
An Ideal Formulation of the Prohibition on Dual Positions for Advocacy Organization Leaders from the Perspective of Legislation

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ABSTRACT

This study examines the formulation of an ideal prohibition on dual positions for leaders of advocacy organizations who concurrently serve as state officials, addressing potential conflicts of interest and threats to organizational independence. The background stems from Article 28, paragraph (3) of Law No. 18 of 2003 on Advocates, which limits dual positions only with political party leaders and lacks explicit provisions regarding state officials, potentially undermining the independence of advocate organizations and constitutional guarantees of legal certainty and freedom of association. The study aims to provide a normative framework for legislative reform that ensures structural integrity and professional independence. Employing a normative juridical research method, the study utilized statutory and conceptual approaches, analyzing relevant constitutional provisions, statutory laws, and Constitutional Court decisions, including Numbers 014/PUU-IV/2006, 91/PUU-XX/2022, and 183/PUU-XXII/2024. Data were collected through systematic document review and legal content analysis. The results indicate that current regulations inadequately address dual positions, leaving room for structural conflicts of interest. The discussion emphasizes the necessity of reformulating Article 28(3) with clear, non-interpretible norms, operational mechanisms, and harmonization with broader legal principles. The study concludes that legislative amendments are essential to prevent conflicts, strengthen advocate independence, and maintain constitutional and rule-of-law standards in Indonesia.

INTRODUCTION

The concept of a state based on law (*rechtstaat*) and the rule of law places law as the highest authority in state administration, so that every government action must comply with the principle of the supremacy of law and protect citizens' constitutional rights. Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia affirms Indonesia as a state based on law (Karyudi, 2024), which consequently demands limitations on power and guarantees of equality before the law (Article 27 paragraph (1) of the 1945 Constitution) and fair legal certainty (Article 28D paragraph (1) of the 1945 Constitution). (Cahyono, 2023) Within this structure of a state based on law, the legal profession holds a strategic position as an officium Nobile and part of the judicial system that guarantees due process of law. The independence of advocates is not merely an ethical attribute, but a constitutional requirement to ensure that the function of defending citizens' rights can proceed without pressure from executive power. (Jasmine, 2025) Without structural freedom from government intervention,

advocates potentially lose their capacity as a countervailing power to other law enforcement officials.

Normatively, the position of advocate organizations is regulated in Law Number 18 of 2003 concerning Advocates, specifically Article 28 paragraph (1), which states that advocate organizations are free and independent professional organizations. The phrase "free and independent" implies that advocate organizations must not be subordinated to state power. The organization's functions include professional education, the appointment of advocates, the preparation and enforcement of a code of ethics, and oversight through an honorary council. (Endira, 2022) This normative architecture is also enriched by Constitutional Court decisions, including Constitutional Court Decision Number 014/PUU-IV/2006, which emphasizes the importance of protecting advocate organizations from practical political interests, and Constitutional Court Decision Number 91/PUU-XX/2022, which limits the term of office of advocate organization leaders and prohibits concurrent positions with political party leaders. This ruling demonstrates that the Court has viewed the potential concentration of power within advocate organizations as a constitutional issue that needs to be limited to maintain independence.

The crucial relevance of this study is evident in Constitutional Court Decision No. 183/PUU-XXII/2024, which challenges Article 28, paragraph (3), of the Advocates Law, specifically regarding the petition to expand the prohibition on concurrent positions for advocate organization leaders, also to include a prohibition on concurrently serving as state officials. The petitioner argued that the lack of such explicit provisions has the potential to create conflicts of interest, undermine the independence of advocate organizations, and threaten constitutional rights to legal certainty and freedom of association. However, in its ruling, the Court dismissed the petition. It emphasized that the regulation expanding the prohibition on holding dual positions constitutes an open legal policy and therefore does not fall within the Court's authority to create new norms. Nevertheless, the Court's legal reasoning highlights potential issues with dual positions, which could give rise to conflicts of interest in the context of the relationship between advocate organizations and state power. Therefore, Decision Number 183/PUU-XXII/2024 is a crucial point, not only affirming the limits of the Court's authority as a negative legislator but also opening up space for legislators to reformulate norms more comprehensively to maintain the independence of advocate organizations.

