



DECISION

Number 014/PUU-IV/2006

FOR THE SAKE OF JUSTICE UNDER THE ONE ALMIGHTY GOD

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF INDONESIA

Examining, hearing, and deciding upon constitutional cases at the first and final level, has passed a decision in the case of Petition for Judicial Review of the Law of the Republic of Indonesia Number 18 Year 2003 concerning Advocates (hereinafter referred to as Advocate Law) against the Constitution of the State of the Republic of Indonesia 1945 (hereinafter referred to as the 1945 Constitution), filed by

1. Name : H. Sudjono, S.H
occupation : Advocate
title : Chairperson of the Central Honorary Council, the Central Executive Board of Indonesian Bar Association (DPP Ikadin)
address : Jalan Pintu Air V No. 40B, Central Jakarta 10710.

2. Name : Drs. Artono, S.H., M.H

occupation : Advocate

title : Member of the Central Honorary Council of the Central Executive Board of Indonesian Bar Association (DPP Ikadin)

address : Jalan Basuki Rachmat No. 6 C2, Malang

3. Name : Ronggur Hutagalung S.H., M.H

occupation : Advocate

title : Member of the Central Honorary Council of the Central Executive Board of Indonesian Bar Association (DPP Ikadin);

address : Jalan Jend. Sudirman 562, Bandung.

Hereinafter referred to as **Petitioners**;

Having read the petition of the Petitioners;

Having heard the statements of the Petitioners;

Having heard the statement of the Government;

Having heard the statements of the Related Parties;

Having heard the statements of eight Advocates' Organizations;

Having heard the statement of Experts of the Petitioners;

Having heard the statement of Witnesses of the Petitioners;

Having heard the written statement of the Government;

Having heard the written statement of the People's Legislative Assembly
of the Republic of Indonesia;

Having heard the written statement of the Related Parties;

Having examined the evidence of the Petitioners.

LEGAL CONSIDERATIONS

Considering whereas the purpose and objective of the petition of the
Petitioners are as described above;

Considering whereas prior to entering the principal issue of the petition,
the Court needs to first take the following matters into account:

1. The authority of the Constitutional Court (hereinafter referred to as the Court)
to examine, hear, and decide upon the petition of the Petitioners;
2. The legal standing of the Petitioners to file the *a quo* petition;

Considering whereas with respect of the foregoing two matters, the Court
is of the following opinion:

I. Authority of the Court

Considering whereas pursuant to Article 24C Paragraph (1) of the Constitution of the State of the Republic of Indonesia Year 1945 (hereinafter referred to as the 1945 Constitution) *juncto* Article 10 Paragraph (1) of the Law of the Republic of Indonesia Number 24 Year 2003 concerning the Constitutional Court (State Gazette of the Republic of Indonesia Year 2003 Number 98, Supplement to State Gazette of the Republic of Indonesia Number 4316, hereinafter referred to as the Constitutional Court Law), the Court shall have the authorities to hear at the first and final level the decision of which shall be final to conduct judicial review of laws against the 1945 Constitution, to decide upon authority disputes of state institutions whose authorities are granted by the 1945 Constitution, to decide upon dissolution of political parties, and to decide upon disputes concerning the results of general elections;

Considering whereas the petition of the Petitioners is concerning Judicial Review of the Law of the Republic of Indonesia Number 18 Year 2003 concerning Advocates (State Gazette of the Republic of Indonesia Year 2003 Number 49, Supplement to State Gazette of the Republic of Indonesia Number 4282, hereinafter referred to as the Advocate Law), particularly Article 1 Sub-Article 1 and Sub-Article 4, Article 28 Paragraph (1) and Paragraph (3), and Article 32 Paragraph (3) and Paragraph (4), hence *prima facie* the Court has the authority to examine, hear, and decide upon the *a quo* petition. However, in particular, Article 32 Paragraph (3) that has been reviewed by the Court in Case Number 019/PUU-I/2003 will be considered together with the principal issue of the case whether there are different constitutional reasons in the *a quo* petition

as referred to in the opinion of the Court concerning Article 60 of the Constitutional Court Law in Case Number 011/PUU-IV/2006;

II. Legal Standing of the Petitioner

Considering whereas pursuant to Article 51 Paragraph (1) of the Constitutional Court Law, Petitioners in the judicial review of law against the 1945 Constitution shall be parties who deem that their constitutional rights and/or authorities are impaired by the coming into effect of a law, namely:

1. individual Indonesian citizens (including groups of people having a common interest);
2. customary law community units insofar as they are still in existence and in accordance with the development of the communities and the principle of the Unitary State of the Republic of Indonesia as regulated in law;
3. public or private legal entities; or
4. state institutions.

