



THE CONSTITUTIONAL COURT OF THE  
REPUBLIC OF INDONESIA

SUMMARY OF THE DECISION IN  
CASE NUMBER 41/PUU-XIX/2021

Concerning

Right to Remission for Convicts in Corruption Crimes

<b>Petitioner</b>	:	<b>Otto Cornelis Kaligis</b>
<b>Type of Case</b>	:	Review over Law Number 12 of 1995 regarding Corrections (Law 12/1995) against the 1945 Constitution of the Republic of Indonesia (1945 Constitution).
<b>Subject Matter</b>	:	Article 14 paragraph (1) letter i of Law 12/1995 and its Elucidation contradict with Article 28J paragraph (1) of the 1945 Constitution.
<b>Verdict</b>	:	To dismiss the Petitioner's petition in its entirety.
<b>Date of Decision</b>	:	Thursday, September 30th, 2021.
<b>Overview of Decision:</b>		

The Petitioner is an Indonesian citizen who is a convict currently serving a sentence upon the final and binding decision in a corruption case. However, the Petitioner was not granted a remission as stipulated in Article 14 paragraph (1) letter i of Law 12/1995 and its Elucidation since KPK did not see the Petitioner as a justice collaborator and hence pursuant to the Government Regulation 99/2012, the Petitioner is not entitled to the remission. The foregoing has prejudiced the Petitioner's constitutional rights as guaranteed by Article 28J paragraph (1) of the 1945 Constitution.

In his Claims, the Petitioner demands the Court to declare that the provisions of Article 14 paragraph (1) letter i of Law 12/1995 and its Elucidation are constitutionally valid upon a condition that the provisions are applied universally without any discrimination, including to corruption convicts, provided that they: (a) Have good behaviours; (b) Have served sentence for at least 6 (six) months; (c) Are not sentenced to life imprisonment; and (d) Are not sentenced to death penalty.

In relation to the jurisdiction of the Constitutional Court, given that the Petitioner is requesting for a judicial review over a Law, in this case Article 14 paragraph (1) letter i of Law 12/1995 and its Elucidation, against the 1945 Constitution, the Court has the jurisdiction to hear the petition in this case;

In relation to the legal standing of the Petitioner, the Court understands the intent and purpose of the Petitioner in raising his constitutional rights which are guaranteed by the provisions of Article 28J paragraph (1) of the 1945 Constitution which according to the Petitioner has been specifically and actually damaged by the enactment of the norms of the law for which the review has been requested. Therefore, without any intention to determine the actual case involving the Petitioner and regardless of whether or not the Petitioner's argument related to the unconstitutionality of the norms for which the review is requested is grounded, the alleged damage on the constitutional rights as described by the Petitioner has a causal relationship (*causal verband*) with the enactment of the norms of the law for which

the review has been requested, whereupon if the petition of the Petitioner is granted, the alleged constitutional damage as described above would not or would cease to exist. Therefore, the Court is in the opinion that the Petitioner has the legal standing to act as Petitioner under the Petition in this case.

Whereas due to the clarity of the petition in this case, the Court considers that it is not urgent and relevant to request for information from the parties as stipulated in Article 54 of the Constitutional Court Law.

Afterwards, before the Court examines the subject matter of the Petitioner's petition, the Court first assesses whether the Petitioner's petition is considered *ne bis in idem*. Since Article 14 paragraph (1) letter i of Law 12/1995 has been requested to be constitutionally reviewed and it has been decided by the Court in the Decision Number 54/PUU-XV/2017, Decision Number 82/PUU-XV/2017 and Decision Number 90/PUU- XVI/2018. However, upon the Court's careful examination of the Petitioner's petition, the basis for review as used in this petition, namely Article 28J paragraph (1) of the 1945 Constitution, has not been used as a basis for review in the petitions previously decided on by the Court as mentioned above. In addition, there is a difference in the substance of the petition, namely that the Petitioner in this petition includes a review over the Elucidation of Article 14 paragraph (1) letter i of Law 12/1995, in addition to the different grounds for the Petitioner's petition as compared to the previous petitions. In the petition in this case, the Petitioner put more emphasis on the consequences of Article 14 paragraph (1) letter i of Law 12/1995 which according to the Petitioner has caused multiple interpretations so that it is possible for other parties to intervene in the granting of remission to convicts and therefore it is contradictory with Article 28J paragraph (1) of the 1945 Constitution. Therefore, according to the Court, there is a difference between the basis for the review and the grounds for the petition in this case and those in the petitions previously decided on by the Court as stipulated in Article 60 paragraph (2) of the Constitutional Court Law in conjunction with Article 78 paragraph (2) of PMK 2/2021, and for that reason the petition in this case may be resubmitted.

