



CONSTITUTIONAL COURT
OF THE REPUBLIC OF INDONESIA

SUMMARY OF DECISION
FOR CASE NUMBER 118/PUU-XX/2022

Concerning

Expiration of the Crime of Forgery of Document

- Petitioners** : **Juliana Helemayana and Asril**
- Type of Case** : Judicial Review of Law Number 1 of 1946 concerning Criminal Law Regulations (Indonesian Criminal Code) against the 1945 Constitution of the Republic of Indonesia (1945 Constitution)
- Subject Matter** : Judicial Review of Article 79 point 1 of Indonesian Criminal Code against Article 28D paragraph (1) of the 1945 Constitution
- Verdict** : 1. To grant the petition of the Petitioners in part.
2. To declare that Article 79 point 1 of Law Number 1 of 1946 concerning Criminal Law Regulations (Announced on 26 February 1946) is contrary to the 1945 Constitution of the Republic of Indonesia and it does not have binding legal force conditionally to the extent that it is not interpreted as, **“regarding the forgery or tampering with currency, the expiration period shall start on the day when the forged item or damaged currency is discovered, used, and causes any loss”**. Therefore, Article 79 point 1 of Law Number 1 of 1946 concerning Criminal Law Regulations (Announced on 26 February 1946) which originally read **“The expiration period shall begin on the day when the action is committed, except in the following cases:**
1. **regarding the forgery or tampering with currency, the expiration period shall start on the day when the forged item or damaged currency is used.”** shall be read in full, **“The expiration period shall begin on the day when the action is committed, except in the following cases:**
1. **regarding the forgery or tampering with currency, the expiration period shall start on the day when the forged item or damaged currency is discovered, used and causes any loss.**
3. To order the publication of this decision in the State Gazette of the Republic of Indonesia as appropriate.
4. To dismiss the remainder of the petition of the Petitioners.
- Date of Decision** : Tuesday, January 31, 2023

Overview of Decision :

Whereas the Petitioners are individual Indonesian citizens who believe that they are harmed by the enactment of Article 79 point 1 of Indonesian Criminal Code.

Whereas in relation to the authority of the Court, because the Petitioners petition for a review of the constitutionality of the norms of the law, *in casu* Article 79 point 1 of Indonesian Criminal Code, the Court has the authority to hear the *a quo* petition.

Whereas in relation to the legal standing of the Petitioners, the Court is of the opinion that the Petitioners have been able to describe the existence of a direct relationship with the law, in particular between the enactment of the norms of Article 79 point 1 of Indonesian Criminal Code and the presumption of the loss of constitutional rights of the Petitioners as regulated in Article 28D paragraph (1) of the 1945 Constitution, namely the existence of uncertainty regarding the initial calculation of the expiration date for forgery of document regulated in Article 79 point 1 of Indonesian Criminal Code which ultimately harms the constitutional rights of the Petitioners, so that the Petitioners cannot carry out prosecutions in relation to the existence of forgery of document because the time for submitting such prosecution has expired. The presumption of such loss of constitutional rights will not occur or will no longer occur if the *a quo* petition of the Petitioners is granted.

Whereas since the *a quo* petition is clear, the Court is of the opinion that there is no urgency and relevance to request information from the parties as stated in Article 54 of the Constitutional Court Law.

Whereas the expiration (expiry) is the lapse of time which shall be the cause of the dismissal or elimination of the right to prosecute or carry out punishment against someone who has committed a crime. Such expiration is intended so that the prosecution authority is carried out within a certain period of time and not carried out indefinitely. The statute of limitations provides legal certainty regarding the status of the crime committed so that the perpetrator does not continue to be in a state of unrest indefinitely because of the feeling of unrest before the expiration date is basically mental suffering which is no different from the suffering resulted from serving a sentence imposed by court. Expiration is also in accordance with the difficulty factor in uncovering cases as they actually happened in the past. This is because in uncovering any case, evidence is needed as determined by the laws and regulations. The longer the time lapses for an event, the more difficult it will be to obtain the evidence. Likewise, the memory of a witness will decrease and the memory will even disappear or the witness will forget about an event that he/she saw or experienced. Likewise, with evidence, time will cause the object to become damaged, destroyed, or lost and cease to exist. Thus, the passage of time will minimize the success of a prosecution and it can even lead to failure. Moreover, the sense of justice is also disturbed while the justice that is achieved is not the true justice, since it is resulted from a trial that used invalid evidence.

