



DECISION

Number 4/PUU-X/2012

FOR THE SAKE OF JUSTICE UNDER THE ONE ALMIGHTY GOD

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF INDONESIA

[1.1] Hearing constitutional cases at the first and final level, has passed a decision in the case of Petition for Judicial Review of Law Number 24 Year 2009 concerning the National Flag, Language, and Emblem as well as Anthem against the 1945 Constitution of the State of the Republic of Indonesia, filed by:

[1.2] 1. Name : Forum for Legal and Constitutional Studies
(*Forum Kajian Hukum dan Konstitusi/FKHK*)

Address : Ngemplak-Karang Jati Neighborhood
Ward/Neighborhood Block 10/38 Number
133, Sinduadi, Mlati, Sleman, Yogyakarta

Hereinafter referred to as ----- **Petitioner I;**

2. Name : Ryan Muhammad

Occupation : University Student

Address : Jalan Salak number 6 C-93, Arco
Sawangan Complex, Depok, West Java

Hereinafter referred to as ----- **Petitioner II;**

3. Name : Erwin Agustian
Occupation : Self-employed
Address : Kampung Sukamulya Neighborhood
Ward/Neighborhood Block 010/004
Cilangkap Sub-district, Babakancikao
District, Purwakarta

Hereinafter referred to as ----- **Petitioner III;**

4. Name : Eko Santoso
Occupation : Self-employed
Address : Perum Mulyamekar Indah Neighborhood
Ward/Neighborhood Block 025/008
Mulyamekar Sub-district, Babakancikao
District, Purwakarta

Hereinafter referred to as ----- **Petitioner IV;**

Petitioner III and Petitioner IV, by virtue of Power of Attorney dated December 21, 2011, having authorized i) Yuherman, S.H., MH., M.Kn., and ii) M. Ady Soehatman, S.H., all of whom being advocates and legal consultants for the Consultation and Legal Aid Institute of Sahid University (Usahid), having its

address at Jalan Prof. Dr. Soepomo, S.H. Number 84, Tebet, South Jakarta, with the right of substitution to act for and on behalf of the authorizers;

Petitioner I, Petitioner II, Petitioner III, Petitioner IV and/or their proxies associated in the Coalition Team of *Garuda Pancasila* Freedom Movement (*Tim Koalisi Gerakan Bebaskan Garuda Pancasila*) having its address in the Consultation and Legal Aid Institute of Usahid;

Hereinafter referred to as -----**the Petitioners;**

[1.4] Having read the petition of the Petitioners;

Having heard the statement of the Petitioners;

Having examined the evidence of the Petitioners;

Having heard the statements of the experts of the Petitioners;

Having heard and read the written statement of the Government;

Having heard the statements of the experts of the Government;

Having read the written statement of the People's Legislative Assembly;

Having read the written conclusion of the Petitioners;

2. FACTS OF THE CASE

[2.1] Whereas the Petitioners have filed a petition dated December 22, 2011, which was received at the Registrar's Office of the Constitutional Court (hereinafter referred to as the Registrar's Office of the Court) on December 23, 2011, based on Deed of Petition File Receipt Number 7/PAN.MK/2012 and which has been recorded in the Registry of Constitutional Cases under Number 4/PUU-X/2012 on January 9, 2011, which has been revised and received at the Registrar's Office of the Court on February 1, 2012, which describes the following matters:

I. Introduction

Whereas the national emblem, *Garuda Pancasila*, together with The national flag Red and White and Indonesian Language constitute the identity of the nation and Indonesians Whereas the four national symbols are the reflection of the state sovereignty in the relationship code with other countries, and they become the reflection of independence and existence of the independent, united, sovereign, just, and prosperous state of Indonesia. Therefore, it is necessary to draft a law governing the four symbols so as to reach a common interpretation of the intended four national symbols.

The People's Legislative Assembly together with the government have issued Law Number 24 Year 2009 concerning the National Flag, Language, and Emblem as well as Anthem (hereinafter referred to as Law Number 24 Year 2009). As described in Article 48 paragraph (2) and the

Elucidation of Article 46, Article 47 paragraph (2), Article 48 paragraphs (1) and (2) sub-paragraphs b and e, and Article 49 sub-article c of Law Number 24 Year 2009, the form, size, and color of the national emblem, *Garuda Pancasila*, are stated to have been derived from the elements of Culture, Philosophy, and Ideology (ideal basis) of the Indonesian nation constituting the world view of the Indonesian nation.

Whereas therefore, the national emblem, *Garuda Pancasila*, which is inspired by the Ideology of *Pancasila* may not be separated from *Pancasila* as the property of all elements of the Indonesian nation. Therefore, the national emblem, *Garuda Pancasila*, is also the property of all Indonesian people, so that there is no reason to keep the national emblem, *Garuda Pancasila*, out of the reach of the people as its owners, either physically or by the application of laws and regulations, to the extent that they are used as the form or exploitation of the sense of nationalism and love for the nation and the state of Indonesia.

The legal adage of *lex superiori derogat legi inferiori* and the interests of the Petitioners impaired by the enactment of Article 57 sub-articles c and d of Law Number 24 Year 2009 have encouraged the Petitioners to file the petition for judicial review of the provisions.

Article 57 sub-article c reads as follows:

“Any person shall be prohibited from making an Emblem for any individual, political party, association, organization and/or any company which resembles or which is similar to the National Emblem”,

Meanwhile Article 57 sub-article d reads as follows:

“Any person shall be prohibited from using the National Emblem for purposes other than those regulated in this Law”.

The petition is filed to review Article 57 sub-articles c and d of Law Number 24 Year 2009 against Article 28C paragraph (2), Article 28I paragraph (2), and Article 32 paragraph (1) of the 1945 Constitution. In that connection, the Petitioners request the Panel of Constitutional Justices to grant the aforementioned petition of the Petitioners.

II. AUTHORITY OF THE CONSTITUTIONAL COURT

1. Whereas Article 24 paragraph (2) of the Fourth Amendment to the 1945 Constitution states that: *“Judicial power shall be exercised by a Supreme Court and its inferior courts, in the jurisdictions of general courts, the religious affair courts, the military tribunal, the state administration courts, and by a Constitutional Court”.*
2. Whereas Article 24C paragraph (1) of the Fourth Amendment of the 1945 Constitution further states that: *“The Constitutional Court shall have authority to hear at the first and final levels, the decision of*

which shall be final, to review laws against the Constitution, to decide disputes over the authority of state institutions granted by the Constitution, to make decisions on the dissolution of political parties, and to decide upon disputes over the results of general elections”

3. Whereas based on the provisions above, the Constitutional Court shall have authority to review Laws against the 1945 Constitution under Article 10 paragraph (1) of Law Number 24 Year 2003 concerning the Constitutional Court which states that: *“The Constitutional Court shall have authority to hear at the first and final levels, the decision of which shall be final: (a) to review laws against the 1945 Constitution”*.
4. The Constitutional Court has been established as an institution serving as the guardian of the constitution. The Constitutional Court may annul any Law whose contents or formulation is inconsistent with the constitution (unconstitutional) by cancelling the existence of such Law as a whole or any of its articles;
5. Whereas as the guardian of the constitution, the Constitutional Court also has authority to provide an interpretation on a provision of articles of Laws so that it will be in line with the constitutional values. The interpretation of the Constitutional Court of the constitutionality of the articles of Laws is the sole interpretation

(being the sole interpreter of the constitution) having legal force. Therefore, that the Constitutional Court may be requested to provide interpretations of articles having ambiguous and unclear meaning, and/or having multiple interpretations;

6. Whereas through this petition, the Petitioners petition for judicial review of Article 57 sub-articles c and d of Law Number 24 Year 2009 concerning the National Flag, Language, and Emblem as well as Anthem against Article 28C paragraph (2), Article 28I paragraph (2), and Article 32 paragraph (1) of the 1945 Constitution;
7. Based on the aforementioned matters, the Constitutional Court has authority to hear the petition *a quo*;

III. Legal Standing of the Petitioners

1. Whereas the recognition of the rights of any Indonesian citizen to file a petition for judicial review of a Law against the 1945 Constitution is a positive indicator of development in the state administration which reflects progress for the strengthening of the principles of the Rule of Law State;
2. Whereas Article 51 paragraph (1) of Law Number 24 Year 2003 concerning the Constitutional Court states that: *"Petitioners shall be the parties who believe that their constitutional rights and/or*

authorities have been impaired by the coming into effect of a Law, namely:

- (a) individual Indonesian citizens;*
- (b) customary law community groups insofar as they are still in existence and in accordance with the development of the community and the principle of the Unitary State of the Republic of Indonesia regulated in Law;*
- (c) public of private legal entities; or*
- (d) state institutions”;*

3. Whereas the Decision of the Constitutional Court on Case Number 11/PUU-V/2007 also explains the capacity of the Petitioners in filing the petition for judicial review of Laws against the Constitution, namely:

- a. the existence of constitutional rights of the Petitioners granted by the 1945 Constitution of the State of the Republic of Indonesia;
- b. The Petitioners consider that their constitutional rights have been impaired by Law being reviewed;

- c. The intended constitutional impairment of the Petitioners is specific or special and actual in nature, or at least potential in nature which, pursuant to logical reasoning, can be assured of occurring;
 - d. There is a causal relationship between the impairment and the coming into effect of the Law petitioned for review;
 - e. If the petition, it is possible that the argued constitutional impairment will not or will no longer occur.
4. Whereas the five requirements referred to above are explained further by the Constitutional Court through Decision Number 27/PUU-VII/2009 in the formal review of the Second Amendment to the Supreme Court Law, (page 59), which states as follows:

“From the practices of the Court (2003-2009), individual Indonesian citizens, especially taxpayers (vide Decision Number 003/PUU-I/2003), the Court considers that various associations and NGOs which concerned about Law for public interest, legal entities, regional Governments, state institutions, et cetera, have legal standing to file a petition for both formal and substantive review of Laws against the 1945 Constitution” (see also Lee Bridges, et al. in “Judicial Review in Perspective, 1995).”

5. Whereas the Petitioners are legal entities and individual Indonesian citizens having the right and care, attention, and conducting activities concerned about the application of values of idealism and constitutionalism of Indonesia, including conducting the activities in the field of education, advocacy, and counseling on the application of values of *Pancasila*. Therefore in this case, the filing of the petition for judicial review of a Law must be considered as the form of the citizens' endeavor, either individually or collectively, to build their society, nation, and state in the enforcement of constitutional values;

6. Whereas Petitioner I is a legal entity, namely the Forum for Legal and Constitutional Studies (*Forum Kajian Hukum dan Konstitusi/FKHK*) in accordance with Notary Deed Number 2 Year 2011, domiciled in Ngemplak Karang Jati, Sinduadi Mlati, Neighborhood Ward 10//Neighborhood Block 38, Number 133, Sleman, Yogyakarta. Based on its Articles of Association and Bylaws, Petitioner I is an institution having concern about the application of the values of *Pancasila* and modernization of the method of the application of *Pancasila*. Petitioner I has filed this petition using the mechanism of organizational representation (legal standing) which constitutes the right and interest of the Petitioners as certain institutions in the name of public interests.

- 6.1 Whereas Petitioner I has legal standing as a Petitioner for judicial review of Law because there is a causal relationship (*causal verband*), namely that the ratification of Law Number 24 Year 2009 concerning the National Flag, Language, and Emblem as well as Anthem has impaired the constitutional rights of the Petitioner.
- 6.2 Whereas Petitioner I is a community organization or an incorporated non-governmental organization (NGO), which grows independently in the society and engages in the implementation of the values of *Pancasila*, as well as in the modernization of the method of application of the values of *Pancasila*.
- 6.3 Whereas the task and role of Petitioner I in conducting the activities of instilling the values of *Pancasila*, as well as the modernization of the method of application of the values of *Pancasila* have continuously exploit the institution as the means to apply the values of *Pancasila* in the society.
- 6.4. Whereas the legal basis and interest of Petitioner I in filing the Petition for Judicial Review of Law Number 24 Year 2009 can be proved by the Articles of Association and/or Bylaws, namely in Article 4 sub-article b which reads: “to participate in realizing the rule of law state based on *Pancasila*”.

