



## DECISION

Number 18/PUU-XI/2013

**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 23 Year 2006 concerning Population Administration against the 1945 Constitution of the State of the Republic of Indonesia, filed by:

[1.2]	<b>Name</b>	:	<b>Mutholib</b>
	Place, Date of Birth	:	Surabaya, June 30, 1966
	Address	:	Neighborhood Ward / Neighborhood Block (RT/RW) 005/008, Sawunggaling Village, Wonokromo District, Surabaya City
	Occupation	:	Parking Attendant

In this case by virtue of Power of Attorney dated February 22, 2013 granting authority to **H. Sholeh Hayat, S.H., H. Subroto Kalim, and Bambang**

**Juwono, S.H., M.Hum.**, having their address at Jalan Diponegoro V/165, Baru Bangil Village, Pasuruan Regency, acting to represent the principal.

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 evidence of the Petitioner;

## **2. FACTS OF THE CASE**

**[2.1]** Whereas the Petitioner filed a petition dated January 13, 2013, which was received and registered with the Registrar's Office of the Constitutional Court (hereinafter referred to as the Registrar's Office of the Court) on January 23, 2013, based on Deed of Petition File Receipt Number 49/PAN.MK/2013 and recorded in the Constitutional Case Registry under Number 18/PUU-XI/2013 dated February 1, 2013, and which has been revised by the petition dated February 26, 2013 received at the Registrar's Office of the Constitutional Court on March 11, 2013, which principally describes the following matters:

### **I. AUTHORITY OF THE COURT**

Whereas Article 24C paragraph (1) of the 1945 Constitution which reads "*the Constitutional Court shall have authority to hear cases at the first*

*and final level, the decision of which shall be final, in conducting judicial review of Laws 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 dissolution of political parties, and to decide upon disputes over the results of general elections”*. Article 10 paragraph (1) sub-paragraph a of Law Number 24 Year 2003 concerning the 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), 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) which reads: *“the Constitutional Court shall have authority to hear at the first and final level, the decision of which shall be final to: a. conduct judicial review of Law against the 1945 Constitution of the Republic of Indonesia”*.

## **II. LEGAL STANDING OF THE PETITIONER**

1. Whereas subsequently, in Decision of the Constitutional Court Number 006/PUU-III/2005 and Decision Number 11/PUU-V/2007, 5 (five) requirements for the impairment of constitutional rights and/or authorities as referred to in Article 51 paragraph (1) of Law Number 24 Year 2003 have been determined, as follows:

2. a. Whereas based on the evidence in the form of Identity Cards and Member's Cards of the Members of the Regional People's Legislative Assembly of East Java Province the Petitioners as individual Indonesian citizens and members of the Regional People's Legislative Assembly of East Java Province shall have the obligations to receive and follow up public aspirations, as regulated in Article 300 sub-article i and sub-article y **[sic!]** of Law Number 27 Year 2009 concerning the People's Consultative Assembly (*MPR*), the People's Legislative Assembly (*DPR*), the Regional Representatives' Council (*DPD*), and the Regional People's Legislative Assembly (*DPRD*) (State Gazette of the Republic of Indonesia Year 2009 Number 123, Supplement to the State Gazette of the Republic of Indonesia Number 4972) namely that at the time of recess, they received public aspirations and complaints, namely difficulties in applying for a deed of birth in Surabaya City, Magetan Regency, and Lamongan Regency. As people's representatives, we have met the qualification for legal standing and have the interest to file a petition for judicial review as referred to in Article

51 paragraph (1) sub-paragraph a of Law 24/2003, in relation to the coming into effect of norms contained in Article 32 particularly the phrase of paragraph (2) of Law Number 23 Year 2006 concerning Population Administration (State Gazette of the Republic of Indonesia Year 2006 concerning Population Administration (State Gazette of the Republic of Indonesia Year 2006 Number 124, Supplement to the State Gazette of the Republic of Indonesia Number 4674).

2. b. Power of Attorney:

Mister Mutholaib who submitted deed of birth application Number 2194/Pdt/20/PN.Sby to the Surabaya District Court experienced difficulties in applying for the deed due to the official fee of Rp.236,000.- plus other fees, thus requiring the total fee of approximately Rp.400,000.-, so that he granted a Power of Attorney to the Petitioners to file a petition for judicial review to the Constitutional Court.

