



**CONSTITUTIONAL COURT  
OF THE REPUBLIC OF INDONESIA**

**SUMMARY OF DECISION  
FOR CASE NUMBER 22/PUU-XXII/2024**

**Concerning**

**Absence of Restriction on Leadership Position  
of Advocate Organization Occupying Leadership Position  
of Campaign Team for Presidential and Vice Presidential Candidates**

<b>Petitioner</b>	: <b>Deddy Rizaldy Arwin Gommo</b>
<b>Type of Case</b>	: Judicial Review of Law Number 18 of 2003 concerning Advocate (Law 18/2003) against the 1945 Constitution of the Republic of Indonesia (1945 Constitution)
<b>Subject Matter</b>	: Article 28 paragraph (3) of Law 18/2003 as interpreted in the Decision of the Constitutional Court Number 91/PUU-XX/2022 is contrary to Article 27 paragraph (1), Article 28D paragraph (1), and Article 28E paragraph (3) of the 1945 Constitution
<b>Verdict</b>	: To dismiss the Petitioner's petition in its entirety
<b>Date of Decision</b>	: Wednesday, March 20, 2024
<b>Overview of Decision</b>	:

The Petitioner is an individual Indonesian citizen who works as an advocate and is a member of an advocate organization which has the constitutional right to vote for a presidential candidate in accordance with the Petitioner's wishes and conscience.

Regarding the Court's authority, because the Petitioner petitions for a judicial review of the constitutionality of legal norms, *in casu* Article 28 paragraph (3) of Law 18/2003 against the 1945 Constitution as interpreted in the Decision of the Constitutional Court Number 91/PUU-XX/2022, therefore the Court has the authority to hear the Petitioner's petition.

Regarding the legal standing, according to the Petitioner, the Petitioner, who is a member of an advocate organization, is injured by the enactment of the *a quo* norms, namely a potential injury that according to reasonable reasoning will occur due to being deprived of his right as an advocate to take sides or to vote as he so wishes, because he is limited by the choice of the leader of the advocate organization. Therefore, the Petitioner felt the organizational political pressure in voting for certain candidates and such pressure is limiting the Petitioner's voting rights which should have been unrestrained and independent. Such limitations has prompted a wish to create a healthy organizational environment to encourage accountability and prevent abuse of power and avoid conflicts of interest within the advocate organization.

Pursuant to the description of the Petitioner in explaining his legal standing, the Court is of the opinion that the Petitioner is indeed an individual Indonesian citizen who works as an advocate. The Petitioner has been able to describe the existence of the presumed constitutional injury, which is specific and actual in nature, instead of potential as described by the Petitioner, arising from the enactment of the provisions of the norms of the article being petitioned for review. In addition, the Petitioner has also been able to describe the existence of a causal relationship (*causal verband*) between his presumed constitutional injury and the enactment of the norms of Article 28 paragraph (3) of Law 18/2003 as interpreted in the Decision of the Constitutional Court Number 91/PUU-XX/2022 which is being petitioned for review. Therefore, if the *a quo* petition is granted by the Court, the presumed injury of constitutional rights as described will not or will no longer occur. 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 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.

What is being questioned by the Petitioner is whether the absence of restriction on leadership position of advocate organization occupying leadership position of campaign team for presidential and vice presidential candidates as stated in Article 28 paragraph (3) of Law 18/2003 does not provide equal rights before the law and in the government and does not provide fair legal certainty and the right to freedom of association, assembly and expression of opinion as guaranteed and protected by Article 27 paragraph (1), Article 28D paragraph (1), and Article 28E paragraph (3) of the 1945 Constitution.

