



## DECISION

Number 85/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 Judicial Review of Law Number 32 Year 2004 concerning Regional Government against the 1945 Constitution of the State of the Republic of Indonesia, filed by:

- [1.2]** 1. Name : **Mohammad Umar Halimuddin, S.H.**
- Place/Date of Birth : Kutai, June 19, 1981
- Occupation : Private Employee
- Address : Jalan Blok Dukuh Number 66  
Neighborhood Ward (RT)  
10/Neighborhood Block (RW) 10,  
Cibubur Sub-District, Ciracas District,  
East Jakarta
2. Name : **Siti Hidayawati, S.H.**

Place/Date of Birth : Jakarta, March 25, 1982

Occupation : Civil Servant

Address : Jalan Blok Dukuh Number 66  
 Neighborhood Ward (RT)  
 10/Neighborhood Block (RW) 10,  
 Cibubur Sub-District, Ciracas District,  
 East Jakarta

In this case granting authority to **Deddy Iskandar, S.H.** and **Zulkarnain Zaumar, S.H.** as advocates and legal consultants at **Deddy Iskandar & Partners** Law Firm having their legal domicile at Ruko Financial Center, Block BA2, Number 2, 2<sup>nd</sup> – 3<sup>rd</sup> Floors, Jalan Boulevard Raya Gading Serpong, Tangerang, acting jointly and severally, by virtue of Special Power of Attorney dated August 1, 2012;

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 filed a petition dated August 13, 2012 received at the Registrar's Office of the Constitutional Court (hereinafter

referred to as the Registrar's Office of the Court) based on Deed of Petition Receipt Number 306/PAN.MK/2012 dated August 15, 2012 and recorded in the Constitutional Case Registry under Number 85/PUU-X/2012 dated September 3, 2012, which has been revised and received at the Registrar's Office of the Constitutional Court on September 25, 2012, which describes the following matters:

**A. AUTHORITY OF THE CONSTITUTIONAL COURT**

1. Whereas the provisions of Article 24C paragraph (1) of the 1945 Constitution (hereinafter referred to as the 1945 Constitution) *juncto* Article 10 of Law Number 24 Year 2003 concerning the Constitutional Court (hereinafter referred to as "**the Constitutional Court Law**"), states that the Constitutional Court shall have the authority to hear at the first and final level, the decision of which shall be final, to conduct judicial review of a law against the 1945 Constitution, to decide upon Disputes over the Authorities of State Institutions whose authorities are granted by the 1945 Constitution, to decide upon the Dissolution of Political Parties, and to Decide upon Disputes over the Results of General Elections;

The aforementioned Authorities of the Constitutional Court are regulated in Article 10 paragraph (1) sub-paragraph (a), the

Constitutional Court Law, which reads:

*“The Constitutional Court shall have the authority to hear at the first and final level, the decision of which shall be final, to conduct judicial review of Laws against the 1945 Constitution of the State of the Republic of Indonesia, 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, to decide upon the dissolution of political parties, and decide upon disputes over the results of general elections”;*

2. Whereas in accordance with the purposes of the Petitioners, the judicial review petition has also been based on Article 50 of the Constitutional Court Law, which reads:

*“Laws which may be petitioned for review shall be laws enacted after the amendment to the 1945 Constitution of the State of the Republic of Indonesia”*

Therefore, the petition of the Petitioners in the case *a quo* is **not inconsistent with Article 60 of Law Number 24 Year 2003 concerning the Constitutional Court;**

## **B. LEGAL STANDING OF THE PETITIONERS**

3. Whereas Article 51 paragraph (1) of the Constitutional Court Law

states that the Petitioners shall be the parties considering that their constitutional rights and/or authorities are impaired by the coming into effect of a Law, namely:

- 1) individual Indonesian citizens;
  - 2) 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;
  - 3) public or private legal entities, or;
  - 4) state institutions.
4. The elucidation of Article 51 paragraph (1) of the Constitutional Court Law states that “constitutional rights” shall be the rights regulated in the 1945 Constitution;
5. Whereas subsequently, Decision of the Constitutional Court Number 006/PUU-III/2005 and Decision Number 010/PUU-III/2005 have determined 5 (five) requirements for the constitutional impairment as referred to Article 51 paragraph (1) of the Constitutional Court Law, as follows:.
- 1) the existence of constitutional rights and/or authorities

granted by the 1945 Constitution;

- 2) such constitutional rights and/or authorities are considered to have been impaired by the coming into effect of the Law being petitioned for review;
  - 3) such constitutional rights and/or authorities must be specific (special) and actual or at least potential in nature which, pursuant to logical reasoning, can be assured of occurring;
  - 4) there is a causal relationship (*causal verband*) between the relevant impairment of constitutional rights and/or authorities and the coming into effect of the Law being petitioned for review;
  - 5) there is a possibility that with the granting of the petition, such constitutional rights and/or authorities as argued will no longer occur;
6. Whereas the right to equal position before the law and government constitutes one of the rights regulated in Article 27 paragraph (1) of the 1945 Constitution, which reads:

*“All Citizens shall have equal position before the law and government and shall be obligated to uphold such law and*

*government without exception”.*

7. Whereas the right to equal position before the law and government for such citizens is affirmed and confirmed as regulated in the provisions of Article 28D paragraph (1) and paragraph (3) of the 1945 Constitution, which read:

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

*(3) Every citizen shall have the right to obtain equal opportunities in the government.”*

8. Whereas the right to vote in the general elections constitutes the materialization of the rights to equal position before the law and government. In Case decision Number 011-017/PUU-I/2003 dated February 24, 2004, the Constitutional Court states that the right to vote shall constitute the constitutional right of citizens, as referred to as in the aforementioned decision which is quoted in full, as follows:

*“Whereas the constitutional rights of citizens to vote and to become a candidate constitute the rights guaranteed by the constitution, Laws, and international conventions, and therefore,*