3. Whereas 2 (two) articles in the 1945 Constitution grant the constitutional rights to the Petitioners, namely:

Article 27 paragraph (1) 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”.*

Article 28D paragraph (1) which reads “*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”.*

### **III. SUBSTANCE OF THE PETITION**

1. The creation of a rule of law is philosophically intended to guarantee protection of the rights and obligations of all Indonesian people under the 1945 Constitution of the State of the Republic of Indonesia.

Good principles of protection, humanity, and legislation including the principle of enforceability must be reflected in the substance of the rule of law being formulated, in line philosophically with the formulation of laws and regulations as stated in the paragraph a of the consideration section and the principle of its formulation in as set out sub-article d, and its substance as set out in sub-article a and sub-article b of Article 5 of Law Number 12 Year 2011 concerning the Formulation of Laws and Regulations.

2. The creation of Law Number 23 Year 2006 concerning Population Administration, seen from one aspect, has positive purposes, as reflected philosophically in paragraph a of the consideration section, namely that the state shall be obligated to protect and acknowledge the determination of private status and legal status in any event related to population affairs and so forth.

One of the positive examples is Article 13 paragraph (1) stating that every national must have *NIK* or a single identity number, as implemented by the state in Article 15 paragraph (4) in issuing electronic Member Identity Card, deed of birth, and family card.

3. The issuance of deed of birth, as stated in Article 27 paragraph (2) of this Law, has given rise to national issues, particularly in East Java where, at the beginning of the issuance of this Law on December 29, 2006 until its realization in 2011, the process, requirements and issuance of deeds of birth were implemented in a normal, uninterrupted and conducive manner, as reflected in the consideration section of Law Number 12 Year 2011, namely that the principles of protection and humanity may be implemented.

This situation occurred because the Ministry of Home Affairs issued recommendations from 2007 to 2011, the content of which was intended to delay the implementation of Article 32 paragraph (2) of this Law, namely that the recording of birth exceeding the time limit of 1 (one) year as referred to in paragraph (2) shall be conducted based on the stipulation of a district court. For example, according to the opinion of the Minister of Home Affairs Gamawan Fauzi in the website, the circular letter of the Minister of Home Affairs was issued because at the beginning of the implementation of Article 23 paragraph (2) of this Law, people who were late in applying for deed of birth registration experienced difficulties and obstacles everywhere. This case can be seen in the websites of: Tanjung Alang Timur Regency, West Sulawesi, Karawang Regency, the Special Capital City Region (*DKI*) of Jakarta, Padang Sidempuan Regency and Medan.

4. Mister Bambang Sasmito S.H., M.H., and Mister Bayu Istiyatmoko S.H., M.H., Head and Deputy-Head of Kepanjen District Court in Malang also explained about the issuance of the circular letter of the Minister of Home Affairs in front of a delegation of Commission A of the Regional People's Legislative Assembly of East Java Province on Friday,



February 21, 2013 in an audience event and examination of data of the implementation of Article 32 paragraph (2) of this Law. Both of them were of the opinion “that circular letter of the Minister of Home Affairs was issued to delay the implementation of Article 32 paragraph (2) in District Courts until 2011 and at the beginning of every year and at the beginning of 2012, it was started to be implemented in accordance with the content of the Law. Thereafter, there have been 1,400 applications for deed of birth and at the beginning of 2013, 170 cases were successfully decided upon. The period for its completion was ranging from 3 (three) weeks to 1 (one) month.

The atmosphere of the court room was like a noisy market crowded with applicants, and the court provided the services solely because it was a state duty pursuant to the Law, but it also became a new tiring and time and energy-consuming burden.

5. The process for applying for deed of birth which is late for more than 1 (one) year, as experienced by mister Mutholib, who sent a letter to us, requires a cover letter from the head of Neighborhood Ward/head of Neighborhood Block, head of sub-district, and from the central post office as well as the presence

of 2 (two) witnesses, and represents a multi-layered and complicated form of bureaucracy. This is not in line with national policies to reform bureaucracy and public services constituting the mandate of the 1945 Constitution, as stated in the consideration section of Law Number 25 Year 2009 concerning Public Services.

6. The Head of Surabaya District Court, Mister Heru Pramono, in an interview with *Jawa Pos* daily newspaper on July 6, 2012, stated that actually he was overwhelmed in providing services for the issuance and stipulation of deeds of birth because the number of incoming Applicants was not equal to the number of personnel involved in such process. The registrars were very overwhelmed with the aforementioned number. In 2012, 7,254 applications were filed and the court heard 1,209 applications every month (exhibit P-3).
7. The issuance of deed of birth is essentially the right of a citizen. This is in line with the content of Article 2 sub-article a of this Law stating that every citizen has the right to obtain population documents. The potential right of every citizen is the implementation of:
  - a. Article 53 paragraph (2) of Law Number 39 Year 1999

concerning Human Rights (State Gazette of the Republic of Indonesia Year 1999 Number 165, Supplement to the State Gazette of the Republic of Indonesia Number 3886) stating that *“every child shall be entitled from his/her birth to a name and to the status of citizenship”*.

