



**CONSTITUTIONAL COURT
OF THE REPUBLIC OF INDONESIA**

**SUMMARY OF DECISION
FOR CASE NUMBER 183/PUU-XXII/2024**

Concerning

Non-Active Status of Advocate Organization Leader When Appointed as State Official

- Petitioner** : **Andri Darmawan**
- 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 28 paragraph (3) of Law 18/2003 against the 1945 Constitution
- Verdict** :
1. To grant the Petitioner's petition in part
 2. To declare that the norm of Article 28 paragraph (3) 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) as interpreted in the Constitutional Court Decision Number 91/PUU-XX/2022 is contrary to the 1945 Constitution of the Republic of Indonesia and has no binding legal force if it is not interpreted as "The advocate organization leader holds a term of office of 5 (five) years and may only be re-elected 1 (one) time for the same position, either consecutive or non-consecutive, and may not concurrently hold a leadership position in a political party at either the central or regional level and is non-active as an advocate organization leader when appointed/designated as a state official."
 3. To order this decision to be published in the State Gazette of the Republic of Indonesia as appropriate
 4. To dismiss the remainder of the Petitioner's petition
- Date of Decision** : Wednesday, July 30, 2025
- Overview of Decision** :

The Petitioner is an Indonesian citizen working as an advocate and has constitutional rights granted by the 1945 Constitution of the Republic of Indonesia. The Petitioner has the right to equality before the law and in the government, the right to fair legal recognition, protection and certainty, the right to freedom of association and

assembly, and to express opinions and he must submit to the restrictions stipulated by the laws and regulations as stated in Article 27 paragraph (1), Article 28D paragraph (1), Article 28E paragraph (3) and Article 28J paragraph (2) of the 1945 Constitution of the Republic of Indonesia.

With respect to the Court's authority, because Petitioner petitions for a judicial review, *in casu* Article 28 paragraph (3) of Advocates Law against the 1945 Constitution, the Court has the authority to hear the petition *a quo*.

Regarding the Petitioner's legal standing, regardless of whether or not the unconstitutionality of the norm being petitioned for review is proven, the Court is of the opinion that the Petitioner has the legal standing to act as a Petitioner in submitting the petition *a quo*.

According to the Petitioner, the prohibition on holding concurrent positions as advocate organization leaders and state officials is intended to ensure that advocate organizations remain free and independent. According to the Petitioner, the prohibition on holding concurrent positions for advocate organization leaders and state officials is intended to avoid conflicts of interest in order to guarantee equal status and treatment before the law. The prohibition on holding concurrent positions for advocate organization leaders and state officials is intended to guarantee fair legal certainty and freedom of assembly and association.

Whereas by referring to the legal considerations quoted in the two decisions above, the Constitutional Court Decision Number 91/PUU-XX/2022 focuses on the prohibition against serving as the leader of an advocate organization for more than two terms, whether consecutive or non-consecutive, and the prohibition against concurrently holding a leadership position in a political party at either the central or regional level. Meanwhile, Constitutional Court Decision Number 80/PUU-XVII/2019 essentially establishes that the status of deputy ministers is equal to that of ministers. With this status, all prohibitions on holding concurrent positions that apply to ministers as stipulated in the norms of Article 23 of Law 39/2008 also apply to deputy ministers. If the legal considerations in the two Court decisions above are connected to the prohibitions applicable to advocates under Law 18/2003 and to ministers and/or deputy ministers under Law 39/2008 and Constitutional Court Decision No. 80/PUU-XVII/2019, they align with the prohibition in Article 20 paragraph (3) of Law 18/2003, which provides that "advocates who are state officials shall not perform their professional duties as advocates while holding such office." Thus, if an advocate is appointed/designated by the President as a minister or deputy minister, the said advocate may not carry out his/her duties (must take leave) as an advocate. This means that when an advocate, by virtue of serving as a state official, is not performing his/her professional duties, it is reasonable to conclude that he/she automatically loses the legal standing to serve as the leader of an advocate organization.

Pursuant to the legal considerations as described above, even though the norm of Article 28 paragraph (3) of Law 18/2003 has been interpreted by the Constitutional Court Decision Number 91/PUU-XX/2022 which states that "the advocate organization leader holds a term of office of 5 (five) years and may only be re-elected 1 (one) time for the same position, either consecutive or non-consecutive, and may not concurrently hold a leadership position in a political party at either the central or regional level", when read in light of the principles underlying Constitutional Court Decision No. 80/PUU-XVII/2019 and the normative intent of Article 20 paragraph (3) of Law 18/2003, the Court has a strong and substantive basis to conclude that the leadership of an advocate organization must assume non-active status when appointed/designated as a state official. This is necessary to prevent potential conflicts of interest that may arise when the leaders of advocate organizations serve as state officials, including when appointed/designated as ministers or deputy ministers. Therefore, the Court will re-interpret the norm of Article 28

paragraph (3) of Law 18/2003 in full as stated in the decision *a quo*.

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

1. To grant the Petitioner's petition in part.
2. To declare that the norm of Article 28 paragraph (3) 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) as interpreted in the Constitutional Court Decision Number 91/PUU-XX/2022 is contrary to the 1945 Constitution of the Republic of Indonesia and has no binding legal force if it is not interpreted as "The advocate organization leader holds a term of office of 5 (five) years and may only be re-elected 1 (one) time for the same position, either consecutive or non-consecutive, and may not be held concurrently as a leader of a political party, either at the central or regional level and is non-active as an advocate organization leader when appointed/designated as a state official."
3. To order this decision to be published in the State Gazette of the Republic of Indonesia as appropriate.
4. To dismiss the remainder of the Petitioner's petition.

DISSENTING OPINION

With respect to the *a quo* decision of the Court, Constitutional Justice Yusmic P. Foekh expresses a dissenting opinion, as follows:

Whereas, since the Petitioner has no direct interest in the advocate organization concerned, *in casu* PERADI, and failed to describe any alleged violation of his constitutional rights in a specific, actual, or at least potential manner that, within reasonable reasoning, could be deemed likely to occur, the Petitioner therefore lacks a legitimate basis to petition for a review of the norm *a quo*.

Whereas pursuant to all descriptions of the legal considerations above, I am of the opinion that the Petitioner has no legal standing to submit the petition *a quo*. Therefore, the Court should have declared the Petitioner's petition inadmissible (*niet ontvankelijke verklaard*).