



## JUDGMENT

Number 95/PUU-XIV/2016

FOR JUSTICE BASED ON THE ONE AND ONLY GOD

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF INDONESIA

[1.1] The one adjudicating constitutional case at the first and last level renders a decision in the Judicial Review of Law Number 18 of 2003 concerning Advocates for the 1945 Constitution of the Republic of Indonesia, which was filed by:

1. **Dr. Stefanus Laksanto Utomo, S.H., M.H.**
2. **Lisa Marina, S.H., M.H.**

both are Central Chairpersons of the Association of Indonesian Law Schools Leaders (Asosiasi Pimpinan Perguruan Tinggi Hukum Indonesia), in this case, based on Special Power of Attorney Number 18/SK/APPTHI/VIII/2016 dated August 9, 2016, authorizing **Dr. Arrisman, S.H., M.H., Dr. Zainal Arifin Hoesein, S.H., M.H., Ummu Salamah, S.H., M.H., Arifudin, S.H., M.H., Lenny Nadriana, S.H., M.H., Akhmad Fajrin, S.H., M.H., Nelson Kapoyos, S.H., Anggryan Rahmanu, S.H., Hizbuldin Satria Agustuar, S.H.**, having its office address at the Faculty of Law of Sahid University, Jalan Prof. Dr. Soepomo Number 84

South Jakarta, either jointly or individually acting on behalf of the principal;

Hereinafter referred to as ----- **the Petitioners;**

**[1.2]** Having read the petition of the Petitioners;  
Having heard the statements of the Petitioners;  
Having examined the evidence of the Petitioners;

## **2. FACTS OF THE CASE**

**[2.1]** Considering that the Petitioners have filed an application with an application letter dated September 21, 2016, which was received at the Registrar's Office of the Constitutional Court (hereinafter referred to as the Registrar's Office of the Court) on September 21, 2016 based on the Deed of Receipt of Application File Number 192/PAN.MK/2016 and recorded in the Constitutional Case Registration Book Number 95/PUU-XIV/2016 on October 5, 2016, which was subsequently amended and received by the Registrar on November 1, 2016, in essence outlining the following matters:

### **I. AUTHORITY OF THE CONSTITUTIONAL COURT**

I.1. Whereas, Article 24 sub-article (2) of the 1945 Constitution states that, "*Judicial power shall be exercised by a Supreme Court and the judicial body*

below it in the general court, religious court, military court, state administrative court, and by a Constitutional Court". Furthermore, Article 24C sub-article (1) of the 1945 Constitution states that "The Constitutional Court shall have the authority to adjudicate at the first and last level whose decisions shall be final in order to review the law against the Constitutional Law, to decide upon disputes over the authority of state institutions whose authority is granted by the Constitutional Law, to decide dissolution of political parties, and to decide upon disputes over the results of general elections". Furthermore, with regards to this petition, it is emphasized in Article 10 sub-article (1) letter a of Law Number 24 of 2003 concerning Constitutional Court as amended by Law Number 8 of 2011 concerning Amendment to Law Number 24 of 2003 concerning Constitutional Court stating that: "The Constitutional Court shall have the authority to adjudicate at the first and last level whose decisions shall be final in order to: a. review the law against the 1945 Constitution of the Republic of Indonesia ...". Likewise, based on Article 29 sub-article (1) letter a of Law Number 48 of 2009 concerning Judicial Power (State Gazette of the Republic of Indonesia Number 157 of 2009, Supplement

to State Gazette of the Republic of Indonesia Number 5076), stating that, *"The Constitutional Court shall have the authority to adjudicate at the first and last level whose decisions shall be final in order to: a. review the law against the 1945 Constitution of the Republic of Indonesia ..."*;

I.2. Whereas, the provisions of Article 9 sub-article (1) of Law Number 12 of 2011 concerning the Formation of Laws and Regulations state that, *"In the event that a Law is allegedly conflicted with the 1945 Constitution, the examination shall be carried out by the Constitutional Court"*;

I.3. Whereas Article 2 sub-article (1) and Article 3 sub-article (1) letter f of Law Number 18 of 2003 concerning Advocates, the State Gazette of the Republic of Indonesia of 2003 Number 49, Supplement to the State Gazette of the Republic of Indonesia Number 4288 (hereinafter referred to as Law Number 18 of 2003) contradict with Article 28C sub-article (1), Article 28D sub-article (1), and Article 31 sub-article (3) of the 1945 Constitution;

I.4. Whereas Article 2 sub-article (1) of Law Number 18 of 2003 states, *"Those who can be appointed as Advocates shall be scholars who have a higher education background in law and have taken special education of Advocate profession which is carried*

*out by the Advocate Organizations". On the other hand, Article 3 sub-article (1) letter f of Law Number 18 of 2003 states that "passed the examination held by the Advocate Organizations"*

1.5. Whereas **several provisions of the 1945 Constitution as an experiment** for the provisions of Article 2 sub-article (1), and Article 3 sub-article (1) letter f of Law Number 18 of 2003 areas follows:

1.5.1 Article 28C sub-article (1) of the 1945 Constitution states that "Every person shall have the right to develop themselves through the fulfillment of his basic needs, shall have the right to receive education and obtain benefits from science and technology, arts and culture, in order to improve his quality of life and for the sake of human welfare".

1.5.2 Article 28D sub-article (1) of the 1945 Constitution states that "Every person shall have the right to receive recognition, guarantees, protection, and certainty of law that is fair and shall receive equal treatment before the law".

1.5.3 Article 31 sub-article (3) of the 1945 Constitution states that "the Government shall attempt and implement a national education system, which enhances faith and piety and

noble character in order to enrich the life of the nation, which is regulated by law"

I.6. Whereas Article 9 sub-article (1) of Law Number 12 of 2011 concerning the Formation of Laws and Regulations regulates that hierarchically, the position of the 1945 Constitution is higher than the Law. Therefore, each of the provisions of the Law must not conflict with the 1945 Constitution, so that if there are provisions in the Law that are contrary to the 1945 Constitution, then the provisions can be petitioned to be reviewed through the mechanism of judicial review of the Law to the Court;

I.7. Whereas the object of the petition for judicial review of this law is the provisions of Article 2 sub-article (1), and Article 3 sub-article (1) letter f of Law Number 18 of 2003 against Article 28C sub-article (1), Article 28D sub-article (1), and Article 31 sub-article (3) of the 1945 Constitution;

I.8. Whereas therefore, the Constitutional Court shall have the authority to examine, adjudicate and decide upon this petition.

## **II. LEGAL STANDING AND CONSTITUTIONAL INTEREST OF APPLICANTS**

II.1. Whereas Article 51 sub-article (1) of Law Number 24 of 2003 concerning Constitutional Court as amended by Law Number 8 of 2011 concerning Amendment to Law Number 24 of 2003 concerning Constitutional Court states that a Petitioner in the judicial review of the Law shall be "a party who considers his constitutional rights and/or authorities are harmed by the enactment of the Law, namely:

- a. individual Indonesian citizens;
- b. community unit of customary law to the extent that it is still alive and in accordance with community development and the principles of the unitary state of the Republic of Indonesia as stipulated in the Law;
- c. public or private legal entity; or**
- d. state institutions."

II.2. Whereas subsequently, in the Explanation of Article 51 sub-article (1) of the *a quo* Law, it is stated what is meant by "*constitutional rights shall mean the rights regulated in the 1945 Constitution*";

II.3. Whereas the Constitutional Court as stipulated in Decision Number 006/PUU-III/2005 in conjunction with Decision Number 11/PUU-V/2007 and subsequent decisions has provided understanding and limitations on what is meant by "constitutional

impairment" with the enactment of a norm of the Law, namely:

- a. the existence of a petitioner's constitutional rights granted by the 1945 Constitution of the Republic of Indonesia;
- b. whereas the constitutional rights shall be deemed by the Petitioner to have been harmed by a Law that is being reviewed;
- c. the said Petitioner's constitutional impairment shall be specific (special) and actual in nature, or at least potential in nature which according to logical reasoning, can be assured to occur;
- d. the existence of cause and effect relations (*causaalverband*) between the impairment and the enactment of the Law that is being petitioned for review; and
- e. the possibility that with the granting of the petition, the postulated constitutional impairment will not or no longer occur;

II.4. Whereas based on the aforementioned provisions, there shall be two conditions that must be fulfilled in order to be able to act as a party in filing an application for judicial review, namely, first, they have the qualifications as Petitioners or legal standing in the judicial review case.



