DUAL OFFICE HOLDING AND THE ROLE OF LAWYER IN PUBLIC POLICY

Binziad Kadafi

"*Having lawyers create laws is like having doctors create diseases*"

I. Introduction

The above joke in the United States could be relevant to the topic of dual office holding by lawyer discussed in this article. Dual office holding by lawyer is a situation when a lawyer simultaneously holds an elected or appointed position to exercise some portion of sovereign power, conferred or defined by law, in addition to his/her legal practice. Dual office holding and primarily the potential conflict of interest in such situation, has long been attracting the attention of the legal community and members of the public in general, not only in Indonesia but also in other countries. But of course, the way each country approaches the dual office issue depends heavily on its own context. The issue can only be approached by tracing the historical factors of the legal profession, the surrounding political system, and other interrelated and interdependent factors, with the most important being the level of independence of the judiciary in each country.

In Indonesia, the discussions, debates, and even arguments during the parliamentary deliberation process of the Law No. 18 of 2003 on Advocates that focused too much on the dual office issue had proved to cover up other issues in the profession, which should have been considered no less important. During the deliberation process of the bill, various media gave more portions for reports on the debate whether the ban on dual office of lawyers should be regulated in the Advocate law or not.

Those facts lead to the question of whether the dual office issue deserves to be emphasized this much in the discussion about Indonesian legal profession? Again, the context is the key word in answering the question. Considering the minimum of compliance and the lack of enforcement of professional ethics; the remaining problems with the independence of judiciary; and the shift from "executive heavy" to a more "legislative heavy" power concentration; the tendency to view the issue of dual office holding as the main specter among other problematic issues surrounding the profession, can conditionally be accepted.

As a matter of fact, Article 3(i) of Indonesian Advocates Code of Ethics (*Kode Etik Advokat Indonesia*) has provided an answer regarding the dual office holding issue by stating that, "An advocate holding a public office, either in the executive, legislative, or judicial branch of government is not allowed to continue his/her practice as an advocate nor to continue using nor to let others using his/her name in relation to the settlement of an ongoing case or lawsuit."[1] However, due to the drawbacks encountered in the supervision and enforcement of the Code of Ethics by the Bar Association, the idea to regulate the dual office holding issue at a statutory level increasingly grows stronger. The idea was instigated partly by a number of incidents caused by the dual status maintained by some lawyers, being both professional advocate and public official.[2] Furthermore, the number of lawyers serving as public officials has been increasing,[3] including those serving

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1 See Article 3(i) of Indonesian Advocates Code of Ethics, signed and promulgated by 7 different Bar Associations on May 23, 2003. The previous version of the Code of Ethics promulgated before the enactment of Advocate Law contained the similar provision.

2 Hukumonline, November 3, 2000.

3 E. Karel Dewanto, *RUU Advokat pun Terganjal Profesi…,* Koran Tempo, June 3, 2002. See also, AWi/Nay/Apr, *Advokat yang Jadi Pejabat Negara Memicu Conflict of Interest*, Hukumonline, November 27, 2001.

as lawmakers who held the authority to deliberate the Advocate bill.[4] Therefore, it was understandable why many stakeholders worried that the interests involved in the discussion of the Advocate bill would make the regulation of dual office holding ineffective. As a direct consequence, the issue attracted more consideration than others.

Even after the enactment of the Advocate Law, the dual office holding issue continued to be contested. This article attempts to suggest that the debate needs to be conducted in a more proportional manner. Proportional means that it should not ignore other problems surrounding the profession, which deserve equal attention. Proportional also means that the debate on the dual office holding issue should not completely deny the long predicate of the legal profession being one of the best sources of capable people to fill certain public offices and roles. Based on this notion, it is essential for this article to beforehand present the historical facts of Indonesian advocates, especially their connection with public offices and roles, before moving forward to propose an appropriate solution to address the issue.

