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The Constitutional Legitimacy of Temporary Advocate Identification in the Indonesian Legal System

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Original Article

Abstract

The rejection of the Temporary Advocate Identification (TPSA) by judicial panels in court proceedings presents significant legal and constitutional concerns, particularly with respect to the principles of legal certainty and the client's right to legal representation. This study seeks to examine the legal status of the TPSA based on Indonesia's positive legal framework, especially in relation to Law No. 18 of 2003 on Advocates and its implementing regulations. Furthermore, it evaluates the authority of advocate organizations in issuing identification cards as a means of establishing professional legitimacy. Utilizing a normative legal method combined with case study analysis of selected judicial decisions, this research finds that although TPSA is not explicitly regulated in statutory provisions, it possesses a valid administrative foundation. The rejection of TPSA in court proceedings has adverse implications for the constitutional rights of advocates and impairs clients' access to legal counsel. Accordingly, the study recommends the establishment of formal regulatory recognition of TPSA to promote legal equality, procedural consistency, and the effective exercise of the right to defense within the judicial system.

Keywords: *Temporary Advocate Identification (TPSA); Legal Certainty; Constitutional Rights of Advocates; Access to Justice*

Abstrak

Penolakan Kartu Tanda Pengenal Sementara Advokat (TPSA) oleh majelis hakim dalam penyelenggaraan peradilan menimbulkan problematika yuridis dan konstitusional, terutama terkait kepastian hukum dan hak pembelaan klien. Penelitian ini bertujuan menganalisis kedudukan hukum TPSA dalam sistem hukum positif Indonesia berdasarkan UU No. 18 Tahun 2003 tentang Advokat dan peraturan pelaksanaannya, serta mengevaluasi kewenangan organisasi advokat dalam menerbitkan tanda pengenal. Metode penelitian menggunakan pendekatan yuridis normatif dan studi kasus terhadap sejumlah putusan pengadilan. Hasilnya menunjukkan bahwa meskipun belum diatur eksplisit, TPSA memiliki dasar legalitas administratif. Penolakan terhadap TPSA berimplikasi pada pelanggaran hak konstitusional advokat dan akses keadilan klien. Penelitian ini merekomendasikan perlunya regulasi pengakuan formal terhadap TPSA demi menjamin kesetaraan hukum, kepastian prosedural, dan efektivitas fungsi pembelaan di pengadilan.

Kata kunci: *Kartu Tanda Pengenal Sementara Advokat (TPSA), Kepastian Hukum, Hak Konstitusional Advokat, Akses terhadap Keadilan*

1. INTRODUCTION

The legal profession, particularly that of advocates, holds a strategic position within the modern justice system as a component of law enforcement, operating on an equal footing with other legal authorities. The involvement of advocates in judicial proceedings not only safeguards the right to legal defense for every individual but also embodies the principles of the rule of law (*rechtstaat*), which emphasizes both procedural and substantive justice. In this context, the authenticity of an advocate's professional identity constitutes a fundamental prerequisite for the legal exercise of advocacy within the courtroom.

Law Number 18 of 2003 concerning Advocates clearly stipulates that individuals who have been appointed and sworn in by the Chief Justice of the High Court and are registered with a recognized advocate organization are entitled to practice law both in and out of court. The Advocate Identification Card (*Kartu Tanda Pengenal Advokat*, or *KTPA*), issued by such organizations, serves as an administrative instrument affirming this legitimacy. Nevertheless, in practice, a Temporary Advocate Identification Card (*Kartu Tanda Pengenal Sementara Advokat*, or *TPSA*) is often issued as an interim document for newly inducted members or those awaiting *KTPA* renewal.

Legal complications emerge when panels of judges reject the *TPSA*—despite its issuance by an official advocate organization and its confirmation of the holder's legal status as an advocate—on the basis of its physical format. Unlike the *KTPA*, which is typically a plastic card, the *TPSA* often takes the form of a paper document. In several instances, advocates presenting only the *TPSA* have been deemed ineligible to perform their professional duties, and in some cases, have had their powers of attorney revoked by clients.¹ This phenomenon underscores critical legal concerns surrounding the tension between administrative formalism and substantive professional legitimacy. It raises potential violations of the constitutionally protected rights to access justice and to legal representation. The absence of a clear statutory provision within the Advocates Law concerning the physical form of professional identification leaves broad interpretive discretion to both advocate organizations and judicial authorities. Such normative ambiguity contributes to legal uncertainty and undermines the lawful standing of practicing advocates.

¹ hukumonline.com, "Mereka Bingung Kemana Harus Mendata Ulang Kartu Advokat," HukumOnline.com, 2015, <https://www.hukumonline.com/berita/a/mereka-bingung-kemana-harus-mendata-ulang-kartu-advokat-lt5583eb28c05c2/>; Letezia Tobing, "Ketidadaan Kartu Tanda Pengenal Advokat Saat Bersidang," HukumOnline.com, 2013, <https://www.hukumonline.com/klinik/a/ketidadaan-kartu-tanda-pengenal-advokat-saat-bersidang-lt516f41480d86d/>; Syahdan Nurdin and Maha Liarosh, "Anggota Peradi Se-Indonesia Desak Pencabutan Surat Edaran Mahkamah Agung No 73 Tahun 2015," *viva: news & insight*, 2024, https://www.viva.co.id/berita/nasional/1779035-anggota-peradi-se-indonesia-desak-pencabutan-surat-edaran-mahkamah-agung-no-73-tahun-2015?page=2#goog_rewarded.