- 6.5. Whereas in its work programs, Petitioner I reviews various Laws including Law Number 24 Year 2009 concerning the National Flag, Language, and Emblem as well as Anthem so that the Law can be implemented effectively and will not impair the constitutional rights of citizens. This matter has been in accordance with the legal standing of Petitioner I in the petition for judicial review of this Law.
- 6.6. Whereas the reviews conducted by the Petitioner I are the forms of the active endeavor to support the realization of the values of constitutionalism in the life as a nation and state.
7. Whereas Petitioner II is a citizen of Indonesia active as the General Coordinator of the Movement of Students of the Faculty of Law of Jakarta since 2009 up to this time, who in their activities are very concerned about the implementation of the values and spirit of nationalism and constitutionalism of Indonesia by conducting activities of instilling the values of *Pancasila* to children and teenagers, and being individuals monitoring deviations occurring in the process of implementation of the values of constitutionalism of the 1945 Constitution;
8. Whereas Petitioner III and Petitioner IV are Indonesian citizens having the idealism of *Pancasila* and nationalism of Indonesia, who

have the rights to obtain access to the national emblem and legal protection of such rights, but who become the victims of the implementation of Law Number 24 Year 2009 concerning the National Flag, Language, and Emblem as well as Anthem, because they have been punished under the decision of the Purwakarta District Court for using the national emblem of the State of the Republic of Indonesia, the state which is loved and proud of by Petitioner III and Petitioner IV.

Petitioner III and Petitioner IV's love and nationalism as citizens of Indonesia have become a spirit and have removed their doubt to use the national emblem, *Garuda Pancasila*, in their activities to show the spirit of nationality and the values possessed by the Indonesians, namely *Pancasila*, which is realized by using the national emblem, *Garuda Pancasila*. However, Petitioner III and Petitioner IV have been become the victims of the implementation of Article 57 sub-article d of Law Number 24 Year 2009.

9. Whereas the Petitioners have constitutional interests in the application of Article 57 sub-articles c and d of Law Number 24 Year 2009 because the application of these provisions has impaired the rights of the Petitioners as citizens guaranteed by Article 28C paragraph (2), Article 28I paragraph (2), and Article 32 paragraph (1) of 1945 Constitution;

Whereas therefore, the Petitioners are the parties intended to in Article 51 paragraph (1) sub-paragraph a of Law Number 24 Year 2003 concerning the Constitutional Court;

10. Whereas according to Satjipto Rahardjo, law deals with rights and obligations. The whole legal structure is formed by both of them. All connections of network accommodated by law constantly revolve around the rights and obligations. In law, basically, there are only two stereotypes of behavior recognized, namely, demanding anything related to rights and owing anything related to *obligations* (see: Satjipto Rahardjo, *Ilmu Hukum*, Citra Aditya Bakti Publisher, Bandung, 2006, 66-67). When citizens, namely the Petitioners, have fulfilled their obligations so that the process of living as a state may be properly implemented, the Petitioners (tax payers) should be granted the rights to sue the process of living as a state which is not properly implemented. One of the rights of suing may be in the form of the filing of a petition for judicial review of a Law considered problematic;
11. Whereas subsequently, the Petitioners intend to explain the constitutional impairment or potential constitutional impairment due to the coming into effect of Article 57 sub-articles c and d of Law Number 24 Year 2009 concerning the National Flag, Language, Emblem, and Anthem against Article 28C paragraph (2), Article 28I

paragraph (2), and Article 32 paragraph (1) of the 1945 Constitution;

11.1. Whereas in connection with the Petitioners' petition for this judicial review, it is understandable that the Petitioners have been impaired by the coming into effect of certain articles in Law Number 24 Year 2009 concerning the National Flag, Language, Emblem, and Anthem. The impairment is related to the description above concerning the impairment to the citizens caused by the failure to realize the values of constitutionalism;

11.2. Whereas as citizens, the Petitioners have the constitutional right to access the recognition, guarantee, protection of just laws as well as equal treatment before the law as regulated in Article 28D paragraph (1) of the 1945 Constitution;

11.3. Whereas the Petitioners also have the right to fight for their constitutional rights as regulated in Article 28C paragraph (2) of the 1945 Constitution which reads "*every person shall have the right to improve himself/herself in striving for his/her rights collectively for building his/her society, nation and state.*";

- 11.4. Whereas the existence of the articles *a quo* of Law Number 24 Year 2009 concerning the National Flag, Language, Emblem, and Anthem being reviewed, has explicitly limited and ruined the democratic order and nationalism of the society in protecting the rights of citizens, and it is inconsistent with the articles set forth in the 1945 Constitution;
- 11.5. Whereas the application of the articles *a quo* of Law Number 24 Year 2009 concerning the National Flag, Language, Emblem, and Anthem being reviewed has impaired the rights of the Petitioners as citizens to obtain legal certainty and protection of the values of constitutionalism set forth in the 1945 Constitution;
12. Whereas in the event that the authority of judicial review is not exercised maximally, it will have an impact on the application of laws and regulations which are far from the spirit of constitutionalism. The application of laws and regulations, in this matter, the Law, which deviates from the values of constitutionalism will definitely impair the citizens who have mandated state institutions to perform good governance;
13. Whereas if this is the case, the purpose of the establishment of the state, namely protecting the rights of its citizens, will not be

reached. As stated by Aristotle, a state is intended for the interests of its citizens, so that they may live a good and happy life (See: I Gde Pantja Astawa and Suprin Na'a, *Memahami Ilmu Negara dan Teori Negara*, Refika Aditama, Bandung, 2009, page 45).

14. Whereas based on the description above, It is clear that the Petitioners have legal standing as Petitioners for the judicial review of Law Number 24 Year 2009 concerning the National Flag, Language, and Emblem as well as Anthem, and there is a legal connection (*causal verband*) with respect to the application of Article 56 sub-articles c and d related to Article 28C paragraph (2), Article 28I paragraph (2), and Article 32 paragraph (1); of the 1945 Constitution;

IV. Reasons of the Petition

1. Whereas the national emblem, *Garuda Pancasila*, which is identical to *Pancasila*, constituting the world view of Indonesian nation with *Bhinneka Tunggal Ika* (unity in diversity) motto, is the property of all Indonesian people, so that its use cannot be restricted only to some circles without disregarding actions intended for degrading the national emblem, *Garuda Pancasila* itself.
2. Whereas Article 57 sub-article c and sub-article d is not in line with *Pancasila* as the world view of Indonesian nation because on the

contrary, the national emblem, *Garuda Pancasila* must be "brought down to earth" in and disseminated to all Indonesian citizens, so that it is embedded and not far or even separated from the Indonesian nation itself as the owner. This can be conducted through various media, and means, or models, creativity, or efforts, insofar as it does not damage or alter the form of the national emblem itself.

3. Whereas Article 57 sub-article c which prohibits the *making of an emblem for any individual, political party, association, organization, and/or company which resembles or which is similar to the National Emblem* is not in line with the spirit of freedom of thought, will, association and assembly for expressing their will in public, without disregarding the actions of certain parties or certain groups who mean to claim the emblem as their own or any other group's property. Similarly, Article 57 sub-article d, which prohibits the use of *the National Emblem for purposes other than those regulated in this Law* is not in line with *Pancasila* as the World View of the Indonesian Nation.
4. Whereas the provision of the abovementioned Law Number 24 Year 2009 keeps the people away from their own national emblem and makes the emblem as if it is the property of state officials or certain groups only. This is very inconsistent with Article 28I

paragraph (2), and Article 32 paragraph (1) of the 1945 Constitution.

5. Whereas it can be said further that:

a. Article 57 sub-article d which reads:

“using the National emblem for purposes other than those regulated in this Law”

This provision is very full with discrimination towards citizens. It is clearly inconsistent with Article 28I paragraph (2) which guarantees that *“Every person shall have the right to be free from discriminatory treatment on any basis whatsoever and shall have the right to obtain protection against any such discriminatory treatment”*.

b. Elucidation of Article 46 of Law Number 24 Year 2009 states that *the definition of "Garuda Pancasila" shall be an emblem in the form of an eagle which has been well-known from the ancient mythology, namely the bird resembling a hawk. Garuda is used as the Emblem of the Unitary State of the Republic of Indonesia to describe that Indonesia is a great nation and a strong country. Referred to as the "shield" shall be a shield which has been well-known for a long time in the culture and native civilization of Indonesia as a part of a*

weapon symbolizing struggle and self-protection in order to achieve a goal. Referred to as "Bhinneka Tunggal Ika motto" shall be an old adage once used by the famous poet, Mpu Tantular. The word bhinneka is a combination of two words: bhinna and ika, which mean different but remain one, and the words tunggal ika mean that in the diversity, Indonesian nation is one unity. This motto is used to describe the unity and integrity of the nation and the Unitary State of the Republic of Indonesia.

Whereas such elucidation is in the same form and construction with the meaning of *Pancasila*. *Bhinneka Tunggal Ika* proposed by Mpu Tantular is the motto rediscovered by the Founding Fathers of this nation, and it is used as a motto to unify the Indonesian nation comprising various ethnicities and regions which are separated by the sea.

Whereas according to the history of the struggle of the Indonesian nation and the history of the 1945 Proclamation as well as the development of the teaching of *Pancasila* education from 1945 up to 2009, the national emblem which is now enacted as the national emblem, *Garuda Pancasila*, in accordance with Law Number 24 Year 2009 is an

inseparable part of *Pancasila*. In fact, all the five images referred to in Article 48 paragraph (2) of Law Number 24 Year 2009 are the symbols of *Pancasila* from the first principle up to the fifth principle. Therefore, there is no reason to prohibit and/or keep the society away from the access to use the national emblem, *Garuda Pancasila*.

It is presumably normal on this occasion for the Petitioners to quote Article 48 paragraph (2) of Law Number 24 Year 2009:

In the shield as intended in Article 46, there are five quarters representing the principles of Pancasila as follows:

- a. the principle of Belief in the One Supreme God as symbolized by the light on the center of the shield, in the form of a five-pointed star;
- b. the principle of Just and Civilized Humanity as symbolized by a chain made up of round and square links on the bottom left quarter of the shield;
- c. the principle of the Unity of Indonesia as symbolized by the banyan tree on the upper left quarter of the shield;

- d. the principle of Democracy Guided by the Inner Wisdom in the Unanimity Arising Out of Deliberations amongst Representatives as symbolized by the bull's head on the upper right quarter of the shield;
- e. and the principle of Social Justice for All People of Indonesia as symbolized by the cotton and rice on the bottom right quarter of the shield.

It means that the symbols, images, or emblems representing the principles of *Pancasila* as a part of disseminating *Pancasila* in a country vulnerable to disintegration in a society which is still not too educated (at the macro level) make such emblems sociologically integrated with the ideology of *Pancasila*.

Whereas the creation of the national emblem originally was a contest, and then the original emblem which was fatter than it is now was perfected by Ir. Sukarno in 1945, shortly after the independence. Afterwards, it has made the ideology of *Pancasila* identical to such emblem, and the definitions of emblems or symbols which originally were symbols having philosophical meanings as symbols of the principles of *Pancasila* were later standardized in Article 48 paragraph (2)

of Law Number 24 Year 2009, are inseparable from *Pancasila*.

Whereas therefore, the society is entitled to use or apply *Garuda Pancasila* image which is identical to the ideology of *Pancasila* constituting the world view of Indonesian nation and which belongs to all Indonesian people, insofar as it is not used for political and personal interests conflicting with public interests.

Whereas referred to political and personal interests shall be the use of *Garuda Pancasila* image which Law Number 24 Year 2009 states as the national emblem, *Garuda Pancasila*, for certain political interests in order to gather the mass in General Elections, both legislative and executive elections, the use of *Garuda Pancasila* image as a mass organizations' emblem to attract public sympathy because of the impression that such mass organization is a state-owned organization or to obtain an approval from the state, creating a certain privilege for its users to socialize, or even to order or prohibit an individual, group of people, or the public to do or not do something. Meanwhile, personal or group interests refer to the use of *Garuda Pancasila* image by an individual or a group of people to seek donations for fundraising as if

such fundraising had been approved by the state which, in the sociological condition of Indonesian society, is identical to the approval from state officials so that an individual, a group of people, and the public become afraid and then give donation to that individual or group of people.