II. The History of the Contiguity of Indonesian Advocates with Public Offices/Roles

Different from other professions, almost everywhere advocates as professionals are taking on multifaceted functions. There are advocates who simply handle business contracts (beside notaries) or advocates who specialize in a certain field of practice such as criminal law, civil law, family law, and so on.[5] On the other hand, the profession has been frequently referred to as the main source of many special services needed by the society.[6] For instance, due to their comprehension of the structure, institutional settings, and the laws of the state, and due to their function in representing citizens in disputes against either state or other citizens, many regular advocates could finally take up an important role in politics themselves or engage in social matters, economy, education, and reform movements.[7]

One of the reasons to why advocates can play such a leading role is their flexibility to arrange and allocate their professional time.[8] Advocates are independent people having an independent source of income.[9] Many of them support, often financially, social and political activities that are not related to their practice, with resources allocated from their lawyering income.[10] Lastly, their legal education, combined with their wide concern regarding law, is able to instill deep engagement including ideas on state, not only on government, but also on nation-state.[11]

The first generation of advocates starting their practices in Indonesia in 1920 was a new professional group which had strong commitment to nationalism and progressive change.[12] They had been actively fighting for an independent state along with its modern legal system and institutions. They, for instance, strongly recommended Indonesia to adopt the *Raad van Justitie* judicial system used by the colonial government to solve legal

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4 Tra, *Berlebihan, Larangan Anggota DPR Jadi Pengacara*, KOMPAS, February 3, 2000.

5 Daniel S. Lev, *Foreword* to Binziad Kadafi, et.al., *Advokat Indonesia Mencari Legitimasi: Studi tentang Tanggung Jawab Profesi Hukum di Indonesia*. Jakarta: Pusat Studi Hukum & Kebijakan Indonesia, 2002: ix-xvi.

6 *Id.*

7 *Id.*

8 *Id.*

9 *Id.*

10 *Id.*

11 *Id.*

12 Daniel S. Lev, A Tale of Two Legal Professions, Lawyers and State in Malaysia and Indonesia, in the *Raising the Bar: The Emerging Legal Profession in East Asia*. In William P. Alford, ed. Cambridge, Massachussets: Harvard University Press, 2007: 383-414.

disputes among Europeans and foreign oriental people (*Timur Asing*) during the colonial period.[13] The main reason was the adherence of the respective judicial system towards principles of equality, certainty, and predictability of the law, which was totally in contrast with the *Landraad* judicial system as applied discriminatively by colonial government to solve legal disputes among indigenous people (*pribumi*).[14] *Landraad* for *pribumi* was intentionally developed by the colonial government to be a more "patrimonial" rather than "legal" judicial system, as part of their politics of dualism.[15] *Landraad* created more social and political stratum among indigenous people than equality before the law and took sides to state's interest rather than to the interest of the people.[16]

Another reason behind the preference of the new group of Indonesian professionals towards the judicial system previously applied for Europeans was that such a system better respected the existence and functions of advocates, in which legal representation by professional advocates was required in most of legal disputes heard and decided by the courts.[17] This was contrary to the *pribumi* judicial system, in which anyone could either formally or informally provide legal representation, as long as the judge and the indigenous litigating parties agreed.[18] Generally in the *Landraad* system, the courts did not deem legal representation by professional advocates necessary.[19]

The aspiration of Indonesian advocates to have a modern judicial system was portrayed by a sharp debate between Mohammad Yamin, an advocate of Sumatran descent, and Raden Soepomo, a Javanese aristocrat who served both as bureaucrat and law professor, on July 1945, particularly at the time when the first Constitution was being drafted.[20] Yamin proposed a new constitution that recognized a broad spectrum of citizens' rights, a constitution that granted the Supreme Court with the authority of judicial review and clearly separated the legislative, executive, and judicial functions.[21] The major premises used by Yamin were: (i) the clear distinction between state and citizens; (ii) recognition towards individual rights; and (iii) the needs of institutional control towards political power.[22] At the statutory level, according to Yamin, adopting the *Raad van Justitie* judicial system could best represent those premises. On the other hand, Soepomo ascertained that Indonesian legal professionals did not have sufficient experience to employ any systems different from the *Landraad* judicial system.[23] The *Landraad*, according to Soepomo, was more familiar to Indonesian jurists and people due to its adapted features to Indonesian situations made by the colonial government.[24]

The political constellation at the early stage of the independence benefited Soepomo's argument.[25] The pragmatic consideration used by the government made it choose to maintain the use of the *Landraad* system along with its procedural law regime, *Herziene Indonesisch Reglement*, rather than adopting the *Raad van Justitie*. This choice of course disappointed many professional advocates.[26]

