



**CONSTITUTIONAL COURT
OF THE REPUBLIC OF INDONESIA**

**SUMMARY OF DECISION
FOR CASE NUMBER 109/PUU-XXII/2024**

Concerning

**Interpretation for Extraordinary Competence
in Appointment of Honorary Professor**

- Petitioner** : **Rega Felix**
- Type of Case** : Judicial Review of Law Number 12 of 2012 concerning Higher Education (Law 12/2012) against the 1945 Constitution of the Republic of Indonesia (1945 Constitution)
- Subject Matter** : Article 72 paragraph (5) of Law 12/2012 is contrary to Article 28G paragraph (1) of the 1945 Constitution
- Verdict** : To dismiss the Petitioner's petition in its entirety
- Date of Decision** : Thursday, 26 September 2024
- Overview of Decision:**

The Petitioner is an individual Indonesian citizen who works as a lecturer and advocate, claiming that he has the constitutional right to receive protection for his honor and dignity as a lecturer as guaranteed in Article 28G paragraph (1) of the 1945 Constitution of the Republic of Indonesia, he believes that his constitutional right has been violated by the enactment of the provisions of Article 72 paragraph (5) of Law 12/2012. According to the Petitioner, the *a quo* Article does not have clarity regarding the phrase “extraordinary competence”, thus a professor title may be given to non-academic person without any clear parameter. The Court needs to provide a constitutional interpretation to establish a minimum limit on the meaning of extraordinary competence so that there would be no violation to the constitutional rights of dedicated lecturers who pursue their careers through regular routes.

Regarding the petition of the Petitioner, the Court considers that the submission of the revised petition dated 9 September 2024 which was received by the Registrar's Office of the Constitutional Court on 10 September 2024, violated the provisions of procedural law and therefore it must be ruled out. Thus, the Court will only consider the Petitioner's initial petition dated 19 July 2024.

Regarding the Court's authority, because the Petitioner petitions for a judicial review, *in casu* Article 72 paragraph (5) of Law 12/2012 against the 1945 Constitution, therefore the Court has the authority to hear the *a quo* petition.

The Petitioner has been able to describe his legal standing as an individual Indonesian citizen who works as a lecturer. In such qualification, the Petitioner has also specifically described his constitutional right which he believes has been violated by the enactment of the norm for which this judicial review is being petitioned, namely the right to protection of the Petitioner's honor and dignity as a lecturer as guaranteed in Article 28G paragraph (1) of the 1945 Constitution of the Republic of Indonesia. The Petitioner believes that the alleged constitutional loss occurs because the norm provides a space for the minister to interpret the phrase "extraordinary competence" in granting professor titles to non-academics. Therefore, there is a causal relationship (*causal verb*) between the Petitioner's alleged constitutional loss and the enactment of the statutory norms for which this judicial review is being petitioned. Therefore, if the *a quo* petition is granted by the Court, the alleged constitutional loss as described will not or at least will no longer occur. Therefore, regardless of whether the unconstitutionality issue of the norms being petitioned for review is proven or not, the Court is of the opinion that the Petitioner has the legal standing to act as a Petitioner in the *a quo* petition.

Before further considering the subject matter of the Petitioner's petition, the Court needs to provide an explanation that the appointment of a person to a title of honorary professor is an effort to develop and disseminate scientific knowledge by including people from non-academic communities. Even though they come from non-academic backgrounds, the criterion for having extraordinary competence is *conditio sine qua non* which must be fulfilled and included in the assessment criteria. Because a person who will be appointed to a title of honorary professor must fulfil the following requirements:

- a. the lowest academic qualification is a doctorate, applied doctorate, specialist, or any competency equivalent to level 9 (nine) in the Indonesian National Qualifications Framework;
- b. extraordinary competence and/or actual achievement and/or extraordinary knowledge; and
- c. relevant experience with outstanding achievements that have received national and/or international recognition [*vide* Article 42 paragraph (1) of the Regulation of the Minister of Education, Culture, Research, and Technology Number 44 of 2024 concerning Profession, Career, and Income of Lecturers (Permendikbudristek 44/2024)].

This means that, pursuant to the above requirements, even if a person comes from a non-academic background, the said person must have passed the tests both academically and professionally in accordance with his/her academic abilities and experience to receive the title of honorary professor. Moreover, the title of honorary professor is also a part of an effort to enlighten the life of the nation provided that the appointment is arranged in accordance with the provisions of laws and regulations.

Regarding the subject matter of the Petitioner's petition, the Constitutional Court Decision Number 20/PUU-XIX/2021 which was pronounced in a plenary session open to the public on 29 March 2022 has clearly and firmly (*clara et clara*) answered that the appointment of honorary professors is a ministerial authority *in casu* the minister responsible for administering higher education [*vide* Article 7 paragraph (1) of Law 12/2012] through the issuance of ministerial regulations [*vide* Article 72 paragraph (6) of Law 12/2012]. This means that Article 72 paragraph (5) of Law 12/2012 which recognizes the existence of honorary professors does not stand on its own, instead it is related to the next provision, namely Article 72 paragraph (6) of Law 12/2012 which delegates the regulations, one of which concerns honorary professors, which are of a technical operational nature in the form of ministerial regulations, so that there are standardization and procedures for assessing the extraordinary competence as a requirement that must be fulfilled by a person to receive the title of honorary professor.