During the period of 2024–2025, the Indonesian Advocates Association (Perhimpunan Advokat Indonesia, or PERADI) undertook a collective renewal of KTPA documents.² As a result, thousands of advocates have had to rely solely on TPSA for extended periods, ranging from three months to over a year. Should the TPSA fail to be acknowledged as a valid indicator of professional legitimacy, it would result in the systemic exclusion of advocates from exercising their legal rights and could significantly impede public access to qualified legal defense. Thus, this issue transcends internal administrative procedures of professional associations and directly affects the integrity of the justice system and the protection of fundamental human rights.

Previous studies have explored various legal aspects of the advocate profession in Indonesia, including the right to immunity, the role of advocates in the justice system, and the dynamics within professional organizations. Research conducted by Cinthia Wijaya, John Calvin, and Mutiara Girindra Pratiwi highlights the significance of advocate immunity in fulfilling their duties to defend clients. They assert that advocates acting in good faith should not be subject to criminal or civil liability, as provided by Article 16 of Law Number 18 of 2003 and upheld by a Constitutional Court decision.³ This perspective is further developed by Andi Nurhidayah, who discusses the ethical boundaries and responsibilities associated with the exercise of immunity, particularly in the context of criminal proceedings.⁴

Furthermore, Kamal Arif emphasizes that the legal profession, as an *officium nobile*, must be granted institutional independence through robust legal protections to ensure the proper execution of its functions, particularly in light of the Constitutional Court Decision Number 26/PUU-XI/2013 (Arif, 2018). In contrast, Rinaldy Adipratama concentrates on the delineation of intern advocates' authority and the procedural requirements for court appearances, highlighting the critical need for legal certainty in the identification and functional authority of advocates.⁵ Meanwhile, the works of Samuel Saut Martua Samo and Yadhdy Cahyady focus more closely on the institutional dimensions of advocate organizations and their roles within the judicial

² Perhimpunan Advokat Indonesia, "Pengumuman Data Ulang Advokat Perhimpunan Advokat Indonesia Tahun 2024 Tahap II," Perhimpunan Advokat Indonesia, 2024, <https://peradi.or.id/index.php/berita/detail/pengumuman-data-ulang-advokat-perhimpunan-advokat-indonesia-tahun-2024-tahap-ii#:~:text=6. Advokat yang Pengangkatannya dilaksanakan,Selatan dan DPC PERADI Depok.>

³ Cinthia Wijaya, John Calvin, and Mutiara Girindra Pratiwi, "Usaha Pemerintah Melindungi Hak Imunitas Advokat Dalam Melakukan Pekerjaan," *Jurnal Muara Ilmu Sosial, Humaniora, Dan Seni* 2, no. 2 (2018): 691–99, <https://doi.org/10.24912/jmishumsen.v2i2.2494>.

⁴ Andi Nurhidayah, "Hak Imunitas Advokat Dalam Menjalankan Profesi Hukum," *Constitutum: Jurnal Ilmiah Hukum*, 2, no. 1 (2023): 77–89, <https://doi.org/10.37721/constitutum.v2i1.1337>.

⁵ Rinaldy Adipratama, "Advokat Magang Dalam Menerima Kuasa Khusus Mendampingi Terdakwa Dalam Perspektif Kepastian Hukum," *Justitia: Jurnal Ilmu Hukum Dan Humaniora* 9, no. 6 (2022): 2961–71, <http://dx.doi.org/10.31604/justitia.v9i6.2961-2971>.

system, both in the discourse surrounding the unification of advocate organizations and in their operational presence in specialized courts, such as the Tax Court.⁶

However, none of these studies specifically address the legal validity of advocate identity documents—particularly the differential treatment between the Advocate Identification Card (Kartu Tanda Pengenal Advokat, KTPA) and the Temporary Advocate Identification Card (Kartu Tanda Pengenal Sementara Advokat, TPSA)—within judicial proceedings in Indonesia. Based on the aforementioned literature, it is evident that there exists a normative and empirical gap in scholarly discourse concerning the legal status of the TPSA in the context of the judicial system. Although existing research touches on the broader legal and institutional status of advocates, no study has systematically examined whether the TPSA can be legally recognized as valid proof of an advocate's legitimacy in court.

This disconnect reveals a legal discrepancy between the substantive provisions of Law Number 18 of 2003 concerning Advocates—which does not prescribe a specific physical format for advocate identification—and the prevailing judicial practice in which TPSAs are rejected on the basis of their non-card format. Such a situation has significant implications for the legal protection afforded to advocates and the effectiveness of their professional role in providing legal representation.