Advocate has a role and function as a profession that is free, independent and responsible for upholding justice in accordance with the law for the benefit of justice seekers, including efforts to empower people to realize their fundamental rights before the law. Advocate in the justice system is one of the pillars in upholding the supremacy of law and human rights. In addition, advocate also plays a role outside of the judicial proceeding (non-litigation). In this case, nowadays the need for legal service of advocate outside of the judicial proceeding is increasing, this is in line with the growing legal needs of society, especially in entering a life that is increasingly open to international interactions. By providing services in the form of consultation, negotiation, and preparing trade contracts, the profession of advocate makes a significant contribution to community empowerment and national legal reform, especially in the economic and trade fields, including in resolving disputes outside of the judicial proceeding. In connection with the issue of creating restrictions for the leadership position of advocate organization, *in casu* as stated in Article 28 paragraph (3) of Law 18/2003, it has been decided in the Decision of the Constitutional Court Number 91/PUU-XX/2022, in Paragraph **[3.14]** and Paragraph **[3.15]**. The Court has emphasized that the terms of office and periodization for the leadership position of advocate organizations are based on the practice generally used by advocate organization or any organization in general. Meanwhile, regarding the 2 (two) terms of office, the aim is to eliminate or prevent potential abuse of power within the advocate organization. Therefore, limiting the terms of office and periodization for the leadership position of advocate organization is one way to provide guarantees of legal certainty and equality before the law for all members of advocate organizations who fulfill the requirements as regulated in Article 28D paragraph (1) of the 1945 Constitution.

Furthermore, in relation to the restriction on leadership position of advocate organization occupying leadership position of campaign team for presidential and vice presidential candidates, the Court is of the opinion that the advocate profession is a provider of legal services, both inside and outside of the court, in the form of providing legal consultation, legal assistance, exercising authorization, accompanying, defending, and carrying out other legal actions for the client's legal interests. Therefore, if an advocate who is also a leader of an advocate organization is being subjected to restrictions not to provide legal services that are closely related to activities relating to legal aspects inherent in the campaign team of the

presidential and vice presidential candidates, then such advocate who is also a leader of advocate organization can be said to actually ignore or neglect the interests of his/her clients. This means that imposing a restriction on an advocate who is a leader of advocate organization who is also occupying leadership position in a campaign team for presidential and vice presidential candidates is the same as exposing the said advocate to being subject to sanctions for committing ethical violations, and it is even possible that he/she could be prosecuted in a civil manner, because he/she abandon his/her obligation to defend their clients outside of the judicial proceeding. Moreover, in carrying out their professional duties, an advocate is prohibited from conducting any discriminatory treatment, whether based on gender, religion, political view, heredity, race, or social and cultural background. Therefore, an advocate who is also the leader of an advocate organization at the same time when he/she is being appointed as a member of a campaign team for the presidential and vice presidential candidate, such situation can actually be said to be part of the willingness of the said advocate to provide legal assistance to anyone who needs it regardless of religion, race or ethnicity, heredity, and political view. It is difficult to separate his/her duties and responsibilities in carrying out his/her profession and his/her position as a member of the campaign team for the presidential and vice presidential candidate.

Pursuant to the aforementioned legal considerations, the norms of Article 28 paragraph (3) of Law 18/2003 as interpreted in the Decision of the Constitutional Court Number 91/PUU-XX/2022 which limits the leaders of advocate organizations to holding a term of office for 5 (five) years and may only be re-elected 1 (one) time for the same position, either consecutively or non-consecutively, and the holding of such position may not be concurrent with the holding of leadership position in a political party, either at the central or regional level, these norms cannot possibly be expanded by adding the phrase "and occupying the leadership position in a campaign team for the presidential and vice presidential candidates", as petitioned by the Petitioner. Because, if this is accommodated, it could actually create new legal uncertainty, because it is difficult to distinguish between an advocate who is a leader of advocate organization who is also a member of the leadership position of the campaign team for the presidential and vice presidential candidate solely because he/she is exercising his/her political rights or is carrying out an advocacy function in actualizing his/her duties as an advocate. Therefore, pursuant to the description of the legal considerations above, the Petitioner's argument regarding the absence of restriction on leadership position of advocate organization occupying leadership position of campaign team for presidential and vice presidential candidates is legally unjustifiable.

Pursuant to all the aforementioned descriptions of legal considerations, it has been proven that the provisions of the norms of Article 28 paragraph (3) of Law 18/2003 as interpreted in the Decision of the Constitutional Court Number 91/PUU-XX/2022 do not violate equal rights before the law and in the government and have provided fair legal certainty and the right to freedom of association, assembly and expression of opinion as guaranteed and protected by Article 27 paragraph (1), Article 28D paragraph (1), and Article 28E paragraph (3) 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.