From the perspective of conflict-of-interest theory, dual positions held by leaders of advocacy organizations and state officials can create structural bias in decision-making, particularly when government policies intersect with the interests of advocacy organizations. Conflicts of interest are not merely ethical violations but also a problem of power design that can trigger abuse of power. When an executive official simultaneously leads a professional organization tasked with overseeing and developing advocates, there is the potential for the organization's interests to be subordinate to government agendas. (Thabrani, 2022) The impact extends beyond organizational independence to policy neutrality and a decline in public trust in the legal profession. In many other public positions such as judges, prosecutors, or officials of independent institutions prohibitions on holding concurrent positions are expressly regulated to maintain institutional integrity and independence. Therefore, the absence of similar regulations within legal organizations raises fundamental normative questions. (Saputra, 2024)

The main problem lies in Article 28, paragraph (3) of the Advocates Law, which only prohibits holding concurrent positions with political party leaders, without mentioning state officials. This gap opens up room for multiple interpretations and has the potential to create legal uncertainty. (Kartadinata, 2023) From the perspective of Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia, unclear norms contradict the principle of fair legal certainty. If the leadership of an advocate organization is within the executive power structure, the meaning of "free and independent" as referred to in Article 28, paragraph (1) of the Advocates Law is substantively reduced. (Rusyan, 2024) Constitutional Court Decision Number 183/PUU-XXII/2024 demonstrates that the issue of prohibiting concurrent positions for leaders of advocate organizations is not merely theoretical, but has become a concrete constitutional dispute before the Court. Although the petition was not granted and the Court emphasized that the regulation constitutes an open legal policy, this case still demonstrates the need for clearer regulations to prevent potential conflicts of interest in practice. Thus, the decision strengthens the argument that improvements in the construction of norms at the statutory level are necessary to provide legal certainty and maintain the independence of advocate organizations.

From the perspective of Law Number 12 of 2011 concerning the Formation of Legislation, good norms must meet the principles of clarity of purpose, appropriateness of content, implementation, usability, and legal certainty. (Cahya, 2025) The norm of Article 28, paragraph (3), which does not explicitly prohibit concurrent positions with state officials, indicates that the principles of clarity of formulation and protection of the public interest have not been met. Therefore, norm reformulation is crucial to maintain the independence of professional organizations, prevent structural conflicts of interest, strengthen checks and balances, and ensure harmonization between the Advocates Law and the principles of the rule of law as stipulated in the 1945 Constitution of the Republic of Indonesia. Academically, this research presents a novelty, as previous studies have focused more on advocate independence or the dynamics of advocate organizations in general. At the same time, a comprehensive analysis of the formulation of the prohibition on dual positions from the perspective of legislative drafting techniques has not been conducted.

METHOD

This research utilized a normative juridical research method, emphasizing the analysis of written legal norms as applicable rules within the Indonesian positive legal system. The study focuses on "law in books" rather than "law in action," positioning legal norms as the primary object of examination. Two main approaches are applied: a statutory approach, which systematically examines relevant legislation such as Articles 1(3), 27(1), 28D(1), 28E(3), and 28J(2) of the 1945 Constitution, Law No. 18 of 2003 concerning Advocates, and Law No. 12 of 2011 concerning the Formation of Legislation; and a conceptual approach, analyzing fundamental principles such as the rule of law, independence of advocate organizations, conflict of interest, abuse of power, and principles of statutory formation. These approaches are supplemented with the study of relevant Constitutional Court decisions, including Numbers 014/PUU-IV/2006, 91/PUU-XX/2022, and 183/PUU-XXII/2024, to understand the constitutional interpretation and the dynamics of norm construction regarding leadership in advocacy organizations.