Accordingly, this study contributes original insight by offering a focused comparative analysis of the legal status of the KTPA and TPSA, viewed from the perspectives of statutory law and judicial practice. Additionally, it examines the underlying tension between the authority of advocate organizations to issue identification documents and the discretionary power of the judiciary in determining the legitimacy of advocates in legal proceedings. In this regard, the research is both academically significant and practically relevant, as it interrogates the validity of the TPSA through the lens of Indonesian positive law, the statutory authority of professional organizations, prevailing judicial practices, and foundational principles of justice within the framework of a rule-of-law state.

The objectives of this study are to analyze the legal status of the TPSA within the Indonesian positive legal framework, particularly in reference to Law Number 18 of 2003 concerning Advocates and its implementing regulations, to examine the practice of TPSA rejection by judicial panels in various courts and to assess the implications for advocates' constitutional rights and clients' rights to legal representation, to evaluate the legal authority of advocate organizations in issuing identification documents as proof of membership and legitimacy to practice in court, and to formulate legal arguments

⁶ Yadhy Cahyady, "Tinjauan Hukum Atas Kedudukan Kuasa Hukum Pada Pengadilan Pajak," *Jurnal Pajak Indonesia* 3, no. 1 (2019): 1–10, <https://doi.org/10.31092/jpi.v3i1.579>; Samuel Saut Martua Samo, "Organisasi Advokat Dan Urgensi Peran Pemerintah Dalam Profesi Advokat," *Jurnal Konstitusi* 14, no. 3 (2018): 511–30, <https://doi.org/10.31078/jk1433>.

and normative recommendations aimed at the recognition of TPSA as equivalent to KTPA, in order to ensure legal certainty and promote equitable access to justice.

2. RESEARCH METHODOLOGY

This study constitutes normative legal research that examines the legal validity of the Temporary Advocate Identification Card (Tanda Pengenal Sementara Advokat, TPSA) as a legitimate form of professional identification in judicial practice in Indonesia. The research employs a combination of legislative, conceptual, case-based, historical, and comparative approaches to provide a comprehensive and multidimensional analysis. The legislative approach is applied to examine the statutory basis for the validity of both the permanent Advocate Identification Card (KTPA) and the TPSA within the framework of Indonesia's positive legal system. The conceptual approach investigates foundational legal theories relevant to the advocate profession—such as *officium nobile*, legal standing, and access to justice—in order to assess the administrative legitimacy of the TPSA from the perspective of substantive justice. The case approach focuses on analyzing judicial practices, particularly those involving the rejection of TPSA as valid identification in court proceedings. Empirical data for this analysis were obtained from court decisions, trial documentation, and limited interviews with practicing advocates.

The historical approach traces the evolution of legal recognition concerning the professional identity of advocates over time, while the comparative approach examines how the legitimacy of advocate identification is recognized in other jurisdictions that share similar legal traditions. The integration of these approaches is intended to provide an understanding of the TPSA's legal status in the Indonesian judicial framework. This study draws upon primary legal sources, including statutory laws and judicial decisions; secondary legal materials, such as academic literature, commentaries, and prior research; and tertiary legal materials, including legal dictionaries and encyclopedias. All data are analyzed using qualitative methods, employing systematic and teleological interpretive techniques to uncover the underlying legal meaning that upholds the principles of justice, legal certainty, and utility. The findings are presented in the form of structured, coherent, and analytically grounded legal arguments.

3. RESEARCH RESULT AND DISCUSSION

3.1. The Legal Status of the Temporary Advocate Identification Card (TPSA) in Indonesia's Positive Legal System and the Normative-Functional Validity of the KTPA in Judicial Practice

This section analyzes the legal status of the Temporary Advocate Identification Card (TPSA) within the Indonesian positive legal framework, with specific reference to Law Number 18 of 2003 on Advocates and its implementing regulations. Additionally, it

examines the normative and functional validity of the permanent Advocate Identification Card (KTPA) within judicial practice and evaluates its significance in ensuring legal certainty and safeguarding the professional rights of advocates.

Law Number 18 of 2003 does not expressly mandate the possession of a KTPA as a formal legal requirement for verifying an individual's status as an advocate. Nonetheless, in practice, the KTPA has evolved into a widely accepted administrative instrument serving as *prima facie* evidence of advocate status in court proceedings. The KTPA is issued by the advocate organization with which the individual is affiliated. However, the authority to issue such identification remains a subject of legal debate, especially in light of the fragmentation of advocate organizations following several Constitutional Court decisions—namely Decisions Number 014/PUU-IV/2006, 66/PUU-VIII/2010, 101/PUU-VII/2009, 112/PUU-XII/2014, 36/PUU-XIII/2015, and 35/PUU-XVI/2018—which collectively affirm that the Indonesian Advocates Association (PERADI) holds eight core mandates, including the appointment and supervision of advocates.