However, a dramatic political change occurred, which brought about strong positive influence towards the legal process after the revolution. When the presidential

13 *Id.*
14 *Id.*
15 *Id.*
16 *Id.*
17 See Kadafi, *supra*, at 41-42.
18 *Id.*
19 *Id.*
20 Lev, *A Tale...*, *supra*.
21 *Id.*
22 *Id.*
23 *Id.*
24 *Id.*
25 *Id.*
26 *Id.*

1945 Constitution was factually replaced by a parliamentary system of government as introduced by the 1950 Constitution, Indonesian advocates accordingly started to take part more actively in politics.[27] Most of them were heavily involved in the works of government which caused the legal profession to be rather left behind.[28] During the parliamentary era, until the late of 1950s a number of advocates served in government; Sartono served as chairman of the parliament, Iskaq Tjokrohadisuryo became Finance Minister, Ali Sastroamidjojo had been serving twice as Prime Minister, Besar Mertokoesoemo became the Secretary of the Department of Justice, and Sunarjo became Foreign Minister.[29] Two other Ministers, Lukman Wiriadinata (PSI) and Jodi Gondokusumo (Nationalist People Party) were also advocates.[30]

Not many studies were conducted regarding this period of Indonesian history, while it actually deserves to get more attention, at least to balance the intentionally generated myth by the government of how terrible the period was.[31] In fact, the years of the parliamentary system were very difficult considering that it was the initial phase of the independence following the revolution.[32] Nevertheless, the parliamentary government could substantially debate and enact a lot of legislations.[33] They could also finally unify and broaden the functioning of the judicial system throughout the country.[34] During this period as well, the first democratic election in Indonesia was held.[35]

To add to those accomplishments, corruption can be said to be rarely found in the parliamentary era.[36] Compared to the Guided Democracy and New Order Era, at the least, corrupt practices within 1950's became a controlled subject by, among other things, the legal process.[37] Despite of many fundamental weaknesses—such as lack of financial capacity, trained human resources, equipment, and lack of other basic facilities—the legal system inherited from the Dutch colonial era worked very well and impressive under the parliamentary government.[38]

The decisions made by courts during the parliamentary era also show that judges from district court level up to the Supreme Court were not only leading the litigation process, but also —to the best of their effort in such a very difficult situation— started to adjust the old statutory provisions with the new condition.[39] The same thing happened with the Public Prosecution Services and the Police, which were equipped with capable and law oriented leadership.[40] During the parliamentary system of government, the courts, public prosecution services, and the police were not halfhearted in enforcing the law, even against top rank political figures.[41] In short, the legal system at that time was highly respected by people who dealt with the judiciary.[42] Of course there were several

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27 Daniel S. Lev, *Hukum dan Politik di Indonesia, Kesinambungan dan Perubahan*. Jakarta: LP3ES, 1990.

28 *Id.*

29 *Id.*

30 Some of them, Iskaq, Lukman, dan Jodi, returned back to practice after completing their service term. *Id.*

31 Lev, *Law and State in Indonesia*, Jentera Law Journal 8th edition Year III (March 2005): 63-102, at 65.

32 In addition, Regional rebellions occurred in many provinces, only limited resources were available, the tension of the world's cold war was just started, and horizontal conflicts happened in many places. See *Id.*

33 *Id.*

34 *Id.*

35 *Id.*

36 *Id.*

37 *Id.*, at 66.

38 *Id.*

39 *Id.*

40 *Id.*

41 *Id.*

42 *Id.*

protests towards the failure of the government to replace colonial laws with the new ones, and the slow prosecution and adjudication process, however, in general, the legal institutions were highly respected and trusted.[43]

So why did the legal system work that well in that period? The fundamental answer does not depend on the quality of legal institutions, but merely on the autonomy and self-confidence of the legal system, which came from the political system and its underlying principles.[44] The other fundamental answer is that the generation of national leaders at that time comprised of highly educated people, mostly with a legal education background, and ideologically aware of the importance of democracy, constitutionalism, and the rule of law concept.[45]

Because the balance between the state and citizens was highly upheld, various labor unions, civil society organizations, political parties, and professional associations were supporting the limitation of public authorities that was very much apprehended by the leaders of parliamentary government.[46] Those circumstances also had its impact towards legal institutions, which although formed by the state, were very sensitive to the pressures from outside.[47]

