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Legal Aspects of the High Court's Authority in Freezing the Minutes of the Advocacy Oath

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Abstrak

Kewenangan Pengadilan Tinggi dalam melakukan pembekuan Berita Acara Sumpah (BAS) Advokat merupakan aspek hukum yang kompleks dan memiliki implikasi terhadap independensi profesi advokat serta sistem peradilan di Indonesia. Penelitian ini bertujuan untuk menganalisis dasar hukum, kewenangan, serta batasan yang dimiliki Pengadilan Tinggi dalam melakukan pembekuan BAS Advokat, serta dampaknya terhadap hak-hak advokat dan sistem hukum nasional. Metode penelitian yang digunakan adalah pendekatan yuridis normatif dengan menelaah peraturan perundang-undangan, putusan pengadilan, serta doktrin hukum yang relevan. Hasil penelitian menunjukkan bahwa kewenangan Pengadilan Tinggi dalam membekukan BAS Advokat masih menghadapi ketidakjelasan dalam regulasi, sehingga berpotensi menimbulkan ketidakpastian hukum. Selain itu, pembekuan BAS dapat berdampak pada terbatasnya akses terhadap keadilan dan kebebasan profesi advokat dalam menjalankan tugasnya. Oleh karena itu, diperlukan regulasi yang lebih jelas dan konsisten guna menghindari potensi penyalahgunaan kewenangan serta menjamin prinsip *due process of law* dalam sistem hukum Indonesia.

Kata Kunci: *Kewenangan Pengadilan Tinggi, Berita Acara Sumpah Advokat, Aspek Hukum*

Abstract

The authority of the High Court in freezing the Advocate Oath Minutes (BAS) is a complex legal aspect and has implications for the independence of the advocate profession and the judicial system in Indonesia. This study aims to analyze the legal basis, authority, and limitations of the High Court in freezing the BAS of Advocates, as well as its impact on the rights of advocates and the national legal system. The research method used is a normative juridical approach by examining relevant laws and regulations, court decisions, and relevant legal doctrines. The results of the study show that the High Court's authority in freezing BAS Advocates still faces ambiguity in regulations, so it has the potential to cause legal uncertainty. In addition, the freezing of BAS can have an impact on limited access to justice and freedom of the advocate profession in carrying out their duties. Therefore, clearer and more consistent regulations are needed to avoid potential abuse of authority and ensure the principle of *due process of law* in the Indonesian legal system.

Keywords: *High Court Authority, Minutes of Advocate Oath, Legal Aspects*

INTRODUCTION

The oath of advocate is a formal requirement that has a strong legal basis in the judicial system in various countries, including Indonesia (Wass, 2022). In the context of Indonesian law, taking the oath of an advocate as regulated in Law Number 18 of 2003 concerning Advocates, is a mandatory procedure that must be carried out before a person can legally carry out his profession as an advocate (Wang, 2024). This oath not only functions as an administrative formality, but also as a form of advocate commitment in upholding the law, justice, and maintaining professional ethics. With this oath, advocates are legally and morally bound to carry out their duties professionally, independently, and uphold the legal interests of their clients without contradicting the principles of justice and legal certainty (Syurpana Nofanda, 2025).

In addition, the advocate oath plays a role in maintaining the integrity of the legal profession by ensuring that every individual who enters the world of advocacy has understood and accepted a binding code of ethics (Rindengan et al., 2025). Without this oath, the legitimacy of an advocate in carrying out his duties can be questioned, both by the community, judicial institutions, and colleagues in the legal community (Maghfiroh et al., 2022). Therefore, the oath-taking process carried out before the High Court is a mechanism that affirms that advocates are part of the law enforcement system that must act in accordance with the principle of due process of law. Thus, the oath of advocate not only serves as an administrative requirement, but also as an instrument to build professionalism, accountability, and public trust in the advocate profession (Laster & Bernlohr Maizel, 2025).

The High Court has a central role in the process of taking the oath of advocate as a form of formal legalization of a person who will carry out the profession of an advocate. In accordance with Law Number 18 of 2003 concerning Advocates (Hutagalung & Seregig, 2025), every prospective advocate who has met the requirements is required to take an oath before the High Court in his or her domicile before being able to carry out his duties legally. This authority indicates that the High Court functions as an institution that ensures that every advocate understands and accepts the responsibilities of his profession, including the obligation to uphold the code of ethics and the principles of justice in the practice of law. The process of taking this oath is not just an administrative formality, but a form of initial supervision to ensure that the inaugurated advocates have integrity and commitment in upholding the law and providing professional legal services to the community (Hanley et al., 2024).

