



**CONSTITUTIONAL COURT
OF THE REPUBLIC OF INDONESIA**

**SUMMARY OF DECISION
FOR CASE NUMBER 106/PUU-XXII/2024**

Concerning

**Calculation of Internship Period at an Advocate's Office
as a Requirement for Appointment as an Advocate**

Petitioner	: Haerul Kusuma
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)
Subject Matter	: Article 3 paragraph (1) letter g, Article 26 paragraph (1), Article 27 paragraph (1), and Article 29 paragraph (1) of Law 18/2003 are contrary to Article 1 paragraph (3), Article 28D paragraph (1), and Article 28H paragraph (2) of the 1945 Constitution
Verdict	: <ol style="list-style-type: none">1. To declare that the Petitioner's petition regarding Article 26 paragraph (1), Article 27 paragraph (1), and Article 29 paragraph (1) of Law Number 18 of 2003 concerning Advocates (State Gazette of the Republic of Indonesia of 2003 Number 49, Supplement to the State Gazette of the Republic of Indonesia Number 4288) is inadmissible2. To dismiss the Petitioner's petition in terms of other and the rest
Date of Decision	: Thursday, 26 September 2024
Overview of Decision	:

The Petitioner is an individual Indonesian citizen working as a legal consultant, as stated in the identity of the petition, who is currently registering to participate in the Special Education Program for Advocates (PKPA). The Petitioner argues that the provision of Article 3 paragraph (1) letter g of Law 18/2003 is contrary to Article 28D paragraph (1) and Article 28H paragraph (2) of the 1945 Constitution, and Article 26 paragraph (1), Article 27 paragraph (1), and Article 29 paragraph (1) of Law 18/2003 are contrary to Article 1 paragraph (3) of the 1945 Constitution.

Regarding the Court's authority, since the Petitioner's petition is a review of Law *in casu* Law 18/2003 against the 1945 Constitution, which falls within the Court's authority, under Article 24C paragraph (1) of the 1945 Constitution, Article 10 paragraph (1) letter a of the Constitutional

Court Law, and Article 29 paragraph (1) of the Judiciary Power Law, has the authority to hear the *a quo* petition.

Regarding legal standing, concerning the constitutional issue of the calculation of internship period starting from the fourth semester of law undergraduate studies (S-1) being petitioned for review by the Petitioner in the judicial review of Article 3 paragraph (1) letter g of Law 18/2003, the Court is of the opinion that the Petitioner has explained a specific and actual constitutional loss, or at least one with reasonable potential to occur, caused by the enforcement of the *a quo* norms. The Petitioner has also sufficiently explained that the alleged constitutional loss has a causal relationship (*causal verband*) with the enforcement of the *a quo* norms, as the Petitioner's constitutional right to become an advocate is hindered due to the internship period being calculated only after completing law undergraduate education (S-1). If the Petitioner's petition is granted, the actual constitutional loss alleged by the Petitioner will no longer persist or occur. Thus, the Court is of the opinion that the Petitioner has the legal standing as a Petitioner in submitting the judicial review of the norms of Article 3 paragraph (1) letter g of Law 18/2003 in the *a quo* petition.

Meanwhile, regarding the constitutionality issue of the code of ethics for the advocate profession and the singular honor council of advocate organizations, which is petitioned for review by the Petitioner in the judicial review of Article 26 paragraph (1), Article 27 paragraph (1), and Article 29 paragraph (1) of Law 18/2003, according to the Court, because the Petitioner has not yet become an advocate, even though the Petitioner has registered as a participant in the PKPA, the Petitioner is currently not bound by the code of ethics for the advocate profession. Thus, no causal relationship (*causal verband*) exists between the articles being petitioned for review by the Petitioner and the Petitioner's constitutional loss. Accordingly, the Court is of the opinion that the Petitioner does not have legal standing regarding the judicial review of Article 26 paragraph (1), Article 27 paragraph (1), and Article 29 paragraph (1) of Law 18/2003. Subsequently, the Court considers the subject matter of the petition concerning the unconstitutionality of Article 3 paragraph (1) letter g of Law 18/2003.