Right before the end of 1950s, the parliamentary government system was dissolved under the force of the military and President Soekarno.[48] The 1945 Constitution was declared to be re-implemented. The regime was replaced with the Guided Democracy regime, which unfortunately abolished every effort and achievement that was pioneered by advocates, such as liberal constitutionalism, effective and autonomous legal process, etc. Advocates became those who suffered the most, in terms of professional, political, and ideological losses.[49] Up until the 1960s, when the Indonesian Advocates Association (*Peradin*) was established, there had been no significant development to be noted from the role of advocates within the government system, besides their role to put pressures from outside on judicial independence and civil rights.

III. Grounds for Advocates' Public Role

Thus, with the many good experiences in the parliamentary system era discussed above, demonstrating the positive impact of advocates' involvement in the government and other public offices and roles, how should the current dual office holding issue of the advocates be approached? There are some arguments that can be advanced to explain and legitimize the tendency of advocates to shift from their professional world to get involved in public roles. The *first* argument explains that the tendency does represent the unfinished struggle of advocates to achieve the rule of law and democratic nation. As Alexis de Tocqueville observed, lawyers are the most powerful existing security against the excesses of democracy, supplying the sobriety and stability, which every good society requires.[50]

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43 *Id.*

44 *Id.*

45 *Id.*

46 *Id.*, at 67.

47 *Id.*, at 68.

48 *Id.*, at 69.

49 *Id.*

50 ALEXIS DE TOCQUEVILLE, DEMOCRACY IN AMERICA 123 (Richard D. Heffner ed., Penguin Books 1956), as quoted in Tracy W. Cary, *Where Have All the Lawyers Gone?*, 67 Ala. Law. 111, 114 (2006).

The *second* argument asserts that advocates are considered as the right people to run the country since they are fully trained to fulfill such a role.[51] Many good reasons can be identified to defend why lawyers should run public offices because of their training. One of the reasons says that, "Lawyers are trained to pay close attention to detail and this likely reduces the number of mistakes in legislative drafting.[52] Lawyers work with laws on a more intensive basis than any other segment of society and can benefit the public with the expertise they bring from everyday experience."[53] Other opinion states that, "Lawyers are trained in such legal skills as negotiation, mediation and advocacy and the art of compromise.[54] Lawyers are trained to listen to both sides and this is perfect training for service in the legislature."[55]

Furthermore, advocates historically maintained excellent track records in administering the government.[56] Besides the above-presented facts of Indonesian history, illustrating the added value that lawyers can bring to the quality of state and nation building, other countries such as the United States also have their own historical evidence of the significant role of lawyers as the primary social architects of the nation.[57] Twenty-five out of the 56 signatories of the Declaration of Independence were lawyers, and 35 of the 55 delegates to the Constitutional Convention were lawyers, or at least had legal training.[58]

Additionally, lawyers have historically taken a very active role in the US executive branch of government. Thirteen out of the first 16 American Presidents were lawyers, and out of 44 Presidents who have served since the country was founded, 28 of them are lawyers.[59] Lawyers have also served with distinction in the legislative branch of government where one-third of the members of the first US House of Representatives were lawyers.[60] These are not to mention obvious lawyers' vested interest in the judicial branch of government.

However, each of the aforementioned arguments has their own counter. The *first* argument which emphasizes the motivation to fight for the rule of law can be challenged by the bias, which would likely occur when an advocate enters the public sphere, namely misuse of public office to foster his/her professional practice. The art of politics can be very dominant in this circumstance. The initial noble motivation can transform into the misuse of public means in order to preserve privileges of their private life. Subsequently, contrasting it with the representative democracy system introduced by the constitution can rebut the *second* argument, which pinpoints technical and intellectual capacity. The introduction of the representative democracy system means that the constitution desires democracy to be an open door for any components of the nation, any professions, and any expertise, to take part in the administration of the state, and not to be monopolized by lawyers. Every component of the nation is responsible for making decisions in the realm of public policy that serve for the best of the collective interest. Moreover, both technical and intellectual capacity mastered by the lawyers can be substituted with advise,

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51 See Ronald Biba ce, *The State of the Union under a Failed Constitution*, *Rebuttal to the Legal Profession's Arguments Against Exclusion from Elective Office in the Legislative and Executive Branches of Government, Part 1,* The Federalist #87 (1995), at http://www.constitutionalguardian.com/federalist_papers/fed87.htm.

