



DECISION

Number 64/PUU-X/2012

FOR THE SAKE OF JUSTICE UNDER THE ONE ALMIGHTY GOD

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF INDONESIA

[1.1] Examining, hearing and deciding upon constitutional cases at the first and final levels, has passed a decision in the case of petition for Judicial Review of Law Number 10 Year 1998 concerning Amendment to Law Number 7 Year 1992 concerning Banking against the 1945 Constitution of the State of the Republic of Indonesia, filed by:

[1.2] Name : **Magda Safrina, SE., MBA**
Occupation : Self-Employed
Address : Jalan PPA Number 45A Neighborhood Ward 008/
Neighborhood Block 001 Bambu Apus Sub-District
Cipayung District, East Jakarta

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

[1.3] Having read the petition of the Petitioner;

Having heard the statements of the Petitioner;

Having examined the documentary evidence presented by the Petitioner;

Having heard and read the written statements of the Government;

Having heard and read the written statements of the People's Legislative Assembly;

Having read the written conclusion of the Petitioner and the Government;

2. FACTS OF THE CASE

[2.1] Considering whereas the Petitioner has filed a petition through a petition letter dated June 12, 2012, which was received at the Registrar's Office of the Constitutional Court (hereinafter referred to as the Registrar's Office of the Court) on June 15, 2012, based on Certificate of Receipt of Petition File Number 223/PAN.MK/2012 and recorded in the Registry of Constitutional Cases on June 25, 2012, under Number 64/PUU-X/2012, which has been revised and received at the Registrar's Office of the Court on July 27, 2012, and which states the following matters:

1. AUTHORITY OF THE COURT

1. Whereas Article 24 paragraph (2) of the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution) states, "*Judicial power shall be exercised by a*

Supreme Court and its subordinate judicial bodies namely the courts of general jurisdiction, the courts of religious jurisdiction, the courts of military jurisdiction, the courts of state administration jurisdiction and by a Constitutional Court”;

2. Whereas Article 24C paragraph (1) of the 1945 Constitution, Article 1 paragraph (1) sub-paragraph a of Law Number 24 Year 2003 concerning Constitutional Court (State Gazette of the Republic of Indonesia Year 2003 Number 98, Supplement to the State Gazette of the Republic of Indonesia Number 4316, hereinafter referred to as the Constitutional Court Law Number 24/2003) and Article 29 paragraph (1) sub-paragraph a of Law Number 48 Year 2009 concerning Judicial Power (State Gazette of the Republic of Indonesia Number 5076) state, *“The Constitutional Court shall have the authority to hear cases at the first and final levels the decision of which shall be final to review Laws against the 1945 Constitution of the Republic of Indonesia”;*

2. LEGAL STANDING OF THE PETITIONER

1. Whereas Article 51 paragraph (1) of Law 24/2003 and the Elucidation thereof state, *“The Petitioner shall be the party considering that his/her constitutional rights and/or authority are impaired by the coming into effect of a law, namely a. individual Indonesian citizens; b. customary law community groups insofar as*

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

2. Whereas the Court, in Decision Number 006/PUU-III/2005 and Decision Number 11/PUU-V/2007, has stipulated 5 (five) requirements for such impairment of constitutional rights and/or authority 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 Petitioner granted by the 1945 Constitution;
 - b. such constitutional rights and/or authority are considered as having been impaired by the coming into effect of the Law petitioned for review;
 - c. such constitutional rights and/or authority must be specific (special) 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 such impairment and the Law petitioned for review;

- e. there is a possibility that with the granting of the petition, such constitutional impairment will not or will no longer occur;
3. Whereas the Petitioner is an individual Indonesian citizen based on the attached evidence of Identity Card. Whereas the Petitioner has conducted a legal marriage in accordance with Laws and Regulations applicable in the State of the Republic of Indonesia by complying with the religion adhered to by the Petitioner, namely Islam. The Petitioner's marriage was held on May 16, 1995, with Certificate of Marriage Number 20/9/V/1995 and registered at the Office of Religious Affairs of Syiah Kuala District, Banda Aceh City, Aceh Special Region Province.
4. Whereas in accordance with applicable Laws and Regulations, the Petitioner, through the Petitioner's legal attorney from the Advocate office Marlianita, SH and Partners, filed a petition for divorce and division of community property (marital property) against the Petitioner's husband. The petition for divorce and division of community property was registered at the Sharia Court of Banda Aceh City under Number 21/Pdt-G/2012/MS-BNA dated February 1, 2012. **The aforementioned petition for community property (marital property) division indicates a number of community properties in the form of savings and time deposits held by**

and in the name of the Petitioner's husband in a number of Banks in Banda Aceh City and Bank of Aceh Besar Regency, Aceh Province. The inclusion of the community property in the form of savings and time deposits was based on the original evidence in the form of bankbooks and time deposit certificates held by the Petitioner.

5. Whereas in the reply of the petition which was submitted to the Sharia Court of Banda Aceh City dated March 21, 2012, and which was reconfirmed by the Rebuttal dated April 18, 2012, **the Petitioner's husband through his legal attorney Darwis, SH, domiciled in Banda Aceh, denied and rejected the existence of all of savings and time deposits held by and in the name of the Petitioner's husband in a number of Banks in Banda Aceh City and Bank of Aceh Besar Regency, Aceh Province.**
6. Whereas based on the original evidence of community property in the form of savings and time deposits held by and in the name of the Petitioner's husband in a number of Banks in Banda Aceh City and Bank of Aceh Besar Regency, Aceh Province, with regard to the difference and dispute between the Petitioner and the Petitioner's husband related to the existence of the aforementioned savings and time deposits, **the Sharia Court of Banda Aceh City subsequently requested the relevant Banks to provide**

clarification with regard to the existence of the aforementioned savings and time deposits for the purpose of the protection of community property, the position of which is protected by Laws and Regulations. The aforementioned letters of request to the Banks were sent by the Sharia Court separately to several banks, namely:

- a. Bank Syariah Mandiri Keutapang Sub-Branch Office, Aceh Besar, dated May 21, 2012.
- b. Bank Mandiri Unsyiah Darussalam Branch, Banda Aceh, dated May 21, 2012.
- c. Bank BRI Peunayong Sub-Branch Office, Banda Aceh, June 6, 2012.