Second, there is a constitutional impairment of the Petitioner caused by the enactment of a Law;

II.5 Whereas the Petitioner is a legal entity or association as referred to in Article 51 sub-article (1) letter c of Law Number 24 of 2003 concerning Constitutional Court as amended by Law Number 8 of 2011 concerning Amendment to Law Number 24 of 2003 concerning Constitutional Court in conjunction with Article 3 of the Constitutional Court Regulation Number 06/PMK/2005 concerning Procedure Guidelines in Case Review of Laws, namely **the Central Chairpersons of the Association of Indonesian Law Schools Leaders** which was established based on Deed No. 312 dated May 18, 2015 drawn up by Notary Sulistyو Pribadi S.H., M.Kn., and was approved by the Ministry of Law and Human Rights of the Republic of Indonesia Number 000958.AH.01.07. Year 2015 on May 21, 2015, domiciled at the Faculty of Law of Sahid University, Jalan Prof. Dr. Soepomo Number 84, South Jakarta 12870, Phone: 021 - 8312813 ext. 202, In this case represented by Dr. Stefanus Laksanto Utomo, S.H., M.H., as the Chairperson of the Association of Indonesian Law Schools Leaders, and Lisa Marina, S.H., M.H., as the Secretary of the Association of Indonesian Law Schools Leaders, domiciled at the Faculty of Law of

Sahid University, Jalan Prof. Dr. Soepomo Number 84, South Jakarta 12870, Phone: 021 - 8312813 ext. 202 and therefore lawfully acting for and on behalf of the Central Chairpersons of the Association of Indonesian Law Schools Leaders;

II.6. Whereas the Petitioners as an association or community organization engaged in the field of higher education in law have a great responsibility in participating in realizing the goals of the Republic of Indonesia as stated in the fourth paragraph of the Preamble of the 1945 Constitution, including enriching the life of the nation. Such nation's goals have been normatively elaborated in the provisions or the body of the 1945 Constitution which is binding and becomes the basic law of the country, so that the entire basic legal norms are the basis for managing community, national and state life. The 1945 Constitution as a basic law was built in a national consensus that is binding on all citizens and must be enforced accordingly so that constitutionalism in the life of the State can be realized, as stated by William G. Andrew that the constitutionality of the State rests on 3 (three) consensus elements, namely: 1) the general goals of society or general acceptance of the same philosophy of government; 2) the form of its

institutions and procedures; and 3) the desirability of the rule of law as the basis of government, (William G. Andrew, *Constitutions and Constitutionalism*. Third edition, New Jersey, D. Van Nostrand Company, INC, 1968, p. 12-13). Therefore, it is not justified at any point that the legal norms under it harm the intrinsic meaning of these basic norms which have become a national consensus, except by the institutions that create it as regulated by the constitution itself. This matter has been theoretically explained by Hans Kelsen who states that the basis of the validity of a norm is always from the norm, and not from the facts. The search for the basis of the validity of a norm is not from reality but from other norms that become the source of the birth of such norm. Therefore, the validity of a norm cannot be obtained from another higher norm or "basic norm". Basic norms function as a reference for each norm formation, so that the basic norms are also the primary source and are binding between different norms, and form a normative order. With this view, if a norm falls within a certain norm, the validity of such norm can be tested by the basic norm (Hans Kelsen, *Pure Theory of Law*,

Berkeley, Los Angeles, London: University of California Press, 1978, p. 5);

II.7. Whereas the Petitioners as an association of higher education in law shall have a direct interest in the implementation of legal science education which gives birth to Bachelors of Law, Masters of Law, and Doctorates of Legal Science with the qualifications and standards set by laws and regulations in the field of higher education. The Association of Indonesian Law Schools Leaders consists of 198 (one hundred ninety eight) law faculties/law study programs, whether Bachelor's Degree, Master's Degree, and Doctorate, in all territory of Indonesia, which have the purposes and objectives as referred to in Article 5 of the Articles of Association of the Household Budget (AD - ART) of the Association of Indonesian Law Schools Leaders, namely: 1) Developing, and increasing the ability of members to prepare students to become human beings who have faith and devote to God Almighty, virtuous, and have national insight and global competitiveness; 2) Developing, and increasing the ability of members to be able to play a role as the foremost development agents in researching, developing, and applying legal knowledge and national culture in order to improve

the community standard of living; 3) Maintaining and upholding the accountability of members in the community; and 4) developing the unity and entity of the members in an effort to contribute their devotion to the community, homeland and the nation. In line with that, the purpose of this association organization is also in the framework of strengthening and implementing the objectives of higher education as elaborated in Article 5 of Law Number 12 of 2012 concerning Higher Education, stating that *"Higher Education shall aim to: a. develop the potential of students to become human beings who have faith and piety to God Almighty and are noble, healthy, knowledgeable, capable, creative, independent, skilled, competent, and cultured for the benefit of the nation; b. produce graduates who master the branches of Science and/or Technology to fulfill the national interests and improve the national competitiveness; c. produce Science and Technology through Research that takes in to account and applies the value of the Humanities for the benefits of the nation's progress, as well as the progress of civilization and the welfare of humanity; and d. realize Community Services based on reasoning and Research*

*work that are useful in advancing public welfare and intellectual life of the nation".*

The elaboration of the objectives of higher education among others is regulated by Presidential Regulation No. 8 of 2012 concerning Indonesian National Qualification Framework which is the basis for developing national education standards, including higher education, so that all higher education implementation must meet the standards specified and reflected in the curriculum, Human Resources (Lecturer), governance of education implementation, research and community services. In implementing the education, there are 3 (three) important things besides the *tridharma* of the higher education, namely the standard of intellectuality, morality/integrity, and skills. Therefore, the purpose of establishing the Association of Indonesian Law School Leaders is associated with higher education objectives, and standardization of higher education, the Petitioners as the leaders of the Association of Indonesian Law School Leaders have a constitutional interest, namely the implementation of higher education in legal science which is based on quality standards that are reflected in the Indonesian National Qualification Framework (KKNI).

Based on these ideas, the Petitioners' legal interest is the existence of obligation to participate in maintaining and realizing the implementation of quality education in order to enrich the intellectual life of the nation as stated in paragraph 3 of the Preamble of the 1945 Constitution, and Article 28C sub-article (1) of the 1945 Constitution. The petitioners have a legal standing (legal position) to file for review of Article 2 sub-article (1), and Article 3 sub-article (1) letter f of Law Number 18 of 2003 against the 1945 Constitution.

### **III. Reasons for Review Petition**

III.1. Whereas every institution, in any form, has a meaningful position and function in the life structure of the state. The existence of community organization or association engaged in the field of social community such as APPTHI (the Association of Indonesian Law School Leaders), has its own position and function in managing and developing the life of society, nation and state. In addition, social community organizations can also function as a strategic liaison (intermediate structure) in managing government relations with citizens, so that both will have adequate access

to information as well as harmonious and balanced relations. With this perspective, the enactment of the functions of social community organizations will affect the life of a country. This condition will arise when the tradition and culture of free thinking can flourish since the dynamics of free thinking greatly affect the growth of the principle of freedom of association which is a pillar for the growth and development of the realm of democracy itself. Thus, establishing or otherwise dissolving social community organizations is the right of every person. Therefore, there shall be no party who has the right to force establishing and dissolving social community organizations but themselves, to the extent that it does not contradict with the principles of the state contained in the constitution and other laws and regulations. This principle provides an affirmation that the authorities cannot arbitrarily dismiss a social community organization just because they have different thoughts or opinions on a country's problem. On the contrary, social community organizations also do not necessarily have legal immunity and arbitrarily carry out their activities by denying various provisions,



especially those which are subject to the contents of the 1945 Constitution;

III.2. Whereas the embodiment of the principle of people's sovereignty in government life is reflected by the intensive involvement of the people in deciding the direction of government policy. The measure of people's sovereignty can be seen in how far the magnitude of the role played by the people and the alignment of people's interests with strategic public policies. With this perspective, social community organizations play their role which is by bridging the interests of the people with the public policy of the government (intermediate structure). Therefore, social community organizations put themselves in a position between, as a bridge that connects the ideal interests of the country (state) with the community/citizens (society). Social community organizations must be able to be the driving force of change in society towards a superior and moral society. Change for Social Community Organization is *sunatullah* and must be welcomed with creative social community organizations, so that Social Community Organizations never stop thinking, moving, and working. Such community involvement needs to be organized and made dynamics so that

they are able to actualize their various needs and interests in an actual and manageable idea and action plan. Such community involvement will also influence the value of collective responsibility for every movement of change. A positive attitude (positive thinking) towards change is part of the progress itself. Therefore, as building used as a means to direct the desired changes, then changing people's attitudes to act positively towards each change is an important part of development itself;

III.3. Whereas the amendment to the 1945 Constitution which is quite basic and changing the paradigm of state administration is in Article 1 sub-article (2) of the 1945 Constitution. In Article 1 sub-article (2) of the 1945 Constitution, it is stated that *"Sovereignty is in the hands of the people and implemented according to the Constitutional Law"*. This assertion shows that democracy as a paradigm, does not stand alone, but the democratic paradigm that is built must be maintained and even must be based on legal values, so that the product of democracy can be normatively controlled by the legal paradigm. This means that the built democratic paradigm is directly proportional to the legal paradigm and this is the paradigm of a democratic state based on law or democratic legal

state. This paradigm is implied on state institutions, model of state power, principles of separation of powers and checks and balances, as well as normative control which is implemented by the Justice Institutions. (Paul Christopher Manuel, et al., 1999: 16 - 17). Therefore, this paradigm changes the paradigm of **parliament supremacy into the principles of legal supremacy** (the state, government and society are regulated and governed by law). The principle of legal supremacy means that all public policies of public institutions and the election of public officials must be based on laws and regulations. As this principle is used, the rule of law in the life of the nation and state becomes an element of the foundation of life order, so that the government is run according to and by law and not by humans (a government of law and not of man). Since the relationship of law with social dynamics moves in a centrifugal manner, the law must by itself develop and compensate its movement centripetally towards the formation of substantive values which is in line with the social dynamics, and the law is not just an empty box without meaning and benefits. At this level, the law must have the spirit of values of human community which embraces

justice, guarantees certainty and has a value of expediency;