*any limitation, violation, denial, and elimination of the intended rights constitute the violation of the human rights of citizens.”*

9. Whereas with regard to the same subject matters as stated in Article 28 and Article 111 of Law Number 42 Year 2008 concerning the General Elections of the President and Vice President, the Constitutional Court, as set out in Case decision Number 102/PUU-VII/2009 dated July 6, 2009, has stated that Article 28 and Article 111 of Law Number 42 Year 2008 concerning the General Elections of the President and Vice President (State Gazette of the State of the Republic of Indonesia Year 2008 Number 176, Supplement to the State Gazette of the Republic of Indonesia Number 4924) shall be constitutional to the extent that such articles are interpreted to include citizens who are not listed in the Permanent Voter List, subject to the following requirements and procedures:

- 1) In addition to Indonesian citizens listed in the Permanent Voter List, Indonesian citizens who have not been listed in the Permanent Voter List may exercise their voting rights by presenting valid Identity Card (*KTP*) or valid passport for those overseas;
- 2) Indonesian citizens using Identity Cards shall also present



Family Cards or similar documents;

- 3) Indonesian citizens using valid Identity Cards may only exercise their voting right at the polling stations located in the Neighborhood Ward/Neighborhood Block or the like according to the address indicated on their Identity Cards;
  - 4) Indonesian citizens as referred to in point 3 above shall first register themselves with the local Voting Organizer Group before exercising their voting right;
  - 5) Indonesian citizens using Identity Cards or passports shall exercise their voting rights 1 (one) hour before the end of voting at the relevant polling stations or the local polling stations overseas.
10. Whereas although the Constitutional Court had ordered the General Election Commission to regulate further the technical implementation of the exercise of the voting rights of Indonesian citizens who are not listed in the Permanent Voter List in reliance upon Decision Number 102/PUU-VII/2009, dated July 6, 2009, the General Election Commission, in this case, the East Jakarta Chapter of the General Election Commission of the Special Capital City Region of Jakarta Province still use the Temporary Voter List;

11. Whereas Petitioner I (Mohammad Umar Halimuddin, S.H.) and Petitioner II (Siti Hidayawati, S.H.) are Individual citizens who have reached the age of 17 and are married. Pursuant to the provisions of Law Number 32 Year 2004, the Petitioners shall have the right to vote in the elections of the Regional Head (Governor) and Vice Regional Head (Deputy Governor) [*vide* Article 68 of Law 32 Year 2004], in the Elections of the Governor and Deputy Governor of the Special Capital City Region of Jakarta Province;
  
12. Whereas the Petitioners have tried to exercise their right to vote in the Election of the Governor and Deputy Governor of the Special Capital City Region of Jakarta Province on July 11, 2012, namely by using and/or presenting valid Identity Cards and Family Cards to the officers of the Voting Organizer in Cibubur Sub-District, Ciracas District, East Jakarta, as set forth in Decision of the Constitutional Court Number 102/PUU-VII/2009, dated July 6, 2009, but the Petitioners were unable to vote because the officers of the Voting Organizer rejected them. Such officers argued that such rejection was based on the instruction of the General Elections Commission of the Special Capital City Region of East Jakarta Province, namely that **a Voter who is not listed in the Permanent Voter List** may exercise his/her voting right at a

polling station, **provided that he/she is listed in the Temporary Voter List**, by presenting an original and valid Identity Card and Family Card.”; **(Exhibit P-8)**

13. Whereas in the Election of the Governor and Deputy Governor of the Special Capital City Region of Jakarta Province on July 11, 2012, the constitutional rights of the Petitioners had been impaired, namely that they were unable to vote because they were not listed in the voter list, either the Permanent Voter List or the Temporary Voter List; although the Petitioners had presented their authentic Identity Cards and Family Cards, they were still unable to vote. This happened because the field officers firmly upheld the provision of Article 69 paragraph (1) of Law Number 32 Year 2004 concerning Regional Government, which reads:

**“In order to be able to exercise the right to vote, every citizen of the Republic of Indonesia must be registered as a voter.”**

14. Whereas due to the existence of the provision of Article 69 paragraph (1) of Law Number 32 Year 2004 concerning Regional Government, the constitutional rights of the Petitioners and other citizens, namely the right to vote, will be potentially impaired, if they are not listed in the Permanent Voter List and the Temporary Voter List in the other or the next General Elections of the

Regional Head.

15. Whereas based on the description above, the Petitioners have interest in the review of Article 69 paragraph (1) of Law Number 32 Year 2004 concerning Regional Government along with its amended regulations;

**C. SUBSTANCE OF THE PETITION**

16. Whereas on October 15, 2004, Law Number 32 Year 2004 concerning Regional Government (State Gazette of the Republic of Indonesia Year 2004 Number 125, Supplement to the State Gazette of the Republic of Indonesia Number 4437) was enacted, as amended by Law Number 8 Year 2005 concerning the Stipulation of Government Regulation in Lieu of Law Number 3 Year 2005 concerning the Amendment to Law Number 32 Year 2004 concerning Regional Government to become a Law (State Gazette of the Republic of Indonesia Year 2005 Number 108, and amended for the second time 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”**;

17. Whereas the Regional Government Law includes the provisions concerning the right to vote in the elections of the regional head and vice regional head as regulated in Article 68 which reads:

*“Any Citizen of the Republic of Indonesia who has reached the age of 17 (seventeen) or who is/has been married on the voting day of the elections of the regional head and vice regional head shall have the right to vote.” With regards to the aforementioned provision, it can be concluded that a citizen shall have the right to vote so long as he/she has reached the age of 17 and/or has been married on the voting day of the elections of the regional head and vice regional head.”*

18. Whereas the same Law also regulates the right to vote as referred to in Article 69 paragraph (1) of the Regional Government Law, which reads:

*“In order to be able to exercise the right to vote, every citizen of the Republic of Indonesia must be registered as a Voter”.*