7. Whereas in relation to the letters sent by the Sharia Court of Banda Aceh City, the Banks refused to provide information as stated in the written response letters of the Banks as attached in the list of evidence submitted by the Petitioner. The Banks' response letters addressed to the Sharia Court of Banda Aceh City came from:

- a. Bank Syariah Mandiri Keutapang Sub-Branch Office, Aceh Besar
- b. Bank BRI Peunayong Sub-Branch Office, Banda Aceh

8. Whereas in the written response letters sent to the Sharia Court of Banda Aceh City, Bank Syariah Mandiri Keutapang Sub-Branch Office, Aceh Besar, and Bank BRI Peunayong Sub-Branch Office, Banda Aceh stated “... ***cannot comply with the summon because it is related to the confidentiality of customers’ data, pursuant to Article 1 of Law Number 7 Year 1992 concerning Banking and Bank Indonesia Regulation Number 2/19/PBI/2000 and so forth ...***”.
9. Meanwhile, Bank Mandiri Unsyiah Darussalam Branch, Banda Aceh, responded to the summon from the Sharia Court by attending the Petitioner’s divorce court session at the Sharia Court of Banda Aceh City on May 30, 2012. During the court session, Bank Mandiri Unsyiah Branch was represented by the Branch Manager of Bank Mandiri Unsyiah Darussalam Branch, Banda Aceh. In his statement during the court session, the Branch Manager of Bank Mandiri Unsyiah Darussalam Branch, Banda Aceh explained that time deposits held in the name of the Petitioner’s Husband at Bank Mandiri Unsyiah Branch in the amount of Rp. 600,000,000.- (six hundred million rupiah) had been cashed by the Petitioner’s husband several days before the Petitioner’s divorce petition was registered at the Sharia Court of Banda Aceh. Furthermore, when the judge of the Sharia Court and

the Petitioner's legal attorney requested further information concerning the flow of funds from the time deposits after the disbursement, the representative of Bank Mandiri Unsyiah Darussalam Branch, Banda Aceh refused to provide information concerning the flow of funds from the time deposit by stating the reason "**... cannot provide information concerning the customers' fund because it is related to the confidentiality of customers' data, pursuant to Article 1 of Law Number 7 Year 1992 concerning Banking and Bank Indonesia Regulation Number 2/19/PBI/2000 and so forth ...**".

10. Due to the response of the three banks, which refused to provide information requested by the Sharia Court of Banda Aceh City concerning the fund held by the Petitioner's husband in the three banks, until now the Petitioner does not know for sure what is the amount of savings, time deposits and assets in the form of other banking products held by the Petitioner's husband in the three banks. Due to the existence of bank confidentiality principle, the Petitioner, the Petitioner's legal attorney and the Sharia Court cannot determine for sure what is the amount of community property (marital property) acquired during marriage between the Petitioner and the Petitioner's husband.

11. With regard to the banks' refusal to provide information concerning the funds held by the Petitioner's husband in the banks as mandated by Article 40 paragraphs (1) and (2) of Law Number 10 Year 1998 concerning Amendment to Law Number 7 Year 1992 concerning Banking related to the confidentiality of banks' customers, **the Petitioner potentially suffers material loss related to the Petitioner's right to the community property (marital property) held at the banks in the name of the Petitioner's husband in the form of savings, time deposits and other banking products.**

3. SUBSTANCE OF THE PETITION

1. Whereas the matters mentioned in the parts regarding the Constitutional Court's Authority and the Petitioner's Legal Standing as stated above constitute inseparable part of the substance of this petition;
2. Whereas law exists for justice seekers. With such paradigm, if justice seekers face a legal issue, **it is not "the justice seekers who are to be blamed" but law enforcers must do something in relation to the existing law, including reviewing the applicable principles/norms, doctrines, substances and procedures** including, in this case, the norm which regulates the banks' obligation to maintain the confidentiality of information concerning

Depositing Customers and their deposits as set forth in Article 40 paragraph (1) of Law Number 10 Year 1998 concerning Amendment to Law Number 7 Year 1992 concerning Banking which reads, "Banks must keep information concerning Depositing Customers and their deposits confidential, except in cases as referred to in Article 41, Article 41A, Article 42, Article 43, Article 44, and Article 44A".

3. Whereas considering that the dispute in the division of community property (marital property) in the event of marriage breakup due to divorce is an event which often occurs in the broad community, which often ends in the material losses suffered by one of the disputing parties, in which such loss has or may have occurred due to bank confidentiality as regulated in Article 40 paragraphs (1) and (2) of Law Number 10 Year 1998 concerning Amendment to Law Number 7 Year 1992 concerning Banking, **the currently existing legal instruments related to community property (marital property) held in the name of a customer of a bank, can be categorized as not yet actually in accordance with the community's needs for the sake of protecting order in the community's life.**
4. Whereas the Petitioner's standing in the marriage is protected by Laws and Regulations applicable in the State of the Republic of

Indonesia, therefore, in relation to the property acquired by the husband and the wife, either individually or jointly, in which the property was acquired during the period of marriage so that the status of the property in the perspective of Laws and Regulations is community property (marital property) as regulated in Law Number 1 Year 1974 concerning Marriage in Article 35 paragraphs (1) and (2), Article 36, and Article 37, and which was further clarified in Article 1 sub-article f of Compilation of Islamic Laws which is applicable pursuant to Presidential Instruction Number 1 Year 1991, **the Petitioner's right in relation to the ownership of such community property (marital property) is also protected by Laws and Regulations applicable in the State of the Republic of Indonesia.**

5. Whereas the status of property acquired during a marriage is regulated in Law Number 1 Year 1974 concerning Marriage, in particular in the following articles:
 - Article 35 paragraph (1) which reads, "Property acquired during a marriage shall become community property".
 - Article 36 paragraph (1) which reads, "With regard to community property, a husband or a wife may act upon approval from both parties".

- Article 37 which reads, “In the event that a marriage is terminated due to divorce, property shall be regulated according to its respective law”.
6. Whereas the criteria of a property object and or other things which fulfill the requirement as community property (marital property) are regulated in Compilation of Islamic Laws Article 1 sub-article f which is applicable pursuant to Presidential Instruction Number 1 Year 1991 which reads, “***property in a marriage (community property) shall be property acquired either individually or jointly by the husband and wife during a marriage bond, without regarding on whose name the property is registered***”, therefore, the Compilation of Islamic Laws Article 1 sub-article f clarifies about the community property which must fulfill several requirements as follows:
1. community property shall be property in a marriage, namely property acquired either individually or jointly by the husband and wife;
 2. the property is acquired during a marriage bond;
 3. and without regarding on whose name the property is registered.

In the event that to the extent that the abovementioned 3 (three) requirements are fulfilled, the status of a property object or thing acquired by the husband or the wife during marriage, in the perspective of Laws and Regulations, is a community property, without regarding on whose name the property or thing is registered.

