



**CONSTITUTIONAL COURT
OF THE REPUBLIC OF INDONESIA**

**SUMMARY OF DECISION
FOR CASE NUMBER 184/PUU-XXII/2024**

Concerning

Expiration Period of the Right to Claim Domestic Basic Salary

Petitioners	: Kusdiana, et al.
Type of Case	: Judicial review of Law Number 1 of 2004 concerning the State Treasury (Law 1/2004) against the 1945 Constitution of the Republic of Indonesia (1945 Constitution)
Subject Matter	: Judicial review of Article 40 paragraph (1) and paragraph (2) of Law 1/2004 against Article 1 paragraph (3), Article 28D paragraph (1) and paragraph (2), and Article 28I paragraph (4) and paragraph (5) of the 1945 Constitution
Verdict	: To dismiss the Petitioners' petition entirely
Date of Decision	: Thursday, August 14, 2025
Overview of Decision	:

Whereas Petitioner I to Petitioner IX and Petitioner XI to Petitioner XV are individual citizens who are retired employees of the Ministry of Foreign Affairs, while Petitioner X is an individual Indonesian citizen who is the wife (heir) of Julidar Chaidir, who is also a retired employee of the Ministry of Foreign Affairs. Whereas the Petitioners feel prejudiced by the enactment of the provisions of Article 40 paragraph (1) and paragraph (2) of Law 1/2004 since the Petitioners who were assigned to representatives of the Republic of Indonesia abroad until the end of 2012 lost the opportunity to fight for their rights to receive domestic basic salaries that were not paid during their assignments, as regulated in the statutory regulations governing the Basic Provisions on Personnel applicable at that time

Regarding the Court's authority, the Petitioners' petition is a petition for review of the constitutionality of statutory norms, *in casu* Article 40 paragraph (1) and paragraph (2) of Law 1/2004 against the 1945 Constitution, and therefore the Court has the authority to hear the petition *a quo*.

Regarding the Petitioners' legal standing, in the Court's opinion, the Petitioners have clearly proven themselves as Indonesian citizens who have constitutional rights guaranteed by the 1945 Constitution [*vide* Evidence P-3 to Evidence P-7 and Evidence P-42 to Evidence P-51]. However, regarding the Petitioners' alleged constitutional losses due to the enactment of the statutory norms being petitioned for review, Petitioner I to Petitioner XV can explain the alleged constitutional losses that have causal relationships (*causal-verband*) with the enactment of the statutory norms

being petitioned for review. Within the limits of reasonable reasoning, the Court is of the view that the alleged constitutional losses are specific and actual or at least potential, since the existence of the norms being petitioned for review results in Petitioner I to Petitioner XV experiencing obstacles in receiving salaries as civil servants while being assigned abroad, which, according to Petitioner I to Petitioner XV, had not been paid. Therefore, if the petition *a quo* is granted, the constitutional losses will no longer occur. Thus, regardless of whether the unconstitutionality of the norms being petitioned for review is proven or not, the Court is of the opinion that Petitioner I to Petitioner XV have the legal standing to act as Petitioners in the petition *a quo*.

Whereas, since the Court has the authority to hear the petition *a quo* and the Petitioners have the legal standing to act as Petitioners in the petition *a quo*, the Court subsequently will consider the subject matter of the petition.

Whereas the substance of the norm of Article 40 paragraph (1) of the State Treasury Law, in essence, regulates the time limit or expiration of the right to claim against debts charged to the state/regional budget after 5 (five) years from the due date of such debts. Moreover, the provisions of the norm of Article 40 paragraph (2) of the State Treasury Law stipulate that the expiration as referred to in Article 40 paragraph (1) of the State Treasury Law shall not apply if the creditor submits a claim to the state/regional government before the expiration period ends. However, later in its development, the Court provides an interpretation to the norms of Article 40 paragraph (1) and paragraph (2) of the State Treasury Law, namely in Constitutional Court Decision Number 15/PUU-XIV/2016, regarding Article 40 paragraph (1) of the State Treasury Law, and regarding the norm of Article 40 paragraph (2) of the State Treasury Law in Decision Number 18/PUU-XV/2017, which, in essence, declare that Article 40 paragraph (1) and paragraph (2) of the State Treasury Law are conditionally unconstitutional to the extent that they are interpreted as being applied to pension and old-age benefits.

