CONSTITUTIONAL COURT
OF THE REPUBLIC OF INDONESIA

SUMMARY OF DECISION
FOR CASE NUMBER 20/PUU-XIX/2021

Concerning

Determination of Position Level of Professor

Petitioner : **Sri Mardiyati**
Type of Case : Material Examination of Law Number 14 of 2005 concerning Teachers and Lecturers (Law 14/2005) against the 1945 Constitution of the Republic of Indonesia (UUD 1945).
Subject matter : Article 50 paragraph (4) of Law 14/2005 is in contrary to Article 1 paragraph (3), Article 27 paragraph (2), Article 28C paragraph (1), Article 28D paragraph (1), Article 28I paragraph (4) and paragraph (5) of the 1945 Constitution.
Verdict : To dismiss the Petitioner's petition in its entirety.
Date of Decision : Tuesday, March 29, 2022.
Overview of Decision :

The petitioner is an individual Indonesian citizen and works as a lecturer, she argues that her constitutional rights as guaranteed in Article 27 paragraph (2), Article 28C paragraph (1), Article 28D paragraph (1), and Article 28I paragraph (4) and paragraph (5) of the 1945 Constitution has been prejudiced, in her opinion, by the promulgation of the provisions of Article 50 paragraph (4) of Law 14/2005. Because the substance of the *a quo* article has given rise to various interpretations (multi-interpretation) or at least opened up opportunities for the government to make regulations under such law which shall annul the authority of the higher education units to conduct the selection, appointment and determination of academic positions of professors in higher education. As a result, the proposal for a functional promotion to professor level made by the Petitioner at the Faculty of Mathematics and Natural Sciences, Universitas Indonesia (FMIPA UI) which had been carried out through the selection process by higher education units (Universitas Indonesia) was rejected by the Ministry of Education, Culture, Research, and Technology.

Regarding the authority of the Court, because the Petitioner is requesting for a judicial review of the Law *in casu* Article 50 paragraph (4) of Law 14/2005, the Court has the authority to hear the *a quo* application.

Regarding the legal standing, the Petitioner has explained her qualifications and her prejudiced constitutional rights as an individual Indonesian citizen who works as a lecturer, namely the right to develop oneself and benefit from science and technology and the right to recognition, guarantee, protection and fair legal certainty [*vide* Article 28C paragraph (1) and Article 28D paragraph (1) of the 1945 Constitution]. According to the Petitioner, the promulgation of such norm being petitioned for review is because the norm provides an opportunity for the government to make regulations under such law which shall take over the authority of the education unit in conducting the selection and appointment as well as the determination of academic positions, *in casu* the rejection of the proposal to be a professor on behalf of the Petitioner from Universitas Indonesia by the Ministry of Education, Culture, Research, and Technology. Therefore, it is evident that there is a causal relationship between the Petitioner's assumption regarding her loss of constitutional rights, which in her

opinion has been prejudiced by the promulgation of the norm of the law for which a review is petitioned, so that if the petition is granted, such loss will no longer occur. Therefore, regardless of whether the Petitioner's argument is proven or not regarding the unconstitutionality of the legal norms petitioned for review, according to the Court, the Petitioner has the legal standing to act as the Petitioner in the *a quo* petition.

Regarding the Petitioners' petition, before considering the matters any further, it is important for the Court to first consider the following matters:

1. Whereas the existence of Law 14/2005 cannot be separated from Law Number 20 of 2003 concerning the National Education System (Law 20/2003) and Law Number 12 of 2012 concerning Higher Education (Law 12/2012).
2. Whereas Law 14/2005 has determined the academic position levels of permanent lecturers consisting of expert assistants, rectors, head rectors, and professors [*vide* Article 48 paragraph (1) and paragraph (2) of Law 14/2005 *junto* Article 72 paragraph (1) of Law 12/2012]. Meanwhile, for non-permanent lecturers' academic position levels, it is regulated and determined by higher education institutions [*vide* Article 48 paragraph (4) of Law 14/2005 *junto* Article 72 paragraph (2) of Law 12/2012]. Regarding the academic position levels, professor is the highest functional position for lecturers who are still teaching in higher education units who are authorized to guide the doctoral candidates. In addition, professors also have a special obligation to write books and scientific works and disseminate their ideas to enlighten the public in order to educate the nation's life.
3. Whereas the minimum requirement of 3 (three) years after obtaining a Doctoral diploma as one of the requirements for achieving the academic position level of a professor, such requirement can be excluded if the proposed candidate has additional scientific works published in reputable international journals after obtaining a Doctoral diploma. The requirements that are normatively determined in Article 72 paragraph (3) of Law 12/2012 *junto* PermenpanRB 17/2003 *junto* Permendikbud 92/2014 shall apply to all permanent lecturers in all universities so that the principles of certainty and fairness can be realized in the entire process, thus the quality of lecturers in academic positions can be accounted for (accountable). Moreover, the professors position also has the function as a guardian of academic and scientific values.
4. Whereas when considered from the point of view of the appointment of academic position levels for lecturers at the Expert Assistant and Rector position levels, it shall be the full authority of the higher education unit (university), but starting from the level of Head Rector and Professor position levels, it shall be the authority of the higher education unit to assess and propose. Subsequently, the Ministry of Education, Culture, Research, and Technology shall have the authority to consider and determine. That means, as the highest level of academic position, the requirements and mechanism for obtaining a professorship are more stringently regulated than those for any lower academic position. The importance of maintaining this quality is also in line with the principle of professionalism which is one of the main substance in Chapter III of Law 14/2005.
5. Whereas Permendikbud Ristek 38/2021 confirms the intent of Article 72 paragraph (5) of Law 12/2012 with the term "Honorary Professor", included in such regulation, the Professors who are non-permanent lecturers being appointed before the promulgation of Permendikbudristek 38/2021 shall also be referred to as “Honorary Professor”. The appointment as an honorary professor shall be determined by the head of the university and reported to the Minister and only universities that meet the requirements can conduct such appointments, namely the universities must have an A or excellent accreditation rating and the universities organize doctoral or applied doctoral study program in accordance with the honorary professor candidate with an A or excellent accreditation rating. In the event that the academic position of the Honorary Professor will be mentioned or used, in addition to being followed by the name of the university, the word “Honorary” or “Honoris Causa (H.C.)” must also be added to the title of the honorary professor, as befits the use of an honorary doctorate or Doctor Honoris Causa written as