52 Cary, *supra*, at 115.

53 *Id.*

54 *Id.*

55 *Id.*

56 Biba ce, *supra*.

57 Cary, s*upra*, at 112.

58 *Id.*

59 See also JOHN C. MCCOLLISTER, GOD AND THE OVAL OFFICE (2005), as cited in *Id.* at 112. This includes the 44th President of the United States, Barack Obama.

60 *Id.*

consultation, and recommendation functions provided by professional experts. The policy makers themselves should not necessarily possess such capacity.

Finally, the *third* argument which concerned historical practices can be questioned by comparing it to the current professional orientation and integrity, which have dramatically changed from the values upheld by the first generation of advocates at the initial phase following independence. During that period, the legal profession was regarded as an honorable profession, attracting proclivity of people with firm integrity and high esteem towards principles of justice, not people who are merely driven by private and personal achievements, mainly economic achievements, as is demonstrated by some advocates nowadays.

But the above-mentioned counter-arguments are not sufficient, in my opinion, to completely close the door for advocates to enter into public roles and hold certain public offices. Because it is not inconceivable that among those who have entered into public offices are a few advocates (or many, hopefully) who actually have a strong motivation to substantiate good government under the rule of law from within, as a continuance of their (previous) struggle to achieve that aspiration from the outside. No one can deny that the intellectual capacity possessed by advocates could be very useful to undertake certain specific state's tasks. Many advocates holding public offices can still preserve or even increase their professional orientation to serve for the best of public interest and protect their integrity. In this case, many of those types of officials are coming from advocates who developed their career in the field of public interest lawyering.[61]

IV. Dual Office Holding

Substantively, the long debates and arguments on the dual office issue should have been resolved by now. Almost every law regulating a specific public office contains a prohibition of dual office holding in its provisions. As one example, Law No. 17 of 2014 on the Structure and the Status of the Parliament contains prohibition of dual office holding, which is scattered in many articles of the Law.

Law No. 17 of 2014 for instance, regulates the prohibition of dual office holding of members of parliament. Article 236(2) of the Law provides that "any members of the House of Representatives are not allowed to serve in private education institution nor perform any profession or occupations such as public accountant, consultant, advocate, notaries, and other occupations/profession, which has a certain relation to their tasks, authorities, and privileges as members of House of Representatives."[62]

However, Law No. 30 of 2002 on Corruption Eradication Commission does not only firmly prohibit but also introduces the criminalization of dual office holding. Article 65 of the Law provides that, "every commissioner of the Corruption Eradication Commission who violates the provision as stipulated in Article 36 can be sentenced with a maximum of 5 years detainment."[63] Article 36 in turn, primarily in point c, prohibits a commissioner of the Corruption Eradication Commission to, "occupy an office of commissioner or director of a company, board member of a foundation, supervisor or director of cooperation, and other professions or activities which has a certain relation to his/her office."[64]

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61 One of the most encouraging examples was the role of two Supreme Court justices, Artidjo Alkostar and Abdul Rahman Saleh (who then became Attorney General). These two justices were among the first justices in Indonesian legal history issuing dissenting opinion in two different cases. It was not coincidence that both justices came from the advocate profession and had been developing their prior career in legal aid institutes.

62 Law on the Structure and the Status of Indonesian Parliament, Law No. 17 of 2014.

63 Law on Corruption Eradication Commission, Law No. 30 of 2002.

64 *Id.*

Of course the degree of firmness of such provisions varies from one to another. This happens because the adaptation of the prohibition by the lawmakers to the characteristics and the scope of each of the distinct offices. Actually the approach to address the dual office issue in each law regulating public office based on the characteristics and scope of responsibility of concerned office is in all conscience correct. By doing so, there will be no wipe out method which could block access of certain groups of society —who by coincidence are holding or performing a certain occupation or profession— to undertake public duties.

Characteristics of a public office can be looked at for instance from its recruitment system (either political or career based recruitment), its term of office (continually or temporarily), the demand of its official's performance (full time or part time), etc. While the scope of responsibility of a public office can be measured by indicating the potential conflict of interest between rights, obligations, and authorities attached to such an office and other offices, profession, or occupation.

