



**CONSTITUTIONAL COURT
OF THE REPUBLIC OF INDONESIA**

**SUMMARY OF DECISION
FOR CASE NUMBER 86/PUU-XX/2022**

Concerning

Expiration of Criminal Prosecution

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| Petitioner | : Robiyanto |
| Type of Case | : Material Review of Indonesian Criminal Code (<i>Kitab Undang-Undang Hukum Pidana</i> or KUHP) against the 1945 Constitution of the Republic of Indonesia (1945 Constitution) |
| Subject Matter | : Judicial Review of Article 78 paragraph (1) number 4 of Indonesian Criminal Code, it is contrary to the Preamble of the 1945 Constitution in the fourth paragraph, the provisions of Article 1 paragraph (3), Article 27 paragraph (1), Article 28D paragraph (1), and Article 28J paragraph (2) of the 1945 Constitution |
| Verdict | : To dismiss the petition of the Petitioner entirely |
| Date of Decision | : Monday, January 31, 2023 |
| Overview of Decision | : |

The Petitioner is an individual Indonesian citizen and also the heir of the victim of the crime of murder, namely the Petitioner's parents named Taslim alias Cikok. The deceased Taslim passed away due to the murder and such act of murder was recorded in the Police Report No.Pol: LP/25/IV/2002, dated 14 April 2002 which subsequently named 7 (seven) suspects, of which 2 (two) of them had been sentenced to imprisonment for 15 (fifteen) years while 5 (five) other suspects were included in the wanted list. However, the legal process against the other 5 (five) suspects has been terminated due to legal reasons. Therefore, according to the Petitioner, based on reasonable reasoning, he suffered actual losses due to the termination of investigation into the suspects in the crime of murder of the deceased Taslim because of the provisions of Article 78 paragraph (1) number 4 of Indonesian Criminal Code.

Regarding the authority of the Court, since the Petitioner petitions for a judicial review of the constitutionality of the norms of Article 78 paragraph (1) number 4 of Indonesian Criminal Code against the 1945 Constitution, the Court has the authority to hear the *a quo* petition;

Regarding the legal standing of the Petitioner, the Court is of the opinion that the Petitioner has been able to describe his constitutional rights which he believes to be harmed by the enactment of the norms of the law being petitioned for review, namely Article 78 paragraph (1) number 4 of Indonesian Criminal Code. The presumption of such loss of constitutional rights is specific and actual. In addition, the presumption of the loss of the constitutional rights described by the Petitioner has a causal relationship (*causal verband*) with the enactment of the norms of the law being petitioned for review. Because if the *a quo* petition is granted, the presumption of constitutional loss as described will not occur and will no longer occur. Thus, regardless of whether or not the unconstitutionality of the norms argued by the Petitioner is proven, the Court is of the opinion that the Petitioner has the legal standing to act as the Petitioner in the *a quo* petition;

Regarding the review of the constitutionality of Article 78 paragraph (1) number 4 of Indonesian Criminal Code as argued by the Petitioner, the Court is of the following opinion:

