Court careless with the considerations for made the court decision. Obviously the Judge in making decisions must be observed with carefully for made the court decision. Thus, the court decision by the Judge of Supreme Court Number: 20 K/ TUN/ 2012 should be reviewed about the consideration by Judge of Supreme Court regarding Article 49 of Law Number 18 Year 2003 concerning Advocates *Jo*. SEMA Number 089/ KMA/ VI/ 2010 dated June 25, 2010 *Jo*. SEMA Number 052/ KMA/ HK.01/ III/ 2011.

Then the Judge of Supreme Court also did mistaken for writing of the SEMA

number which is stated on considerations. It should be SEMA Number 052/ KMA/ HK.01/ III/ 2011 not SEMA Number 052/ KMA/ MK.01/ III/ 2011. From that point it can be see that the Judge of Supreme Court in deciding the court decision is not careful because the Judge should respond the court decision with full responsibility. Thus, the court decision by the Judge of Supreme Court Number: 20 K/ TUN/ 2012 should be reviewed because Judge of Supreme Court careless with the considerations for made the court decision.

The Judge in order to make a court decision should see the legal consideration from the evidence, also with the proof from the witness who presented by Plaintiff side and Defendant side to make clear the court decision by Judge. From that, Judge can consider it to be a court decision for deciding the case. Then how can the Judge of Supreme Court stated about the Plaintiff side Advocate don't have formal legitimacy for accompany the Plaintiff side to proceeding in this case, because the Advocate of Plaintiff side don't have taking their oath in the Local High Court in front of Head of High Court and make priority to the Advocate validity as consideration in the court decision then not see the applicable law and regulation that concerning about the Advocate. According to

the wrong in implementation of law, how can the Judge can deciding the court decision. Whereas the Supreme Court is a cassation court trial with the authority to harmonize in the application of the law through the court decision of cassation and review to keep all regulations applied fairly, accurately and correctly.

In the court decision of the Judges of the Supreme Court Number: 20 K/ TUN/ 2012 explains that in deciding this case the of Judges of Supreme Court consider the considerations which the point is the Advocates of the Plaintiff side don't have taking their oath as an Advocate based on Law Number 18 Year 2003 concerning Advocate *Jo. SEMA* Number 089/ KMA/ VI/ 2010 dated June 25, 2010 *Jo. SEMA* Number 052/ KMA/ HK.01/ III/ 2011 that stated Advocates who can proceed to represent in the court are those who have taken their oath yet at the local High Court, therefore the Advocate of the Plaintiff side don't have the formal legitimacy to represent the Plaintiff side for proceeding in this case.

Actually what makes the Judge of Supreme Court does not clearly observe the applicable laws and regulation about Advocate to consider the consideration in deciding the court decision in this case from

the validity of the Advocates Plaintiff side as an Advocate in proceeding this court trial in deciding this case. Based on Law Number 18 Year 2003 concerning Advocate, the definition of Advocate itself is a person who has a legal service profession both inside and outside the court that has fulfilled the requirements based on Law Number 18 Year 2003 concerning Advocate. Legal Services is a service provided by an Advocate in the form of providing legal consultations, legal assistance, exercising power, representing, accompanying, defending and taking other legal actions for the legal interest of a client which means any person, legal entity or other institution receiving legal services from Advocate.

Before becoming an Advocate for his profession as an Advocate, the Advocate candidate must meet several requirements of which :

1. Citizen of the Republic of Indonesia;
2. Living in Indonesia;
3. Not be a civil servant or a State official;
4. Aged at least 25 (twenty five) years;
5. Certified undergraduate of law;
6. Pass the exam held by the Advocate Organization;
7. Internship at least 2 (two) years continuously at the Advocate's office;
8. Have never been convicted of a criminal offense punishable by imprisonment of 5 (five) years more;

9. Be good, honest, responsible, fair, and have high integrity;
10. Before carrying out his profession, the Advocate shall taking their oath by his religion in the High Court trial in each domicile territory.