Apart from being an institution that carries out the oath of advocates, the High Court also plays a role in maintaining the quality and credibility of the advocate profession (Handler, 2022). With the oath-taking process, advocates not only gain legal legitimacy, but are also reminded of the moral responsibility and professionalism inherent in their role as part of the justice system. In some cases, the High Court also has the authority to review and even freeze the Advocate's Oath Minutes (BAS) if there are significant violations of law or ethics (Fasciale, 2025). This shows that the role of the High Court is not only limited to the administrative process, but also as a control mechanism for the sustainability of the advocate profession so that it continues to run in accordance with applicable legal and ethical principles (Conley, 2024).

Legal issues related to the authority of the High Court in freezing the Advocate's Oath Minutes (BAS) have become a debate in the legal realm, especially related to the limitations and basis of authority possessed by the judicial institution (Capra & Richter, 2023). Normatively, Law Number 18 of 2003 concerning Advocates stipulates that taking the oath of an advocate is a procedure that must be carried out before the High Court, but the regulation regarding the mechanism for freezing BAS is still not explicitly regulated. The infirmity of this rule raises legal problems, especially when the High Court unilaterally freezes or refuses to certify an advocate's BAS for certain reasons, such as a dispute over an advocate organization or an alleged ethical violation before the advocate begins to practice his or her profession (Alfarauq et al., 2014). In the context of the state of law, every authority of the judiciary must have a clear legal basis so as not to contradict the principle of due process of law and not to harm the constitutional rights of prospective advocates.

The implications of the High Court's freezing of advocate BAS can have a significant impact on access to justice and sustainability of the advocate profession (Tajti (Thaythy), 2024). Advocates who have met all legal requirements and passed advocate education may lose their right to practice as a result of the decision to freeze the BAS, which in some cases is based on internal conflicts of advocate organizations or policies that do not have a strong legal basis. In addition, this action also has the potential to cause legal uncertainty for people who need advocate services, due to the reduction in the number of advocates who are legally recognized by the justice system (Evans & Matthews, 2024). Therefore, there needs to be stricter regulations and transparent mechanisms in regulating the High Court's authority regarding the freezing of BAS, in order to ensure that the action remains within a clear legal corridor and upholds the principles of justice and legal certainty.

The legal debate regarding the basis of the High Court's authority in freezing the

Advocate Oath Minutes (BAS) centers on the clarity of regulations and the limitations of authority granted by laws and regulations. Law Number 18 of 2003 concerning Advocates explicitly stipulates that the oath of an advocate must be taken before the High Court, but does not provide clear provisions regarding the authority to freeze or cancel the BAS after the oath has been taken. This ambiguity has given rise to polemics (Capra & Richter, 2017), where some parties argue that the High Court has the authority to freeze as part of the supervisory function of the advocate profession, while others consider that the action has no valid legal basis and has the potential to violate the principle of due process of law and the constitutional rights of advocates. In addition, the difference in interpretation of this authority is also influenced by the dynamics of advocate organizations that have a role in professional development, thus raising questions about who has the main authority in determining the status of sworn advocates (Wang, 2024). Therefore, stricter regulations and policy harmonization between judicial institutions and advocate organizations are needed to avoid legal uncertainty and ensure that the authority exercised remains in line with the principles of justice and the rule of law (Syurpana Nofanda, 2025)

Research on the authority of the High Court in freezing the Advocate Oath Minutes (BAS) is still limited and has not comprehensively examined the legal aspects underlying the action. Some previous studies have focused more on the obligation of the advocate oath as a formal requirement of the profession, as well as the relationship between advocate organizations and the justice system. However, there is still a legal vacuum regarding the mechanism for freezing BAS advocates, especially in relation to the principle of due process of law, independence of advocates, and access to justice for the community. In addition, there are still few studies that specifically analyze the potential for abuse of authority in freezing BAS and its impact on legal certainty and sustainability of the advocate profession (Rindengan et al., 2025). This study offers a new perspective by deeply examining the basis of the High Court's authority in freezing advocate BAS, both from normative aspects and legal practices that occur in Indonesia. In addition, this study will also analyze the legal implications of freezing BAS on advocate independence, access to justice, and legal certainty, which have not been widely discussed in previous studies. Using a juridical-normative and empirical approach, this study will provide clearer and more transparent regulatory recommendations to avoid abuse of authority and create a balance between the supervisory function of the High Court and the protection of the advocate profession.

