



CONSTITUTIONAL COURT
OF THE REPUBLIC OF INDONESIA

SUMMARY OF DECISION
FOR CASE NUMBER 148/PUU-XXII/2024

Concerning

Internship Place for Prospective Advocates

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| Petitioner | : Masail Ishmad Mawaqif |
| 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 of Law 18/2003 is contrary to Article 28C paragraph (1), Article 28H paragraph (2), and Article 31 paragraph (1) of the 1945 Constitution of the Republic of Indonesia |
| Verdict | : To dismiss Petitioner's petition in its entirety |
| Date of Decision | : Friday, January 3, 2025 |
| Overview of Decision | : |

The Petitioner is an Indonesian citizen who has an educational background in law as evidenced with a Sarjana Hukum (S.H or Bachelor of Laws) degree from the Faculty of Law, Halu Oleo, Kendari. In his field of expertise, the Petitioner provides services that contribute to its continued development. In addition, the Petitioner offers legal assistance to the community in pursuit of an ideal legal state. The Petitioner believes that his rights are violated by the enactment of Article 3 paragraph (1) letter g of Law 18/2003. The provision *a quo* violates the Petitioner's constitutional rights because, according to the Petitioner, the norm in the provision of Article 3 paragraph (1) letter g of Law 18/2003 does not provide clarity regarding the internship period that the Petitioner, as a prospective advocate, may undertake. According to the Petitioner, the norm of Article 3 paragraph (1) letter g of Law 18/2003 is no longer relevant to current conditions, as internships need not be limited to law offices but may also be carried out in various other institutions. With respect to the arguments of his petition, according to the Petitioner, the provision of Article 3 paragraph (1) letter g of Law 18/2003 is contrary to Article 28C paragraph (1), Article 28H paragraph (2) and Article 31 paragraph (1) of the 1945 Constitution of the Republic of Indonesia.

With respect to the Court's authority, since the Petitioner petitions for a review of the constitutionality of statutory norms, *in casu* Law 18/2003 against the 1945 Constitution, the Court has the authority to hear the petition *a quo*.

With respect to the legal standing, regardless of whether or not the Petitioner's arguments regarding the unconstitutionality of the norm of Article 3 paragraph (1) letter g of Law 18/2003 for which the Petitioner is requesting a judicial review, in his qualifications as an individual

Indonesian citizen with a background in law and having carried out work and activities related to procedural law or trials during his studies, namely an internship in the court monitoring section at Indonesia Corruption Eradication Commission (Komisi Pemberantasan Korupsi) for 3 (three) consecutive years, the Petitioner has been able to describes his alleged loss of constitutional rights, which relates to the ease and special treatment necessary to obtain the same opportunities and benefits in order to achieve equality and justice as guaranteed by Article 28H paragraph (2) of the 1945 Constitution of the Republic of Indonesia. The fulfillment of these constitutional rights, according to the Petitioner, is prevented by the requirement that a prospective advocate must complete a continuous two-year internship at a law office, as mandated by the implementation of Article 3 paragraph (1) letter g of Law 18/2003. Moreover, in the Petitioner's place of domicile, there is no officially recognized law office that provides internship opportunities. The Court is of the opinion that this alleged loss of constitutional rights is specific and factual, and has a causal relationship (*causal verband*) to the validity of the norm being challenged, as evidenced by the photocopy of the Petitioner's Residence Identity Card [*vide* Evidence P-3], Court Monitoring certificate [*vide* Evidence P-4] and Special Education Certificate for the Advocate Profession [*vide* Evidence P-5]. Therefore, if the petition *a quo* is granted, the alleged loss of constitutional rights, as experienced by the Petitioner, will no longer occur. Therefore, the Petitioner has the legal standing to act as a Petitioner in the petition *a quo*.

With respect to the constitutionality review of Article 3 paragraph (1) letter g of Law 18/2003 as argued by the Petitioner, the Court is of the opinion that the Petitioner's petition is clear and there is no need or urgency to hear the statements from the parties as referred to in Article 54 of the Constitutional Court Law.