- b. The existence of the right of a child is also affirmed by Law Number 23 Year 2002 concerning Child Protection (State Gazette of the Republic of Indonesia Year 2002 Number 109, Supplement to the State Gazette of the Republic of Indonesia Number 4235), in Article 5 which reads *“every child shall be entitled to a name as his/her identity and to the status of citizenship”*, Article 27 paragraph (1) and paragraph (2) which reads *“every child shall be granted an identity from his/her birth”*. The identity as referred to in paragraph (1) is set out in a deed of birth.
- c. The legal status of the rights of a child is acquired from the ultimate source of national law, namely, Article 28D paragraph (4) of the 1945 Constitution of the State of the Republic of Indonesia, which reads *“every person shall have the right to the status of citizenship”*.

8. The rights of a child guaranteed by 3 (three) Laws and protected by the 1945 Constitution of the State of the Republic of Indonesia are encountering legal disasters, as follows:
  - a. District Courts have been dealing with difficulties, obstacles, complexity, fees and additional burden and the Minister of Home Affairs has become particularly busy so that within a period of 5 (five) years they have been constantly issuing Circular Letters, giving dispensations, and postponing the implementation of Article 32 paragraph (2) of this Law (exhibit P-4).
  - b. Article 32 paragraph (2) of this Law has violated the rights guaranteed by Article 28D paragraph (4) of the 1945 Constitution, namely that the right of a child to obtain the status of citizenship as guaranteed has been subjected to obligations and sanctions at the same time for late reporting within a period of 1 (one) year with a strict requirement for the existence of a stipulation from a district court.
9. The existence of the aforementioned obligations and sanctions has resulted in considerable costs in the application for a deed of birth, especially for the poor living in rural areas, namely

among other things, transportation fees for going to and from a court house several times, for paying administrative fees to the post office, presenting 2 witnesses, applying for the statement on birth acknowledgement to head of village, etc. These have impaired and violated the constitutional rights of citizens, particularly Applicants for deeds of birth.

For example, the court fees in Malang District Court range from Rp.177,000.- to Rp.236,000.- in accordance with the distance, and such fees shall be transferred to a bank account.

To prepare for the hearing process and the stipulation in Kepanjen District Court of Malang, 8 types of letters including 8 pages of the stipulation letter must be made and Applicants must prepare 7 types of letters, in addition to the transportation for going to the central post office in the city (exhibit P-5).

10. Whereas therefore, we request that Article 32 of Law Number 23 Year 2006 concerning Population Administration be declared to have no binding legal effect with its all legal consequences.

#### **IV. *PETITUM***

1. To grant the petition of the Petitioner;

2. To declare that Article 32 of Law Number 23 Year 2006 concerning Population Administration (State Gazette of the Republic of Indonesia Year 2006, Supplement to the State Gazette of the Republic of Indonesia Number 4674) which reads:
  - a. Birth reporting as referred to in Article 27 paragraph (1) exceeding the time limit of 60 (sixty) days up to 1 (one) year as from the date of birth shall be conducted after obtaining the approval of the head of the local implementing agency.
  - b. Birth recording exceeding the time limit of 1 (one) year as referred to in paragraph (1) shall be conducted based on a stipulation of a District Court;
  - c. Further provisions on the requirements and procedures for the birth recording as referred to in paragraph (1) and paragraph (2) shall be regulated in a Presidential Regulation.

The provisions of such article are inconsistent with the philosophy and principle of the formulation of laws and regulations, namely that they must reflect the principles of

protection, humanity and enforceability and they are inconsistent with Article 28D paragraph (4) of the 1945 Constitution which reads “*every person shall have the right to citizenship status*”.

3. To declare that Article 32 of Law Number 23 Year 2006 concerning Population Administration (State Gazette of the Republic of Indonesia Number 124, Supplement to the State Gazette of the Republic of Indonesia Number 4674), particularly the phrase “*exceeding the time limit of 1 (one) year*” shall not have any binding legal effect with its all legal consequences”.
4. To order due promulgation of this decision in the Official Gazette.