III.4. Whereas Article 28C sub-article (1) of the 1945 Constitution emphasizes that, *"Every person shall have the right to develop themselves through the fulfillment of his basic needs, shall have the right to receive education and obtain benefits from science and technology, arts and culture, in order to improve his quality of life and for the sake of human welfare"*. According to the Petitioners, the provision of Article 28C sub-article (1) of the 1945 Constitution implies that everyone shall have the right to develop their potential, skills and expertise. Therefore, the state provides facilities or at least provides freedom for each citizen to fulfill his basic needs solely in order to develop his potential, skills and expertise through gradual education in accordance with the standards specified in the legislation. This means that every citizen has the right to receive quality education in accordance with specified standards in order to increase the potential, skills and expertise of the knowledge gained. These rights are basic rights inherent in every person (human rights) and at the same time are a fundamental part of citizens' rights

(citizen's constitutional rights) which must get the attention, protection and fulfillment of the state;

III.5. Whereas Article 28D sub-article (1) of the 1945 Constitution states that, "*Every person shall have the right to receive recognition, guarantees, protection, and certainty of law that is fair and shall receive equal treatment before the law*". This provision, according to the Petitioners, shows that everyone shall have the right of recognition of each status inherent to him, including recognition of the profession and career inherent to him. Such recognition also needs guarantees, protection and legal certainty, as well as equal treatment before the law. The same treatment before the law also means that each citizen must receive the same treatment without distinction between fellow citizens, including in the provisions of the statutory norms which must contain impartial values between fellow citizens. The meaning of the phrase '*every person shall have the right to ... and **legal certainty that is fair and shall receive equal treatment before the law***' in the perspective of the nature of the legal objectives implies that every legal norm must be able to provide first, justice that is

characterized by the principle of balance, proper, and fairness (proportion); second, certainty, and third, benefits to everyone. In understanding the position and function of a legal norm, we cannot let go of the development of the legal norm itself which historically includes the theological, ontological (philosophical), positivist, and functional levels. Each stage of such development has a conceptual and ideological relation, so that the soul or meaning of each formulation of legal norms becomes a unified system of norms or paradigms. Therefore, a legal norm must be built from the meaning of *"a logical analysis of actual juristic thinking"* so that the legal norm has the power to be used as the basis for every person to have intention for every person and institutional power and therefore, legal norms are assumed to be *"an agency of power; an instrument of government"*. This principle is a reflection desired by the provisions of Article 28D sub-article (1) of the 1945 Constitution;

III.6. Whereas Article 31 sub-article (3) of the 1945 Constitution emphasizes that, *"the Government shall attempt and implement a national education system, which enhances faith and piety and noble character in order to enrich the life of the*

*nation, which is regulated by law".* According to the Petitioners, the provision of Article 31 sub-article (3) is a translation of the objective of the establishment of the Unitary State of the Republic of Indonesia as mandated in the Preamble to the 1945 Constitution of the Republic of Indonesia in paragraph 4 which states *"... to protect all Indonesian Citizens and all Indonesian bloodshed and to advance public welfare, **to enrich the life of the nation,** and to participate in carrying out world order based on freedom, eternal peace and social justice ..."*. In order to realize this goal, Article 31 sub-article (3) of the 1945 Constitution of the Republic of Indonesia mandates the Government to attempt and organize a national education system that enhances faith and piety towards God Almighty and has noble character in order to educate the nation which regulated in the Law. In addition, Article 31 sub-article (5) mandates the Government to advance Science and Technology by upholding the values of religion and national unity for the advancement of civilization and human welfare. Therefore, the government has the duty to attempt and organize a national education system which is solely to increase the faith and piety and noble character which aims to

enrich the life of each citizen. The national education system is subsequently regulated by a Law concerning national education system that contains teaching standards, curriculum, institutions that have the obligation to educate, and other contents as the elements to form an education system that is able to realize the quality of each citizen who is capable to face various possibilities and challenges in creating and carrying out each work;

III.7. Whereas therefore, the Petitioners argue that the education paradigm as mandated by Article 31 sub-article (3) of the 1945 Constitution, and the laws and regulations in the field of education must be able to formulate the direction of the national education policy which sets the following values:

**a. The Nature of Education**

Humans are the holders of the mandate of the Caliphate of Allah on earth. Therefore, humans were handed over the universe to be managed according to His *sunnah*. Humans are encouraged to take advantage of nature by processing, exploring and developing natural resources. Humans are responsible for maintaining the safety and preservation of nature where creatures live. Humans need to maintain the



balance of nature in taking advantage of it. Furthermore, humans must also be able to maintain good relations with their fellow humans with attitudes and actions for the sake of brotherhood, peace, understanding and mutual respect for all humanity and the universe. Therefore, nature, humans, strength and behavior manifest as the Grace of Allah SWT. For the sake of life duties as referred to above, humans need knowledge, skills as well as values and attitudes. If education is interpreted as an effort to improve knowledge, skills and values and attitudes of humans to carry out the task of the Caliphate in a good way, then the education held must be oriented to these responsibilities.

**b. Place for Development of superior human resources**

Human resource development is a conscious, planned, and sustainable effort in order to produce human resources that have the characteristics of being the real change leaders who are able to capture the meaning and direction of change, and are able to organize all available potentials in order to encourage and even create changes required in

the process of growth and development of society and its environment. One of approaches that has a strong influence on creating human resources that have quality and integrity is through education. This is because education is a place (a tool) where the quality of human resources is formed, born and developed. In essence, the quality of human resources of a nation is a reflection of the quality of education, as a crisis of a nation and even a crisis of humanity, in essence, is a crisis of the world of education. Therefore, every step of the planned change cannot be separated from the direction desired by the world of education. In a civilized country, educational institutions shall receive a high enough attention and position from stakeholders and the public. They believe that every progress made with civilization is impossible if the driving force is not educated, trained and has integrity. Educational institutions for civilized countries are used as centers of change and progress of civilization. In such connection, the world of education is a battle between progress and destruction of a civilization, so that if the world of

education is unable to maintain and develop a civilization, then the civilization will be lost and destroyed by itself. For that reason, the world of education has a strategic position, role and function in developing human civilization. Reality illustrates that the quality of human resources in Indonesia is still not balanced between self-potential and available natural potential. An imbalance in the potential of human resources with available natural resources results in low productivity of the community which impacts the quality of life or the level of human welfare.

**c. Advancement of Science and Technology**

The need of mankind to develop themselves and their communities is closely related to the development of science and technology. The development of the world community and the association between people and between nations is influenced by new discoveries resulting from the development of the latest science and technology. The rapid development of science and technology, especially in the Western world, has brought change after change, affecting personal life, family, community,

state and nation life, even in regional and international life. The world is now challenged by what is often referred to as the "Civilization Revolution" which introduces humans to three types of civilization, namely agriculture, industry and information. The revolution of science and technology in the 18th century gave birth to industrial civilization. The process of industrialization through the discovery of machines apparently plays a major role in changing views and ways of thinking. Such matter changes the values of life and social order, adjusting to the industrialization process. Meanwhile, certain divisions are still confined by primitive agrarian life. This is the fact that has divided the world into what we call the advanced world and the developing world. In the meantime, the advanced world that has been familiar with science and technology has reached its peak with the discovery of computer technology and other electronic devices. Therefore, the world seems to have turned into a large room without insulation. In other parts of the world, there are still an agrarian civilization and stepping into

industrialization. Indonesia and other developing countries are in that stage. Indonesia is building itself to make a move. Indonesia cannot choose a theoretical framework or development models that have been successfully applied in the post-industrial world. However, Indonesia must examine and choose so that we are not trapped by differences in local conditions and situations. Higher education in the developing world, including in Indonesia, is expected to respond to these symptoms.

**d. Characteristics of Educational Output (Higher Education)**

As a process, the implementation of education must be able to realize:

a. Moral Society

Campus life is characterized as a society where every citizen tries his best to apply noble mind and character in his life's order and might also try his best to distance himself from disgraceful deeds. Whether jointly or individually, the entire academic community must develop their life dependence only on Allah SWT

alone. Thereby, the education process will create high integrity to its students.

b. Intellectual Society

Campus life is characterized as a society where every citizen tries his best to apply the habits and culture of scholarship, intellectual culture that is able to accept, understand and develop science as a historical inheritance and the richness of universal human civilization.

c. Professional Society

Campus life is characterized as a society where every citizen tries his best to train himself according to the work rules required by the chosen profession.