Whereas regarding the petition for judicial review of Article 3 paragraph (1) letter g of Law 18/2003, such a review has previously been submitted concerning the phrase "continuously", which was declared to be contrary to Article 28D paragraph (1) of the 1945 Constitution in Constitutional Court Decision Number 79/PUU-XVI/2018, pronounced in a plenary session open to the public on 26 November 2018. The basis for the petition, in that case, was that the phrase "continuously" in the *a quo* article was not clearly defined, causing legal uncertainty for advocate candidates. In this regard, advocate candidates who were terminated during their internship period before completing two years could not be considered to have undergone a continuous two-year internship and would have to restart the internship process to meet the requirement for appointment as advocates. Additionally, the judicial review of the norms of Article 3 paragraph (1) letter g of Law 18/2003 has also been petitioned for review concerning the phrase "internship for at least 2 (two) years continuously at an advocate's office", which was declared to be contrary to Article 28D paragraph (1) of the 1945 Constitution in Constitutional Court Decision Number 138/PUU-XXI/2023, pronounced in a plenary session open to the public on 21 December 2023. The argument of the petition is that the requirement to complete a continuous two-year internship at an advocate's office for becoming an advocate resulted in legal uncertainty when applied to candidates with prior experience in law enforcement agencies.

In the *a quo* petition, the Petitioner submits a judicial review of Article 3 paragraph (1) letter g of Law 18/2003 concerning the phrase "internship for at least 2 (two) years continuously at an Advocate's office", arguing that it is contrary to Article 28D paragraph (1) and Article 28H paragraph (2) of the 1945 Constitution on the basis that unclarity and legal uncertainty arises in

the Petitioner's process to become an advocate. In this regard, no clear explanation is available as to whether the internship period should be calculated from the time of law undergraduate studies (S-1) or after graduating as a law graduate. According to the Petitioner, the internship requirement of at least two continuous years at an advocate's office should not necessarily be fulfilled after completing law higher education. If the purpose of the two-year internship is to provide practical experience that supports skills, competencies, and ethics in the profession as an advocate, such experience could be obtained during S-1 law studies. Moreover, as the purpose of the internship, gaining practical experience supporting skills, competencies, and ethics in the profession as an advocate, should not be limited to formal internships but should also consider other relevant legal experiences, such as employment at a law office, participation in various legal training programs, mock trials or moot court competitions, or roles as paralegals during university studies. Accordingly, in the Court's opinion, in addition to citing Article 28D paragraph (1) of the 1945 Constitution as the basis for the judicial review, the Petitioner also applies a different basis for the judicial review, namely Article 28H paragraph (2) of the 1945 Constitution, and presents a different argument compared to the previous petition, namely the non-recognition of internship periods during undergraduate legal education (S-1). Therefore, according to the Court, regardless of whether the *a quo* petition is in essence legally justifiable, the petition formally may be submitted again under the provisions of Article 60 of the Constitutional Court Law and Article 78 of Constitutional Court Regulation Number 2/2021.

Whereas regarding the constitutional review of Article 3 paragraph (1) letter g of Law 18/2003 as argued by the Petitioner, after thoroughly examining the petition and the written evidence provided by the Petitioner, the Court considers the Petitioner's petition as follows:

1. Whereas regarding the role of advocates, Constitutional Court Decision Number 138/PUU-XXI/2023 states that the advocate profession is an integral part and element of the judicial system, serving as one of the pillars of law enforcement in upholding the rule of law and human rights. Therefore, as a vital element in law enforcement, advocates must be competent and professional, and maintain integrity in performing their professional duties, including providing legal assistance or services and always adhering to the applicable code of ethics for advocates. In this context, according to the Court, anyone aspiring to become an advocate must understand, internalize, and apply these principles as an advocate. This can be achieved, among other ways, by undergoing an internship that is continuous and sustainable, under the guidance, mentorship, and supervision of senior advocates and/or advocate organizations.
2. Whereas advocates with good character, namely those possessing a strong work ethic, adequate knowledge and skills, and adherence to professional ethics as emphasized in Constitutional Court Decision Number 138/PUU-XXI/2023, represent a profession that remains significantly underutilized in Indonesia, referring to the 2021 Access to Justice Index in Indonesia, compiled by the Directorate of Law and Regulation of the Ministry of National Development Planning/National Development Planning Agency of the Republic of Indonesia. The data indicates that the availability of advocates is insufficient to meet the potential legal assistance or legal support needs of the Indonesian population. The index shows a score of 3.33 on a scale of up to 10, reflecting that, ideally, one advocate should annually serve 1,150 individuals seeking justice. However, the empirical data reveals that currently, one advocate is annually serving approximately 34,515 individuals. In other words, the current availability of advocates is inadequate to meet the potential legal needs of the population.
3. Whereas concerning this data, according to the Court, addressing the insufficient number of advocates in Indonesia to handle legal issues or provide legal assistance requires not only an increase in the quantity of advocates but also an enhancement in the quality of advocates.