Or

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

**[2.2]** Whereas to substantiate the arguments of his petition, the Petitioner filed the documentary or written evidence approved in the hearing on March 13, 2013, marked as exhibits P-1 through P-11 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 the Recess Letter of the Members of the Regional People's Legislative Assembly of East Java Province;
3. Exhibit P-3 : Photocopy of Law Number 27 Year 2009 concerning the People's Legislative Assembly (*DPR*) - Regional People's Legislative Assembly (*DPRD*);
4. Exhibit P-4 : Photocopy of Law Number 23 Year 2006 concerning Population Administration;
5. Exhibit P-5 : Photocopy of Circular Letter of the Supreme Court Number 6 Year 2012;
6. Exhibit P-6 : Photocopy of Law Number 39 Year 2009 concerning Human Rights;
7. Exhibit P-7 : Photocopy of Law Number 23 Year 2002 concerning Child Protection;
8. Exhibit P-8 : Photocopy of the Identity Cards (*KTP*) and Member Cards of the Members of the Regional People's



Legislative Assembly of East Java Province;

9. Exhibit P-9 : Photocopies of Newspaper Clippings:
  - a. *Jawa Pos* dated January 7, 2013;
  - b. *Jawa Pos* dated December 28, 2012;
  - c. *Jawa Pos* dated June 6, 2012;
  - d. *Surya* dated January 4, 2013;
  - e. *Surya* dated January 3, 2013;
  
10. Exhibit P-10 : Photocopy of Data of Deed of Birth Ownership in Surabaya;
  
11. Exhibit P-11 : Internet Access:
  - a. Court Fees for a Deed of Birth in Belawan (*Biaya Sidang Akta Kelahiran di Belawan*);
  - b. Students Having No Deed of Birth Rejected by Schools (*Tidak Punya Akta Kelahiran Ditolak Sekolah*);
  - c. Fees in Tanjung Jabung Regency (*Biaya di Kabupaten Tanjung Jabung*);
  - d. Claims in Karawang (*Tuntutan di Karawang*);
  - e. Complicated Application for a Deed in the Special Capital City Region (*DKI*) of Jakarta (*Ruwetnya Akta di DKI Jakarta*);

- f. Padang Lawas, Expensive Fees (*Padang Lawas, Biaya Mahal*);
- g. Medan, Costly Fees (*Medan, Biaya Mencekik*);
- h. Surabaya, Millions of Citizens Have No Deed (*Surabaya, Jutaan Warga tidak Punya Akta*);
- i. Department of Home Affairs Complains About Complicated Application for a Deed (*Depdagri, Mengeluh tentang Akta Repot Mengurusnya*);

**[2.3]** Whereas to shorten the description of this decision, everything taking place during the court hearing shall be sufficiently set out in the minutes of the hearing, which constitutes an integral and inseparable part of this decision;

### **3. LEGAL CONSIDERATIONS**

**[3.1]** Whereas the purpose and objective of the petition of the Petitioner are to review the constitutionality of Article 32 of Law Number 23 Year 2006 concerning Population Administration (State Gazette of the Republic of Indonesia Year 2006 Number 124, Supplement to the State Gazette of the Republic of Indonesia Number 4674, hereinafter referred to as Law 23/2006) which completely states, as follows:

- (1) *Birth reporting as referred to in Article 27 paragraph (1) exceeding the time limit of 60 (sixty) days up to 1 (one) year as from the date of birth shall be conducted after obtaining an approval of the Head of the Local Implementing Agency.*
- (2) *Birth recording exceeding the time limit of 1 (one) year as referred to in paragraph (1) shall be conducted based on a stipulation of the local district court;*
- (3) *Further provisions on the requirements and procedures for the birth recording as referred to in paragraph (1) and paragraph (2) are regulated in a Presidential Regulation.*

are inconsistent with Article 27 paragraph (1), Article 28D paragraph (1) and paragraph (4) of the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution);

Article 27 paragraph (1):

*“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):

*“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 28D paragraph (4):

*“Every person shall the right to the status of citizenship”.*

**[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. authorities of the Court to hear the petition *a quo*;
- b. legal standing of the Petitioner to file the petition *a quo*.