It is clear that all of them must be fulfilled if they want their profession as Advocates. Then the Advocate may proceed to represent in court if the fulfillment of several conditions, which are:

1. An Advocates who has been taking their oath yet in High Court.
2. An Advocates who has not taking their oath yet in High Court but can be proven through a proposal requested of taking oath by an Advocate organization but that proposal rejected by the High Court.
3. An Advocates who has not taking their oath in Local High Court but can be proven through a requested proposal of taking the oath by an Advocate Organization but until 4 (four) months since the letter of proposal has been submitted there has been no answer from the High Court.

Based on article 4 of Law Number 18 Year 2003 concerning Advocate before proceeding in the court trial, an Advocate must taking their oath according to his

religion at the High Court base on their domicile of territory. So clearly stated in the article that before an Advocate represent in the court should taking their oath yet because if not then an Advocate don't have formal legitimacy in carrying out his profession as an Advocate to accompany the client in the case.

Then how did the Judge of Supreme Court stated that the Advocates of Plaintiff side is not have formal legitimate to proceeding in this case, while the Advocates of Plaintiff side are Advocates based on a special power of attorney dated May 3, 2010, submitted by the Plaintiff side as Advocate to handle this case. Namely H. J. Jahidin S, SH. MH. by holding the organizational card of KAI registered number 023-00164/KAI-WT/I/2009, 27 April 2009 (valid until 27 April 2012), Petrus Tiba Negha. SH by holding the organizational card of KAI registered number 023-00034/KAI-WT/I/2008, 30 May 2009 (valid until 30 May 2011), Mulyadi, SH. by holding the organizational card of KAI registered number 023-00089/KAI-WT/I/2009, 27 April 2009 (valid until 27 April 2012), Hj. Sarinah, SH by holding the organizational card of KAI registered number 023-00133/KAI-WT/I/2009, 27 April 2009 (valid until 27 April 2012), and Luturmas James, SH, by

holding the organizational card of KAI registered number 023-00064/KAI-WT/I/2008, 30 May 2008 (valid until 30 May 2011).

When considered from the KAI Advocate Organization card hold by the Advocates of the Plaintiff side, an Advocate who has held the Advocate Organization card thus fulfilled all the requirements to become an Advocate, therefore already the responsibility of the Advocate itself and also the organization of Advocate about the validity of the advocate organizational card. Relevant with SEMA Number 052/ KMA/ HK.01/ III/ 2011 which the main point of the cassation memory by the Defendant side. How can the Judge of Supreme Court stated that in their consideration to decide this case which is the Advocates of the Plaintiff side has not taking their oath as Advocate based on Law Number 18 Year 2003 concerning Advocate *Jo.* SEMA Number 089/ KMA/ VI/ 2010 dated June 25, 2010 *Jo.* SEMA Number 052/ KMA/ HK.01/ III/ 2011 which contains about the Advocates who can proceed to represent in the court are those who have taken their oath yet at the High Court based on their domicile of territory.

The point of that regulation is that the Advocate who can represent in the court

involved an Advocate who has been taking their oath in the Local High Court based on their domicile of territory. Which its means that the Advocate who has been taking their oath before SEMA Number 089/ KMA/ VI/ 2010 and after SEMA Number 089/ KMA/ VI/ 2010 has been enforced, the Advocates can still be represent in the court regardless come from which Advocate Organization.

Whether the Judge of Supreme Court in that considerations for this court decision concerned in terms of the Advocate Organization which in the advocates of Plaintiff side come from. Where the problem refers to Article 28 paragraph (1) of Law Number 18 Year 2003 concerning Advocate stating that Advocate Organizations are the only places for Advocates for their strengthen their skills in accordance with the provisions of this regulation, with a view to improving the quality of the Advocate. Where at that time there are several Advocates organizations that exist namely PERADI and KAI. Initially, the Advocate organization was PERADI acknowledged as the recognized place for advocates based on that regulation but there KAI which also acknowledged as the recognized place for Advocates. So there are two Advocate organizations that claim to acknowledge as a recognized place of

Advocate organizations based on that regulation namely PERADI and KAI.