Whereas therefore, in the opinion of the Petitioners, Article 57 sub-article d is inconsistent with Article 28I paragraph (2) of the 1945 Constitution because of the existence of the prohibition in Article 57 sub-article d regulating its use which only allows for the use of *Garuda Pancasila* image as the national emblem in Article 51 and Article 52 of Law Number 24 Year 2009, which then has an impact of criminalization as set forth in Article 69 of that Law for its users beyond Article 51 and Article 52.

Whereas such discrimination is due to the fact that *Garuda Pancasila* image with *Bhinneka Tunggal Ika* motto, which become emblem of the state of the Republic of Indonesia, hereinafter referred to as the national emblem, *Garuda Pancasila*, according to our reasons described above, *Garuda Pancasila* image is historically and philosophically an integral and inseparable part of *Pancasila* as the foundation of the state and its placement, following the 1945

Proclamation of Independence up to the post-reform decline of the ideology of *Pancasila* and the revocation of the sole principle of *Pancasila*, are always congruent, side by side, and identical to the ideology of *Pancasila*, which means that as the ideology, or world view, or ideal foundation as a nation and state which must be performed by all Indonesian people, *Pancasila* and anything attached to it, is the property of all Indonesian people and can be used by all Indonesian people insofar as it is implemented genuinely and consistently.

- c. Whereas Article 32 paragraph (1) of the 1945 Constitution which reads *“The state shall advance the Indonesian national culture amidst world civilization by guaranteeing freedom to the society in preserving and developing their cultural values.”*

Whereas the national emblem, *Garuda Pancasila*, according to the elucidation of Article 46 of Law Number 24 Year 2009 is defined as follows:

“The definition of “Garuda Pancasila” shall be an emblem in the form of an eagle which has been well-known from the ancient mythology, namely the bird resembling a hawk. Garuda is used as the Emblem of the Unitary State of the

Republic of Indonesia to describe that Indonesia is a great nation and a strong country. Referred to as the "shield" shall be a shield which has been well-known for a long time in the culture and native civilization of Indonesia as a part of a weapon symbolizing struggle and self-protection in order to achieve a goal. Referred to as "Bhinneka Tunggal Ika motto" shall be an old adage once used by the famous poet, Mpu Tantular. The word bhinneka is a combination of two words: bhinna and ika, which mean in the diversity, different but remain one, and the single words tunggal ika mean that in the diversity, Indonesian nation is one unity. This motto is used to describe the unity and integrity of the nation and Unitary State of the Republic of Indonesia."

Therefore, the following definitions can be adopted:

- 1) *Garuda* Picture is taken from the ancient mythology, namely a bird resembling a hawk. The *Garuda* has been known for a long time in the culture of Indonesian people.
- 2) Whereas the *Bhinneka Tunggal Ika* motto was originally a brief designation of an old adage created by the Poet, Mpu Tantular who lived during the era of the Majapahit Kingdom, namely *Bhinneka Tunggal Ika*

Tan Hana Dharma Mangrwa. Whereas the Majapahit Kingdom existed in the 13-14 century AD and was located in the Territory in which the State of The Republic of Indonesia is located now, with its center of power being in the region of East Java, or exactly in Mojokerto.

- 3) Whereas according to the speech by Ir. Soekarno, *Pancasila* was extracted from the living culture of Indonesian society. The same thing is also stated by textbooks concerning *Pancasila* and history books concerning *Pancasila*, namely that *Pancasila* is discovered from a the native living culture of Indonesian society whose positive aspects are adopted to become the world view of all Indonesian people in the life as a nation and state.
- 4) Whereas the symbol of *Pancasila* which is identical and which has been embedded as an integral and inseparable part, and as even later explained explicitly in Article 48 paragraph (2) concerning the emblems in the shield on the chest of *Garuda* consisting of 5 (five) emblems symbolizing the first through the fifth principles, shows that *Garuda* which

later becomes the national emblem, *Garuda Pancasila*, has been in accordance with Law Number 24 Year 2009 constituting an inseparable part of *Pancasila*, so that it becomes the property of all Indonesian people.

- 5) Whereas as symbolization of the culture of society, and the noble values of Indonesian nation, the society has the right or freedom to preserve and develop the noble values of their culture which are summarized in the ideal foundation of *Pancasila* and symbolized by *Garuda* image which also becomes the national emblem, *Garuda Pancasila*, and standardized in Law Number 24 Year 2009. Whereas the preservation and development of cultural values which are summarized in *Pancasila* to which the *Garuda* image is attached, as well as the national emblem, the freedom of Indonesian people is guaranteed by the state in preserving and developing their cultures or noble values, one of which being the use of *Garuda Pancasila* image similar to the national emblem, *Garuda Pancasila*, as an inseparable part of *Pancasila* as its realization.

- 6) Whereas the existence of that Article 57 sub-article d has prevented the people from exercising their right to use *Garuda Pancasila* image which is similar to the national emblem, *Garuda Pancasila*, to perform cultural expression guaranteed by Article 32 paragraph (1) of the 1945 Constitution, and therefore, we have filed this petition for substantive review for Article 57 sub-article d to be declared inconsistent with Article 32 paragraph (1) of the 1945 Constitution, and automatically with the deletion of Article 57 sub-article d, Article 69 sub-article c of Law Number 24 Year 2009 will be automatically deleted because its reference article has been deleted.
6. Whereas by the application of Article 57 sub-article c and sub-article d of Law Number 24 Year 2009 will make *Pancasila* inflexible and far from people's understanding. Psychologically, people usually use the national symbol/emblem such as *Garuda Pancasila* or the red and white (Indonesian flag) as a form of people's love and pride to a country, because the national symbol/emblem constitutes the graphic form of a state, and therefore generally, someone will not wish to understand or know something until he has initially seen the graphic form.

7. Whereas according to Satjipto Rahardjo, law is for society rather than society for law. It means that the law is intended to protect the society, and the law must not be viewed on how it punishes the society, but how that law protects the society. However, Law Number 24 Year 2009 has repressive the provisions in its articles because it is more potential to punish the society, rather than to protect them.
8. Whereas the national emblem is a unifying facility, identity, and a form of national existence, but the application of Law Number 24 Year 2009, particularly Article 57 sub-article d, is potential to cause conflict in the society.
9. Whereas the application of Article 57 sub-article c and sub-article d of Law Number 24 Year 2009 has led to excessive criminalization with its penal provisions in Article 69. The intended criminalization is excessive because it does not consider the sense of nationalism. An action of the public using the national emblem, although based on the sense of nationalism, will be criminalized by the existence of the provisions of Article 57 sub-article c and sub-article d of Law Number 24 Year 2009 with its penal provisions in Article 69. This has been experienced by Petitioner III and Petitioner IV.
10. Whereas in the seminar of the Forum for Legal and Constitutional Studies (*Forum Kajian Hukum dan Konstitusi/FKHK*) held on

December 15, 2011 in Yogyakarta, it could be concluded that the national emblem has been living in the social life of our society, not to alienate it from the people. Previously, *Garuda Pancasila* was "alienated" and only hung on the wall of a room, while nowadays, "*Garuda di Dadaku/Garuda on my Chest*" of *Pancasila* has been closer to the public. In the future, the values of *Pancasila* should be integrated into and live in every breath and conduct of the society and particularly the government, the holder of power.

V. *Petitum*

Based on the reasons described above and the attached evidence, the Petitioners request the Honorable Constitutional Justices of the Constitutional Court to examine and decide upon the substantive review as follows:

1. To accept and grant the petition for Judicial Review of Law petitioned by the Petitioners in its entirety;
2. To declare Article 57 sub-articles c of Law Number 24 Year 2009 concerning the National Flag, Language, and Emblem as well as Anthem inconsistent with Article 28C paragraph (2) of the 1945 Constitution, and therefore, it shall not have any binding legal force;
3. To declare Article 57 sub-articles d of Law Number 24 Year 2009 concerning the National Flag, Language, and Emblem as well as

Anthem inconsistent with Article 28I paragraph (2) and Article 32 paragraph (1) of the 1945 Constitution of the State of the Republic of Indonesia, and therefore, it shall not have any binding legal force;

4. To order the promulgation of the injunction of decision of the Constitutional Court granting the petition for judicial review of Law Number 24 Year 2009 concerning the National Flag, Language, and Emblem as well as Anthem against the 1945 Constitution in the Official Gazette by no later than thirty (30) business days as of the pronouncement of the decision;

Should the Constitutional Court be of another opinion, we request for a decision by principles of what is fair and just (*ex aequo et bono*).

[2.2] Whereas to prove the arguments of their petition, the Petitioners have presented written evidence in the form of letters or writings marked as exhibit P-1 up to exhibit P-12 as follows:

1. Exhibit P-1 : Photocopy of Law Number 24 Year 2009 concerning the National Flag, Language, and Emblem as well as Anthem;
2. Exhibit P-2 : Photocopy of the 1945 Constitution of the State of the Republic of Indonesia;
3. Exhibit P-3 : Photocopy of Identity Cards in the name of Ahluddin

Saiful Ahmad, Erwin Agustian, Eko Santoso, Ryan Muhammad, Victor Santoso Tandiasa;

4. Exhibit P-4 : Photocopy of Articles of Association/By-Laws of the Forum for Legal and Constitutional Studies (*Forum Kajian Hukum dan Konstitusi/FKHK*);
5. Exhibit P-5 : Photocopy of Notary Deed of the Forum for Legal and Constitutional Studies (*Forum Kajian Hukum dan Konstitusi/FKHK*);

In addition to presenting written evidence in the form of letters or writings, the Petitioners have also presented **Experts M. Muktasar Syamsuddin, Ph.D.** and **Prof. Dr. Asvi Warman Adam**, whose statements under oath have been heard on March 1, 2012, and April 11, 2012, which in substance explain as follows:

Experts

1. M. Muktasar Syamsuddin, Ph.D.

- Semiotics differentiates sign into i) emblem, ii) signal, and iii) cue. Emblem is in at the highest level. A sign (as a signal) is the simplest means of communication which does not have any meaning, but only recognized, known, or giving a description. A

sign (as an emblem) needs interpretation to find the symbolized meaning.

- Inherently, an emblem contains a very deep meaning and noble values respected by humans. Therefore, humans treat the emblem or symbol as a creation or work of mind as the noble creatures of God without being ordered to do so.
- The national emblem (*Garuda Pancasila*) may be viewed from two perspectives. I) substantive cause aspect, that the national emblem, *Garuda Pancasila*, must substantively be admitted as having come/originated from the Indonesian nation itself. Therefore, the values in the national emblem, *Garuda Pancasila* shall be claimed as the property of Indonesian nations/people, and therefore, the values must be appreciated and respected.
- Secondly, formal cause aspect, being the laws and regulations regulating the use of the national emblem.
- The national emblem, *Garuda Pancasila*, shows the pride of Indonesian nation. In such pride, there is freedom of appreciation in order to achieve the goal symbolized by *burung Garuda (Pancasila)*.

- When a sign is used as an emblem, the interpretation will open, and rooms which may cause multiple interpretations will open.
- If multiple interpretations occur, the determinant is the extent to which the interpretation is supported by the instruments to achieve the desired goal, namely the state's goals. Those instruments are derived from cultural customs and national history.
- When prohibitions arise, the fundamental thing to be done is to collectively agree on the same purpose, intention, and understanding that the national emblem is intended to achieve the goals/ideals of the state of Indonesia.
- If Indonesian people do not have a culture (customs), it would be impossible for the national emblem to exist; if it exists instead, the existence must be fragile.
- The limitation of the use of the national emblem is actually to show the identity of nationality of the state of Indonesia which is distinctive from other nations and states.
- A Professor of the University of Gadjah Mada identifies that *Garuda* is the magic hawk, which is actually the same with ones used in United States of America and Iran, but in different size and format.