Considering whereas in addition, since the pronouncement of Decision Number 006/PUU-III/2005 and subsequent decisions, the Court has determined five criteria concerning the impairment of constitutional rights as intended in Article 51 Paragraph (1) of the Constitutional Court Law, as follows:

1. The Petitioners must have constitutional rights and/or authorities granted by the 1945 Constitution;
2. Such constitutional rights and/or authorities are deemed to have been impaired by the coming into effect of a law petitioned for review;
3. The impairment of such constitutional rights and/or authorities is specific and actual in nature, or at least potential in nature which, according to logical reasoning, will take place for sure;
4. There is a causal relationship (*causal verband*) between the impairment of constitutional rights and/or authorities and the law petitioned for review;
5. If the petition is granted, it is expected that the impairment of constitutional rights and/or authorities argued will not or does not occur any longer.

Considering whereas the Petitioners are H. Sudjono, S.H., Drs. Artono, S.H., M.Hum., and Ronggur Hutagalung, S.H., M.H., all of whom being Advocates as members of Ikadin, acting as individuals, who argued the following matters:

1. The Petitioners are Indonesian citizens who are Advocates by profession who joined the Advocates' Organization of Peradin, which later became Ikadin;
2. The Petitioners did not specifically explain about their constitutional rights impaired by the coming into effect of articles of the Advocate Law petitioned

for review; neither did they explain the impairment of constitutional rights which is either actual or potential in nature;

3. The Petitioners only argued that Article 1 Sub-Article 1 and Sub-Article 4 of the Advocate Law are contradictory to Article 28A, Article 28C Paragraph (2), Article 28D Paragraph (1) and Paragraph (3), Article 28E Paragraph (3) of the 1945 Constitution; that Article 28 Paragraph (1) and Paragraph (3) of the Advocate Law are contradictory to Article 28C Paragraph (2), Article 28D Paragraph (1), and Article 28E Paragraph (3) of the 1945 Constitution; that Article 32 Paragraph (3) and Paragraph (4) of the Advocate Law are contradictory to Article 28C Paragraph (2), Article 28D Paragraph (1) and (3), Article 28E Paragraph (3), and Article 28J Paragraph (1) and Paragraph (2) of the 1945 Constitution, but they did not give reasons for or arguments concerning such contradictions;
4. The Petitioners consider that the establishment of the Advocates' Organization of Peradi has impaired Ikadin that they established with great difficulty;
5. The Petitioners are worried that the Advocates re-registration policy performed by Peradi will impair their constitutional rights as Indonesian citizens and as Advocates who have been officially appointed by the Government;

Considering whereas accordingly, the Petitioners are included in the qualification of individual Indonesian citizens and as individual Indonesian citizens they have constitutional rights granted by the 1945 Constitution. Although not explicitly argued, it can be concluded that the Petitioners deem that a number of articles of the 1945 Constitution have been violated by some articles of the Advocate Law petitioned for review. As Advocates, the Petitioners have interest in relation to the Advocate Law and have the right to question whether or not the Advocate Law harms them or their profession. Hence, as individual Indonesian citizens who are Advocates by profession, the Petitioners have the legal standing to file the petition for judicial review of the Advocate Law against the 1945 Constitution;

Considering whereas since the Court has the authority to examine, hear, and decide upon the *a quo* petition and the Petitioners have the legal standing, the Court will further consider the Principal Issue of the Petition filed by the Petitioners;

III. Principal Issue of the Petition

Considering whereas in the principal issue of petition, the Petitioners argued the following matters:

1. Whereas Article 1 Sub-Article 1 and Sub-Article 4 Advocate Law which read
“An Advocate shall be a person having the profession of giving legal services, both inside and outside the court, who meet the requirements pursuant to the

provisions of this law” (Sub-Article 1) and “*Advocates’ Organization shall be a professional organization established based on this Law*” (Sub-Article 4), are contradictory to Article 28A, Article 28C Paragraph (2), Article 28D Paragraph (1) and Paragraph (3), and Article 28E Paragraph (3) of the 1945 Constitution which read as follows:

- Article 28A, “*Every person shall have the right to live and to defend his/her life and living*”;
 - Article 28C Paragraph (2), “*Every person shall have the right to improve him/herself in striving for his/her rights collectively for building his/her society, nation, and state*”;
 - Article 28D Paragraph (1), “*Every person shall have the right to the recognition, the guarantee, the protection and the legal certainty of just laws as well as equal treatment before the law*”;
 - Article 28D Paragraph (3), “*Every citizen shall have the right to obtain equal opportunities in government*”;
 - Article 28E Paragraph (3), “*Every person shall have the right to the freedom of association, assembly and expression of opinion*”;
2. Whereas Article 28 Paragraph (1) and Paragraph (3) of the Advocate Law which read “*the Advocates’ Organization shall be the single forum of Advocates’ profession which is free and independent and established in*

accordance with the provisions of this law with the purpose and objective of improving the quality of Advocates' profession" [Paragraph (1)] and *"The leadership of the Advocates' Organization cannot be assumed concurrently by the leaders of political parties, either in the Central or Regional level"* (Paragraph 3) are contradictory to Article 28C Paragraph (2), Article 28D Paragraph (1), Paragraph (2), and Paragraph (3), and Article 28E Paragraph (2) of the 1945 Constitution;

3. Whereas Article 32 Paragraph (3) and Paragraph (4) of the Advocate Law which read, "(3) Temporarily, the duties and authorities of the Advocates' Organization as intended in this Law, shall be performed jointly with *Ikatan Advokat Indonesia* (Ikadin), *Asosiasi Advokat Indonesia* (AAI), *Ikatan Penasihat Hukum Indonesia* (IPHI), *Himpunan Advokat and Pengacara Indonesia* (HAPI), *Serikat Pengacara Indonesia* (SPI), *Asosiasi Konsultan Hukum Indonesia* (AKHI), *Himpunan Konsultan Hukum Pasar Modal* (HKHPM), and *Asosiasi Pengacara Syariah Indonesia* (APSI)" and "(4) Within the period of no later than 2 (two) years after this Law takes effect, the Advocates' Organization shall have been established" are contradictory to Article 28, Article 28C Paragraph (2), Article 28D Paragraphs (1), (2), and (3), and Article 28E Paragraph (2) of the 1945 Constitution;

Considering whereas the Petitioners did not give the reasons for or arguments on the contradiction between the articles of the Advocate Law concerned and the 1945 Constitution;

Considering whereas in the hearing, the oral statement and written statement of the Government were heard, as completely set out in the description concerning the Principal Case. However, the Government, represented by the Minister of Law and Human Rights, principally stated the following matters:

- Whereas there are not any constitutional rights of the Petitioners impaired by the Advocate Law, because up to now the Petitioners have been able to serve as Advocates freely, and hence the Petitioners do not have the legal standing to file the petition for judicial review of the Advocate Law;
- Whereas the matters stated and complained about by the Petitioners are concerned more with the application of law, rather than with the issue of constitutionality of law;
- Whereas many weaknesses in the Advocate Law can be improved through *legislative review*, which is not within the scope of authority of the Constitutional Court;
- Whereas in substance, the articles of the Advocate Law petitioned for review by the Petitioners are not contradictory to the 1945 Constitution;
- Whereas accordingly, the Government requested the Court to reject the petition of the Petitioners or at least to declare that the petition can not be accepted.