III.8. Whereas in an effort to elaborate the provisions of Article 31 sub-article (3) of the 1945 Constitution, as part of the development of human resources through education, in addition to the issuance of Law Number 20 of 2003 concerning National Education System, also in higher education, Law Number 12 of 2012 concerning Higher Education has been issued. Educational institutions including higher educational institutions have a great responsibility in the

implementation of education within the framework of achieving national education goals as formulated in Article 3 of Law Number 20 of 2003 concerning National Education System which emphasizes that, *"National education shall function to develop capabilities and shape the character and civilization of the nation that has dignity in order to develop an intellectual life of the nation and shall aim to develop the potential of students to become human beings who have faith and piety to God Almighty, and are noble, healthy, knowledgeable, capable, creative, independent, and become citizens that are democratic and responsible"*. On the other hand, the purpose of higher education is emphasized in Article 5 of Law Number 12 of 2012 concerning Higher Education, stating that, *"Higher Education shall aim to: a. develop the potential of students to become human beings who have faith and piety to God Almighty and are noble, healthy, knowledgeable, capable, creative, independent, skilled, competent, and cultured for the benefit of the nation; b. produce graduates who master the branches of Science and/or Technology to fulfill the national interests and improve the national competitiveness; c. produce Science and Technology*

*through Research that takes in to account and applies the value of the Humanities for the benefits of the nation's progress, as well as the progress of civilization and the welfare of humanity; and d. realize Community Services based on reasoning and Research work that are useful in advancing public welfare and intellectual life of the nation";*

III.9. Whereas based on the objectives of the national education and higher education, all of its implementation must be based on national education standards as stipulated in Government Regulation Number 19 of 2005 concerning National Education Standards and Ministerial Regulation of Education and Cultural Affairs Number 49 of 2014 concerning National Standards of Higher Education and implementing agencies of education must also be regulated and controlled by the government, because it is the government that is given the mandate to carry out education as emphasized Article 31 sub-article (3) of the 1945 Constitution. The education implementer can be qualified by the government itself and the community by first obtaining permission from the government, in this case the Ministry of Education and Cultural Affairs for Kindergarten, Elementary



School and Junior and High School and Vocational High School, and the Ministry of Research and Technology of Higher Education for higher education. Therefore, in a higher education environment in any qualifications, including professional education, it must be held by a higher educational institution which has obtained its operating permit from the government;

III.10. Whereas the existence of higher institutions especially in the field of legal science as a center of excellence to produce reliable human resources who have qualifications as human resource universities, and at the same time as a research university becomes urgent and strategic. Therefore, as an academic arena to educate and increase the intellectual capacity of academics and practitioners in the field of law, not only are they skilled and professional in studying and finding solutions to legal and development problems, but also responsive to the development of legal science, or have skills in the field of legal research and development, but also have an academic character based on good ethics and morals. Nationally, the vision of national development 2005-2025 has been established, namely **Indonesia that is Independent, Advanced, Fair and**

**Prosperous.** The vision of national development is formulated into a statement that can be measured to be able to know the level of independence, progress, justice and prosperity to be achieved. In the perspective of Indonesian higher education, the national development formula is translated into the national vision of higher education, which states, "The realization of quality higher education and the ability of science and technology and innovation to support the competitiveness of the nation";

III.11. Whereas in the standardization of education, the Indonesian National Qualification Framework (KKNI) has been established as set forth in Presidential Regulation Number 8 of 2012 concerning Indonesian National Qualification Framework. Article 1 number 1 of Presidential Regulation Number 8 of 2012 emphasizes that: "The Indonesian National Qualification Framework is a framework for competency qualification stages that can match, equalize and integrate education and work training fields as well as work experience in the context of providing recognition of work competence in accordance with the job structures in various sectors". Therefore, the entire learning process must be formulated the competencies and

qualifications of graduates which are reflected in learning outcomes namely, abilities obtained through internalization of knowledge, attitudes, skills, competencies, and accumulation of work experience. The results of the entire learning process are proven in the form of diplomas and competency certificates issued by higher educational institutions that provide higher education in law. This is affirmed in Article 4 of Presidential Regulation Number 8 of 2012, which states:

- (1) Learning outcomes obtained through education or job training shall be declared in the form of certificates.*
- (2) The certificate as referred to in sub-article (1) shall be in the form of a diploma and certificate of competence.*
- (3) The diploma as referred to in sub-article (2) shall be in the form of recognition of the learning outcomes obtained through education.*
- (4) The competency certificate as referred to in sub-article (2) shall be in the form of recognition of learning outcomes obtained through education or job training.*
- (5) Learning outcomes obtained through work experience shall be declared in the form of*

*information issued by the relevant place of work.*

Based on the aforementioned matters, the implementation of advocate education as part of the competencies that must be possessed by graduates of the Bachelor's Degree (S1) of Legal Science cannot stand alone, but such education process must be part of the process of education of the Bachelor's Degree (S1) of Legal Science, so that the implementation is inseparable from the frame of legal science study program that has been accredited by the National Accreditation Board for Higher Education (BAN-PT). The right choice is that the competence as an advocate shall be included in the educational curriculum of the Bachelor's Degree (S1) program of legal science or more specifically included in the bachelor's degree (S1) program of legal science that concentrates in legal practitioners. However, in order to make all students of bachelor's degree (S1) program of legal science have the same competence, it is better that the application of the KKNI-based learning process continues to be carried out by higher educational institutions, but in practicing learning, the higher educational

institution must collaborate with professional advocacy organizations;

III.12. Whereas according to Article 21 sub-article (1), sub-article (2), sub-article (3), and sub-article (4) of Law Number 20 of 2003 concerning National Education System, it is stated that the implementation of education, whether academic, professional, and vocational, shall be carried out by higher educational institution that is declared entitled by the government, so that the awarding of academic, professional and vocational degrees shall only be done by an education program organized by an educational institution. The provisions of Article 21 of the *a quo* Law shall be as follows:

*(1) Higher educational institutions that meet the requirements for establishment and are declared entitled to carry out certain educational programs can provide academic, professional or vocational degrees in accordance with the educational programs that they implement.*

*(2) Individuals, organizations, or education implementers who are not higher educational institutions shall be prohibited from awarding academic, professional or vocational degrees.*

(3) *Academic, professional or vocational degrees shall only be used by graduates from higher educational institutions who are declared entitled to award academic, professional or vocational degrees.*

(4) *The use of academic, professional or vocational degrees of the higher education graduates shall only be justified in the form and abbreviations awarded by the related higher educational institutions.*

Based on the provisions of Article 21 of the *a quo* Law, the implementation of professional advocate education or known as the Advocate Professional Special Education (*Pendidikan Khusus Profesi Advokat, PKPA*) carried out by advocate organizations as of now is not in line with the spirit of the provisions of Article 21 of the *a quo* Law;

III.13. Whereas based on the aforementioned view, the implementation of advocate education is not appropriate if it is only carried out by professional advocacy organizations without involving higher educational institutions, especially related to the curriculum structure of the advocate education. Basically, professional advocate organizations can carry out special

education, whether regarding the professional code of ethics and the deepening of the legal substance that develops in society, as well as specific skills, so that each advocate has intellectual competence, moral competence, and professional competence. Therefore, advocate education as one of the processes to increase competence, whether intellectual, moral, or professional, the implementation process is more appropriate if carried out synergistically between the institutions of higher education in law with advocate professional organizations. Therefore, Article 2 sub-article (1) and Article 3 sub-article (1) letter f of Law Number 18 of 2003 are not in line with Article 28C sub-article (1), Article 28D sub-article (1), and Article 31 sub-article (3) of the 1945 Constitution;

III.14. Whereas relating to Court Decision Number 103/PUU-XI/2013 which principally decides on reviewing the norms of Article 2 sub-article (1) of Law Number 18 of 2003, it is different from the petition filed by the Petitioners. Case Number 103/PUU-XI/2013 is a case that proposes a petition to the Court so that Article 2 sub-article (1) of Law Number 18 of 2003 that is contradictory to the 1945 Constitution to the extent that it does not

interpreted that the implementation of PKPA activities can be collaborated with third parties in the form of formal and/or non-formal educational institutions or by a legal entity and/or individual in collaboration with advocate organizations that meet the requirements in advance. On the other hand, what is petitioned by the Petitioners in this matter is related to Article 2 sub-article (1) of Law Number 18 of 2003, the petition of the petitioners is that Article 2 sub-article (1) of Law Number 18 of 2003 is contradictory with the 1945 Constitution to the extent that it is not interpreted (conditional unconstitutional) "Those who can be appointed as Advocates shall be scholars who have a higher education background in law and have taken special education of Advocate profession which is carried out by the Advocate Organizations". Therefore, it is very different between the petition of the Petitioners and the petition in case Number 103/PUU-XI/2013 which has been decided by the Court;

**III.15. Article 2 sub-article (1), and Article 3 sub-article (1) letter f of Law Number 18 of 2003 reduce or close the opportunities for citizens to obtain standards and guarantees for the quality of**



