



Legal Immunity of Advocates as a Constitutional Guarantee for Access to Justice and Democratic Accountability

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Abstract

Advocates are essential to upholding the rule of law and ensuring access to justice; yet, they often face intimidation and criminalization when handling sensitive cases. While international instruments, such as the United Nations Basic Principles on the Role of Lawyers (1990), recognize the importance of legal immunity, its constitutional protection and implementation vary significantly across jurisdictions. Employing a normative juridical approach that integrates doctrinal, comparative, and conceptual analyses, this study finds that European legal systems generally provide stronger constitutional safeguards. In contrast, many Latin American and Asian jurisdictions offer comparatively weaker protections. The findings affirm that advocates' immunity is not merely a professional privilege but a constitutional guarantee essential to equal access to justice and democratic accountability. This study contributes to scholarly discourse by reframing advocates' immunity within a constitutional and democratic framework. It further offers practical recommendations for policymakers and professional associations to strengthen legal protections, thereby enhancing both the independence of advocates and the resilience of democratic systems.

Keywords: Advocates' immunity; Constitutional guarantees; Access to justice; Democratic accountability; Comparative law; Human rights

Introduction

Advocates are legal professionals who play a central role in upholding the law and justice (Arifton et al., 2025; Khalil, 2023; Lubis et al., 2025; Xu et al., 2024; Zacharias & Green, 2005). In practice, lawyers often face threats such as criminalization, political pressure, and even physical attacks as a result of defending clients in sensitive cases. According to data from the International Bar Association (IBA) in 2023, more than 150 cases of attacks on lawyers were recorded in 24 countries, including instances of arbitrary detention and intimidation in courtrooms. In Indonesia, the Jakarta Legal Aid Institute (LBH) also released its 2022 annual report, which noted an increase in cases of lawyers being criminalized for defending activists and vulnerable groups. These facts underscore the need for a review of legal protections for lawyers, particularly in terms of immunity.

This situation underscores the urgency of research on the legal immunity of advocates. Without strong guarantees of immunity, advocates cannot perform their strategic role as independent enforcers of the law (Bhat et al., 2025; Erwanto & Suparno, 2024). This has a direct impact on public access to justice and ultimately weakens the functioning of democracy. In other words, immunity is

not merely a privilege for lawyers, but a constitutional prerequisite for the sustainability of a democratic legal system.

However, a significant research gap remains. Previous studies have focused more on the protection of advocates in the context of national law (Khalil, 2023; Ritter, 2006; Vilchyk et al., 2021), for example, through advocate legislation or professional codes of conduct; however, they have not linked this issue of immunity to constitutional guarantees of access to justice and democratic accountability within an international framework. In addition, international literature has tended to highlight the freedom of judges and the independence of judicial institutions (Hanssen, 2005; Helmke & Rosenbluth, 2009; Posner & Yoo, 2005; Ríos-Figueroa & Staton, 2014; Vyas, 1992), while the independence of lawyers has received less attention. This gap is the starting point for this study, which aims to examine the connection between lawyer immunity, constitutional access to justice, and democratic accountability on an international scale.

Therefore, this study aims to thoroughly examine the concept of legal immunity for advocates from an international law perspective, providing a deeper understanding of how global standards protect the independence of this profession. Additionally, this study aims to clarify the relationship between attorney immunity and constitutional guarantees of access to justice, as without proper protection, the public may potentially lose effective means of defense before the law. Moreover, this study examines the role of attorney immunity in promoting democratic accountability in various countries, where the willingness of attorneys to monitor, critique, and challenge state policies is a key indicator of democratic quality.

With this focus, this research has a dual contribution. Scientifically, this research broadens the horizon of study by linking the immunity of advocates in the realm of international law, access to justice, and the principles of constitutional democracy. Meanwhile, in practical terms, this research provides recommendations for policymakers, professional associations, and international institutions to strengthen constitutional protection for advocates, enabling this profession to carry out its functions independently while maintaining the quality of a healthy democracy.

Research Objectives

This study aims to deepen understanding of the legal immunity for advocates in the international legal arena and its implications for access to justice and strengthening democracy. The focus is on three key areas. First, it offers a conceptual and normative analysis of legal immunity for advocates, examining international legal instruments and constitutional practices across different jurisdictions. Second, it investigates the relationship between lawyers' legal immunity and constitutional guarantees of access to justice, since lawyer protection is essentially a tool to ensure the public's right to fair and equal defense before the law. Third, it assesses how attorney immunity can help strengthen democratic accountability by comparing practices in various countries that have incorporated attorney protection into their constitutional frameworks.

Thus, this study not only fills an academic gap in the literature on the strategic role of advocates at the global level but also presents practical contributions that can serve as a reference for policymakers, professional associations, and international institutions. It is hoped that the results of this study will encourage the creation of more progressive regulatory designs to guarantee the

independence of advocates, strengthen access to justice, and maintain the sustainability of democratic principles in both international and national legal systems.

