



**CONSTITUTIONAL COURT  
OF THE REPUBLIC OF INDONESIA**

**SUMMARY OF DECISION  
FOR CASE NUMBER 113/PUU-XXI/2023**

**Concerning**

**Scope of Immunity Right of Advocate**

<b>Petitioner</b>	<b>:</b>	<b>Alvin Lim</b>
<b>Type of Case</b>	<b>:</b>	Judicial Review of Law Number 8 of 2003 concerning Advocates (Law 8/2003) against the 1945 Constitution of the Republic of Indonesia (1945 Constitution)
<b>Subject Matter</b>	<b>:</b>	The phrase "may not be prosecuted" in Article 16 of Law 8/2003 as has been interpreted by the Court in the Decision of the Constitutional Court Number 26/PUU-XI/2013 and the Elucidation of Article 16 of Law 8/2003 are contrary to the 1945 Constitution.
<b>Verdict</b>	<b>:</b>	To dismiss the Petitioner's petition in its entirety.
<b>Date of Decision</b>	<b>:</b>	Wednesday, 29 November 2023
<b>Overview of Decision</b>	<b>:</b>	

The Petitioner is an individual Indonesian citizen who works as an advocate and has currently been named a Suspect by the National Police of the Republic of Indonesia (the Police) for alleged criminal acts of defamation and/or slander and/or issuing notification that could cause trouble among the people and/or broadcasting uncertain or excessive or incomplete news pursuant to Article 45 paragraph (3) *juncto* Article 27 paragraph (3) of Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions and/or Article 14 paragraph (1) and paragraph (2) and/or Article 310 and/or Article 311 of the Criminal Code.

Furthermore, in considering the Petitioner's petition, regarding the authority of the Constitutional Court, the Court is of the opinion that because of the object of the *a quo* petition is a material review of the norms of articles in Law 18/2003 against the 1945 Constitution, then the Court has the authority to hear the *a quo* petition.

Regarding legal standing of the Petitioner, the Court considers that the Petitioner has described his constitutional rights which according to the Petitioner are injured by the enactment of the legal norms being petitioned for review, namely the phrase "may not be prosecuted" in Article 16 of Law 18/2003 which has been interpreted by the Court through the Decision of the Constitutional Court Number 26/PUU-XI/2013 and the Elucidation of Article 16 of Law 18/2003. The presumed constitutional injury as referred to is specific and actual in nature because the Petitioner is an advocate who is carrying out the duties of his profession and has now been named as a suspect by the Police or at least potential in nature, because

there is no guarantee of immunity right for the advocate profession in carrying out their professional duties in good faith for the benefit of client's defense inside and outside of court. Therefore, regardless of whether the unconstitutionality of the norms 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 a Petitioner in the *a quo* petition.

Whereas since the subject matter or substance of the Petitioner's petition is clear, the Court is of the opinion that there is no urgency and relevance in hearing the statements of the parties as intended in Article 54 of the Constitutional Court Law.

Furthermore, before considering the subject matter of the Petitioner, the Court has decided on the judicial review case related to Article 16 of Law 18/2003, namely in the Decision of the Constitutional Court Number 26/PUU-XI/2013, which was declared in a plenary session open to the public on 14 May 2014. The Decision of the Constitutional Court Number 52/PUU-XVI/2018 and the Decision of the Constitutional Court 56/PUU-XVI/2018 which was declared in a plenary session open to the public on 27 February 2019. In addition, the Court has also decided on the case of reviewing the constitutionality of the Elucidation of Article 16 of Law 18/2003, namely in the Decision of the Constitutional Court Number 108/PUU-XXI/2023, which was declared in a plenary session open to the public on 31 October 2023.

Furthermore, in considering the subject matter of the Petitioner's petition, the Court first explains the constitutionality framework for advocates' immunity in carrying out their profession, which substantially stated that one of the principles that must exist in a rule of law state is the principle of equality before the law as formulated in Article 27 paragraph (1) of the 1945 Constitution. In principle, the equality before the law means that every individual, regardless of social status, wealth, race, gender, or other characteristics, is subject to the laws established by the state and has the same rights and legal protection. No one is above the law, and no one should be discriminated against or given preferential treatment in law. However, Tom Bingham, a former Chief Justice of England and Wales in his book *The Rule of Law* (2010) gives a broader meaning to the principle of equality before the law as "The laws of the land should apply equally to all, save to the extent that objective differences justify differentiation." This means that, although substantially the law must apply the same way to everyone, it is possible for there to be differences in treatment before the law to the extent that these differences are objectively legally justifiable. In this context, there is a difference in treatment of the advocate profession, *in casu* granting the immunity right is not a discriminatory act which refers to the provisions of Article 1 point 3 of Law Number 39 of 1999 concerning Human Rights because prohibited discrimination is differences in treatment that may injure other groups of society. The advocates have an important role in the Indonesian justice system, because they are positioned as one of the law enforcement officers who represent the interests of society [*vide* Article 5 paragraph (1) of Law 18/2003]. In this position, the advocate profession has the duty to maintain a balance between the interests of the state (police, prosecutors and justices) and the society and to supervise the application of the criminal justice system in accordance with the principle of due process of law. With the understanding, duties and responsibilities of the advocate profession, the existence of immunity right given to advocates in carrying out their profession has a basis of rationality and measure of constitutionality which is needed in order to realize social justice for all Indonesian people.