Dr. (H.C.). Therefore, there is a similarity in the inclusion of an honorary doctorate with an honorary professor. Based on this, the writing of the title of honorary professor must be written as Prof. (H.C.) followed by the name of the higher education institution that gave the title.

6. Whereas in order to be proposed as an honorary professor, there is no requirement for a certain number of credits, but based on *tacit* knowledge assessment, namely the knowledge that is only based on the experience of one's mind, in accordance with the understanding and experience of such person which has not been made into knowledge in accordance with scientific rules, but has the potential to be developed into explicit knowledge in universities to benefit the society. On the other hand, for any permanent lecturers, in fact, explicit knowledge is an important aspect to show extraordinary skills and achievements in the academic field which is manifested in the form of scientific works such as papers, research reports, scientific journals, proceedings, as well as books or other monumental works.
7. Whereas in relation to the requirements for publication in reputable international journals, the Court is of the opinion that if these conditions are to be maintained, there is no need for the articles that have been published to be re-reviewed by the university and/or ministry reviewers as long as the article is published in a reputable journal whose list has been determined by the ministry and the list is updated regularly.

Based on the considerations above, the Court then considers the main point of the Petitioner's petition which argues that the norm of Article 50 paragraph (4) of Law 14/2005 creates uncertainty and multiple interpretations which may be distorted by the regulations made thereunder so that it is in contrary to the 1945 Constitution, as follows:

1) Whereas the *a quo* Article is part of the provisions governing the lecturers, particularly regarding the qualifications, competencies, certifications, and academic positions;
2) Whereas the phrase “in accordance with the laws and regulations” in the promulgation of laws and regulations, *in casu* Article 50 paragraph (4) of Law 14/2005, is permitted, as specified in Attachment II number 281 of Law 12/2011 which states “The reference to declare the application of various provisions of laws and regulations that are not stated in detail, shall use the phrase in accordance with the provisions of the laws and regulations”. If it is being related to Article 72 paragraph
(6) of Law 12/2012, the ministerial regulations which regulate the academic position levels have the promulgation basis because the ministerial regulations are delegated from a higher regulation even though Article 50 paragraph (4) of Law 14/2005 only states the phrase “in accordance with the laws and regulations”;
3) Whereas without intending to assess the legality of Permendikbud 92/2014, the Court is of the opinion that in order to avoid the possibility of differences in assessment between universities and ministries in assessing the academic levels of professors, the assessment team shall be integrated between the university assessment team and the ministry assessment team. In addition to maintaining the quality of lecturers who can be appointed as professors, such integration is also intended to simplify the stages or the nomination process that must be carried out transparently and easily accessible by every candidate proposed for promotion. Furthermore, all these mechanisms and processes must be carried out transparently and easily accessible to every candidate proposed for promotion.
4) Whereas the proposal for the academic position of professor made on behalf of the Petitioner, 27 (twenty-seven) days before the retirement age limit of the Petitioner, which was submitted on October 4, 2019 [*vide* evidence P-8]. The assessment process is still being carried out on the proposal, namely on October 22, 2019, February 25, 2020, and February 26-27, 2020, the results of which has not recommended the proposal on behalf of the Petitioner to be submitted as a professor [*vide* Summary of Court Hearing Number 20/PUU-XIX/2021 dated January 10, 2022, page 7]. In this regard, without the Court intending to evaluate the concrete case as experienced by the Petitioner, by referring to

these facts, the issue that the Petitioner did not obtain the recommendation to be a professor is a matter of implementation of various regulations and policies that have been determined and is not a matter of the constitutionality of norms.

5) Whereas regardless of the Petitioner's a quo issue is a matter of implementation or application of norms, regarding the academic position levels, especially professors, the Court is of the opinion that the existence of Permendikbud 92/2014 and PO PAK 2014 and now PO PAK 2019 are juridical instruments as the subsequent regulations of Article 50 paragraph (4) Law 14/ 2005 and Article 72 paragraph (6) of Law 12/2012 which are technically operational in nature to ensure the standardization of assessment and assessment procedures, so that the quality of lecturers as the holders of academic positions can be accounted for (accountable). In this case, the Court needs to emphasize that even if there is a delegation and authority in promulgating a Ministerial Regulation, such delegation and authority shall not be justified in reducing and adding to the substance of the law which was the basis for the promulgation of such ministerial regulation.

Based on all the legal considerations as described above, the Court considers that there is no issue on the constitutionality of the norm of Article 50 paragraph (4) of Law 14/2005 regarding justice, legal certainty, protection of work and self-development in a legal state as stipulated in the provisions of Article 1 paragraph (3), Article 27 paragraph (2), Article 28C paragraph (1), Article 28D paragraph (1), Article 28I paragraph (4) and paragraph (5) of the 1945 Constitution, therefore the Petitioner's petition is legally unjustifiable.

Accordingly, the Court subsequently issued a decision which verdict is to dismiss the Petitioner's petition in its entirety.