- Whereas in principle the expiration of the prosecution period is one of the embodiments of the principle of due process of law in order to provide recognition, guarantee, protection, and legal certainty as some of the characteristics of a constitutional legal state. In addition, the presence of the provisions of a *quo* Article is a form of protection by the laws and regulations, *in casu* the Indonesian Criminal Code which aims to create protection for the perpetrators and the victims of criminal acts from the state power (prosecution) which without the application of the *a quo* norms may be unlimited;
- Whereas regardless of whether or not the suspect or defendant which has been suspected or convicted has really committed the crime and as long as the crime has not been proven, it is important for the state to continue to prioritize the guarantee of legal protection of the human rights (presumption of innocence). Likewise, the victims of criminal acts are actually not only the direct victims, but also the wider community, because people experience disturbances of peace and security in enjoying their lives in society. This is actually a form of real implementation and in line with the constitutional mandate of Article 28D paragraph (1) of the 1945 Constitution which requires the state to provide recognition, guarantees, protection and fair legal certainty and equal treatment before the law to its citizens without exception, including the suspects/defendants, the victims of criminal acts and the community as representation of the public interest;
- Whereas the expiration period for prosecution of criminal acts universally has a very strategic role in supporting the creation of legal certainty and justice, not only for the suspects or defendants but also for the victims and/or the families of the victims and the society in general. This affirmation is intended so that the authority of the state in prosecuting the perpetrators of the said crime may only be carried out within a certain period of time or limited to an unlimited period of time. In fact, the expiration period is a waiting period for the suspect/defendant to be prosecuted and is a period of undergoing a separate 'punishment', both morally (stigma) and sometimes physically too, because for many suspects/defendants, some of their rights have been taken by force (*pro justitia*) by the law enforcement officers, either in the form of deprivation of independence of body or property, for example the determination of suspects, detentions, searches, confiscations and precautions not to be allowed to travel abroad;
- Whereas furthermore regarding the abolition of the expiration period for criminal prosecution as requested in the *a quo* petition, where the expiration period shall then apply "for life" to the criminal offenders who are subject to capital punishment or life imprisonment. The Court is of the opinion that this could result in the state, *in casu* the law enforcement officers, encountering difficulties in gathering valid evidence, both in gathering legal facts that must be extracted from the statements of witnesses and suspects/defendants as well as evidence relating to the crimes committed;
- Whereas in a concrete term, the evidence for a crime could be invalid because the initial investigation and investigation of the criminal act was carried out for a long time since the moment of the criminal act committed. It could be in the form of the evidence relating to the crime has been damaged, the witnesses have forgotten the events that they saw, experienced and felt, due to age or other health problems or even the witnesses have died. This is also the case with the statements of the suspects/defendants, they also potentially could no longer remember with certainty the crime they committed. Thus, the conformity of evidence, both the statements of the witnesses, suspects/defendants and the existence of evidence as part of the evidence, they are fundamental requirements and they are the key to the success of the judges who adjudicate the criminal cases to obtain legal facts for the proceeding of the court in order to obtain legal certainty in passing fair decisions. Therefore, proving a criminal case based on evidence whose validity is doubtful, it will actually result in legal facts that are no longer in line with the actual criminal incident, so that this will result in a judge's decision that is not objective and does not reflect legal certainty and hurt the sense of justice;

- Whereas in accordance with the description of the legal considerations above, the current expiration period as referred to in Article 78 of Indonesian Criminal Code is constitutional. However, regarding the expiration period, if an amendment is made regarding the length of the expiration period, then the measure of a sense of justice shall be under the authority of the legislators who are representatives of state legal politics in representing the will of the people who are part of the criminal policy. Therefore, in relation to the said expiration period, it may be amended at any time in accordance with the demands of needs and a growing sense of justice in society, provided that it does not exceed the authority and does not conflict with the principles contained in the 1945 Constitution. However, because the expiration period of the criminal prosecution is linked to the constitutional rights, which are the fundamental rights of the victims and/or the families of victims of criminal acts who must also be given legal protection for the losses they experience, therefore in determining the said expiration period, if any amendment were to be made, then the rights and interests of the victims of criminal acts must also be taken into account;
- Whereas the implementation of the provisions of the norms of Article 78 of Indonesian Criminal Code does not mean eliminating the rights of the victim and/or the family of the victim to obtain accountability from the perpetrators of criminal acts who avoid criminal charges because they benefit from the implementation of the provisions of the norms of Article 78 of Indonesian Criminal Code. The form of accountability as intended can actually be taken by the victim of criminal act with a claim for compensation by combining it together with the charges. However, since it has been stated that criminal prosecution cannot be carried out against the criminal case because it has expired, and therefore the right to combine the claim for compensation has been closed, then the victims of criminal acts can actually take the method of filing a civil lawsuit. However, because such a civil lawsuit requires a fee that is not cheap/light, then through the *a quo* decision, the Court emphasizes that in order to provide protection, guarantees and fair legal certainty regarding this accountability, in the future the legislators may consider regulating the state's obligations in providing accountability in the form of appropriate compensation to victims and/or the families of victims. Thus, in this way the state can create equality and justice which will lead to the creation of a sense of security and peace as well as fostering a sense of trust in the performance of the state in the efforts of enforcing the criminal law;

Whereas pursuant to all of the aforementioned considerations, the Court is of the opinion that the subject matter of the petition of the Petitioner is legally unjustifiable. Accordingly, the Court subsequently passes down a decision in which the verdict states to dismiss the petition of the Petitioner entirely.