The population of the study comprises the legal texts, statutory instruments, and Constitutional Court rulings relevant to the leadership and independence of advocate organizations. As a normative study, the “sample” is purposively selected based on legal relevance and significance, focusing on statutes and judicial decisions that specifically address dual positions held by advocacy leaders. Data collection involves document review and content analysis, ensuring systematic examination and interpretation of the provisions, legal principles, and judicial reasoning. The instrument for this research is a structured legal content analysis framework, validated through cross-referencing legislative texts and judicial interpretations to ensure consistency and reliability in capturing normative arguments.

Data analysis is conducted qualitatively through deductive reasoning, synthesizing statutory interpretation and conceptual legal principles to formulate normative conclusions. The procedure involves mapping relevant legal provisions, identifying gaps or conflicts, and constructing ideal formulations for prohibiting dual positions among advocacy organization leaders serving as state officials. Software tools are not central to the analysis, as the study relies on textual, normative reasoning; however, systematic documentation and coding of legal texts ensure traceability and analytical rigor. The ultimate objective of the method is to produce a coherent, constitutionally grounded normative construction that informs legislative reform and strengthens the independence of advocate organizations within the Indonesian legal framework.

RESULTS AND DISCUSSION

Constitutional Construction of the Independence of Advocate Organizations in a Rule of Law

The concept of the rule of law in the Indonesian constitutional system is explicitly affirmed in Article 1, paragraph (3), of the 1945 Constitution of the Republic of Indonesia, which states that "The State of Indonesia is a state based on law." This formulation is not merely a normative declaration but also carries legal consequences that all state power must be subject to the law, uphold the supremacy of the constitution, and guarantee the protection of human rights. (Siregar, 2024) Within the framework of a state based on law (*rechtstaat*) and the rule of law, there are principles of limitation of power, recognition of citizens' rights, and checks and balances between state institutions. Therefore, a state based on law not only demands the existence of laws and regulations but also requires an institutional structure that is independent and free from interference by those in power, which could disrupt the balance of the legal system. (Supena, 2023) In this context, the existence of the legal profession and advocate organizations cannot be separated from the construction of a state based on law because advocates play a role in safeguarding citizens' constitutional rights in the judicial process.

The principle of equality before the law, as stipulated in Article 27, paragraph (1), of the 1945 Constitution of the Republic of Indonesia, states that all citizens have equal status before the law and the government and are obliged to uphold the law and the government without exception. This principle emphasizes that there must be no discriminatory treatment in the legal system, either by the state or by institutions with public functions. (Lubis, 2025) Advocates, as a legal profession, have the responsibility to ensure that everyone receives equal and fair representation in the legal process. Without independent advocates, the principle of equality before the law loses its substantive meaning, as citizens facing state power lack an effective

counterbalance. Therefore, the independence of advocate organizations is a prerequisite for advocates to fulfil their constitutional role in ensuring equal access to justice. (Nachrawy, 2025)

In addition to the principle of equality, Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia guarantees that everyone has the right to recognition, guarantees, protection, and fair legal certainty, as well as equal treatment before the law. Fair legal certainty requires a legal institutional system that is not influenced by the interests of certain powers. (Putri, 2025) If advocate organizations, as a professional body, are under the influence or subordination of the executive branch, there is the potential for distortions in their oversight and enforcement of the advocate code of ethics. This could ultimately disrupt legal certainty and procedural fairness in the judicial system. Therefore, the independence of advocate organizations is not merely an internal organizational issue, but rather part of the constitutional guarantee of fair legal certainty, as provided for in Article 28D, paragraph (1). (Nasution, 2025)

Article 28E, paragraph (3), of the 1945 Constitution of the Republic of Indonesia guarantees everyone the right to freedom of association, assembly, and expression of opinion. Advocates' organizations are a manifestation of the right to freedom of association in the legal profession. (Manulang, 2024) This right is fundamental, but not absolute, because Article 28J paragraph (2) of the 1945 Constitution of the Republic of Indonesia stipulates that in exercising their rights and freedoms, everyone must submit to restrictions stipulated by law solely to guarantee recognition and respect for the rights and freedoms of others and to fulfill just demands in accordance with moral considerations, religious values, security, and public order in a democratic society. (Pasaribu, 2025) Thus, regulations regarding advocate organizations, including restrictions on their leadership, are a form of legitimate constitutional restriction as long as they are carried out by law and aim to maintain the integrity and independence of the legal profession. The independence of advocate organizations in this case must be understood as a mechanism for protecting freedom of association itself so that the interests of state power do not infiltrate it.

