



THE INDONESIAN ADVOCATES ASSOCIATION AS A CONSTITUTIONAL STATE ORGAN

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ABSTRACT

*This research aims to analyze PERADI's position in the Indonesian constitutional law system and discover PERADI's authority as a constitutional state organ. This research is qualitative research with a normative juridical approach and data analysis techniques using descriptive analysis. This research concluded that PERADI is a state organ, and PERADI is classified as an Auxiliary agent, which has a special position and authority in its function as a state org General Election Commission. Institutions or organs established by the state to implement statutory norms as regulated in the provisions of Article 7 of Law No. 12 of 2011 as amended by Law No. 15 of 2019 concerning Amendments to Laws Number 12 of 2011 concerning the Formation of Legislation is a state institution or state organ. In a modern legal state, the government promotes and organizes general welfare, which Lemaire calls *bestuurszorg*. This has implications for government work becoming more extensive. The Indonesian Advocates Association, better known by the abbreviation PERADI as an advocate organization that was born from Law No. 18 of 2003, is part of the government's role in improving the welfare of society in the field of law enforcement so that it can be said that Peradi is a state organ that carries out state functions*

A. INTRODUCTION

Based on the Constitution of the Republic of Indonesia in 1945 guarantees equality for everyone before the law¹ as stated in Article 28 D states that everyone has the right to recognition, guarantee, protection and certainty of the law and equal treatment by law without discrimination of belief, religion, race and class and position to submit and uphold the law and constitution for the sake of upholding justice and truth.

The right to freedom of organization is a right of every citizen guaranteed in the constitution because it is a form of natural right that is fundamental².

- 1 Monika Suhayati., Pengaturan Sistem Organisasi Advokat Dalam Rancangan Undang-Undang Tentang Perubahan Undang-Undang Nomor 18 Tahun 2003 Tentang Advokat, *sekretariat DPR RI, kajian* 20, No. 4, (December 2015): 317
- 2 Jimly Ashiddiqie., *Kemerdekaan Berserikat Pembubaran Partai Politik dan Mahkamah Konstitusi*, (Jakarta: Konstitusi Press, 2006): 22

According to Artidjo Alkostar, the Advocate profession is also known as a noble profession (*officium nobile*), because it requires the defense of all people regardless of race, color, religion, culture, socio-economic background, rich, poor, political beliefs, gender and ideology. Furthermore, Artidjo Alkostar stated, one of the glory (*officium nobile*) of the Advocate profession is because it is in the nature of providing services to the community (altruism), so that quality is worth upholding humanity and justice³.

The Advocate profession is closely related to the advocate organization that oversees it with the birth of the Advocate Law, making the Advocate profession recognized as a state organ so that it is equivalent to other law enforcers where law enforcement in Indonesia is carried out by various parties, namely, the police, prosecutor's office, the judiciary, correctional institutions and Advocates.

In his work entitled *General Theory of Law And State*, "whoever full is a function determined by legal order is an organ". Anyone who carries out a function determined by a legal order is an organ.⁴

Referring to his definition, state institutions or state organs do not always have an organic form. Apart from organic organs, every position determined by law can be called an organ as long as the functions create norms (norm creating) or carry out norms (norm applying). These functions, be they of a norm-creating or a norm-applying character, are all ultimately aimed at executing a legal sanction.⁵

From this understanding, it can be concluded that institutions or organs are formed by the state to implement the norms of statutory regulations as regulated in the provisions of Article 7 of Law No. 12 of 2011 as amended by Law No. 15 of 2019 concerning Amendments to Law No. 12 of 2011 concerning the Formation of Legislative Regulations is a state institution or state organ.⁶

The legislative organ is a state organ with the authority to make laws. The executive organ is the state organ with the authority to implement the law, and the Judicial organ is the state organ with the authority to judge law violations.⁷ The state institutions (organs) that hold these three branches of power are referred to by Sri Soemantri as permanent state institutions or main state institutions. According to him, the three state institutions in Indonesia are the People's Representative Council and the President, the

3 Jimly Asshiddiqie., *Kata Sambutan Ketua Mahkamah Konstitusi Republik Indonesia, tanggal 23 Oktober 2007, dalam Kitab Advokat Indonesia*, (Cetakan Pertama, PT. Alumni, 2007): 11

4 Jimly Asshiddiqie., *Perkembangan & Konsolidasi Lembaga Negara Pasca Reformasi*, (Sinar Grafika, Jakarta, 2010): 1.

5 Iswandi, Kelik, and Nanik Prasetyoningsih., "Kedudukan State Auxiliary Organ Dalam Sistem Ketatanegaraan Di Indonesia," *Jurnal Penegakan Hukum Dan Keadilan* 1, No. 2, (2020): 138–65

6 Abdillah, Nandang Alamsah Deliarnoor, Neneng Yani Yuningsih, and Fatmawati., "The Position of Auxiliary Organ in Government System of West Java Provincial Government." *Journal of Contemporary Governance and Public Policy* 1, No. 2, (2020): 67–81.