From that time, in Indonesia there are some Advocate Organization based on the Law Number 18 Year 2003 concerning the Advocate. So before there are arise the dispute from the Advocate Organization between PERADI Advocate Organization and KAI Advocate Organization, the system which exist is the Multi-Bar System. That mean the Advocate should to join in the Advocate Organization and also Advocate not required to join in the Advocate Organization anywhere to proceeding in the court trial based on SEMA Number 052/ KMA/ V/ 2009, concerning about the action from Supreme Court for Advocate Organization.

The Judge should know that with the organizational card ownership of the Plaintiff side Advocate issued by KAI, then an Advocate who holding the organizational card has fulfilled all the requirements to become an Advocate including taking oath in front of Head of Local High Court before represent to proceeding in the court trial. Therefore, before handle the Plaintiff side in this case, the Advocate of the Plaintiff side also represent in the District Court and the Administration Court which have nothing to

violate the new regulations issued by Supreme Court namely SEMA Number 089/ KMA/ VI/ 2010 that stated to instruct all Head of the High Court in Indonesia to take the oath of the Advocate candidate with the submitted proposal by the PERADI Advocate Organization in which the Decree of the Supreme Court was published after the problem between PERADI and KAI was finished except that the Advocates of Plaintiff side was taking their oath yet after the SEMA was published which is stated that to taking their oath by the Head of Local High Court proposed by the PERADI Advocate Organization.

Related to SEMA Number 052/ KMA/ V/ 2009 date 01 May 2009 stated the Advocate who has taken their oath in the local High Court based on law Number 18 Year 2003 concerning Advocate before SEMA Number 052/ KMA/ V/ 2009 date 01 May 2009 can not be prevented to represent to proceeding in the court trial regardless which Advocate Organization their come from. Which that SEMA has been revoked by the latest issuance of SEMA Number 089/ KMA/ VI/ 2010 dated 25 June 2010 that stated because to solved dispute relating to legal Advocate Organization between PERADI and KAI at the Supreme Court dated on June 24, 2010 where it has been

solved and created an agreement that legal Advocate Organization based on law Number 18 Year 2003 concerning Advocate is PERADI Advocate Organization.

From the issuance of that SEMA Number 089/ KMA/ VI/ 2010, concerning about the oath of Advocate, the system of Advocate Organization in Indonesia changed to the Single Bar System there are only one the Advocate Organization in the Indonesia jurisdiction area (PERADI Advocate Organization) and all of the Advocate should to join in that Advocate Organization. But also the other Advocate Organization still exist however only one the Advocate Organization in the Indonesia jurisdiction area based on the applicable law and regulation that regulated the Advocate and Advocate Organization.

The Supreme Court stated in that SEMA Number 089/ KMA/ VI/ 2010 also instruct to head of High Court in Indonesia to take the oath for Advocate before represent in the court that has fulfilled all the requirements to become an Advocate according to the agreement on June 24, 2010 between PERADI and KAI. And also about the problems to Advocates who have not taking oath yet after issuance of that SEMA Number 089/ KMA/ VI/ 2010 as the while

alternative solution until the dispute relating to legal Advocate organization between PERADI and KAI solved, according to the Supreme Court, Advocate may proceed to represent in court if the fulfillment of several conditions, which are :

1. An Advocates who has been taking their oath yet in High Court.
2. An Advocates who has not taking their oath yet in High Court but can be proven through a proposal requested of taking oath by an Advocate organization but that proposal rejected by the High Court.
3. An Advocates who has not taking their oath yet in High Court Advocate but can be proven through a proposal requested of taking oath by an Advocate organization but until 4 (four) months since the letter of proposal has been submitted there has been no answer from the High Court.