Whereas pursuant to Article 60 of the Constitutional Court Law and Article 78 of the Constitutional Court Regulation Number 2 of 2021 concerning Procedures in Judicial Review Cases (PMK 2/2021), with respect to whether the norm *a quo* may be resubmitted for judicial review, the Court has carefully examined the petition *a quo* and compared it with the petition in Case Number 79/PUU-XVI/2018, which challenges the constitutionality of Article 3 paragraph (1) letter g of Law 18/2003 by invoking Article 28 paragraph (2) of the 1945 Constitution of the Republic of Indonesia as the basis for review, and the reason for the petition, that the use of the term "continuously" in Article 3 paragraph (1) letter g of the Law *a quo* lacks a clear definition and thereby creates legal uncertainty for prospective advocates who, if dismissed during their internship period before completing the required 2 (two) year term, cannot be deemed to have completed a continuous 2 (two) year internship and must therefore repeat the full 2 (two) year internship to be appointed as advocates. Meanwhile, Article 3 paragraph (1) letter g of Law 18/2003 has been reviewed previously, regarding the phrase "internship for at least 2 (two) years continuously at a law office" in Case Number 138/PUU-XXI/2023 by invoking Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia as the basis for review, it argues that the requirement to undertake an internship for 2 (two) years continuously at a law office as a condition for appointment as an advocate creates legal uncertainty when applied to prospective advocates who come from law enforcement backgrounds and already have experience in law enforcement agencies. Before the petition *a quo*, the norm of Article 3 paragraph (1) letter g of Law 18/2003 has also been reviewed in Case Number 106/PUU-XXII/2024 by invoking Article 28D paragraph (1) and Article 28H paragraph (2) of the 1945 Constitution of the Republic of Indonesia as the basis for review. In Case Number 106/PUU-XXII/2024, the reason for the review is the existence of legal ambiguity and uncertainty concerning the requirements for becoming an advocate, particularly due to the absence of a clear explanation on how the internship period at a law firm is calculated, whether it begins when one becomes a law student or only upon being declared a law graduate. Meanwhile, in the petition *a quo*, the Petitioner submitted a petition for judicial review of Article 3 paragraph (1) letter g of Law 18/2003 by invoking Article 28C paragraph (1), Article 28D paragraph (1), Article 28H paragraph (2), and Article 31 of the 1945 Constitution of the Republic of Indonesia as basis for review. In this case, the Petitioner petitions that Article 3 paragraph (1) letter g of Law 18/2003 be declared contrary to the 1945 Constitution of the

Republic of Indonesia if it is not interpreted as “Internships may be carried out at agencies that exercise *pro justitia* powers”. The main argument of the Petitioner is that the norm in Article 3 paragraph (1) letter g of Law 18/2003 has hindered and obstructed him, as a prospective advocate, from developing himself in the advocate profession because, in his place of residence, there is no officially recognized law office where internships can be carried out. Thus, as stated in the reasons for the petition, agencies that exercise *pro justitia* powers, such as district courts, prosecutors’ offices, and police can be used as alternative internship locations for prospective advocates. Furthermore, pursuant to the above description, because of the petition *a quo* of the Petitioner presents basis and reasons for review that differ from those in the previous petitions, the Court is of the opinion that, regardless of whether or not the substance of the petition is legally justifiable, formally, pursuant to the provisions of Article 60 of the Constitutional Court Law and Article 78 of PMK 2/2021, the provisions of the norm of Article 3 paragraph (1) letter g of Law 18/2003 may be resubmitted for review.

Whereas after the Court carefully read the arguments in the Petitioner’s petition along with the evidence submitted, the main issue disputed by the Petitioner is related to the internship of at least 2 (two) years continuously at a law office, which, according to the alternative interpretation presented by the Petitioner, is contrary to the 1945 Constitution of the Republic of Indonesia and has no binding legal force if it is not interpreted as “Internships may be carried out at agencies that exercise *pro justitia* powers”.

Whereas with respect to the first alternative presented in the Petitioner’s *petitums*, in simple terms, the Petitioner seeks to eliminate the norm of Article 3 paragraph (1) letter g of Law 18/2003. With respect to the norm *a quo*, the Court has reviewed its constitutionality several times, as stated in the legal considerations of the Constitutional Court Decision Number 79/PUU-XVI/2028, and the norm of Article 3 paragraph (1) letter g of Law 18/2003 is also contained in the legal considerations of the Constitutional Court Decision Number 138/PUU-XXI/2023 and the legal considerations of the Constitutional Court Decision Number 106/PUU-XXII/2024, from these legal considerations, it can essentially be concluded that the 2 (two) year internship for prospective advocates must be understood as one of the sequential processes that must be completed to become an advocate after obtaining a bachelor’s degree in law. The Court does not yet have a fundamental reason to change its stance from its legal considerations contained in the decisions *a quo* of the Court. Thus, the legal considerations of these decisions also apply *mutatis mutandis* to the legal considerations of the Petitioner’s petition requesting that the Court declare the norm of Article 3 paragraph (1) letter g of Law 18/2003 contrary to the 1945 Constitution of the Republic of Indonesia and has no binding legal force. Therefore, the argument of the Petitioner is legally unjustifiable.

Whereas regarding the second alternative presented in the Petitioner’s *petitums*, in essence the Petitioner petition for the Court to declare that the norm of Article 2 paragraph (1) letter g of Law 18/2003 is contrary to the 1945 Constitution of the Republic of Indonesia and has no binding legal force if it is not interpreted as “Internships may be carried out at agencies that exercise *pro justitia* powers”. With respect to this matter, in several Constitutional Court decisions, it has been stated that the essence of undertaking an internship at a law office is to cultivate the culture, honor, and professional competence required to practice as an advocate. Through such an internship, a prospective advocate gains the knowledge, understanding, and practical experience necessary for managing advocacy work and the day-to-day operations of a law office. In fact, as stated in the Elucidation of Article 3 paragraph (1) letter g of Law 18/2003, one of the purposes of the internship for prospective advocates is to learn, understand, and apply matters related to the advocate’s code of ethics.

