



**CONSTITUTIONAL COURT  
OF THE REPUBLIC OF INDONESIA**

**SUMMARY OF DECISION  
FOR CASE NUMBER 138/PUU-XXI/2023**

**Concerning**

**Requirement of Internship Before Being Appointed as Advocate**

<b>Petitioner</b>	: Indra Sofian
<b>Type of Case</b>	: Judicial Review of Law Number 18 of 2003 concerning Advocates (Law 18/2003) against the 1945 Constitution of the Republic of Indonesia (1945 Constitution)
<b>Subject Matter</b>	: Article 3 paragraph (1) letter g of Law 18/2003 is contrary to Article 28D paragraph (1) of the 1945 Constitution
<b>Verdict</b>	: To dismiss the Petitioner's petition in its entirety
<b>Date of Decision</b>	: Thursday, December 21, 2023
<b>Overview of Decision</b>	:

Whereas the Petitioner is an individual Indonesian citizen who is currently working as First Principal Investigator at the Directorate of Partnership Supervision, Deputy of Law Enforcement at the Indonesia Competition Commission of the Republic of Indonesia. In addition, the Petitioner is currently taking the Special Professional Education for Advocates (*Pendidikan Profesi Khusus Advokat* or PKPA), and in the next process, the Petitioner is going to take the Advocate Professional Examination (*Ujian Profesi Advokat* or UPA), therefore the Petitioner has the potential to become an advocate. The Petitioner stated that he has constitutional rights in the form of recognition, guarantees, protection and legal certainty as well as equal recognition before the law as guaranteed by Article 28D paragraph (1) of the 1945 Constitution

Whereas regarding the Court's authority, because the Petitioner petitions for a review of the constitutionality of the norms of law, *in casu* Article 3 paragraph (1) letter g of Law 18/2003 against the 1945 Constitution, the Court has the authority to hear the *a quo* petition.

Whereas regarding the legal standing, the Petitioner has been able to clearly describe his qualifications as an Indonesian citizen who is also an employee occupying the position of First Principal Investigator at the Directorate of Partnership Supervision, Deputy of Law Enforcement at the Indonesia Competition Commission who has experience in the field of law enforcement within the administration area who is currently taking the Special Professional Education for Advocates (*Pendidikan Profesi Khusus Advokat* or PKPA) and then he is going to take the Advocate Profession Examination (*Ujian Profesi Advokat* or UPA) and furthermore he is going to continue with an internship of at least 2 (two) years in an attorney's office consecutively before being appointed and sworn in to become an advocate. In such qualifications, the Petitioner has described his constitutional rights which, according to him, are injured by the enactment of the norm being petitioned for review, namely the right to recognition and guarantees of fair legal certainty and equal treatment before the law. Therefore, the Petitioner has been able to describe specifically the existence

of a causal relationship (*causal verband*) between the presumed constitutional injury he experienced and the enactment of the provisions of the norms of Article 3 paragraph (1) letter g of Law 18/2003. Such presumed constitutional injury has the potential to occur and if the petition submitted by the Petitioner was granted by the Court, the presumed constitutional injury which is potential in nature will not happen. Therefore, regardless of whether the unconstitutionality of the norms as argued 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 *a quo* 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.

Whereas regarding Article 3 paragraph (1) letter g of Law 18/2003, a review has been petitioned in relation to the phrase "consecutively" which was argued to be contrary to Article 28D paragraph (1) of the 1945 Constitution, such petition which has been decided in the Decision of the Constitutional Court Decision Number 79/PUU-XVI/2018 was declared in a plenary session open to the public on 26 November 2018, the reason for such petition is because the phrase "consecutively" does not give a clear definition and thus creates legal uncertainty and does not provide legal protection for the prospective advocates because if the prospective advocates are in their internship period and then they are dismissed before the two year period is completed, then the prospective advocates cannot be said to have carried out an internship for 2 (two) years consecutively and they must repeat the internship process for 2 (two) years before being appointed as an advocate. Meanwhile, in the *a quo* Petition, the Petitioner submitted a review of Article 3 paragraph (1) letter g of Law 18/2003 regarding the phrase "internship for at least 2 (two) years consecutively at an Attorney's office", the Petitioner argued that such phrase is contrary to Article 28D paragraph (1) of the 1945 Constitution on the legal grounds that the requirement to carry out an internship for 2 (two) years consecutively in an attorney's office before being appointed as an advocate has created legal uncertainty to the prospective advocates who are already members of law enforcement agencies and have the experience serving in law enforcement agencies. Because the Petitioner's petition used a different reason from the previous petition, the Court is of the opinion that regardless of whether the substance of the *a quo* petition is legally justifiable or not, pursuant to the provisions of Article 60 paragraph (2) of the Constitutional Court Law and Article 78 paragraph (2) of the Constitutional Court Regulations, formally, the *a quo* petition may be re-submitted.