Within this framework, advocates are viewed as a noble profession, one that carries a high level of honour and moral responsibility in upholding law and justice. (Zahara, 2023) This profession is not only oriented toward client interests, but also toward upholding the law and human rights. As part of the judicial system, advocates are equal to other law enforcement officials and play a role in ensuring due process of law. This position is affirmed in Law Number 18 of 2003 concerning Advocates, which recognizes advocates as free and independent law enforcers. (Fazriah, 2022) This recognition implies that advocates and their organizations should not be subordinate to any particular branch of state power, as this would disrupt the balance of the judicial system and weaken advocates' role as guardians of the constitution in practice.

The meaning of "free and independent advocate organization" as stated in Article 28, paragraph (1), of Law Number 18 of 2003 concerning Advocates must be interpreted systematically within the framework of the rule of law and the constitutional guarantees mentioned therein. "Free" means free from interference from executive power or political interests that can influence organizational decision-making. In contrast, "independent" means having autonomy in regulating education, supervision, enforcement of the code of ethics, and management of the organization without subordination to state institutions. Thus, the independence of advocate organizations is a constitutional consequence of Article 1 paragraph

(3), Article 27 paragraph (1), Article 28D paragraph (1), Article 28E paragraph (3), and Article 28J paragraph (2) of the 1945 Constitution of the Republic of Indonesia, so that it cannot be viewed solely as a legislative policy (open legal policy), but rather as a structural need in realizing a democratic and just rule of law state. (Saputra M. I., 2026)

Juridical and Constitutional Analysis of Constitutional Court Decision Number 183/PUU-XXII/2024

In Constitutional Court Decision Number 183/PUU-XXII/2024, the object of the judicial review focuses on Article 28 paragraph (3) of Law Number 18 of 2003 concerning Advocates, which was previously interpreted through Decision Number 91/PUU-XX/2022, specifically regarding the limitation on concurrent positions held by leaders of advocate organizations. The applicant in this case requested that this norm be expanded not only to prohibit concurrent positions with political party leaders but also to include concurrent positions as state officials. The arguments developed stem from the potential for conflicts of interest and threats to the independence of advocate organizations, as professional bodies that should be free and independent of state intervention. This petition also alleges violations of constitutional rights, particularly those related to legal certainty, equality before the law, and freedom of association, as guaranteed by the 1945 Constitution of the Republic of Indonesia. Thus, the case demonstrates a tension between the need to maintain the independence of the legal profession and the normative design, which is deemed not to comprehensively regulate the prohibition on holding multiple positions.

In its legal considerations, the Constitutional Court focused primarily on the Petitioner's legal standing and the requirements for constitutional loss. The Court found that the alleged loss was more potential in nature and did not demonstrate a clear causal link between the norm under review and the specific and actual constitutional loss. Furthermore, the Court emphasized that the Petitioner's issues tended to concern concrete practices or the implementation of the norm, rather than the norm's unconstitutionality. In other words, the Court clearly distinguished between normative issues (norm review) and the issue of implementing norms in the field (law in action). Within this framework, the Court also viewed restrictions on holding concurrent positions as part of the lawmaker's open legal policy. It, therefore, could not be automatically deemed unconstitutional simply because it did not regulate the matter more broadly as requested by the Petitioner.

The ruling in this case ultimately held that the Petitioner's request could not be accepted or rejected. Therefore, the Court did not grant the request to add the prohibition on holding concurrent positions as a state official to Article 28, paragraph (3), of the Advocates Law. The legal consequence of this ruling is that the applicable norm remains as it was before, namely, prohibiting only concurrent positions with political party leaders, not including state officials. Thus, there was no change in the norm or in its meaning, as requested. This also means that, from a legal perspective, the prohibition on concurrent leadership of advocate organizations and state offices is not explicitly regulated. Hence, its regulatory scope remains within the legislator's authority. This assertion is crucial because it guides further analysis and refutes the assumption that the Court has directly established the prohibition in its decision.