Whereas if the internship requirement is replaced with internship at another law-enforcement institution, even one that also exercise *pro justitia* powers, a prospective advocate may face three potential problems that could affect his future practice as an advocate. First, a prospective advocate will not have the opportunity to develop within a professional environment shaped by the culture and values of the advocate’s profession.

Without growing up in an advocate-centered work setting, it is reasonable to assume that a prospective advocate may develop a different perspective on how to maintain the honor and dignity of the advocate profession when later engaging in the broader law-enforcement system. Furthermore, due to the environmental factors of an internship location that is removed from the atmosphere and practices of advocacy, there is a significant possibility that the prospective advocate's professional capacity, as required in the practice of advocacy, which in many respects differs from other law-enforcement institutions, will be affected.

Second, the internship obligation at a law office is intended, among other things, to enable prospective advocates to understand matters related to the advocate's code of ethics [*vide* Constitutional Court Decision Number 138/PUU-XXI/2023]. This means that if the internship is conducted elsewhere, even at an institution exercising *pro justitia* powers, the process of learning, internalizing, and applying the advocate's code of ethics will not occur optimally. Indeed, ideally, a strong understanding of, and adherence to, a professional code of ethics is a fundamental requirement for maintaining the dignity of the profession. If the internship is undertaken outside a law office, the prospective advocate will inevitably grow and develop according to the habits and institutional culture of that other institution, rather than those of the advocate profession. Within the limits of reasonable reasoning, such an obligation is essential because advocates, being an honorable profession (*officium nobile*), play a vital role in achieving and upholding just legal certainty in society, as mandated by Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia.

Third, internship for a prospective advocate at a law office provides a broad and comprehensive experience, including the transfer of knowledge necessary for pursuing a career as an advocate. In this case, through an internship at a law office, a prospective advocate has the opportunity to acquire and practice holistic competencies relating to all aspects of procedural (formal) and substantive (material) law across all judicial environments in Indonesia [*vide* Constitutional Court Decision Number 138/PUU-XXI/2023]. Additionally, such internship offers a prospective advocate practical exposure to proceedings at every level of the judiciary, from first-level courts to the cassation level, and even judicial review proceedings within all courts under the Supreme Court.

Regarding the issue of "certain circumstances" as faced by the Petitioner, namely, the request that internships be permitted at law-enforcement or *pro justitia* institutions, the Court considers this argument unjustifiable, because such institutions only carry out non-comprehensive law-enforcement functions and do not provide the knowledge or internalization of professional ethics required of an advocate.

The Court is aware that in outermost, remote, and underdeveloped areas where, in fact, there are no (or not yet) law offices, the phrase "law office" in Article 3 paragraph (1) letter g of Law 18/2003 as the place for internships for prospective advocates may be fulfilled through an internship at a legal aid institution (*lembaga bantuan hukum* or LBH) or a community organization that has a permanent legal-aid organ/unit which continuously or sustainably carries out advocacy and legal-aid activities for the public, both inside and outside the court, as regulated in Law Number 16 of 2011 concerning Legal Aid. In addition, the legal-aid institution in question must be supported or managed by advocates. This alternative may only be applied where the factual conditions in the outermost, remote, and underdeveloped areas, as argued by the Petitioner, indeed show that there is no (or not yet) a law office. This means that the exception allowing internships for prospective advocates to be carried out outside law offices cannot extend to *pro justitia* institutions, as argued by the Petitioner. In this context, according to the Court, the facts faced by the Petitioner, leading to the petition to allow internships at *pro justitia* institutions, cannot be used to justify declaring the norm of Article 3 paragraph (1) letter g of Law 18/2003 unconstitutional, as previously considered in the legal reasoning above. This is because, even if the factual circumstances alleged by the Petitioner are true, they cannot be assessed within the framework of Article 28H paragraph (2) of the 1945 Constitution of the Republic of Indonesia. In this regard, Article 28H paragraph (2) of the

1945 Constitution of the Republic of Indonesia is intended to provide protection for citizens who have limitations (disabilities), such that special measures (affirmative actions) are required to ensure equal opportunities and benefits in order to achieve equality and justice. Thus, the Petitioner's argument stating that the norm of Article 3 paragraph (1) letter g of Law 18/2003 is contrary to the 1945 Constitution of the Republic of Indonesia and has no binding legal force if it is not interpreted as "Internships may be carried out at agencies that exercise *pro justitia* powers" is legally unjustifiable.

Whereas pursuant to all descriptions of the legal considerations above, the Court is of the opinion that it has been proven that the provisions of the norm contained in Article 3 paragraph (1) letter g of Law 18/2003 is not contrary to the guarantee of legal certainty for every citizen in the process of becoming an advocate. Thus, the norm of Article 3 paragraph (1) letter g of Law 18/2003 is not contrary to Article 28C paragraph (1), Article 28D paragraph (1), Article 28H paragraph (2) and Article 31 paragraph (1) of the 1945 Constitution of the Republic of Indonesia. Therefore, the Petitioner's arguments are entirely legally unjustifiable.

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