The rules that regulated of taking oath for Advocate may have an effect on Advocates especially when they become an advocate for accompany client in court proceedings. It causes the Judge to Advocates who have not been taking oath yet differently in their considerations for court decision. Although not many Judges are considering it as long as it is not disputed by Plaintiff side

or Defendant side in the trial court. This step practiced by most Judges before and after this regulation namely SEMA Number 089/ KMA/ VI/ 2010 published, especially in the courts of the Special Territory of Yogyakarta (DIY).⁵³

If the Judge of Supreme Court review to the applicable SEMA Number 089/ KMA/ VI/ 2010 dated 25 June 2010 that an Advocate who fulfills the requirements of Law No. 18 of 2003 on Advocates should taking their oath yet in the local high court based on Advocate candidate domicile of territory before performing his profession as Advocate. Advocates who have not taking their oath yet by the Head of High Court have not the formal legitimate in the trial court. Whereas when looking at the implementation in the court of the Special Territory of Yogyakarta (DIY) Judge's considered that the Advocate who has not been taking their oath yet can only represent in the court beside the Advocate who have been taking their oath yet. Therefore the Advocate who has not been taking their oath yet not able to representing in the court trial independently but only beside the Advocate who have been taking

their oath yet who are already valid and fulfill the requirements of law Number 18 Year 2003 concerning Advocate implementation of SEMA Number 089/ KMA/ VI/ 2010 dated 25 June 2010. According to the Judge consideration, based on the humanitarian reason (human right) is not good to hinder people who are looking for money according to the constitution regulation. That explained that there is no difference between an Advocate who represent in the court trial from which the organization of Advocate came from.⁵⁴

The Judge of Supreme Court should not necessarily make taking oath for Advocate be a problem because it is clear that all Advocates of the Plaintiff side hold an Advocate organizational card issued by the KAI Advocate organization. By holding the Advocate organizational card that responsibility of the Advocate itself and the KAI Advocate Organization that issued it. And also the Advocate of the Plaintiff side are an Advocate who has taken his oath yet at the High Court according by Law Number 18 Year 2003 concerning Advocate before SEMA Number 052/ KMA/ V/ 2009 Date 01

⁵³ See from, *Implikasi Putusan Mahkamah Konstitusi Nomor 101/ PUU-VII/ 2009 Terhadap Pelaksanaan Profesi Advokat di Daerah Istimewa Yogyakarta*. Pusat Kajian Hukum Konstitusi FH UJB. 2010

⁵⁴ See from, *Implikasi Putusan Mahkamah Konstitusi Nomor 101/ PUU-VII/ 2009 Terhadap Pelaksanaan Profesi Advokat di Daerah Istimewa Yogyakarta*. Pusat Kajian Hukum Konstitusi FH UJB. 2010

May 2009 so it can not prevented the advocate of Plaintiff side for proceeding to represent in a court regardless which Advocate Organization of the Advocate come from. Otherwise if all of them do not hold the Advocate organizational card then Judge of Supreme Court must see the validity of Advocate from the Plaintiff side and should be further consideration for the Judge of Supreme Court in deciding in this court decision.

CONCLUSION

The Judge of Supreme Court in deciding the court decision on decision number: 20 K/ TUN/ 2012 in their considerations only consider in terms of the validity of Advocate where the Advocate is invalid to represent in court trial because the Advocate from KAI Advocate Organization not from PERADI Advocate Organization accordance with applicable SEMA at that time.

About the validity of Advocate to represent in court trial, an Advocate must fulfill the requirements of Law Number 18 Year 2003 concerning Advocates which should taking their oath in the High

Court according to their domicile before represent in court trial. In the provisions of applicable SEMA Number 089/ KMA/ VI/ 2010 at that time, it was stated that the Advocate which will taking their oath shall be submitted by the PERADI Advocate Organization in his proposal to the High Court according to their domicile. Advocates who have not taking their oath in the High Court only can accompany beside the Advocate who has been taking their oath to represent in court trial.

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