From a constitutional perspective, this decision can be analyzed within the framework of the rule-of-law principle as stipulated in Article 1, paragraph (3), of the 1945 Constitution of the Republic of Indonesia, which demands legal certainty, limitations on power, and protection

of human rights. On the one hand, by not expanding the norm, the Court demonstrates a cautious attitude to avoid exceeding its authority as a negative legislator, thereby maintaining respect for the principle of the separation of powers. However, it is questionable whether this stance is sufficiently responsive to potential conflicts of interest that could undermine the principles of equality before the law (Article 27, paragraph (1)) and fair legal certainty (Article 28D, paragraph (1)). Furthermore, regarding freedom of association (Article 28E, paragraph (3)), the absence of an explicit prohibition could open the door to the dominance of certain powers within advocate organizations, ultimately reducing the substantive meaning of that freedom. Therefore, this decision demonstrates the tension between protecting constitutional rights and the limits of the Court's authority to formulate norms.

From a legal perspective, this decision can be criticized for the Court's rather formalistic approach in assessing the Petitioner's constitutional impairment. By framing the issue as an implementation issue, the Court appears to ignore the structural dimension of conflicts of interest, which stem from incomplete normative design. In fact, in certain contexts, legal gaps can constitute real constitutional violations, particularly when they risk abuse of power. Furthermore, by categorizing this issue as a matter of open legal policy, the Court leaves the matter entirely to legislators, without providing firmer normative boundaries or guidelines. This can be seen as a restrictive stance, differing from several previous decisions in which the Court has been more progressive in safeguarding the independence of advocate organizations. This criticism is significant because it demonstrates that, although formally constitutional, the decision still leaves unresolved issues substantively.

The implications of this decision are significant for the legal system and the institutional structure of the advocate profession in Indonesia. In the absence of an explicit prohibition on holding concurrent positions as a state official, the potential for conflicts of interest within advocate organizations remains, which could ultimately affect the independence and integrity of the profession. From a judicial perspective, this also has the potential to weaken the role of advocates as a countervailing power to state power. On the other hand, this ruling emphasizes that normative changes must be implemented through legislative mechanisms, thereby encouraging lawmakers to play an active role in formulating more comprehensive regulations. Therefore, this ruling does not fully resolve the existing problem, but rather emphasizes the urgent need for legal reform to ensure the independence of advocate organizations remains intact within a democratic, rule-of-law framework.

The Ideal Formulation of the Prohibition on Dual Positions from the Perspective of Legislation

Constitutional Court Decision No. 183/PUU-XXII/2024 affirms that expanding the prohibition on dual positions held by advocate organization leaders and state officials is within the realm of open legal policy. Therefore, the Court did not amend the norm and maintained the current formulation of Article 28, paragraph (3) of the Advocates Law. The consequence of this stance is that the responsibility for more comprehensively regulating the prohibition on dual positions rests entirely with the legislature. However, the facts revealed in the case demonstrate the potential for a clear conflict of interest when advocate organization leaders concurrently serve as state officials, which could compromise the advocate organization's independence. Therefore, although the Court rejected the petition, this decision provides a strong basis for advocating for reformulating the norm through legislative regulation.

From the perspective of legislative drafting, the first concrete step is to prioritize the inclusion of limited revisions to Law Number 18 of 2003 concerning Advocates in the National Legislation Program (*Prolegnas*). The preparation of the academic paper is a crucial stage that presents philosophical, legal, and sociological arguments for prohibiting dual positions, emphasizing the principles of the rule of law, the independence of the legal profession, and the prevention of structural conflicts of interest. The academic paper must explicitly reference Constitutional Court Decision Number 183/PUU-XXII/2024 as the basis for lawmakers' capacity and authority to expand norms. Thus, the legislative process is not merely reactive but is grounded in strong, focused constitutional argumentation.

