



**CONSTITUTIONAL COURT
OF THE REPUBLIC OF INDONESIA**

**SUMMARY OF DECISION
FOR CASE NUMBER 150/PUU-XXII/2024**

Concerning

Prohibition on Civil Servants Becoming Advocates

- Petitioners** : **Djarot Dimas Achmad Andaru, et al.**
- 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** : Judicial review of Article 3 paragraph (1) letter c and Article 20 paragraph (2) of Law 18/2003 against Article 28C paragraph (1), 28C paragraph (3), 28D paragraph (1), paragraph (3), Article 28E paragraph (1), Article 28I paragraph (4) of the 1945 Constitution
- Verdict** : 1. To grant the Petitioners' petition in part
2. To declare that Article 3 paragraph (1) letter c 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 contrary to the 1945 Constitution of the Republic of Indonesia and has no binding legal force to the extent that it is not interpreted as: "does not apply to Civil Servant (PNS) lecturers who, for community service within the framework of the Tri Dharma of Higher Education, provide legal aid free of charge or without collecting any fees (*prodeo/pro bono*)"
3. To declare that Article 20 paragraph (2) 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 contrary to the 1945 Constitution of the Republic of Indonesia and has no binding legal force to the extent that it is not interpreted as: "does not apply to Civil Servant (PNS) lecturers who, for community service within the framework of the Tri Dharma of Higher Education, provide legal aid free of charge or without collecting any fees (*prodeo/pro bono*)"

4. To order the publication of this decision in the State Gazette of the Republic of Indonesia as appropriate
5. To dismiss the remaining petition of the Petitioners

Date of Decision : Friday, January 3, 2025

Overview of Decision :

The Petitioners are individual Indonesian citizens consisting of Civil Servant Lecturers at a State Higher Education Institution (Petitioner I and Petitioner II) and a law faculty Student (Petitioner III).

Regarding the Court's authority, since the Petitioners' petition is a review of Article 3 paragraph (1) letter c and Article 20 paragraph (2) of Law 18/2003 against Article 28C paragraph (1), 28C paragraph (3), 28D paragraph (1), paragraph (3), Article 28E paragraph (1), Article 28I paragraph (4) of the 1945 Constitution, the Court has the authority to hear the Petitioners' petition.

Regarding legal standing, the Petitioners, in essence, argue that the enactment of the norms being petitioned for review has resulted in Petitioner I and Petitioner II being unable to develop themselves by becoming functional civil servant lecturers, while simultaneously carrying out their profession as advocates, and Petitioner III also feels deprived of the opportunity to obtain legal education from lecturers experienced in the field. In the Court's opinion, the alleged constitutional losses of Petitioner I, Petitioner II, and Petitioner III are specific and factual, and have a causal relationship (*causal verband*) with the enactment of the statutory norms being petitioned for review. Therefore, if the petition is granted, the alleged constitutional losses, or at least the potential for constitutional losses, experienced by Petitioner I, Petitioner II, and Petitioner III will no longer occur. Thus, regardless of whether the unconstitutionality of the norms being petitioned for review is proven or not, the Court is of the opinion that Petitioner I, Petitioner II, and Petitioner III (hereinafter, the Petitioners) have the legal standing to act as Petitioners in the petition *a quo*.

Whereas, because the petition *a quo* is evident, the Court is of the opinion that there is no urgency and relevance in hearing the statements of the parties as referred to in Article 54 of the Constitutional Court Law.