**education that can be recognized and can be accounted for.**

- a. Whereas in an effort to realize the principles of the state law in social and state life, the role and function of advocates as a free, independent and responsible profession are important, other than the justice institutions and law enforcement institutions such as the police and prosecutors. Through legal services provided, Advocates carry out their professional duties to uphold justice based on the law for the benefit of justice seekers, including efforts to empower people to realize their fundamental rights before the law. Advocates as one of the elements of the justice system are one of the pillars in upholding the rule of law and human rights;
- b. Whereas the strategic position of advocates in an effort of law and justice enforcement, including in providing awareness to their communities to realize their fundamental rights before the law requires education carried out by institutions that are credible and have quality standards that can be accounted for;

- c. Whereas the current conditions of advocate organization are diverse, approximately in the amount of 8 (eight) advocate organizations. The said advocate organizations are Ikatan Advokat Indonesia (IKADIN), Asosiasi Advokat Indonesia (AAI), Ikatan Penasihat Hukum Indonesia (IPHI), Himpunan Advokat dan Pengacara Indonesia (HAPI), Serikat Pengacara Indonesia (SPI), Asosiasi Konsultan Hukum Indonesia (AKHI), Himpunan Konsultan Hukum Pasar Modal (HKHPM) and Asosiasi Pengacara Syariah Indonesia (APSI);
- d. Whereas due to the large number and variety of advocate organizations, each organization has different ways and standards in implementing the advocate education process which is also implemented in the process of testing prospective advocates. This condition is certainly very detrimental to the prospective advocates, as well as the public as advocate service users because it results in quality and competencies that are not standardized, and mutatis mutandis will have an impact on the quality of advocate competencies in law enforcement;

- e. Whereas the competency paradigm is an ability based on the mastery of certain knowledge obtained in an educational process with certain standards and is based on moral values and is equipped with adequate skills, so that the mastery of the knowledge can be applied in accordance with standards and the procedures set for a particular work and has a great benefit to the community (equipped with KKNI);
- f. Whereas another fact that is happening right now is the competition between advocate organizations. The existence of competition among advocate organizations is caused by the struggle for the position of advocate organizations to become advocate organizations whose existence is recognized by the government. This has led to large-scale recruitment carried out by advocate organizations in order to get as many members as possible. With this massive recruitment, advocate organizations often reduce standards in assessing or determining the quality of prospective advocates who will become advocates. Surely, this will reduce the quality of advocates which results in poor quality of law enforcement practices;

g. Whereas advocates in Indonesia currently do not have a single organization, so the implementation of professional education currently is based on the provisions of Article 2 sub-article (1) of Law 18 of 2003. Due to the diversity of professional advocate organizations, each of which has a legal basis as a legal professional advocacy organization, each of these professional advocacy organizations has the right to organize advocate professional education. However, each of the professional advocate organizations has advocate professional education standards in accordance with the criteria determined by each professional organization. The absence of professional advocate education curriculum standards and the existence of a variety of professional advocacy organizations results in the absence of a unit of specified professional standards. In addition, there are also difficulties in evaluating and auditing the learning outcomes of the professional advocate's education, therefore, the results of the professional advocate's education do not have quality standards that can be accounted for;

- h. Whereas **the formation of advocate organizations has the purpose and objective** to improve the quality of the Advocate profession as emphasized in Article 28 sub-article (1) of Law No. 18 of 2003. The purposes and objectives of forming the advocate organization **mutatis mutandis negate** the function of the advocate organizations as an educational institution to make its students become an advocate and graduate them;
- i. Whereas in addition to what is elaborated in letter h above, the materials presented to prospective participants in special education implemented by advocate organizations are materials that have previously been provided in higher educational institutions. Therefore, the implementation has absolutely no benefit apart from repeating the materials that have been learned before;
- j. Whereas in terms of educating, as emphasized in Article 36 sub-article (3) letter f of Law 20 of 2003, it has been particularly delegated to formal education which includes higher educations to realize it through the curriculum, including in terms of creating students to be able to face the demands of the

world of work. Therefore, the students who actually graduate from higher education institutions have actually become eligible Advocates. As for the scope of the legal professions that have specializations, such as curators, etc. ... those who really need special education can obtain it from advocate organizations to the extent that they are within the limits of providing additional knowledge and sharing experiences to Advocates;

- k. Whereas with the various facts as referred to above, Article 2 sub-article (1) and Article 3 sub-article (1) letter f of Law No. 18 of 2003, which forms the basis of advocate organizations to implement education and determine the graduation of prospective advocates, contradict with the expectations of the state which intend to be able to provide education for citizens who have standards and guarantees of quality that can be recognized and can be accounted for as mandated by Article 28C sub-article (1), and Article 28D sub-article (1) of the 1945 Constitution.

**III.16. Article 2 sub-article (1), and Article 3 sub-article (1) letter f of Law Number 18 of 2003**

**reduce the right of citizens to fair recognition, guarantee, protection and legal certainty.**

- a. Whereas the Advocate Organizations as stipulated in Article 1 number 4 of Law Number 18 of 2003 concerning Advocates shall operate as a professional organization, not as an educational organization. Therefore, all forms of implementation carried out in educational activities deviate from what is meant in the formation of the Advocate organization itself;
- b. Whereas in other professional organizations commensurate with professional advocate organizations, namely notary profession, the professional organization does not carry out educational activities, but only operates as a medium for members of the profession and upholds ethics in carrying out the profession. This matter is as contained in the provisions of Article 3 of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Position of Notary, which states:  
*"The requirements to be appointed as Notaries as referred to in Article 2 shall be as follows:*
  - 1) *Indonesian citizen;*
  - 2) *have faith to God Almighty;*

- 3) *at least 27 (twenty seven) years old;*
- 4) *physically and mentally healthy as declared by a health certificate from doctors and psychiatrists;*
- 5) *have obtained a bachelor's degree and graduated from master's degree of notarial law;*
- 6) *have taken an internship or have clearly worked as a Notary employee for a minimum of 24 (twenty four) consecutive months at Notary's Offices on his own initiative or upon recommendation of the Notary Organization after graduating from master's degree of notarial law;*
- 7) *not a civil servant, state official, advocate, or not holding another position which by law is prohibited from being concurrently appointed as a Notary; and*
- 8) *have never been sentenced to imprisonment based on a court decision that has obtained permanent legal force for committing an offense threatened with imprisonment of 5 (five) years or more."*

It is clearly stated in the provisions that in order to become a notary, there is completely no provision stating that they must attend



special education of notary profession in advance and the requirement for a graduation statement from professional organizations. This contradicts with the advocate profession which demands the prospective advocates to attend special education and must be declared passed first by an advocate organization before working in their profession as an advocate;

- c. Whereas as a fellow profession that shares the function of assisting the government in enforcing the law, there must be the same standard and there are no differences in recruiting members. It is because principally all citizens have equal treatment according to the law as mandated by Article 28D sub-article (1) of the 1945 Constitution;
- d. Whereas from these various reasons, the provisions of Article 2 sub-article (1), and Article 3 sub-article (1) letter f of Law Number 18 Year 2003 completely disregard the rights of citizens to fair recognition, guarantee, protection and legal certainty, and it must not be discriminatory in reaching their profession as an advocate. This clearly contradicts with the mandate of Article 28D

sub-article (1), and Article 28I sub-article (2) of the 1945 Constitution.

**III.17. The Implementation of Professional Education Is Part of the Process of Higher Education of Legal Science**

- a. Whereas in the case of education, the 1945 Constitution mandates the Government to attempt and implement a national education system as stipulated in Article 31 sub-article (3). The provisions of Article 31 sub-article (3) of the 1945 Constitution are then followed up with the formation of Law Number 20 of 2003 concerning National Education System;
- b. Whereas in the provisions of Article 20 sub-article (2) of Law Number 20 of 2003 concerning National Education System, it is stated that: "Higher education shall be obliged to implement educations, researches and community services."