This includes improving their knowledge, practical experience, professional ethics, and work culture. Such quality improvement can be achieved through internship programs that enrich, deepen, and enhance the competencies of prospective advocates. According to the Court, the advocate profession plays a pivotal role in efforts to fulfill developments in the transformation of justice services and the expansion of access to legal aid services. Therefore, internships for prospective advocates are not merely a formal requirement for becoming an advocate but are also part of redesigning the legal education, legal practice, and professional ethics of the legal profession in law enforcement.

4. Whereas regarding the constitutional issue raised by the Petitioner, namely internships at an advocate's office being calculated from the time of being an undergraduate law student, the Court states that this cannot be separated from the Court's stance in Constitutional Court Decision Number 79/PUU-XVI/2018 and Constitutional Court Decision Number 138/PUU-XXI/2023, which fundamentally emphasize the importance of internships for prospective advocates.
5. Whereas according to the excerpts of legal considerations in the aforementioned decisions, the Court has emphasized that internships for prospective advocates: (1) provide an opportunity to apply legal theories in the form of application or implementation of legal theories to factual cases in all fields of both formal and material law across all judicial bodies; (2) offer practical experience to support skills, competencies, and ethics in practicing the profession; (3) teach individuals to position themselves as a free, independent, and responsible profession in upholding the law, behaving well, honestly, and with high integrity while always adhering to the code of ethics for advocates; (4) aim to instill a sense of culture, honor, and capacity as legal professionals and to understand the mission of the legal profession by equipping prospective advocates with practical knowledge and skills so that they can perform their functions in providing legal services after being officially sworn in as advocates; and (5) help understand advocacy management in law offices and the operational management of advocate's offices, which must be conducted continuously.
6. Whereas regarding the Petitioner's argument, the Court is of the opinion that the process of learning legal theory in university studies and the application of this knowledge through internships at advocate's offices should be distinguished, even though they cannot be entirely separated. While students in university learn to understand various legal theories and concepts, during internships they focus more on applying or implementing these theories, knowledge, and legal insights to factual cases, enabling prospective advocates to gain practical experience in building competence, skills, and ethics in practicing advocate profession. Although the Court acknowledges developments in some universities introducing internship programs, including at advocate's offices, such internships conducted as students are relatively short and part of the educational process to graduate as law school graduates. In fact, internships at an advocate's office required by Law 18/2003 serve as a special requirement to become an advocate and are part of a practical process aimed at providing professional experience as an advocate. Therefore, in the Court's opinion, in order to ensure the completion of higher education, it is appropriate for the internship process for becoming an advocate to take place after graduation as a law school graduate and not be mixed with any internships undertaken during the study period. Furthermore, the Court has affirmed this matter in Constitutional Court Decision Number 79/PUU-XVI/2018 and reinforced it in Constitutional Court Decision Number 138/PUU-XXI/2023.
7. Therefore, the two-year internship process for prospective advocates must be understood as a series of processes that must be undertaken to become an advocate after graduating with a law degree. Furthermore, regarding the Petitioner's argument that in practice there are

differences in how internship periods are calculated across different advocate organizations, the Petitioner does not provide evidence specifying in which organizations these differences have occurred. Even if the Petitioner's *a quo* argument was valid, such internship practices fall within the scope of supervision by respective advocate organizations to ensure compliance with the internship requirements in advocate's offices, which, according to the explanation of Article 3 paragraph (1) letter g of Law 18/2003, is calculated at least two years of continuous internship at an advocate's office before a prospective advocate is appointed as an advocate. In summary, the Petitioner's argument pertains to the implementation of norms rather than the constitutionality of norms.

Whereas according to all the legal considerations above, the Court concludes that Article 3 paragraph (1) letter g of Law 18/2003, as argued by the Petitioner, is not contrary to Article 28D paragraph (1) and Article 28H paragraph (2) of the 1945 Constitution of the Republic of Indonesia. Thus, the Petitioner's petition is legally unjustifiable entirely.

Thus, the Court subsequently passed down a decision in which the verdicts were as follows:

1. To declare that the Petitioner's petition regarding Article 26 paragraph (1), Article 27 paragraph (1), and Article 29 paragraph (1) of Law Number 18 of 2003 concerning Advocates (State Gazette of the Republic of Indonesia of 2003 Number 49, Supplement to the State Gazette of the Republic of Indonesia Number 4288) is inadmissible;
2. To dismiss the Petitioner's petition in terms of other and the rest.