19. Whereas pursuant to the provision of Article 69 paragraph (1) of the Regional Government Law, it can be also concluded that a citizen who has reached the age of 17 and/or has been married is ineligible to vote in the elections of the regional head and vice

regional head because such citizen must be also registered as a voter, and thus, any citizen not listed in the voter list will lose his/her right to vote due to the administrative issues;

20. Whereas the human rights constitute the substances contained in the 1945 Constitution. Before the ratification of the Second Amendment to the 1945 Constitution containing the human rights, the 1945 Constitution had recognized several types of the human rights. One of them is the right referred to in Article 27 paragraph (1), stating that:

*“All Citizens shall have equal position before the law and government and shall be obligated to uphold such law and government without exception”.*

21. Whereas the provision of Article 27 paragraph (1) of the 1945 Constitution has not been amended when the wave of constitutional reform happened within the period of 1999-2002. In fact, its existence has been increasingly affirmed by the adoption of the provisions of Article 28D paragraph (1) and paragraph (3) of the 1945 Constitution, which read:

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

(3) *Every citizen shall the right to obtain equal opportunities in the government.”*

22. Whereas the right to vote constitutes a form of materialization of the rights to equal position before the law and government as regulated in Article 27 paragraph (1) and Article 28D paragraph (1) and paragraph (3) of the 1945 Constitution and also as specifically regulated in Article 43 of Law Number 39 Year 1999 concerning Human Rights, which reads:

*“Every citizen shall have the right to become a candidate and to vote in the general elections based on equality of rights through the direct, public, free, confidential, honest and fair voting and in accordance with the provisions of laws and regulations.”*

23. Whereas the Right to vote is also set forth in Article 25 of the International Covenant on Civil and Political Rights (ICCPR) ratified by Indonesia with Law Number 12 Year 2005 concerning the Ratification of the International Covenant on Civil and Political Rights, which reads as follows:

*“Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions: (a) To take part in the conduct of public affairs,*

*directly or through freely chosen representatives; (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors.”*

24. Whereas the provision of Article 69 paragraph (1) of the Regional Government Law, causing a citizen to potentially lose his/her right to vote if he/she is not registered as a voter or if he/she is not listed in the voter list, is very unfair and inconsistent with the spirit of the 1945 Constitution;

25. Whereas the provision of Article 69 paragraph (1) of the Regional Government Law reads:

*“In order to be able to exercise the right to vote, every citizen of the Republic of Indonesia must be registered as a voter”*,

The aforementioned provision tends to serve more as an administrative provision and procedure for a citizen to exercise his/her voting right;

26. Whereas the administrative provisions and procedures for a citizen to exercise his/her voting right are in fact required to prevent chaos from occurring in the implementation of elections. However, the administrative provisions and procedures may not



be used to affirm substantial matters, namely the right of a citizen to vote in the elections of the regional head and vice regional head. This is in line with the considerations of the Constitutional Court as contained in Decision Number 102/PUU-VII/2009, dated July 6, 2009, namely:

*(3.18) "Whereas the right of a citizen to vote as described above has been determined as a human right and constitutional right of a citizen, and therefore, the aforementioned constitutional right must not be hampered or prevented by various administrative provisions and procedures which make it difficult for such citizen to exercise his/her voting right.";*

*(3.20) "Whereas the provision requiring a citizen to be registered as a voter in the Permanent Voter List tends to serve as an administrative procedure and may not be used to affirm substantial matters, namely the right of a citizen to vote in the general elections. Therefore, the Court is of the opinion that the solution is necessary to complete the existing Permanent Voter List so that a Citizen shall be not prevented from exercising his/her voting right."*

27. Whereas therefore, it is clear that Article 69 paragraph (1) of the Regional Government Law can lead to the loss of the right to vote

of a citizen who has reached the age of 17 and/or who has been married. Whereas actually, the right to vote constitutes the right guaranteed by the constitution as described by the Court in the consideration section of its decision as set forth in the decision on the Case Number 011-017/PUU-I/2003, dated February 24, 2004.

The complete excerpt of such consideration reads as follows:

*“Whereas the constitutional rights of citizens to vote and to become a candidate constitute the rights guaranteed by the constitution, laws, and international conventions, and thus, any limitation, violation, denial, and elimination of the intended rights constitute the violation of the human rights of citizens.”*

28. Whereas the provision of Article 69 paragraph (1) of the Regional Government Law has the same substance as the substance of Article 28 of Law Number 42 Year 2008 concerning the General Elections of the President and Vice President, decided upon by the Constitutional Court as contained in Decision Number 102/PUU-VII/2009, dated July 6, 2009, the complete excerpts of which read as follows:

- *To grant the petition of the Petitioners in part;*
- *To declare Article 28 and Article 111 of Law Number 42 Year 2008 concerning the General Elections of the*

*President and Vice President (State Gazette of the Republic of Indonesia Year 2008 Number 176, Supplement to the State Gazette of the Republic of Indonesia Number 4924) constitutional to the extent that such articles are interpreted to include citizens who are not listed in the Permanent Voter List, subject to the following requirements and procedures:*

- 1. In addition to Indonesian citizens listed in the Permanent Voter List, Indonesian citizens who have not been listed in the Permanent Voter List may exercise their voting right by presenting valid Identity Cards (KTP) or valid Passports for those overseas;*
- 2. Indonesian citizens using Identity Cards shall also present family cards or similar documents;*
- 3. Indonesian citizens using valid Identity Cards may only exercise their voting right at the polling stations located in the Neighborhood Ward / Neighborhood Block or the like according to the address indicated on their Identity Cards;*
- 4. Indonesian citizens referred to in point 3 shall first register themselves at the local Voting Organizer*

*Group before exercising their voting right;*

5. *Indonesian citizens using Identity Cards or passports shall exercise their voting right 1 (one) hour before the end of voting at the polling stations or the local polling stations overseas.*