Whereas regarding the subject matter of the Petitioners' petition, which essentially argues that the validity of the articles being reviewed has resulted in restrictions on the opportunities for Civil Servant Lecturers to improve and develop their quality, as guaranteed by the 1945 Constitution, in essence, the Court is of the view as follows:

1. Whereas regarding the space for civil servant lecturers to play a role as advocates for community service as part of the Three Duties (*Tri Dharma*) of Higher Education, since Constitutional Court Decision Number 006/PUU-II/2004, pronounced in a plenary session open to the public on December 13, 2004, it should be easier to achieve or reach the access to obtain legal aid services, not only for those who can get professional advocates, namely those who are financially capable, live in strategic areas and environments, or are easy to obtain legal aid services, but also for people who cannot afford the service. In an effort to assist people, especially the less fortunate, to obtain the right to justice and equal treatment before the law which constitutes a constitutional right of citizens, Law Number 16 of 2011 concerning Legal Aid (Law 16/2011) was established to become the basis for the state to provide legal aid evenly throughout the territory of the Republic of Indonesia, especially for those who are less fortunate. Thus, ultimately, effective, efficient, and accountable justice

can be realized [*vide* the Preamble letter c and Article 3 of Law 16/2011]. In addition, in the Court's opinion, pursuant to the above legal considerations, opportunities become available for various parties, including civil servant lecturers who have expertise and in-depth knowledge in legal theory and law enforcement, the competencies or abilities of which are in line with the basic requirements for court litigation in carrying out advocate profession, to be involved in providing legal aid services, especially in areas where it is challenging to reach advocates or for economically disadvantaged people.

2. Whereas regarding the involvement of lecturers and the correlation with the Tri Dharma of Higher Education, particularly community service, lecturers play an essential role in ensuring that the knowledge and expertise of the academic community meaningfully contribute to the community. This means that concrete community service is not restricted to a single form, but can be tailored to lecturers' fields of expertise. For civil servant lecturers who dedicate themselves to higher legal education, one concrete form of relevant community service is providing legal services or legal aid to the community, particularly the less fortunate, to obtain free legal assistance (*prodeo/pro bono*). Such a role is one of the solutions to open access, addressing the gap in access to justice for people who cannot afford advocate services or legal consultants. In fact, in many cases, legal aid is crucial to protect the rights of citizens, especially the lower classes, who often become victims of injustice due to limited legal knowledge and economic resources. Given this position, in the context of community service, civil servant lecturers have the opportunity to help underprivileged communities obtain their rights before the law. In simple terms, civil servant lecturers with a legal background can use their competence and expertise to provide legal counseling, assistance, and advocacy in various legal cases faced by the community. These services can be provided through legal aid institutions or other names at higher education institutions. In this regard, the Court needs to emphasize the issues raised by the Petitioners *a quo* related to the provisions of the norm of Article 9 of Law 16/2011, which regulates the rights of legal aid providers, namely: a) recruiting advocates, paralegals, lecturers, and law faculty students; b) providing legal aid services; c) organizing legal counseling, legal consultations, and other activity programs related to the provision of legal aid; d) receiving state funds to provide legal aid under this Law; e) issuing opinions or statements in defending cases under their responsibility in court hearings in accordance with the provisions of laws and regulations; f) obtaining information and other data from the government or other agencies, for the purposes of defending cases; and g) receiving guarantees of legal protection, security, and safety while providing legal aid.
3. Whereas one of the rights of legal aid providers, as regulated in Article 9 letter e of Law 16/2011 above, is to issue opinions or statements in defending cases under their responsibility in court hearings in accordance with the provisions of laws and regulations. This provision is important when correlated with Article 9 letter a of Law 16/2011, which grants legal aid providers the right to recruit, among others, lecturers. In this context, lecturers, including those with civil servant status, have great potential to provide legal aid in court. However, the inherent status of civil servant lecturers creates obstacles to the implementation of these rights. Therefore, granting civil servant lecturers limited rights to participate in court proceedings for the purpose of providing legal aid is an important step to ensure the active role of civil servant lecturers in carrying out the Tri Dharma of Higher Education, particularly community service, while also supporting government efforts to expand access to justice for the less fortunate (poor) without collecting any fees (*prodeo/pro bono*).
4. Whereas civil servant lecturers' involvement in providing legal aid to the community, especially those who are less fortunate, as considered above, will provide mutual benefits in developing their knowledge and expertise, and respond to the real needs of developing higher legal education. In this case, relatively speaking, civil servant lecturers will have a