Whereas civil servant salaries are funded from the State Budget (APBN) for central government civil servants and from the Regional Budget (APBD) for regional government civil servants. In this regard, if it is correlated to the Petitioners' petition which basically argues/challenges that the Petitioners as retired civil servants of the Ministry of Foreign Affairs have not been paid their basic salaries while being assigned abroad, then the constitutionality issue that must be considered is whether, in relation to this matter, it is true that the basic salaries for retired civil servants of the Ministry of Foreign Affairs which were unpaid while being assigned abroad in the period 1950 to 2012 are categorized as the debts charged to the state/regional budget and must be paid and correlate to the constitutionality of the norms of Article 40 paragraph (1) and paragraph (2) of the State Treasury Law being petitioned by the Petitioners.

Regarding the constitutionality issue challenged by the Petitioners, it can be explained that, in general, salary provisions for Ministry of Foreign Affairs civil servants are regulated in the laws and regulations governing the basic provisions of personnel currently in force, *in casu* Government Regulation Number 200 of 1961 concerning Salaries of Civil Servants of the Republic of Indonesia (GR 200/1961), Law Number 18 of 1961 concerning Basic Provisions on Personnel (Law 18/1961), which was later replaced by Law Number 8 of 1974, as amended by Law Number 43 of 1999 concerning Amendment to Law Number 8 of 1974 concerning Basic Provisions on Personnel (Law 43/1999). Moreover, regarding the provisions of civil servant salaries at the Ministry of Foreign Affairs, these are contained in Circular Letter (SE) Number 015690 dated October 16, 1950 (SE 1950), signed by the Secretary General on behalf of the Minister of Foreign Affairs at that time. SE 1950 regulates the salary rights of Ministry of Foreign Affairs civil servants assigned to foreign representatives, where in Roman Numeral iii point c, it is stated: "To the extent that the housing allowance is paid, the Salary in Indonesia is not provided, as it is already included in that allowance." This is in accordance with the provisions contained in Government Regulation of 1948 Number 21 (GR 21/1948) concerning the 1948 Civil Servant Salary Regulation. Article 1 paragraph (1) of GR 21/1948 provides, in principle, that positions in attachment A of this regulation are given a monthly basic salary and other official income in accordance with their respective positions as set out in the salary structure in the attachment lists. In addition, the attachment to GR 21/1948 explains that, if placed abroad, allowances are provided in

accordance with special regulations. Furthermore, provisions regarding salaries are also regulated in Law Number 18 of 1961 concerning Basic Provisions on Personnel (Law 18/1961), in Article 13 paragraph (1) and paragraph (2) of Law 18/1961.

Under the provisions described above, the provisions regarding civil servant salaries remain regulated by law. They are related to the latest civil servant salaries regulated in Law Number 20 of 2023 concerning State Civil Apparatus, which in essence regulates the same matter, namely that every civil servant or state civil apparatus has the right to receive income consisting of a basic salary and allowances, while employees who are placed abroad are entitled to income which is further regulated in government regulations. However, the provision of these allowances is adjusted during implementation in accordance with the circumstances or capabilities of the state.