In the provisions of the norm, it is very clear that state or private higher educational institutions are demanded as institutions/body that function as a place to carry out education and it is mandatory in nature. Therefore, any form of educational activities

- should rely on higher education, and not on institutions outside of the higher education;
- c. Whereas Higher Education as an educational institution can be organized by the government or by the society as stipulated in Article 1 number 7 and number 8 of Law 12 of 2012, namely: Article 1 number 7 of Law 12 of 2012 "State Higher Education, hereinafter abbreviated as PTN, means a Higher Education established and/or organized by the Government." and Article 1 number 8 of Law 12 of 2012 "Private Higher Education, hereinafter abbreviated to PTS, means a Higher Education established and/or organized by the society.";
- d. Whereas special education for advocate is a legal education to fulfill the provisions of prospective advocates in practicing law enforcement in the community. Special education for Advocates is professional education as an advocate in order to make prospective advocates have the levels, qualities, and competencies that are qualified when they become advocates. Therefore, it is necessary to have an educational institution that has a clear legal basis for its implementation and has material content in

accordance with curriculum standards that can be accounted for. This is as referred to in Article 20 sub-article (3) of Law Number 20 of 2003 concerning National Education System which emphasizes that "Higher Education shall be able to implement academic, professional and/or vocational programs";

- e. Whereas higher educations, in this case higher education of law, including universities that have law faculties, whether private or state higher educations, are institutions that have the right to award professional degrees. This has been stated in Article 21 sub-article (1) of Law Number 20 of 2003 concerning National Education System which emphasizes that "Higher Educations that meet the requirements for establishment and are declared entitled to hold certain educational programs shall be able to award academic, professional or vocational degrees in accordance with the educational program that it organizes.";
- f. Whereas as stipulated in Article 17 sub-article (1) and sub-article (2) of Law Number 20 of 2003 concerning National Education System, Professional education is Higher Education after the bachelor's degree program

which prepares students for work that requires special expertise requirements in collaboration with other Ministries, LPNK, and/or professional organizations responsible for the quality of professional services;

g. Whereas other than higher educational institutions, it is forbidden by law to award validity or academic, professional or vocational degrees. Consequently, it is not valid if someone is awarded a degree other than from higher educations;

h. Whereas as the arguments presented, it is clear that higher education is an institution that is given the right and authority as well as the obligation to organize education, including professional education, in this case the advocate profession. These arguments also state that other than higher educational institutions that organize education, including professional education for advocates, have no basis and are contradicted with Article 31 sub-article (3) of the 1945 Constitution;

i. Whereas furthermore, in the "in view of" section of Law No. 18 of 2003 which constitutes the legal basis for forming the

law, it completely does not consider Article 31 sub-article (3) of the 1945 Constitution which is the basic law in the implementation of education. Therefore, the existence of Law No. 18 of 2003 which develops norms related to education is legally flawed;

- j. Whereas Special Education for Advocate Profession (*Pendidikan Khusus Profesi Advokat*, PKPA) is an education that is included into formal education category. It is because the activities of special education are an inseparable part of the Bachelor's Degree (S1) competency produced by the higher education of legal science. Therefore, the implementation of professional education, in this case advocate professional education is an integral part of the Bachelor's Degree (S1) education with a KKNI-based curriculum. Specifically regarding the implementation of professional education, in this case the advocate profession, it is implemented with a curriculum structure formulated with professional advocacy organizations, as well as associations of study program of legal science. Therefore, the implementation of professional education in this case the

advocate profession should be designed and implemented jointly by higher educational institutions of legal science and professional advocacy organizations.

#### **IV. PETITUM**

Based on the reasons as elaborated above and the attached evidence, the Petitioners request the Honorable Court Judge to examine, adjudicate and decide on the Judicial Review as follows:

1. To accept and grant the entire of petition for Judicial Review filed by the Petitioners;
2. To declare that Article 2 sub-article (1) of Law Number 18 of 2003 concerning Advocates, State Gazette of the Republic of Indonesia Number 49 of 2003, Supplement to the State Gazette of the Republic of Indonesia Number 4288 contradicts with the 1945 Constitution to the extent that it is not interpreted *(conditional unconstitutional) "Those who can be appointed as Advocates shall be scholars who have a higher education background in law and have taken special education of Advocate profession which is carried out by higher educational institutions in collaboration with professional advocacy organizations"*.
3. To declare that Article 2 sub-article (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 does not have a binding legal force to the extent that it is not interpreted *(conditional unconstitutional) "Those who can be appointed as Advocates shall be scholars who have a higher education background in law and have taken special education of Advocate profession which is carried out by higher educational institutions in collaboration with professional advocacy organizations";*

4. To declare that Article 3 sub-article (1) letter f 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 contradicts with the 1945 Constitution to the extent that it is not interpreted *(conditional unconstitutional) "passed the examination organized by higher educational institutions in collaboration with professional advocacy organizations";*
5. To declare that Article 3 sub-article (1) letter f 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 does not have binding legal



force to the extent that it is not interpreted (conditional unconstitutional) "*passed the examination organized by higher educational institutions in collaboration with professional advocacy organizations*".

If the Panel of Judges of the Court argues otherwise, we request for a fair and just decision (*ex aequo et bono*).

**[2.2]** Considering that in order to strengthen their arguments, the Petitioners have submitted evidence of letters/writings which are marked with exhibit P-1 through exhibit P-6, as follows:

1. Exhibit P-1 : A copy of the 1945 Constitution of the Republic of Indonesia;
2. Exhibit P-2 : A copy 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;
3. Exhibit P-3 : A copy of Deed of Incorporation of the Association of Indonesian Law School Leaders Number 312 dated May 18, 2015 drawn up by Notary Sulistyono Pribadi S.H., M.Kn.;
4. Exhibit P-4 : A copy of Ratification of the Establishment of a Legal Entity by the

Ministry of Law and Human Rights Number  
000958.AH.01.07.Year 2015 dated May 21,  
2015;

5. Exhibit P-5 : A copy of Residential Identity Card (KTP)  
of the Chairman of APPTHI Dr. St.  
Laksanto Utomo, S.H., M.H.;
6. Exhibit P-6 : A copy of Residential Identity Card (KTP)  
of the Secretary of APPTHI Liza Marina,  
S.H., M.H.

**[2.3]** Considering that in order to shorten the description  
in this decision, any matter occurring during the trial shall  
refer to the minutes of the trial, which constitutes an  
inseparable part of this decision;

### **3. LEGAL CONSIDERATIONS**

#### **Authority of the Court**

**[3.1]** Considering that based on Article 24C sub-article  
(1) of the 1945 Constitution of the Republic of Indonesia  
(hereinafter referred to as the 1945 Constitution), Article 10  
sub-article (1) letter a of Law Number 24 of 2003 concerning  
Constitutional Court as amended by Law Number 8 of 2011  
concerning Amendment to Law Number 24 of 2003 concerning  
Constitutional Court (State Gazette of the Republic of

Indonesia of 2011 Number 70, Supplement to the State Gazette of the Republic of Indonesia Number 5226, hereinafter referred to as Law of Constitutional Court), and Article 29 sub-article (1) letter a of Law Number 48 of 2009 concerning Judicial Power (State Gazette of the Republic of Indonesia of 2009 Number 157, Supplement to the State Gazette of the Republic of Indonesia Number 5076), one of the authorities of the Court is to adjudicate at the first and last level whose decision shall be final to review the Law towards the 1945 Constitution;

**[3.2]** Considering that since the petition of the Petitioners is a constitutionality review of the norms of the Law in this case 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, hereinafter referred to as the Law of Advocate) against the 1945 Constitution, the Court shall have the authority to adjudicate the *a quo* petition;

#### **Legal standing of the Petitioners**

**[3.3]** Considering that based on Article 51 sub-article (1) of the Law of Constitutional Court, those who can act as Petitioners in a review of a Law against the 1945 Constitution shall be those who consider their constitutional rights and/or

authority impaired by the enactment of the Law petitioned for review, namely :

- a. individual Indonesian citizens, including groups of people who have the same interests;
- b. community unit of customary law to the extent that it is still alive and in accordance with community development and the principles of the unitary state of the Republic of Indonesia as stipulated in the Law;
- c. public or private legal entity; or
- d. state institutions.

Therefore, the Petitioner in the review of Law against the 1945 Constitution shall explain and prove in advance:

- a. his position as Petitioner as referred to in Article 51 sub-article (1) of the Law of Constitutional Court;
- b. impairment of constitutional rights and/or authorities granted by the 1945 Constitution resulting from the enactment of the Law petitioned for review;

**[3.4]** Also considering that the Court as of the Decision Number 006/PUU-III/2005, dated May 31, 2005 and Decision Number 11/PUU-V/2007, dated September 20, 2007 and subsequent decisions argues that the impairment of constitutional rights and/or authority as referred to in Article 51 sub-article (1) of the Law of Constitutional Court must meet five conditions, namely:

- a. the existence of a petitioner's constitutional rights granted by the 1945 Constitution;
- b. the constitutional rights and/or authorities shall be deemed impaired by the Petitioner by the enactment of a Law that is petitioned for review;
- c. the said impairment of constitutional rights and/or authorities of the petitioner shall be specific and actual or at least have the potential which according to logical reasoning, can be assured to occur;
- d. the existence of cause and effect relations (*causal verband*) between the impairment and the enactment of the Law that is being petitioned for review; and
- e. the existence of possibility that with the granting of the petition, the postulated constitutional impairment will not or no longer occur.

**[3.5]** Considering that the Petitioners act as an association of higher education in law that has a direct interest in the implementation of legal science education which gives birth to Bachelors of Law, Masters of Law, and Doctorates of Legal Science with the qualifications and standards set by laws and regulations in the field of higher education whose purposes and objectives as specified in Article 5 of the Articles of Association of the Household Budget (AD - ART) of the Association of Indonesian Law Schools Leaders, namely: 1) Developing, and increasing the ability of

members to prepare students to become human beings who have faith and devote to God Almighty, virtuous, and have national insight and global competitiveness; 2) Developing and increasing the ability of members to be able to play a role as the foremost development agents in researching, developing, and applying legal knowledge and national culture in order to improve the community standard of living; 3) Maintaining and upholding the accountability of members in the community; and 4) developing the unity and entity of the members in an effort to contribute their devotion to the community, homeland and the nation.