Despite this, in judicial practice, courts have accepted KTPA and TPSA documents issued by advocate organizations other than PERADI, thereby creating normative ambiguity.⁷ Furthermore, although the Supreme Court Secretary's Circular Letter indicates that only KTPA issued by PERADI is valid, such a circular does not possess the binding force of law or regulation and thus cannot serve as a definitive legal standard.

The findings of this study suggest that the legal status of the KTPA is administrative and functional rather than normative, as it lacks a clear foundation within the formal hierarchy of laws and regulations. While the KTPA has been accepted *de facto* in courtrooms as evidence of an advocate's legitimacy, the absence of explicit legal provisions regarding its format, issuing authority, and legal force opens space for divergent interpretations—posing a threat to the principle of legal certainty, which is foundational to the integrity of the judicial process.

The weakness in the administrative regulation of the legal profession in Indonesia stems from the absence of a centralized institutional structure overseeing the profession. Unlike notaries, who are regulated directly by the Ministry of Law and Human Rights, the governance of advocates is dispersed and institutionally fragmented.⁸ The Supreme

⁷ hukumonline.com, "Mereka Bingung Kemana Harus Mendata Ulang Kartu Advokat"; Tobing, "Ketidadaan Kartu Tanda Pengenal Advokat Saat Bersidang"; Nurdin and Liarosh, "Anggota Peradi Se-Indonesia Desak Pencabutan Surat Edaran Mahkamah Agung No 73 Tahun 2015."

⁸ Prayudi Malik, Said Sampara, and Nurul Qamar, "Analisis Putusan Mahkamah Konstitusi Republik Indonesia Nomor 35 PUU-XVI/2018 Tentang Organisasi Advokat," *Journal of Lex Generalis* 1, no. 7 (2020): 989–1010, <https://doi.org/10.52103/jlg.v1i7.280>; Vidi Galenso Syarieff, "Kedudukan Organisasi Advokat Dalam Sistem Kekuasaan Kehakiman," *Jurnal Ilmiah Publika* 11, no. 1 (2023): 42–51, <https://doi.org/10.33603/publika.v11i1.8200>; Muhammad Fajar Sidiq Widodo, Sudarsono Sudarsono, and Bambang Winarno, "Kedudukan Organisasi Advokat Sebagai Wadah Tunggal Profesi Pasca Putusan Mahkamah

Court's Circular cannot be considered a legitimate legal basis for determining the validity of professional administrative instruments.⁹

Legal certainty, as theorized by Jan M. Otto and Gustav Radbruch, necessitates the existence of clear, consistent, and publicly accessible legal norms.¹⁰ However, the current judicial acceptance of documents such as the KTPA—despite the absence of normative legitimacy within Indonesia's formal legal hierarchy—reflects a tension between legal practice and statutory clarity.

The regulatory ambiguity surrounding the Advocate Identification Card (KTPA) carries two significant legal implications. First, it opens the door to discriminatory recognition of advocate status, particularly for individuals affiliated with organizations other than PERADI. Second, it increases the likelihood of administrative rejection in judicial proceedings due to the absence of a nationally standardized identification mechanism, thereby undermining the legal rights of clients and generating uncertainty in legal representation. The fundamental purpose of the KTPA should be to facilitate efficiency and practicality in verifying an individual's legal status as an advocate. Accordingly, its validity ought to be determined not by the issuing organization, but by the advocate's fulfillment of all procedural and substantive requirements as stipulated in the Advocates Law.

This study finds that the KTPA does not possess an explicit normative basis within Law Number 18 of 2003 concerning Advocates. Nevertheless, it has been adopted as a de facto administrative convention within judicial practice. Furthermore, the Supreme Court Secretary's Circular Letter lacks binding legal authority and serves merely as an administrative guideline, which in practice may be disregarded. The absence of formal legal regulation regarding the KTPA has the potential to erode the principle of legal certainty and may foster unequal treatment among advocates.

To address these challenges, it is essential to harmonize regulatory standards among the judiciary, advocate organizations, and legislative bodies in order to establish a valid and uniform legal instrument for professional identification in the legal field. Thus, there is an urgent need to formulate implementing regulations under the Advocates Law that explicitly govern the existence, design, and issuance authority of the

Konstitusi," *Jurnal Ilmiah Pendidikan Pancasila Dan Kewarganegaraan* 3, no. 2 (2018): 149–58, <http://dx.doi.org/10.17977/um019v3i2p149-158>.

⁹ Manganju H Simanullang, John Pieris, and Abdul Goffar, "Menelusuri Kendala Hukum Dalam Surat Ketua Mahkamah Agung Republik Indonesia Nomor 73/KMA/Hk.01/Ix/2015 Tentang Pengambilan Sumpah Advokat Terhadap Organisasi Advokat Sebagai Satu-Satunya Wadah Menurut UU No. 18 Tahun 2003 Tentang Advokat," *Jurnal Cahaya Mandalika* 3, no. 2 (2023): 1120–32, <https://ojs.cahayamandalika.com/index.php/jcm/article/view/2200>; Muttaqin Asyura, Faisal A. Rani, and Ilyas Ismail, "Kewenangan Ketua Mahkamah Agung Mengeluarkan Surat Keputusan Ketua Mahkamah Agung Nomor 73/KMA/HK.01/IX/2015 Perihal Penyempahan Advokat," *Syiah Kuala Law Journal* 3, no. 3 (2019): 429–44, <https://doi.org/10.24815/sklj.v3i3.12611>.

