



DECISION

Number 62/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 25 Year 2002 concerning the Establishment of Riau Islands Province under the 1945 Constitution of the State of the Republic of Indonesia, filed by:

- [1.2]**
1. Name : **Drs. H. Daria**
Occupation : Regent of Lingga Regency
Address : Jalan Istana Robat Daik Lingga
as ----- **Petitioner I;**
2. Name : **Kisanjaya S.Pd.**
Occupation : Head of Singkep District, Lingga Regency
Address : Jalan Cendrawasih Number 1, Dabo Singkep
as ----- **Petitioner II;**
3. Name : **Saref**
Occupation : Head of Berhala Village

Address : Dusun I Pulau Lalang Berhala Village, Singkep
District

as ----- **Petitioner II;**

By virtue of Special Power of Attorney Number 10.SKK/KH-EA/V/2012 dated May 22, 2012, granting authority to **H. Edward Arfa, S.H., Ampuan Situmeang, S.H., M.H., and Agung Wiradharma, S.H.**, advocates/Lawyers at the Law Office of Edward Arfa SH & Partners, having its address at Jalan Raja Ali Haji, Number 3 EA, Tanjungpinang City, Riau Islands Province, both individually and jointly acting for and on behalf of the authorizers;

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

[1.3] Having read the petition of the Petitioners;

Having heard the statements of the Petitioners;

Having examined the evidence of the Petitioners;

2. FACTS OF THE CASE

[2.1] Whereas the Petitioners have filed the petition dated June 14, 2012 received at the Registrar's Office of the Constitutional Court (hereinafter referred to as the Registrar's Office of the Court) on June 14, 2012, based on Certificate of Petition File Receipt Number 218/PAN.MK/2012 and recorded in the Registry of Constitutional Cases on June 20, 2012 under Number 62/PUU-X/2012, which

was revised and received at the Registrar's Office of the Court on July 13, 2012, which principally describes the following matters:

I. Introduction

1. Concerning Lingga Regency

1.1 As one of the newly-established regencies split from Riau Islands Regency in Riau Province, Lingga Regency is now a regency in Riau Islands Province, established based on Law Number 31 Year 2003 concerning the Establishment of Lingga Regency in Riau Islands Province (State Gazette of the Republic of Indonesia Year 2003 Number 146). (**Exhibit P-3**).

1.2 Article 5 paragraph (1), paragraph (2) and paragraph (3) of Law Number 31 Year 2003 concerning the Establishment of Lingga Regency in Riau Islands Province state that:

(1) Lingga Regency shall have the following territorial borders:

- a. To the north bordering Galang District Batam City and the South China Sea.
- b. To the east bordering the South China Sea.

c. To the south bordering Bangka Sea and Berhala Strait.

d. To the west bordering Inderagiri Sea.

(2) The territorial borders as intended in paragraph (1) shall be described in the administrative territory map which constitutes an inseparable part of this Law (Exhibit P-4).

(3) The determination of the exact territorial borders of Lingga Regency in the field as intended in paragraph (1) shall be stipulated by the Minister of Home Affairs.

2. Concerning Riau Islands Province

2.1 Riau Islands Province was established based on Law Number 25 Year 2002 concerning the Establishment of Riau Islands Province, comprised of a part of the territory of Riau Province established based on Law Number 61 Year 1958 concerning the Stipulation of Emergency Law Number 19 Year 1957 concerning the Establishment of the Autonomous Level I Regions of West Sumatra, Jambi and Riau (State Gazette Year 1957 Number 75) (**Exhibit P-5**).

2.2 Article 3 of Law Number 25 Year 2002 concerning the Establishment of Riau Islands Province states that:

“Riau Islands Province is derived from a part of the territory of Riau Province consisting of:

1. Riau Islands Regency
2. Karimun Regency
3. Natuna Regency
4. Batam City
5. Tanjungpinang City”

2.3 Elucidation of Article 3 of Law Number 25 Year 2002 concerning the Establishment of Riau Islands Province contains the following interpretation: (**see Exhibit P-1b**)

“In this Law, Riau Islands Province shall not include Berhala Island, because Berhala Island is included in the administrative territory of Jambi Province pursuant to Law Number 54 Year 1999 concerning the Establishment of Sarolangun Regency, Tebo Regency, Muaro Jambi Regency and Tanjung Jabung Timur Regency of Jambi Province”.

(hereinafter referred to as the object of petition).

3. Concerning Tanjung Jabung Timur Regency

3.1 Tanjung Jabung Timur Regency in Jambi Province was established based on Law Number 54 Year 1999 concerning the Establishment of Sarolangun Regency, Tebo Regency, Muaro Jambi Regency and Tanjung Jabung Timur Regency of Jambi Province (**Exhibit P-6**).

3.2 Article 9 paragraph (4), paragraph (5) and paragraph (6) of Law Number 54 Year 1999 concerning the Establishment of Sarolangun Regency, Tebo Regency, Muaro Jambi Regency and Tanjung Jabung Timur Regency of Jambi Province states that:

(4) Tanjung Jabung Timur Regency has the following territorial borders:

- a. ***To the north bordering the South China Sea.***
- b. ***To the east bordering the South China Sea.***
- c. ***To the south bordering Kumpeh District, Maro Sebo, and South Sumatra Province.***
- d. ***To the east bordering Tanjung Jabung Barat Regency.***

- (5) The territorial borders as intended in paragraph (4) shall be set out in the map which constitutes an inseparable part of this Law.
- (6) The determination of the exact territorial borders of Tanjung Jabung Timur Regency in the field as intended in paragraph (4) shall be stipulated by the Minister of Home Affairs.
4. Whereas until now, the Minister of Home Affairs has not stipulated the determination of the exact territorial borders in the field as intended in Article 5 paragraph (3) of Law Number 31 Year 2003 concerning the Establishment of Lingga Regency in Riau Islands Province and Article 9 paragraph (6) of Law Number 54 Year 1999 concerning the Establishment of Sarolangun Regency, Tebo Regency, Muaro Jambi Regency and Tanjung Jabung Timur Regency of Jambi Province, pursuant to Regulation of the Minister of Home Affairs Number 1 Year 2006 concerning the Guidelines on the Confirmation of Territorial Borders (**Exhibit P-7**).
5. Based on Regulation of the Minister of Home Affairs Number 44 Year 2011 concerning Administrative Territory of Berhala Island (**Exhibit P-8**):

Article 2

Berhala Island is located at the Northern part of Tanjung Jabung Timur Regency of Jambi Province at the position of Latitude 0° 51' 34" South and Longitude 104° 24' 18" East.

Article 3

Berhala Island shall be included in the administrative territory of Tanjung Jabung Timur Regency of Jambi Province.

6. Whereas against the Regulation of the Minister of Home Affairs Number 44 Year 2011 concerning the Administrative Territory of Berhala Island, the people of Berhala Island Village made a position statement with a carbon copy sent to the President containing ***“rejection to join Tanjung Jabung Timur Regency of Jambi Province”*** (Exhibit P-9 and Exhibit P-9.a)
7. Whereas in the petition for the right to judicial review of Regulation of the Minister of Home Affairs Number 44 Year 2011 concerning the Administrative Territory of Berhala Island filed by the Elements of Government Administrators of Riau Islands Province and Lingga Regency to the Supreme Court, under Registration Number 49.P/HUM/2011, the Supreme Court in its decisions has nullified (*nietig van rechtswege*) the aforementioned Regulation of the Minister of Home Affairs Number 44 Year 2011 (Exhibit P-10) based on the following considerations:

- Whereas in relation to the issue of the territory of Berhala Island, the fact was that there was still a conflict of “**partialistic factor**” (order of the article) in the Law which had not been settled by synchronization of Law, namely Article 9 paragraph (4) of Law Number 54 Year 1999, Article 5 paragraph (1) of Law Number 31 Year 2003, and Elucidation of Article 3 of Law Number 25 Year 2002.
- Whereas Law Number 31 Year 2003 concerning the Establishment of Lingga Regency was the most recent Law compared to Law Number 54 Year 1999 and Law Number 25 Year 2002. The legal doctrine states that “The most recent laws and regulations shall supersede the old laws and regulations”.
- Whereas in the condition of conflict of “**partialistic factor**” of such level of Law, the Minister of Home Affairs should have procured synchronization of the three Laws through the competent institutions (The People’s Legislative Assembly (DPR) and the Government) rather than by issuing the Regulation of the Minister of Home Affairs *in casu*.
- Whereas Regulation of the Minister of Home Affairs Number 44 Year 2011 has been inconsistent with Law Number 31

Year 2003 because Berhala Village is included in the territory of Lingga Regency of Riau Islands Province.

8. Whereas the Governor of Jambi Province, H. Hasan Basri Agus, cs., has filed a petition for constitutional review of Article 5 paragraph (1) sub-paragraph c of Law Number 31 Year 2003 concerning the Establishment of Lingga Regency in Riau Islands Province, under Registration Number 32/PUU-X/2011, which is currently in the examination process by Constitutional Court Justices (**Exhibit P-11**).

9. Whereas since the substance or principal issue in the Petition for Judicial Review under Registration Number 32/PUU-X/2011 filed by the Government of Jambi Province is similar to the substance of Petition for Judicial Review of the Elucidation of Article 3 of Law Number 25 Year 2002 filed by the Petitioners as well as the petition for Judicial Review of Law Number 54 Year 1999 concerning the Establishment of Sarolangun Regency, Tebo Regency, Muaro Jambi Regency and Tanjung Jabung Timur Regency [Article 9 paragraph (4) sub-paragraph a] in Case Number 48/PUU-X/2012 filed by H. Alias Wello, cs., namely regarding the **“ADMINISTRATIVE STATUS OF BERHALA”**, then the Petitioners request for the Honorable Chairperson/Panel of Constitutional Court Justices examining and hearing this petition of the Petitioners

to pass a decision on the intended judicial review petition at the same time.

10. Whereas the Petitioners fully trust the Constitutional Court to pass the most equitable decision as possible according to the legal considerations and juridical facts, physical control, administrative implementation, history, geography, and other supporting facts which the Petitioners will present and prove at the hearing of the Constitutional Court.