With regards to the aforementioned two 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, hereinafter referred to as Law 48/2009), one of the Court's 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]** Whereas the Petitioner filed a petition for review of the constitutionality of a law *in casu* Article 32 of Law 23/2006, against Article 27 paragraph (1), Article 28D paragraph (1), and paragraph (4) of the 1945 Constitution, which is one of the Court's authorities, and therefore, the Court shall have the authority to hear the petition *a quo*;

#### **Legal standing of the Petitioner**

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

- a. individual Indonesian citizens (including groups of people having a common interest);
- b. customary law community groups insofar as they are still in existence and in line with the development of the communities and the principle

of the Unitary State of Republic of Indonesia as regulated in Law;

- c. public or private legal entities; or
- d. state institutions;

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

- a. his position as a Petitioner 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 following Decision Number 006/PUU-III/2005 dated May 31, 2005 and Decision Number 11/PUU-V/2007, dated September 20, 2007, as well as subsequent decisions, the Court 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 Petitioner granted by the 1945 Constitution;
- b. the Petitioner considers 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 of constitutional rights and/or authorities 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 Petitioner considers that he has been impaired by the coming into effect of Article 32 of Law 23/2006 which regulates the process for birth recording exceeding the time-limit. The provisions *a quo* are considered inconsistent with the principle of equal position before the law, the principle of legal certainty of just laws, and inconsistent with the right to citizenship status owned by every citizen, as guaranteed by Article 27 paragraph (1), Article 28D paragraph (1) and paragraph (4) of the 1945 Constitution;

The Petitioner is a citizen who applied for a deed of birth

exceeding the time limit to Surabaya District Court, with case registration Number 2194/Pdt/20/PN.Sby. The Petitioner experienced difficulties in applying for the birth recording exceeding the time limit for having to go through a complicated bureaucratic process, namely, being required to obtain Cover Letters from Neighborhood Ward and Neighborhood Block, Sub-District, District, the Population Affairs and Vital Records Service Office, the District Court, the Central Post Office, the bank and to present two witnesses. The Petitioner also had to pay the official fee of Rp236,000.- plus other fees which were relatively burdensome for the Petitioner;

**[3.8]** Whereas the Court is of the opinion that the Petitioner as an individual Indonesian citizen who, pursuant to Article 51 paragraph (1) of the Constitutional Court Law and the Court's decisions on legal standing, and with due observance of the impairment suffered by the Petitioner who experienced difficulties in applying for the birth recording exceeding the time-limit, in relation to the constitutional rights of the Petitioner, has the constitutional rights granted by the 1945 Constitution, which in the Petitioner's opinion have been impaired by the coming into effect of Law 23/2006 petitioned for review, which are specific and actual in nature, with a causal relationship (*causal verband*) between the aforementioned impairment and the coming into effect of Law 23/2006 petitioned for review, and thus, there is a possibility that if the petition is granted, such constitutional rights as argued will not or will no longer occur. Therefore, the Court is of the opinion



that the Petitioner has legal standing provided for by Article 51 paragraph (1) of the Constitutional Court Law to file the petition *a quo*;

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

### **Substance of the Petition**

**[3.10]** Whereas prior to considering the substance of the petition further, the Court needs to quote Article 54 of the Constitutional Court Law stating, *“The Constitutional Court may request for information and/or minutes of meeting on the petition being examined to the People's Consultative Assembly, the People's Legislative Assembly, the Regional Representatives' Council, and/or the President”* in reviewing a Law. In other words, the Court may request or may not request for information and/or minutes of meeting on the petition being examined to the People's Consultative Assembly, the People's Legislative Assembly, the Regional Representatives' Council, and/or the President, depending on its urgency and relevance. As the legal issues and the petition *a quo* are sufficiently clear, the Court is of the opinion that there is no urgency and relevance to request for information and/or minutes of meeting to the People's Consultative Assembly, the People's Legislative Assembly, the Regional Representatives' Council, and/or the President, and thus, the Court may directly decide upon the petition *a quo*;

**[3.11]** Whereas in essence, the Petitioner claims to have been impaired by the coming into effect of Article 32 of Law 23/2006 because population documents constitute the right of each national, thus, it is line with the content of Article 2 sub – article a of Law 23/2006. Every child shall be entitled to a name as his/her identity and to obtain citizenship status [*vide* Article 3 and Article 5 of Law Number 23 Year 2002 concerning Child Protection (State Gazette of the State of the Republic of Indonesia Year 2002 Number 109, Supplement to the State Gazette of the State of the Republic of Indonesia Number 4235. hereinafter referred to as Law 23/2002)];