Furthermore, regarding the phrase "may not be prosecuted" in Article 16 U 18/2003 which has been interpreted by the Court in the Decision of the Constitutional Court Number 26/PUU-XI/2013, the Court is of the opinion that the immunity right granted by Article 16 of Law 18/2003 which has been interpreted by the Court in the Decision of the Constitutional Court Number 26/PUU-XI/2013 is included in the justification reason in the criminal law doctrine which eliminates the unlawful nature of an act due to implementing the law (*te uitvoering van een wettelijke voorschrift*), *in casu* Law 18/2003 *juncto* Law 11/2011. In this framework, even though an act meets the definition of a crime, however the unlawful nature of the act is abolished, therefore the perpetrator may not be held criminally liable. This means that if there is a justification, an act is prohibited from being considered a criminal act, as such act can be justified and thus it may not be punished, for example any act carried out to implement the provisions of laws and regulations as stipulated in Article 31 of the Criminal Code. Therefore, the Court is of the opinion that every step and action taken by an advocate in carrying out his professional duties for the benefit of client defense inside or outside of the court session is legally justifiable to the extent that it is carried out in good faith. This means that the meaning of the phrase "may not be prosecuted" in *a quo* article covers all stages in the criminal justice process, starting from the inquiry, investigation, prosecution, court examination at all levels, to the enforcement of the decision. If there is an act that is deemed to meet the elements of a prohibited act, an investigation will first be carried out to determine whether the act is a criminal act or not. Under the immunity right of advocate, every action or deed of an advocate in carrying out his/her professional duties for the benefit of the client inside or outside of the court to the extent that it is carried out in good faith constitutes a legally justifiable act and is not a criminal act. Therefore, within the limits of reasonable reasoning, if there is an allegation of a criminal act committed by an advocate in carrying out his/her profession in good faith then he/she should be dismissed at the investigation stage because the action is not a criminal act and should not be continued to the investigation level, unless it can be proven otherwise. Thus, the Petitioner's argument stating that the phrase "may not be prosecuted" in the provisions of Article 16 of Law 18/2003 which has been interpreted by the Court in the Decision of the Constitutional Court Number 26/PUU-XI/2013 is contrary to Article 28C paragraph (2) of the 1945 Constitution because the interpretation did not cover the investigation stage is legally unjustifiable.

Furthermore, regarding the Petitioner's argument that the definition of "good faith" in the Elucidation of Article 16 of Law 18/2003 is unclear and has resulted in restrictions for advocates on access to justice to obtain legal assistance and to provide defense for clients, so that if there is a violation of the law by an advocate carried out in good faith, then it must be examined through the DKOA, the Court will quote consideration of the Court in Sub-paragraph **[3.13.3]** and Sub-paragraphs **[3.13.4]** of the Decision of the Constitutional Court Number 52/PUU-XVI/2018 which has also been quoted in the Decision of the Constitutional Court Number 108/PUU-XXI/2023 which was declared in a plenary session open to the public on 31 October 2023, which has described that the Court is of the opinion that any ongoing process of ethical enforcement carried out by DKOA does not stop the investigation process carried out by the law enforcement and the investigation must still be carried out in accordance with the applicable laws and regulations. So, the authority of the DKOA is related to upholding the moral values inherent in the advocate profession (Code of Ethics for the Advocate Profession), so that in the context of providing an assessment of "in good faith" related to legal actions carried out by advocates (criminal or civil) it is not under the authority of the DKOA,

instead it is the authority of other law enforcement officers (police, prosecutors and justices). Therefore, the Court is of the opinion that the immunity right of advocate resulted in a big responsibility that must be carried out by the advocates as one of the law enforcement officers and to maintain the dignity of the advocate profession as *officium nobile*. Therefore, the Petitioner's argument regarding the unclear definition of "in good faith" in the Elucidation of Article 16 of Law 18/2003 has resulted in restrictions for advocates on access to justice to obtain legal assistance and to provide defense for clients, so that if there is a violation of the law by an advocate carried out in good faith, then it must be examined through the DKOA, is legally unjustifiable.

Furthermore, regarding the Petitioner's argument which states that the absence of an explanation of the phrase "outside of court", in the Elucidation of Article 16 of Law 18/2003 will eliminate the element of balance in the examination of cases by advocates to defend the interests of clients, which will close all channels or means for advocates to speak out in conveying criticism, suggestions, inputs and/or opinions for and on behalf of the clients' interests, especially in the scope of broadcasting and it does not rule out the possibility of giving rise to pressure, threats, coercion against advocates who are critical and vocal in voicing legal issues faced by clients, the Court is of the opinion that if the Court follows the Petitioner's train of thought, it will actually narrow the meaning of "outside of court" which is generally defined as a non-litigation resolution process, namely dispute resolution that is carried out using methods that exist outside of court or using alternative dispute resolution institutions. The Court also emphasizes that the central point of the immunity right of advocate is that it relies on the good faith of the advocate when carrying out his/her professional duties. This means that all legal actions outside of court, such as conveying criticism, suggestions, inputs and/or opinions for and on behalf of the client's interests, especially in the scope of broadcasting, must also be carried out in good faith by the advocate as part of the law enforcement officer. Therefore, the *a quo* argument of the Petitioner is also legally unjustifiable.

Pursuant to all the legal considerations above, the Court is of the opinion that the norms of the phrase "may not be prosecuted" in Article 16 of Law 18/2003 which has been interpreted by the Court in the Decision of the Constitutional Court Number 26/PUU-XI/2013 and the Elucidation of Article 16 of Law 18/2003 has been proven to be not contrary to the fulfillment of the right to advance oneself in fighting for one's rights collectively to develop one's society, nation and state which is guaranteed in Article 28C paragraph (2) of the 1945 Constitution as argued by the Petitioner, therefore the Petitioner's petition is entirely legally unjustifiable.

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