B. Legal Basis of Authority of the Constitutional Court

1. Article 24C paragraph (1) of the 1945 Constitution *juncto* Article 10 paragraph (1) of Law Number 24 Year 2003 concerning the Constitutional Court *juncto* Law Number 8 Year 2011 concerning Amendment to Law Number 24 Year 2003 concerning the Constitutional Court states that: “The Constitutional Court shall have the authority to hear at the first and final level, the decisions of which shall be final:
 - a. to review laws against the 1945 Constitution of the State of the Republic of Indonesia;

- b. to decide upon disputes over the authorities of state institutions whose authorities are granted by the 1945 Constitution of the State of the Republic of Indonesia;
 - c. to decide upon the dissolution of political parties;
 - d. to decide upon disputes over the results of general elections;
 - e. to decide upon the opinion of the People's Legislative Assembly (DPR) that the President and/or the Vice President is alleged to have violated the law in the form of treason against the state, corruption, bribery, other criminal acts, or disgraceful acts, and/or no longer qualified as the President and/or Vice President as intended in the 1945 Constitution of the State of the Republic of Indonesia.
- 2.** Whereas the Elucidation of Article 3 of Law Number 25 Year 2002 concerning the Establishment of Riau Islands Province which becomes the object of the petition for the judicial review *a quo* constitutes a part of the Law.
- 3.** Whereas based on the matters described in paragraph 1 and 2 above, the Constitutional Court shall have the right and authority to review the Elucidation of Article 3 of Law Number 25 Year 2002 concerning the Establishment of Riau Islands Province under the 1945 Constitution of the State of the Republic of Indonesia.

C. Legal Standing of the Petitioners

1. Whereas Petitioner I as the Regent of Lingga is acting for and on behalf of the Public Legal Entity of Lingga Regency who, based on the provision of Article 25 sub-article f of Law Number 32 Year 2004, has the duty and authority to represent his region in and outside the court and who may appoint legal counsels to represent him in accordance with the applicable laws and regulations.

2. Whereas Petitioner II as the Head of Singkep District is a regional government apparatus as stated in Article 3 paragraph (1) subparagraph c of Law Number 32 Year 2004 which reads:
“Regional government as intended in paragraph (1) shall consist of the regional head and regional apparatuses”.

This is also clarified in Article 120 paragraph (2) of Law Number 32 Year 2004 concerning Regional Government that regional apparatuses of regency/city shall consist of the regional secretary, regional secretariat, regional technical institutions, districts and sub-districts.

Article 126 paragraph (2) of Law Number 32 Year 2004 also mentions that the district as intended in paragraph (1) shall be led by a district head who, in implementing his/her duties, receives the delegation of authority from the regent or mayor to handle a part of

regional autonomy affairs. In addition to the duty as intended in paragraph (2), a district head shall also perform general government duties, including:

- a. coordinating activities of community empowerment, implementation peace, public order and application and enforcement of laws and regulations.
- b. coordinating the maintenance of public service infrastructure and facilities.
- c. developing the implementation of village and/or sub-district government.
- d. providing public services which become his/her scope of duties and/or which village government has not been able to perform.

3. Whereas Petitioner III, namely Berhala Village Head, as a Regional Apparatus pursuant to the provision of Article 206 of Law Number 32 Year 2004, shall have authority covering:

- a. existing government affairs based on the village's right of origin.
- b. government affairs under the authority of the regency/city which are delegated to the village for their arrangement.

- c. duty of assistance from the government, provincial government, and/or regency/city government.
 - d. other government affairs delegated to the village under the laws and regulations.
 - e. implementation of government affairs delegated from the regent/mayor.
4. Whereas Petitioner I as Lingga Regent, Petitioner II and Petitioner III as regional apparatuses are the elements of regional government administrators in Lingga Regency appointed based on:
- 4.1 **Petitioner I, Drs. H. Daria**, as Lingga Regent was appointed based on Decree of the Minister of Home Affairs Number 131.21.411 Year 2010 concerning the Approval of the Dismissal and Approval of the Appointment of Lingga Regent of Riau Islands Province dated August 2, 2010 (**Exhibit P-12**).
 - 4.2 **Petitioner II, Kisanjaya, S.Pd**, as Singkep District Head was appointed based on Decision of Lingga Regent Number KPTS.195/BKD.KP/III/2011 dated March 9, 2011 (**Exhibit P-13**).

4.3 **Petitioner III, Saref**, was appointed as Berhala Village Head based on Decision of Lingga Regent Number 134/KPTS/2009 (**Exhibit P-14**).

5. Whereas as the elements of Regional Government Administrators of Lingga Regency, the Petitioners believe their constitutional rights and authorities have been impaired by the existence of the Elucidation of Article 3 of Law Number 25 Year 2002, especially in relation to their rights/authority, namely, among other things:

5.1 Authority in the implementation of government administration in Berhala Island/Berhala Village which has been established based on Regional Regulation of Lingga Regency Number 2 Year 2006 (**Exhibit P-15**).

5.2 Authority in the development of public infrastructure and facilities in Berhala Island Village which has been and which will be financed by Lingga Regency Government, through both the Regional Revenues and Expenditures Budget (APBD) of Riau Islands Province and the Regional Revenues and Expenditures Budget (APBD) of Lingga Regency.

5.3 Authority in the implementation of supervision of the implementation of regional regulations and other laws and

regulations, regional head regulations, Regional Revenues and Expenditures Budget (APBD), and regional government policies in implementing development programs, particularly in Berhala Village.

5.4 Authority in the implementation of Regional Autonomy of Lingga Regency, particularly the obligations in the implementation of Berhala Village Government, namely, among other things:

- a. protecting the community, keeping the national unity, oneness and harmony as well as the integrity of the Unitary State of the Republic of Indonesia.
- b. increasing the quality of the community's life.
- c. developing a democratic life.
- d. materializing justice and even distribution.
- e. improving basic education services.
- f. providing adequate health service facilities, social facilities and public facilities.
- g. preparing regional planning and layout.
- h. preserving socio-cultural values.

6. Whereas pursuant to the provision of Article 51 paragraph (1) sub paragraph c of Law Number 24 Year 2003 concerning the Constitutional Court, the Petitioners as the elements of the Regional Government Administrators of Lingga Regency and/or in their capacity as public legal entities believe that their constitutional rights and/or authorities have been impaired by the application of Elucidation of Article 3 of Law Number 25 Year 2002 concerning the Establishment of Riau Islands Province.

7. Whereas the Constitutional Court's Decision Number 006/PUU-III/2005 and Decision Number 11/PUU-V/2007 have determined 5 (five) requirements for the impairment of constitutional rights and/or authorities as intended in Article 51 paragraph (1) of Law Number 24 Year 2003, as follows:
 - a. The existence of constitutional rights and/or authority of the Petitioners granted by the 1945 Constitution;

 - b. such constitutional rights and/or authority are considered to have been impaired by the coming into effect of the law petitioned for review;

 - c. The impairment of such constitutional rights and/or authority must be specific and actual 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 coming into effect of the law petitioned for review;

e. It is likely that with the granting of the Petitioners' petition, the constitutional impairment argued by the Petitioners will not or will no longer occur;

8. Whereas therefore, the Petitioners have legal standing to file the petition for judicial review of the Elucidation of Article 3 of Law Number 25 Year 2002 which becomes the *objectum litis* of the petitioner *a quo* under the 1945 Constitution of the State of the Republic of Indonesia.

II. Reasons for the Petition for Judicial Review of the Elucidation of Article 3 of Law Number 25 Year 2002 concerning the Establishment of Riau Islands Province

A. Juridical Reasons

1. Whereas the Elucidation of Article 3 of Law Number 25 Year 2002 concerning the Establishment of Riau Islands Province which becomes the object of the petition for judicial review *a quo* is a part of a Law which cannot be separated from the

substance of the corpus of Article 3 of Law Number 25 Year 2002 concerning the Establishment of Riau Islands Province.

Whereas **Article 3** of Law Number 25 Year 2002 concerning the Establishment of Riau Islands Province reads: *“Riau Islands Province is derived from a part of the territory of Riau Province consisting of:*

1. *Riau Islands Regency*
2. *Karimun Regency*
3. *Natuna Regency*
4. *Batam City*
5. *Tanjungpinang City”*

Whereas the **Elucidation of Article 3** of Law Number 25 Year 2002 concerning the Establishment of Riau Islands Province *a quo* contains an interpretation which reads: *“In this Law, Riau Islands Province shall not include Berhala Island, because Berhala Island is included in the administrative territory of Jambi Province pursuant to Law Number 54 Year 1999 concerning the Establishment of Sarolangun Regency, Tebo Regency, Muaro Jambi Regency and Tanjung Jabung Timur Regency of Jambi Province”*

2. Whereas juridically, the Elucidation of Article 3 of Law Number 25 Year 2002 is inconsistent with the 1945 Constitution of the State of the Republic of Indonesia and/or Law Number 12 Year 2011 concerning the Formulation of Laws and Regulations mandated by Article 22A of the 1945 Constitution, because:

2.1 Elucidation of Article 3 of Law Number 25 Year 2002 concerning the Establishment of Riau Islands Province has created a “**new norm**” which is so inconsistent with the principal substance regulated in the corpus of Article 3 of Law Number 25 Year 2002 concerning the Establishment of Riau Islands Province.

2.2 Elucidation of Article 3 of Law Number 25 Year 2002 concerning the Establishment of Riau Islands Province does not explain the principal substance regulated in Article 3, namely the origin of territory of Riau Islands Province. It has even expanded or added the definition of norm in the corpus of Article 3 of Law Number 25 Year 2002 concerning the Establishment of Riau Islands Province, namely by

including the formulation concerning the status of Berhala Island.

- 2.3 Elucidation of Article 3 of Law Number 25 Year 2002 concerning the Establishment of Riau Islands Province does not clarify the norm in the corpus and even it is considered to have included a disguised change to the provision of law, particularly to the norm in the corpus of Article 3 of Law Number 25 Year 2002 concerning the Establishment of Riau Islands Province.

Whereas Article 3 of Law Number 25 Year 2002 reads:

“Riau Islands Province is derived from a part of the territory of Riau Province consisting of:

1. *Riau Islands Regency*
2. *Karimun Regency*
3. *Natuna Regency*
4. *Batam City*
5. *Tanjungpinang City”*

From the text of Article 3 of Law Number 25 Year 2002 concerning the Establishment of Riau Islands

Province, it is clear that it does not mention at all the **“origin of Riau Islands Province”**.

- 2.4 Whereas Law Number 54 Year 1999 concerning the Establishment of Sarolangun Regency, Tebo Regency, Muaro Jambi Regency and Tanjung Jabung Timur Regency of Jambi Province used as the basis for the Elucidation of Article 3 of Law Number 25 Year 2002 which states/interprets that Berhala Island is included in the administrative territory of Jambi Province cannot be explicitly justified in Law Number 54 Year 1999, either in its general elucidation or in the Elucidation of Article 9 paragraph (4) sub-paragraph **a** and sub-paragraph **b** of Law Number 54 Year 1999 concerning Establishment of Sarolangun Regency, Tebo Regency, Muaro Jambi Regency and Tanjung Jabung Timur Regency of Jambi Province which only reads: **“Tanjung Jabung Timur Regency borders the South China Sea to the North and to the East”**. It does not explicitly state that Berhala Island is included in the administrative territory of Tanjung Jabung Timur Regency of Jambi Province.