¹⁰ Jan Michiel Otto, *Kepastian Hukum Di Negara Berkembang*, trans. Tristan Moeliono, 1st ed. (Jakarta: Komisi Hukum Nasional Republik Indonesia, 2003); Gustav Radbruch, "Five Minutes of Legal Philosophy (1945)," *Oxford Journal of Legal Studies* 26, no. 1 (2006): 13–15, <https://doi.org/10.1093/ojls/gqi042>.

KTPA. Such a regulatory framework would help fulfill the foundational objectives of legal certainty, justice, and utility¹¹, thereby strengthening the integrity of advocacy practices in Indonesia.

3.2. Judicial Rejection of the Temporary Advocate Identification Card (TPSA) and Its Implications for the Constitutional Rights of Advocates and Clients' Legal Defense

This section examines the judicial practice of rejecting the Temporary Advocate Identification Card (TPSA) by panels of judges across various courts in Indonesia and evaluates its implications for the constitutional rights of advocates in performing their professional duties, as well as for clients' rights to legal representation. Furthermore, this study assesses the extent to which such practices undermine legal certainty—a core tenet of judicial authority—and highlights the lack of uniformity in judicial acceptance of professional identification issued by different advocate organizations.

Findings from the analysis indicate that several advocates have been denied the right to represent their clients solely because they presented TPSA or KTPA issued by organizations other than PERADI.¹² The primary reasons for rejection are twofold: (1) the identification was not issued by an advocate organization officially recognized by the Supreme Court; and (2) the temporary nature of the TPSA was deemed insufficient to establish formal professional legitimacy. Nonetheless, inconsistencies were observed: in certain instances, TPSA was accepted when the advocate operated within a legal team that included members possessing a KTPA issued by PERADI. This variability underscores the subjective and inconsistent nature of judicial discretion in determining the legitimacy of advocate identification.

The findings reveal that such judicial rejections contribute directly to legal uncertainty, contravening the principles enshrined in Article 24 of the 1945 Constitution and Article 4 of the Law on Judicial Power. Moreover, this practice constitutes a violation of the constitutional rights of advocates under Law Number 18 of 2003 concerning Advocates and potentially infringes upon clients' rights to competent legal defense.

The challenges surrounding the recognition of advocate identity stem from structural issues, particularly the absence of a clearly defined single authority for advocate organizations, as exacerbated by a series of Constitutional Court decisions.¹³

¹¹ Heather Leawoods, "Gustav Radbruch: An Extraordinary Legal Philosopher," *Journal of Law and Policy* 2 (2000): 489–515, https://openscholarship.wustl.edu/law_journal_law_policy/vol2/iss1/16.

¹² hukumonline.com, "Mereka Bingung Kemana Harus Mendata Ulang Kartu Advokat"; Tobing, "Ketidadaan Kartu Tanda Pengenal Advokat Saat Bersidang"; Nurdin and Liarosh, "Anggota Peradi Se-Indonesia Desak Pencabutan Surat Edaran Mahkamah Agung No 73 Tahun 2015."

¹³ Malik, Sampara, and Qamar, "Analisis Putusan Mahkamah Konstitusi Republik Indonesia Nomor 35 PUU-XVI/2018 Tentang Organisasi Advokat"; Syarif, "Kedudukan Organisasi Advokat Dalam Sistem Kekuasaan

This study expands the discourse by demonstrating that the problem extends beyond inter-organizational conflict and has manifested within judicial practices, thereby affecting the fundamental rights of legal professionals and the clients they represent. Suhayati has argued that inter-organizational disputes lie at the heart of this issue. However, this study emphasizes the judiciary's constitutional responsibility to uphold legal certainty and to ensure equal, non-discriminatory treatment for all advocates who have lawfully met the requirements to practice.¹⁴

The rejection of the Temporary Advocate Identification Card (TPSA) or a KTPA issued by non-PERADI organizations, when not grounded in substantive legal provisions, reflects a judicial tendency to apply a narrowly normative interpretation of the law. In contrast, applying systematic and teleological interpretive methods suggests that the KTPA should be regarded solely as an administrative instrument rather than conclusive legal evidence of an advocate's professional status. Sociologically, the KTPA serves as a concise representation of a more comprehensive documentation process mandated by the Advocates Law, including a PKPA certificate, bar examination results, proof of legal apprenticeship, and the official minutes of the oath ceremony.

The refusal to accept the KTPA—particularly when it is accompanied by supporting documents such as the minutes of oath-taking—reveals a disruption in the expected legal reasoning that should consistently uphold the logic embedded within the legal system. Moreover, judges who render decisions inconsistent with the provisions of positive law, particularly the Advocates Law, undermine the fundamental objectives of law, namely legal certainty (*rechtssicherheit*) and justice (*gerechtigkeits*).¹⁵ Inconsistencies and subjective judicial interpretations contribute to legal uncertainty, erode the expectations of legal actors, and open the door to discriminatory practices, especially against advocates affiliated with non-PERADI organizations.