7 Jimly Asshiddiqie., *Pengantar Ilmu Hukum Tata Negara*, (Jakarta: RajaGrafindo Perkasa, 2009): 283.

President himself, and the Supreme Court with four areas of judicial power and the Constitutional Court.⁸ Sri Soemantri calls state institutions that do not hold the three branches of power state institutions that provide services (auxiliary bodies).⁹ In Indonesian constitutional reality, according to Moh Kusnardi and Bintang R Saragih. The concept of separation of powers is not applied purely; what happens is that there is a division of powers. This can be proven by the cooperation between parliament and the government in making laws. It also establishes parliament as a government watchdog. The number of state organs specified in the Constitution is not limited to just 3 (three) institutions but goes beyond that. Currently, many state institutions or organs have emerged that were formed based on orders from the law.¹⁰

Sri Soemantri calls state institutions political institutions. Sri Soemantri does not agree with mentioning the terms highest state institutions and high state institutions because these terms differ from the equivalent terms of political institutions. According to Sri Soemantri, the correct terms are highest and highest state institutions.¹¹ Apart from being referred to as political institutions, state institutions are also called institutions that hold state power. Sri Soemantri stated this because, according to him, these institutions were able to impose their will on other parties and control them. In contrast to Sri Soemantri, Bagir Manan refers to these state institutions as state organs.¹² Bagir Manan classifies state institutions into three groups: constitutional state institutions, administrative state institutions, and state institutions that are helpful (auxiliary agents).¹³

State institutions of a constitutional nature are classified into two, namely state institutions as a condition for the existence of the state and state institutions which are not absolute to the existence of the state. For the first, it is related to the fundamental function of the state. If these state institutions do not exist, then the function of the state will not work. These state institutions are state institutions that carry out executive, legislative, and judicial functions.¹⁴ The state institutions that are not absolute in the

8 Sri Soemantri., "*Lembaga Negara dan state Auxiliary Bodies dalam Sistem Ketatanegaraan Menurut UUD 1945*", op. cit., : 82

9 *Ibid*, :93.

10 Moh. Kusnardi dan Bintang Saragih., *Susunan Pembagian Kekuasaan Menurut Sistem Undang-Undang Dasar 1945*, (Jakarta: Gramedia): 30-31.

11 Sri Soemantri, *Ketetapan MPR (S) Sebagai Salah Satu Sumber Hukum Tata Negara*, (Remaja Karya CV, 1985): 42. Also see, Sri Soemantri's disagreement with the mention in the People's Consultative Assembly Decree No. III/MPR/1978.

12 Bagir Manan dalam Rahayu Prasetianingsih dan Inna Junaenah, *Laporan Penelitian, Implikasi Konsep Tentang Lembaga Negara terhadap Kewenangan Mahkamah Konstitusi untuk Mengadili Sengketa Antar Lembaga Negara yang Dibentuk Berdasarkan Undang-Undang Dasar*, (Bandung: Lembaga Penelitian Universitas Padjadjaran, 2006): 67.

13 Iswandi, Kelik, and Nanik Prasetyoningsih., "Kedudukan State Auxiliary Organ Dalam Sistem Ketatanegaraan Di Indonesia." *Jurnal Penegakan Hukum Dan Keadilan* 1, No. 2, (2020): 138-65

14 Endira, Bamedika Kris, Muhammad Junaidi, Diah Sulistyani Ratna Sediati, and Amri Panahatan Sihotang., "Kedudukan Dan Peran Organisasi Profesi Advokat Advokat Yang Berhadapan Dengan Hukum." *Jurnal USM Law Review* 5, No. 1 (2022): 389-400.

existence of the state are state institutions outside the functions contained in the trias politica theory, for example, the Financial Audit Agency.

Administrative state institutions are state institutions that carry out government administration. The final state institution is helpful to state institutions (auxiliary agents), namely state institutions that support the implementation of absolute institutional functions. This group includes the Judicial Commission, various state commissions, and state organs formed outside the Constitution.¹⁵ The birth of auxiliary agents state institutions or auxiliary body state institutions is closely related to the acceptance of the modern legal state concept, which is the antithesis of the classical legal state concept. In classical legal states, the state is interpreted as a night watchman (*nachtwakersstaat*). The state is not involved in advancing the public interest. This differentiates it from a modern legal state (welfare state).¹⁶

In a modern legal state, the government promotes and organizes general welfare, which Lemaire calls *bestuurszorg*. This has implications for government work becoming more extensive. The three branches of state power contained in the trias politica Montesquieu concept will only be able to carry out all of these roles with assistance from other state institutions.¹⁷ According to Dede Mariana, the birth of state auxiliary agents or auxiliary body state institutions is also inseparable from two things: first, as a symptom of democratic transition. Second, its post-reform presence aims to improve state institutions as a reform agenda. Its presence is a manifestation of public distrust of state institutions.¹⁸ date, in Indonesia, more than 53 auxiliary agents or auxiliary state institutions have been formed based on statutory regulations outside the Constitution.

B. RESEARCH METHODS

This research type is analytical descriptive research with a normative juridical approach, namely establishing certain standards or norms for a phenomenon by examining secondary data. This research uses two data collection techniques, namely document study and interviews.

15 Abdillah, Nandang Alamsah Deliarnoor, Neneng Yani Yuningsih, and Fatmawati., "The Position of Auxiliary Organ in Government System of West Java Provincial Government." *Journal of Contemporary Governance and Public Policy* 1, No. 2, (2020): 67–81.