2.5 Whereas Law Number 12 Year 2011 concerning Formulation of Laws and Regulations as the mandate of Article 22A of the 1945 Constitution of the State of the Republic of Indonesia, Attachment II point 176, point 177, point 178, and point 186 letter a and letter b (**Exhibit P-16**), states as follows:

- **Point 176:**

Elucidation functions as the official interpretation of the legislators of certain norms in the corpus. Therefore, elucidation only contains a description of a word, phrase, sentence or equivalent of any foreign word/term in the norm which can be accompanied by examples.

Elucidation as the means to clarify the norm in the corpus shall not cause the intended norm unclear.

- **Point 178:**

Elucidation does not use any formulation containing any disguised change to the provisions of laws and regulations.

- **Point 186:**

The formulation of the article-by-article elucidation shall consider the following matters:

- a. Not being inconsistent with the principal substance regulated in the corpus;
- b. Not expanding, narrowing or adding the definition of norms in the corpus.

2.6 Whereas the Elucidation of Article 3 of Law Number 25 Year 2002 concerning the Establishment of Riau Islands Province does not give any legal certainty (*rechts zekerheids*) to the Petitioners, because with the existence of such Elucidation of Article 3, the Petitioners cannot exercise their constitutional authority in the implementation of government affairs, where the scope of authority has been guaranteed by the provision of Article 5 paragraph (1) sub-paragraph c of Law Number 31 Year 2003 concerning the Establishment of Lingga Regency in Riau Islands Province, as mandated by the 1945 Constitution and which juridically has had binding legal force (*verbindend*).

3. Whereas the Elucidation of Article 3 of Law Number 25 Year 2002 concerning the Establishment of Riau Islands Province has been made in such a corruptive manner inconsistently with the philosophy of *Pancasila* .

According to Prof. Mahfud MD in the Pancasila Congress IV in Yogyakarta at the end of May 2012, the instrumental value of Pancasila is still facing serious problems because of many violations occurring in the formulation of laws and regulations which are inconsistent with the values of Pancasila. The most dangerous corruption nowadays is not committed by the people but corruption related to the formulation of regulations and policies, as regulations are made corruptive, corruption will continue, not only once. (Media Indonesia Daily Newspaper, page 3 dated June 1, 2012).

4. Whereas as a result of the existence of **Elucidation of Article 3** of Law Number 25 Year 2002 concerning the Establishment of Riau Islands Province, the Petitioners, as the elements Regional Government Administrators of Lingga Regency and/or as public legal entities, **believe that their constitution rights and authority in the implementation of Government affairs have been impaired**, particularly in

the Berhala Village Government which has been established based on Regional Regulation of Lingga Regency Number 2 Year 2006 (**see Exhibit P-15**).

Whereas the Petitioners can present and describe their constitutional rights/authority violated and/or impaired by the Elucidation of Article 3 of Law Number 25 Year 2002, as protected by the 1945 Constitution of the State of the Republic of Indonesia, specifically and actually, or potentially, as follows:

Article 18 of the 1945 Constitution:

- (1) The Unitary State of the Republic of Indonesia shall be divided into provincial regions and these provincial regions shall be divided into regencies and municipalities, and each province, regency and municipality shall have a regional government regulated by law.

Whereas Law Number 31 Year 2003 concerning the Establishment of Lingga Regency in Riau Islands Province is the mandate of Article 18 paragraph (1) of the 1945 Constitution to regulate Regional Government of Lingga Regency.

Article 5 paragraph (1) sub-paragraph c states that Lingga Regency borders Bangka Sea and Berhala Strait to the south. Therefore, the territory of Lingga Regency which borders Bangka Sea and Berhala Strait to the south, where Berhala Island is located to the north of Berhala Strait, so that Berhala Island is included in the administrative territory of Lingga Regency in Riau Islands Province. Based on the aforementioned fact, the **Elucidation of Article 3** of Law Number 25 Year 2002 concerning the Establishment of Riau Islands Province is inconsistent with the provision on the territorial borders of Lingga Regency regulated in Article 5 paragraph (1) sub-paragraph c so as to impair the Petitioners' constitutional rights/authority protected by the 1945 Constitution.

- (2) The regional governments of province, regency and city regulate and manage government affairs by itself according to the principles of autonomy and duty of assistance.

In relation to Article 18 paragraph (2) of the 1945 Constitution which mandates regency regions to

regulate and manage government affairs by themselves according to the principle of autonomy. The existence of the **Elucidation of Article 3** of Law Number 25 Year 2002 concerning the Establishment of Riau Islands Province has prevented the Petitioners to regulated and manage regional government by themselves, particularly government affairs of Berhala Island, so as to impair the constitutional rights and authority of the Petitioners as the elements of Regional Government Administrators of Lingga Regency to regulate and manage government affairs by themselves according to the principles of autonomy and duty of assistance, particularly in Berhala Island, Berhala Village, among other things in performing the obligations to

- a. protecting the community, keeping the national unity, oneness and harmony as well as the integrity of the Unitary State of the Republic of Indonesia.
- b. increasing the quality of the community's life.
- c. developing a democratic life.

- d. materializing justice and even distribution.
- e. improving basic education services.
- f. providing adequate health service facilities, social facilities and public facilities.
- g. preparing regional planning and layout.
- h. preserving socio-cultural values.

Whereas in implementing regional autonomy, particularly in Berhala Island, the Regional Government of Lingga Regency has actually and specifically allocated APBD Funds of Lingga Regency, among other things for: (**Exhibit P-52**).

1. protecting the community, building Security Posts, Budget Year 2006, in the value of Rp.45,474,000.- (forty-five million four hundred and seventy-four thousand rupiah).
2. provision of homes, building 30 (thirty) units of simple houses, Budget Year 2006, in the value of Rp.860,910,000 (eight hundred and sixty million nine hundred and ten thousand rupiah).

3. administrative services, building the Village Office, Budget Year 2009, in the value of Rp.367,400,000 (three hundred and sixty-seven million four hundred thousand rupiah).
4. improving Basic Education Services, conducting major rehabilitation of the rooms of Elementary School 024, Budget Year 2007, in the value of Rp.198,000,000.- (one hundred and ninety-eight million rupiah).
5. health service facilities, rehabilitation of the Auxiliary Community Health Center, Budget Year 2011, in the value of Rp.70,000,000.- (seventy million rupiah).
6. particularly for nurses, the Regional Government of Lingga Regency provided the regional income additional payment specifically in Berhala Island in October up to December 2011 in the amount of Rp.12,000,000.- (twelve million rupiah) through account no.: 1.02.01.00005.1.1.02.02 in the name of Raja Nurhayati.

- (3) **The provincial, regency, and municipal governments shall have their respective Regional People's Legislative Assembly (DPRD) the members of which shall be elected through general elections.**

Whereas in relation to the mandate of the aforementioned Article 18 paragraph (3) of the 1945 Constitution, the Government of Lingga Regency has implemented General Elections of the Members of DPRD of Lingga Regency Year 2009 where the Community of Berhala Island participated in casting their votes in the election of the members of DPRD of Lingga Regency. Therefore, the existence of the **Elucidation of Article 3** of Law Number 25 Year 2002 concerning the Establishment of Riau Islands Province has had an implication of the absence of legal certainty/invalidity of the results of vote acquisition in the feast of democracy of Regional Head Election/General Election Year 2009.

- (4) Governors, Regents and Mayors as the respective heads of provincial, regency, and municipal governments shall be elected democratically.

Whereas in relation to the mandate of the aforementioned Article 18 paragraph (4) of the 1945 Constitution, the Government of Lingga Regency has implemented the Election of Regional Head of Lingga Regency Year 2009 in which the community of Berhala Island also participated in casting their votes in the election of Regent and Vice Regent of Lingga Regency. Therefore, the existence of the **Elucidation of Article 3** of Law Number 25 Year 2002 concerning the Establishment of Riau Islands Province has impaired the constitutional right of Petitioner I as Lingga Regent, because the legal consequence (*rechts gevold*) of the existence of the Elucidation of Article 3 of Law Number 25 Year 2002 concerning the Establishment of Riau Islands is the implication of absence of legal certainty and/or invalidity of the results of vote acquisition in the feast of democracy of Regional Head Election/General Election Year 2009 **(Exhibit P-18 up to Exhibit P-20)**

- (6) The regional governments shall have the right to stipulate regional regulations to implement autonomy and duty of assistance.

Whereas in relation to the mandate of the aforementioned Article 18 paragraph (6) of the 1945 Constitution, the Regional Government of Lingga Regency has issued Regional Regulation of Lingga Regency Number 2 Year 2006 concerning the Establishment of Berhala Village as the implementation of autonomy and duty of assistance. Therefore, the existence of the **Elucidation of Article 3** of Law Number 25 Year 2002 concerning the Establishment of Riau Islands Province can prevent the implementation of Regional Regulation of Lingga Regency Number 2 Year 2006 by potentially impairing the constitutional rights/authority of Petitioner I as Lingga Regent, and by potentially impairing the constitutional rights/authority of Petitioner II and Petitioner III as the apparatuses of the Regional Government of Lingga Regency (**Exhibit P-15**).

In relation to the implementation of the aforementioned Regional Regulation of Lingga Regency Number 2 Year 2006, for the purpose of increasing the role of Village apparatuses (Heads of Neighborhood Blocks/RW and Neighborhood

Units/RT) pursuant to Decision of Lingga Regent Number 58/KPTS/IV/2007, the Regional Government of Lingga Regency has allocated the APBD (Regional Revenues and Expenditures Budget) Aid Fund per quarter to Heads of Neighborhood Blocks (RW) in the amount of Rp.450,000.- (four hundred and fifty thousand rupiah) and Heads of Neighborhood Units (RT) in the amount of Rp.300,000.- (three hundred thousand rupiah), including for Heads of RW and Heads of RT in Berhala Island (**Exhibit P-17**).

In relation to the implementation of Regional Regulation of Lingga Regency Number 2 Year 2006, the Government of Lingga Regency has collected population data in Berhala Village and has issued family cards as well as identity cards (**Exhibits P-22 through P-50**).

The existence of the **Elucidation of Article 3** of Law Number 25 Year 2002 concerning the Establishment of Riau Islands Province may directly and actually impair the constitutional rights/authority of the Petitioners in the context of developing the population of Berhala Village in relation to the implementation of

general election and Regional Head Election in Lingga Regency, particularly in Berhala Island, Berhala Village. (see Exhibits P-18 through P-20).

Article 28D paragraph (1) of the 1945 Constitution:

Every person shall have the right to the recognition, the guarantee, the protection and the legal certainty of just laws as well as equal treatment before the law.