- The actual legal protection intended by Law *a quo* is at the time when other states or nations misuse the *garuda* emblem.
- The truth can be measured from two aspects. First, from the coherency aspect, namely whether the concept for understanding the emblem is really equivalent with the reality. When the reality is that Indonesian people rely on brotherhood, mutual aid, while later the symbol (*Garuda*) is used to divide the brotherhood, mutual aid, truth does not exist because it is not in accordance with the reality.
- Secondly, the pragmatic truth, namely the extent of use of the national emblem. The Law states that it is used as the national unifier, and if it is in accordance with its objective, the pragmatic truth exists.

2. Prof. Dr. Asvi Warman Adam

- The expert has once become an expert witness in a labor case in Purwakarta, the stamp of which used *Garuda* emblem, and in the case of the PSSI National Team using *Garuda* emblem on their jerseys.
- The intended Paragraph threatened the National Team and supporters since they used the national emblem on their shirts/t-shirts.

- *Garuda* emblem has been used both before and after the independence of Indonesia.
- Indonesian team used *Garuda* emblem when playing against Russia during the Olympic Games in Australia.
- The community is subject to a criminal sanction for their love to the *Garuda* emblem instead.
- There are 170 kinds of *Garuda* emblem on gates and other places in Yogyakarta made without being based on the laws and regulations (referring to the postgraduate thesis of Nanang Hidayat “*Mencari Telur Garuda/Finding the Eggs of Garuda*”)
- Soekarno stated that the paintings and drawings of *Garuda* emblem found everywhere are the forms of love to the state.
- The national emblem should be disseminated and shown to the community.
- The article threatening those using the emblem without complying with the provision of Law with a criminal sanction is unacceptable.
- In the case of two labor groups in Purwakarta, it was evident that the case arose from a complaint filed by a community organization as the competitor of the two labor groups. It means that the

provision concerning the emblem is only used as a means of political competition.

- In the complaint against the national team, the decision of the District Court only discussed the legal standing of the petitioners instead of discussing the substance.
- In the event that Article 57 sub-article d of Law of 24/2009 is applied, so many institutions and people will be subject to criminal sanctions, including the Constitutional Court, for using attributes using the national emblem, which is not in compliance with the provisions. Therefore, it is better to make it free to use the national emblem.
- The contradiction in the intended Law is that on the one hand, people are encouraged to use the national emblem while on the other hand, they are criminalized for doing so.
- Article 57 sub-article d of Law of 24/2009 does not consider the space and time in the future because it does not provide any detailed regulation. The article cannot accommodate the prospective development related to the technology of information.

[2.3] Whereas with respect to the petition filed by the Petitioners, the Government gave an opening statement in the hearing on March 1, 2012, and

written statement on March 29, 2012 received by the Registrar's Office of the Constitutional Court on May 16, 2012 explaining the matters as described below.

A. Legal Standing of the Petitioners

Before providing responses or objections to the substance of the petition, the Government shall firstly provide responses with respect to the legal standing of the Petitioners.

Pursuant to the provisions of Article 51 paragraph (1) of Law Number 24 Year 2003 concerning the Constitutional Court as amended by Law Number 8 Year 2011, the Petitioners shall be the parties who believe that their constitutional rights and/or authorities have been impaired by the coming into effect of a Law, namely:

- a. individual Indonesian citizens;
- b. customary law community groups insofar as they are still in existence and in accordance with the development of the community and the principle of the Unitary State of the Republic of Indonesia regulated in Law;
- c. public of private legal entities; or
- d. state institutions.

The abovementioned provision is confirmed in its elucidation, namely that the intended “constitutional rights” shall be the rights regulated in the 1945 Constitution.

The Constitutional Court, in Decisions Number 006/PUU-III-2005 and Number 11/PUU-V/2007, more strictly formulate the definition of and limitation on the requirements of legal standing based on the constitutional right of the petitioners, namely:

- a. the existence of constitutional rights of the Petitioners granted by the 1945 Constitution;
- b. the petitioners consider that their constitutional rights have been impaired by law being reviewed;
- c. the intended constitutional impairment of the petitioners is specific or special and actual in nature, or at least potential in nature, which, pursuant to logical reasoning, can be assured of occurring;
- d. there is a causal relationship (*causal verband*) between the impairment and the coming into effect of the law petitioned for review;
- e. there is a possibility that with the granting of the petition, the argued constitutional impairment will not or will no longer occur.

In the event that the five criteria are not accumulatively met, it can be assured that the Petitioners do not have legal standing to file the petition for judicial review (of the case) to the Constitutional Court.

To ascertain whether the petitioners have legal standing to file the petition for judicial review of Article 57 sub-articles c and d of Law Number 24 Year 2009 against the 1945 Constitution to the Constitutional Court, the arguments of the petitioners shall be examined and related with the provision of Article 51 paragraph (1) of Law Number 23 Year 2003 *juncto* criteria/requirements of legal standing as intended in the Decision of the Constitutional Court Numbers 006/PUU-111/2005 and 11/PUU V/2007.

1. Petitioner I is the Forum for Legal and Constitutional Studies (*Forum Kajian Hukum dan Konstitusi/FKHK*) in accordance with Notary Deed Number 2 Year 2011, drawn up before Notary Dradjat Darmadji, S.H., having his address in Ngemplak Karang Jati, Sinduadi Miati, Neighborhood Ward 10/Neighborhood Block 38, Number 133, Sleman, Yogyakarta;
2. Petitioner II is a citizen of Indonesia active as the General Coordinator of the Movement of Students of the Faculty of Law of Jakarta since 2009 up to this time, which is very concerned about the application of the values and the spirit of nationalism and constitutionalism of Indonesia by conducting activities of instilling the values of *Pancasila*. The Petitioner considers himself as an individual who monitors deviations occurring in

the process of implementation of the values of constitutionalism of the 1945 Constitution;

3. Petitioner III is a citizen of Indonesia who considers himself a law and Human Rights observer;
4. Petitioner IV and Petitioner V are citizens of Indonesia who have the rights to obtain access to the national emblem and legal protection of the rights, but who have become the victims of the implementation of Law Number 24 Year 2009 because they have been punished under the decision of Purwakarta District Court for using the national emblem of the Republic of Indonesia.

With respect to the abovementioned matters, according to the Government, it is necessary to question whether it has been proper for the Petitioners to be the parties having interests whose constitutional rights and/or authority have been impaired by the coming into effect of the provision of Article 57 sub-articles c and d of Law Number 24 Year 2009.

1. In its petition, Petitioner I as the Forum for Legal and Constitutional Studies (*Forum Kajian Hukum dan Konstitusi/FKHK*) cannot prove that it has obtained the approval from the authorized official to be a legal entity having authority to perform a legal action. Petitioner I (Ahluddin Saiful Ahmad), at the hearing of the Constitutional Court on February 16, 2012, expressly explained that the Forum for Legal and Constitutional Studies

(*Forum Kajian Hukum dan Konstitusi/FKHK*) had not been registered with the Ministry of Home Affairs as a community organization, so that it had not become a legal entity (see Minutes of the Hearing of the Case Number 4/PUU-X/2012 dated February 16, 2012, page 12.) Article 51 paragraph (1) sub-paragraph c of Law Number 24 Year 2003 provides that a Petitioner must have a (private) legal entity status. Without having a legal entity status, Petitioner I does not have legal standing to file the petition for judicial review of Article 57 sub-articles c and d of Law Number 24 Year 2009 to the Constitutional Court.

2. According to the Government, it is evident that Petitioner I, Petitioner II, and Petitioner III cannot explain:
 - a. the constitutional impairment suffered in a specific, detailed, clear, and express manner, due to the coming into effect of the provision of Article 57 sub-articles c and d of Law Number 24 Year 2009;
 - b. the causal relationship (*causal verband*) between the impairment and the coming into effect of the provision of Article 57 sub-articles c and d of Law Number 24 Year 2009;
 - c. if the petition is granted, it is possible that the impairment argued will not or will no longer occur;

as provided for by Article 51 paragraph (1) of Law Number 24 Year 2003 and the previous Decisions of the Constitutional Court (*vide* Decision Number 006/PUU III/2005 and Decision Number 11/PUU-V/2007).

3. Petitioner III (Bervilia Sari) does not sign and affix her thumbprint on the petition for judicial review of Article 57 sub-articles c and d of Law Number 24 Year 2009 against the 1945 Constitution dated December 22, 2011, so that the existence of Petitioner III as a Petitioner in constitutional case Number 4/PUU-X/2012 cannot be legally accounted for (see Petition for Judicial Review of Article 57 sub-articles c and d of Law Number 24 Year 2009 dated December 22, 2011 page 15).
4. Petitioner IV and Petitioner V do not specifically explain the constitutional impairment suffered due to the coming into effect of Article 57 sub-articles c and d of Law Number 24 Year 2009. Besides, the act committed by Petitioner IV and Petitioner V, who are also included as the victims of the implementation of Law Number 24 Year 2009, is not explained in a clear and detailed manner. Petitioner IV and Petitioner V only explain that they faced the proceeding at the Purwakarta District Court for using the national emblem.

The Government considers that the constitutional impairment argued by the Petitioners does not have legal grounds, is not specific, and does not have any causal relationship, so that the Chief Justice/Panel of Justices of the Constitutional Court is requested to reject the legal standing. However, the

Government fully delegates to the Constitutional Court to consider and assess whether or not the Petitioners have legal standing, with respect to the coming into effect of article 57 sub-articles c and d of Law Number 24 Year 2009.

B. Response to the Substance of the Petition

1. Background of the Formulation of Law Number 24 Year 2009

The 1945 Constitution has regulated that the national flag, language, emblem and anthem, which become the unifying symbols, identity of the nations, and identity of the Unitary State of The Republic of Indonesia. The four symbols become the reflection of the state sovereignty in the relationship code with other countries, as well as the reflection of independence and existence of the independent, united, sovereign, just, and prosperous state of Indonesia. Therefore, the national flag, language, emblem and anthem are not only recognition of Indonesia as a nation and state, but also as symbols and national emblems which are respected and proud of by the citizens of Indonesia.

The national flag, language, emblem and anthem become the power which is able to collect the pieces of the diverse histories of the Archipelago as a big nation in the frame of the Unitary State of the Republic of Indonesia.

The 1945 Constitution has regulated various matters concerning the national flag, language, emblem and anthem. Article 35 states that

Indonesian National Flag is the Red and White and Article 36 states that the National Language is the Indonesian Language. Furthermore, Article 36A states that the National Emblem is *Garuda Pancasila* with *Bhinneka Tunggal Ika* as the motto. Article 36B states that the National Anthem is *Indonesia Raya*, and Article 36C provides that the further Provisions concerning the national flag, language, emblem and anthem are regulated by Law. Those articles constitute official recognition and affirmation by the State of the use of the symbols as the identities of the nation and the Unitary State of the Republic of Indonesia.

To implement the mandate of Article 36C of the 1945 Constitutional Court, Law Number 24 Year 2009 concerning the National Flag, Language, and Emblem as well as Anthem has been enacted. This Law explicitly regulates the use of the national flag, language, emblem and anthem.

The regulation concerning the National Emblem as a symbol of identity, a form of the existence of the nations and the Unitary State of the Republic of Indonesia, is implemented based on the principles of unity, sovereignty, honor, nationality, *bhinneka tunggal ika*, order, legal certainty, balance, harmony, and conformity.

The regulation concerning the national emblem is intended for:

- a. strengthening the unity and integrity of the nation and the Unitary State of the Republic of Indonesia;

- b. maintaining the honor signifying the sovereignty of the nation and the Unitary State of the Republic of Indonesia;
- c. creating order, certainty, and standardization of the use of the National Flag, Language, and Emblem as well as Anthem.

2. National Emblem

National emblem constitutes the majesty of the state, so that it is determined as the symbol, attribute, and representation of the state. As the result of creation and intention, the national emblem has philosophical and historical meanings. The national emblem is always used and treated respectfully. The love and pride of the state can be seen through the respect for and protection of the national emblem.