16 Abdillah, Nandang Alamsah Deliarnoor, Neneng Yani Yuningsih, and Fatmawati., "The Position of Auxiliary Organ in Government System of West Java Provincial Government." *Journal of Contemporary Governance and Public Policy* 1, No. 2, (2020): 67–81.

17 Umami, Farida, Ahkam Nashrullah Maududi, and Aminah Rizqi Mahmudah., "A Discourse of Good Government General Principles in Public Services in Indonesia." *Indonesian Journal of Pancasila and Global Constitutionalism* 1, No. 1 (2022): 17–32.

18 Dede Mariana., "Akuntabilitas Publik Kinerja Lembaga Non Struktural", *makalah disampaikan pada FGD : 'Evaluasi terhadap Akuntabilitas Publik Kinerja Lembaga Negara', Bandung, Kerjasama setjen MPR dengan LPPM Universitas Padjadjaran, (31 July 2012): 1.*

C. RESULTS AND DISCUSSION

1. The History of Advocate Organizations

During the Dutch colonial period, advocates were considered defenders and legal advisors. Apart from being an advocate, there is also the profession of "procurer", namely an expert in civil procedural law who provides services in filing cases with the court and exercising power of attorney for the parties involved in a lawsuit in court.¹⁹ Currently, based on the provisions of Article 1, paragraph (1) and paragraph (2) of Law No. 18 of 2003 concerning Advocates, an Advocate is defined as a person whose profession is to provide legal services, both inside and outside the court, who fulfill the requirements based on the provisions of the law. Legal services provided by advocates include providing legal consultations, legal assistance, exercising power of attorney, representing, assisting, defending, and carrying out other legal actions for the client's legal interests.²⁰ However, there are also advocates and procurers appointed to practice at Hoogerechtshof.²¹

During independence, the positions of "advocaat and procureur" were carried out by "lawyers". According to Subekti, the word lawyer only covers what is contained in the word procurer. So, at that time, many lawyers used "advocate and lawyer" and "defender and attorney". At that time, in the District Courts, many were still not law graduates practicing defending cases, called "Pokrol". In 1959-1960 in Central Java, advocates gathered in Semarang and founded an advocate organization called "Balie", chaired by Mr. Soejoedi. Not long after this organization was founded, various advocate associations emerged in various regions of Indonesia, namely the "Advocate Hall" in Jakarta, Bandung, and Surabaya.²²

1963 was an important year in the history of Indonesian lawyers. This year, a national advocacy organization was born. On March 14, 1963, at the same time as the National Law Seminar was held in Jakarta, an advocate organization called the Indonesian Advocates Association (abbreviated as PAI) was officially established. This organization is led by a chairman named Mr. Loekman Wiradinata.²³ On August 30, 1964, at the first Congress of the Advocates' Conference at the Dana Solo Hotel, PAI changed and changed its name to the

19 Subekti, *Hukum Acara Perdata*, Badan Pembinaan Hukum Nasional Departemen Kehakiman Jakarta dan Bina Cipta Bandung, (1989): 13.

20 Karlina, Yunawati, and Irwan Sapta Putra., "Analisis Dampak Bimbingan Teknis Hukum Acara Pengujian Undang-Undang Di Mk Ri Terhadap Advokat Peradi." *Jurnal Res Justitia: Jurnal Ilmu Hukum* 3, No. 2, (2023): 262–87

21 *Ibid.*

22 Afandi, Fachrizal, Iftitahsari, Girlie L. A. Ginting, and Erasmus A. T. Napitupulu. 2023. *Menerapkan Standardisasi, Memperkuat Akuntabilitas Dan NilaiNilai Ideal Profesi Advokat: Studi Kelembagaan Organisasi Advokat Di Indonesia*. Jakarta: Institute for Criminal Justice Reform.

23 Lusya Sulastri, *Rekonstruksi Pengaturan Sistem Organisasi Advokat Sebagai Pertanggungjawaban Kualitas Profesi Berbasis Nilai Keadilan, Disertasi*, (Semarang: Universitas Islam Sultan Agung (UNISSULA), 2019): 186.

Indonesian Advocates Association (abbreviated as PERADIN). In the first congress session of the Advocates' Deliberation, the name and establishment of the PERADIN organization as an organization or forum for the Indonesian Advocates Association was accepted/inaugurated by acclamation. Since the founding of PERADIN, it has been agreed that "Advocate" is the official title, replacing the title Lawyer for all PERADIN members.²⁴

During the New Order government's rule, in 1966, PERADIN was recognized by Soeharto as the only Indonesian advocate organization. The Government's recognition became even more unequivocal with the issuance of a letter from the Minister of Army Commander as Commander of Operations for the Restoration of Security and Order (abbreviated as Pangkopkamtib) dated May 3, 1966, which stated that PERADIN was the only forum for the Indonesian advocate profession at that time. PERADIN is an advocate organization that upholds legal ideals. PERADIN is determined to create a legal state of separation of powers, an independent judiciary, and supremacy of law. In its fifth congress, in 1977 in Jogjakarta, PERADIN reaffirmed that PERADIN was not a conventional professional organization but a struggling organization in the legal field.²⁵