Whereas in relation to the Mandate of Article 28D paragraph (1) of the 1945 Constitution, the existence of the **Elucidation of Article 3** of Law Number 25 Year 2002 concerning the Establishment of Riau Islands Province has impaired the constitutional rights as well as authority of the Petitioners as the elements of regional government administrators of Lingga Regency because it has created legal uncertainty (*rechts zekerheids*) for the Petitioners in the implementation of regional government of Lingga Regency, particularly in Berhala Island, Berhala Village, which has been and which will be implemented in a sustainable manner.

Whereas the existence of the **Elucidation of Article 3** of Law Number 25 Year 2002 concerning the Establishment of Riau Islands Province will potentially impair the constitutional rights and authority of the Petitioners and will create legal

uncertainty with respect to the implementation of regional regulations, government administration services, population administration services, land administration services and so on for the population in Berhala Island, causing the interests of the population in Berhala Island to be neglected.³

B. Factual Reasons

Whereas to support the juridical reasons presented and described in section A above; the Petitioners have also presented a number of facts related to “Berhala Island” as follows:

(1) Fact of Physical Control

1.1 Since the Government of Riau Islands Regency as a Regency in Riau Province under Law Number 61 Year 1958, *juncto* Emergency Law Number 19 Year 1957, up to the establishment of Lingga Regency in Riau Islands Province under Law Number 31 Year 2003 concerning the Establishment of Lingga Regency in Riau Islands Province, the Government of Riau Islands Regency of Riau Province, and the Government of Lingga Regency in Riau Islands Province, and the Government of Riau Islands Province have implemented many programs for

development of public infrastructure and facilities in Berhala Island, Berhala Village, among other things:

- Development of sports facility in the form of Volley Ball Court by the Government of Riau Island Regency in 2001 (**Exhibit P-85**).
- Development of Welcome Gate by Riau Islands Regency of Riau Province in 2001. (**Exhibit P-86**)
- Development of Monitoring Post Facility of the Navy of the National Armed Forces (TNI AL) (**Exhibit P-87**)
- Development of religious worship facility in the form of a Mosque build with the self-financing funds of the community and Government of Riau Islands Regency. (**Exhibit P-88**)
- Construction of Cemented Road (**Exhibit P-89**)
- Development and Building of Tourism Facilities by the Government of Lingga Regency and the Government of Riau Islands Province. (**Exhibit P-90**)

- Implementation of the Berhala Village Development Acceleration Program (**Exhibit P-91**).
- Development of Monument/Inscription(**Exhibit P-92**).
- Development of education facility in the form of one unit of Elementary School (SD) and Junior High School (SLTP) Building (**Exhibit P-93, Exhibit P-94 and Exhibit P-95**).
- Development of Health Facility in the form of Toilet (**Exhibit P-96**)
- Development of Lighthouse Tower Installation (**Exhibit P-97**).
- Development of Community Housing Facility (**Exhibit P-98**).
- Installation of Land Border Signs (**Exhibit P-99**).
- Development of Indosat Tower (**Exhibit P-100**).

- Development and Renovation of Village Head Office Building (**Exhibit P-101 and Exhibit P-102**).
- Development of the Village Deliberations Board Building (**Exhibit P-103**).
- Development of one unit of Permanent Auxiliary Community Health Center by the Government of Riau Islands Regency (**Exhibit P-104**).
- Development of Clean Water Facility (**Exhibit P-105**).
- Development of Electrical Tank in the form of 10KVA Diesel Generator Set as the aid from the Government of Riau Islands Regency Year 2001.
- Development of Wooden Jetty between Berhala Island and Layak Island by the Government of Riau Islands Regency in 2001.

- Land Procurement in Berhala Island through the APBD Fund of Riau Islands Province Year 2009.
- Establishment of *Koperasi Serba Usaha* (Multi-Business Cooperative) in Berhala Village, Singkep District, Lingga Regency.

1.2 Developments of such public infrastructure and facilities have been utilized by the population/community of Berhala Island and the Government of Lingga Regency still allocates APBD fund in every budget year.

1.3 Whereas thus far, following the establishment of Tanjung Jabung Timur Regency in Jambi Province under Law Number 54 Year 1999, the Government of Jambi and/or the Government of Tanjung Jabung Timur Regency have not questioned the implementation of development programs in Berhala Island by the Government of Riau Islands Regency of Riau Province and by the Government of Lingga Regency of Riau Islands Province.

1.4 Whereas based on the matters described in

paragraphs 1.1 through 1.3 above, the good faith (*te goeder trouw*) of the Government of Lingga Regency which has physically controlled Berhala Island “**should be protected by law**”.

(2) Facts of Government Administration

- 2.1 The Government of Lingga Regency of Riau Islands Province has made Regional Regulation of Lingga Regency Number 2 Year 2006 upon the approval by the Regional People’s Legislative Assembly of Lingga concerning the Establishment of Berhala Village (**see Exhibit P-15**).
- 2.2 Whereas Singkep District Head and Berhala Village Head as the Regional Apparatuses of Lingga Regency and/or the elements of Government Administrators have collecting the data/recorded the population as well as issued Family Cards (KK) and Identity Cards in Berhala Village, particularly for the population domiciled in Berhala Island (**see Exhibit P-122 through P-50**).
- 2.3 Some of the population in Berhala Village have possessed land title certificates issued by the Head of

the Land Office of Riau Islands Regency (**Exhibits P-56 through P-62**)

- 2.4 The Transportation Service Office of Lingga Regency and Singkep District Head has given the recommendation on the tower height and Building Permit (IMB) Recommendation to Indosat Company to erect/develop the tower in Berhala Island (**Exhibit P-63**).
- 2.5 Based on marriage and reconciliation events in Singkep District, in 2010, the population of Berhala Island/Berhala Village held wedding and were recorded at the Religious Affairs Office of Singkep District (**Exhibit P-64**).
- 2.6 In the General Election of President and Vice President, Election of Members of the People's Legislative Assembly (DPR), the People's Representative Council (DPD), the Regional People's Legislative Assembly (DPRD) of Province and DPRD of Lingga Regency Year 2009, and the Regional Head Election of Lingga Regency; the Government of Lingga Regency has held voting in Berhala Island/Berhala Village (**see Exhibits P-18 through P-**

20).

(3) Facts of Land Administration

During the Administration of *Sri Padoeka Toean Besar Resident Riouw* Year 1914, *De Controleur Van Lingga*, in 1914, 3 (three) land grants were issued in Berhala Island, namely as follows:

1. **Grant Number 308** Year 1914, in the name of Raja Truna bin R. Mahmud, covering an area of 20,700 M2 (**Exhibit P-66**).
2. **Grant Number 310** Year 1914, in the name of Entjik Ana binti Entjik Zahrifa, covering an area of 17,860 M2 (**Exhibit P-67**).
3. **Grant Number 376** Year 1914, in the name of Entjik Noeh, covering an area of 1,032 M2 (**Exhibit P-68**).

Subsequently, during the period of Government Administration of Riau Islands Regency of Riau Province (now Lingga Regency of Riau Islands Province), the Land Office of Riau Islands Regency has issued land certificates as the land administration services for the population of Berhala Island, namely, among other things:

1. Certificate of Title Number 343 in the name of Hasyim Mahidan (**Exhibit P-56**);
2. Certificate of Title Number 344 in the name of ON (**Exhibit P-57**);
3. Certificate of Title Number 345 in the name of Zainal Arifin (**Exhibit P-58**);
4. Certificate of Title Number 346 in the name of ON (**Exhibit P-59**);
5. Certificate of Title Number 347 in the name of Hasan Djemahat (**Exhibit P-60**);
6. Certificate of Title Number 348 in the name of ON (**Exhibit P-61**);
7. Certificate of Title Number 349 in the name of Hasan Djemahat (**Exhibit P-62**).

(4) Historical Facts

- 4.1 During the period of Lingga Riouw Sultanate in 1857, Berhala Island was the occupied by Lingga Sultan as set out in the "*contract met den sultan van Lingga Riouw en onder hoodrigheden, 1 December 1857*"

(Exhibit P-65).

4.2 During the Dutch colonial period of 1922-1944, Berhala Island was included in the area of *Residentie Riouw* and was drawn in the “*Map of Residentie Riouw en onderhoordigheden Year 1922, overzichskaarts van Sumatera blad 17 and the Map of Singkep, first edition Year 1743*”.

(5) Geographical Facts of Berhala Island and Berhala Strait

5.1 A number of official maps clearly indicate the position of Berhala Strait and also the geographical location of Berhala Island as an Administrative Territory of Riau Islands Regency of Riau Province and Lingga Regency of Riau Islands Province, namely among other things:

1. **Map of Archipelagic Sea Lanes** of the Dutch *Hydrography* and the *Admiralty* Map of Lingga Year 1925 issued by Navy of the Indonesian National Armed Forces, Hydro-Oceanography Service Office year 2004 (**Exhibit P-69**).
2. **Indonesian Topographic Map**, Dabo Edition of 1986, made by the Coordinating Board for

National Survey and Mapping (*Bakorsurtanal*)
Year 1986/1987 issued by *Bakorsurtanal*
(**Exhibit P-70**).

3. **Map of Riau Province**, published by *Peta Produsen Alat Peraga Pendidikan* (Map of Producers, Education Visual Aid) Edition Year 2001 (**Exhibit P-71**).

4. **Map of Government Administrative Territory Borders of Sub-Districts/Villages of Singkep District** of Riau Islands Regency of Riau Province, executor of Indonesian Geodetic Survey (**Exhibit P-72**).

5.2 The Official Map of the *Dinas Hidros* of the Navy of the Indonesian National Armed Forces also clearly indicates the location of Berhala Strait, namely between Berhala Island and Tanjung Jabung, among other things:

1. **Map Number 41 Year 1964** (*Riouw En Lingga Archipel*, Scale 1:200,000, Dutch Map Year 1951) (**Exhibit P-75**).

2. **Map Number 41 Year 1982** (Riau Islands and

Lingga Sheet II, Scale 1:200,000) (**Exhibit P-76**).

3. **Map Number 41 Year 1991** (Sumatera – Eastern Coast and Lingga Islands Sheet II, Scale 1:200,000) (**Exhibit P-77**).
4. **Map Number 41 Year 2002** (Sumatera – Eastern Coast of Riau Islands and Lingga Islands Sheet II, Scale 1:200,000) (**Exhibit P-78**).
5. **Map Number 41 Year 2005** (Sumatera – Eastern Coast of Riau Islands and Lingga Islands Sheet II, Scale 1:200,000) (**Exhibit P-79**).
6. **Map Number 41 Year 2006** (Sumatera – Eastern Coast of Riau Islands and Lingga Islands Sheet II, Scale 1:200,000) (**Exhibit P-80**).
7. **Map Number 41 Year 2010** (Sumatera – Eastern Coast of Riau Islands and Lingga Islands Sheet II, Scale 1:200,000) (**Exhibit P-81**).