METHOD

This study uses a normative juridical method, which focuses on positive legal studies in analyzing the authority of the High Court in freezing the Advocate's Oath Minutes (BAS). This approach is carried out by studying relevant laws and regulations, such as Law Number 18 of 2003 concerning Advocates, the Civil Procedure Code (HIR/RBg), as well as various regulations related to the authority of judicial institutions in the supervision of the advocate profession. In addition, this study will also examine legal doctrines, court decisions, and opinions of legal experts to understand the basis of the High Court's authority in freezing BAS and its legal implications for advocate independence, access to justice, and legal certainty.

The analysis was carried out through the statute approach, conceptual approach, and case approach. The statute approach is used to examine the legal rules that are the basis for the High Court's authority in authorizing or freezing advocate BAS. The conceptual approach is used to examine legal theories related to the independence of advocates, the authority of judicial institutions, and the principles of due process of law in the Indonesian legal system. Meanwhile, the case approach will analyze several court decisions related to the freezing or rejection of advocate BAS to understand how the law is applied in practice. With this method, the research is expected to contribute to filling the legal void and provide more comprehensive recommendations related to the regulation of the authority of the High Court in the ratification of the advocate BAS.

RESULT AND DISCUSSION

Authority of the High Court in the Advocate Oath Taking Process

The High Court has an important role in the process of taking the oath of advocate as part of the formal requirements that must be met before a person can legally practice the profession of advocate. Based on Law Number 18 of 2003 concerning Advocates, every prospective advocate who has met the requirements must take an oath before the High Court in accordance with his legal domicile (Tajti (Thaythy), 2024). This oath is not just a formality, but is part of a legal mechanism to ensure advocates' compliance with professional ethics, the rule of law, and the protection of the rights of justice seekers. With the oath of advocates, it is hoped that advocates can carry out their duties professionally, responsibly, and in accordance with the principles of *officium nobile* inherent in their profession.

In the context of authority, the High Court acts as an institution that has the authority to certify the eligibility of an advocate before they can officially practice. This function is not only a form of administration, but also as judicial control over prospective advocates so that this profession is still carried out by individuals with integrity and have the necessary competencies. (Maghfiroh et al., 2017) The High Court has an obligation to assess whether a prospective advocate has met the legal, ethical, and moral requirements, before allowing him to take the oath of the profession. Therefore, the authority of the High Court in this process serves as the last filter to ensure that the appointed advocate has qualifications in accordance with the applicable legal professional standards.

After the oath is taken, the High Court will issue a Minutes of Oath (BAS) which is an official document for an advocate to carry out his profession. This BAS serves as legal evidence that the advocate has legally taken his professional oath, so that he has the right to practice law, provide legal assistance, and carry out the role of an advocate in the judicial system (Fasciale, 2018.). BAS is also the basis for advocates to be registered in legitimate advocate organizations and gain legitimacy before other legal institutions. Therefore, without a BAS, an advocate cannot legally carry out his duties, even if he has met all other academic and administrative requirements (Evans & Matthews, 2024).

However, in practice, the authority of the High Court in the process of taking the oath of advocate is often the subject of legal debate. One of the issues that arises is whether the High Court has the authority to postpone or refuse to take the oath of an advocate under certain conditions. Some views state that the High Court only has an administrative role in the oath procession, so it does not have the discretionary right to delay or reject the oath of an advocate who has fulfilled the requirements. However, on the other hand, there is an opinion that states that the High Court has a supervisory function over the advocate profession, so that it can take action if there are indications of impropriety or violation of the code of ethics before the oath is taken (Conley, 2024).

In addition, the authority of the High Court in freezing the BAS of advocates is also a fairly complex issue in the Indonesian legal system. In some cases, the High Court is considered to have the authority to freeze or annul a BAS if serious violations committed by an advocate are found after the oath has been taken. However, the legal basis for this authority is still not explicitly regulated in laws and regulations, thus raising a debate whether the action is a form of judicial authority or an abuse of authority (Hanley et al., 2024). This difference in interpretation has the potential to create legal uncertainty for advocates who have taken the oath, especially in cases where the freezing of the BAS was carried out without a transparent and accountable procedure.