Furthermore, in relation to the subject matter of the petition, the Petitioner maintains that Article 14 paragraph (1) letter i of Law 12/1995 and its Elucidation are subject to multiple interpretations and may lead to discriminatory treatment of convicts so that they are contradictory with Article 28J paragraph (1) of the 1945 Constitution. The Court is of the opinion that the provisions of Article 14 paragraph (1) of Law 12/1995 are not discriminatory because they merely stipulate details of the rights of convicts, including the right to remission (letter i), without any condition or requirement for fulfilling these rights. In that sense, the granting of legal rights to certain groups of society may logically be seen discriminatory from the perspective of others who are not granted such rights, while for the recipient (subject) of the rights, a discrimination is deemed to occur when there is a material norm which determines certain conditions and requirements or in the enforcement of the norm in connection with the fulfilment of rights that have been granted. Since the Petitioner in this case is the subject of rights, in this case the right to remission, then the formulation of norms which merely set forth details of the rights of convicts (including the Petitioner) shall not, in the opinion of the Court, be interpreted in any way beyond what is expressed in the relevant norms. Therefore, the Court emphasizes that the provisions of Article 14 paragraph (1) letter i of Law 12/1995 are not subject to multiple interpretations and discrimination so that the Petitioner's argument that the relevant norms are contradictory with Article 28J paragraph (1) of the 1945 Constitution is not legally justifiable.

Furthermore, in relation to the Petitioner's argument that the Elucidation of Article 14 paragraph (1) letter i of Law 12/1995 is subject to multiple interpretations and causes discriminatory treatment against convicts and thus they are contradictory with Article 28J paragraph (1) of the 1945 Constitution. In relation to the Petitioner's argument, the Court considers that the Elucidation of Article 14 paragraph (1) letter i of Law 12/1995 merely contains an official interpretation of the norms regulated in the main part of the law

and it is not contradictory with the subject matter of the main part of the law. The Elucidation emphasizes that the (right to) remission may be granted after the requirements determined by the laws and regulations are satisfied because upon the enactment of Law 12/1995, at least 2 (two) subordinate legislations governing remission in Indonesia had been enacted, namely the Presidential Decree Number 120 of 1955 regarding Special Remission and the Decree of the Minister of Justice Number 04.HN.02.01 of 1988 regarding Additional Remission for Convicts Who Become Organ Donors and Blood Donors. Therefore, further description about the granting of remission as regulated in Article 14 paragraph (1) letter i of Law 12/1995 refers to certain subordinate legislations governing remission which remained valid following the enactment of Law 12/1995. Therefore, the Petitioner's argument regarding the Elucidation of Article 14 paragraph (1) letter i of Law 12/1995 is not legally justifiable.

Furthermore, the Petitioner also maintained that as a result of the enactment of Article 14 paragraph (1) letter i of Law 12/1995 which is subject to multiple interpretations, other parties may possibly intervene with the granting of the (right to) remission to convicts upon more stringent terms and therefore it contradicts Article 28J paragraph (1) of the 1945 Constitution. In relation to the Petitioner's argument in this case, the Court is in the opinion that such matter is not caused by the unconstitutionality of the norms of Law 12/1995 for which the review has been requested but rather it is an issue in the implementation of the norms as encountered by the Petitioner, namely the mechanism for granting remissions as regulated in Law 12/1995 which relates to a government regulation that requires each corruption convict must be identified as a justice collaborator in order for him to enjoy the right to remission. Nonetheless, the Court as the protector of the constitutional rights of citizens as well as the guardian of democracy also has the responsibility for upholding the rights and obligations in democratic public laws in such a way that although the issue faced and raised by the Petitioner is the implementation of norms over which the Court has no jurisdiction, the Court considers that the penal system organized must guarantee the protection of the rights of convicts and improve the quality in the personality and independence of the convicts so that they realize their mistakes, improve themselves, and will not repeat the crimes and therefore they could be accepted again by the community, and the penal system shall not be based merely on the concept of deterrence and retaliation. In addition, the right to remission must be granted without any exception. That means that all convicts shall equally obtain their rights unless the same are revoked upon a court decision. The affirmation of the rights of convicts in the correctional system is significant because in the Court's view, the detention of convicted individuals, including in this case their imprisonment, basically constitutes a deprivation of the right to live freely which belongs to an individual. Therefore, during detention such person must still be granted the basic rights upon the principle that the only right being deprived is the right to live freely like other people who are not serving any sentences. Therefore, the additional conditions beyond the main requirements for the granting of remission to convicts should otherwise be construed as a sort of rewards in the form of remission in addition to the legal rights granted upon Law 12/1995. The Court's affirmation on the foregoing legal consideration is an integral and inseparable part of the functions of the Constitutional Court in preserving the constitutional and democratic rights of citizens even though all matters relating to the above legal consideration constitute the implementation of norms over which the Court has no jurisdiction. Therefore, the arguments in the Petitioner's petition is not legally justifiable.

Therefore, the Court considers that there is no issue of the constitutionality of norms regarding the respect for human rights as referred to in the provisions of Article 28J paragraph (1) of the 1945 Constitution vis-a-vis Article 14 paragraph (1) letter i of Law 12/1995 and its Elucidation and for that reason the Court believes that the Petitioner's argument is not legally justifiable.

Upon all of the above legal considerations, the Court subsequently issued a decision which in its verdict dismissed the Petitioner's petition in its entirety.