Research Methodology

This study was conducted using a normative legal approach combined with doctrinal, comparative, and conceptual analysis (Bhagyamma G, 2023; Brand, 2007). This approach was chosen because the issue of attorney immunity concerns not only the text of regulations but is also closely related to constitutional practices in various countries and the principles of democracy that are developing at the international level. Thus, this methodological design enables the study to reveal the relationship between the norms, practices, and legal theories that underlie the protection of attorneys more comprehensively.

The research data sources consist of three major groups. First, primary legal materials in the form of international legal instruments such as the United Nations Basic Principles on the Role of Lawyers (1990), the European Convention on Human Rights (1950), the American Convention on Human Rights (1969), as well as constitutions and national regulations related to the legal profession in several countries. Second, secondary legal materials were obtained from scientific articles in reputable journals, reports from international institutions such as Amnesty International, the International Bar Association, and the International Commission of Jurists, as well as relevant academic monographs. Third, tertiary legal materials in the form of legal dictionaries, academic indexes, and legal encyclopedias are used to clarify conceptual and terminological understanding.

The analysis process was conducted using qualitative techniques in three stages. The first stage was doctrinal analysis, which involved interpreting and examining international and national legal norms governing attorney immunity. The second stage involved a comparative study, which entailed examining how various jurisdictions—particularly in Europe, Latin America, and Asia—apply legal protections to attorneys. The third stage involves conceptual analysis, which situates attorney immunity within a broader framework, specifically access to justice and democratic accountability.

To maintain validity, this study only uses internationally recognized legal sources and academic literature that has undergone peer review. With a detailed description of the methodology, this study can be replicated by other researchers through access to the same legal sources and secondary data. This approach ensures that the findings can be verified, while also opening up opportunities for comparison with future studies.

Result

Recognition of Attorney Immunity in International Legal Instruments

A review of international legal documents shows that attorney immunity has been recognized as a fundamental principle to guarantee the independence of the legal profession (Akande, 2004; Roberts, 2011; Siagian et al., 2022). The United Nations Basic Principles on the Role of Lawyers (1990) emphasize that lawyers should not be subject to sanctions or legal threats for professional actions taken in defending clients, as long as these actions are within the bounds of professional ethics. A similar principle is also contained in the European Convention on Human Rights and the American Convention on Human Rights, which explicitly emphasize the protection of lawyers' freedom of expression in courtrooms (Bertoni, 2009; Flauss, 2009; Helfer, 2008; Letsas, 2006; McCrudden, 2008; Mos, 2025; Petersmann, 2002).

Moreover, recognition in this international instrument is not merely a moral declaration. Still, it has developed into a binding legal obligation for signatory countries, particularly in the context of respecting the human right to practical legal assistance. The convergence of these various global and regional legal instruments should create a minimum standard that compels countries to adjust their domestic legal systems. However, this is where the paradox lies: even though it is normatively mature and universally recognized, the existence of a global consensus actually reveals a deep gap between ideal international law and the reality of national legal politics, where judicial power often still conflicts with the interests of a repressive executive power.

These findings indicate a global consensus on the importance of immunity for advocates. However, this consensus has not yet been fully implemented uniformly. Some countries protect their constitutions, while others only regulate them in their professional advocate laws, leaving room for criminalization.

Variations in Constitutional Practice Across Jurisdictions

This comparative analysis not only maps out differences but also unpacks the roots of disparities in the application of attorney immunity across various countries, revealing how its implementation is closely tied to the maturity of a country's legal system. For example, in Europe, lawyers enjoy maximum protection that is not only guaranteed by national constitutions but also progressively reinforced by the precedents of the European Court of Human Rights (ECtHR). This court consistently interprets lawyer immunity as an intrinsic element of the right to a fair trial (Article 6 ECHR), thereby creating a multi-layered and effective law enforcement system for the legal profession.

In stark contrast to the situation in Europe, practices in Latin America reveal an interesting paradox. Although countries such as Colombia and Argentina have progressive constitutional guarantees, these guarantees are often ineffective at the operational level. The protection of attorney immunity in this region is inversely proportional to the level of political instability and the strength of the ruling regime, where attorneys who defend human rights (HRDA) are targeted for criminalization by both state and non-state actors. Meanwhile, in many Asian countries, including Indonesia, protection is still superficial and fragmented. Although Indonesia has Law No. 18 of 2003 on Advocates, which guarantees immunity, the absence of an explicit constitutional anchor and a legal culture that still positions advocates as "competitors" to law enforcement officials makes it easy to override this law through vague articles in the Criminal Code. This weak protection is clearly reflected in the prevalence of criminalization cases, such as the use of defamation articles (Article 207 of the Criminal Code) or obstruction of justice, which silences critical lawyers.

From this sharp variation, it can be concluded that the existence of international legal norms is too soft to enforce the homogeneity of implementation at the domestic level. In other words, attorney immunity ultimately reflects the political and legal conditions of a country: it is only strong in countries with a well-established rule of law tradition, and weak in countries where the executive power and regime are still dominant. Therefore, the gap between universal norms and domestic realities is not merely an implementation gap, but a reflection of the clash between the idealistic commitments of international law and the harsh realities of sovereignty and national legal politics.