Based on a critical examination of constitutional principles, statutory regulations, and judicial practices, the following conclusions can be drawn:

- a) First, there is no explicit provision in Law No. 18 of 2003 stipulating that the KTPA is a mandatory requirement for verifying the professional status of an advocate. The only formal and constitutive requirement is the record of the oath administered before the High Court.
- b) Second, administrative instruments issued by the Supreme Court—such as circulars or advisory opinions—do not carry the same normative authority as statutory laws. These instruments are internal and administrative in nature.

Kehakiman”; Widodo, Sudarsono, and Winarno, “Kedudukan Organisasi Advokat Sebagai Wadah Tunggal Profesi Pasca Putusan Mahkamah Konstitusi.”

¹⁴ Monika Suhayati, “Pengaturan Sistem Organisasi Advokat Dalam Rancangan Undang-Undang Tentang Perubahan Undang-Undang Nomor 18 Tahun 2003 Tentang Advokat,” *Kajian: Menjembatani Teori Dan Persoalan Masyarakat Dalam Perumusan Kebijakan* 20, no. 4 (2015): 317–28, <https://doi.org/10.22212/kajian.v20i4.632>.

¹⁵ Otto, *Kepastian Hukum Di Negara Berkembang*; Radbruch, “Five Minutes of Legal Philosophy (1945).”

Therefore, using the Supreme Court Secretary's Circular as a legal basis for rejecting KTPA issued by non-PERADI organizations lacks justification under positive law.

- c) Third, a historical and systematic interpretation of several Constitutional Court decisions confirms that no exclusive authority has been granted to PERADI concerning the recognition of advocates. All advocate organizations remain valid, provided they adhere to the legal framework and engage PERADI in executing their statutory functions.
- d) Fourth, the arbitrary rejection of KTPA contravenes the principle of non-discrimination enshrined in Article 28D of the 1945 Constitution and undermines the principle of access to justice, which upholds the client's right to competent legal representation as a fundamental human right.
- e) Fifth, in empirical practice, the acceptance or rejection of TPSA or KTPA often hinges on the subjective discretion of individual judges rather than on clearly established legal norms. This results in dualism in judicial practice and exacerbates inequalities in the treatment of advocates who, under the law, should enjoy equal status before the court.

3.3. The Authority of Advocate Organizations in Issuing Identification Cards

This study evaluates the authority of advocate organizations to issue Advocate Identification Cards (KTPA) as evidence of membership and legal standing in court proceedings, and analyzes the implications of such authority for the principles of legal certainty and the constitutional rights of advocates within the Indonesian judicial system. Furthermore, the study investigates the validity of KTPA issued by various advocate organizations in judicial practice, assesses the consistency of its acceptance by the judiciary, and examines the urgency of establishing more explicit normative regulations.

The findings reveal significant variation in judicial recognition of KTPA. While some judges only acknowledge KTPA issued by specific organizations—primarily PERADI—others permit advocates to litigate using a Temporary Advocate Identification Card (TPSA) or merely by presenting proof of oath-taking. In many cases, acceptance is contingent on discretionary policies guided by court leadership. This study confirms that the absence of explicit legal provisions concerning the form and authorized issuer of KTPA in Law No. 18 of 2003 on Advocates, or any other statutory regulation, has led to pervasive legal uncertainty. The inconsistent judicial treatment of KTPA issued by different organizations reflects a weak normative foundation and an inconsistent application of the principle of due process.

The fragmentation of advocate organizations following key Constitutional Court rulings has adversely affected the professional unity and predictability of judicial

processes.¹⁶ Additionally, the lack of universal recognition of KTPA has led to discriminatory treatment of advocates and impeded the legal defense rights of clients.¹⁷ These findings suggest that the core issue extends beyond inter-organizational conflict and lies in the lack of coordination among judicial institutions and the absence of uniform regulatory standards. The prevailing legal uncertainty regarding the recognition of KTPA contradicts the fundamental legal principles, particularly with respect to legal certainty (*Rechtssicherheit*) and justice (*Gerechtigkeit*).¹⁸ Once an advocate has been lawfully appointed and sworn in by the High Court, their professional legitimacy should not depend on administrative documentation—such as a KTPA—issued by a specific organization.

The rejection of KTPA or TPSA without clear legal justification raises concerns over violations of the principle of non-discrimination as enshrined in Article 4 of the Law on Judicial Power and Article 28D (1) of the 1945 Constitution, which guarantees equal protection under the law. Interpreted sociologically and teleologically, the primary function of the KTPA is to facilitate professional identification, not to serve as the substantive legal basis for an advocate's legitimacy. Furthermore, the exclusive reference to KTPA in the Circular Letter of the Secretary of the Supreme Court—specifying that only KTPA issued by PERADI is valid—introduces a form of institutional exclusivity. This contradicts the principles of freedom of association and the intent of the Constitutional Court's decisions, which have affirmed the legitimacy of advocate organizations beyond PERADI.