At the VI PERADIN Congress in 1981 in Bandung a new Indonesian advocate organization was successfully formed called the Indonesian Advocates Association (abbreviated as IKADIN) on October 10, 1985. After IKADIN was established, PERADIN was asked by the Government to merge into IKADIN. The position of General Chair of IKADIN was first held by Harjono Tjitrosoebono, who then served as chairman of the PERADIN Central Leadership Council. IKADIN was initially exclusive because only practising advocates could become members based on a decree from the Minister of Justice of the Republic of Indonesia. However, then a policy emerged that eliminated this exclusivity.²⁶

The Indonesian Legal Advisors Association (abbreviated as IPHI) was established on May 9 1987. The Indonesian Advocates Association (abbreviated as AAI) was established on July 27, 1990, the Indonesian Lawyers Union (abbreviated as SPI) was established on June 28, 1998, the Association of Indonesian Advocates and Lawyers (abbreviated HAPI) was founded on February 10, 1993, the Capital Market Legal Consultants Association (abbreviated HKHPM) was founded on April 4, 1989, the Indonesian Legal Consultants Association (abbreviated AKHI)

24 Sariati, Muhamad Ali., "Juridical Analysis of Advocacy Switching Reviewed from Advocate Law." *Jurnal Hukum Khaira Ummah* 16, No. 4 (2021):163–69.

25 Widodo, Muhammad Fajar Sidiq, Sudarsono, and Bambang Winarno., "Kedudukan Organisasi Advokat Sebagai Wadah Profesi Pasca Putusan Mahkamah Konstitusi." *Jurnal Ilmiah Pendidikan Pancasila Dan Kewarganegaraan* 3, No. 2 (2018): 149–58.

26 Sugiyono., "Analisis Yuridis Empiris Sema No.73/Kma/Hk.01/Ix/2015 Perpecahan Peradi Sebagai Wadah Tunggal Advokat Dalam Sistem Peradilan Indonesia." *Dinamika Hukum* 9, No. 2 (2018): 1–22.

and the Indonesian Sharia Lawyers Association (abbreviated APSI). History records that three professional advocate organizations, IKADIN, Ikatan IPHI, and AAI, formed the Indonesian Advocates Forum (FAI) to coordinate the Supreme Court and advocate organizations. FAI contributes ideas to strengthening the position, function, and duties of advocates in the justice system in Indonesia.²⁷

In subsequent developments, the FAI was disbanded and changed its name to the Indonesian Advocate Communication Forum (abbreviated as FKAI) which consisted of seven professional advocate organizations including IKADIN, IPHI, AAI, HAPI, SPI, AKHI, HKHPM. FKAI then changed its name to the Indonesian Advocates Working Committee (abbreviated as KKAI). KKAI was born on February 11, 2002. After being established, KKAI was notified to the Chief Justice of the Republic of Indonesia.²⁸ KKAI officially becomes a partner in judicial power. This is reflected in the letter from the Chairman of the Supreme Court of the Republic of Indonesia with Number KMA/445/VI/2003 Regarding the Implementation of Law No. 18 of 2003 concerning Advocates dated June 25 2003, which was addressed to the Chairman of the High Court, the Chairman of the State Administrative High Court, Chairman of the District Court, and Chairman of the State Administrative Court.²⁹

KKAI is a committee that was involved in creating the Law on Advocates.³⁰ KKAI has played a role in strengthening the existence of advocate organizations before the birth of Law No. 18 of 2003 concerning Advocates; various roles have been carried out by KKAI, including Overseeing the formation of the Indonesian Advocate Code of Ethics, which 7 (seven) Advocate Organizations established on May 23 2002. KKAI has implemented the Advocate exam for the first time in Indonesia, based on the decision of the Chief Justice of the Republic of Indonesia, signed by the Chief Justice of the Republic of Indonesia Indonesia, Bagir Manan, in 2002.

After Law No. 18 of 2003 concerning Advocates was implemented, the Indonesian Advocates Association (abbreviated as PERADI) was born. PERADI was declared on December 21, 2004. The PERADI organization and its management were introduced to the public on April 7, 2005, at Balai Sudirman, Jakarta. The PERADI management structure for 2005-2010 is as follows: The General Chairperson is Otto Hasibuan. The Deputy General Chairperson is H. Indra Sahnun Lubis, and the General Secretary is Harry Ponto. In this activity, PERADI has submitted a verified list of Indonesian advocate members to the

27 Constitutional Court Decision Number 35/PUU-XVI/2018, p. 132-133.

28 *Ibid*, : 134.

29 Letter from the Chairman of the Supreme Court of the Republic of Indonesia No. Number: KMA/445/VI/2003 Regarding the Implementation of Law No. 18 of 2003 concerning Advocates.

30 Lusia Sulastri., *Rekonstruksi Pengaturan Sistem Organisasi Advokat Sebagai Pertanggungjawaban Kualitas Profesi Berbasis Nilai Keadilan, Disertasi, op., cit.*, :194.

Chairman of the Supreme Court and the Minister of Justice and Human Rights as an embodiment of Article 29 paragraph (2), (3) of Law no. 18 of 2003 concerning Advocates. In 2005, PERADI issued decision no. KEP. 03/PERADI/2005. PERADI formed and ratified the establishment of the Indonesian Advocate Professional Education Commission (KP2AI) as the implementer of special education for the Advocate Profession and Continuing Legal Education (CLE) to carry out the authority granted by Law No. 18 of 2003 concerning Advocates. Based on Article 1, paragraph (1), and Paragraph (2) of Law No. 18 of 2003 concerning Advocates, those who can be appointed as Advocates are only graduates who have a higher legal education background and have taken special education for the Advocate profession carried out by the Advocate Organization.