8. **Map Number 41 Year 2012** (Sumatera – Eastern Coast of Riau Islands and Lingga Islands Sheet II, Scale 1:200,000) (**Exhibit P-82**).

5.3 Forest Area Maps clearly indicate that Berhala Island is included in the forest area of Riau Islands Regency of Riau Province, now Lingga Regency of Riau Islands Province, among other things:

1. Forest Area Map of Jambi Province, Scale 1:250,000) (**Exhibit P-83**).
2. Forest Area Map of Riau Province, Scale 1:500,000) (**Exhibit P-84**).

5.4 Whereas the Coordinating Board for National Survey and Mapping (*Bakorsurtanal*) through Letter Number B-2398.3/BAKO/SESMA/PD/12/2011 dated December 07, 2011 to the Regional Secretary of Riau Islands Province explains:

“Geographically, Berhala Island is located at Latitude 0°51’34” South and Longitude 104°24’18” East in the middle of the sea between Jambi Province and Riau Islands Province. Berhala

Strait constitutes one of the National Maritime Routes located between Berhala Island and Sumatera Island". (Exhibit P-84)

(6) Other Supporting Facts:

A number of supporting facts can also be described, as follows:

6.1 Lighthouse Tower

The lighthouse tower located in Berhala Island is under the technical supervision of the officers of the Directorate of Sea Transportation of the Class I Navigation District of Tanjungpinang (Exhibit P-73 and Exhibit P-99).

6.2 Integrated Security Program

For the interest of legal protection and security of community members, the security agency of Lingga Regency, in 2005, implemented the integrated security program in Berhala Island (Exhibit P-51).

V. Conclusion:

Based on the arguments on juridical as well as administrative bases as clearly described by the Petitioners in the petition for judicial review of the

Elucidation of Article 3 of Law Number 25 Year 2002 as well as supported by evidence and legal facts in the form of government administration, implementation of infrastructure development, public facilities, education services, health, historical facts and other supporting facts, it can be concluded as follows:

1. Whereas the Petitioners as the elements of Regional Government administrators of Lingga Regency and/or as public legal entities have legal standing in defending the legality of existence of Law Number 31 Year 2003 concerning the Establishment of Lingga Regency of Riau Islands Province, particularly Article 5 paragraph (1) sub-paragraph c
2. Whereas the Elucidation of Article 3 of Law Number 25 Year 2002 is very inconsistent with the 1945 Constitution of the State of the Republic of Indonesia, particularly Article 18 paragraph (1), paragraph (2), paragraph (3), paragraph (4) and paragraph (6) and Article 28D paragraph (1), so as to create legal uncertainty.
3. Whereas as a result of the Elucidation of Article 3 of Law Number 25 Year 2002, the constitutional rights and/or authority of the Petitioners as the elements of Regional Government administrators of Lingga Regency and/or as public legal entities as regulated and/or protected by the 1945 Constitution of the State of the

Republic of Indonesia have been impaired, specifically, actually and potentially.

VI. *Petitum*

Based on the arguments as well as juridical reasons and also supported by instruments of evidence as well as supporting facts that the Petitioners have presented and described in the petition for judicial review *a quo*, the Petitioners request for the Honorable Chairperson/Panel of Constitutional Court Justices to pass the following decisions:

1. Granting the Petitioners' petition in its entirety.
2. Declaring the Elucidation of Article 3 of Law Number 25 Year 2002 concerning the Establishment of Riau Islands Province inconsistent with the 1945 Constitution of the State of the Republic of Indonesia.
3. Declaring that the Elucidation of Article 3 of Law Number 25 Year 2002 concerning the Establishment of Riau Islands Province shall not have any binding legal force.

[2.2] Whereas to substantiate their arguments, the Petitioners have submitted written instruments of evidence marked as Exhibits P-1.a through P-105, as follows:

1. Exhibit P – 1.a Photocopy of Law Number 25 Year 2002 concerning the Establishment of

Sarolangun Regency, Tebo Regency, Muaro Jambi Regency and Tanjung Jabung Timur Regency of Jambi Province;

7. Exhibit P – 7 : Photocopy of Regulation of the Minister of Home Affairs Number 1 Year 2006 concerning the Guidelines for the Confirmation of Regional Borders;
8. Exhibit P – 8 : Photocopy of Regulation of the Minister of Home Affairs Number 44 Year 2011 concerning Administrative Territory of Berhala Island;
9. Exhibit P – 9 : Photocopy of Position Statement of the Community of Berhala Island;
- Exhibit P – 9.a : Photocopy of List of Names of Community Members of Berhala Island in the Position Statement rejecting to join Tanjung Jabung Timur Regency in Jambi Province;

10. Exhibit P – 10 : Photocopy of Decision of the Supreme Court, Case Registration Number 49 P/HUM/2011;
11. Exhibit P – 11 : Photocopy of Petition for Judicial Review of Article 5 paragraph (1) subparagraph c of Law Number 31 Year 2003 under the 1945 Constitution (Registration Number 32/PUU-X/2011);
12. Exhibit P – 12 : Photocopy of Decree of the Minister of Home Affairs Number 131.21-411 Year 2010 concerning the Approval of the Dismissal and Appointment of the Regent of Lingga of Riau Islands Province, dated August 2, 2010;
13. Exhibit P – 13 : Photocopy of Decision of Lingga Regent Number KPTS.195/BKD.KP/III/2011 dated March 9, 2011 concerning the Appointment of Singkep District Head;
14. Exhibit P – 14 : Photocopy of Decision of Lingga Regent Number 134/KPTS/IV/2009 concerning

the Appointment of Berhala Village Head;

15. Exhibit P – 15 : Photocopy of Regional Regulation of Lingga Regency Number 2 Year 2006 concerning the Establishment of Berhala Village, Singkep District, Lingga Regency;
16. Exhibit P – 16 : Photocopy of Law Number 12 Year 2011 concerning the Formulation of Laws and Regulations along with Attachment II;
17. Exhibit P – 17 : Photocopy of Decision of Lingga Regent Number 58/KPTS/IV/2007 concerning the Nominative List of Neighborhood Block (RW) Heads and Neighborhood Unit (RT) Heads throughout Lingga Regency Entitled to Receive the Aid Funds from the Regional Government of Lingga Regency, Budget Year 2007;
18. Exhibit P – 18 : Photocopy of List of Permanent Voters in the General Elections of President

and Vice President, Regent and Vice Regent of Lingga, and Members of Regional People's Legislative Assembly (DPRD) of Lingga Year 2009;

19. Exhibit P – 19 : Photocopy of List of Permanent Voters in the Election of Regent and Vice Regent of Lingga Regency;
20. Exhibit P – 20 : Photocopy of List of Permanent Voters in the General Elections of Members of the People's Legislative Assembly (DPR), the People's Representative Council (DPD), the Regional People's Legislative Assembly (DPRD) of Province and DPRD of Lingga Regency Year 2009;
21. Exhibit P – 21 : Photocopy of Data of Population of Berhala Village collected by the Government of Lingga Regency, Singkep District;

22. Exhibit P – 22 : Photocopy of Population Data in the form of Family Card and Identity Card of Berhala Island in the name of Syamsur;
23. Exhibit P – 23 : Photocopy of Population Data in the form of Family Card and Identity Card of Berhala Island in the name of Indra;
24. Exhibit P – 24 : Photocopy of Population Data in the form of Family Card and Identity Card of Berhala Island in the name of Nasron;
25. Exhibit P – 25 : Photocopy of Population Data in the form of Family Card and Identity Card of Berhala Island in the name of Asmah;
26. Exhibit P – 26 : Photocopy of Population Data in the form of Family Card and Identity Card of Berhala Island in the name of Samsudin;
27. Exhibit P – 27 : Photocopy of Population Data in the form of Family Card and Identity Card of Berhala Island in the name of Zahari;

28. Exhibit P – 28 : Photocopy of Population Data in the form of Family Card and Identity Card of Berhala Island in the name of Tahir;
29. Exhibit P – 29 : Photocopy of Population Data in the form of Family Card and Identity Card of Berhala Island in the name of Mohd. Yusuf;
30. Exhibit P – 30 : Photocopy of Population Data in the form of Family Card and Identity Card of Berhala Island in the name of Megawati;
31. Exhibit P – 31 : Photocopy of Population Data in the form of Family Card and Identity Card of Berhala Island in the name of M. Saripudin;
32. Exhibit P – 32 : Photocopy of Population Data in the form of Family Card and Identity Card of Berhala Island in the name of Amjah;
33. Exhibit P – 33 : Photocopy of Population Data in the form of Family Card and Identity Card of Berhala Island in the name of Nurdin;

34. Exhibit P – 34 : Photocopy of Population Data in the form of Family Card and Identity Card of Berhala Island in the name of Tarmizi;
35. Exhibit P – 35 : Photocopy of Population Data in the form of Family Card and Identity Card of Berhala Island in the name of Jupri;
36. Exhibit P – 36 : Photocopy of Population Data in the form of Family Card and Identity Card of Berhala Island in the name of Ismail;
37. Exhibit P – 37 : Photocopy of Population Data in the form of Family Card and Identity Card of Berhala Island in the name of Kantan;
38. Exhibit P – 38 : Photocopy of Population Data in the form of Family Card and Identity Card of Berhala Island in the name of M. Azwandi;
39. Exhibit P – 39 : Photocopy of Population Data in the form of Family Card in the name of Ma'din and Identity Card of Berhala Island in the name of Mariah;

40. Exhibit P – 40 : Photocopy of Population Data in the form of Family Card and Identity Card of Berhala Island in the name of Zainal;
41. Exhibit P – 41 : Photocopy of Population Data in the form of Family Card and Identity Card of Berhala Island in the name of Juniarti;
42. Exhibit P – 42 : Photocopy of Population Data in the form of Family Card and Identity Card of Berhala Island in the name of Anwar Saputra;
43. Exhibit P – 43 : Photocopy of Population Data in the form of Family Card and Identity Card of Berhala Island in the name of Abdullah;
44. Exhibit P – 44 : Photocopy of Population Data in the form of Family Card in the name of Basrah and Identity Card of Berhala Island in the name of Tijah;
45. Exhibit P – 45 : Photocopy of Population Data in the form of Family Card and Identity Card of Berhala Island in the name of Rubiyah;