Considering whereas the People's Legislative Assembly (DPR) has given its written statement as completely set out mentioned in the description of the Principal Case, which principally reject the entire arguments of the Petitioners;

Considering whereas the Court has also requested statements of the Directly Related Parties, namely *Perhimpunan Advokat Indonesia* (Peradi), and 8 organizations that established Peradi, namely *Ikatan Advokat Indonesia* (Ikadin), *Asosiasi Advokat Indonesia* (AAI), *Ikatan Penasihat Hukum Indonesia* (IPHI), *Himpunan Advokat and Pengacara Indonesia* (HAPI), *Serikat Pengacara Indonesia* (SPI), *Asosiasi Konsultan Hukum Indonesia* (AKHI), *Himpunan Konsultan Hukum Pasar Modal* (HKHPM), and *Asosiasi Pengacara Syariah Indonesia* (APSI), which are completely set out in the description of the Principal Case, principally concerning the following matters:

1. Statement of *Perhimpunan Advokat Indonesia* (Peradi):

Peradi, as represented by Denny Kailimang, S.H., M.H. (Chairperson) and Dr. H. Teguh Samudera, S.H., M.H. (Vice Secretary General), gave the oral statement and written statement that principally stated as follows:

- whereas the constitutional rights of the Petitioners are not impaired by the Advocate Law, because up to now they are still practicing their profession as Advocates freely;

- whereas the Petitioners as members of Ikadin have no right to file the petition for judicial review of the Advocate Law, because Ikadin played a role in formulating the Advocate Law and as an organization still supports the Advocate Law, and hence the Petitioners have actually violated the Articles of Association and By-Laws of Ikadin;
- whereas what is questioned by the Petitioners is concerned more with the application of law which may include many conflicts of interest, rather than with the issue of constitutionality of law;
- whereas the Petitioners did not clearly explain the reasons for the argued unconstitutionality of the Advocate Law;
- whereas the establishment of Peradi as a single forum for Advocates' profession does not put an end to Advocates' Organizations such as Ikadin and others; In fact, the Advocate Law even acknowledges the existence of the 8 organizations which later established Peradi;
- whereas Peradi as an organization of Advocates' profession has the right to regulate and to issue organizational norms that must be obeyed by the members solely for their collective interests and the interest of each member, hence it cannot be said as violating human rights;

- whereas it is proper that the petition of the Petitioners should be rejected.

2. Statement of *Ikatan Advokat Indonesia* (Ikadin) :

In its oral statement and written statement, Ikadin, represented by Leo Simorangkir, S.H. and associates, stated the following matters:

- whereas the existence and credibility of Ikadin is still maintained and it even has quite a big role in implementing the articles of the Advocate Law, hence the opinion of the Petitioners who were involved in Ikadin's establishment that Ikadin is getting weaker or powerless is not true;
- whereas the Petitioners do not meet the criteria of *legal standing* to file the petition for judicial review of the Advocate Law and that the petition is unclear, and hence it must be declared that the petition can not be accepted;
- whereas the articles of the Advocate Law argued by the Petitioners are not proved to be contradictory to the 1945 Constitution, because the Petitioners did not give clear arguments.

3. Statement of *Asosiasi Advokat Indonesia* (AAI) :

In its oral statement, AAI, represented by Deny Kailimang, S.H., M.H., stated that:

- AAI still exists despite the existence of Peradi, thus AAI is one of the founders with seven other organizations that established Peradi in accordance with the instruction of the Advocate Law;
 - the authorities of Peradi are clearly regulated in the Advocate Law, while the initial 8 organizations have no authorities, because their respective procedures for appointment and recruitment are different, namely by Decision of High Court for Practicing Lawyers, and by Decision of the Minister of Justice for Advocates, Lawyers, or Legal Advisors;
 - the definition, role, and functions of an organization of Advocates' profession set forth mentioned in the Advocate Law have met the general standards for an organization of Advocates' profession stipulated by the International Bar Association (IBA) in 1991.
4. Statement of *Ikatan Penasihat Hukum Indonesia* (IPHI):

IPHI, represented by Indra Sahnun Lubis, S.H. (General Chairperson of IPHI), in his oral statement responded to the articles of Advocate Law argued by the Petitioners as follows:

- whereas the provisions of Article 1 Sub-Article 4 and Article 28 Paragraph (1) of the Advocate Law do not have any impact on the existence of Ikadin or seven other organizations that founded Peradi;

