

Tanggung jawab advokat kepada klien atas pembuatan legal opinion dalam transaksi bisnis = Attorney liability to client for rendering opinion in business transactions

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Abstrak

[Adanya gugatan perdata yang diajukan oleh Sumatra Partners LLC melawan advokat pada kantor hukum Ali Budiardjo, Nugroho, Reksodiputro (ABNR) atas pembuatan legal opinion telah menunjukkan potensi gugatan klien yang tidak puas akan pelayanan jasa hukum yang diberikan oleh advokat, khususnya dalam hal pembuatan legal opinion. Sampai saat ini belum terdapat putusan pengadilan yang dapat dijadikan yurisprudensi berkaitan dengan hal ini. Penelitian ini mencoba untuk menjawab mengenai isu bagaimana pertanggungjawaban advokat atas pembuatan legal opinion, baik secara etika profesi, perdata, dan pidana. Melalui pendekatan yuridis normatif diketahui bahwa terdapat batasan-batasan yang mengharuskan seorang advokat untuk bertanggung jawab, dan pada dasarnya advokat dapat dimintai pertanggungjawaban atas pembuatan legal opinion, baik secara etika profesi yang didasarkan pada ketentuan kode etik profesi advokat Indonesia yang diputuskan oleh

dewan kehormatan advokat, secara perdata maupun pidana apabila terlebih dahulu dapat dibuktikan adanya itikad tidak baik pada diri advokat dalam menyusun legal opinion, serta mampu membuktikan dalil-dalil gugatan yang diajukan pada jenis pertanggungjawaban secara perdata ataupun membuktikan bahwa advokat tersebut telah memenuhi unsur delik tertentu yang berkaitan dengan penyusunan sebuah legal opinion. Selain itu, untuk memitigasi risiko pertanggungjawaban hukum yang dimiliki advokat, kedepannya advokat dapat melakukan penutupan asuransi tanggung gugat hukum.

.....Civil lawsuits by Sumatra Partners LLC against some advocates in Ali Budiardjo, Nugroho, Reksodiputro (ABNR) law offices on matter malpractice in rendering legal opinion showed trends in clients to take lawsuit against their lawyer, who are not satisfied with the legal services provided by the lawyers, particularly in terms of rendering legal opinion. Until today, there is no court decision that can be used as jurisprudence on this matter. This study tries to answer on the issue of advocate's liability in rendering a legal opinion, based on professional ethics, civil, and criminal approach. Based on normative juridical approach is known that there are any restrictions that require a lawyer to be responsible, and basically advocates liable for rendering a legal opinion, based on professional ethics refer to provisions of the Indonesia advocates code ethics, and it will decided by the advocates board of honors, while, for civil and criminal liability, intially must be proven that there is no existence of good faith in advocates when he/she drafting legal opinions, and the plaintiff must be able to prove the arguments of the lawsuit or prove that the advocates has met the elements of criminal provision regarding to rendering a legal opinion. Furthermore, in order to mitigate legal risk from rendering opinion letter, an advocates shall be has legal risk insurance., Civil lawsuits by Sumatra Partners LLC against some advocates in Ali Budiardjo, Nugroho, Reksodiputro (ABNR) law offices on matter malpractice in rendering legal opinion showed trends in clients to take lawsuit against their lawyer, who are not

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