Based on the overall findings of this study, several critical conclusions can be drawn:

- a) The authority of advocate organizations to issue Advocate Identification Cards (KTPA) lacks an explicit legal basis in statutory law or government regulations. The KTPA functions primarily as an administrative tool to facilitate identification but does not constitute the legal foundation for the legitimacy of an advocate's professional status.
- b) Judicial inconsistency in recognizing KTPA contributes to a state of legal uncertainty, adversely affecting both advocates and their clients. This inconsistency undermines the principles of due process and non-discriminatory justice, which are fundamental to a fair legal system.
- c) Decisions of the Constitutional Court have clearly established that no single advocate organization holds exclusive authority. Consequently, the selective

¹⁶ Erlina Sari Hasibuan, "Problematisasi Organisasi Advokat Di Indonesia Yang Menyebabkan Perpecahan," *As-Syar'i: Jurnal Bimbingan & Konseling Keluarga* 5, no. 2 (2023): 381–86, <https://doi.org/10.47467/as.v5i2.2659>.

¹⁷ Rendra Edwar Fransisko and Alauddin Alauddin, "Legalitas Advokat Dalam Memnberikan Layanan Konsultasi Hukum Daring Di Tinjau Dari Perspektif UU Advokat Dan UU ITE," *Unes Law Review* 6, no. 4 (2024): 12159–64, <https://doi.org/10.31933/unesrev.v6i4.2073>.

¹⁸ Radbruch, "Five Minutes of Legal Philosophy (1945)."

- recognition of KTPA from only one organization is both discriminatory and inconsistent with constitutional mandates.
- d) Circulars issued by the Supreme Court, including those concerning the recognition of KTPA, do not carry the binding legal force of statutory or regulatory instruments. Therefore, such circulars cannot be used as the sole legal basis for the acceptance or rejection of KTPA in judicial practice.
 - e) There is a pressing need for more authoritative, inclusive, and clearly articulated regulatory instruments—either in the form of Supreme Court Regulations (Peraturan MA) or legislative amendments to Law No. 18 of 2003 on Advocates. Such reforms should affirm the equal standing of all legally sworn advocates, irrespective of their organizational affiliation.
 - f) The broader public interest in ensuring access to justice is jeopardized when duly appointed advocates are hindered in their professional duties due to administrative technicalities that are not clearly regulated by law.

In light of these considerations, a comprehensive evaluation of the advocate identification system—particularly concerning the issuance and recognition of KTPA—is urgently required. Legal norms must explicitly affirm that the act of being sworn in by the High Court constitutes the definitive proof of an advocate's legitimacy. KTPA should be recognized regardless of the issuing organization, provided no exclusive legal provision states otherwise. This approach would eliminate discriminatory practices, promote legal certainty, and ensure the protection of both advocates' constitutional rights and their clients' right to legal representation in a just and equitable legal system.

3.4. Legal Arguments and Normative Recommendations on the Legal Recognition of TPSA

This study seeks to develop legal arguments and normative recommendations to support the legal recognition of the Temporary Advocate Identification (TPSA), ensuring its equal status with the standard Advocate Identification Card (KTPA). The ultimate objective of this recognition is to uphold legal certainty and ensure access to justice for advocates and the clients they represent in judicial proceedings. Based on primary data collected through interviews with judges, court clerks, and advocates across various jurisdictions, as well as an analysis of relevant legal sources—including Constitutional Court decisions, statutory laws, and Supreme Court circulars—the following findings were identified:

- a) There remains inconsistency in the judicial treatment of advocates presenting TPSA. While some judges permit such advocates to litigate, others categorically reject the use of TPSA.

- b) No existing legislation at the statutory level explicitly regulates or prohibits the use of TPSA as a valid form of professional identification for advocates.
- c) TPSA is typically issued by legitimate advocate organizations that conduct the PKPA (Special Professional Education for Advocates), administer professional certification exams, and facilitate the oath-taking process as mandated under Law No. 18 of 2003.
- d) Judges who reject TPSA often argue that it lacks the formal legal status associated with KTPA issued by PERADI.

The study's findings affirm that, under the prevailing legal framework, any individual who has fulfilled the statutory requirements outlined in Law No. 18 of 2003—including being sworn in by the High Court—holds the legal status of an advocate. Accordingly, professional identity should not be narrowly confined to possession of a KTPA alone; identification tools such as TPSA, particularly when issued by legally recognized organizations, should also be deemed valid.

The judicial rejection of TPSA in the absence of a clear legal basis represents a breach of the principles of legal certainty and access to justice. The ambiguity surrounding the recognition of advocate organizations other than PERADI stems from the absence of adequate implementing regulations under Law No. 18 of 2003.¹⁹

TPSA functions as a practical and efficient form of identification, especially given the burdensome nature of presenting multiple formal documents during court proceedings. A systematic and teleological interpretation of the Advocate Law reveals no explicit restriction on alternative identification formats beyond KTPA. Furthermore, field practices have demonstrated the *de facto* acceptance of diverse KTPA formats from multiple advocate organizations²⁰, suggesting that judicial implementation often extends beyond rigid administrative requirements.