- whereas Peradi is indeed the single forum for Advocates' profession that serves to carry out education, examination, and monitoring on Advocates, and which is aimed at improving the quality of Advocates' profession, hence it is neither right nor possible to dissolve or destroy the existing organizations, such as Ikadin and others;
- whereas following the enactment of the Advocate Law, and the establishment of Peradi, IPHI has actually been growing, hence the provision of Article 32 Paragraph (3) is not in any way aimed at destroying the existing organizations;
- whereas the prohibition from taking double titles for the Leaders of the Advocates' Organization concurrently as the leaders of political parties has been appropriate, so that legal interest is not related to political interest.

5. Statement of *Himpunan Advokat and Pengacara Indonesia* (HAPI):

HAPI, represented by Hj. Elza Syarief, S.H., M.H. (Secretary General), verbally stated the following matters:

- whereas as a constitutional state, through the Advocate Law, Indonesia has acknowledged that an Advocate is a law enforcement agent having equal status as other law enforcement agents such as judges, prosecutors, and the police, hence it is proper that Advocates shall have a single forum for organizations of Advocates' profession, in

any form, be it federation or association, which is free and independent from the Government;

- whereas the Advocate Law is a great progress in improving Advocates' profession which is independent and free, because it can take care of its own organization pursuant to its articles of association and by-laws, without intervention of the Government. In addition, HAPI and other organizations still exist and are consistently growing;
- with the presence of the Advocate Law, Advocates can help people and clients without fear or worry, because they are protected by law in practicing their profession.

6. Statement of *Serikat Pengacara Indonesia* (SPI) :

SPI, represented by Teguh Sugeng Santoso, S.H. (Vice Chairperson), verbally stated the following matters:

- whereas the patron of SPI, formerly named *Serikat Pengacara Muda Indonesia*, is Ikadin that places itself as struggling Advocates teaching that Advocates' profession has independent characteristics, based on the skills methodologically obtained from scientific knowledge, and the most important thing is that in their profession, the Advocates regulate themselves (*self regulation*), including the code of ethics that must be obeyed by all communities;

- whereas accordingly, SPI deeply regrets that senior Advocates who filed the petition for judicial review of the Advocate Law have in fact suffered a setback by boasting about the Government's role in the appointment of and monitoring on the Advocates;
- whereas according to SPI, the Advocate Law is not perfect, but it has been appropriate, because it has returned the position of Advocates' community to an independent position. Here, the central role of Peradi as a single forum must not be co-opted by other interests and other organizations (founders of Peradi) must then monitor Peradi to become a respectful Advocates' Organization.

7. Statement of *Asosiasi Konsultan Hukum Indonesia* (AKHI):

AKHI, represented by Hoesein Wiriadinata, S.H., LL.M. (Chairperson), verbally stated the following matters:

- AKHI, which was founded in 1988 by several senior figures in law, such as Prof. Mochtar Kusumaatmadja, Ali Budiardjo, and others, has been previously considered merely as a *law society* and never imagines to be able to join the Advocates' Organization named Peradi;
- whereas AKHI wanted to join into single organization of Advocates' profession provided that there are no more quarrellings or separation. Thus, AKHI deeply regrets the Petitioners' attitude that will in fact disturb the development process of Peradi as a single forum for

Advocates' profession that had been desired by Advocates for a long time.

8. Statement of *Himpunan Konsultan Hukum Pasar Modal* (HKHPM):

HKHPM, represented by Felix O. Soebagjo (General Chairperson), gave oral statement and written statement principally as follows:

- whereas the Petitioners did not clearly describe their constitutional rights impaired by the coming into effect the Advocate Law petitioned for review, because in fact Ikadin and seven other organizations still exist;
- whereas the articles of the Advocate Law argued by the Petitioners are proved not to be contradictory to the articles of the 1945 Constitution they referred to;
- whereas the Court should reject the petition of the Petitioners.