Whereas the Petitioner's argument regarding the requirement for a consecutive 2 (two) year internship at an Attorney's office for former law enforcers who have experience working in law enforcement agencies and law enforcement agencies in the administration area, the Court must refer to the Court's stance in the Decision of the Constitutional Court Number 79/PUU-XVI/2018. Therefore, it is important for the Court to reaffirm the importance of "internship for Advocates" as has been considered by the Court in the legal considerations of such decision. Pursuant to the legal considerations of the Decision of the Constitutional Court Number 79/PUU-XVI/2018, it can be concluded that internship is an important requirement which is a part of a series of steps that must be carried out by a person to be appointed as an advocate. PKPA is a mandatory study of legal theories and then in the UPA, a person must take an examination to determine whether he/she understand these theories, meanwhile an internship is an opportunity to apply these legal theories in the form of application or implementation of such legal theories in relation to concrete cases, so that the prospective advocate has the practical experience to support his/her abilities, skills and ethics in carrying out his/her profession. Therefore the prospective advocate is able to understand the real problems that must be faced or handled in carrying out his/her duties and work after being appointed as an advocate. Through an internship, the prospective advocate will also learn to position himself/herself

as a professional that is free, independent and responsible in upholding the law, who knows how to behave, is honest and has high integrity and always carries out his/her duties and obligations in accordance with the attached advocate's code of ethics. Therefore, the Court is of the opinion that every person who wishes to become an advocate needs to understand, study, apply in practice, conduct and integrate into the characteristics, the code of ethics of advocates and work culture in carrying out the advocate profession. The Court is of the opinion that this can be realized by taking part in a consecutive and continuous internship under the guidance of, patronage of and supervision by senior advocates and/or advocate organizations.

Whereas although the law enforcement profession has similarities in the scope of its duties and work, namely upholding the law and justice, the advocate profession has its own character, especially regarding the duties of the advocate profession which is broader compared to other law enforcers. In criminal law enforcement, for example, advocates may provide legal assistance services to clients at all levels of the judicial process, namely from the investigation level to the court proceeding level. Therefore, advocates must have professionalism and competence at all levels, each of which has different procedural legal characteristics. So, having the experience as a law enforcer at one of the stages in the criminal justice system is not sufficient to prove that a prospective advocate is competent in carrying out the advocate profession comprehensively. Therefore, the Petitioner's argument that a prospective advocate who has experience as a law enforcer in a law enforcement agency including in the administrative legal institution should be exempted from the requirement to complete an internship for at least 2 (two) consecutive years in an attorney's office is an argument that is not entirely justifiable. Moreover, as stated in the Elucidation of Article 3 paragraph (1) letter g of Law 18/2003, one of the objectives of internship for the prospective advocate is to learn to understand and also implement matters related to the advocate's code of ethics, therefore this further proves that there are other objectives of the internship requirement other than what is described above, which is also to understand matters relating to the advocate's code of ethics that are not found at the practical level when appointed as an advocate.

Whereas the Court is able to understand the Petitioner's argument that a person's work experience in a particular profession cannot be ignored because a person's work experience shows the person's skills and qualities. The internship requirement substantially aims to provide professional learning and maintain a person's integrity under the guidance of the advocate's code of ethics. Therefore, eliminating the requirement to complete internship process for the prospective advocates who have experience as law enforcers as petitioned by the Petitioner is an argument that is unjustifiable. Moreover, advocates not only have the potential to become legal representatives in criminal cases which often engage with the law enforcement profession, but they also must comprehensively master all types of legal profession, both material and formal, both in the fields of public law and private law. Therefore, if the prospective advocates who have experience as law enforcers in law enforcement agencies, including the administrative legal institutions, are exempted from the internship requirement, this will result in concerns that such prospective advocates will not have comprehensive competence regarding the procedural law and material law of all judicial environment in Indonesia.

Pursuant to the entire description of the legal considerations above, the Court is of the opinion that the provisions of the norms of Article 3 paragraph (1) letter g of Law 18/2003 do not give rise to legal uncertainty and are not discriminatory before the law, therefore they are not contrary to Article 28D paragraph (2) of the 1945 Constitution, instead of as argued by the Petitioner. Therefore, the Petitioner's arguments are entirely legally unjustifiable.

The Court subsequently passed down a decision which verdict states to dismiss the Petitioner's petition in its entirety.