balanced ability between mastery of legal theory and texts (law in books) with practical experience (law in actions). By directly addressing the real legal issues in practice, civil servant lecturers can enrich legal teaching in the classroom. In addition, by gaining practical experience, lecturers' limitations in ability and practical experience can be overcome over time. Moreover, in the current context, higher education institutions are required to recruit/present lecturers with practical experience (practitioners), so that there is a link and match between theory and practice, as this cannot be optimally fulfilled by internal civil servant lecturers who lack practical experience. Furthermore, if civil servant lecturers do not hold advocate status, they will not have access/permission to become legal representatives (legal advisors) to accompany the community, including defending cases under their responsibility in court hearings that they will provide with free legal aid services (*prodeo/pro bono*), whether before law-enforcement institutions in litigation or non-litigation [*vide* Article 9 letter e of Law 16/2011].

5. Pursuant to the description and legal facts above, the spirit to realize the Tri Dharma of Higher Education in the form of community service, in this case in the form of legal aid, will be hampered by the prohibition on becoming advocates for lecturers with civil servant status, as stipulated in Law 18/2003, even though the civil servant lecturers are recruited as legal aid providers who have the right to provide legal aid up to court hearings [*vide* Article 9 letter a of Law 16/2011]. Therefore, to eliminate these obstacles, the prohibition in the norms of Article 3 paragraph (1) letter c and Article 20 paragraph (2) of Law 18/2003 must be interpreted narrowly so that the norms *a quo* eliminate the obstacles faced by civil servant lecturers in gaining practical experience, provided it is carried out as part of community service. This new opportunity does not necessarily apply to all civil servant lecturers.
6. Whereas pursuant to the legal considerations above, in the Court's opinion, to realize services that provide direct and real benefits to the community in legal service provision, especially for the less fortunate who need access to justice, it is time to allow civil servant lecturers [both State Higher Education Institution (PTN) and Private Higher Education Institution (PTS)] to become advocates on a limited basis to the extent that it is part of community service to realize one of the Tri Dharma of Higher Education. In this way, their primary function as lecturers and researchers remains intact because practical experience can enrich their teaching and research materials. Moreover, students will receive more contextually relevant and applicable learning, as civil servant lecturers have direct experience handling concrete legal cases. Therefore, by providing opportunities for lecturers with civil servant status to become advocates, it not only enriches the body of knowledge to realize the Tri Dharma of Higher Education comprehensively, but also strengthens lecturers' role as agents of change who contribute positive, real impacts to society and the legal system in Indonesia.
7. Whereas pursuant to the description of the legal considerations above, the Court also realizes that a civil servant lecturer also has significant responsibilities beyond providing community service. In this case, lecturers are required to prepare teaching materials well, including preparing Semester Learning Plans (RPS) and conducting literature studies, which demand time allocation and full attention, as well as being responsible in the field of research including, among others, preparing research proposals, and writing books and scientific works as an effort to support academic career development and functional position promotions up to the professor level. Thus, if civil servant lecturers are given the space/opportunity to become advocates that must be actively involved in court proceedings, they must ensure that this situation does not disrupt their focus and responsibilities in academic performance as lecturers, such as guiding students, writing books, and conducting research, as well as other activities related to the academic legal field. Therefore, providing

space/opportunities for civil servant lecturers to carry out community service duties as advocates must be accompanied by strict conditions and requirements.