Discussion

The symbiotic relationship between the immunity of advocates and access to justice is not only theoretical but also empirically proven (Blasi & Jost, 2006). Data from various jurisdictions show a consistent pattern. In countries where advocates are frequently intimidated, public trust in judicial institutions declines dramatically, and vulnerable groups are systematically marginalized from legal protection. This finding directly affirms the theory of access to justice put forward by Cappelletti and Garth (1978), which asserts that meaningful access to the law depends on the existence of gatekeepers, in this case lawyers, who can operate independently without fear of legal reprisals. Thus, intimidation against lawyers is essentially an attack on the main channel through which people can obtain justice.

Furthermore, attorney immunity should be understood not merely as a privilege, but as an absolute constitutional prerequisite for the realization of substantive justice for all citizens. Without such guarantees, lawyers risk facing a dilemma that encourages risk-averse lawyering, namely, avoiding sensitive, controversial, or power-related cases. As a consequence, the legal space becomes increasingly narrow, and society, especially marginalized groups, loses an effective instrument to fight for their rights. Therefore, immunity can be seen as a normative foundation that enables lawyers to carry out their social function as a counterbalance in the legal system.

Furthermore, this analysis reveals a significant correlation between the strength of lawyers' advocacy and the level of democratic accountability in a country. Countries with strong constitutional protections, such as those in Western Europe, demonstrate how the legal profession can serve as an active pillar of democracy. In this context, advocates not only represent individual interests but also utilize strategic litigation to challenge and overturn discriminatory public policies through judicial mechanisms, thereby strengthening the function of public interest advocacy. Conversely, in regimes with weak protections, criminal law instruments are often repurposed as repressive tools to silence criticism. Consequently, the weakening of the legal profession directly reduces the effectiveness of horizontal accountability mechanisms (O'Donnell 1999), in which non-state institutions should play an essential role in monitoring and counterbalancing the potential for abuse of power by the executive.

Based on this description, this study confirms that attorney immunity is a clear dividing indicator between mature constitutional states and states that merely claim to be so. Immunity goes beyond mere professional protection; it is central to the enforcement of the rule of law, a catalyst for universal access to justice, and a vital mechanism for maintaining checks and balances in a democratic constitutional structure. Thus, immunity serves a dual purpose: as protection for the legal profession in carrying out its mandate without fear, and as an instrument for the public to demand accountability from those in power. Ignoring this fundamental principle not only threatens the survival of the legal profession but also has the potential to undermine the very foundations of democracy itself.

Scientific Novelty and Research Contribution

This study presents a scientific innovation by positioning the legal immunity of advocates not merely as professional protection, but as an integral part of constitutional guarantees of access to justice and an instrument for strengthening democratic accountability. This approach differs from previous studies, which tended to be limited to analyses of professional ethics or domestic regulations

alone. Thus, this study broadens the scope of analysis by combining perspectives from international law, cross-jurisdictional constitutional practices, and democratic theory.

Another novelty lies in the comparative approach used. Analysis of Europe, Latin America, and Asia shows that variations in advocate protection depend not only on positive legal norms but also on the quality of the surrounding democratic system. By linking normative and conceptual aspects, this study has successfully constructed a new analytical framework that confirms advocate immunity serves a dual function: protecting the legal profession while ensuring the functioning of checks and balances in modern democratic systems.

This research makes significant contributions both scientifically and practically. Scientifically, it provides a new conceptual framework that fills a gap in the literature on the relationship between advocate immunity, access to justice, and democratic accountability from an international law perspective. This framework can serve as a reference for further research focusing on the interaction between the legal profession, human rights, and democratic governance. From a practical standpoint, this research provides concrete recommendations for policymakers, professional associations, and international institutions to enhance constitutional protections for advocates, particularly in countries that remain vulnerable to criminalization practices.

Thus, this research not only contributes academically to the development of legal and democratic studies but also has practical implications for legal reform efforts and the strengthening of democratic governance at the global level.

Conclusion

This study confirms that the legal immunity of lawyers is an essential foundation for the rule of law, access to justice, and democratic accountability. The main findings show that although international legal instruments have recognized the principle of lawyer immunity, its implementation still varies at the domestic level. Countries with strong constitutional protections tend to be able to create more independent and transparent judicial systems, while countries with weak protections are more vulnerable to the criminalization of lawyers.

Reflection from this analysis shows that attorney immunity should not be viewed as a professional privilege, but rather as a constitutional guarantee that ensures the public's right to adequate and fair legal representation. Thus, attorney immunity serves a dual purpose: it protects the legal profession from external pressure while strengthening the checks and balances that are an essential feature of modern democracy.

The contribution of this research lies in its efforts to broaden the horizons of legal studies by linking attorney immunity to the international, constitutional, and democratic spheres, while also providing practical recommendations for policymakers and professional organizations. The broader implication is the need to encourage the creation of more binding global standards to guarantee the independence of advocates, so that this profession can continue to play its strategic role in maintaining the quality of democracy and upholding justice for all.

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