7. Whereas by referring to Law Number 1 Year 1974 concerning Marriage, in particular Article 35 paragraph (1), Article 36 paragraph (1), Article 37, the application of which is confirmed in the Presidential Instruction Number 1 Year 1991 concerning Compilation of Islamic Laws Article 1 sub-article f, **in relation to all of savings, time deposits, as well as property and other banking products owned and held at banks by the Petitioner's husband, in the perspective of laws and regulations applicable in the State of the Republic of Indonesia, all of such properties have the standing as community property (marital property) owned jointly by the Petitioner and the Petitioner's husband to the extent that the property was acquired during marriage period.**

8. Whereas pursuant to Law Number 1 Year 1974 concerning Marriage, in particular Article 35 paragraph (1), Article 36 paragraph (1), Article 37, the application of which is confirmed in

the Presidential Instruction Number 1 Year 1991 concerning Compilation of Islamic Laws Article 1 sub-article f, **the Petitioner's right to the community property (marital property) acquired during marriage, including property held by the Petitioner's husband in banks in the form of savings, time deposits and other banking products, constitutes the Petitioner's personal property right guaranteed by Law applicable in the State of the Republic of Indonesia.**

9. Whereas several articles of the 1945 Constitution have guaranteed the Petitioner's constitutional rights, namely:

Article 28G paragraph (1) which reads, **"Every person shall have the right to protect him/herself, his/her family, honor, dignity and property under his/her control, and shall have the right to feel secure and be protected from the threat of fear to do, or not to do something which constitutes a human right";**

Article 28H paragraph (4) which reads, **"Every person shall have the right to possess personal property rights and such property rights shall not be taken over arbitrarily by anybody";**

10. Whereas following the coming into effect of Article 40 paragraphs (1) and (2) of Law Number 10 Year 1998 concerning Amendment to Law Number 7 Year 1992 concerning Banking in relation to banks'

obligation to maintain the confidentiality of information concerning Depositing Customers and their deposits, it is confirmed in paragraph (1) that, "*Banks shall maintain the confidentiality of information concerning Depositing Customers and their deposits ...*"; in which the aforementioned paragraph (1) only provides exception of customers' confidentiality for the following purposes:

- Article 41 (for taxation purpose),
- Article 41A (for settlement of banks' receivables which have been transferred to the State Receivables and Auction Affairs Agency/State Receivable Affairs Committee),
- Article 42 (for the purpose of court proceeding in criminal cases), Article 43 (in civil cases between banks and their customers),
- Article 44 (for interbank information exchange purpose), and
- Article 44A (upon request, approval, or authority from depositing customers which is made in writing),

in which the abovementioned exceptions do not include exception for civil cases with regard to divorce and division of community property (marital property) of depositing customers, therefore, the aforementioned Article 40 paragraphs (1) and (2) of Law Number 10 Year 1998 concerning

Banks' Customer Confidentiality has violated the Petitioner's constitutional right to obtain information in relation to community property (marital property) acquired during marriage held in banks in the name of the Petitioner's husband, in the form of savings, time deposits and other banking products; in the event that the Petitioner filed a petition for divorce and division of community property (marital property) at a civil court institution.

11. Whereas the aforementioned Article 40 paragraphs (1) and (2) of Law Number 10 Year 1998 concerning Amendment to Law Number 7 Year 1992 concerning Banking has obstructed the Petitioner's access to obtain information in relation to the community property held in banks in the name of the Petitioner's husband, therefore, the aforementioned Article 40 potentially causes material loss to the Petitioner in relation to the Petitioner's right to the community property (marital property) held in banks in the name of the Petitioner's husband in the form of savings, time deposits and other banking products. While in fact, the Petitioner's right to the community property (marital property) acquired during marriage is already guaranteed by Article 35 and Article 37 of Law Number 1 Year 1974 concerning Marriage, and reconfirmed by Presidential Instruction Number 1 Year 1991 concerning Compilation of Islamic Laws Article 1.

Therefore, the aforementioned Article 40 paragraphs (1) and (2) of Law Number 10 Year 1998 concerning Amendment to Law Number 7 Year 1992 concerning Banking has violated:

a. *the Petitioner's constitutional right as a citizen to protect herself, her family, her honor, dignity and property under her control, as guaranteed by Article 28G paragraph (1) of the 1945 Constitution;*

12. Whereas the aforementioned Article 40 paragraphs (1) and (2) of Law Number 10 Year 1998 concerning Amendment to Law Number 7 Year 1992 concerning Banking, in civil case of petition for divorce and division of community property (marital property) during a marriage, has provided an opportunity for one of the parties, either the husband or the wife, whose name is registered as a bank's customer to control and or transfer a portion and or all of community property acquired during marriage without the knowledge of the other party, so that it may make it possible for one party to arbitrarily take the other party's right, while the other party can lose a portion and or all of his/her right to the community property (marital property) acquired during marriage.

Therefore, the aforementioned Article 40 paragraphs (1) and (2) of Law Number 10 Year 1998 concerning Amendment to Law Number 7 Year 1992 concerning Banking has made and or will make the

impaired party entirely helpless in protecting his/her right to the community property (marital property) taken/controlled arbitrarily by the other party.

Therefore, Article 40 paragraphs (1) and (2) of Law Number 10 Year 1998 concerning Amendment to Law Number 7 Year 1992 concerning Banking has violated:

b. the Petitioner's constitutional right as a citizen to personal property rights which may not be taken over arbitrarily by anybody, as guaranteed by Article 28H paragraph (4) of the 1945 Constitution.

13. Whereas the aforementioned Article 40 paragraphs (1) and (2) of Law Number 10 Year 1998 concerning Amendment to Law Number 7 Year 1992 concerning Banking, probably has also violated the constitutional right of other citizens who, either directly or indirectly, have suffered losses in the past, **the article of which will potentially violate the constitutional right of other citizens in the future if no judicial review is conducted, followed by amendment and or improvement of the aforementioned article.**

14. Whereas in the past, the aforementioned Article 40 paragraphs (1) and (2) of Law Number 10 Year 1998 concerning Amendment to Law Number 7 Year 1992 concerning Banking had provided an

opportunity for the occurrence of criminal act in the form of embezzlement of community property (marital property) by one of the disputing parties in a court proceeding in civil cases of divorce and division of community property, **therefore the article may constitute a form of permission to the broad occurrence of criminal act of embezzlement of community property in the community.**

4. ***PETITUM***

1. To accept and to grant the Petitioner's petition.
2. To declare that Article 40 paragraphs (1) and (2) of Law Number 10 Year 1998 concerning Amendment to Law Number 7 Year 1992 concerning Banking is inconsistent with the 1945 Constitution of the State of the Republic of Indonesia and does not have binding legal force insofar as it is not interpreted as **to guarantee the right of a customer's husband or wife to gain access to data of the depositing customer and his/her deposits, in relation to community property (marital property) in a civil case of divorce of the relevant customer in a civil court institution in the entire territory of the Republic of Indonesia.**
3. To order the promulgation of this decision in the Official Gazette as appropriate;

Or

In the event that the Court's Panel of Justices is of a different opinion, the decision is requested to be passed by principles of what is fair and just (*ex aequo et bono*).