In comparison, in the United States, although attorneys have historically provided leadership in the legislative, executive, and judicial branch of government,[65] the way attorneys see the office in the legislative branch is different from other branches. No other branch presents lawyers with a variety of opportunities for conflict of interest as the legislative.[66] Due to its characteristics and scope in the US context, the legislative office has not traditionally been considered as a full-time office but rather as served only part time. Moreover, political pressure generally kept state legislative salaries at relatively low levels.[67] Therefore, maintaining another occupation has been seen as an economic necessity[68] for legislators especially on a state level,[69] which would be impossible for other offices.

Even to a similar office in the same branch yet on a different level, the approach would be different. After much criticism and a Bar recommendation that all outside practice be prohibited, the US Congress on federal level[70] made it virtually impossible for representatives and senators to engage in outside practice.[71] In any event, service in Congress on federal level and campaigning for reelection has become a full time job.[72] Members of Congress who are lawyers simply cannot afford to spend time in private practice.[73]

V. Conflict of Interest

From the above discussion, one can conclude that the core problem of the dual office issue is its inherent potential conflict of interest. The conflict of interest itself can be defined as "a situation where someone, such as a public official, employee, or professional, has certain private or personal interests, which might influence the objective performance of his/her official duties." There are three key elements in the definition of a conflict of interest. The first element is the existence of a private/personal interest, which frequently appears to be a financial interest or other form of interest.

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65 Dennis Mitchell Henry, *Lawyer-Legislator Conflict of Interest*, 17 J. Legal Prof. 261 (1992).

66 *Id.*

67 George F. Carpinello, *Should Practicing Lawyers Be Legislators*, 41 Hastings L.J. 87, 99-100 (1989).

68 Henry, *supra.* Maintaining another occupation for legislators is not considered as hazardous in the US, as long as certain conditions, such as not to represent the interest of their clients before any government agencies, have been met.

69 Carpinello, *supra*, at 100.

70 *Id.*, at 99.

71 *Id.*

72 *Id.*

73 *Id.*

When an attorney enters the legislature and maintains a law practice, not only his personal interest but also clients' interests will come along as extra baggage.[74] Thus the potential conflict of interest is multiplied.[75]

The problem will come forth when the personal interest and client's interest are encroached with the second element of the definition, "official duty", a duty which is performed due to certain office and due to action in a formal capacity. In the case of lawyer-legislator, a legislator's primary responsibility is to advocate his/her constituents' interests.[76] Conducting certain activities in private practice can suggest to a legislator's constituents that he/she is using public office to advance his/her personal interests rather than theirs.[77]

The third element of the definition is that the conflict of interest will influence the responsibility of professionals or public officials in many ways. Professionals and public officials are expected to do their function objectively and independently. Clients and public in general will normally have certain concerns with regard to the objectivity and independence of both professionals and public officials if they apparently are in the middle of situations which might lead them into a conflict of interest. Conflict of interest can lure professionals and public officials to commit unethical (which in turn could be illegal) actions as follow:[78]

a. Using their public office to secure contracts made for their professional practice;
b. Receiving benefits. Bribery is one example and gratification is another;
c. Trading in influence by attempting to gain personal benefit as a barter of the use of his/her influence in public office to unfairly prioritize the interest of certain parties;
d. Misusing public facilities for private purposes;
e. Misusing confidential information, either information obtained from their clients to be used in the name of their public office, or vice versa.

Therefore, it can be understood why Indonesian advocates through some major bar associations gained significant support from not only NGOs and legal scholars, but also from the public in general, in their effort to push the parliament prohibiting the dual office holding in the Advocate law. Regardless of the motivation behind their movement to voice such concern, the wider legal community and the public in expressing their support saw that even a potential conflict of interest could develop into the actual one. This by chance cooperation among leadership of Indonesian bar associations, NGOs, legal scholars, and prominent figures in the public, could effectively block the attempt to keep allowing legislators who —in Indonesian case— are serving full time, receiving a relatively high salary and substantial benefits from the state, and having rather dominant influence and power, to maintain their private practice as lawyers.