The national emblem is not just a silent picture but a symbol having *nah* and spirit which inspire the struggle of the state. The national emblem has fundamental impacts on the content, process, and system of state administration amidst the rapidly increasing demands for national, regional, and global change (international relations). Therefore, the state needs a symbol which can maintain the sovereignty, strengthen the unity and integrity, and protect the cultural values.

The Emblem of the Unitary State of Republic of Indonesia is in the form of *Garuda Pancasila*, whose head turns straightly to the right, with a heart-

shaped shield hung by a chain on the neck of the *Garuda*, and with the *Bhinneka Tunggal Ika* motto written on a ribbon gripped by the *Garuda*. The intended *Garuda Pancasila* is an emblem in the form of *Garuda* bird which has been well-known from ancient mythology, namely a bird resembling a hawk. *Garuda* is used as the National Emblem of the Republic of Indonesia to depict Indonesia as a big nation and a strong state.

Shield is an armor which has been well-known in the native culture and civilization of Indonesia as a part of weapons symbolizing struggle and self-protection to achieve the goal. The *Bhinneka Tunggal Ika* motto is an old adage once used by a famous poet *Mpu Tantular*. The word *bhinneka* is a combination of two words: *bhinna* and *ika* which means different but remain one; and the words *tunggal ika* means that in the diversity, Indonesian nation is one unity. This motto is used to describe the unity and integrity of the nation and the Unitary State of the Republic of Indonesia.

Garuda wearing the shield has beaks, wings, a tail, and claws which symbolizing the power of development. *Garuda* has wings each having 17 feathers, a tail having 8 feathers, a base of the tail having 19 feathers, and a neck which has 45 feathers as the symbol of August 17, 1945, the time when the proclamation of independence of the Republic of Indonesia was read. There is a thick black line across the center of the shield, which

depicts the equator, to symbolize that the Unitary State of the Republic of Indonesia is an independent and sovereign country which is crossed by the equator.

There are five quarters on the shield representing the principles of *Pancasila* as follows:

- 1) the principle of Belief In the One Supreme God as symbolized by the light in the form of a five-pointed star on the center of the shield;
- 2) the principle of Just and Civilized Humanity as symbolized by a chain made up of round and square links on the bottom left quarter of the shield;
- 3) the principle of the Unity of Indonesia as symbolized by the banyan tree on the upper left quarter of the shield;
- 4) the principles of Democracy Guided by the Inner Wisdom in the Unanimity Arising Out of Deliberations Amongst Representatives as symbolized by the bull's head on the upper right quarter of the shield; and
- 5) the principle of Social Justice for All People of Indonesia as symbolized by the cotton and rice on the bottom right quarter of the shield.

The 9 round links symbolize the female element, The 8 square links symbolize the male element. The seventeen links are unbroken, which symbolizes the element of succession from generation to generation. Furthermore, both cotton and rice are in accordance with the hymn which places clothing and food as the symbol of the goals of the prosperity and welfare.

The National Emblem, *Garuda Pancasila*, uses the main colors consisting of: a) red on the upper right and bottom left quarters of the shield; b) white on the upper left and bottom right quarters of the shield; c) gold for the entire *Garuda*; d) black on the heart-shaped center of the shield and e) natural color for the entire picture of the emblem.

Gold symbolizes the majesty of the nation and the nobility of the State. Black symbolizes the cycle and bond of human life from the beginning of creation until the end of life. Natural color symbolizes the spirit and dynamics of life in this universe.

3. The use of the National Emblem

The national emblem must be used in: a) a building, office, or classroom of an education unit; b) outside a building or office; c) a state gazette, supplement to state gazette, official gazette, and supplement to official gazette; e) a coin and banknote; or f) a stamp.

The national emblem can be used: a) as a stamp or a letterhead; b) as an official stamp for an office; c) on a stamped paper; d) on a letter and a badge of a hero title, decoration and mark of honor; e) as a badge or attribute of a state official, government official, or citizens of Indonesia performing tasks of the state abroad; f) in the execution of an official event; g) in a book or magazine published by the government; h) in a compilation of laws; and/or; i) in a house of a citizen of Indonesia.

The national emblem used in a building, office, or classroom of an education unit is put in: a) a building and/or office of President and Vice President; b) a building and/or office of a state institution; c) a building and/or office of a government agency; and d) other buildings and/or offices.

The national emblem outside a building or office is used in: a) Presidential or Vice Presidential Palace; b) house of the President and Vice President; c) a building or office and a house of a representative of the Republic of Indonesia abroad; and d) a house of a governor, regent, mayor, and a district head.

The national emblem may only be used as a stamp or a letterhead of an official and an official stamp for office by the state officials or other state officials provided for by Law.

4. Prohibition of the Use of National Emblem

Starting from the interest level of an emblem, a state applies a strict law to the use of a national emblem.

A national emblem embodies legitimacy and authority. The Unitary State of the Republic of Indonesia has an emblem, namely *Garuda Pancasila*, and each provincial and regency/municipal government has its own emblem. Each emblem shall not be used carelessly. However, there are limitations to the legal order and certainty of the use of such emblem. In the event that the national emblem, *Garuda Pancasila*, is interpreted as joint property so that if any person, political party, association, organization and/or company freely use the emblem in any event at their will, the national emblem will lose its majesty as a state representation, and the noble values embodied therein will be eroded by the interests of certain parties. The national emblem will eventually become the object of contention of many parties.

Article 57 of Law Number 24 Year 2009 states that every person shall be prohibited from: a) defacing, writing, drawing on or damaging the National Emblem with the intention to disgrace, insult or dishonor the national emblem; b) using the national emblem which is damaged and inappropriate in its form, color and size proportion; c) making an emblem for any individual, political party, association, organization and/or any company which resembles or which is similar to the national emblem; and

d) using the national emblem for purposes other than those regulated in this Law.

a. The understanding of the prohibition of the use of the national emblem as intended in Article 57 of Law Number 24 Year 2009 sub-articles c and d, shall not be separated from but it shall be related to the aspects of philosophy, history of establishment, and purpose of using the national emblem in the frame of the Unitary State of the Republic of Indonesia. *Garuda Pancasila* as the national emblem is a creation and intention of Indonesian nation which has been created through a long process and which has become an agreement and commitment of the entire nation in order to strengthen the unity and integrity, as well as to defend the honor and sovereignty of the nation and the state.

b. It is reasonable that a national emblem officially stipulated by the constitution as the state symbol which is the unifier, the identity of a nation and the identity of a state, cannot be used or claimed as an emblem for the interests of certain individuals, political parties, associations, organizations and/or companies. A national emblem as an official state symbol shall be duly used (not carelessly) so that the philosophical and historical values embodied therein can still be protected and maintained. Therefore, it is necessary to have certain restrictions and prohibitions of the use of the Emblem of the

State of the Republic of Indonesia, namely in making an emblem for personal interests of any individual, political party, organization and/or company.

- c. The majesty of the national emblem, *Garuda Pancasila* eroded by the interests of certain parties will weaken the position of Indonesia in the global life and international relations. This matter has a negative impact on the life as a nation and state because other countries will easily gain any benefit and advantage from Indonesia.

5. Legal Obligations and Human Rights

- a. All citizens shall have equal position before the law and government and shall be obligated to uphold the law and government without exception as intended in Article 27 of the 1945 Constitution. The obligation to uphold the law is confirmed in Law Number 24 Year 2009 which states, among other things, that every person who makes an emblem for any individual, political party, association, organization and/or company which resembles or which is similar to the national emblem, or who intentionally makes the national emblem for purposes other than those regulated in the Law shall be imposed with sanctions.
- b. The restrictions on the use of the national emblem as regulated in Article 57 sub-articles c and d of Law Number 24 Year 2009 shall

have a clear constitutional basis/ground, namely Article 28J paragraph (2) of the 1945 Constitution stating that in exercising his/her right and freedom, every person must submit to the restrictions stipulated by laws with the sole purpose to guarantee the recognition of and respect for other persons' rights and freedom and to fulfill fair demand in accordance with the considerations of morality, religious values, security and public order in a democratic society.

Based on the description above, the Government is of the opinion that there is no inconsistency between the prohibition of the use of the national emblem as intended in the provisions of Article 57 sub-articles c and d of Law Number 24 Year 2009 and the provisions of:

- 1) Article 27 paragraph (1) of the 1945 Constitution because such prohibition does not reduce or eliminate equality before the law;
- 2) Article 28C paragraph (2) because such prohibition does not eliminate or reduce the right of every person to improve himself/herself in building his/her society, nation and state.
- 3) Article 28D paragraph (1) because such prohibition does not eliminate or reduce the right of every person to the recognition, guarantee, protection and legal certainty of just laws as well as equal treatment before the law;

- 4) Article 28E paragraph (3) because such prohibition does not eliminate or reduce the right of every person to the freedom of assembly, association and expression of opinion;
- 5) Article 28I paragraph (2) because such prohibition does not eliminate or reduce the right of every person to be free from discriminatory treatment on any basis whatsoever and the right to obtain protection against any such discriminatory treatment.

6. Non Repressive and No Multiple interpretations

The argument of the Petitioners stating that the prohibition of the use of the national emblem in accordance with the provisions of Article 57 sub-article c and d of Law Number 24 Year 2009 are repressive is completely untrue. Such argument is only is merely an assumption without any legal ground, because they lack the understanding of the philosophical and historical bases as well as the regulation of such prohibition. Such prohibition of the use of the national emblem is solely intended to defend the honor and to protect such national emblem as the symbol, identity and representation of the Unitary State of the Republic of Indonesia.

The formulation of the provisions of Article 57 sub-articles c and d of Law Number 24 Year 2009 is sufficiently clear so that it cannot be used as an article open to multiple interpretations article to repress or trap any community member. In the event of any violation of the provisions of

Article 57 sub-articles c and d of Law Number 24 Year 2009, the law enforcement institution shall be obligated to enforce the provisions.

Therefore, the argument of the Petitioner stating that the provisions of Article 57 sub-articles c and d of Law Number 24 Year 2009 are repressive and open to multiple interpretations is one which is an assumption in nature rather than an argument on constitutionality.

C. Conclusion

Based on the description above, the Government has come to the following conclusions:

1. The Petitioners do not have legal standing.
2. The National Emblem, *Garuda Pancasila*, represents the majesty of the state serving as the unifying symbol, national identity, and the identity of the Unitary State of the Republic of Indonesia, which should be respected and protected accordingly.
3. The provisions of Article 57 sub-articles c and d of Law Number 24 Year 2004 are intended to establish legal certainty and order with respect to the use of the national emblem.
4. The formulation of Article 57 sub-articles c and d of Law Number 24 Year 2009 is sufficiently clear, accordingly, it cannot be interpreted

as an article open to multiple interpretations for any repressive purpose.

5. In the event that the petition of the Petitioners is granted, there will be unlimited freedom to use of the national emblem, *Garuda Pancasila*, which will weaken the unity and integrity and eliminate the identity of the Unitary State of the Republic of Indonesia.
6. Article 57 sub-articles c and d of Law Number 24 Year 2009 is not inconsistent with Article 27 paragraph (1), Article 28C paragraph (2), Article 28D paragraph (1), Article 28E paragraph (3) and Article 28I paragraph (2) of the 1945 Constitution.

Based on the statements and arguments above, the Government requests for the Constitutional Court hearing the judicial review of Article 57 sub-articles c and d of Law Number 24 Year 2009 against the 1945 Constitution to pass the following decisions:

1. To declare that the Petitioners do not have legal standing;
2. To reject the constitutional review petition of the Petitioners in its entirety or at least to declare that the judicial review petition of the Petitioners cannot be accepted (*niet ontvankelijk verklaard*);
3. To declare that the provisions of Article 57 sub-articles c and d of Law Number 24 Year 2009 are not inconsistent with the provisions of Article 27

paragraph (1), Article 28C paragraph (2), Article 28D paragraph (1), Article 28E paragraph (3) and Article 28I paragraph (2) of the 1945 Constitution,.

