



**CONSTITUTIONAL COURT
OF THE REPUBLIC OF INDONESIA**

**SUMMARY OF DECISION
FOR CASE NUMBER 108/PUU-XXI/2023**

Concerning

**Legal Process Against Advocates Through Examination of Code of Ethics
by the Ethics Council of Advocates' Organizations
and the Meaning of the Phrase "Outside the Court"**

Petitioner	: Zico Leonard Djagardo Simanjuntak
Type of Case	: Judicial Review of Law Number 18 of 2003 concerning Advocates (Law 18/2003) against the 1945 Constitution of the Republic of Indonesia (1945 Constitution)
Type of Case	: Elucidation to Article 16 of Law 18/2003 is contrary to Article 24 paragraph (1), Article 27 paragraph (1), Article 28D paragraph (1), and Article 28E paragraph (3) of 1945 Constitution
Verdict	: To dismiss the Petitioner's petition in its entirety
Date of Decision	: Tuesday, 31 October 2023
Overview of Decision	:

The Petitioner is an individual Indonesian citizen, who works as an advocate, whose constitutional rights have been impaired by the enactment of the Elucidation to Article 16 of Law 18/2003, which has not yet comprehensively interpreted the meaning of "good faith" and "court proceedings both in all court environments and outside the court". The enactment of the Elucidation to the *a quo* Article has caused legal ambiguity and uncertainty regarding the immunity rights of Advocates in carrying out their professional duties, in the case of the Petitioner as an Advocate to protect clients' rights by taking legal action, including the Petitioner's files which often make the news. Therefore, there must be a clear affirmation of the Elucidation to Article 16 of Law 18/2003.

Regarding the Court's Authority, because the Petitioner petitions for a review of the constitutionality of norms of law, *in casu* Elucidation to Article 16 of Law 18/2003 against the 1945 Constitution, the Court has the authority to hear the *a quo* petition.

Regarding the Petitioner's legal standing, the Court is of the opinion that the Petitioner has been able to describe the presumed loss of constitutional rights which, according to the Petitioner, has actually been harmed by the enactment of the Elucidation to Article 16 of Law 18/2003 which has not comprehensively interpreted the meaning of "good faith" and "both in all court environments and outside the court" as guaranteed in Article 24 paragraph (1), Article 27 paragraph (1), Article 28D paragraph (1), and Article 28E paragraph (3) of the 1945 Constitution, therefore the Petitioner stated that he would suffer a constitutional loss if there is no clear interpretation and meaning of the Elucidation to Article 16 of Law 18/2003. The Petitioner has also been able to describe the presumed loss of constitutional rights which has a causal relationship (*causal verband*) with the enactment of the Elucidation to the Article being petitioned for review. The Court is of the opinion that regardless of whether the unconstitutionality of the Elucidation to Article 16 of Law 18/2003 being petitioned for review is proven or not, if the *a quo* petition is granted, the presumed loss of constitutional

rights as described shall no longer occur. Therefore, regardless of whether the unconstitutionality of the Elucidation being petitioned for review by the Petitioner is proven or not, the Court is of the opinion that the Petitioner has the legal standing to act as Petitioner in the *a quo* petition.

Pursuant to Article 54 of the Constitutional Court Law, since the *a quo* petition is clear, the Court is of the opinion that there is no urgency to ask for statements from the parties as described in Article 54 of the Constitutional Court Law.

Whereas the Petitioner questioned the unconstitutionality of the Elucidation to Article 16 of Law 18/2003 which according to the Petitioner is contrary to the right to independent judicial power, equal treatment before the law and in the government, fair legal recognition, guarantees, protection and certainty, as well as freedom of association, assembly and expression of opinion as guaranteed in Article 24 paragraph (1), Article 27 paragraph (1), Article 28D paragraph (1), and Article 28E paragraph (3) of 1945 Constitution.

Regarding legal protection for Advocates in carrying out their professional duties in good faith, both in court and outside of court, the Court has decided the matter in the Constitutional Court Decision Number 52/PUU-XVI/2018 which was declared in a plenary session open to the public on 27 February 2019. Furthermore, regarding the immunity rights of Advocates which are guaranteed and protected by Law 18/2003, this does not necessarily make Advocates immune to the law. The right to immunity depends on whether what the Advocate does is based on good faith or not. Therefore, the definition of good faith described in the Elucidation to Article 16 of Law 18/2003 requires that in defending the interests of their clients, Advocates must remain to hold on to the rules of law.