[2.2] Considering whereas in order to prove her arguments, the Petitioner has presented documentary/written evidence marked as Exhibit P-1 up to and including P-11 as follows:

1. Exhibit P-1 Photocopy of Identity Card in the name of the Petitioner;
2. Exhibit P-2 Photocopy of Certificate of Marriage Number 20/9/V/1995, dated May 16, 1995;
3. Exhibit P-3 Photocopy of the 1945 Constitution of the State of the Republic of Indonesia;
4. Exhibit P-4 Photocopy of Law Number 7 Year 1992 concerning Banking;
5. Exhibit P-5 Photocopy of Law Number 10 Year 1998 concerning Amendment to Law Number 7 Year 1992 concerning Banking;
6. Exhibit P-6 Photocopy of Law Number 1 Year 1974 concerning Marriage;
7. Exhibit P-7 Photocopy of Government Regulation Number 9 Year 1975 concerning Application of Law Number 1 Year 1974 concerning Marriage;

8. Exhibit P-8 Photocopy of Presidential Instruction Number 1 Year 1991 concerning Dissemination of Compilation of Indonesian Islamic Laws;
9. Exhibit P-9 Photocopy of Compilation of Islamic Laws Volume 1 concerning Marriage Law;
10. Exhibit P-10 Photocopy of Criminal Code First Volume Chapter XXIV concerning Embezzlement, Article 372;
11. Exhibit P-11 Photocopy of Evidence from Banks showing the Indication of the Petitioner's Loss caused by Law Number 10 Year 1998 concerning Amendment to Law Number 7 Year 1992 concerning Banking;

[2.3] Considering whereas with regard to the Petitioner's petition, the Government has provided statements as follows:

Whereas in relation to the petition *a quo*, the Government is of the opinion that the issue faced by the Petitioner is not an issue of the constitutionality of a norm, but an issue of the application of laws and regulations.

Whereas the Petitioner should be able to file a petition to the Panel of Judges of the Sharia Court examining the case of the Petitioner's petition for divorce to stipulate the community property (marital property) she acquired during marriage, so that when the Panel of Judges of the Sharia Court has later stipulated such community property (marital property) as property which must be divided, but if the Petitioner's husband later does not divide such community property (marital

property), the Petitioner can report the Petitioner's husband's act as a criminal act of embezzlement to the law enforcement apparatus namely the police.

With such a report of criminal act, the Petitioner can gain access to the community property pursuant to the provision of Article 42 paragraph (1) of the Banking Law which states that, "*For the purpose of court proceeding in criminal cases, the Leadership of Bank Indonesia may grant permission to the police, prosecutor, or judge to obtain information from banks concerning deposits of the suspect or the accused held in banks.*" Therefore, the Petitioner can maintain her constitutional right in protecting the Petitioner's property and personal property rights as guaranteed by the provision of Article 28G paragraph (1) and Article 28H paragraph (4) of the 1945 Constitution.

In relation to the legal standing of the Petitioner, the Government in the petition *a quo* leaves it entirely to the Chief/Panel of Justices of the Constitutional Court to assess, whether the Petitioner has legal standing or not, as defined in Article 51 paragraph (1) of Law Number 8 Year 2011 concerning Amendment to Law Number 24 Year 2003 concerning Constitutional Court and also based on Constitutional Court's Decision Number 006/PUU-III/2005 dated May 31, 2005 and Decision Number 11/PUU-V/2007 dated September 20, 2007 as well as the subsequent decisions.

Whereas the relationship between banks and depositing customers is a civil legal relationship based on trust which is formalized in an agreement between a bank and a depositing customer. This is in line with the elucidation of Article 1 sub-

article 17 of the Banking Law which reads, “*A Depositing Customer shall be a customer who places funds at a bank in the form of deposits based on an agreement between the bank and the customer concerned.*” As a trusted institution which manages the funds of depositing customers, the bank has the obligation to keep the confidentiality of all information related to depositing customers and their deposits. This has become a focus of the formulators of the Banking Law as shown on page 76 of the Minutes of Meetings of the Discussion on Draft Law concerning Amendment to Law Number 7 Year 1992 concerning Banking held on September 17, 1998, which was issued by the Secretariat General of the People’s Legislative Assembly which states, among other things, that banks have the obligation to maintain the confidentiality of information concerning depositing customers and their deposits.

If the husband or wife of a bank’s individual customer, for the reason of community property (marital property), argues that he/she also has the right to a deposit at the bank, including the right to information related to the aforementioned deposit, the person concerned should have been able to prove that he/she also has the right to the aforementioned deposit (joint account).

In addition to the abovementioned matter, the Government is of the opinion that because of the highly strategic role of banks as business entities having the function of collecting funds from the community in the form of deposits and redistributing the funds to the community in the form of loans, banking institutions

become one of the institutions having a highly strategic role in the development of the national economy.

A bank, as an institution trusted to manage the community's funds, also has the obligation to maintain the confidentiality of all information related to customers and the funds they deposit against the parties which may harm the customers. This is highly necessary because as an institution which collects the community's funds, a bank must obtain the community's confidence, and such community's confidence will be maintained if all information related to the relationship between a customer and a bank can be maintained confidential properly. The importance of bank confidentiality in the banking industry is also related to the existence of the principles which must be observed in running banking business for creating a healthy banking system, namely the Economic Democracy Principle, the Trust Principle, the Bank Confidentiality Principle, and the Prudence Principle.

This brings a consequence for the bank to maintain confidentiality, in consideration of the confidence granted by the community to a bank as a financial institution which collects the community's funds, therefore, it is appropriate for a bank to guarantee the protection of confidentiality to customers in relation to all information regarding their funds held in the bank.

Based on the aforementioned matters, the Government, together with the People's Legislative Assembly in preparing the Banking Law, have included the provisions of Article 40 paragraphs (1) and (2) of the Law *a quo* regarding bank

confidentiality as a form of protection and for providing guarantee and legal certainty to depositing customers for trusting their funds to a bank.

With regard to the Petitioner's petition which in substance states that the provisions of Article 40 paragraphs (1) and (2) of the Banking Law are inconsistent with the provisions of Article 28G paragraph (1) and Article 28H paragraph (4) of the 1945 Constitution, the Government is of the opinion that the provisions *a quo* are not inconsistent with the 1945 Constitution, but on the contrary, the provisions of Article 40 paragraphs (1) and (2) *a quo* are in line with the provisions of Article 28G paragraph (1) and Article 28H paragraph (4) of the 1945 Constitution.

The existence of the provisions of Article 40 paragraphs (1) and (2) of the Banking Law concerning bank confidentiality will indirectly obstruct the efforts of irresponsible parties to obtain data and information related to depositing customers, which can be used illegally to take and acquire the customers' right to their fund which is held in a bank. Therefore, the existence of the provision *a quo* actually provides protection to the constitutional right of depositing customers as guaranteed by the provisions of Article 28G paragraph (1) and Article 28H paragraph (4) of the 1945 Constitution to protect the property and personal property rights of depositing customers held in a bank.

In addition to the matters already conveyed by the Government, the Government can also convey that the absence of provisions regarding bank confidentiality as set forth in the provisions of Article 40 paragraphs (1) and (2) *a quo* will result in

the decrease of the level of the community's confidence in the banking industry. As previously explained by the Government, the decrease of the level of the community's confidence in banks will result in the collapse of the banking industry which will lead to disruption to the stability of the national economy. Therefore, based on the aforementioned matters, the Government is of the opinion that the bank confidentiality principle set forth in the provisions *a quo* are still highly necessary, for creating a proper and healthy national banking industry.

Based on the aforementioned explanation, the Government requests to the Chief/Panel of Justices of the Constitutional Court examining, hearing and deciding upon the petition for review of the provisions of Article 40 paragraphs (1) and (2) of Law Number 10 Year 1998 concerning Amendment to Law Number 7 Year 1992 concerning Banking, to pass a decision based on the principles of what is fair and just (*ex aequo et bono*).