Whereas, without intending to examine the concrete case experienced by the Petitioners, where according to the Petitioners, the problem experienced started from Circular Letter of the Ministry of Foreign Affairs of the Republic of Indonesia Number 015690 dated October 16, 1950 concerning the Finances of the Republic of Indonesia's representatives abroad (SE 015690/1950), and after reading carefully, the issuance of SE 015690/1950 is due to the supply *deviezen* (foreign reserves) at that time being very limited, so it was necessary to regulate again the regulations regarding the finances of representatives abroad, including the matter of basic salaries. This was reaffirmed in Letter of the Ministry of Foreign Affairs of the Republic of Indonesia Number 10166, dated March 1, 1951, regarding Family allowances and the delegation of salaries to Indonesia, in point 2, namely as explained in SE 015690/1950, that the allowances provided abroad include salaries. In addition to these legal facts, according to information from the Ministry of Foreign Affairs presented at the hearing, regarding basic salaries before January 2, 2013, every employee of the Ministry of Foreign Affairs who is assigned to the Indonesian Representative will receive a Certificate of Termination of Payment (SKPP) for Basic Salary. Furthermore, in its written statement, the Ministry of Foreign Affairs also states that this certificate is an administrative requirement for the placement and activation of Overseas Living Allowance (TPLN), and is then submitted to the finance division at the Indonesian Representative Office. On the other hand, when the employee in question is transferred from abroad to a domestic office, a Certificate of Termination of Payment of TPLN will be issued so that their basic salary and allowances are paid again in Indonesia. This is fully regulated in Letter of the Ministry of Foreign Affairs Number 51447 dated September 10, 1953 concerning Income of civil servants/who are transferred from Indonesia/abroad to abroad/Indonesia, namely active civil servants are paid income in Indonesia which in principle a. if departing from Indonesia to abroad, then foreign income (living allowance) is paid from the date of departure from Indonesia; b. Upon returning to Indonesia, foreign income (living allowance) is paid from the date of arrival, calculated in accordance with the usual travel plan. Furthermore, regarding this matter, until 2013, the Ministry of Foreign Affairs did not find any legal basis requiring the payment of salaries, because the existing legal basis from 1950 had not yet been revoked and therefore still had legal force. In fact, in a statement before the court, the Ministry of Foreign Affairs explains that employees assigned to foreign representatives are already aware that the basic salary is included in the residence allowance. In other words, the employee concerned has known, understood, and agreed that the domestic basic salary will not be paid while assigned to a foreign representative, because it has been accumulated in the residence allowance. Therefore, formally, the legal basis revealed in hearing has denied the matter being challenged by the Petitioners, which is indeed no longer included in the category of debt to the state, so that it has no relevance to the constitutionality of the norms of Article 40 paragraph (1) and paragraph (2) of the State Treasury Law as argued by the Petitioners.

Whereas, in addition to the description of the legal considerations above, in the hearing there is also a legal fact, that since January 2013, employees who will be assigned abroad are not required to make an SKPP, which is one of the requirements for issuing a Transfer Decree, so that since 2013, employees who are assigned abroad have not had their basic salary stopped. This is regulated in Article 80 paragraph (1) of Government Regulation of the Republic of Indonesia Number 45 of 2013 concerning Procedures for the Implementation of the State Budget as amended by Government

Regulation of the Republic of Indonesia Number 50 of 2018 concerning Amendment to Government Regulation Number 45 of 2013 concerning Procedures for the Implementation of the State Budget, which in essence regulates compensation for officials/employees who serve in the country or abroad in the form of salaries and/or allowances or in other forms. Therefore, regarding the factual problems experienced by the Petitioners, and without intending to examine the legality of the regulation in question and the concrete cases challenged by the Petitioners, where according to data from the Ministry of Foreign Affairs in the hearing which states that the number of Ministry of Foreign Affairs employees affected by the enactment of SE 015690/1950 from 1950 to 2012 was 5,200 (five thousand two hundred) employees [*vide* Minutes of the Hearing, dated June 23, 2025]. In this regard, the Court leaves to the Government whether, according to the Government, the issue regarding the “basic salary” or “base salary” for the affected employees will be resolved as a form of settlement not solely under normative legal basis, but also taking into account a form of appreciation for service as a manifestation of the presence of the state for the problems faced by the Petitioners and approximately the other 5,200 (five thousand two hundred) employees, then this can be regulated by an implementing regulation as is the case with Government Regulation of the Republic of Indonesia Number 45 of 2013 concerning Procedures for the Implementation of the State Budget as amended by Government Regulation of the Republic of Indonesia Number 50 of 2018 concerning Amendment to Government Regulation Number 45 of 2013 concerning Procedures for the Implementation of the State Budget. Thus, pursuant to the description of the legal facts, in the Court’s opinion, the problems experienced by the Petitioners are not matters relating to the constitutionality of the norms of Article 40 paragraph (1) and paragraph (2) of the State Treasury Law, as interpreted in Constitutional Court Decision Number 15/PUU-XIV/2016 and Number 18/PUU-XV/2017. Because, if the government ultimately accommodates the problems faced by the Petitioners, provided state finances are capable, by issuing a (new) legal basis regarding the “basic salary” or “base salary” petitioned by the Petitioners, the calculation of expiration period of the right to claim against the state, as intended in Article 40 paragraph (1) and paragraph (2) of the State Treasury Law applies or is calculated 5 (five) years from the date the legal basis or regulation is issued/enacted.

