



**CONSTITUTIONAL COURT  
OF THE REPUBLIC OF INDONESIA**

**SUMMARY OF DECISION  
FOR CASE NUMBER 111/PUU-XX/2022**

**Concerning**

**Policy on Temporary Suspension of Payment of Lecturer Professional Allowances (Lecturer Certification) as Study Assignment Lecturers**

<b>Petitioners</b>	: <b>Gunawan A. Tauda and Abdul Kadir Bubu</b>
<b>Type of Case</b>	: Judicial review of Law Number 14 of 2005 concerning Teachers and Lecturers (Law 14/2005) against the 1945 Constitution of the Republic of Indonesia (1945 Constitution)
<b>Subject Matter</b>	: Article 51 paragraph (1) of Law 14/2005 is contrary to Article 28D paragraph (1) of the 1945 Constitution
<b>Verdict</b>	: To dismiss the Petitioners' petition entirely
<b>Date of Decision</b>	: Friday, April 14, 2023
<b>Overview of Decision</b>	:

The Petitioners are individual Indonesian citizens who work as Lecturers at the Faculty of Law of Universitas Khairun as study assignments lecturers continuing their education at the doctoral level (S3) and believe that their constitutional rights are or are potentially harmed by the enactment of the phrase "In carrying out professional duties" in the norm of Article 51 paragraph (1) of Law 14/2005.

Regarding the Authority of the Court, because what the Petitioners are petitioning for is a review of the constitutionality of the norm of law, *in casu* Article 51 paragraph (1) of Law 14/2005 against the 1945 Constitution, the Court has the authority to hear the Petitioners' petition.

Regarding Legal Standing, the Petitioners describe that they believe they have been or are potentially suffering the loss of constitutional rights due to the implementation of the policy of temporary suspension of the payment of Lecturer Professional Allowances (Lecturer Certification) based on an obscure interpretation of such by the Ministry of Education, Culture, Research and Technology (Kementerian Pendidikan, Kebudayaan, Riset dan Teknologi or Kemendikbudristek) so that the Petitioners as study assignment lecturers who continue to law study at the Doctoral level at Universitas Gadjah Mada and the Universitas Islam Indonesia do not receive professional allowances which are the income to which lecturers should be entitled and the payment of which cannot be temporarily suspended only because of a policy based solely on interpretation.

In accordance with the description put forward by the Petitioners in describing their legal standing as described above, *in casu* as study assignment lecturers, in the Court's opinion, the Petitioners have been able to describe specifically their constitutional rights, which, in the Petitioners' opinion, either actually or at least potentially is harmed by the enactment of the norm petitioned for review. Therefore, it is evident that there is a causal relationship (*causal verband*) between the Petitioners' presumed loss of constitutional rights and the enactment of the norm of the article being petitioned for review.

Accordingly, if the Petitioners' petition is granted, then the presumed loss will no longer or will not occur. Thus, regardless of whether the unconstitutionality of the norm of Article 51 paragraph (1) of Law 14/2005 being petitioned for review is proven or not, the Court is of the opinion that the Petitioners have the legal standing to act as Petitioners in the *a quo* petition.

Regarding the Petitioners' arguments which, in essence, question the constitutionality of the phrase "In carrying out professional duties" in the norms of Article 51 paragraph (1) of Law 14/2005, which in the Petitioners' opinion, is contrary to the 1945 Constitution if it is not interpreted as "In carrying out professional duties, its meaning includes lecturers assigned to study." Regarding the *a quo* Petitioners' arguments, the Court considers as follows:

The existence of lecturers in the national education system plays a significant important role. It is a catalyst for the functioning of higher education institutions and all aspects related to the development of science, technology, and art, which are the products of higher education institutions. In this regard, lecturers should be encouraged to improve and advance their competence and professionalism. Lecturers are professional educators and scientists with the main task of transforming, developing, and disseminating science and technology through education, research, and community service [vide Article 1 point 14 of Law Number 12 of 2012 concerning Higher Education]. In this regard, lecturers are not only required to have academic qualifications, competencies, and educator certificates, be physically and mentally healthy, and meet other qualifications required by the higher education units where they are assigned but are also required to have personal abilities to be able to realize national education goals. The lecturers' academic qualifications are obtained through accredited postgraduate higher education in accordance with their field of expertise [vide Article 46 paragraph (1) of Law 14/2005].

Regarding the Petitioners' argument, it questions the phrase "In carrying out professional duties", that it is conditionally contrary to Article 28D paragraph (1) of the 1945 Constitution because such phrase is unclear, uncertain, has no specific meaning, and does not reflect fair legal certainty, and has the potential to cause the absence of equal treatment before the law for Petitioners and lecturers who are currently pursuing or will pursue further studies, *in casu* doctoral studies at domestic and foreign tertiary institutions, so that it can lead to policy makers' different interpretations (multi-interpretations) about the meaning of lecturers' professional duties. Without the Court intending to assess the concrete cases experienced by the Petitioners and assess the legality of Letter of the Head of the Personnel Bureau of the Ministry of National Education Number 23327/A4.5/KP/2009, a lecturer who already has an educator certificate and has received a lecturer professional allowance, then continues his education with status of study assignment and, while carrying out the study assignment, the payment of lecturer professional allowances is stopped temporarily as was the case with functional position allowances. Furthermore, in elaborating their arguments for the