9. Statement of *Asosiasi Pengacara Syariah Indonesia* (APSI):

APSI, represented by Drs. Taufik, S.H., M.H. (Chairperson), stated the following matters:

- whereas arguments of the Petitioners were built on an assumption and illusion, and with lack of rational framework and facts that are actually the principal points in this matter;

- whereas the petition of the Petitioners is aimed at nudging the Administrators of Peradi towards getting up and working to the maximum extent to fulfill the message of the Advocate Law;
- whereas Advocate Law has given us the spirit to develop the image of Advocates' profession, to build the quality of Advocate, and the spirit to incite the values of independence of Advocate profession, hence the Petitioners' way of thinking that refers to old patterns is considered as a setback.

Considering whereas to support their arguments, besides giving written evidence (Exhibit P-1 Exhibit P-10), the Petitioners also presented an expert and two witnesses who gave oral statements under oath that principally stated as follows:

1. Statement of expert Prof. Dr. Maria Farida Indrati, S.H., M.H. (Legislation Science Expert of the Faculty of Law of the University of Indonesia):
 - Whereas from the perspective of legislation science of the Advocate Law contains many flaws, because it regulates technical and concrete matters too much, and is much in favor of certain groups, as indicated by the provisions of Article 32 Paragraph (3) and Article 33 of the Advocate Law, while a law should only regulate general and abstract matters;

- Whereas the Advocate Law also contains provisions which are not in accordance with the 1945 Constitution concerning the rights of a person/citizen, such as provision concerning Advocates' Organization as the single forum for Advocates' profession [Article 1 Number 4 *juncto* Article 28 Paragraph (1) of the Advocate Law];
- Whereas the presence of Advocate Law is without clear relevance, whether to implement the instruction of the 1945 Constitution or the instructions of a law, as required according to Legislation Science *juncto* Law Number 10 Year 2004 concerning Formulation of Laws and Regulations, because there are no instructions, either from the 1945 Constitution, or from a law to formulate the Advocate Law;
- Whereas Decision of the Constitutional Court that cancelled Article 31 of the Advocate Law has been correct, because the *a quo* Article is not relevant to Advocate; Any person claiming to be an Advocate and acting as if he were an Advocate is subject to the Indonesian Criminal Code (KUHP), not to the Advocate Law;
- Whereas the term "Advocate Organization" with Capital A and Capital O in the General Provision of Article 1 Sub-Article 4 and being repeated 36 times in the Advocate Law indicate that "Advocate Organization" is the single forum of Advocates' profession that must be established, not under the name of PERADI or any other name;

2. Witness Djohan Djauhari, S.H. (former Secretary General of PERADIN/IKADIN) :

- a. The witness told more about the history of efforts to make PERADIN/IKADIN as the single forum for Advocates' profession which encountered many difficulties and obstacles in the past;
- b. Whereas the Advocate Law does harm the Advocates who have obtained Decisions of the Minister of Justice to become advocates for life, because the announcement of PERADI dated June 16, 2006 (Exhibit P-5) contains a provision in item 9 stating, "Advocates, legal advisors, practicing lawyers, and legal consultants as intended in item 1, who do not register for renewed data collection within the timeframe as required in item 4, will be considered resigning as Advocate";

3. Witness Yan Juanda Saputra, S.H., M.H., M.M. (Advocate):

- a. The witness explained about the background of the Advocate Law in 1998 in which the witness was much involved;
- b. The witness stated that the Advocate Law harms Advocates, including himself, because the establishment of PERADI as the Advocates' Organization which is the forum for Advocates' profession was not conducted through a Congress of Advocates, but only by representatives of 8 (eight) organizations referred to in Article 32 Paragraph (3) of the Advocate Law;

Considering whereas with respect to the statements of expert and witness of the Petitioners, PERADI and eight organizations that established PERADI declared disagreement since the issue is more about the application of the Advocate Law, rather than an issue of constitutionality of the Advocate Law. Besides, according to PERADI, if the establishment of the Advocates' Organization as the single forum of Advocates' profession is conducted through a congress prior to making an inventory and verification concerning who are included as the Advocates pursuant to Advocate Law, it will not meet the deadline of two years required by Article 32 Paragraph (4), and possibly there will be conflicts like the past experience. Thus, the eight organizations referred to in Article 32 Paragraph (3) that received the mandate to form an Advocates' Organization agreed that the establishment of Advocates' Organization was conducted through a consultative meeting of representatives of eight organizations concerned. PERADI also declared that Advocate Law does not instruct the dissolution of the eight organizations that formed the Advocates' Organization (PERADI) and there is no prohibition from establishing a new organization similar to the eight organizations forming PERADI;