29. Whereas therefore, it can be concluded that the provision of Article 69 paragraph (1) of the Regional Government Law, requiring a citizen to be registered as a voter or to be listed in the voter list in order to be able to vote, has denied a citizen's constitutional rights to vote and therefore, it is inconsistent with Article 27 paragraph (1), Article 28D paragraph (1) and paragraph (3) of the 1945 Constitution;

#### **D. *PETITUM***

Based on all matters described above, the Petitioners request for the Panel of Constitutional Court Justices to pass the decision with the following injunctions:

1. To grant the petition filed by the Petitioners in its entirety;
2. To declare Article 69 paragraph (1) of Law Number 32 Year 2004 concerning Regional Government (State Gazette of the Republic of Indonesia Year 2004 Number 125, Supplement to the State

Gazette of the Republic of Indonesia Number 4437), “In order to be able to exercise the right to vote, every citizen of the Republic of Indonesia must be registered as a Voter.”, inconsistent with the 1945 Constitution;

3. To declare that Article 69 paragraph (1) of Law Number 32 Year 2004 concerning Regional Government (State Gazette of the Republic of Indonesia Year 2004 Number 125, Supplement to the State Gazette of the Republic of Indonesia Number 4437), “In order to be able to exercise the right to vote, every citizen of the Republic of Indonesia must be registered as a Voter.”, does not have any binding legal effect;

Or

To declare the aforementioned article constitutional to the extent that it is interpreted to include citizens who listed in the Permanent Voter List, subject to the following requirements and procedures:

- a. In addition to Indonesian citizens listed in the Permanent Voter List, Indonesian citizens who have not been listed in the Permanent Voter List may exercise their voting right by presenting valid Identity Card (*KTP*) or valid passport for those overseas;

- b. Indonesian citizens using Identity Card shall also present Family Card or the like;
  - c. Indonesian citizens using valid Identity Card may only exercise their voting right at the polling stations located in the Neighborhood Ward / Neighborhood Block or the like according to the address indicated on their Identity Card;
  - d. Indonesian citizens as referred to in point c above, shall first register themselves at the local Voting Organizer Group before exercising their voting right;
  - e. Indonesian citizens using Identity Card or passport shall exercise their voting right 1 (one) hour before the end of voting at the polling stations or the local polling stations overseas.
4. To order due promulgation of this Decision in the Official Gazette of the Republic of Indonesia.

Or,

If the Panel of Constitutional Court Justices is of a different opinion, the Petitioners request for the decision to be passed according to what is just and good (*ex aequo et bono*).

**[2.2]** Whereas to substantiate their arguments, the Petitioners presented documentary or written evidence marked as exhibits P-1 up to P-6 received at the Registrar's Office of the Constitutional Court on August 15, 2012 and exhibits P-7 through P-10 received at the Registrar's Office of the Constitutional Court on September 25, 2012, which were approved in the hearing on October 8, 2012, as follows:

1. Exhibit P-1 : Photocopy of the 1945 Constitution of the State of the Republic of Indonesia;
2. Exhibit P-2 : Photocopy of Law Number 32 Year 2004 concerning Regional Government;
3. Exhibit P-3 : Photocopy of Scanned Identity Card of the Special Capital City Region of Jakarta Province with Single Identity Number 3175091906810025 in the name of: Moh. Umar. H., S.H., valid until June 19, 2017;
4. Exhibit P-4 : Photocopy of Scanned Identity Card of the Special Capital City Region of Jakarta Province with Single Identity Number 3175096503820009 in the name of: Siti Hidayawati, S.H., valid until March 25, 2017;
5. Exhibit P-5 : Photocopy of Excerpt from the deed of marriage Number 831/32/VII/2005 dated July 4, 2005;

6. Exhibit P-6 : Photocopy of Family Card Number 317509290212001;
7. Exhibit P-7 : Photocopy of Permanent Voter List of the General Election of the Governor and Deputy Governor, at the Polling Station with Number 055, Cibubur Sub-District, Ciracas District, East Jakarta Municipality, the Special Capital City Region of Jakarta Province, dated June 2, 2012 (**Model A4 – KWK.KPU**);
8. Exhibit P-8 : Photocopy of Circular Letter of the General Election Commission of the Special Capital City Region of Jakarta Province with Number 474/KPU-Prov-010/VII/2012, dated July 9, 2012, concerning the Implementation of Voting and Vote-Counting at Polling Stations;
9. Exhibit P-9 : Photocopy of Evidence in the form of Receipt of Special Additional Voter (Model A-3.3.1-KWK.KPU), dated July 29, 2012, in the name of Moh. Umar. H, S.H. (**PETITIONER I**);
10. Exhibit P-10 : Photocopy of Evidence in the form of Receipt of Special Additional Voter (Model A-3.3.1-KWK.KPU), dated July 29, 2012, in the name of Siti Hidayawati, S.H. (**PETITIONER II**).



**[2.3]** Whereas to shorten the description of this decision, all matters taking place during the court hearing shall referred to the minutes of hearings and constitute an integral and inseparable part of this decision;

### **3. LEGAL CONSIDERATIONS**

**[3.1]** Whereas the purpose and objective of the petition of the Petitioners are to review the constitutionality of Article 69 paragraph (1) of Law Number 32 Year 2004 concerning Regional Government (State Gazette of the Republic of Indonesia Year 2004 Number 125, Supplement to the State Gazette of the Republic of Indonesia Number 4437, hereinafter referred to as the Regional Government Law) stating that, *“In order to be able to exercise the right to vote, every citizen of the Republic of Indonesia must be registered as a voter”* against the 1945 Constitution 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) shall first consider the following matters:

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

With regards to the aforementioned both matters, the Court is of the

following opinion:

### **Authorities of the Court**

**[3.3]** Whereas pursuant to 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 the State Gazette of the Republic of Indonesia Number 5226, hereinafter referred to as the Constitutional Court Law), and 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 authorities of the constitutional Court is to review Laws against the 1945 Constitution;