8. Whereas, to ensure that the performance of duties as lecturers with civil servant status and as advocates for community service runs in harmony with the other duties in the Tri Dharma of Higher Education, as the Court considers above, the requirements in question are as follows:
 - a. Have passed the advocate competency exam held by the Advocates Organization;
 - b. Advocate status is granted for community service and can only be granted if civil servant lecturers have served as lecturers for at least 5 (five) years at the relevant higher education institutions;
 - c. Must join and have served for a minimum of 3 (three) years consecutively at legal aid institutions or other names established by the relevant higher education institutions, and are not permitted to open law firms on their own and only provide free legal assistance (*prodeo/pro bono*) for economically disadvantaged people, as proven by certificates from authorized officials;
 - d. The relevant ministry has accredited legal aid institutions of the higher education institutions in question;
 - e. The number of advocates in legal aid institutions or other names in question does not exceed the number of sections/departments of the law faculty at the higher education institutions in question;
 - f. Every legal aid provision as referred to in point 3 must obtain permission and, upon completion, must be reported to the head of the higher education institutions, *in casu* deans of the faculty of law;
 - g. Do not join as, and not being active, members of advocate organizations.
9. Whereas pursuant to the entire description of the legal considerations above, in the Court's opinion, it is proven that Article 3 paragraph (1) letter c and Article 20 paragraph (2) of Law 18/2003 are contrary to the principle of the right to develop oneself, manifested through providing the broadest possible opportunity for every Indonesian Citizen to improve their quality through education and have the right to recognition, assurance, protection, fair legal certainty and equal treatment before the law, as stated in Article 28C paragraph (1) and Article 28D paragraph (1) of the 1945 Constitution, as argued by the Petitioners. However, because the verdict decided by the Court differs from the *Petitum* petitioned by the Petitioners, the Petitioners' argument with respect to the review of the norms of Article 3 paragraph (1) letter c and Article 20 paragraph (2) of Law 18/2003 is legally justifiable in part.

Accordingly, the Court subsequently passes down a decision as follows:

1. To grant the Petitioners' petition in part;
2. To declare that Article 3 paragraph (1) letter c 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 contrary to the 1945 Constitution of the Republic of Indonesia and has no binding legal force to the extent that it is not interpreted as: "does not apply to Civil Servant (PNS) lecturers who, for community service within the framework of the Tri Dharma of Higher Education, provide legal aid free of charge or without collecting any fees (*prodeo/pro bono*)";

3. To declare that Article 20 paragraph (2) 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 contrary to the 1945 Constitution of the Republic of Indonesia and has no binding legal force to the extent that it is not interpreted as: "does not apply to Civil Servant (PNS) lecturers who, for community service within the framework of the Tri Dharma of Higher Education, provide legal aid free of charge or without collecting any fees (*prodeo/pro bono*)";
4. To order the publication of this decision in the State Gazette of the Republic of Indonesia as appropriate.
5. To dismiss the remaining petition of the Petitioners.

Dissenting Opinion

Against the Court's decision *a quo*, there is a dissenting opinion from 2 (two) Constitutional Justices, namely Constitutional Justice Arsul Sani and Constitutional Justice Daniel Yusmic P. Foekh, as follows:

Whereas regarding the constitutional right to recognition, assurance, protection, and fair legal certainty as well as equal treatment before the law, not in the slightest is the Petitioners' right violated. Law 20/2023, its implementing regulations, the code of ethics applicable to civil servants, and Law 18/2003 apply to all civil servants, whether they hold structural or functional positions. Likewise, Law 18/2003 and the KEAI (Indonesian Advocate Code of Ethics) apply to all advocates and prospective advocates, regardless of whether the person concerned is a civil servant. There is no recognition, assurance, protection, legal certainty, or treatment that is not given or is given differently between the Petitioners and other people with civil servant status who wish to become advocates. In fact, the granting of the Petitioners' petition, although only partially, as stated in the verdict of the decision *a quo*, potentially gives rise to issues of recognition and differential treatment for civil servants with other functional positions in the legal field, such as legal researchers and even substitute registrars in judicial institutions, particularly when they are also lecturers, even if not permanent. The issues of recognition and differential treatment become more apparent when what is partially granted is limited to matters in which civil servants with the functional position of lecturer can act as advocates, to the extent that they are in charge of legal aid and consultation institutions at the law faculty. This certainly further raises a question, namely what about civil servants who hold functional positions as lecturers in criminal law, civil law, state administrative law and/or criminal, civil or state administrative procedural law yet are not given the task to be in charge at legal aid and consultation institutions at the law faculty, despite their interest in developing their knowledge of legal practice to teach their students about law in action or law in practice. Therefore, pursuant to these legal considerations, the Court should dismiss the Petitioners' petition entirely.