2. The PERADI's Position as a Constitutional State Organ

Law No. 18 of 2003 concerning Advocates contains the legal politics of regulating advocate organizations.³¹ This legal policy requires the existence of a single forum for advocate organizations. Legal politics like this are not something new in the legal world.

Legal politics that requires the existence of a single forum for advocate organizations is increasingly emphasized by the Constitutional Court. The Constitutional Court, based on Article 24 paragraph (3) of the 1945 Constitution, is part of the judiciary and based on Article 24C of the 1945 Constitution, has the authority to adjudicate at the first and final level whose decision is final to review laws against the constitution.³²

In exercising this authority, the Constitutional Court carries out legal interpretation. Maruarar Siahaan, who once served as a constitutional judge, stated that the legal interpretation made by the Constitutional Court contained in the Constitutional Court Decision based on the review submitted to him was binding.³³ Jimly Asshiddiqie,³⁴ who once served as chairman of the Constitutional Court stated that the Constitutional Court's role is as an interpreter so that the spirit of the

31 Mahfud MD explained that legal politics is a legal policy or an official line (policy) regarding law that will be enforced by making new laws or replacing old ones to achieve State goals. Padmo Wahjono defines *legal politics* as the basic policy that determines the direction, form, and content of the law that will be formed. Padmo Wahjono also explained that legal politics is the policy of State administrators regarding what is used as the criteria for punishing something, which includes the formation, application, and enforcement of the law. Teuku Mohammad Radhie defines *legal politics* as a statement of the will of state authorities regarding the laws that apply in their territory and the direction of legal development that will be developed. Moh. Mahfud MD, *Politik Hukum di Indonesia*. (Jakarta: P.T. Raja Grafindo Persada, 2009): 1.

32 Kamaluddin, Moh, Sarbini, and Wyda Lusiana., "Reconstruction Of The Arrangements For The Appointment Of Advocates." *Jurnal Legalitas* 15, No. 2 (2021): 199–218.

33 Maruarar Siahaan, *Hukum Acara Mahkamah Konstitusi Republik Indonesia*, (Jakarta: Konstitusi Press, 2005): 13.

34 Samosir, Samuel Saut Martua., "Advocates Bar and the Urgency of the Government's Role in the Profession of Advocate." *Jurnal Konstitusi* 14, No. 3, (2017): 511–30.

constitution is always alive and colors the sustainability of the state and society.

When the Constitutional Court received the request to review Law No. 18 of 2003 concerning Advocates, it interpreted PERADI's position in its various decisions. PERADI is interpreted as a constitutional state organ. The Constitutional Court has also strengthened PERADI's position as a forum for advocate organizations (Single Bar).³⁵ This can be seen in the Constitutional Court Decision Number 014/PUU-IV/2006, the Constitutional Court Decision Number 66/PUU-VIII/2010, and the Constitutional Court Decision Number 35/PUU-XVI/2018.

The following is the legal interpretation of the Constitutional Court contained in the Constitutional Court Decision Number 014/PUU-IV/2006 :

- a. Whereas Article 28 Paragraph (1) of the Law on Advocates is directed towards a "single bar organization", but from the facts of the trial, according to information from PERADI and eight organizations that carried out the temporary duties of the Advocate Organization before the organization in question was formed [vide Article 32 Paragraph (3) and Paragraph (4) Law on Advocates], namely Ikadin, AAI, IPHI, SPI, HAPI, AKHI, HKHPM, and APSI, the eight founding organizations of PERADI still exist but their authority as a professional organization for Advocates, namely in terms of the authority to create a code of ethics, examine, supervise, and dismiss the Advocate [vide Article 26 Paragraph (1), Article 3 Paragraph (1) letter f, Article 2 Paragraph (2), Article 12 Paragraph (1), and Article 9 Paragraph (1) of the Law on Advocates], with official authority This has become the authority of PERADI which has been formed. The eight Advocate Organizations that founded PERADI still have authority other than the authority that has become PERADI's authority, so it cannot be said that Article 28 Paragraph (1) of the Advocate Law eliminates the existence of the eight organizations, which therefore violates the principle of freedom of association and assembly as regulated by the 1945 Constitution (vide 57 Court Decision Number 019/PUU-I/2003). Thus, the Petitioner's argument stating that Article 28 Paragraph (1) of the Advocate Law is contrary to the 1945 Constitution is unfounded;
- b. Whereas the provisions of Article 5 Paragraph (1) of the Law on Advocates, which gives status to Advocates as law enforcers who have an equal position with other law enforcers in upholding law and justice, shows that because of their position, an organization is needed which is the only forum for the Advocate profession as stated in referred to in Article 28 Paragraph (1) of the Advocate Law. , Article 28 Paragraph (1) of the Law on Advocates states, "Advocate Organizations are the only free and independent forum for the

35 Malik, Prayudi, Said Sampara, and Nurul Qamar, "Analisis Putusan Mahkamah Konstitusi Republik Indonesia Nomor 35 PUU-XVI/2018 Tentang Organisasi Advokat." *Journal of Lex Generalis (JLS)* 1, No. 7 (2020): 989–1010.