Pursuant to the descriptions of all legal considerations above, the Petitioners’ argument regarding the unconstitutionality of the norms of Article 40 paragraph (1) and paragraph (2) of the State Treasury Law is legally unjustifiable.

Whereas pursuant to all the legal considerations as described above, the norms of Article 40 paragraph (1) and paragraph (2) of the State Treasury Law have been proven not contrary to the right to recognition, assurance, protection, and fair legal certainty, as well as equal treatment before the law, the right to work and receive fair compensation and treatment in employment relations, the right to protection and fulfillment of human rights as a form of government responsibility, and the principle of protection of human rights in accordance with the principles of a democratic state as guaranteed in Article 1 paragraph (3), Article 28D paragraph (1) and paragraph (2), and Article 28I paragraph (4) and paragraph (5) of the 1945 Constitution, not as argued by the Petitioners. Thus, the Petitioners’ petition argument is legally unjustifiable.

Accordingly, the Court subsequently passes down a decision in which the verdict is to dismiss the Petitioner’s petition entirely.

Dissenting Opinion

Against the Court’s decision *a quo*, there is a dissenting opinion from 1 (one) of the Constitutional Justices, namely, Constitutional Justice Arsul Sani, who states as follows:

Whereas considering the provisions in laws and regulations since GR 21/1948 until Law 20/2023, income (in this case, basic salary) is placed as a component of material appreciation and recognition for State Civil Apparatus (ASN) together with allowances and facilities, as well as social security (in this case, pension and old-age benefits). Therefore, within the framework of the same constitutional rights regarding fair legal protection, recognition of appropriate rights in employment

relations, as well as guarantees of fair legal certainty as mandated by Article 28D paragraph (1) and paragraph (2) of the 1945 Constitution, the Court should provide equal treatment between the treatment of basic salary income, which in the case *a quo* is argued by the Petitioners to have not been paid by the state) and that of pension and old-age benefits as stated in the two Constitutional Court Decisions above. Thus, in my opinion, the exception to the validity of the provisions on the expiration vide Article 40 paragraph (1) of Law 1/2004 as contained in Constitutional Court Decision Number 15/PUU-XIV/2016 and Number 18/PUU-XV/2017 to the extent that it relates to the right to pension and old-age benefits should be applied in a *mutatis mutandis* manner to the right to income in the form of basic salary in relation to the expiration to claim against the state. This means that the right to submit a (legal) claim for income in the form of basic salary is not limited by the expiration provisions set out in Article 40 paragraph (1) of Law 1/2004.

Whereas furthermore, the application in a *mutatis mutandis* manner of the expiration exceptions outlined in Article 40 paragraph (1) of Law 1/2004 as interpreted by Constitutional Court Decision Number 15/PUU-XIV/2016 and Number 18/PUU-XV/2017 does not automatically make the Petitioners immediately entitled to receive fulfillment of claims related to unpaid basic salary, unless the claim is then voluntarily approved by the state. Such exceptions only provide the Petitioners with the opportunity to use available civil legal channels without being hindered by the provisions on expiration under Article 40 paragraph (1) of Law 1/2004. This means that the interpretation that excludes the application of the expiration merely ensures that the Petitioners do not lose or forfeit their legal right to use or take legal action to fight for what they argue as basic salary that has not been paid while assigned abroad.

Whereas pursuant to the matters as stated above, the Court should grant the Petitioners' petition in part, but with a verdict not as petitioned by the Petitioners, namely by declaring that Article 40 paragraph (1) of Law 1/2004 as interpreted in Decision Number 15/PUU-XIV/2016 is contrary to the 1945 Constitution and has no binding legal force to the extent that it is interpreted as "applied to pension benefits, old-age benefits, and the right of state civil apparatus income in the form of unpaid basic salaries." Likewise, the Court should declare that Article 40 paragraph (2) as interpreted in Decision No. 18/PUU-XV/2017 is contrary to the 1945 Constitution and has no binding legal force to the extent that it is not interpreted as "applied to pension benefits, old-age benefits, and the right of state civil apparatus income in the form of unpaid basic salaries."