[2.4] Whereas the Government has presented 2 (two) experts, namely **Prof. Dr. Udin S. Winataputra** and **Prof. Dr. Kaelan, M.S.**, whose statements have been heard under oath in the hearing on April 11, 2012, which in substance state as follows:

1. Prof. Dr. Udin S. Winataputra

- Article 57 sub-article b of Law 24/2009 is not inconsistent with *Pancasila* because one of the forms of civilization is lawfulness or obedience to the applicable and binding laws.
- Article 57 sub-article c of Law 24/2009 is not inconsistent with spirit of the freedom of thought, will, and assembly as well as association because the democracy embodied and interpreted by the values and morals of *Pancasila* is not limitless freedom but rather, it is democracy demanding civilized freedom.
- The national emblem is embedding value and moral symbol of the state which is the supreme organization having *dwang ordnung* or coercive instrument. It is certainly unethical to degrade the emblem by tinkering about its symbolic appearance.

- The duty of an educator is to provide education, to the extent that the intended Law is not amended. A tutor shall not teach to violate the Law.
- Materials which still contain any controversy shall be used for developing critical thinking not by violating the Law but by preparing review of revision. Such critical thinking shall be used for many things other than the Law, including the 1945 Constitution.
- The national emblem is the embedding value and moral symbol of the state as the supreme organization having coercive instruments; it is certainly unethical to degrade the national emblem by tinkering with its symbolic appearance.
- Respect and responsibility for the national emblem are the forms of civilization of every citizen. It is wrong for the use of the national emblem to be fully given to the public for the sake of freedom.
- The regulation of the use of the national emblem, *Garuda Pancasila* shall be interpreted and accepted with integrity of psychological process (characterization by a value or a value complex) which constitutes the integration of moral listening, moral feeling and moral action dimensions of every citizen.
- The restriction on public understanding of the value and moral of *Pancasila* symbolically depicted in *Garuda Pancasila* does not lie in

its provisions, but in its proper dissemination and education processes, namely by understanding the national emblem as a whole (*holic-semiotic*).

- The love is in fact materialized by receiving and placing the national emblem, *Garuda Pancasila* according to what has been regulated by Law 24/2009.
- Article 57 sub-article d of Law 24/2009 is consistent with *Pancasila* as the world view of the Indonesian nation

2. Prof. Dr. Kaelan, M.S.

- Law is a sign and a sign system. The meaning of a sign lies in its references.
- In semiotics, *Garuda Pancasila* is the icon of the state of Indonesia.
- **Peircean** divides the relationship between sign and its references into 3 forms, namely i) iconic; ii) index; and iii) symbol.
- The National Emblem, *Garuda Pancasila*, is the icon of the state of Indonesia.
- Using the national emblem means: i) using the state authority; ii) using the state legitimacy; iii) using the state power; and iv) representing the state.

- The values of *Pancasila* as well as the metaphor *Bhinneka Tunggal Ika* have objectively existed as local wisdom in Indonesian Nation.
- The national emblem, *Garuda Pancasila*, is an agreed symbol or the result of the convention of the Indonesian nation.
- Miriam Budiardjo (1981) states that the elements of a state are territory, people (population), government and sovereignty.
- The use of the national emblem by any individual, group, company, organization, community organization, political party, etc. is similar to using the state authority, legitimacy, power and representation.
- The national emblem cannot be used in random events because the national emblem represents the state.
- It is irrelevant for other citizens, community organizations, groups or community institutions to use the national emblem because there are consequences for the use of the state power, legitimacy, authority as well as representation in using the national emblem.
- The nullification of Article 57 sub-articles c and d of Law 24/2009, which means that the national emblem can be freely used, will create ambiguities in the state system and bureaucracy ambiguities because the free use of the national emblem has consequences of

using the state power, legitimacy, authority as well as representation.

- The use of the national emblem shall be interpreted in a specific context. It is excessive to criminalize the users of the national emblem for pride purposes. The judgment of the use of the national emblem shall be based on its context and function.
- Revocation of Article 57 of Law 24/2009 will lead to bias in the use of the national emblem amidst the state and the society.

[2.5] Whereas with respect to the petition of the Petitioners, the People's Representative Assembly submitted its written statement dated March 1, 2012 which was received on March 22, 2012, which principally describes the following matters:

1. Legal standing of the Petitioners

The qualification which must be fulfilled by the Petitioners as the parties is regulated in the provision of Article 51 paragraph (1) of Law Number 24 Year 2003 concerning the Constitutional Court, which states that, "*The Petitioners shall be the parties who believe that their constitutional rights and/or authorities have been impaired by the coming into effect of a Law, namely:*

- a. *individual Indonesian citizens;*

- b. *customary law community units insofar as they are still in existence and in line with the development of the communities and the principle of the Unitary State of the Republic of Indonesia as regulated in law;*
- c. *public or private legal entities; or*
- d. *state institutions;”*

The intended constitutional rights and/or authorities in the provision of Article 51 paragraph (1) are confirmed in its elucidation, namely that “referred to as “constitutional rights” shall be the rights regulated in the 1945 Constitution of the State of the Republic of Indonesia.” The provision of the elucidation of this Article 51 paragraph (1) asserts that only the rights explicitly regulated in the 1945 Constitution are categorized as “constitutional rights”.

Therefore, pursuant to the Constitutional Court Law, in order to qualify as the Petitioner having legal standing in a petition for judicial review of a Law against the 1945 Constitution, any person or party must first explain and substantiate:

- a. their qualification as the Petitioners in the petition *a quo* as intended in Article 51 paragraph (1) of Law concerning the Constitutional Court;

- b. their constitutional rights and/or authorities which are impaired by the coming into effect of a Law as intended in “Elucidation of Article 51 paragraph (1)”.

As to the constitutional impairment parameters, the Constitutional Court has provided the meaning and definition of constitutional impairment due to the coming into effect of a Law, which must fulfill five conditions (*vide* Decisions on Case Number 006/PUU-III/2005 and Case Number 011/PUU-V/2007), namely as follows:

- a. the existence of the constitutional rights and/or authorities of the Petitioners granted by the 1945 Constitution;
- b. the Petitioners believe that such constitutional rights and/or authorities have been impaired by the coming into effect of a Law being reviewed;
- c. the impairment of constitutional rights and/or authorities of the Petitioners shall be specific and actual or at least potential in nature which based on logical reasoning, can be assured of occurring;
- d. there is a causal relationship (*causal verband*) between the intended impairment and the coming into effect of the Law being petitioned for judicial review;

- e. if the petition is granted, it is possible that the impairment of constitutional rights and/or authorities argued will not or will no longer occur;

If those five conditions are not fulfilled by the Petitioners in the case of judicial review of the Law *a quo*, the Petitioners do not have the legal standing qualification as Petitioners.

In response to the petition of the Petitioners *a quo*, the People's Representative Assembly views that the Petitioners must first prove whether it is true that the Petitioners as the parties whose constitutional rights and/or authorities have been impaired by the coming into effect of the provisions being reviewed, particularly in construing the impairment in their constitutional rights and/or authorities as the impact of the coming into effect of the provisions being reviewed.

With respect to such legal standing, the People's Representative Assembly fully entrusts the Constitutional Court to consider and judge whether or not the Petitioners have legal standing as regulated by Article 51 paragraph (1) of Law concerning the Constitutional Court and pursuant to Decision Number 006/PUU-III/2005 and Decision on Case Number 011/PUU-V/2007.

2. Judicial Review of Law on the National Flag, Language and Emblem as well as Anthem

With respect to the petition of judicial review of the Law *a quo*, the People's Representative Assembly gives the following statements:

1. whereas Article 1 paragraph (3) of the 1945 Constitution mandates that the state of Indonesia is a rule of law state. Therefore, the life as a nation, state, community, as well as the state and government administration shall be in line with the principles of a rule of law state, one of which being that it must be based on the applicable laws and regulations as positive law. Based on the principles of a rule of law state, the constitution of the state of the Republic of Indonesia expressly and clearly regulates and determines the symbols of the state of Indonesia, such as:
 - National Flag of Indonesia shall be The Red and White as provided for in Article 36 of the 1945 Constitution;
 - National Language shall be Indonesian language as provided for in Article 36 of the 1945 Constitution;
 - National Emblem shall be *Garuda Pancasila* with the motto of *Bhinneka Tunggal Ika* as provided for in Article 36A of the 1945 Constitution;
 - National Anthem shall be *Indonesia Raya* as provided for in Article 36C of the 1945 Constitution;

2. whereas the clear regulations on the national symbols as provided for in such articles of the constitution shall be the state's official recognition and validation of the use of such symbols as the identity of the nation and the identity of the Unitary State of the Republic of Indonesia, either in the life as a nation and state within the country or in the system of relationship with other countries and shall be the reflection of independence and existence of the state of Indonesia which is free, united and sovereign.

3. whereas since the constitution has officially determined and legalized the state symbols, all forms of the state symbols and the national identity must be used under the 1945 Constitution as Article 36C of the 1945 Constitution mandates that further provisions on the national flag, language, and emblem as well as anthem shall be regulated by Law. Based on the mandate of Article 36C of the 1945 Constitution, Law Number 24 Year 2009 concerning the National Flag, Language, Emblem as well as Anthem was then formulated. Meanwhile, the purposes of the formulation of the Law on the National Flag, Language, Emblem as well as Anthem shall be as follows:
 - a. to strengthen the unity and integrity of the nation and the unitary state of the Republic of Indonesia;

- b. to maintain the honor signifying the sovereignty of the nation and the unitary state of the Republic of Indonesia
 - c. creating order, certainty and standardization in the use of the National Flag, Language, Emblem as well as Anthem.
4. in relation to the petition of the Petitioners questioning the constitutionality of Article 57 sub-articles c and d of the Law on the National Flag, Language, and Emblem as well as Anthem, the People's Representative Assembly is of the opinion that the provisions regarding the prohibition from an emblem for any individual, political party, association, organization and/or company which resembles or which is similar to the state emblem, and from using the national emblem for purposes other than those regulated in the Law *a quo* are intended to maintain the honor of the national emblem as the identity and the identity of the state as well as to create legal order and certainty in the use of the National Emblem.
5. Whereas the People's Representative Assembly views that a legal ratio is acceptable when a national emblem officially legalized by the constitution as the identity and the identity of the state may not be used, acknowledged or claimed as an emblem for any individual, certain political party, association, organization and/or company. The National Emblem shall belong to the state, including

its people, not to any individual, certain political party, organization and/or company.

Meanwhile, the prohibition of the use of the National Emblem for purposes other than those regulated in the Law *a quo* is intended for creating legal certainty in the use of the national emblem, and this is in line with the provision of Article 36C of the 1945 Constitution implicitly stating that the use of the national emblem shall be regulated by Law.

6. Whereas the People's Representative Assembly is of the opinion that the provisions on the prohibition and restriction of the right of a person to use the national emblem as regulated in Article 57 sub-articles c and d of the Law on the National Flag, Language, and Emblem as well as Anthem have a clear constitutional basis/ground, namely Article 28J paragraph (2) of the 1945 Constitution which states, *"In exercising his/her right and freedom, every person shall be subject to the restrictions stipulated by laws with the sole purpose to guarantee the recognition of and respect for other persons' rights and freedom and fulfill fair demand in accordance with the considerations of morality, religious values, security and public order in a democratic society."*

Based on the statements above, the People's Representative Assembly is of the opinion that the provisions of Article 57 sub-articles c and d of the Law on the

National Flag, Language, emblem as well as anthem are not inconsistent with the 1945 Constitution. Therefore, the People's Representative Assembly requests for the Constitutional Court hearing the Judicial Review of the Law on the National Flag, Language, and Emblem as well as Anthem against the 1945 Constitution, to pass the following decisions:

1. To reject the judicial review of the Petitioners;
2. To declare that Law Number 24 Year 2009 concerning the National Flag, Language, and Emblem as well as Anthem is not inconsistent with Article 27 paragraph (1), Article 28C paragraph (2), Article 28D paragraph (1), Article 28I paragraph (2), and Article 28E paragraph (3) of the 1945 Constitution of the State of the Republic of Indonesia;
3. To declare that Law Number 24 Year 2009 concerning the National Flag, Language, and Emblem as well as Anthem continues to be valid and binding as the applicable legal provisions;
4. In the event that the Court is of a different opinion, the decision is requested to be passed by principles of what is fair and just.