Considering whereas the Petitioners have given their conclusion which and principally insist on the initial arguments while PERADI, representing the directly related parties in the closing statement stated that what was filed by the Petitioners was actually a matter of implementation of the Advocate Law, not a matter of constitutionality of the Advocate Law;

Considering whereas based on the arguments given by the Petitioners and the based on written evidence, the Statement of the Government, the Written statement of the People's Legislative Assembly, the Statement of Peradi, and the Statements of eight organizations forming Peradi as directly related parties, as well as statements of expert and witnesses presented by the Petitioners, the Court is of the following opinion:

1. whereas the provisions of in Articles 1 Sub-Article 1 and Sub-Article 4 do not contain a matter of constitutionality as argued by the Petitioners, because they only contain definitions as commonly required in the general provisions of a law; such provisions does not refer that the name of the Advocates' Organization established pursuant to the Advocate Law must take the name of the Advocates' Organization as argued by the Expert of Petitioners, because the term Advocates' Organization is intended for simplifying repetition in the Advocate Law concerning the single forum of the Advocates' profession;
2. whereas the writing of the term "Advocates' Organization" in Capital A and Capital O, although grammatically correct in accordance with Legislation Science shows a proper noun, but grammatical approach only without historical approach on the intent of legislators or the context of materials regulated by the *quo* law entirely (systematic-contextual), can cause a misleading understanding. Because, according to the intent of legislators as well as the entire context of materials of the *a quo* law, the writing of

"Advocate Organization" with Capital A and Capital O is not intended as a certain proper name, but as a regular noun indicating a general meaning.

3. whereas Article 28 Paragraph (1) of the Advocate Law refers to "*a single bar organization*", but from the fact in the hearing according to the statements of PERADI and eight organizations holding temporary duty before the establishment of Advocates' Organization concerned [vide Article 32 Paragraph (3) and Paragraph (4) of the Advocate Law], namely Ikadin, AAI, IPHI, SPI, HAPI, AKHI, HKHPM, and APSI, the eight organizations as the founders of PERADI still exist but their authorities as organizations of Advocate profession, in making code of ethics, reviewing, monitoring, and removing Advocates [vide Article 26 Paragraph (1), Article 3 Paragraph (1) Sub-Paragraph f, Article 2 Paragraph (2), Article 12 Paragraph (1), and Article 9 Paragraph (1) of the Advocate Law], have been officially declared as the authorities of PERADI. The eight Advocates' Organizations founding PERADI still have authorities other than the authorities of PERADI, hence Article 28 Paragraph (1) of the Advocate Law cannot be said to remove the existence of the eight organizations, and violate the principle of freedom of association and assembly as regulated by the 1945 Constitution (*vide* Decision of the Court Number 019/PUU-I/2003). Therefore, the Petitioners' arguments stating that Article 28 Paragraph (1) of the Advocate Law is contradictory to the 1945 Constitution is groundless;

4. whereas the provision of Article 5 Paragraph (1) of the Advocate Law which gives the status to Advocates as law enforcement agents having equal status with other law enforcement agents in enforcing law and justice shows that due to such position an organization as the single forum of Advocates' profession is needed as intended in Article 28 Paragraph (1) of the Advocate Law. The reason is that, Article 28 Paragraph (1) of the Advocate Law provides, " *the Advocates' Organization shall be the single forum of Advocates' profession which is free and independent and established in accordance with the provisions of this law for the purpose and objective of improving the quality of Advocates' profession*", so PERADI as the single forum of Advocates' profession is basically an independent state organ in a broad sense that also performs state functions (*vide* Decision of the Court Number 066/PUU-II/2004); whereas the explicit indication of eight organizations in Article 32 Paragraph (3) and Article 33 of the Advocate Law does not violate the principle of a transitional regulation which by the expert of the Petitioners is deemed to be in favor of certain groups, but only strengthens a certain existing legal fact and its transition to a new legal fact according to the Advocate Law;
5. whereas concerning the prohibition of from assuming concurrent titles in Article 28 Paragraph (3) of the Advocate Law, there is no matter of constitutionality in such article, meaning that there is no violation of a constitutional right, but a logical consequence of a choice on a certain title;