**[3.4]** Whereas the petition *a quo* concerns the review of the constitutionality of a Law *in casu* the Regional Government Law against the 1945 Constitution so that the Court has authority to hear the petition *a quo*;

### **Legal Standing of the Petitioners**

**[3.5]** Whereas pursuant to Article 51 paragraph (1) of the Constitutional Court Law and the Elucidation thereof, the parties eligible to act as the

Petitioners in the judicial review of a Law against the 1945 Constitution shall be those considering that their constitutional rights and/or authorities are impaired by the coming into effect of the Law petitioned for review, 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;

Therefore, the Petitioners in the Review of a Law against the 1945 Constitution shall first explain and substantiate:

- a. their position as the Petitioners as referred to 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 review;

**[3.6]** Also considering that the following Decision Number 006/PUU-III/2005 dated May 31, 2005 and Decision Number 11/PUU-V/2007dated

September 20, 2007 as well as subsequent decisions, the Court is of the opinion that the impairment of constitutional rights and/or authorities as referred to in Article 51 paragraph (1) of the Constitutional Court Law must meet five requirements, namely:

- a. the existence of constitutional rights and/or authorities of the Petitioners granted by the 1945 Constitution;
- b. the Petitioners consider that such constitutional rights and/or authorities are impaired by the coming into effect of the Law being petitioned for review;
- c. such constitutional rights and/or authorities 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 relevant impairment and the coming into effect of the Law being petitioned for review;
- e. there is a possibility that with the granting of the petition, such constitutional rights and/or authorities argued will not or will no longer occur;

**[3.7]** Whereas the Petitioners are individual Indonesian citizens who have reached the age of above 17 and who have been married (*vide* exhibits P-3 and

P-4) as well as those have tried to exercise their rights to vote in the General Election of the Regional Head and Vice Regional Head (*Pemilukada*) of the Special Capital City Region of Jakarta Province on July 11, 2012, namely by presenting valid Identity Card and Family Card to the officers of the Voting Organizer in Cibubur Sub-District, Ciracas District, East Jakarta, as determined in Decision of the Constitutional Court Number 102/PUU-VII/2009, dated July 6, 2009, but the Petitioners were still unable to vote because the officers of the Voting Organizer rejected them. Such rejection was based on the instruction for the General Elections Commission of East Jakarta stating that a Voter is not listed in the Permanent Voter List may exercise his/her voting right in the polling stations provided that he/she is listed in the Temporary Voter List, by presenting an original and valid Identity Card and Family Card (*vide* exhibit P-8);

The constitutional rights of the Petitioners had been impaired due to their inability to vote since the Petitioners were not listed in the Permanent Voter List and the Temporary Voter List although the Petitioners had presented their original and valid Identity Card and Family Card. The officers of the Voting Organizer complied with the provision of Article 69 paragraph (1) of the Regional Government Law stating that, *"In order to be able to exercise the right to vote, every citizen of the Republic of Indonesia must be registered as a voter"*. According to the Petitioners, Article 69 paragraph (1) of the Regional Government Law potentially impairs the constitutional rights of the Petitioners and other citizens to vote (the right to vote) if they are not listed in the

Permanent Voter List and the Temporary Voter List in other and the next General Elections of the Regional Head;

The Petitioners argue that the provision of Article 69 paragraph (1) of the Regional Government Law violates the constitutional rights of the Petitioners as regulated in Article 27 paragraph (1), Article 28D paragraph (1), and paragraph (3) of the 1945 Constitution stating as follows:

- Article 27 paragraph (1) of the 1945 Constitution: *“All Citizens shall have equal position before the law and government and shall be obligated to uphold such law and government without exception.”*;
- Article 28D paragraph (1) of the 1945 Constitution: *“Every person shall have the right to the recognition, guarantee, protection, and legal certainty of just laws as well as equal treatment before the law.”*;
- Article 28 D paragraph (3) of the 1945 Constitution: *“Every citizen shall the right to obtain equal opportunities in the government.”*

Whereas pursuant to the provision of Article 51 paragraph (1) of the Constitutional Court Law and the requirements for the impairment of constitutional rights and/or authorities as described above, according to the Court, the Petitioners are individual Indonesian citizens who have reached the

age of above 17 and who have been married (*vide* exhibits P-3 and P-4) and who have the constitutional rights granted by Article 27 paragraph (1), Article 28D paragraph (1) and Article 28D paragraph (3) of the 1945 Constitution which, according to the Petitioners, are impaired by the coming into effect of Article 69 paragraph (1) of the Regional Government Law. Such constitutional rights are specific and actual in nature, having a causal relationship (*causal verband*) between the intended impairment and the coming into effect of the Regional Government Law petitioned for constitutionality review because the Petitioners as residents of the Special Capital City Region of Jakarta Province were unable to vote in the General Election of the Regional Head and Vice Regional Head of the Special Capital City Region of Jakarta Province held on July 11, 2012 due to the fact that they were not listed in the Permanent Voter List and the Temporary Voter List, and therefore, there is a possibility that with the granting of the petition, the impairment of constitutional rights as argued will not or will no longer occur in the next General Elections of the Regional Head and Vice Regional Head. Therefore, according to the Court, the Petitioners have legal standing to file the petition *a quo*;

**[3.8]** Whereas because the Court has authority to hear the petition *a quo* and the Petitioners have legal standing to file the petition *a quo*, the Court will subsequently consider the substance of the petition;