Whereas in general, the expiration period must begin to be calculated on the day when the crime was committed [*vide* Article 78 of Indonesian Criminal Code]. Thus, the start of the calculation of the expiration period is not when the action is committed, but when the consequences of the crime appear. Article 79 point 1 of Indonesian Criminal Code provides an exception to the application of the expiration period which generally calculated starting on the day when the act is committed, namely the day when the forged item or damaged currency is used.

Whereas the calculation of the expiration period as stipulated in the provisions of Article 79 point 1 of Indonesian Criminal Code shall start when all the elements of the formulation of the crime of forgery of documents are fulfilled, namely on the day when the forged item is discovered, used, and cause any loss. The three elements as referred to must be interpreted cumulatively. In other words, the expiration period for the crime of forgery of document shall be calculated on the day when the allegedly forged document is used and the forgery is discovered to the victim or any other person or party and the victim is harmed as a result of using the allegedly forged document. Such provision provides a more legal certainty for all parties, especially for the victims, who may just discover the crime of forgery of document when he/she suffers from any loss due to the use of the relevant document. This means that

the victim may not be aware of the forgery of document if the forged document is not used by someone and it harms him/her. Such situation is also one of the forms of legal protection given by the state to the community, *in casu* the victim, as intended in Article 28I paragraph (4) of the 1945 Constitution. Furthermore, this provision also closes the opportunities for people who intend to use the forged document after the lapse of the expiration period as determined by the laws and regulations.

Whereas in order to avoid the legal uncertainty in calculating the expiration period for forged document as stipulated in the provisions of Article 79 point 1 of Indonesian Criminal Code and to provide a sense of justice for all parties, in relation to the calculation of the expiration period for forged document in accordance with the provisions of Article 79 point 1 of Indonesian Criminal Code, it shall be on the day when the forged document is discovered, used, and cause any loss. Thus, the existence of different interpretations by the law enforcement officers in implementing the provisions of the norms of Article 79 point 1 of Indonesian Criminal Code can be avoided.

Whereas in accordance with the entire description of the aforementioned legal considerations, the Court is of the opinion that the argument of the petition of the Petitioners which states that the calculation of the expiration period for the crime of forgery of document as stipulated in Article 79 point 1 of Indonesian Criminal Code has caused legal uncertainty as stipulated in Article 28D paragraph (1) of the 1945 Constitution is acceptable. However, because the interpretation of the requirements to start the calculation of the expiration period with regard to the provisions of the norms of Article 79 point 1 of Indonesian Criminal Code, as argued by the Petitioners is not the same as the stance of the Court, therefore the petition of the Petitioners is legally reasonable in part. As for other matters and the remainder of the petition, including Article 137 letter a of Bill of Indonesian Criminal Code, the Court does not consider it further because it is deemed irrelevant.

Subsequently, the Court passes down a decision in which the verdict states the following:

1. To grant the petition of the Petitioners in part.
2. To declare that Article 79 point 1 of Law Number 1 of 1946 concerning Criminal Law Regulations (Announced on 26 February 1946) is contrary to the 1945 Constitution of the Republic of Indonesia and it does not have binding legal force conditionally to the extent that it is not interpreted as, **“regarding forgery or tampering with currency, the expiration period shall begin on the day when the forged item or damaged currency is known, used, and causes any loss”**. Therefore, Article 79 point 1 of Law Number 1 of 1946 concerning Criminal Law Regulations (Announced on 26 February 1946) which originally read **“The expiration period shall begin on the day when the action is committed, except in the following cases:**
 1. regarding the forgery or tampering with currency, the expiration period shall begin on the day when the forged item or damaged currency is used.” shall be read in full, **“The expiration period shall begin on the day when the action is committed, except in the following cases:**
 1. regarding the forgery or tampering with currency, the expiration period shall begin on the day when the forged item or damaged currency is discovered, used and causes any loss.”
3. To order the publication of this decision in the State Gazette of the Republic of Indonesia as appropriate.
4. To dismiss the remainder of the petition of the Petitioners.