[2.4] Considering whereas with regard to the Petitioner's petition, the People's Legislative Assembly has provided statements as follows:

A. THE PROVISIONS OF THE BANKING LAW BEING PETITIONED FOR REVIEW AGAINST THE 1945 CONSTITUTION OF THE STATE OF THE REPUBLIC OF INDONESIA

In her petition, the Petitioner filed a petition for review of Article 40 paragraphs (1) and (2) of the Banking Law which reads as follows:

- “(1) Banks shall maintain the confidentiality of information concerning Depositing Customers and their deposits, except in cases as set forth in Article 41, Article 41A, Article 42, Article 43, Article 44, and Article 44A.*
- (2) The provisions as set forth in paragraph (1) shall also be applicable for affiliated Parties.”*

The Petitioner has an assumption that the provisions of Article 40 paragraphs (1) and (2) of the Banking Law are inconsistent with Article 28G paragraph (1) and Article 28H paragraph (4) of the 1945 Constitution of the State of the Republic of Indonesia which read as follows:

Article 28G paragraph (1):

“Every person shall have the right to protect him/herself, his/her family, honor, dignity and property under his/her control, and shall have the right to feel secure and be protected from the threat of fear to do, or not to do something which constitutes a human right” .

Article 28H paragraph (4):

“Every person shall have the right to possess personal property rights and such property rights shall not be taken over arbitrarily by anybody” .

B. THE CONSTITUTIONAL RIGHTS AND/OR AUTHORITY CONSIDERED BY THE PETITIONER AS HAVING BEEN IMPAIRED BY THE COMING INTO EFFECT OF THE BANKING LAW

In the petition *a quo*, the Petitioner states that her constitutional rights have been impaired and violated or at least potentially impaired and violated, which, pursuant to logical reasoning, can be assured of occurring by the coming into effect of Article 40 paragraphs (1) and (2) of the Banking Law, claiming substantially as follows:

- a. The Petitioner assumes that Article 40 paragraphs (1) and (2) of the Banking Law only provide for exception of customers' confidentiality for the purpose of taxation, settlement of banks' receivables which have been transferred to the State Receivables and Auction Affairs Agency, for the purposes of criminal court proceeding, as well as civil cases between banks and their customers, in which such exceptions exclude civil cases with regard to divorce and division of marital property of depositing customers.
- b. In the Petitioner's opinion, Article 40 paragraph (1) of the Banking Law has afforded an opportunity for the Petitioner's husband to relocate and/or transfer savings and time deposits, which constitute community property, held in the name of the Petitioner's husband, which is inconsistent with Article 28H paragraph (4) which reads, "*Every person shall have the right to possess personal property*

rights and such property rights shall not be taken over arbitrarily by anybody”.

- c. Based on the abovementioned description, the Petitioner assumes substantially that the coming into effect of the provisions of Article 40 paragraphs (1) and (2) of the Banking Law has obstructed the Petitioner’s access to obtain information in relation to the community property (marital property) of the Petitioner and the Petitioner’s husband, which was acquired during their marriage and held in banks in the name of the Petitioner’s husband. In the Petitioner’s opinion, the existence of Article 40 paragraphs (1) and (2) of the Banking Law has violated the Petitioner’s constitutional right for protecting the Petitioner’s property and personal property rights as guaranteed by the provisions of Article 28G paragraph (1) and Article 28H paragraph (4) of the 1945 Constitution.

C. STATEMENTS OF THE PEOPLE’S LEGISLATIVE ASSEMBLY OF THE REPUBLIC OF INDONESIA

With respect to the Petitioner’s arguments as described in the petition *a quo*, the People’s Legislative Assembly has conveyed the following statements:

1. Legal Standing of the Petitioner

The qualifications to be met by a Petitioner as a Party have been set forth in the provisions of Article 51 paragraph (1) of Law Number 24 Year 2003 concerning the Constitutional Court (hereinafter briefly referred to as the Constitutional Court Law) stating that, "*Petitioners shall be the parties considering that their constitutional rights and/or authorities have been impaired by the coming into effect of a Law, namely:*

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

The constitutional rights and/or authorities referred to the aforementioned provisions of Article 51 paragraph (1) are confirmed in the elucidation thereof stating that "referred to as "constitutional rights" shall be the rights regulated in the 1945 Constitution of the State of the Republic of Indonesia." The provision of the Elucidation of Article 51 paragraph (1) confirms that

only the rights explicitly regulated in the 1945 Constitution are classified as “constitutional rights”.

Therefore, according to the Constitutional Court Law, in order to be eligible to become Petitioners having legal standing in a petition for review of Law against the 1945 Constitution, persons or parties must first explain and substantiate:

- a. Their qualification as Petitioners in the petition *a quo* as referred to in Article 51 paragraph (1) of Law Number 24 Year 2003 concerning the Constitutional Court;
- b. Their constitutional rights and/or authority as intended in the “Elucidation of Article 51 paragraph (1)” which they consider as having been impaired by the coming into effect of a Law.

With regard to the parameters of such constitutional impairment, the Constitutional Court has provided a definition and limitations of constitutional impairment caused by the coming into effect of Law, which must meet 5 (five) requirements (*vide* Decisions Number 006/PUU-III/2005 and Number 011/PUU-V/2007), namely as follows:

- a. the existence of constitutional rights/authority of the Petitioners granted by the 1945 Constitution;

- b. whereas the aforementioned Petitioners' constitutional rights and/or authority are considered by the Petitioners as having been impaired by the Law being petitioned for review;
- c. whereas the impairment of the relevant Petitioners' constitutional rights and/or authority is specific (special) and actual, or at least potential in nature which, pursuant to logical reasoning, can be assured of occurring;
- d. the existence of causal relationship (*causal verband*) between the impairment and the coming into effect of the Law being petitioned for review;
- e. the possibility that with the granting of the petition, the argued impairment of such constitutional rights and/or authority will not or will no longer occur.

If the aforementioned five requirements are not met by the Petitioner in the case of judicial review of the Law *a quo*, then the Petitioners do not have the qualification of legal standing as a Petitioning party.

In response to the petition of the Petitioner *a quo*, the People's Legislative Assembly is of the opinion that the Petitioner must be able to prove first whether she is truly the party considering that her constitutional rights and/or authority have been impaired by

the coming into effect of the provision being petitioned for review, particularly in constructing the existence of impairment of her constitutional rights and/or authority as a consequence of the coming into effect of the provision being petitioned for review.

With respect to such legal standing, the People's Legislative Assembly leaves it entirely to the honorable Chief Justice/Panel of Justices of the Constitutional Court to consider and judge, whether the Petitioner has legal standing or not as regulated in Article 51 paragraph (1) of the Law concerning the Constitutional Court and based on the Constitutional Court's Decisions Number 006/PUU-III/2005 and Number 011/PUU-V/ 2007DPR.