### **Substance of the Petition**

**[3.9]** Whereas in the petition *a quo*, the Petitioners principally argue the following matters:

- Article 69 paragraph (1) of the Regional Government Law, causing a citizen to potentially lose his/her right to vote if he/she is not registered as a voter or in the voter list, is very unfair and inconsistent with the spirit of the 1945 Constitution;
- The administrative provision and procedure for a citizen to exercise his/her voting right are in fact required to prevent chaos from occurring in the implementation of elections. However, the administrative provision and procedure may not be used to affirm substantial matters, namely the right of a citizen to vote in the elections of the regional head and vice regional head. This is in line with the considerations of the Constitutional Court as contained in paragraph [3.18] and paragraph [3.20] of Decision Number 102/PUU-VII/2009, dated July 6, 2009;
- Article 69 paragraph (1) of the Regional Government Law may cause a citizen who has reached the age of 17 and/or who has been married to lose his/her right to vote. In fact, the right to vote constitutes the right guaranteed by the constitution as described in the legal considerations in Decision Number 011-017/PUU-I/2003, dated February 24, 2004;
- Article 69 paragraph (1) of the Regional Government Law has the same substance as the substance of Article 28 of Law Number 42 Year 2008



concerning the General Elections of the President and Vice President decided upon by the Constitutional Court in Decision Number 102/PUU-VII/2009 dated July 6, 2009, the injunctions of which, among other things, state:

*“ . . . Article 28 and Article 111 of Law Number 42 Year 2008 concerning the General Elections of the President and Vice President (State Gazette of the Republic of Indonesia Year 2008 Number 176, Supplement to the State Gazette of the Republic of Indonesia Number 4924) shall be constitutional to the extent that such articles are interpreted to include citizens not listed in the Permanent Voter List, subject to the following requirements and procedures:*

- 1. In addition to Indonesian Citizens who are listed in the Permanent Voter List, Indonesian Citizens who have not been listed in the Permanent Voter List may exercise their voting right by presenting valid Identity Card (KTP) or valid Passport for those overseas;*
- 2. Indonesian Citizens using Identity Card shall also present Family Card or the like;*
- 3. Indonesian Citizens using valid Identity Card may only exercise their voting right at the Polling Stations located in*

*Neighborhood Ward / Neighborhood Block or the like according to the address indicated on their Identity Card;*

4. *Indonesian Citizens as referred to in point 3 shall first register themselves at the local Voting Organizer Group before exercising their voting right;*

5. *Indonesian Citizens using Identity Card or passport shall exercise their voting right 1 (one) hour before the end of voting at the polling stations or the local polling stations overseas.”*

- Article 69 paragraph (1) of the Regional Government Law, requiring a citizen to be registered as a voter or to be listed in the voter list in order to be able to vote, has denied a citizen’s constitutional right to vote and therefore, the Petitioners request for the norm *a quo* to be declared inconsistent or conditionally inconsistent with Article 27 paragraph (1), Article 28D paragraph (1) and paragraph (3) of the 1945 Constitution;

**[3.10]** Whereas to substantiate their arguments of the petition, the Petitioners presented documentary/written evidence marked as exhibits P-1 up to P-10 which were approved in the hearing on October 8, 2012;

### **Opinion of the Court**

**[3.11]** Whereas before considering the substance of the petition, the Court

shall quote Article 54 of the Constitutional Court Law stating that, *“The constitutional court may request for statements and/or minutes of meeting with respect to the petition being examined from the People's Consultative Assembly, the People's Legislative Assembly, the Regional Representatives' Council, and/or the President”*. Because such article uses the word “may”, the Court does not have to hear the statements of the People's Consultative Assembly, the People's Legislative Assembly, the Regional Representatives' Council, and/or the President. In other words, the Court may request or may not request for the statements and/or minutes of meeting with respect to the petition being examined from the People's Consultative Assembly, the People's Legislative Assembly, the Regional Representatives' Council, and/or the President, depending on the urgency and relevance. Since the legal issues in the petition *a quo* have been clear, the Court considers that it is not urgent or relevant to request for the statements and/or minutes of meeting from the People's Consultative Assembly, the People's Legislative Assembly, the Regional Representatives' Council, and/or the President, and thus, the Court may make a decision directly on the petition *a quo*;

**[3.12]** Whereas the Petitioners principally argue that the provision of Article 69 paragraph (1) of the Regional Government Law stating that, *“In order to be able to exercise the right to vote, every citizen of the Republic of Indonesia must be registered as a voter”* the implementation of which requires a citizen to be registered as a voter or to be listed in the voter list in order to be able to

exercise his/her right to vote in a general election of the regional head and vice regional head, in fact, eliminates a citizen's constitutional rights to vote. Therefore, according to the Petitioners, Article 69 paragraph (1) of the Regional Government Law is inconsistent with Article 27 paragraph (1), Article 28D paragraph (1) and paragraph (3) of the 1945 Constitution;

**[3.13]** Whereas with respect to the case *a quo*, the Court refers to Decision Number 011-017/PUU-I/2003 dated February 24, 2004, on page 35 stating that, *“the constitutional rights of citizens to vote and to become a candidate constitute the rights guaranteed by the constitution, laws, and international conventions, and therefore, any limitation, violation, denial, and elimination of the intended rights constitute the violation of the human rights of citizens”*;

**[3.14]** Whereas Article 69 paragraph (1) of the Regional Government Law petitioned for constitutionality review in the case *a quo* is different from the provisions petitioned for review in Case Number 102/PUU-VII/2009 concerning the petition for review of Article 28 and Article 111 of Law Number 42 Year 2008 concerning the General Elections of the President and Vice President even though both provisions substantially regulate the same principal issues, namely, a person's right to vote, so that the legal considerations of the Court in Decision Number 102/PUU-VII/2009 dated July 6, 2009 shall apply, *mutatis mutandis*, to the case *a quo*;