Law No. 18 of 2003 does not stipulate a specific form for advocate identification, and thus no statutory basis exists to reject TPSA as a valid form of professional verification. A historical review of the legal framework indicates the absence of any provision mandating KTPA as the sole acceptable means of identification. TPSA is issued by duly established advocate organizations and held by individuals who have been formally sworn in as legal practitioners. However, its recognition continues to depend on the subjective discretion of individual judges.

This regulatory gap has resulted in inconsistent judicial practices, ultimately undermining the predictability and uniformity of legal proceedings. Such inconsistency

¹⁹ Malik, Sampara, and Qamar, "Analisis Putusan Mahkamah Konstitusi Republik Indonesia Nomor 35 PUU-XVI/2018 Tentang Organisasi Advokat"; Syarif, "Kedudukan Organisasi Advokat Dalam Sistem Kekuasaan Kehakiman"; Widodo, Sudarsono, and Winarno, "Kedudukan Organisasi Advokat Sebagai Wadah Tunggal Profesi Pasca Putusan Mahkamah Konstitusi."

²⁰ hukumonline.com, "Mereka Bingung Kemana Harus Mendata Ulang Kartu Advokat"; Perhimpunan Advokat Indonesia, "Pengumuman Data Ulang Advokat Perhimpunan Advokat Indonesia Tahun 2024 Tahap II."

is contrary to the fundamental principles of judicial power as enshrined in Article 24(1) of the 1945 Constitution and Article 4(1) of Law No. 48 of 2009 on Judicial Power, both of which emphasize the imperative of impartiality and the prohibition of discriminatory treatment within the judiciary. Based on the foregoing analysis, several legal arguments can be articulated as follows:

- a) From a normative legal perspective, all individuals who have been duly sworn in by the High Court in accordance with the Advocate Law are legally authorized to practice law, without being subjected to discriminatory treatment based on the form of professional identification.
- b) The Temporary Advocate Identification (TPSA), insofar as it is issued by a legitimate advocate organization and based on the legal procedures prescribed by Law No. 18 of 2003, must be regarded as having equal legal validity to the standard Advocate Identification Card (KTPA).
- c) The rejection of TPSA in the absence of a clear and explicit legal basis constitutes a violation of the principle of non-discrimination and undermines the right to due process of law.
- d) The recognition of TPSA reflects a commitment to substantive justice, which emphasizes social context and equitable outcomes as central to the implementation of legal norms.

Normative Recommendations:

- a) The Supreme Court should issue a new Circular Letter or Supreme Court Regulation (Peraturan Mahkamah Agung/Perma) affirming that all forms of advocate identification issued by authorized professional organizations, when accompanied by evidence of oath-taking, are legally valid for use in court proceedings.
- b) The legislature and executive branch should revise Law No. 18 of 2003 or draft derivative regulations that explicitly define and regulate the format and legal recognition of advocate identification documents.
- c) Advocate organizations other than PERADI should collaborate to establish a national forum aimed at developing a standardized format for professional identification applicable to all advocates in Indonesia.
- d) Capacity-building programs for judges and court clerks are urgently required to enhance their understanding of the legal status of TPSA within the broader context of advocate rights and access to justice.

4. CONCLUSION

This study aims to examine the legal status of the Temporary Advocate Identification Card (TPSA) within the framework of Indonesia's positive legal system, particularly in

relation to Law No. 18 of 2003 concerning Advocates and its implementing regulations. The research focuses on three primary areas: (1) the judicial practice of rejecting TPSA by certain panels of judges; (2) the constitutional implications of such rejection for the rights of advocates and their clients; and (3) the evaluation of the authority of advocate organizations in issuing identification cards as evidence of professional membership and procedural legitimacy in litigation. The findings of this study indicate that although the TPSA is not explicitly governed by current statutory provisions, it possesses both legal and administrative justification as a temporary form of professional identification for legally appointed advocates. The study reveals inconsistent practices across different jurisdictions, with some judicial panels refusing to acknowledge advocates presenting only a TPSA. Such rejection may constitute a violation of advocates' constitutional rights—particularly as protected under Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia—and may also infringe upon the client's right to legal representation.

Moreover, this study affirms that advocate organizations, as officially recognized entities, possess the authority to issue identification cards, including TPSA, provided that such issuance does not contravene existing legal norms. Formal recognition of TPSA is therefore essential to uphold the principles of legal certainty, equality before the law, and access to justice. The significance of this study lies in its contribution to the formulation of normative recommendations, including the proposal for regulatory enactments or a Supreme Court Circular that explicitly acknowledges the TPSA as a valid transitional instrument of administrative legality. However, this research is limited by its empirical scope, which is currently confined to several judicial jurisdictions. Accordingly, further studies are recommended to assess the national implementation of TPSA and to support the development of academic papers that may serve as a foundation for future normative frameworks.

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