6. whereas Article 32 Paragraph (3) and Paragraph (4) of the Advocate Law are actually articles that have been executed after the timeframe of two years was over and by the establishment PERADI as an Advocates' Organization which is the single forum for Advocates' profession, hence it is not relevant to question their constitutionality. In addition, Article 32 Paragraph (3) of the Advocate Law has been petitioned for judicial review to the Court and with its Decision Number 019/PUU-I/2003 the Court declared that the petition was rejected;

7. whereas the Petitioners' worry concerning their fate as Advocates who were appointed and had their oath taken is unnecessary because it is guaranteed by Article 32 Paragraph (1) of the Advocate Law, while the matter of re-registration of Advocates conducted by Peradi is more about a policy and/or organizational norms that are not related to whether or not the Advocate Law is constitutional. Besides, according to the statement of the General Chairperson of PERADI in the hearing, the provision questioned by the Petitioners in the Announcement of PERADI dated June 16, 2006 (Exhibit P-5) was in fact revoked in the next Announcement of PERADI which was not included as Evidence in the petition. Thus, the Petitioners' arguments insofar as concerning such worry of the Petitioners, are groundless;

Considering whereas accordingly, in the principal issue of the petition, the Petitioners' arguments are not sufficiently grounded, hence the petition must be declared rejected;

In view of Article 56 Paragraph (5) of the Law of the Republic of Indonesia Number 24 Year 2003 concerning the Constitutional Court (State Gazette of the Republic of Indonesia Year 2003 Number 98, Supplement to State Gazette of the Republic of Indonesia Number 4316);

PASSING THE DECISION

To declare that the petition of the Petitioners is rejected in its entirety.

Hence this decision was made in the Consultative Meeting on Monday November 27, 2006 of nine Constitutional Court Justices, namely Prof. Dr. Jimly Asshiddiqie, S.H., as the Chairperson and concurrent Member, Prof. H.A. Mukthie Fadjar, S.H., M.S., Soedarsono, S.H., H. Achmad Roestandi, S.H., Prof. Dr. HM. Laica Marzuki, S.H., Prof. HAS. Natabaya, S.H., LL.M, Dr. Harjono, S.H., MCL., I Dewa Gede Palguna, S.H., M.H., and Maruarar Siahaan, S.H., respectively as members, and was pronounced in the Plenary Session open for public on Thursday November 30, 2006 attended by seven Constitutional Court Justices namely Prof. Dr. Jimly Asshiddiqie, S.H., as the Chairperson and concurrent Member, Prof. H.A. Mukthie Fadjar, S.H., M.S., Soedarsono, S.H., H. Achmad Roestandi, S.H., Prof. Dr. HM. Laica Marzuki, S.H., Prof. HAS. Natabaya, S.H., LL.M, and I Dewa Gede Palguna, S.H., M.H., respectively as members assisted by Eddy Purwanto, S.H., as Substitute Registrar and in the

presence of the Petitioners/Attorney, Government or its representative, the People's Legislative Assembly or its representative, and the Related Parties.

CHIEF JUSTICE,

SIGNED

Prof. Dr. Jimly Asshiddiqie, S.H.

JUSTICES,

SIGNED

Prof. H. A. Mukthie Fadjar, S.H., M.S.

SIGNED

H. Achmad Roestandi, S.H.

SIGNED

Prof. H.A.S. Natabaya, S.H., LL.M

SIGNED

Soedarsono, S.H.

SIGNED

Prof. Dr. H. M Laica Marzuki, S.H.

SIGNED

I Dewa Gede Palguna, S.H., M.H.

SUBSTITUTE REGISTRAR,

SIGNED

Eddy Purwanto, S.H.