Whereas the delegation of authority to the minister *in casu* Article 72 paragraph (6) of Law 12/2012 is permitted as regulated in Attachment II number 211 to Law Number 12 of 2011 concerning the Formation of Legislation (Law 12/2011). On this basis, the Regulation of the Minister of Education, Culture, Research, and Technology Number 44/2024 was issued, which among other things revokes and declares the Regulation of the Minister of Education, Culture, Research, and Technology Number 38 of 2021 concerning the Appointment of Honorary Professors at Higher Education Institutions invalid. The Regulation of the Minister of Education, Culture, Research, and Technology Number 44/2024, among other things, regulates the procedures for the appointment, term of office, requirements, rights and obligations, and the dismissal and prohibitions of the honorary professors. Therefore, without any intention to assess the legality of the Regulation of the Minister of Education, Culture, Research, and Technology Number 44/2024, the *a quo* Regulation has a legal basis in its formation, and it also protects the honor and dignity of the persons at the highest academic level, *in casu* the professors. This is because the requirements and mechanisms for obtaining the title of academic professor as the highest academic level are stricter compared to other lower academic titles, the requirements and mechanisms for obtaining the title of honorary professors are also stricter compared to the appointment of honorary doctorates appointed by universities, since the honorary professors are appointed by the minister under the recommendation of universities.

Without intending to assess the legality of the Regulation of the Minister of Education, Culture, Research, and Technology Number 44/2024, the Court is of the opinion that the said Regulation is a juridical instrument as an implementing regulation of Article 72 paragraph (6) of Law 12/2012 which is related to Article 72 paragraph (5) of Law 12/2012, the constitutionality of which is being petitioned by the Petitioner. In this case, the Regulation of the Minister of Education, Culture, Research, and Technology Number 44/2024 in relation to the regulation of honorary professors is of a technical administrative nature to ensure the standardization and procedures for appointing honorary professors so that they can be accounted for. Even though the Regulation of the Minister of Education, Culture, Research, and Technology Number 44/2024 contains provisions for honorary professors, in principle the nature and substance of the law which underlies the formation of the said ministerial regulation must not be reduced, namely that only a person with extraordinary competence may be appointed by the minister as an honorary professor under the recommendation of universities [*vide* Article 72 paragraph (5) of Law 12/2012]. Within the limits of reasonable reasoning, the requirement of extraordinary competence is intended to ensure that the title of honorary professor is awarded strictly and very selectively.

Regarding the Petitioner's *petitum*, the Court is of the opinion that it is not in accordance with the nature of the awarding of the title of honorary professor because the awarding of the said title is made under the assessment of extraordinary competence. Therefore, in principle, the petition of the Petitioner does not question the constitutionality of norms, rather it is an aspiration to establish stricter requirements for awarding a person the title of honorary professor. However, the proposed interpretation of the provisions of Article 72 paragraph (5) of Law 12/2012 as contained in the petition of the Petitioner can actually narrow the meaning of the intended norm because a person's competence may be proved either based on academic work or on achievement and experience that are relevant to the extraordinary competence that can be achieved by the professionals who have played a direct role in society. In addition, the recognition must not solely come from the international community as it would actually negate the national assessment and recognition which are also equally important. Therefore, in the midst of rapid developments in science and technology, it is necessary to bridge the gap between the purely academic community and the professional community consisting of practitioners to

maximize the fulfillment of the right to obtain benefits from the development of science and technology as guaranteed by the constitution [*vide* Article 28C paragraph (1) of the 1945 Constitution]. Moreover, the Petitioner's *petitum* formulates the same requirements for professors who may be appointed as full professors. Article 49 of Law 14/2005 states, "Professors who have scientific works or other monumental works that are very special in their fields and have received international recognition may be appointed as full professors." Therefore, if the Petitioner's *petitum* is granted, there will be no difference between an honorary professor and a full professor who comes from an academic background. In addition, if said *petitum* is granted, it potentially creates legal uncertainty because it would be difficult to differentiate between the requirements to be appointed as an honorary professor and a full professor. However, in practice, as an academic position that requires extraordinary competence, the fulfillment of these requirements must be a primary concern in selecting a person to be awarded the title of honorary professor. These requirements should be imposed strictly in accordance with the provisions of Article 72 paragraph (5) of Law 12/2012. The imposition of such strict requirements is carried out by universities because the recommendation of honorary professor is submitted by universities to the minister after going through a strict and highly selective selection process. In this case, even if a person is recommended by a university to become an honorary professor, if the minister assesses that the said person does not meet the requirements for having extraordinary competence, the minister may reject the recommendation.

Pursuant to the entire description of the above legal considerations, it is evident that the norm of Article 72 paragraph (5) of Law 12/2012 does not violate the right to protection of personal honor and dignity as guaranteed in Article 28G paragraph (1) of the 1945 Constitution of the Republic of Indonesia, instead of as argued by the Petitioner. Therefore, the Petitioner's argument is entirely legally unjustifiable.

Accordingly, the Court subsequently passed down a decision which verdict states to dismiss the Petitioner's petition in its entirety.