Pursuant to Article 26 paragraph (4) and paragraph (5) of Law 18/2003, the Ethics Council of Advocates' Organizations (Dewan Kehormatan Organisasi Advokat or DKOA) has the right to supervise and examine and adjudicate any violations of the Advocate's professional code of ethics based on predetermined procedures. Therefore, the *petitum* of the Petitioner's petition which request that the Elucidation to Article 16 of Law 18/2003 is added with an elucidation which states that good faith is carrying out professional duties for the sake of upholding justice under the law to defend the interests of their clients, which in a legal proceeding, Advocates must go through a "good faith" examination conducted by DKOA, such request is contrary to Article 26 paragraph (7) of Law 18/2003 which states that the procedures for examining and adjudicating any violations of the Advocate's professional code of ethics are further regulated by a DKOA Decree. Additional elucidation, as requested by the *a quo* Petitioner, will actually cause an inconsistencies between the norms of Article 16 and Article 26 of Law 18/2003. This is because the meaning of good faith in the norms of Article 16 of Law 18/2003 has been interpreted by the Court in Constitutional Court Decision Number 26/PUU-XI/2013 which was then reaffirmed in Constitutional Court Decision Number 52/PUU-XVI/2018. In addition, Article 26 of Law 18/2003 also regulates the DKOA mechanism related to supervision and examination of the Advocates who carry out their professional duties in good faith. Therefore, the Petitioner's petition which requests that DKOA conducts preliminary examination of the good faith is not in line with the spirit of the Constitutional Court Decision Number 52/PUU-XVI/2018, because the examination of good faith by an Advocate in relation to any alleged violation of the law should be conducted by and under the authority of the law enforcement officers. Therefore, the *a quo* argument of the Petitioner is legally unjustifiable.

Furthermore, there is a question of the constitutionality of the Elucidation to Article 16 of Law 18/2003 if the meaning of "outside of court" is not interpreted as stated in the *petitum* of the Petitioner's petition regarding the Elucidation to the *a quo* Article. Regarding the *a quo* argument of the Petitioner, if it is linked to the Petitioner's *petitum* which request for the interpretation of the Elucidation to Article 16 of Law 18/2003 by adding an elucidation regarding what is meant by "court proceeding" is a court proceeding at every level of court in all judicial environments, such matter is actually an excessive *petitum* because by looking closely at the substance of the Elucidation to Article 16 of Law 18/2003 regarding the meaning of "court proceedings", such term has been explained exactly as requested by the Petitioner. This means that the Petitioner's request is actually already contained in the Elucidation to Article 16 of Law 18/2003 which states, "The term 'court proceeding' means a court proceeding at every level of court in all judicial environments." In addition, regarding the Petitioner's argument that the Elucidation to Article 16 of Law 18/2003 is unconstitutional if it does not add an interpretation to the phrase "outside of the court proceeding is all other legal action for the interests of the client, including news and press releases related to the case," as stated in the *a quo petitum*. Regarding the Petitioner's *a quo* argument, it is important for the Court to quote the legal considerations of the Constitutional Court Decision Number 26/PUU-XI/2013, which was declared in a plenary session open to the public on 14 May 2014.

In accordance with these legal considerations, since the substance questioned by the Petitioner is essentially related to the meaning of outside the court proceeding, it is an element of action that is used as described in Article 1 number 1 and number 2 of Law 18/2003, and it has also been confirmed in the *a quo* Decision, therefore an addition elucidation to Article 16 of Law 18/2003 actually creates uncertainty regarding the substance of Law 18/2003. Moreover, the *a quo* Law has emphasized that Advocates are free to express opinions or statements in defending cases for which they are responsible in court proceedings while adhering to the professional code of ethics and the laws and regulations. Advocates are also given the freedom to carry out their professional duties to defend cases for which they are responsible while adhering to the professional code of ethics and the laws and regulations [*vide* Article 14 and Article 15 of Law 18/2003]. This means that whatever action an advocate takes in the interests of his client, as long as it is carried out in accordance with the advocate's code of ethics and the laws and regulations, the advocate shall obtain legal protection for such action. Therefore, if the arguments of the Petitioner's *a quo* petition is accommodated by simply interpreting it as "outside of the court proceeding is all other legal action for the interests of the client, including news and press releases related to the case", it will actually create legal uncertainty, because on the one hand it does not provide limitations, while on the other hand it requires limitations including the matters being petitioned for review by the Petitioner.

Pursuant to the entire description of the legal considerations above, the essence of the Petitioner's petition is related to the review of constitutionality of the Elucidation to Article 16 of Law 18/2003 which in principle related to the meaning of "good faith" and "in court and outside of court", such matters have been considered by the Court in the review of the constitutionality of the norms of Article 16 of Law 18/2003 in the Constitutional Court Decision Number 26/PUU-XI/2013 and has been affirmed in the Constitutional Court Decision Number 52/PUU-XVI/2018, then the legal considerations of these two decisions, *mutatis mutandis* shall apply as the legal consideration of the *a quo* decision. Therefore, the Elucidation to Article 16 of Law 18/2003 has been found not to violate the independent judicial power, equal treatment before the law and in the government, fair legal recognition, guarantees, protection and certainty, and freedom of association, assembly and expression of opinion as guaranteed in Article 24 paragraph (1), Article 27 paragraph (1), Article 28D paragraph (1), and Article 28E paragraph (3) of the 1945 Constitution. Therefore, the Petitioner's argument is entirely legally unjustifiable.

Accordingly, the Court subsequently handed down a decision whose verdict states to dismiss the Petitioner's petition in its entirety.