46. Exhibit P – 46 : Photocopy of Population Data in the form of Family Card and Identity Card of Berhala Island in the name of Fauzi;
47. Exhibit P – 47 : Photocopy of Population Data in the form of Family Card and Identity Card of Berhala Island in the name of M. Tani;
48. Exhibit P – 48 : Photocopy of Population Data in the form of Family Card and Identity Card of Berhala Island in the name of Zulhailan;
49. Exhibit P – 49 : Photocopy of Population Data in the form of Family Card and Identity Card of Berhala Island in the name of Bahasir;
50. Exhibit P – 50 : Photocopy of Population Data in the form of Family Card and Identity Card of Berhala Island in the name of Encik Maimunah;
51. Exhibit P – 51 : Photocopy of Letter of Instruction Number Sprint/44/V/2005 dated May 06, 2005 concerning the Implementation of Integrated Security in Berhala Island, and Letter of Submission of the Names

of Integrated Security Personnel;

52. Exhibit P – 52 : Disbursement of APBD Funds of Lingga Year 2006, Year 2007, Year 2009, and Year 2011 for the following activities:
1. Development of security Post
 2. Development of Simple Houses (30 units)
 3. Development of Village Office
 4. Minor Rehabilitation of Auxiliary Community Health Center
 5. Major Rehabilitation of rooms of Elementary School (SD) 024 of Singkep (Berhala)
53. Exhibit P – 53 : Data of Health Facilities and Health Services in Berhala Island;
54. Exhibit P – 54 : Photocopy of special income increase payment for Nurse at the Auxiliary Community Health Center of Berhala Island;

55. Exhibit P – 55 : Photocopy of Letter of Assignment of Nurse at the Auxiliary Community Health Center of Berhala Island in the name of Raja Nurhayati;
56. Exhibit P – 56 : Photocopy of Land Title Certificate of the people in Berhala Island Number 343 in the name of Hasyim Mahidan, issued by the Land Office of Riau Islands Regency, Riau Province (now Lingga Regency of Riau Islands Province);
57. Exhibit P – 57 : Photocopy of Land Title Certificate of the people in Berhala Island Number 344 in the name of ON, issued by the Land Office of Riau Islands Regency, Riau Province (now Lingga Regency of Riau Islands Province);
58. Exhibit P – 58 : Photocopy of Land Title Certificate of the people in Berhala Island Number 345 in the name of Zainal Arifin, issued by the Land Office of Riau Islands Regency, Riau Province (now Lingga

Regency of Riau Islands Province);

59. Exhibit P – 59 : Photocopy of Land Title Certificate of the people in Berhala Island Number 346 in the name of ON, issued by the Land Office of Riau Islands Regency, Riau Province (now Lingga Regency of Riau Islands Province);
60. Exhibit P – 60 : Photocopy of Land Title Certificate of the people in Berhala Island Number 347 in the name of Hasan Djemahat, issued by the Land Office of Riau Islands Regency, Riau Province (now Lingga Regency of Riau Islands Province);
61. Exhibit P – 61 : Photocopy of Land Title Certificate of the people in Berhala Island Number 348 in the name of ON, issued by the Land Office of Riau Islands Regency, Riau Province (now Lingga Regency of Riau Islands Province);
62. Exhibit P – 62 : Photocopy of Land Title Certificate of

the people in Berhala Island Number 349 in the name of Hasan Djemahat, issued by the Land Office of Riau Islands Regency, Riau Province (now Lingga Regency of Riau Islands Province);

63. Exhibit P – 63 : Photocopy of Recommendation of the Head of Transportation Service Office of Lingga Regency and Building Permit (IMB) from Singkep District Head to PT. Indosat to erect a Tower in Berhala Island;
64. Exhibit P – 64 : Photocopy of marriage and reconciliation events record of the Religious Affairs Office of Singkep District;
65. Exhibit P – 65 : *Contrac met den sultan van Lingga Riouw en onderhoorigheden 1857;*
66. Exhibit P – 66 : Photocopy of Grant Number 308 for the land in Berhala Island issued by *De Controleur van Lingga* during the

Administration of *Sri Padoeka Toean Besar Resident Riouw* Year 1914;

67. Exhibit P – 67 : Photocopy of Grant Number 310 for the land in Berhala Island issued by *De Controleur van Lingga* during the Administration of *Sri Padoeka Toean Besar Resident Riouw* Year 1914;
68. Exhibit P – 68 : Photocopy of Grant Number 376 for the land in Berhala Island issued by *De Controleur van Lingga* during the Administration of *Sri Padoeka Toean Besar Resident Riouw* Year 1914;
69. Exhibit P – 69 : Map of Archipelagic Sea Lanes of the Dutch *Hydrography* and the *Admiralty* Map of Lingga Year 1925 issued by Navy of the Indonesian National Armed Forces, Hydro-Oceanography Service Office year 2004;
70. Exhibit P – 70 : Indonesian Topographic Map, Edition of 1986 from the Coordinating Board for National Survey and Mapping

(*Bakorsurtanal*), issued by
Bakorsurtanal;

71. Exhibit P – 71 : Map of Level I Region of Riau, published by *Peta Produsen Alat Peraga Pendidikan* (Map of Producers, Education Visual Aid) Edition Year 2001;
72. Exhibit P – 72 : Map of Government Administrative of Sub-Districts/Villages of Singkep District of Riau Islands Province;
73. Exhibit P – 73 : Photocopy of Letter of the Sea Transportation Directorate, Class I Navigation District of Tanjungpinang concerning Technical data and names of Guards at the Lighthouse Tower in Berhala Island;
74. Exhibit P – 74 : Photocopy of letter of *Bakorsurtanal* Number B 2398.3/BAKO/SESMA/PD/12/2011 dated December 07, 2011;
75. Exhibit P – 75 : Map Number 41 Year 1964 (*Riouw En Lingga Archipel*, Scale 1:200,000, Dutch

Map Year 195);

76. Exhibit P – 76 : Map Number 41 Year 1982 (Riau Islands and Lingga Sheet II, Scale 1:200,000);
77. Exhibit P – 77 : Map Number 41 Year 1991 (Sumatera – Eastern Coast and Lingga Islands Sheet II, Scale 1:200,000);
78. Exhibit P – 78 : Map Number 41 Year 2002 (Sumatera – Eastern Coast of Riau Islands and Lingga Islands Sheet II, Scale 1:200,000);
79. Exhibit P – 79 : Map Number 41 Year 2005 (Sumatera – Eastern Coast of Riau Islands and Lingga Islands Sheet II, Scale 1:200,000);
80. Exhibit P – 80 : Map Number 41 Year 2006 (Sumatera – Eastern Coast of Riau Islands and Lingga Islands Sheet II, Scale 1:200,000);
81. Exhibit P – 81 : Map Number 41 Year 2010 (Sumatera –

Eastern Coast of Riau Islands and Lingga Islands Sheet II, Scale 1:200,000);

82. Exhibit P – 82 : Map Number 41 Year 2012 (Sumatera – Eastern Coast of Riau Islands and Lingga Islands Sheet II, Scale 1:200,000);
83. Exhibit P – 83 : Forest Area Map of Jambi Province, scale 1:250,000);
84. Exhibit P – 84 : Forest Area Map of Riau Province, scale 1:1,500,000);
85. Exhibit P – 85 : Photocopy of Photos of Development of sports facility in the form of Volley Ball Court for the community of Berhala Village, Singkep District, Lingga Regency by the Regional Government of Lingga Regency using the APBD Fund of Lingga Regency;
86. Exhibit P – 86 : Photocopy of Photos of Development of Welcome Gate by the Regional Government of Lingga Regency of Riau

Islands Province;

87. Exhibit P – 87 : Photocopy of Photos of Development of Monitoring Post Facility of the Navy of the National Armed Forces (TNI AL);
88. Exhibit P – 88 : Photocopy of Photos of Development of Religious Worship Facility;
89. Exhibit P – 89 : Photocopy of Photos of Construction of Cemented Road;
90. Exhibit P – 90 : Photocopy of Photos of Tourism Supporting Facilities;
91. Exhibit P – 91 : Photocopy of Photos of the Berhala Village Development Acceleration Program;
92. Exhibit P – 92 : Photocopy of Photos of Development of Monument/Inscription;
93. Exhibit P – 93 : Photocopy of Photos of Education Facility Development;
94. Exhibit P – 94 : Photocopy of Photos of Development of Elementary School Building;

95. Exhibit P – 95 : Photocopy of Photos of Development of Junior High School (SLTP) Building;
96. Exhibit P – 96 : Photocopy of Photos of Development of Health Facility in the form of Toilet Facility;
97. Exhibit P – 97 : Photocopy of Photos of Development of Lighthouse Tower Installation;
98. Exhibit P – 98 : Photocopy of Photos of Development of Community Housing Facilities;
99. Exhibit P – 99 : Photocopy of Photos of Installation of Land Border Signs;
100. Exhibit P – 100 : Photocopy of Photos of Indosat Tower Development;
101. Exhibit P – 101 : Photocopy of Photos of Renovation of Village Head Office Building;
102. Exhibit P – 102 : Photocopy of Photos of Development of Village Head Office before and after renovation;
103. Exhibit P – 103 : Photocopy of Photos of Development of

Village Deliberations Board Building;

104. Exhibit P – 104 : Photocopy of Photos of Development of Auxiliary Community Health Center Building;

105. Exhibit P – 105 : Photocopy of Photos of Clean Water Facility Development;

[2.3] Whereas to shorten the description in this decision, all which have occurred in the hearings are sufficiently indicated in the minutes of hearing, which shall constitute an integral and inseparable part of this decision.