Advocate profession which was formed by the provisions of this Law with the intent and purpose of improving the quality of the Advocate profession", then the PERADI organization as The only forum for the Advocate profession is a state organ in the broadest sense which is independent (independent state organ) which also carries out state functions (vide Court Decision Number 066/PUU-II/2004); that the explicit mention of the names of the eight organizations listed in Article 32 Paragraph (3) and Article 33 of the Law on Advocates does not violate the essence of a transitional regulation which the Petitioner's experts consider to favor certain groups, but only to confirm certain existing legal facts. and its transition into new legal facts according to the Law on Advocates;

- c. Article 32, Paragraph (3) and Paragraph (4) of the Law on Advocates is an article that has been completed with the passing of the two-year deadline and with the formation of PERADI as an Advocate Organization, which is the only forum for the Advocate profession, so it is no longer relevant to question its constitutionality. Apart from that, Article 32 Paragraph (3) of the Law on Advocates has been requested for review by the Court, which the Court, in its Decision Number 019/PUU-I/2003, has declared rejected.

In the Constitutional Court Decision Number 014/PUU-IV/2006, the Constitutional Court provided a legal interpretation. It stated that the direction of the advocate organization regulated in Article 28 paragraph (1) of Law No. 18 of 2003 concerning Advocates is the Single Bar Organization.³⁶ In the decision, the Constitutional Court also stated that Article 5 Paragraph (1) of Law No. 18 of 2003 concerning Advocates gives advocates status as law enforcers so that advocates have an equal position with other law enforcers in upholding law and justice. Based on this, the Constitutional Court stated that an organization is needed, the only forum for the advocate profession as intended in Article 28 Paragraph (1) of Law No. 18 of 2003 concerning Advocates. The PERADI organization is said by the Constitutional Court to be the only forum for the advocate profession. PERADI is also declared a state organ in the broadest sense that is independent (independent state organ) carrying out state functions.³⁷

PERADI was declared by the Constitutional Court to have the authority to create a code of ethics and examine, supervise and dismiss advocates. This is based on Article 26 Paragraph (1), Article 3 Paragraph (1) letter f, Article 2 Paragraph (2), Article 12 Paragraph (1), and Article 9 Paragraph (1) of Law No. 18 of 2003 concerning Advocates. The founding advocate organizations of PERADI, namely IKADIN, AAI, IPHI, SPI, HAPI, AKHI, HKHPM, and APSI, according to the Constitutional

36 Constitutional Court Decision Number 014/PUU-IV/2006, : 56.

37 *Ibid.*, : 57.

Court, no longer have the authority to create a code of ethics, examine, supervise and dismiss advocates.³⁸

In the decision, the Constitutional Court also stated that Article 32 Paragraph (3) and Paragraph (4) of Law No. 18 of 2003 concerning Advocates is an article that has been implemented with the two-year deadline having passed and with the formation of PERADI as an Advocate Organization. Which is the only forum for the Advocate profession, so it is no longer relevant to question its constitutionality.³⁹ Based on the legal interpretation of the Constitutional Court, PERADI's position is a constitutional state organ. Constitutional Court Decision Number 66/PUU-VIII/2010 and Constitutional Court Decision Number 35/PUU-XVI/2018 strengthen Constitutional Court Decision Number 014/PUU-IV/2006.

PERADI's position as a state organ that carries out state functions has implications for the position of the PERADI legal entity. PERADI has *mutatis mutandis* been transformed into a public legal entity, not a private one, which requires legal entity approval from the government based on Staatsblad 1870 Number 64. This applies to state organs in general. The main state institutional organizations (executive, judicial, and legislative) and auxiliary state institutions (state commissions), because they are public legal entities, do not require legal entity approval from the government.

PERADI, because of its position as a state organ, also has implications for the PERADI management who should be appointed and appointed by the President as the holder of administrative power within the Unitary State of the Republic of Indonesia. As the holder of administrative power, the President has the authority to appoint members of the main state institutions and members of state institutions (state organs) auxiliary agents in Indonesia. Supreme Court Judges, Constitutional Judges,⁴⁰ Members of the People's Representative Council, officials in the judicial and legislative realms, and members of State Commissions are also appointed and appointed by President.

The administrative powers possessed by the President can be found in the Constitution and various statutory regulations. In the 1949 Constitution, the President has the authority to appoint the Prime Minister, Ministers, the Chairman of the Senate, and other high-ranking state officials.⁴¹ The 1945 Constitution also contains the administrative powers of the President. Article 24A paragraph (3) of the 1945 Constitution states that the President appoints Supreme Court Judges.

38 *Op.Cit.*

39 Constitutional Court Decision Number 014/PUU-IV/2006, : 57.

40 Jimly Asshiddiqie menyatakan Bahwa Hakim Konstitusi Secara Administratif Diangkat dan Diberhentikan dengan Keputusan Presiden. Jimly Asshiddiqie, *Kedudukan Mahkamah Konstitusi Dalam Struktur Ketatanegaraan Indonesia*, <https://www.mkri.id> diakses pada tanggal 02 Januari 2024.