VI. Conclusion

The final stance towards the dual office holding issue in the deliberation of the Indonesian Advocate law was to ban it completely. Article 20(3) of the Law No. 18 of 2003 on Advocate provides that, "An advocate holding public office is not allowed to perform his/her profession during the term of respective office."[79] Based on that article,

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74 Henry, *supra*, at 264.

75 *Id.*

76 Robert Reeves, *Legislators as Private Attorneys: The Need for Legislative Reform*, 30 UCLA L. Rev. 1052 (1983).

77 *Id.*

78 Sheldon S. Steinberg & David T. Austern, *Government, Ethics, and Managers, Penyelewengan Aparat Pemerintahan*. Bandung: PT. Remaja Rosda Karya, 1999.

79 Law on Advocate, Law No. 18 of 2003.

lawyers who are appointed or elected as public officials will be automatically suspended by the Bar Association. Since the Bar Association was the appointing authority according to the Article 2(2) of the Advocate Law, "The appointment of advocate is conducted by the bar Association,"[80] it will consequently act as the suspending authority.

The suspension itself is an administrative mechanism. It is different from the suspension as the result of ethics enforcement measures which have been introduced by Article 7(1) of the Advocate Law. Considering its administrative nature, the suspension mechanism to operationalize the Article 20(3) will not involve any disciplinary procedures or institutions. When an advocate is officially appointed to hold certain public office, the Bar Association will then mechanically issue an administrative decision to freeze the practice license of the respective advocate for certain period.

The suspension period can comprise of the service term of the public office held and additional 1 or 2 years of cooling-off period. The objective of including the cooling-off period is to neutralize any remaining privileges, which might still have influence after the service. That way, the former public official-lawyer will not be able to abuse their remaining privileges after service in representing clients in their professional practice.

Albeit the fact that the Article 20(3) totally prohibits the dual office holding, the Advocate Law still contains a norm which soften the consequence of such prohibition. The elucidation (*Penjelasan*) of the Article 20(3) provides that "the provision of this article is not intended to lessen the private rights and relations between the advocate and his/her law firm/office."[81] This elucidation can be interpreted that being public official does not eliminate totally the relation between the advocate and his/her office.

Some observers negatively view that the norm created by the elucidation is evidence that members of the Law Committee of the parliament were halfhearted in prohibiting the dual office holding in the Advocate Law. However, from a different perspective, the elucidation can also be seen as a considerable endeavor to get rid of disincentives for advocates who have long been developing their professional practice to take role in public sphere.

The authorization to preserve private relations between advocates serving as public officials with their law firm/office does not necessarily become a legitimacy for them to keep performing any activities, or taking part in any forms, related to legal representations conducted by their office. If there is an indication that the lawyer-public official violates this proscription, then such violation could be brought before the ethics enforcement procedures by the Bar Association, which could end up with the permanent disbarment as stipulated in Article 16 of the Indonesian Advocates Code of Ethics and Article 7 of the Advocate Law.

The provision would be more ideal if it is accompanied by the application of the wealth reporting mechanism, which has been introduced by the Law No. 28 of 1999 on Good Government and the Law No. 30 of 2002 on the Corruption Eradication Commission. Article 5 of the Law No. 28 of 1999 provides that all public officials have the obligation to publicly report their assets prior to and after their service.[82] Public officials also have the obligation to allow audit and monitoring conducted towards their assets at any time during their term of office by Corruption Eradication Commission.[83]

Of course such Laws are not operational enough to achieve the aim of the prohibition of dual office holding in preventing the occurrence of conflict of interest among lawyers-legislators. Those must be accompanied by an effective code of ethics for

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80 *Id.*

81 *Id.*

82 Law on Good Government, Law No. 28 of 1999.

83 *Id.* See also Article 13(a) of the Law on the Corruption Eradication Commission, Law No. 30 of 2002.

advocates and other internal rules enacted and enforced by the Bar Association. However, the Bar Association will not be strong enough to execute its functions effectively if the Bar is not run democratically. The inbuilt democracy and participation in the management of the Bar Association, including in the formulation of the code of ethics and other internal rules, will build strong commitment among advocate members —both individually and collectively— to enforce the agreed upon rules and code of ethics. If the professional rules have been internalized within every advocate in Indonesia, probably someday Indonesian advocates can alter the joke quoted at the beginning of this article into: "*Having lawyers create laws is like having doctors create medicines.*"

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