constitutionality of the norm of Article 51 paragraph (1) of Law 14/2005, the Petitioners only partially understand the said norm or do not read them in full/comprehensively in relation to other norms in the *a quo* Law. In understanding the norm of Article 51 paragraph (1) of the *a quo* Law, the enforceability of Article 52 of the *a quo* Law must be considered. In Article 52 paragraph (1) of a *quo* Law, income above the minimum living needs as referred to in Article 51 paragraph (1) letter a of the *a quo* Law includes basic salary, allowances attached to the salary, as well as other income in the form of professional allowances, functional allowances, special allowances, honorary allowances, and additional benefits related to duties as lecturers which are determined on the award principle based on merit. Even though Article 52 paragraph (1) of Law 14/2005 is intended to relate to Article 51 paragraph (1) letter a of the *a quo* Law, namely related to income above the minimum living needs and social welfare security, the Petitioners' petition questioning the phrase "In carrying out professional duties" cannot be separated from the issue of income for lecturers who carry out study assignments. Thus, the meaning of Article 51 paragraph (1) of a *quo* Law relating to the issue of income for lecturers who carry out study assignments as referred to in the *a quo* Law which normatively has accommodated various types of income both for lecturers who are not carrying out study assignments and for lecturers who carry out professional assignments within the framework of study assignments.

Suppose Petitioners question the discontinuity of professional allowance payment for lecturers carrying out their study assignments. In that case, a *quo* Law has regulated the rights of lecturers in carrying out their professional duties, namely the right to earn income above the minimum living needs and social welfare guarantees. Moreover, further provisions regarding the lecturers' rights are regulated through lower technical regulations. Furthermore, in the formulation of the norm of Article 51 paragraph (1) of a *quo* Law, there is no regulation regarding the termination of the lecturers' professional allowance. Instead, the *a quo* article normatively provides a legal basis to ensure that lecturers continue to obtain their financial rights granted under statutory regulations, which constitute income above the minimum living necessities and social welfare guarantees. Furthermore, it turns out that functional allowances for lecturers remain to be paid so that the fulfilment of financial rights, as referred to in the *a quo* Law guaranteed and treated equally and fairly. In this case, the payment of the lecturer professional allowance for 6 (six) months and the lecturer functional allowance for study assignment lecturers remain to be paid. Even study assignment lecturers get study assignment allowances either in the form of scholarships from the ministries/institutions providing scholarships or scholarships from their respective tertiary institutions, which in statutory regulations are called study assignment allowances and/or study assignment fees.

Concretely, the discontinued professional allowances experienced by the Petitioners were not immediately terminated. Without the Court intending to assess the legality of Article 30 letter d of Minister of Administrative Reform and Bureaucratic Reform Regulation Number 17 of 2013 concerning Functional Positions of Lecturers and Their Credit Scores, State Gazette of the Republic of Indonesia of 2013 Number 466 (Permenpan 17/2013), professional allowances for study assignment lecturers begins to discontinue after the lecturer has undergone a study assignment for more than 6 (six) months continuously. Thus, the professional allowance will be stopped starting from the seventh month. Professional allowances are terminated not only because of study assignments but also for other reasons such as temporary dismissal from civil servants, full assignment outside of a lecturer's academic position, and taking leave outside the state's responsibility [*vide* Article 30 of Permenpan 17/2013]. Moreover, as ordered by

Law 14/2005, provisions regarding lecturer rights, especially related to lecturers' financial rights in carrying out study assignments, are further regulated in technical statutory regulations under *a quo* Law. Furthermore, for lecturers who have completed the education, the lecturer professional allowance, which was previously only given for 6 (six) months, will be paid after being reactivated into the lecturer's academic position [*vide* Article 31 paragraph (4) of Permenpan 17/2013]. Thus, for lecturers who have completed their study assignments and are active in their academic profession, the lecturer professional allowance (lecturer certification) are back to being paid.

Regarding issues at the level of implementation of the norm petitioned for review, where there are differences in treatments between tertiary institutions within the Ministry of Education, Culture, Research and Technology, the Ministry of Religion, the Ministry of Home Affairs, and other ministries/institutions that provide or facilitate education continuation in the form of study assignments, in the Court's opinion, such treatments should be carried out in a coordinated manner and under synchronized policies, so that they are evenly distributed and equal in all relevant ministries/institutions, by prioritizing the smoothness and effectiveness of study assignments and the welfare of study assignment lecturers so that the lecturers can complete further education on time with optimal results. In addition, it is necessary to carry out monitoring and evaluation by utilizing platforms or integrated information systems properly managed and functioning according to their designation. The information systems are not only wholly established but also maintained, supervised, and their quality is guaranteed so that they encourage equal treatment to increase lecturer professionalism. In addition, to optimize the ability of academic staff to carry out the Tri Dharma of Higher Education, lecturers should not be burdened with excessive administrative tasks so that lecturers will focus more on developing their academic abilities optimally in realizing national education goals. Thus, in accordance with the description above, the Court states the Petitioners' arguments are matters of implementing norms, not matters of the constitutionality of norms.

In accordance with the description of the legal considerations above, the Court is of the opinion that the provision of the norms of Article 51 paragraph (1) of Law 14/2005 evidently is not contrary to the rights to recognition, guarantees, protections, fair legal certainty, and equal treatment before the law and government and do not give rise to legal discrimination as guaranteed in the 1945 Constitution. Thus, the Petitioners' petition is entirely legally unjustifiable.

Subsequently, the Court passes down a decision in which the verdict is to dismiss the Petitioners' petition entirely.