2. Material Review of Article 40 paragraphs (1) and (2) of the Banking Law

With respect to the petition for material review of Article 40 paragraphs (1) and (2) of the Banking Law, the People's Legislative Assembly has given the following statements:

1. Banking institutions have a very strategic position, among other things, as intermediation institutions or institutions receiving deposits from the community and redistributing the funds to the community. For that purpose, the funds received from the community must be managed carefully so that the

owners of the funds or customers will not worry about the security and availability of their funds when they need them. Furthermore, in order to ensure that Banks can serve their function as intermediation institution properly, they require the public confidence.

2. The public confidence in banks is important for at least two reasons, first, to improve the efficiency of the utilization of banks and the efficiency of intermediation, and second, to prevent the occurrence of bank rush and bank panics. For those purposes, bank managements are required to have the skills in managing banks' assets, debts and equity.
3. One of the elements for raising the public confidence in the banking world, particularly in terms of guarantee of the security of their funds deposited in banks, is the element of banks' confidentiality. The requirement for banks to observe bank confidentiality constitutes the implementation of the legal relationship between banks and their customers depositing their funds at the banks, based on the principle of confidentiality and trust. Therefore, the relationship between banks and their customers is a confidential relation *which causes a trust relationship between customers and banks where the customers deposit their funds. The confidentiality*

*principle which causes customers' confidence in banks is in line with the provisions of Article 1 sub-article 5 of the Banking Law which states: "Deposits shall be **funds entrusted to banks by the public** based on a fund deposit agreement in the forms of Demand Deposits, Time Deposits, Certificate of Deposits, Savings and/or other similar forms";*

4. In the context of actualizing public confidence in the banking world, it is necessary to create an instrument of laws and regulations which can guarantee legal certainty for every party related to banking activities, either owners, bank managers, or the community (customers), which is regulated in the Banking Law. Article 40 paragraphs (1) and (2) of the Banking Law regulates about the obligation of banks and affiliated parties to maintain the confidentiality of information concerning depositing customers and their deposits.
5. The provisions regarding the obligation of banks and affiliated parties to maintain the confidentiality of information concerning depositing customers and their deposits as set forth in Article 40 paragraphs (1) and (2) of the Banking Law will protect the security of customers' funds held by banks as personal property right assets held by banks in the form of Demand Deposits, Time Deposits, Certificate of Deposits,

Savings and/or other similar forms. Therefore, it is in line with the provisions of Article 28G paragraph (1) and Article 28H paragraph (4) of the 1945 Constitution which provides guarantee of security to *property under his/her control which shall not be taken over arbitrarily by anybody*.

6. Whereas with regard to community property (marital property) held in banks in the form of Demand Deposits, Time Deposits, Certificate of Deposits, and/or savings, either in the name of the husband or in the name of the wife, the respective party ought to know the legal consequence thereof, namely that each individual cannot access information concerning his/her deposits. Therefore, the People's Legislative Assembly is of the opinion that this is not an issue of the constitutionality of a norm, but an issue of the application of a norm in which **it is possible** for the husband and the wife **to agree** that community property held in banks will be held in the form of a joint account, in which each party can access the deposits or otherwise, they can agree to hold the fund in their respective names, certainly with the legal consequence that each of them cannot access the information about the deposits. This is in line with the provision of Article 36 paragraph (1) of Law Number 1 Year 1974 concerning marriage which states, "**with regard to**

community property, a husband or a wife may act upon agreement of both parties”.

7. Based on the abovementioned description, the People’s Legislative Assembly is of the opinion that the provisions of Article 40 paragraphs (1) and (2) of the Banking Law are not inconsistent with Article 28G paragraph (1) and Article 28H paragraph (4) of the 1945 Constitution;

Hence the statements of the People’s Legislative Assembly have been conveyed as materials for consideration of the Panel of Justices of the Constitutional Court in order to examine, hear, and decide upon the case *a quo* and to be able to pass the following decision:

1. To accept the Statements of the People’s Legislative Assembly entirely;
2. To declare the provisions of Article 40 paragraphs (1) and (2) of the Banking Law not inconsistent with Article 28G paragraph (1) and Article 28H paragraph (4) of the 1945 Constitution;
3. To declare the provisions of Article 40 paragraphs (1) and (2) of the Banking Law still have binding legal force.

[2.5] Considering whereas the Petitioner has submitted written conclusions which was received at the Registrar's Office of the Court on August 27, 2012, principally stating that she remains firm on her standpoint;

[2.6] Considering whereas the Government has submitted written conclusions which was received at the Registrar's Office of the Court on September 4, 2012, principally stating that it remains firm on its statements;

[2.7] Considering whereas to shorten the description in this decision, everything occurring during the hearing shall sufficiently be indicated in the minutes of hearing, which constitutes an inseparable part of this decision;

3. LEGAL CONSIDERATIONS

[3.1] Whereas the substance of the Petitioner's petition is the review of the constitutionality of Article 40 paragraphs (1) and (2) of Law Number 10 Year 1998 concerning Amendment to Law Number 7 Year 1992 concerning Banking (State Gazette of the Republic of Indonesia Year 1998 Number 182, Supplement to the State Gazette of the Republic Indonesia Number 3790, hereinafter referred to as the Banking Law) against the 1945 Constitution of the State of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution);

[3.2] Considering whereas prior to examining the substance of the petition, the Constitutional Court (hereinafter referred to as the Court) shall first consider the following matters:

- a. authority of the Court to examine, hear and decide upon the petition *a quo*;
- b. legal standing of the Petitioner to file the petition *a quo*;

With respect to the aforementioned two matters, the Court is of the following opinions:

Authorities of the Court

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

[3.4] Considering whereas the Petitioner's petition is concerning the review of the constitutionality of the norm of Article 40 paragraphs (1) and (2) of the Banking Law against the 1945 Constitution, which falls under one of the

authorities of the Court, therefore the Court has the authority to examine, hear and decide upon the petition *a quo*;

Legal Standing of the Petitioner

[3.5] Considering whereas pursuant to Article 51 paragraph (1) of the Constitutional Court Law and the Elucidation thereof, the parties eligible to file a petition for review of Laws against the 1945 Constitution shall be those considering that their constitutional rights and/or authority granted by the 1945 Constitution are impaired by the coming into effect of a Law, namely:

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

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

- a. her standing as a Petitioner as intended in Article 51 paragraph (1) of the Constitutional Court Law;

- b. the impairment of her constitutional rights and/or authority granted by the 1945 Constitution as a consequence of the coming into effect of the law being petitioned for review;

[3.6] Considering also whereas, following the issuance of the Constitutional Court's Decision Number 006/PUU-III/2005, dated May 31, 2005 and the Constitutional Court's Decision Number 11/PUU-V/2007, dated September 20, 2007, as well as subsequent decisions, the Court has the standpoint that the impairment of constitutional rights and/or authority as intended in Article 51 paragraph (1) of the Constitutional Court Law must meet five requirements, namely:

- a. the existence of constitutional rights and/or authority of the Petitioner granted by the 1945 Constitution;
- b. the Petitioner considers that such constitutional rights and/or authority have been impaired by the coming into effect of the Law petitioned for review;
- c. such constitutional impairment must be specific (special) 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 such impairment and the Law petitioned for review;

- e. there is a possibility that with the granting of the petition, such constitutional impairment as argued by the Petitioner will not or will no longer occur;

[3.7] Considering whereas in her petition, the Petitioner argues as follows:

1. Whereas the Petitioner filed a petition for divorce and division of community property (marital property) against the Petitioner's husband at the Sharia Court of Banda Aceh City under Number 21/Pdt-G/2012/MS-BNA dated February 1, 2012. The aforementioned petition for community property (marital property) division indicates a number of community properties in the form of savings and time deposits held by and in the name of the Petitioner's husband in a number of banks in Banda Aceh City and Bank of Aceh Besar Regency, Aceh Province. However, in the reply to the petition which was submitted to the Sharia Court of Banda Aceh City dated March 21, 2012, and which was reconfirmed by the rebuttal dated April 18, 2012, the Petitioner's husband through his legal attorney Darwis, SH, denied and rejected the existence of all savings and time deposits held by and in the name of the Petitioner's husband in a number of banks in Banda Aceh City and Bank of Aceh Besar Regency, Aceh Province.
2. Whereas with regard to the disagreement and dispute between the Petitioner and the Petitioner's husband related to the existence of the

aforementioned savings and time deposits, the Sharia Court of Banda Aceh City subsequently requested the relevant Banks to provide clarification with regard to the existence of the aforementioned savings and time deposits for the purpose of the protection of community property, the position of which is protected by Laws and Regulations, with the details are as follows:

- a. Bank Syariah Mandiri Keutapang Sub-Branch Office, Aceh Besar, dated May 21, 2012.
 - b. Bank Mandiri Unsyiah Darussalam Branch, Banda Aceh, dated May 21, 2012.
 - c. Bank BRI Peunayong Sub-Branch Office, Banda Aceh, June 6, 2012.
3. Whereas in relation to the letters sent by the Sharia Court of Banda Aceh City, the banks refused to provide information with the reason that ***they cannot comply with the summon because it is related to the confidentiality of customers' data.***

[3.8] Considering whereas Article 28G paragraph (1) of the 1945 Constitution states, *“Every person shall have the right to protect him/herself, his/her family, honor, dignity and property under his/her control, and shall have the right to feel secure and be protected from the threat of fear to do, or not to do something which constitutes a human right”*, and Article 28H paragraph (4) of the

1945 Constitution states, “*Every person shall have the right to possess personal property rights and such property rights shall not be taken over arbitrarily by anybody*”;

[3.9] Considering whereas with due regard to the Petitioner’s arguments and in relation to the Petitioner’s constitutional rights provided for in Article 28G paragraph (1) and Article 28H paragraph (4) of the 1945 Constitution, the Court is of the opinion that the right to property which constitutes community property acquired during marriage is a property which must be protected and shall not be taken over arbitrarily by anybody. Article 40 paragraphs (1) and (2) of the Banking Law has omitted the Petitioner’s constitutional right, as a wife, to community property, which must be protected because the Petitioner cannot know the total amount of such property. Moreover, the fact is that the Petitioner has also requested the Sharia Court of Banda Aceh City to request to several banks holding the Petitioner’s community property to provide information about the existence of the intended savings and time deposits for the purpose of the protection of community property, however, it was rejected by the banks for the reason of customers’ confidentiality as provided for in the Banking Law *a quo*. The Court is of the opinion that, in the case *a quo*, there is constitutional impairment which is specific (special) and actual in nature which is experienced by the Petitioner. Moreover, factually there is a causal relationship between the intended impairment and the coming into effect of the Law being petitioned for review, in which, if the petition is granted, such constitutional impairment as argued by the Petitioner will not or will no longer occur;

[3.10] Considering whereas based on the abovementioned considerations, in the Court's opinion, the Petitioner has legal standing to file the petition *a quo*;

[3.11] Considering whereas since the Court has the authority to examine, hear and decide upon the petition *a quo*, and the Petitioner has legal standing to file the petition, the Court shall subsequently consider the substance of the petition;

The Substance of the Petition

The Opinion of the Court

[3.12] Considering whereas after the Court has carefully heard and read the petition of the Petitioner, the statements of the Government, the statements of the People's Legislative Assembly, and examined the documentary evidence presented by the Petitioner, the Court considers as follows:

- Whereas Article 28G paragraph (1) of the 1945 Constitution states, *Every person shall have the right to protect him/herself, his/her family, honor, dignity and property under his/her control, and shall have the right to feel secure and be protected from the threat of fear to do, or not to do something which constitutes a human right*", and Article 28H paragraph (4) of the 1945 Constitution states, *"Every person shall have the right to possess personal property rights and such property rights shall not be taken over arbitrarily by anybody"*. Based on the aforementioned

provisions, every person has the right to the protection of property under his/her control and every person possesses personal property rights which shall not be taken over arbitrarily by anybody;

- Whereas with regard to the property under his/her control, it has included community property jointly acquired during marriage, as provided for in Article 35 paragraph (1), Article 36 paragraph (1), and Article 37 of Law Number 1 Year 1974 concerning Marriage (State Gazette of the Republic of Indonesia Year 1974 Number 1, Supplement to State Gazette of the Republic of Indonesia Number 3019) which states,

Article 35

- (1) *Property acquired during a marriage shall become community property.*

Article 36

- (1) *With regard to community property, a husband or a wife may act upon approval of both parties.*

Article 37

In the event that a marriage is terminated due to divorce, property shall be regulated according to the relevant laws.

Furthermore, Article 1 sub-article f of the Compilation of Islamic Laws which is applicable under Presidential Instruction Number 1 Year 1991 states, “**property**

in a marriage (community property) shall be property acquired either individually or jointly by the husband and the wife during a marriage bond, without regarding on whose name the property is registered.”

Therefore, by referring to Law Number 1 Year 1974 concerning Marriage, in particular Article 35 paragraph (1), Article 36 paragraph (1), Article 37 and Presidential Instruction Number 1 Year 1991 concerning the Compilation of Islamic Laws, in particular Article 1 sub-article f, with regard to all of savings, time deposits, and other property and banking products owned and held in banks by the husband and or the wife, such properties have the standing as community property (marital property) owned jointly by the husband and or the wife, including the Petitioner. Based on the aforementioned consideration, the Court is of the opinion that community property (marital property) acquired during marriage, including properties held by the husband and/or the wife in a bank in the form of savings, time deposits and other banking products constitute property owned jointly by the husband and the wife, which is protected under the constitution.

[3.13] Considering whereas the Court has to resolve the issue of the prohibition for banks to provide information concerning depositing customers and their deposits as set forth in Article 40 paragraph (1) of the Banking Law, particularly in relation to deposits which constitute community property under the Marriage Law.