41 Ismail Suny, *Pergeseran Kekuasaan Eksekutif*, (Jakarta: Aksara Baru, 1977): 92.

3. The Power and Authority of PERADI

In law, the concepts of authority and authority have different meanings. Ateng Syarifudin explained that authority (authority, gezag) is formal power, meaning power that comes from the power granted by law. Authority (competence, bevoegdheid) only concerns a certain "onderdeel" (part) of authority.⁴² Ateng Syarifudin further explained that within the authority, there are authorities (rechtsbevoegdheden). Authority is the scope of public legal action, the scope of government authority, not only includes authority in the context of carrying out tasks, and granting authority and distribution of authority is primarily stipulated in statutory regulations.⁴³ Philippus M. Hadjon explained that authority (bevoegdheid) in constitutional law is interpreted as legal power (rechtmacht). Authority in Dutch administrative law is always associated with bestuurbevoegdheid (government authority).⁴⁴

Based on the opinions of the legal experts above, and referring to the provisions of Article 2 paragraph (2), Article 3 Paragraph (1) letter f, Article 9 Paragraph (1), Article 12 Paragraph (1), and Article 26 Paragraph (1) of the Law -Law No. 18 of 2003 concerning Advocates, PERADI is a state organ that has formal power (authority) to appoint advocates, create a code of ethics, test, supervise and dismiss advocates.⁴⁵ PERADI's authority, an "undersell" (part) of this authority, is to provide special education for the advocate profession.⁴⁶ Submit a copy of the Decree regarding the dismissal of an advocate to the Supreme Court, High Court, and other law enforcement agencies.⁴⁷ Establish a Supervisory Commission comprising senior advocates, experts/academics, and the public.⁴⁸ Issue a decision regarding supervision procedures.⁴⁹ Establish an Honorary Council at the central and regional levels to examine and adjudicate violations of the code of ethics for the advocate profession.⁵⁰

42 Tri Cahya Indra Permana., *Hak Permohonan Pejabat/Badan Atas Dugaan Penyalahgunaan Wewenang*, dalam Teguh Satya Bakti, *Bunga Rampai Peradilan Administrasi Kontemporer*, (Yogyakarta: GENTA Press, 2014): 46.

43 Syarief, Vidi Galenso., "Kedudukan Organisasi Advokat Dalam Sistem Kekuasaan Kehakiman." *Jurnal Ilmiah Publika* 11, No. 1 (2023): 42–51.

44 Supandi, *Kewenangan Diskresi Pemerintah Dalam Sistem Hukum Indonesia*, dalam Teguh Satya Bakti, *Bunga Rampai Peradilan Administrasi Kontemporer*, (Yogyakarta: GENTA Press, 2014): 20. 58 Article 2 paragraph (2), Article 3 paragraph.

45 8 Article 2 paragraph (2), Article 3 Paragraph (1) letter f, Article 9 Paragraph (1), Article 12 Paragraph (1), and Article 26 Paragraph (1) of Law No. 18 of 2003 concerning Advocates and Court Decisions Constitution Number 014/PUU-IV/2006, : 56.

46 Article 2 paragraph (1) Law No. 18 of 2003 concerning Advocates.

47 Article 9 paragraph (2) Law No. 18 of 2003 concerning Advocates.

48 1 Article 13 paragraph (1) and paragraph (2) Law No. 18 of 2003 concerning Advocates

49 Article 13 paragraph (3) Law No. 18 of 2003 concerning Advocates

50 Article 26 paragraph (5) and Article 27 paragraph (1) Law No. 18 of 2003 concerning Advocates.

4. PERADI's Relationship with Main State Institutions

a. PERADI's relationship with the President

Bagir Manan stated that the position of the President in the 1945 Constitution was very strong. The President is the administrator of government, who exercises executive power. Apart from that, the President also exercises the power to form laws and regulations.⁵¹ Ismail Suny also stated that the President is the owner of administrative power.⁵² PERADI's relationship with the President is that the President, as the holder of administrative power, has the authority to appoint, determine and dismiss advocates as law enforcers. However, based on Article 2 paragraph (2) and Article 9 paragraph (1) of Law No. 18 of 2013 concerning Advocates, this authority is delegated and attributed to the advocate organization, PERADI. Thus, PERADI's position is as an auxiliary agent state organ (auxiliary body) and an administrative state organ which assists the executive power in exercising its powers in the administrative realm.

The check and balance mechanism between the President and PERADI is that the President with his the authority to make laws together with the House of Representatives based on Article 5 paragraph (1), Article 20 paragraph (2), Article 20 paragraph (4) of the 1945 Constitution can eliminate PERADI's authority in appointing, determining and dismissing advocates. The President and the House of Representatives can also take over this authority again and return the authority to appoint, appoint and dismiss advocates as law enforcers to the President as the owner of administrative power.

b. PERADI's relationship with the House of Representatives

Based on Article 20, paragraph (1) of the 1945 Constitution, the People's Representative Council is designated as the holder of the power to form laws. The House of Representatives, with its authority to make laws together with the President based on Article 5 paragraph (1), Article 20 paragraph (2), and Article 20 paragraph (4) of the 1945 Constitution, can eliminate PERADI's authority to appoint, appoint and dismiss advocates. The House of Representatives and the President can take over this authority again and return the authority to appoint, appoint, and dismiss advocates as law enforcers to the President as the owner of administrative power.