3. LEGAL CONSIDERATIONS

[3.1] Whereas the purpose and objective of the Petitioner's petition is to review the constitutionality of Article 3 of Law Number 25 Year 2002 concerning the Establishment of Riau Islands Province (State Gazette of the Republic of Indonesia Year 2002 Number 111, Supplement to the State Gazette of the Republic of Indonesia Number 4237, hereinafter referred to as Law No. 25/2002) under Article 18 paragraph (1), paragraph (2), paragraph (3), paragraph (4) and paragraph (6), as well as Article 28D paragraph (1) of the 1945 Constitution of the State of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution);

[3.2] Whereas before considering the substance of the petition, the

Constitutional Court (hereinafter referred to as the Court) will first consider the following matters:

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

With respect to the aforementioned both matters, the Court is of the opinion as follows:

Authority of the Court

[3.3] Whereas under the provisions of 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 the Amendment to Law Number 24 Year 2003 concerning the Constitutional Court (State Gazette of the Republic of Indonesia Year 2011 Number 70, Supplement to State Gazette of the Republic of Indonesia Number 5226, hereinafter referred to as the Constitutional Court Law), 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 State Gazette of the Republic of Indonesia Number 5076), one of the constitutional authorities of the Court is to hear cases at the first and final level, whose decision shall be final, to conduct judicial review of Laws under the Constitution;

[3.4] Whereas the Petitioner's petition for judicial review is to review the constitutionality of Law, *in casu* Elucidation of Article 3 of Law No. 25/2002 under Article 18 paragraph (1), paragraph (2), paragraph (3), paragraph (4) and paragraph (6) and Article 28D paragraph (1) of the 1945 Constitution, the Court has authority to hear the petition *a quo*;

Legal Standing of the Petitioners

[3.5] Whereas under Article 51 paragraph (1) of the Constitutional Court Law, parties which may file a petition for judicial review of a Law under the 1945 Constitution shall be those who consider that their constitutional rights and/or authorities 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 units 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 as regulated in law;
- c. public or private legal entities; or
- d. state agencies;

Therefore, the Petitioners in the judicial review of a Law under the 1945 Constitution must first explain and substantiate:

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

[3.6] Whereas also, following its Decision Number 006/PUU-III/2005, dated May 31, 2005 and 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 authorities as intended in Article 51 paragraph (1) of the Constitutional Court Law shall meet 5 requirements, namely:

- 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 are impaired by the coming into effect of the Law being petitioned for judicial review;
- c. the constitutional impairment must 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 likely that the constitutional impairment argued will not or will no longer occur;

[3.7] Whereas Petitioner I is the Regent of Lingga Regency of Riau Islands Province, which pursuant to Article 25 sub-article f of Law Number 32 Year 2004 concerning Regional Government as amended by Law Number 12 Year 2008 concerning the Second Amendment to Law Number 32 Year 2004 concerning Regional Government (State Gazette of the Republic of Indonesia Year 2008 Number 59, Supplement to State Gazette of the Republic of Indonesia Number 4844, subsequently referred to as the Regional Government Law) shall be entitled to represent the interests of his region before the Court. Petitioner II is the Head of Singkep District of Lingga Regency and Petitioner II is the Head of Berhala Village who believe that their constitutional rights and authority have been impaired by the coming into effect of the Elucidation of Article 3 of Law No. 25/2002 stating that, "*In this Law, Riau Islands Province shall not include Berhala Island, because Berhala Island is included in the administrative territory of Jambi Province pursuant to Law Number 54 Year 1999 concerning the Establishment of Sarolangun Regency, Tebo Regency, Muaro Jambi Regency and Tanjung Jabung Timur Regency of Jambi Province*". The Petitioners believe that they have been disturbed in exercising their authority due to the provision *a quo*,

among other things in: 1) implementation of Government administration in Berhala Island; 2) implementation of public infrastructure and facility development in Berhala Island financed by the Government of Lingga Regency, either from the APBD of Riau Islands Province or from the APBD of Lingga Regency; 3) implementation of supervision of the implementation of Regional Regulations and other Laws and Regulations related to development programs, particularly in Berhala Village; 4) implementation of regional autonomy in Lingga Regency, particularly the obligation in the implementation of Government in Berhala Village, et cetera;

[3.8] Whereas based on the foregoing arguments of the Petitioners, according to the Court, the Petitioners as the elements of regional government administrators of Lingga Regency and as public officials managing government administration in their administrative regions and also having a direct interest in the certainty of the borders of their region meet the qualifications as public legal entities having constitutional rights which may be impaired by the coming into effect of the Elucidation of Article 3 of Law No. 25/2002. Therefore, the Petitioners have legal standing to file the petition *a quo*;

[3.9] Whereas since the Court has authority to hear the petition *a quo* and the Petitioner have legal standing to file the petition *a quo*, the Court shall subsequently consider the substance of the petition;

Substance of the Petition

[3.10] Whereas the substance of the Petitioners' petition is the constitutionality review of the Elucidation of Article 3 of Law No. 25/2002 stating that *"In this Law, Riau Islands Province shall not include Berhala Island, because Berhala Island is included in the administrative territory of Jambi Province pursuant to Law Number 54 Year 1999 concerning the Establishment of Sarolangun Regency, Tebo Regency, Muaro Jambi Regency and Tanjung Jabung Timur Regency of Jambi Province"*. According to the Petitioners, the elucidation of Article 3 of Law No. 25/2002 is inconsistent with Article 18 paragraph (1), paragraph (2), paragraph (3), paragraph (4) and paragraph (6), as well as Article 28D paragraph (1) of the 1945 Constitution stating that:

1. Article 18 paragraph (1), paragraph (2), paragraph (3), paragraph (4) and paragraph (6):

(1) *The Unitary State of the Republic of Indonesia shall be divided into provincial regions and these provincial regions shall be divided into regencies and municipalities, whereby each province, regency and municipality shall have a regional government regulated by law.*

(2) *The provincial, regency, and municipal governments shall regulate and administer their own governmental affairs in accordance with the principle of autonomy and duty of assistance.*

(3) *The provincial, regency, and municipal governments shall have their respective Regional People's Legislative Assembly the*

members of which shall be elected through general elections.

(4) *Governors, Regents and Mayors as the respective heads of provincial, regency, and municipal governments shall be elected democratically.*

(6) *The regional governments shall have the right to stipulate regional regulations and other regulations to implement autonomy and duty of assistance.*

2. Article 28D paragraph (1):

(1) *Every person shall have the right to the recognition, the guarantee, the protection and the legal certainty of just laws as well as equal treatment before the law*

The Petitioners principally argue as follows:

- a. Elucidation of Article 3 of Law No. 25/2002 has created a new norm which is inconsistent with the principal substance regulated in Article 3 of Law No. 25/2002 itself which states, "*Riau Islands Province is derived from a part of the territory of Riau Province consisting of: 1. Riau Islands Regency; 2. Karimun Regency; 3. Natuna Regency; 4. Batam City; 5. Tanjungpinang City*". This is inconsistent with Law Number 12 Year 2011 concerning the Formulation of Laws and Regulations;
- b. Elucidation of Article 3 of Law No. 25/2002 does not give any legal

- certainty so that the Petitioners as the elements of Regional Government administrators of Lingga Regency and/or as public legal entities cannot exercise their constitutional authority in implementing their own government affairs, particularly in Berhala Village;
- c. In 2009, Lingga Regency implemented General Elections of the Members of DPRD of Lingga Regency and Regional Heal Elections of Lingga Regency, where the Community of Berhala Island participated in casting their votes in the General Elections. The absence of legal certainty due to the Elucidation of Article 3 of Law No. 25/2002 has the implication of invalidity of the results of vote acquisition in the General Elections in 2009;
- d. Elucidation of Article 3 of Law No. 25/2002 hampers Regional Regulation of Lingga Regency Number 2 Year 2006 concerning the Establishment of Berhala Village of Singkep District, Lingga Regency (see Exhibit P-15) made by the Regional Government of Lingga Regency as the implementation of autonomy and Duty of Assistance.

Opinion of the Court

[3.11] Whereas before considering the substance of the Petitioners' petition, the Court needs to firs consider the following matters:

[3.11.1] Article 54 of the Constitutional Court Law states, "*The Constitutional Court may request for statements and/or minutes of meeting related to the petition being examined to the People's Consultative Assembly, the People's*

Legislative Assembly, the Regional Representative Council, and/or the President". Since the aforementioned article uses the word "may" then the Court does not have to hear the statements of the People's Consultative Assembly, the People's Legislative Assembly, the Regional Representative Council, and/or the President in conducting review of a Law. In other words, the Court may request or may not request for statements and or minutes of meeting related to the petition being examined to People's Consultative Assembly, the People's Legislative Assembly, the Regional Representative Council, and/or the President, depending on the urgency and relevance. Since the legal issue in the petition *a quo* has been clear as there are similar petitions, the Court views that the urgency and relevance to request for statements and/or minutes of meeting from the People's Legislative Assembly and/or the President are no longer necessary for the petition *a quo*, while the statements of the People's Consultative Assembly and the Regional Representative Council in the case *a quo*, according to the Court, is not necessary;

[3.11.2] Whereas the petition *a quo* is principally similar to Petitions Number 32/PUU-X/2012, Number 47/PUU-X/2012 and Number 48/PUU-X/2012 which question the territorial borders of Tanjung Jabung Timur Regency of Jambi Province, particularly regarding the position of Berhala Island, whether it is included in the territory of Jambi Province or the territory of Riau Islands Province. Therefore, the statement of DPR, statement of the Government, and the statements of experts of the parties which have been heard and the evidence which has been submitted in the Petitions Number 32/PUU-X/2012, Number

47/PUU-X/2012 and Number 48/PUU-X/2012 shall also be used in considering the petition *a quo*.

[3.12] Whereas in its statement for the petition Number 48/PUU-X/2012, the Government has principally conveyed as follows:

- For the purpose of settlement of territorial inclusion of Berhala Island the possession of which is disputed by the government of Jambi Province and the government of Riau Islands Province, the Ministry of Home Affairs has settled the problem by issuing Regulation of the Minister of Home Affairs Number 44 Year 2011 concerning the Administrative Territory of Berhala Island, deciding that Berhala Island is included in the territory of Jambi Province, but that it was nullified by the Supreme Court;
- Within the frame of the Unitary State of the Republic of Indonesia, no man's territory is not allowed. The administrative and legal position of a territory must be clear so that the authority for government administration over it will be clear. Therefore, in the frame of effective government administration, the Government does not question whether Berhala Island will be managed by the Regional Government of Lingga Regency or Tanjung Jabung Timur Regency, since the important thing is that it is still within the frame of the Unitary State of the Republic of Indonesia and that government service can run effectively so that the protection of citizens will run properly. The government hopes that the settlement of the problem of Berhala Island at the Constitutional Court will become the final

decision which is accepted and complied with by all regional stakeholders;

With respect to the same petition, DPR has principally explained as follows:

- Elucidation of Article 3 of Law No. 25/2002 gives confirmation and legal certainty that Berhala Island is included in the administrative territory of Jambi Province pursuant to Law Number 54 Year 1999 concerning the Establishment of Sarolangun Regency, Tebo Regency, Muaro Jambi Regency and Tanjung Jabung Timur Regency;

[3.13] Whereas after considering the matters described above, the Court is of the opinion determination of the position of Berhala Island is closely related to several laws regulating the territorial borders of each:

- a. Article 3 of Law No. 25/2002 states, "*Riau Islands Province is derived from a part of the territory of Riau Province consisting of: 1. Riau Islands Regency; 2. Karimun Regency; 3. Natuna Regency; 4. Batam City; 5. Tanjungpinang City*", and its Elucidation states, "*In this Law, Riau Islands Province shall not include Berhala Island, because Berhala Island is included in the administrative territory of Jambi Province pursuant to Law Number 54 Year 1999 concerning the Establishment of Sarolangun Regency, Tebo Regency, Muaro Jambi Regency and Tanjung Jabung Timur Regency of Jambi Province*".
- b. Article 5 paragraph (1) sub-paragraph c of Law Number 31 Year 2003 concerning the Establishment of Lingga Regency in Riau Islands Province

states, “*Lingga Regency shall have the following territorial borders..., c. to the south bordering Bangka Sea and Berhala Strait; and...*” as well as