**[3.15]** Whereas in the context of the 2009 General Election of the President

and Vice President, and in view of such case's urgency which at that time, had approached the implementation of the voting, the Court, in the legal considerations in paragraph [3.20] and paragraph [3.23] of Decision Number 102/PUU-VII/2009 *a quo*, affirmed that, "*the provision requiring a citizen to be listed as a voter in the Permanent Voter List tends to serve as an administrative procedure and may not be used to affirm substantial matters, namely the right of a citizen to vote in the general elections. Therefore, the Court is of the opinion that the solution is necessary to complete the existing Permanent Voter List so that a Citizen shall be not prevented from exercising his/her voting right; . . . before passing the Decision on the constitutionality of articles petitioned for review, on the one hand, in order not to impair the constitutional rights of citizens and on the other hand, not to violate the provisions of the prevailing laws and regulations, the Court shall order the General Election Commission to regulate further the technical implementation of the exercise of the voting rights of Indonesian citizens not listed in the Permanent Voter List by using the following guidelines:*

1. *Indonesian Citizens not yet listed in the Permanent Voter List may exercise their voting right by presenting valid Identity Cards (KTP) or valid Passports for those overseas;*
2. *Indonesian Citizens using Identity Card shall also present Family Card or the like;*

3. *Indonesian Citizens using valid Identity Card may only exercise their voting right at the Polling Stations located in the Neighborhood Ward / Neighborhood Block or the like according to the address indicated on their Identity Cards. In particular, Indonesian Citizens using passports in Overseas Election Committees shall obtain approval and designation of the polling stations from the local Overseas Election Committees;*
4. *Indonesian Citizens referred to in point 3 shall first register themselves at the local Voting Organizer Group before exercising their voting right;*
5. *Indonesian Citizens using Identity Card or Passport shall exercise their voting right 1 (one) hour before the end of voting at the polling stations or the local polling stations overseas.”*

**[3.16]** Whereas in the context of the General Elections of the Regional Head and Vice Regional Head, invalidity of data of the Permanent Voter List is one of the issues arising in almost all cases of disputes over the results of General Elections of the Regional Head and Vice Regional Head heard at the Court. In fact, such issue is also growing from the invalidity of data of the Temporary Voter List, Revised Temporary Voter List (*DPSHP*), Final Revised Temporary Voter List (*DPSHP Akhir*), to the List of Potential Voters in the Elections even though most cases of the General Elections of the Regional Head and Vice Regional Head cannot be materially proved to have significant impacts on the voting result of each candidate pair. However, it cannot be denied that in

reality, the issues of invalidity of data of the Permanent Voter List, Temporary Voter List, and the List of Potential Voters in the Elections still persist, at least in the regions which become the objects of disputes over the results of the General Elections of the Regional Head and Vice Regional Head heard at the Court. In many decisions on the cases of the General Elections of the Regional Head and Vice Regional Head, the Court has stated many times that the issue of Permanent Voter List is not an independent issue, but it is related to the issue of the management of population data which has not been completed. Errors in the preparation of Permanent Voter List, especially in relation to the single identity number (NIK), have been due to imperfect recording in the population administration information system utilizing the information and communication technology.

**[3.17]** Whereas in order to protect and guarantee the implementation of the exercise of the rights of citizens to vote in the General Elections of the Regional Head and Vice Regional Head, the General Election Commission has determined the provisions as set forth in Article 17A of General Election Commission Regulation Number 15 Year 2010 concerning the Amendment to General Election Commission Regulation Number 72 Year 2009 concerning the Guidelines and Procedures for the Implementation of voting and vote-counting of the General Elections of Regional Head and Vice Regional Head at the Polling Stations stating that:

(1) *Any voter who is not listed in the Permanent Voter List, while his/her*

*name is listed in data of voters/Temporary Voter List may vote in the polling stations.*

- (2) *If the name of such voter as referred to in paragraph (1) is listed in data of voters/Temporary Voter List, the Chairperson of the Voting Organizer Group shall, based on the statement of the Chairperson of the Voting Organizer, give notice (Model C6 – KWK.KPU).*

Whereas in its development, by referring to both Decision Number 011-017/PUU-I/2003 dated February 24, 2004 and Decision Number 102/PUU-VII/2009 dated July 6, 2009, the Court, in the decisions on cases of disputes over the results of the General Elections of the Regional Head and Vice Regional Head, principally justifies the practices conducted by the General Election Commission in the regions being intended to accommodate, to the greatest possible extent, local residents who have met the provisions to become voters in the General Elections of the Regional Head and Vice Regional Head. There are several examples of such the Court's decisions, namely, among other things: (1) Decision Number 28/PHPU.D-VIII/2010 concerning the dispute over the results of the 2010 General Election of the Regional Head and Vice Regional Head of Gresik Regency, East Java Province, dated August 10, 2010, which principally states that any citizen not yet listed in the Permanent Voter List may exercise his/her voting right by presenting valid Identity Card or passport, so that even no addition is made to the Permanent Voter List, such citizen is still able to exercise his/her voting right



by presenting valid identity, namely Identity Cards or passports; (2) Decision Number 209-210/PHPU.D-VIII/2010 concerning the dispute over the results of the 2010 General Election of the Regional Head and Vice Regional Head of South Tangerang City, dated December 10, 2010, which principally justifies that the Respondent's (the General Election Commission of South Tangerang City) actions to prevent the elimination of the constitutional rights of citizens to vote by issuing a circular letter which allows the voters not receiving the invitation and the voter card to use Identity Card; (3) Decision Number 77/PHPU.D-X/2012 concerning the dispute over the results of the 2012 General Election of the Regional Head and Vice Regional Head of Brebes Regency, Central Java Province, dated November 7, 2012, which principally states that the actions taken by the Respondent (the General Election Commission of Brebes Regency) in order to guarantee and protect the rights of citizens to vote, namely accommodating candidate voters who are not only listed in the Permanent Voter List, but who are also listed in the List of Potential Voters in the Elections, the Temporary Voter List, and Revised Temporary Voter, have been appropriate;

**[3.18]** Whereas pursuant to Article 5 paragraph (1) and the Elucidation of Article 5 paragraph (1) 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 Number 5076), the Judges, including the Constitutional Court Justices, shall be obligated to explore, follow, and

comprehend the legal values and the sense of justice applied in the communities for the Decisions of the Constitutional Court Justices to comply with the law and the community's sense of justice;