c. PERADI's relationship with the Supreme Court

The Supreme Court, its subordinate judicial bodies, and the Constitutional Court are state institutions (state organs) within the jurisdiction of the judiciary and state organs that enforce and defend the law.⁵³ However, based on the provisions of Article 38 paragraph

51 Bagir Manan., *Lembaga Kepresidenan*, (Yogyakarta, FH UII Press, 2003): 29-30.

52 Ismail Suny., *Pergeseran Kekuasaan Eksekutif*, Aksara Baru, op., cit., : 92.

53 Bagir Manan, dalam Bagir Manan dan Kuntana Magnar., *Beberapa Masalah Hukum Tatanegara Indonesia*, op., cit., : 38.

(1) of Law No. 48 of 2009 concerning Judicial Power, other bodies have functions related to judicial power.⁵⁴ Advocates are included in other bodies within the judiciary. This is based on the explanation of Article 38, paragraph (1) of Law No. 48 of 2009 concerning Judicial Power.⁵⁵

Advocates have the status of law enforcers, free and independent, guaranteed by laws and regulations.⁵⁶ Advocates are free to carry out their professional duties to defend cases for which they are responsible while adhering to the professional code of ethics and statutory regulations.⁵⁷ When an Advocate carries out his professional duties in good faith to benefit the Client's defense in court or outside court, the Advocate cannot be prosecuted civilly or criminally.⁵⁸

The relationship between the Supreme Court and PERADI is that PERADI has the authority to appoint advocates who can sit in various courts within the judiciary.⁵⁹ PERADI has assisted the Supreme Court in carrying out its role in enforcing and defending the law. In this position, PERADI is an auxiliary agent state organ (auxiliary body) that assists judicial power.

The check and balance mechanism between the Supreme Court and PERADI is that the Supreme Court, through the High Court, has the authority to carry out the oath process for advocates whom PERADI has appointed before carrying out their profession according to their religion in an open session of the High Court in their legal domicile area. In exercising this authority, the Supreme Court, through the high court, can refuse to carry out the oath process for an advocate whom PERADI has appointed if an administrative defect is found in the appointment as regulated in the provisions of Article 2 paragraph (1) and Article 3 paragraph (1) of Law No. 18 of 2003 concerning Advocates.⁶⁰

The Supreme Court, with its authority as regulated in Article 24A of the 1945 Constitution, can also carry out material and formal reviews of regulations issued by PERADI whose contents are "Law" or "wet in material zin". The Supreme Court, through the Administrative Court, can also review written decisions and decisions (beschikking) issued by PERADI.

54 Article 38 paragraph (1) Law No. 48 of 2009 concerning Judicial Power.

55 Explanation of Article 38 paragraph (1) of Law No. 48 of 2009 concerning Judicial Power.

56 Article 5 paragraph (1) Law No. 18 of 2003 concerning Advocates.

57 Article 15 Law No. 18 of 2003 concerning Advocates.

58 Since Wednesday, 14 May 2014, Article 16 of Law No. 18 of 2003 concerning Advocates does not have binding legal force as long as it is not interpreted, "Advocates cannot be Prosecuted Either Civilly Or Criminally for Carrying Out Their Professional Duties in Good Faith for The Benefit of Client Defense In Or Outside The Court Session," based on Constitutional Court Decision Number 26/PUU-XI/2013.

59 Article 2 paragraph (2) Law No. 18 of 2003 concerning Advocates.

60 Article 4 paragraph (1) and paragraph (2) Law No. 18 of 2003 concerning Advocates.

D. CONCLUSION

Political law, namely Law No. 13 of 2003 concerning Advocates and Constitutional Court Decision Number 66/PUU-VIII/2010, Constitutional Court Decision Number 014/PUU-IV/2006, and Constitutional Court Decision Number 35/PUU-XVI/2018 making PERADI a single bar organization for advocates (Single Bar Organization), PERADI is a constitutional state organ, Peradi is also an administrative state organ and an auxiliary agents state organ which carries out the president's authority in appointing, appointing and dismissing advocates as law enforcers, PERADI with the same authority has the authority to appoint advocates who can appear in various courts within the Judiciary. PERADI is an auxiliary state organ that has assisted the Supreme Court in carrying out its role in enforcing and defending the law. PERADI's position as a state organ that carries out state functions has implications for the position of the PERADI legal entity. PERADI has *mutatis mutandis* been transformed into a public legal entity rather than a private one, which requires legal entity approval from the government based on Staatsblad 1870 Number 64. PERADI because its position as a state organ has implications for the position of PERADI administrators, who should be appointed and determined by the president as the holder of administrative power in the Unitary State of the Republic of Indonesia. As the holder of administrative power, the president has the authority to appoint members of the main state institutions and members of state institutions (state organs) auxiliary agents in Indonesia. The Supreme Court, with its authority as regulated in Article 24A of the 1945 Constitution, can also carry out reviews of regulations issued by PERADI which the content is "Law" or "wet in material zin". The Supreme Court, through the Administrative Court, can also review written decisions and decisions (*beschikking*) issued by Indonesian Advocates Association.

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