In dealing with this problem, clearer and more detailed regulations are needed regarding the limits of the High Court's authority in taking the oath of advocate and its legal implications for the advocate profession itself. Reform in the regulatory aspect must be directed to affirm the role of the High Court as an institution that ensures the sustainability of the advocate profession without violating the principles of advocate independence (Syurpana Nofanda, 2025). With legal clarity and transparent procedures, it is hoped that the advocate oath taking system can run more effectively, fairly, and not harm the interests of justice seekers who need the services of advocates in the legal process (Rindengan et al., 2025).

Legal Issues in Freezing the Minutes of the Advocate Oath

Freezing of the Advocate's Oath Report (BAS) is a complex and controversial legal issue in the Indonesian justice system. BAS is an official document that indicates that an advocate has taken an oath before the High Court, as regulated in Law Number 18 of 2003 concerning Advocates. With the existence of BAS, an advocate has the legality to carry out his duties in providing legal assistance. However, in several cases, the High Court is claimed to have the authority to freeze or postpone the issuance of BAS for certain reasons. This has caused debate because there are no explicit provisions in the laws and regulations that provide a clear legal basis for freezing BAS (Hanley et al., 2024).

One of the main issues in freezing the BAS of advocates is the absence of a firm legal mechanism related to the procedures and basis of the High Court's authority in freezing. Some parties argue that because advocates are independent professions, the taking of oaths is only administrative, not a form of substantive supervision by the High Court. Therefore, freezing the BAS is considered an act that goes beyond authority if it is not based on clear regulations. On the other hand, there is an argument that because advocates have a strategic role in the justice system, the High Court should be given the authority to freeze BAS in certain circumstances (Evans & Matthews, 2024), such as if there are indications of violations of the law or non-compliance with the code of ethics before the advocate begins to carry out his duties.

In addition, the freezing of BAS also has implications for the constitutional rights of prospective advocates who have met the formal requirements to practice. In the context of legal certainty, the freezing of BAS without a clear legal basis can be considered a form of arbitrariness that is contrary to the principle of due process of law (Capra & Richter, 2019). Advocates who have passed the professional exam, completed special education for the advocate profession (PKPA), and meet other requirements should have legal guarantees to be able to immediately take the oath and obtain a BAS. If the High Court has the authority to freeze BAS without a transparent and accountable procedure, then there is the potential for discrimination or intervention that can hinder the independence of the advocate profession.

From the perspective of the relationship between judicial power and the advocate profession, the freezing of BAS also raises questions about the limits of the court's authority in supervising advocates as an independent profession. Advocates are not part of the judicial bureaucratic system, but are professions that have a social function in providing legal assistance to the community (Hanley et al., 2024). If the High Court can freeze or delay the taking of the oath without a clear legal mechanism, then there is a potential violation of the principle of checks and balances in the Indonesian legal system. Therefore, there is a need for regulatory reform that emphasizes the extent of the High Court's authority in supervising advocates without sacrificing the independence of the profession.

As a solution to this debate, there needs to be a stronger legal umbrella in regulating BAS freezing procedures, both through laws and regulations and jurisprudence that provide clearer guidelines. If a BAS freezing mechanism is indeed needed, then there must be objective criteria and a legal mechanism that can be tested to avoid arbitrariness (Wang, 2024). In addition, advocate organizations also need to be involved in decision-making related to the freezing of BAS, so that advocates can continue to carry out their profession professionally and in accordance with the ethical standards that have been set. With clear legal certainty and regulations, it is hoped that legal issues related to the freezing of BAS can be resolved in a fair, transparent, and not detrimental way to justice seekers who need the services of advocates.

CONCLUSION

From the research, the authority of the High Court in freezing the Advocate's BAS still faces unclear regulations, thus potentially causing legal uncertainty. In addition, freezing the BAS can have an impact on limited access to justice and the freedom of the advocate profession in carrying out its duties. Therefore, clearer and more consistent regulations are needed to avoid potential abuse of authority and guarantee the principle of due process of law in the Indonesian legal system.

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