**[3.19]** Whereas in order to guarantee the constitutional rights of citizens to vote (the right to vote) particularly in the General Elections of the Regional Head and Vice Regional Head, and to give legal certainty of just laws as well as to enjoy the optimal benefits in the implementation of the General Elections of the Regional Head and Vice Regional Head for the candidate pairs participating in the General Elections of the Regional Head and Vice Regional Head, the organizers of the General Elections of the Regional Head and Vice Regional Head, and citizens who will exercise their voting rights, either set forth in data of the Permanent Voter List, Temporary Voter List, Revised Temporary Voter List, Final Revised Temporary Voter List, and List of Potential Voters in the Elections or not set forth in such data, but having original and valid Identity Cards, the Court shall order the General Election Commission to regulate further the technical implementation of the exercise of the voting rights of Indonesian citizens who are either listed or not listed in the Permanent Voter List, Temporary Voter List, Revised Temporary Voter List, Final Revised Temporary Voter List and List of Potential Voters in the Elections by using the guidelines as set forth in the injunctions of this decision;

**[3.20]** Whereas based on the legal considerations above in the relationship between one and another, according to the Court, the petition of the Petitioners

have legal grounds in part;

#### **4. CONCLUSIONS**

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

- [4.1]** The Court has authority to hear the petition *a quo*;
- [4.2]** The Petitioners have legal standing to file the petition *a quo*;
- [4.3]** The substance of the Petitioners' petition has legal grounds in part;

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 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 the State Gazette of the Republic of Indonesia Number 5226), as well as Law Number 48 Year 2009 concerning Judicial Power (State Gazette of the Republic of Indonesia Year 2009 Number 157, Supplement to the State Gazette Number 5076).

#### **5. INJUNCTIONS OF DECISION**

**Passing the Decision,**

**To declare:**

1. To grant the petition of the Petitioners in part;
  - 1.1. Article 69 paragraph (1) of Law Number 32 Year 2004 concerning Regional Government (State Gazette of the Republic of Indonesia Year 2004 Number 125, Supplement to the State Gazette of the Republic of Indonesia Number 4437) is inconsistent with the 1945 Constitution of the State of the Republic of Indonesia to the extent that it is interpreted not to include Indonesian citizens not listed in the Permanent Voter List, the Temporary Voter List, Revised Temporary Voter List, Final Revised Temporary Voter List, and List of Potential Voters in the Elections subject to the following requirements and procedures:
    - 1) Valid Identity Card and Family Card or the like must be presented;
    - 2) The voting right may only be exercised at the Polling Stations located in the Neighborhood Ward/Neighborhood Block or the like according to the address indicated on the Identity Card;
    - 3) The person concerned shall first register him/herself at the local Voting Organizer Group before exercising his/her voting right;

- 4) The person concerned may vote 1 (one) hour before the end of voting at the polling station;

1.2. Article 69 paragraph (1) of Law Number 32 Year 2004 concerning Regional Government (State Gazette of the Republic of Indonesia Year 2004 Number 125, Supplement to the State Gazette of the Republic of Indonesia Number 4437) does not have any binding legal effect to the extent that it is interpreted not to include Indonesian citizens not listed in the Permanent Voter List, the Temporary Voter List, the Temporary Voter List Resulting from the Revision, the Temporary Voter List Resulting from the Final Revision, and the List of Potential Voters in the Elections subject to the following requirements and procedures:

- 1) Valid Identity Cards and Family Cards or the like must be presented;
- 2) The voting right may only be exercised at the Polling Stations located in the Neighborhood Ward/Neighborhood Block or the like according to the address indicated on the Identity Cards;
- 3) The person concerned shall first register him/herself with the local Voting Organizer Group before exercising his/her

voting right;

- 4) The person concerned may vote 1 (one) hour before the end of voting at the polling station;
2. To order due promulgation of this decision in the Official Gazette of the Republic of Indonesia;
3. To reject the other and the remaining parts of the petition of the Petitioners;

Hence, this decision was made in the Consultative Meeting of Justices attended by nine Constitutional Court Justices, namely Moh. Mahfud MD, as Chairperson and concurrent Member, Achmad Sodiki, Maria Farida Indrati, M. Akil Mochtar, Hamdan Zoelva, Muhammad Alim, Harjono, Anwar Usman, and Ahmad Fadlil Sumadi, and respectively as Members, on **Monday, the twenty-fifth of February, two thousand and thirteen**, which was pronounced in the Plenary Session of the Constitutional Court open to the public on **Wednesday, the thirteenth of March, two thousand and thirteen**, and the pronouncement was completed at **15.00 WIB** (West Indonesia Time), by nine Constitutional Court Justices, namely Moh. Mahfud MD, as Chairperson and concurrent Member, Achmad Sodiki, Maria Farida Indrati, M. Akil Mochtar, Hamdan Zoelva, Muhammad Alim, Harjono, Anwar Usman, and Ahmad Fadlil Sumadi, respectively as Members, assisted by Wiwik Budi Wasito as the Substitute Registrar, in the presence of the Government or its representative,

the People's Legislative Assembly or its representative, in the absence of the  
Petitioners and/or their attorneys.

**CHIEF JUSTICE,**

**sgd.**

**Moh. Mahfud MD**

**JUSTICES,**

**sgd.**

**Achmad Sodiki**

**sgd.**

**M. Akil Mochtar**

**sgd.**

**Muhammad Alim**

**sgd.**

**Anwar Usman**

**sgd.**

**Maria Farida Indrati**

**sgd.**

**Hamdan Zoelva**

**sgd.**

**Harjono**

**sgd.**

**Ahmad Fadlil Sumadi**

**SUBSTITUTE REGISTRAR,**

**sgd.**

**Wiwik Budi Wasito**