The Petitioners as the chairpersons of the Association of Indonesian Law School Leaders have constitutional interests, namely the implementation of higher education in legal science based on quality standards reflected in the Indonesian National Qualification Framework (KKNI). Based on these opinions, the legal interest of the Petitioners is the existence of obligation to participate in maintaining and realizing the implementation of quality education in order to enrich the intellectual life of the nation as stated in the 3<sup>rd</sup> paragraph of the Preamble of the 1945 Constitution, and Article 28C sub-article (1) of the 1945 Constitution.

**[3.6]** Considering that based on the argument of the Petitioners, according to the Court, the Petitioners have

fulfilled the legal standing requirements to submit the *a quo* petition;

**[3.7]** Considering that because the Court has the authority to adjudicate the *a quo* petition and the Petitioners have a legal standing to submit the *a quo* petition, then the Court will consider the principals of the petition;

### **Principals of the Petition**

**[3.8]** Considering that since the petition of the petitioners is clear, based on Article 54 of the Law of Constitutional Court, so according to the Court, it is not necessary to hear the statements of the MPR, DPR, DPD or the President. Therefore, the Court directly considers the principals of the petition in which the Petitioners postulate Article 2 sub-article (1) and Article 3 sub-article (1) letter f of the Law of Advocate which states as follows:

#### **Article 2**

*(1) Those who can be appointed as Advocates shall be scholars who have a higher education background in law and have taken special education of Advocate profession which is carried out by the Advocate Organizations*

#### **Article 3**

*(1) To be appointed as an Advocate, they must meet the following requirements:*

*f. passed the examination held by the Advocate Organizations.*

towards

Article 28C sub-article (1), Article 28D sub-article (1), and Article 31 sub-article (3) of the 1945 Constitution, with reasons which are principally as follows [full description contained in the Facts of the Case]:

1. Whereas in the standardization of education, the Indonesian National Qualification Framework (KKNI) has been established as set forth in Presidential Regulation Number 8 of 2012 concerning Indonesian National Qualification Framework. Article 1 number 1 of Presidential Regulation Number 8 of 2012 emphasizes that: *"The Indonesian National Qualification Framework is a framework for competency qualification stages that can match, equalize and integrate education and work training fields as well as work experience in the context of providing recognition of work competence in accordance with the job structures in various sectors"*. Therefore, the entire learning process must be formulated the competencies and qualifications of graduates which are reflected in learning outcomes namely, abilities obtained through internalization of knowledge, attitudes, skills, competencies, and accumulation of work experience. The



results of the entire learning process are proven in the form of diplomas and competency certificates issued by higher educational institutions that provide higher education in law. This is emphasized in Article 4 of Presidential Regulation Number 8 of 2012.

2. Based on the aforementioned matters, the implementation of advocate education as part of the competencies that must be possessed by graduates of the Bachelor's Degree (S1) of Legal Science cannot stand alone, but such education process must be part of the process of education of the Bachelor's Degree (S1) of Legal Science, so that the implementation is inseparable from the frame of legal science study program that has been accredited by the National Accreditation Board for Higher Education (BAN-PT). The right choice is that the competence as an advocate shall be included in the educational curriculum of the Bachelor's Degree (S1) program of legal science or more specifically included in the bachelor's degree (S1) program of legal science that concentrates in legal practitioners. However, in order to make all students of bachelor's degree (S1) program of legal science have the same competence, it is better that the application of the KKNI-based learning process continues to be carried out by higher educational institutions, but in practicing learning, the higher educational institution must collaborate with professional advocacy organizations;

3. Whereas according to Article 21 sub-article (1), sub-article (2), sub-article (3), and sub-article (4) of Law Number 20 of 2003 concerning National Education System, it is stated that the implementation of education, whether academic, professional, and vocational, shall be carried out by higher educational institution that is declared entitled by the government, so that the awarding of academic, professional and vocational degrees shall only be carried out by an education program organized by an educational institution. Based on the provisions of Article 21 of the *a quo* Law, the implementation of professional advocate education or known as the Special Education for Advocate Profession (*Pendidikan Khusus Profesi Advokat*, PKPA) carried out by advocate organizations currently is not in line with the spirit of the provisions of Article 21 of the *a quo* Law;
4. Whereas based on the aforementioned view, the implementation of advocate education is not appropriate if it is only carried out by professional advocacy organizations without involving higher educational institutions, especially related to the curriculum structure of the advocate education. Basically, professional advocate organizations can carry out special education, whether regarding the professional code of ethics and the deepening of the legal substance that develops in society, as well as specific skills, so that

each advocate has intellectual competence, moral competence, and professional competence. Therefore, advocate education as one of the processes to increase competence, whether intellectual, moral, or professional, the implementation process is more appropriate if carried out synergistically between the institutions of higher education in law with advocate professional organizations. Therefore, Article 2 sub-article (1) and Article 3 sub-article (1) letter f of Law Number 18 of 2003 are not in line with Article 28C sub-article (1), Article 28D sub-article (1), and Article 31 sub-article (3) of the 1945 Constitution;

5. Whereas with regards to Court Decision Number 103/PUU-XI/2013 which principally decides on reviewing the norms of Article 2 sub-article (1) of Law of Advocate, it is different from the petition filed by the Petitioners. Case Number 103/PUU-XI/2013 is a case that proposes a petition to the Court so that Article 2 sub-article (1) of Law of Advocate that is declared contradictory to the 1945 Constitution to the extent that it does not interpreted that the implementation of PKPA activities can be collaborated with third parties in the form of formal and/or non-formal educational institutions or by a legal entity and/or individual in collaboration with advocate organizations that meet the requirements in advance. On the other hand, what is petitioned by the Petitioners in

this matter is related to Article 2 sub-article (1) of Law of Advocate, the petition of the petitioners is that Article 2 sub-article (1) of Law of Advocate is contradictory with the 1945 Constitution to the extent that it is not interpreted (*conditional unconstitutional*) "*Those who can be appointed as Advocates shall be scholars who have a higher education background in law and have taken special education of Advocate profession which is carried out by the Advocate Organizations*". Therefore, it is very different between the petition of the Petitioners and the petition in case Number 103/PUU-XI/2013 which has been decided by the Court;

6. Whereas special education for advocate is a legal education to fulfill the provisions of prospective advocates in practicing law enforcement in the community. Special Education for Advocate Profession is professional education as an advocate in order to make prospective advocates have the levels, qualities, and competencies that are qualified when they become advocates. Therefore, it is necessary to have an educational institution that has a clear legal basis for its implementation and has material content in accordance with curriculum standards that can be accounted for. This is as referred to in Article 20 sub-article (3) of Law Number 20 of 2003 concerning National Education System which emphasizes that

"Higher Education shall be able to implement academic, professional and/or vocational programs";

7. Whereas higher educations, in this case higher education of law, including universities that have law faculties, whether private or state higher educations, are institutions that have the right to award professional degrees. This has been stated in Article 21 sub-article (1) of Law Number 20 of 2003 concerning National Education System which emphasizes that "Higher Educations that meet the requirements for establishment and are declared entitled to hold certain educational programs shall be able to award academic, professional or vocational degrees in accordance with the educational program that it organizes.";
8. Whereas Special Education for Advocate Profession (*Pendidikan Khusus Profesi Advokat, PKPA*) is an education that is included into formal education category. It is because the activities of special education are an inseparable part of the Bachelor's Degree (S1) competency produced by the higher education of legal science. Therefore, the implementation of professional education, in this case advocate professional education is an integral part of the Bachelor's Degree (S1) education with a KKNI-based curriculum. Specifically regarding the implementation of professional education, in this case the advocate profession, it is implemented with a curriculum

structure formulated with professional advocacy organizations, as well as associations of study program of legal science. Therefore, the implementation of professional education in this case the advocate profession should be designed and implemented jointly by higher educational institutions of legal science and professional advocacy organizations.

**[3.9]** Considering that in order to strengthen their arguments, the Petitioners have submitted evidence of letters/writings which are marked with exhibit P-1 through exhibit P-6;

**[3.10]** Considering that before taking further consideration regarding the principal matter of the *a quo* petition, the Court needs to emphasize that with regard to Article 2 sub-article (1) of the Law of Advocate, it has been petitioned for review as stated in the Decision of the Constitutional Court Number 103/PUU-XI/2013 with a verdict stating that it rejected the petition of the petitioners. However, of the three basic reviews in the *a quo* petition, there is one different basis of review, namely Article 31 sub-article (3) of the 1945 Constitution, subsequently, in accordance with Article 60 sub-article (2) of the Law of Constitutional Court, the Court may adjudicate the *a quo* petition. Moreover, in the *a quo* petition, there are other norms that are also petitioned and

its constitutionality has never been reviewed, namely Article 3 sub-article (1) letter f of the Law of Advocate.

**[3.11]** Considering that after closely examining the *a quo* petition, it is discovered that the intention of the Petitioners is that the higher educational institutions of law shall be given the authority to organize PKPA in collaboration with professional advocacy organizations.