[2.6] Whereas the Petitioners have submitted written conclusions received at the Registrar's Office of the Court on April 24, 2012, and March 5, 2012 respectively, in which they remain consistent with their standpoint;

[2.7] Whereas to shorten the description in this decision, all which occurred during the court hearings shall sufficiently be indicated in the minutes of hearing, which constitutes an inseparable unity with this decision;

3. LEGAL CONSIDERATIONS

[3.1] Whereas the purpose and objective of the petition *a quo* is to review the constitutionality of Article 57 sub-articles c and d of Law Number 24 Year 2009 concerning the National Flag, Language, and Emblem as well as Anthem (State Gazette of the Republic of Indonesia Year 2009 Number 109, Supplement to State Gazette of the Republic of Indonesia Number 5035, hereinafter referred to as Law 24/2009), which states:

Article 57

“Any person shall be prohibited from:

- c. making an emblem for any individual, political party, association, organization and/or any company which resembles or which is similar to the National Emblem; and,*
- d. using the National Emblem for purposes other than those regulated in this Law.”*

against the 1945 Constitution of the State of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution), which states:

Article 28C paragraph (2):

“Every person shall have the right to improve himself/herself in striving for his/her rights collectively for building his/her society, nation, and state”.

Article 28I paragraph (2):

“Every person shall have the right to be free from discriminatory treatment on any basis whatsoever and shall have the right to obtain protection against any such discriminatory treatment”.

Article 32 paragraph (1):

“The state shall advance the national culture of Indonesian amidst world civilization by guaranteeing freedom to the society in preserving and developing its cultural values”.

[3.2] Whereas before considering the substance of the petition, the Constitutional Court (hereinafter referred to as the Court) shall first consider the following matters:

- a. The authority of the Court to hear the petition *a quo*;
- b. The legal standing of the Petitioners to file the petition *a quo*;

Authority of the Court

[3.3] Whereas based on Article 24C paragraph (1) of the 1945 Constitution, Article 10 paragraph (1) sub-paragraph a of Law Number 24 Year 2003 concerning the Constitutional Court as amended by Law Number 8 Year 2011 concerning Amendment to Law Number 24 Year 2003 concerning the Constitutional Court (State Gazette of the Republic of Indonesia Year 2011 Number 70, Supplement to the State Gazette of the Republic of Indonesia Number 5226, hereinafter referred to as the Constitutional Court Law), as well as Article 29 paragraph (1) sub-paragraph a of Law Number 48 Year 2009 concerning Judicial Power (State Gazette of the Republic of Indonesia Year 2009 Number 157, Supplement to the State Gazette of the Republic of Indonesia Number 5076, hereinafter referred to as Law Number 48/2009), one of the Court's constitutional authorities is to hear cases at the first and final level, the decisions of which shall be final, to review laws against the Constitution;

[3.4] Whereas the petition of the Petitioners is to review the constitutionality of Article 57 sub-articles c and d of Law Number 24 Year 2009 concerning National Flag, Language, and Emblem as well as Anthem against the 1945 Constitution, which constitutes one of the authorities of the Court, and therefore, the Court has authority to hear the petition *a quo*;

Legal Standing of the Petitioners

[3.5] Whereas based on Article 51 paragraph (1) of the Constitutional Court Law and its Elucidation, the parties eligible to file a petition for review of Laws against the 1945 Constitution shall be those considering that their constitutional

rights and/or authority granted by the 1945 Constitution are impaired by the coming into effect of a Law, namely:

- a. individual Indonesian citizens (including groups of people having a common interest);
- b. customary law community groups insofar as they are still in existence and in line with the development of the communities and the principle of the Unitary State of Republic of Indonesia as regulated in Law;
- c. public or private legal entities; or
- d. state institutions;

Hence, the Petitioners in the review of a Law against the 1945 Constitution must first explain and substantiate:

- a. their standing as Petitioners as referred to in Article 51 paragraph (1) of the Constitutional Court Law;
- b. the impairment of such constitutional rights and/or authority granted by the 1945 Constitution due to the coming into effect of the law petitioned for review;

[3.6] Also considering that following its Decision Number 006/PUU-III/2005 dated May 31, 2005 and the Constitutional Court's Decision Number 11/PUU-V/2007, dated September 20, 2007, as well as subsequent decisions, the Court

has been of the opinion that the impairment of constitutional rights and/or authority as referred to in Article 51 paragraph (1) of the Constitutional Court Law must fulfill five requirements, namely:

- a. the existence of constitutional rights and/or authority of the Petitioners granted by the 1945 Constitution;
- b. the Petitioners believe that such constitutional rights and/or authority have been impaired by the coming into effect of the law petitioned for review;
- c. such constitutional impairment must be specific and actual in nature or at least potential in nature which, pursuant to logical reasoning, can be assured of occurring;
- d. there is a causal relationship (*causal verband*) between the intended impairment and the law petitioned for review;
- e. if the petition is granted, it is possible that such constitutional impairment as argued will not or will no longer occur;

[3.7] Whereas based on the description as stated in paragraphs [3.5] and [3.6] above, the Court shall subsequently consider the legal standing of the Petitioners in the petition *a quo*, as follows;

[3.8] Whereas in substance, the Petitioners argue that they are a legal entity and natural persons of Indonesian citizen entitled to and concerned about activities related to the values of Indonesia's idealism and constitutionalism.

Petitioner I is a legal entity named the Forum for Legal and Constitutional Studies (Notary Deed Number 2 Year 2011) domiciled in Yogyakarta, who is concerned with the application of *Pancasila* values and modernization of the method of *Pancasila* (*vide* Exhibit P-4 and Exhibit P-5).

Petitioner II is an Indonesian citizen who is the General Coordinator of the Movement of Students of the Faculty of Law of Jakarta (2009-present), who is concerned with the instillation of *Pancasila* values to children and teenagers.

Petitioner III and Petitioner IV are Indonesian citizens having the right to access national emblems; and under the Law 24/2009 *a quo* they have been punished by Purwakarta District Court for using the National Emblem, *Garuda Pancasila*.

The Petitioners argue that they have constitutional rights regulated in Article 28C paragraph (2), Article 28I paragraph (2), and Article 32 paragraph (1) of the 1945 Constitution, which are impaired by the coming into effect of the provisions of Article 57 sub-articles c and d of Law 24/2009.

In the Court's opinion, Indonesian citizens have the rights to express themselves, and/or show the identity of their citizenship through the use of other unique emblems or identities of the state of Indonesia. The use/utilization of the state's unique identity by the citizens is reasonable in the context of fulfillment of the citizens' needs for nationality/state identity which will eventually be inherent in them. The citizens' ownership of nationality/state identity is protected by the 1945 Constitution, and it can be shown in various ways, among other things, by

the recognition of citizenship, the recognition of culture, participation in government and/or state defense, and etc. Based on such considerations, the Court deems the Petitioners have the constitutional right to use an identity which shows themselves as Indonesian citizens.

Whereas the existence of Article 57 sub-articles c and d of Law 24/2009, which among other things regulate (restrict) the use of the national emblem, *prima facie*, obstructs or even impairs the constitutional right of the Petitioners in using national/state identities. The potential impairment of the constitutional right of the Petitioners, or even the impairment which has been experienced by several Petitioners, will no longer occur if the petition of the Petitioners is granted by the Court.

[3.9] Whereas by taking account of the potential consequence suffered by the Petitioners linked to the constitutional right of the Petitioners, in the Court's opinion, there is a causal relationship (*causal verband*) between the intended impairment and the coming into effect of the law petitioned for review;

[3.10] Whereas since the Court has authority to hear upon the petition *a quo*, and the Petitioners which consist of a legal entity and natural persons have legal standing, the Court will subsequently consider the substance of the petition;

Substance of the Petition

Opinion of the Court

[3.11] Whereas the Petitioners argue that Article 57 sub-articles c and d of Law 24/2009 are inconsistent with Article 28C paragraph (2), Article 28I paragraph (2), and Article 32 paragraph (1) of the 1945 Constitution. The Petitioners argue that Article 57 sub-article c is inconsistent with the spirit of the freedom of thought, will, as well as assembly and association to express intention in public. Meanwhile, Article 57 sub-article d of Law 24/2009, in the Petitioners' opinion, is full of discriminatory acts upon citizens, which is inconsistent with Article 28I paragraph (2) of the 1945 Constitution. The coming into effect of Article 57 sub-articles c and d of Law 24/2009, in the Petitioners' opinion, has resulted in criminalization without considering the sense of nationalism, which is related to penal provisions in Article 69 of the Law *a quo*. The use of national emblem by the community even though it is based on nationalism, it is still criminalized by Article 57 sub-articles c and d of Law 24/2009.

In the Petitioners' opinion, Article 57 sub-articles c and d of Law 24/2009 has prevented the Petitioners from using the National Emblem, *Garuda Pancasila*; in fact, Petitioner III and Petitioner IV argue that they have been punished under the decision of the Purwakarta District Court for using the National Emblem, *Garuda Pancasila* for their activities;

[3.12] Whereas prior to subsequently considering the petition of the Petitioners, the Court needs to put forward the following matters:

[3.12.1] Sign from the semiotic perspective is something which represents something. In general, there are three forms of relationship between the signifier

and the signified, namely icon, index, and symbol. Icon is something which is selected to become a signifier due to its shape resemblance to the object it represents. Index is something which is selected to become a signifier because it gives a cue about the object it represents, while symbol is a signifier which is selected because it is conventionally agreed or customarily used by the community to represent certain objects. Signified object is not merely physical in nature, but it also includes values or conceptions.

The state of Indonesia as a complex of ethnic groups, values and behavior; or as a complex of physic/object/nature and culture, absolutely needs a signifier to briefly/easily refer to the existence of the intended complex of ethnic groups, values and behavior. Therefore, the sign used to represent the state of Indonesia must reflect the complexity contained within the state of Indonesia.

[3.12.2] *Garuda Pancasila*, which takes the form of a certain kind of bird, represents the identity of Indonesian nation due to the agreement of the people of Indonesia. *Garuda Pancasila* is not an icon since it does not have any direct similarities/resemblance to the concept of the state of Indonesia. *Garuda Pancasila* is selected to represent the nation-state of Indonesia based on the agreement of the people of Indonesia. The sign selected based on this mutual agreement is more appropriately stated as a symbol, or one of its variants, namely emblem.

The emblem of *Garuda Pancasila* contains the identity of the nation-state of Indonesia, which also includes noble values idealized by the nation-state of

Indonesia, but the representation of all forms of the nation-state identities in the form of *Garuda Pancasila*, does not mean that the diversity possessed may not be used separately. Each identity of any division of the nation-state of Indonesia can still be used separately;

[3.12.3] The emblem represents the entirety of the nation-state of Indonesia, accordingly individual Indonesian citizen as a part of the nation-state of Indonesia has the right to use other national emblem or identity, or to use other forms of identity separately or collectively. Concurrently with such right of citizen, the state as a body that performs the sovereignty of the people, as well as a part of the nation-state of Indonesia, also has the right to use national emblem and other identities of the nation-state of Indonesia, even exclusively;

[3.13] Whereas it is certainly desired that the national emblem containing a certain meaning (ideal values) is honored and respected continuously from generation to generation. Although in certain context the meaning of a sign is always relative in meaning, which means that it may change over time, the effort to perpetuate the values of the nation-state is a matter which must be obtained as well as possible for the continuous existence of the relevant nation-state. One of the matters which can be done to bequeath the existence of the national emblem (both in terms of value and physical form) is by standardizing the shape of the intended national emblem;

The standard form of an emblem cannot indeed guarantee that the meaning of the emblem will also become fixed or unchanged. On the contrary, the fixed

meaning of the national emblem does not guarantee the unchanged form of the national emblem. However, in the context of perpetuating the meaning of the national emblem, no matter how small the effort done by the state, in the Court's opinion, that matter should be done indeed;

In connection with that matter, in the Court's opinion, the law in the form of laws and regulations can be used (relatively) as an instrument to perpetuate values which are deemed good. In the case *a quo*, the Law, particularly Law 24-2009, is a form of laws and regulation which is selected by the state in the effort to perpetuate the form (and value) of the national emblem.