- c. Article 9 paragraph (4) sub-paragraph a of Law Number 54 Year 1999 concerning the Establishment of Sarolangun Regency, Tebo Regency, Muaro Jambi Regency and Tanjung Jabung Timur Regency states, “*Tanjung Jabung Timur Regency shall have the following borders: a. South China Sea to the North*”

[3.14] Whereas to determine the position of Berhala Island, the Government, in this case the Ministry of Home Affairs has issued Regulation of the Minister of Home Affairs Number 44 Year 2011 concerning the Administrative Territory of Berhala Island dated September 29, 2011, whose Article 3 states, “*Berhala Island shall be included in the administrative territory of Tanjung Jabung Timur Regency of Jambi Province*”. With respect to the aforementioned Regulation of the Minister of Home Affairs, Drs. H. Muhammad Sani, as Governor of Riau Islands Province, cs., filed a petition for review of the Regulation of the Minister of Home Affairs *a quo* to the Supreme Court which, in the injunctions of its Decision Number 49 P/HUM/2011 dated February 9, 2012 nullified the Regulation of the Minister of Home Affairs concerning the Administrative Territory of Berhala Island dated September 29, 2011, so that Berhala Island is included in the administrative territory of Lingga Regency, Riau Islands Province;

[3.15] Whereas in its Decision Number 32/PUU-X/2012 dated February 21, 2013 in paragraphs **[3.13.1]** through **[3.13.2]** the Court has considered the

following matters:

*“[3.13.1] Whereas as a unitary state, the whole territory of Indonesia is the territory of the Unitary State of the Republic of Indonesia. Article 18 paragraph (1) of the 1945 Constitution states, “The Unitary State of the Republic of Indonesia shall be divided into provincial regions and these provincial regions shall be divided into regencies and municipalities, whereby each province, regency and municipality shall have a regional government regulated by law.” Whereas the intention of the word “**divided**” in the aforementioned Article is to emphasize that the territory of the Unitary State of the Republic of Indonesia exists first. Whereas such division indicates that the territory of province/regency/municipality is no other than the territory of the Unitary State of the Republic of Indonesia the authority of which, for certain matters, is delegated to the province/regency/municipality for regulation. Whereas the 1945 Constitution has intentionally taken the word “**divided**” in order to avoid the words “**consisting of**” or “**constituted of**”. The aim is to avoid legal construction that the territory of province/regency/municipality exists first before the existence of the territory of the Unitary State of the Republic of Indonesia. Therefore, the territory of province/regency/municipality is merely the administrative territory of the territory of the Unitary State of the Republic of Indonesia, which is different from a federal state;*

The implementation of Article 18 paragraph (1) of the 1945 Constitution becomes the sole authority of the legislators to divide the territory including stipulating the territorial borders. The territory of province/regency/municipality is relative in nature. This means that it does not become the absolute territory of a province/regency/municipality whose borders cannot be changed. This is reflected in Law Number 32 year 2004 concerning Regional Government as amended by Law Number 12 Year 2008 concerning the Second Amendment to Law Number 32 Year 2004 concerning Regional Government (State Gazette of the Republic of Indonesia Year 2008 Number 59, Supplement to the State Gazette of the Republic of Indonesia Number 4844, hereinafter referred to as the Regional Government Law) namely that for certain reasons, the territory of province/regency/municipality may change with the merger or split as regulated in Article 4 paragraph (3) of the Regional Government Law stating that, "Establishment of a region may be in the form of merger of several regions or parts of adjacent regions or the split of a region into two or more regions";

[3.13.2] *Whereas in the case a quo, a legal remedy was once sought by Drs. H. Muhammad Sani, as Governor of Riau Islands Province, cs., ending with Decision of the Supreme Court Number 49 P/HUM/2011 dated February 9, 2012 with the decisions stating,*

among other things, as follows:

1. *Granting the aforementioned petition of objection with respect to the Right to Judicial Review of the Petitioners: the aforementioned 1. DRS. H. MUHAMMAD SANI, 2. IR. H. MUHAMMAD NUR SYAFRIADI, M.Si., 3. DRS. H. DARIA, 4. KAMARUDDIN ALLI, S.H., 5. KISANJAYA, S.Pd., AND 6. SAREF partly;*
2. *Declaring Regulation of the Minister of Home Affairs Number 44 Year 2011 dated September 29, 2011 concerning Administrative Territory of Berhala Island inconsistent with*
 - a. *Article 5 paragraph (1) sub-paragraph c, paragraph (2) and paragraph (3) of Law Number 31 Year 2003 concerning the Establishment of Lingga Regency;*
 - b. *Article 5 and Article 6 of Law Number 12 Year 2011 concerning the Formulation of Laws and Regulations;*
 - c. *Article 9 paragraph (6) of Law Number 54 Year 1999 concerning the Establishment of Sarolangun Regency, Tebo Regency, Muaro Jambi Regency and Tanjung Jabung Timur Regency;*
 - d. *Article 5 paragraph (3) of Law Number 25 Year 2002*

concerning the Establishment of Riau Islands Province;

3. *Declaring Regulation of the Minister of Home Affairs Number 44 Year 2011 dated September 29, 2011 concerning Administrative Territory of Berhala Island null and void (nietig van rechtswege);*
4. *Declaring that Regulation of the Minister of Home Affairs Number 44 Year 2011 dated September 29, 2011 concerning Administrative Territory of Berhala Island does not have any binding legal effect;*
5. *Ordering the Minister of Home Affairs to revoke and declare Regulation of the Minister of Home Affairs Number 44 Year 2011 dated September 29, 2011 concerning Administrative Territory of Berhala Island...”;*

Since the legal issue has been decided upon by the Supreme Court in Decision Number 49 P/HUM/2011 dated February 9, 2012 concerning the review of Regulation of the Minister of Home Affairs Number 44 Year 2011 dated September 29, 2011 concerning Administrative Territory of Berhala Island as described above as the implementation of Law, then according to the Court, in the frame of rule-of-law state and for maintaining legal

certainty, without the intention to judge the aforementioned decision of the Supreme Court, such decision become synchronous with the Court's opinion above. Decision of the Supreme Court must be respected because it is still within its competence. Therefore, the Court, on the basis of respecting the legal product which has been right, determines that the territorial borders which have been cancelled by the Supreme Court in Decision Number 49 P/HUM/2011 dated February 9, 2012 is the valid legal product and therefore, it must be respected. In addition, according to the Court, the division of territory by the legislators is not inconsistent with Article 18 paragraph (1) and paragraph (2) or Article 18A of the 1945 Constitution. The expert opinion conveyed in the hearing that the settlement of territorial dispute in the case a quo must use the arguments of interstate territorial dispute is incorrect because it is not concerned with an interstate territorial dispute;

[3.16] Whereas since the substance of the petition in the petition Number 32/PUU-X/2012 is principally similar to the substance of the petition *a quo*, although with different Laws, the Court's considerations in Decision Number 32/PUU-X/2012 dated February 21, 2013 as quoted above shall, *mutatis mutandis*, become the Court's considerations in the petition *a quo*. Since there are several other Laws regulating the territorial borders related to the legal status of Berhala Island giving rise to a different understanding, thus leading to legal

uncertainty, then the Court needs to ascertain the legal status of Berhala Island, namely that it is included in the administrative territory of Lingga Regency of Riau Islands Province;

[3.17] Whereas based on the considerations above, according to the Court, the Petitioners' arguments concerning constitutionality review of the Elucidation of Article 3 of Law No. 25/2002 have legal grounds;

4. CONCLUSIONS

Based on the assessment of facts and laws above, the Court has arrived at the following conclusions:

[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 Petitioners' arguments have legal grounds;

Under 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 the Amendment to Law Number 24 Year 2003 concerning the Constitutional Court (State Gazette of the Republic of Indonesia Year 2011 Number 70, Supplement to State Gazette of the Republic of Indonesia Number 5226), Law Number 48 Year 2009 concerning Judicial Power (State Gazette of the Republic of Indonesia Year 2009 Number 157, Supplement to State Gazette of the Republic of Indonesia Number 5076);

5. INJUNCTIONS OF DECISION

Passing the Decision,

To declare:

1. Granting the petition of the Petitioners in its entirety;
 - 1.1 Elucidation of Article 3 of Law Number 25 Year 2002 concerning the Establishment of Riau Islands Province (State Gazette of the Republic of Indonesia Year 2002 Number 111, Supplement to the State Gazette of the Republic of Indonesia Number 4237) inconsistent with the 1945 Constitution of the State of the Republic of Indonesia;
 - 1.2 That Article 3 of Law Number 25 Year 2002 concerning the Establishment of Riau Islands Province (State Gazette of the Republic of Indonesia Year 2002 Number 111, Supplement to the State Gazette of the Republic of Indonesia Number 4237) has no binding legal effect;
2. Ordering the promulgation of this Decision properly in the Official Gazette of the Republic of Indonesia.

In witness whereof, this decision was passed in the Consultative Meeting of Justices attended by nine Constitutional Court Justices, namely Moh.

Mahfud MD, as Chairperson and concurrent Member, Achmad Sodiki, Hamdan Zoelva, Anwar Usman, Ahmad Fadlil Sumadi, M. Akil Mochtar, Harjono, Muhammad Alim, and Maria Farida Indrati, respectively as Members, on **Monday, the fourth of February year two thousand and thirteen**, and was pronounced in the plenary session of the Constitutional Court open to the public on **Thursday, the twenty-first of February year two thousand and thirteen**, the pronouncement being completed at **15.35 West Indonesia Time**, by seven Constitutional Court Justices, namely Achmad Sodiki, as Chairperson and concurrent Member, Hamdan Zoelva, Anwar Usman, Ahmad Fadlil Sumadi, M. Akil Mochtar, Muhammad Alim, and Maria Farida Indrati, respectively as Members, assisted by Saiful Anwar as the Substitute Registrar, in the presence of the Petitioners/their attorneys, the People's Legislative Assembly or its representative and the Government or its representative.

CHAIRPERSON,

Sgd.

Achmad Sodiki

JUSTICES,

Sgd.

Hamdan Zoelva

Sgd.

Anwar Usman

Sgd.

Sgd.

Ahmad Fadlil Sumadi

M. Akil Mochtar

Sgd.

Sgd.

Muhammad Alim

Maria Farida Indrati

SUBSTITUTE REGISTRAR,

Sgd.

Saiful Anwar