[3.14] Considering, it is true that the confidentiality of every customer's data must be maintained by banks, as set forth in Article 40 paragraph (1) of the Banking Law, however, the article *a quo* also provides exceptions that customers' data may also be accessed for the following purposes:

- for taxation purposes (Article 41),
- for the settlement of banks' receivables which have been transferred to the State Receivables and Auction Affairs Agency/State Receivable Affairs Committee (Article 41A),
- for the purpose of court proceeding in criminal cases (Article 42),
- in civil cases between banks and their customers (Article 43),
- for interbank information exchange purposes (Article 44), and
- upon request, approval, or authority from depositing customers which is made in writing (Article 44A);

Whereas among the aforementioned exceptions, there are norms which allow the disclosure of customers' data upon court's instruction, namely for criminal cases and civil cases between banks and their customers. Based on this matter, the Court is of the opinion that it will be more fulfilling to the sense of justice if customers' data must also be disclosed for the purpose of civil cases with regard to community property, because community property is joint property of husband and wife, therefore, the husband and/or the wife must obtain protection for such

right which shall not be taken over arbitrarily by one of the parties. Such matter is guaranteed by Article 28G paragraph (1) and Article 28H paragraph (4) of the 1945 Constitution;

[3.15] Considering whereas based on the aforementioned considerations, the Court is of the opinion that it is necessary to have certain interpretation in relation to the provisions of Article 40 paragraph (1) of the Banking Law, in order to ensure that there is equitable legal certainty in the implementation of the article *a quo*, so that every wife and/or husband, including the Petitioner, obtains guarantee and legal certainty with regard to the information concerning community property in a marriage which is held in banks. With regard to Article 40 paragraph (1) of the Banking Law, it is necessary to provide an interpretation in order to ensure that the confidentiality of customers' data in banks is maintained, except in relation to other matters provided by the Law and based on this interpretation made by the Court. In the Court's opinion, if Article 40 paragraph (1) of the Banking Law is declared inconsistent with the 1945 Constitution in its entirety and therefore does not have binding legal force, this will cause the absence of protection to bank confidentiality, and therefore will cause lack of customers' confidence in banks and harm the national economy. Therefore, the Court is of the opinion that in order to protect the husband's and/or the wife's rights to community property held in banks, it is necessary for the Court to provide equitable legal certainty and protection. The provisions of Article 40 paragraph (1) of the Banking Law must be construed as "*shall maintain the confidentiality of information concerning Depositing Customers and their*

deposits, except in cases as set forth in Article 41, Article 41A, Article 42, Article 43, Article 44, and Article 44A and for the purpose of court proceeding with regard to community property in cases of divorce.” Therefore, the arguments of the Petitioner *a quo*, in the Court’s opinion, have legal grounds;

[3.16] Considering whereas with regard to the provisions of Article 40 paragraph (2) of the Banking Law which are argued to be inconsistent with the 1945 Constitution, the Court is of the opinion that the provisions are for affiliated parties, not for individual citizens. Affiliated parties, pursuant to Article 1 sub-article 22 of the Banking Law, are as follows:

- a. *a member of the board of commissioners, board of supervisors, board of directors or their attorneys, officers, or employees of a bank;*
- b. *a member of the board of management, board of supervisors, board of executives or their attorneys, officers, or employees of a bank, particularly for a bank established in the legal form of a cooperative in accordance with applicable laws and regulations;*
- c. *a party providing services to a bank, such as public accountant, appraiser, legal consultant and other consultants;*
- d. *a party which, according to Bank Indonesia’s judgment, takes part in influencing the management of a bank, namely shareholders and their family members, family members of the board of commissioners, family*

members of the board of supervisors, family members of the board of directors, and family members of the board of management.

If the provisions are declared inconsistent with the 1945 Constitution, the affiliated parties are able to know about customers' data the confidentiality of which should have been maintained. This will harm banks' customers, with the impact of the loss of confidence in banks and harm the national economy. Therefore, the abovementioned provisions are not inconsistent with the 1945 Constitution and therefore the arguments of the petition of the Petitioner *a quo* have no legal ground;

[3.17] Considering whereas based on all of the considerations above, the Court is of the opinion that the petition of the Petitioner is proven and has legal grounds partially;

4. CONCLUSION

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

[4.1] The Court has the authority to examine, hear, and decide upon the petition *a quo*;

[4.2] The Petitioner has legal standing to file the petition *a quo*;

[4.3] The substance of the petition of the Petitioner is proven and has legal grounds partially.

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

5. INJUNCTION OF DECISIONS

Passing the Decision,

To declare:

1. To grant the Petitioners' petition partly;
 - 1.1. Article 40 paragraph (1) of Law Number 10 Year 1998 concerning Amendment to Law Number 7 year 1992 concerning Banking (State Gazette of the Republic of Indonesia Year 1998 Number 182, Supplement to the State Gazette of the Republic of Indonesia Number 3790) is inconsistent with the 1945 Constitution of the State of the Republic of Indonesia to the extent not construed as

including for *the purpose of court proceeding with regard to community property in cases of divorce*;

- 1.2. Article 40 paragraph (1) of Law Number 10 Year 1998 concerning Amendment to Law Number 7 year 1992 concerning Banking (State Gazette of the Republic of Indonesia Year 1998 Number 182, Supplement to the State Gazette of the Republic of Indonesia Number 3790) has no binding legal force to the extent not construed as including for *the purpose of court proceeding with regard to community property in cases of divorce*;
2. To reject the other and the remaining parts of the petition of the Petitioner;
3. To order the promulgation of this decision in the Official Gazette of the Republic of Indonesia as appropriate;

Hence this decision was made in the Consultative Meeting of Justices attended by nine Constitutional Court Justices, namely Moh. Mahfud MD as the Chief Justice and concurrent Member, Achmad Sodiki, M. Akil Mochtar, Harjono, Maria Farida Indrati, Muhammad Alim, Anwar Usman, Ahmad Fadlil Sumadi, and Hamdan Zoelva, respectively as Members, on **Wednesday the twentieth of February two thousand and thirteen**, and was pronounced in the Plenary Session of the Constitutional Court which was open for the public on **Thursday, the twenty-eights of February two thousand and thirteen**, pronounced completely on **14.53 Western Indonesia's Time**, by eight Constitutional Court

Justices, namely Moh. Mahfud MD as the Chief Justice and concurrent Member, M. Akil Mochtar, Harjono, Maria Farida Indrati, Muhammad Alim, Anwar Usman, Ahmad Fadlil Sumadi, and Hamdan Zoelva, respectively as Members, assisted by Cholidin Nasir as the Substitute Registrar, in the presence of the Petitioner, the Government or its representative, and the People's Legislative Assembly or its representative.

CHIEF JUSTICE,

Sgd.

Moh. Mahfud MD.

JUSTICES,

Sgd.

M. Akil Mochtar

Sgd.

Harjono

Sgd.

Maria Farida Indrati

Sgd.

Muhammad Alim

Sgd.

Anwar Usman

Sgd.

Ahmad Fadlil Sumadi

Sgd.

Hamdan Zoelva

SUBSTITUTE REGISTRAR,

Sgd.

Cholidin Nasir