Furthermore, regarding the technical aspects of norm formulation, amendments to Article 28 paragraph (3) must be made using clear, limited, and non-interpretible formulations. The ideal formulation of the proposed norm is: "The leadership of an advocate organization holds a term of office of 5 (five) years and may only be re-elected once for the same position, either consecutively or non-consecutive, and may not hold the same position concurrently with the leadership of a political party and/or a position as a state official." To avoid ambiguity, it is necessary to include a definition in the explanatory article that refers to the definition of a state official as stipulated in the relevant laws and regulations. Furthermore, the norm must be imperative to avoid creating room for exceptions that could undermine the regulation's purpose.

For this norm to be implemented effectively, a concrete, operational mechanism must be established. First, an obligation must be established for leaders of advocate organizations appointed as state officials to resign from their positions within a specified period, for example, no later than 30 (thirty) days after their inauguration. Second, if this obligation is not met, the position in the advocate organization is automatically declared null and void. Third, an internal oversight mechanism must be established through an advocate organization, an honorary council authorized to verify and enforce the regulation. Fourth, administrative sanctions must be explicitly formulated, including a ban on re-election for violators within a specified period.

Furthermore, the reformulation of the norm must be tested within the framework of the principle of limiting rights, as stipulated in Article 28J, paragraph (2), of the 1945 Constitution of the Republic of Indonesia, to ensure its constitutionality. This restriction on holding multiple positions has a legitimate aim, namely, maintaining the independence of advocate organizations and preventing conflicts of interest. This restriction is also necessary because without an explicit prohibition, the potential for abuse of power remains open. From a proportionality perspective, this restriction does not eliminate an individual's right to serve as both a state official and a leader of an advocacy organization; it merely regulates the fact that both positions cannot be held concurrently. Therefore, constitutionally, this prohibition is justified and actually strengthens the protection of others' rights within the legal system.

Harmonization with the broader legal system is a crucial step to ensure that formulated norms do not stand alone. The prohibition on holding multiple positions must be aligned with similar principles already in place for other positions, such as judges, prosecutors, and officials of independent institutions, which are generally prohibited from holding multiple positions to maintain integrity and independence. This harmonization process can be carried out through cross-ministerial coordination, particularly the Ministry of Law and Human Rights and the House of Representatives (DPR), to ensure there are no overlaps or inconsistencies in norms. With this series of concrete steps, the reformulation of the prohibition on holding multiple

positions will not only be a normative idea but also an implementable legislative design, responsive to Constitutional Court Decision No. 183/PUU-XXII/2024, and capable of strengthening the independence of advocate organizations within the Indonesian legal system.

CONCLUSION

Based on the overall analysis, it can be concluded that Constitutional Court Decision Number 183/PUU-XXII/2024 affirms that expanding the prohibition on leaders of advocate organizations holding concurrent positions with state officials is within the realm of open legal policy. Therefore, the Court did not amend Article 28, paragraph (3) of the Advocates Law, and the petition was dismissed. However, this decision does not necessarily negate the substantive issues raised in the petition, as the revealed facts demonstrate the potential for conflicts of interest and threats to the independence of advocate organizations if such concurrent positions are not explicitly regulated. Therefore, the independence of advocate organizations, as a consequence of the principle of the rule of law as stipulated in the 1945 Constitution of the Republic of Indonesia, still demands more comprehensive regulations. The lack of implicit regulations in current norms has the potential to create legal uncertainty and undermine the integrity of the judicial system. In this regard, it is recommended that lawmakers immediately undertake a limited revision of Article 28, paragraph (3), of Law Number 18 of 2003 concerning Advocates, through the National Legislation Program mechanism, by including an explicit prohibition on holding dual positions as state officials. This reformulation must be accompanied by clear norms, a firm definition of state officials, and operational implementation mechanisms, including the obligation to resign, time limits, and effective administrative sanctions. In addition, harmonization with other laws and regulations, and the strengthening of oversight mechanisms, are needed so that the norms formed are not only declaratory in nature but can also be implemented consistently. With this step, lawmakers will not only follow up on the implications of the Constitutional Court Decision but also strengthen the independence of advocate organizations and maintain the overall quality of the Indonesian legal system.

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