**[3.12]** Considering that taking into account that there is a similarity in substance in the *a quo* petition with the substance of petition Number 103/PUU-XI/2013 which has been decided by the Court, then for the argument of the Petitioners, the Court needs to quote the Constitutional Court's Decision Number 103/PUU-XI/2013, dated September 14, 2014, which has provided considerations, including:

*".... whereas, the role of the Advocate Organization's sole forum does not obstruct the right to receive education and the certainty and equal treatment before the law in implementing PKPA. The purpose of the formation of an advocate organization is to provide advocacy, guidance, and advocate professional education to its members so that they are able to master legal discipline, legal material, practice as a quality and professional advocate and provide protection and/or sanctions to their members in the event of a violation of the professional code of ethics;*

*Whereas since advocate organizations aim to improve the quality of the advocate profession, advocate organizations must be able to determine and regulate how to recruit prospective members, starting from the background, knowledge possessed, education to be taken, implementing good examinations, and an internship program so that prospective advocates have the opportunity to be guided, trained, and practiced in order to become professional human beings as the implementation of the knowledge they have mastered. With the requirements that must be met by prospective advocates through advocate organizations, the implementation of educations and examinations as well as the appointment and inauguration of advocates are a manifestation of improving the quality of the advocate profession that runs a noble profession (officium nobile), which in the future, the Advocates can build justice in the middle of society in their role in the process of law enforcement in Indonesia;*

*Whereas the constitutionality examination petitioned by the Petitioners, according to the Court, is the norm governing one of the requirements to become an advocate who must participate in PKPA carried out by Advocate Organizations as the only professional place for the advocate profession in order to improve the quality of the advocate profession. The provision is precisely needed to provide certainty for the qualifications of prospective advocates who must take the education of prospective advocates under the control and*



*supervision of advocate organizations. It does not mean that there is a prohibition for legal entities or organizations other than PERADI to carry out professional advocacy education as has been carried out by the Petitioners. However, the implementation must remain under the control of an advocate organization which is mandated by the Law to appoint, supervise, and dismiss advocates."*

By taking into account legal considerations in the Constitutional Court Decision Number 103/PUU-XI/2013 above, the Court has emphasized its position that those entitled to implement PKPA shall be advocate organizations. However, this consideration does not mean that advocate organizations can implement PKPA by ignoring the standards and norms that are applicable in the world of education by emphasizing the aspects of expertise and professional skills.

Therefore, in the implementation of the said PKPA, there must be a quality standard and target achievement of a certain level of expertise/skills in the PKPA curriculum. It is for this reason that cooperation with higher educational institutions that have study program of law or law schools is important. It is because speaking of education, the terminology inherent in the PKPA term implicitly implies that PKPA must meet the general pedagogical qualifications as outlined in the curriculum. Therefore, advocate organizations in implementing PKPA must collaborate with higher educational institutions that have study program of law or law schools

with a curriculum that emphasizes the qualifications of expertise or professionalism aspects. The requirement is based on the argumentation that the quality of education standardization including professional education will be maintained as required by the Law of Advocate [vide Article 28 sub-article (1) of the Law of Advocate] and in line with the spirit of Article 31 of the 1945 Constitution. In order to achieve the intended objectives, a standard that is commonly used is required in professional education. Therefore, advocacy organizations shall remain to be the implementer of PKPA with the obligation to work closely with higher educational institutions with a minimum accreditation of B in its faculty of law or law schools with a minimum of accreditation of B.

Whereas the rights of advocate organizations to implement PKPA is based on Article 28 sub-article (1) of the Law of Advocate which basically emphasizes that an Advocate Organization is formed with the purpose and objective of improving the quality of the Advocate profession. The affirmation of the purpose and objective has also been emphasized in the Constitutional Court Decision Number 066/PUU-II/2004. This is the difference between the Advocate profession and other professions as argued by the Petitioners who argue that PKPA should be included in the formal education category implemented by higher educational institutions.

Therefore, according to the Court, in order to maintain the role and function of Advocates as a free, independent and responsible profession as mandated by the Law of Advocate, the implementation of PKPA should be carried out by an organization or forum of advocate professions with the necessity of cooperating with higher educational institutions of law science as outlined in the aforementioned considerations.

Based on the description of the aforementioned considerations, the petition of the Petitioners with regard to Article 2 sub-article (1) of the Law of Advocate has a legal basis in part.

**[3.13]** Considering that against the petition of the Petitioners regarding constitutionality of Article 3 sub-article (1) letter f of the Law of Advocate, the Court argues that because the authority to implement PKPA is owned by advocate organizations, as considered in paragraph [3.12], and the examination as referred to in Article 3 Sub-article (1) letter f of the Law of Advocate means an examination relating to the profession, so as professional organization, it is the advocate organization that shall have the right to administer the said examination. Therefore, the argument of the Petitioners, to the extent that it concerns with Article 3 sub-article (1) letter f the Law of Advocate, has no grounds according to law.

[3.14] Considering that in relation to the *a quo* petition, the Court has received a letter from the Indonesian Advocates Association (*Perhimpinan Advokat Indonesia*, PERADI) Number 581/DPN/PERADI/XI/2016, dated November 1, 2016, signed by **Dr. H. Fauzie Yusuf Hasibuan, S.H., M.H. and Thomas E. Tampubolon, S.H., M.H.**, who in essence filed applications to be accepted as Related Parties. Since the *a quo* case examination based on the Consultative Meeting of Judge on November 14, 2016 was decided not to proceed until the trial hearing stage, then the said petition was not considered.

[3.15] Considering that based on all the above legal considerations, the Court argues that the petition of the Petitioners has legal grounds in part.

#### 4. CONCLUSION

Based on an assessment of the facts and the law as elaborated above, the Court concludes that:

[4.1] The Court shall have the authority to adjudicate the *a quo* petition;

[4.2] The Petitioners shall have a legal standing to file the *a quo* petition;

**[4.3]** The petition of the Petitioners shall have reasons according to law in part;

Based on the 1945 Constitution of the Republic of Indonesia, Law Number 24 of 2003 concerning Constitutional Court as amended by Law Number 8 of 2011 concerning Amendment to Law Number 24 of 2003 concerning Constitutional Court (State Gazette of the Republic of Indonesia 2011 Number 70, Supplement to the State Gazette of the Republic of Indonesia Number 5226), and Law Number 48 of 2009 concerning Judicial Power (State Gazette of the Republic of Indonesia Number 157 of 2009, Supplement to the State Gazette of the Republic of Indonesia Number 5076);

## **5. VERDICT**

### **Adjudicating,**

1. To grant the petition of the Petitioner in part;
2. To declare that Article 2 sub-article (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) contradicts with the 1945 Constitution of the Republic of Indonesia and does not have Legal force that is binding to the extent that it is not interpreted **that those entitled to implement Special Education for Advocate Profession shall be an advocate organization with the obligation to**

**work closely with higher educational institutions whose faculty of law shall have accreditation of B or law schools that shall have at least accreditation of B.**

3. To decline the petition of the Petitioners for the other and the remaining.
4. To order the inclusion of this verdict in the State Gazette of the Republic of Indonesia accordingly.

In witness whereof, judged in Judge Consultation Meeting attended by eight Constitutional Judges, namely Anwar Usman, as Chairman also acting as Member, Patrialis Akbar, Wahiduddin Adams, Suhartoyo, Maria Farida Indrati, Manahan M.P Sitompul, Aswanto, and I Dewa Gede Palguna, respectively acting as Members, on **Monday, the fourteenth day of November, two thousand and sixteen**, and by eight Constitutional Judges, namely Arief Hidayat, as Chairman also acting as Member, Anwar Usman, Wahiduddin Adams, Suhartoyo, Maria Farida Indrati, Aswanto, I Dewa Gede Palguna, and Saldi Isra, respectively acting as Members, on **Tuesday, the ninth day of May two thousand and seventeen**, stated in the Plenary Session of the Constitutional Court opened publicly on **Tuesday, the twenty third day of May, two thousand and seventeen**, and finished at **14.15 WIB (Western Indonesia Time)**, by nine Constitutional Judges, namely Arief Hidayat as Chairman also acting as Member, Anwar Usman, Manahan M.P Sitompul, Aswanto, Wahiduddin Adams, Suhartoyo, Maria Farida Indrati, I

Dewa Gede Palguna, and Saldi Isra, respectively acting as Members, accompanied by Hani Adhani as Substitute Court Clerk, in the presence of the Petitioner/its attorney, President or his representative, House of Representative or its representative.

**CHAIRMAN,**

**Signed**

**Arief Hidayat**

**MEMBERS,**

**Signed**

**Anwar Usman**

**Signed**

**Manahan M.P Sitompul**

**Signed**

**Aswanto**

**Signed**

**Suhartoyo**

**Signed**

**Maria Farida Indrati**

**Signed**

**Wahiduddin Adams**

**Signed**

**I Dewa Gede Palguna**

**Signed**

**Saldi Isra**

**SUBSTITUTE COURT CLERK,**

**Signed**

**Hani Adhani**