[3.14] Whereas in substance, the Petitioners argue that Article 57 sub-article c of Law Number 24 Year 2009 concerning the National Flag, Language, and Emblem as well as Anthem is inconsistent to Article 28C paragraph (2) of the 1945 Constitution and Article 57 sub-article d of Law Number 24 Year 2009 concerning the National Flag, Language, and Emblem as well as Anthem is inconsistent with Article 28I paragraph (2) and Article 32 paragraph (1) of the 1945 Constitution, therefore they shall have no binding legal force.

Article 57 sub-article c of Law 24/2009

[3.15] Whereas with regard to such petition, the Court is of the opinion that the prohibition in the provision of Article 57 sub-article c of Law 24/2009 is not intended to deny citizens' rights in using the National Emblem of Indonesia. The use of forms resembling or similar to the National Emblem as an emblem for

individual, political party, association, organization and/or company brings out the potential impairment to the citizens entirely. The resemblance or similarity of form between the national emblem and the emblem for an individual or another organization other than the state will bring out an assumption that the state and other non-state parties have the resemblance or similarity in various aspects, so as to creates an ambiguity;

[3.15.1] (Legal) Acts of two parties having the same or similar emblem will be deemed the same; and the image will be exchanged. To the extent that both parties using the same of similar emblem are indeed identical (same purposes and acts), the sameness and similarity of emblem will not be an issue. However, that matter becomes dangerous if in the relationship among users of the same emblem there is any opposing purpose and/or act. The issues which may occur are that, among other things, the community will experience confusion/ambiguity in identifying which (state or non-state) performs certain acts. Further, such matter will result in the vagueness of meaning (value) of the national emblem of *Garuda Pancasila*;

The ambiguity in identification, when the use of the same or similar emblem by two different parties or more occurs, either intentionally or unintentionally, actually occurs frequently in daily life. The difference of the intended ambiguity in identification, for instance, in the fields of trade, education, banking, etc, involves relatively a small number of people, and therefore, the potential impairment is also small. The ambiguity in the identity (emblem) of the state will harm many

parties, since the identity (emblem) of the state belongs to all Indonesian citizens. The potential impairment increases, since it involves the entire citizens. The difference in such shape and use, in the Court's opinion, gives a constitutional reason for the state to regulate differently certain identities selected to become the National Emblem.

[3.16] Whereas the Petitioners agree, as evidenced by the statements of experts, that there is different treatment by the Government (State) with respect to the acts of using national emblem. Only a number people have been imposed with criminal sanctions for violating Law 24/2009, while other people have never been legally processed despite the fact that they have use the national emblem or any form similar to the national emblem beyond the provisions of Law 24/2009. Apart from the fact that Petitioner III and Petitioner IV have been imposed with a criminal sanction for violating Law 24/2009, the Court considers that the application and the constitutionality of such law are two different issues. A Law must indeed be applied and must have binding effect to all citizens and populations but a Law which has not been applied is not necessarily unconstitutional. Acts are considered unconstitutional in the sense that they violate human rights protected by Article 28I paragraph (2) of the 1945 Constitution when a provision of the same Law is applied differently to the citizens, but once again, the difference in such application does not constitute an issue of constitutionality of the norm of Article 57 sub-article c of Law 24/2009, even though such act is argued by the Petitioners as being inconsistent with the 1945 Constitution, particularly Article 28C paragraph (2), Article 28I paragraph

(2), and Article 32 paragraph (1) of the 1945 Constitution. Therefore, the Court is of the opinion that the argument of the Petitioners stating that there is such different treatment does not constitute an issue of constitutionality, and therefore, in the Court's opinion, the argument of the Petitioners does not have any legal ground.

Article 57 sub-article d of Law 24/2009

[3.17] Whereas Article 57 of Law 24/2009 states that *“Any person shall be prohibited from: ... d. using the National Emblem for purposes other than those regulated in this Law.”* Such article must be construed systematically by referring to Article 51 of Law 24/2009 which states:

Article 51

“National Emblem must be used:

- a. inside buildings, offices, or class rooms of an education unit;*
- b. outside buildings of offices;*
- c. in state gazettes, supplements to state gazette, official gazettes, supplements to official gazettes;*
- d. passports, diplomas, and official documents issued by the government;*
- e. coins and banknotes; or*

f. *stamps.*”

Article 52

“National Emblem may be used:

- a. *as a stamp or letterhead of a position;*
- b. *as an official stamp for office;*
- c. *on stamped paper;*
- d. *on letters and badges of hero title, decorations, medals of honor;*
- e. *as badges of attributes of state officials, government officials, or Indonesian citizens who are carrying out a state task abroad;*
- f. *in the implementation of an official event;*
- g. *in books and magazines published by the Government;*
- h. *in books of compilation of laws; and/or*
- i. *in homes of Indonesian citizens.*”

The juxtaposition of Article 57 sub-article d, Article 51, and Article 52, in the Court’s opinion shows that the use of national emblem is obligatory for the purposes as stated in such Article 51 and is allowed for the purposes as stated in such Article 52, while the use for other purposes is expressly prohibited by Article

57 sub-article d. Such prohibition is reinforced by criminal sanction regulated in Article 69 sub-article c which states, “*Every person who: ... c. intentionally use the National Anthem for the purposes other than as regulated herein shall be subject to criminal sanction of maximum imprisonment of 1 (one) year or maximum pecuniary sanction of Rp100,000,000.00 (one hundred million rupiah)*”.

[3.18] Whereas in the Court’s opinion, the Law *a quo* only provides for several obligatory use and the use for permits while in fact, the national emblem has been commonly used in various activities of the community, among other things, it is pinned on head covering, as a form of monument or memorial, depicted on clothing, pinned on school student uniform, all of which not being included as the use which are obligatory or allowed as referred to in Article 57 sub-article d of the Law *a quo*. On this basis, the Court is of the opinion that the prohibition of the use of the national emblem as referred to in Article 57 sub-article d of the Law *a quo* is inappropriate. Furthermore, the prohibition is followed by a criminal sanction, while a provision regarding actions subject to criminal sanction should comply with the formulation which is clear and firm (*lex certa*), written (*lex scripta*), and strict (*lex stricta*);

In connection with the national emblem, a matter which may not be forgotten is the existence of Article 32 paragraph (1) of the 1945 Constitution which states, “*The state shall advance the national culture of Indonesian amidst world civilization by guaranteeing freedom to the society in preserving and developing its cultural values.*” The Court is of the opinion that the word “guaranteeing” in

Article 32 paragraph (1) of the 1945 Constitution must be defined as the obligation of the state which, on the other hand, is the right of the citizen or the community “to preserve and develop its cultural values”. Considering that *Pancasila*, symbolized in the form of *Garuda Pancasila*, is a set of value systems (culture) which become a common property or culture of all Indonesian citizens. Therefore, it is the right of the citizens to perform their values including to use of the national emblem, especially when considering that *Pancasila* as a value system is derived from or crystallization of cultural values of Indonesian nation.

[3.19] Whereas in accordance with the considerations above, the Court is of the opinion that the restriction of the use of the national emblem constitutes a form of denial of the citizens’ expression and appreciation of their identities as citizens. Such denial may reduce the sense of belonging of the citizens toward their national emblem, and it is not impossible that to a certain extent it reduces the degree of nationalism, which is in fact of course inconsistent with the intention of the formulation of the Law *a quo*. Therefore, the Court is of the opinion that the argument of the Petitioners regarding the judicial review of the constitutionality of Article 57 sub-article d of the Law *a quo* has legal grounds.

[3.20] Whereas Article 57 sub-article d of the Law *a quo* is the prohibition followed by a criminal sanction in Article 69 sub-article c of the Law *a quo*. Accordingly, there is a close relationship between both articles as prevailing legal provisions. Due to the close relationship, the legal considerations of the Court for

such Article 57 sub-article d shall be, *mutatis mutandis*, applicable to Article 69 sub-article c of the Law *a quo*.

[3.21] Whereas based on all the considerations above, the Court is of the opinion that the petition of the Petitioners has legal grounds partly.

4. CONCLUSIONS

Based on the assessment of facts and laws described above, the Court has concluded that:

[4.1] The Court has authority to hear the petition *a quo*;

[4.2] The Petitioners have legal standing to file the petition *a quo*,

[4.3] The substance of the petition has legal grounds partly.

Based on the 1945 Constitution of the State of the Republic of Indonesia, Law Number 24 Year 2003 concerning the Constitutional Court, as amended by Law Number 8 Year 2011 concerning Amendment to Law Number 24 Year 2003 concerning the Constitutional Court (State Gazette of the Republic of Indonesia Year 2011 Number 70, Supplement to the State Gazette of the Republic of Indonesia Number 5226), and Law Number 48 Year 2009 concerning Judicial Power (State Gazette of the Republic of Indonesia Year 2009 Number 157, Supplement to the State Gazette of the Republic of Indonesia Number 5076);

5. INJUNCTIONS OF DECISION

Passing the Decision,

To declare:

1. To grant the petition of the Petitioners partly;
 - 1.1. That Article 57 sub-article d of Law Number 24 Year 2009 concerning the National Flag, Language, and Emblem as well as Anthem (State Gazette of the Republic of Indonesia Year 2009 Number 109, Supplement to State Gazette of the Republic of Indonesia Number 5035) is inconsistent with the 1945 Constitution;
 - 1.2. That Article 69 sub-article c of Law Number 24 Year 2009 concerning the National Flag, Language, and Emblem as well as Anthem (State Gazette of the Republic of Indonesia Year 2009 Number 109, Supplement to State Gazette of the Republic of Indonesia Number 5035) is inconsistent with the 1945 Constitution;
 - 1.3. That Article 57 sub-article d of Law Number 24 Year 2009 concerning the National Flag, Language, and Emblem as well as Anthem (State Gazette of the Republic of Indonesia Year 2009 Number 109, Supplement to State Gazette of the Republic of Indonesia Number 5035) shall have no binding legal force;

- 1.4. Article 69 sub-article c of Law Number 24 Year 2009 concerning the National Flag, Language, and Emblem as well as Anthem (State Gazette of the Republic of Indonesia Year 2009 Number 109, Supplement to State Gazette of the Republic of Indonesia Number 5035) shall have no binding legal force;
2. To order the promulgation of this decision properly in the Official Gazette of the Republic of Indonesia;
3. To reject the other and the remaining parts of the petition of the Petitioners;

Hence this decision was made in the Consultative Meeting of Justices by nine Constitutional Court Justices, namely Moh. Mahfud MD, as Chairperson and concurrent Member, Achmad Sodiki, Ahmad Fadlil Sumadi, Hamdan Zoelva, Maria Farida Indrati, Muhammad Alim, Harjono, M. Akil Mochtar, and Anwar Usman, respectively as Members, on **Wednesday, the second of January, two thousand and thirteen**, and was pronounced in the Plenary Session of the Constitutional Court open to the public on **Tuesday, the fifteenth of January, two thousand and thirteen**, with the pronouncement being completed **at 10.16 Western Indonesia Time**, by nine Constitutional Court Justices, namely Moh. Mahfud MD., as Chairperson and concurrent Member, Achmad Sodiki, Ahmad Fadlil Sumadi, Hamdan Zoelva, Maria Farida Indrati, Muhammad Alim, Harjono, M. Akil Mochtar, and Anwar Usman, respectively as Members, assisted by Mardian Wibowo as the Substitute Registrar, in the presence of the Government

or its representative, the People's Legislative Assembly or its representative,
without the presence of the Petitioners/their proxy.

**CHIEF JUSTICE,
Sgd.**

Moh. Mahfud MD.

JUSTICES,

Sgd.

Achmad Sodiki

Sgd.

Hamdan Zoelva

Sgd.

Muhammad Alim

Sgd.

M. Akil Mochtar

Sgd.

Ahmad Fadlil Sumadi

Sgd.

Maria Farida Indrati

Sgd.

Harjono

Sgd.

Anwar Usman

SUBSTITUTE REGISTRAR,

Sgd.

Mardian Wibowo