Article 27 paragraph (1) of Law 23/2006 states that citizens shall be obligated to report every birth to the local implementing agency at its place of birth by no later than 60 (sixty) days as from the date of birth. Birth recording exceeding the time limit of 1 (one) year as referred to in Article 32 paragraph 2 shall be conducted based on a stipulation of a district court. Further provisions shall be regulated in a Presidential Regulation. This results in a lengthy, multi-layered, and complicated bureaucratic process charged with high fees which are burdensome for the Petitioner and also it is not line with the national policies to reform bureaucracy and public services being the mandate of the 1945 Constitution, as stated in the consideration section of Law Number 25 Year 2009 concerning Public Services;

**[3.12]** Whereas after examining the petition of the Petitioner in detail, the

Court considers the following matters:

### **Opinions of the Court**

**[3.13]** Whereas Article 1 paragraph (2) of the 1945 Constitution states that sovereignty is in the hands of the people and it shall be exercised in accordance with the Constitution. This means that the people as the holders of sovereignty shall control the state. The Establishment of the Government of the State of Indonesia is intended to protect all Indonesian people and motherland and to advance the public welfare as well as to develop the intellectual life of the nation. In order to fulfill the people's interest, in the context of regional autonomy, the regional government shall have authority to exercise autonomy at the broadest level, except for governmental affairs determined by the Law as affairs of the Central Government. One of the mandatory affairs constituting the authority of the regency/municipality is the population affairs and vital records service [*vide* Article 14 paragraph (1) subparagraph I of Law Number 32 Year 2004 concerning Regional Government as most recently amended by Law Number 12 Year 2008 concerning the Second Amendment to Law Number 32 Year 2004 concerning Regional Government (State Gazette of the State of the Republic of Indonesia Year 2008 Number 59, Supplement to the State Gazette of the State of the Republic of Indonesia Number 4844)]. In addition, the granting of broad autonomy to regions is intended to accelerate the materialization of public welfare by improving public services, public empowerment and public

participation. The state shall have the obligation to serve every citizen and resident to fulfill his/her rights and basic needs in the context of the public services constituting the mandate of the 1945 Constitution;

**[3.14]** Whereas the provision of public services currently still deals with the situations which are not yet in accordance with the needs and changes in various fields of the life of the society, the nation, and the state. It is caused by unpreparedness for addressing the occurrence of the transformation of value having broad dimensions and results in the occurrence of various complex development issues. A higher public awareness of obtaining better and more qualified education is often hampered by various technical and administrative issues which cannot be resolved immediately because of some legal provisions which are still not conducive for fast, simple, and cost-effective public services;

**[3.15]** Whereas Article 27 paragraph (3) of Law 23/2002 states that *“A deed of birth shall be made based on a letter of statement from the persons witnessing and/or helping with the birth process”*. Article 27 paragraph (4) of Law 23/2002 states that *“In the event that a child whose process of birth is not known and whose parents’ whereabouts are not known, the deed of birth for such child shall be made based on the statement of the persons finding him/her”*. Article 28 paragraph (1) of Law 23/2002 states that *“The government shall be responsible for the making of a deed of birth the implementation of which shall be carried out at the lowest level of sub-*

*district/village*”. Based on the aforementioned provisions, it can be concluded that deed of birth services constitute the government’s obligation in the field of the Population Administration which shall be provided in a simple and affordable manner. On the other hand, every citizen shall be obligated to report every population event and every important event he/she experienced, including birth;

**[3.16]** Whereas the Unitary State of the Republic of Indonesia based on *Pancasila* and the 1945 Constitution essentially shall have the obligations to protect and acknowledge the determination of private status and legal status in any population event and any important event experienced by an Indonesian citizen within and/or outside the territory of the Unitary State of the Republic of Indonesia. The state shall give protection by organizing the Population Administration.

The Population Administration, in this case the deed of birth, is very important for citizens because with a deed of birth they will obtain population documents serving as perfect evidence of an authentic deed, evidence of a person’s identity, evidence of a person’s relationship with his/her family which will have a series of legal consequences, both civil responsibility of the parents to their child and a person’s inheritance rights. A child not having a deed of birth will, according to the law (*de jure*), not be deemed existent by the state. The consequences are that the name, descent line, nationality of the new-born child are not recorded and his/her presence

is not protected. Moreover, the worst consequence is the manipulation of the child's identity which easily facilitates child exploitation, such as child trafficking, child labor exploitation, and violence against children.

A deed of birth is also related to legal-formal requirements for a person's identity before the law. One of the aforementioned requirements is to determine the minimum age of a person in order to be considered an legal person able to do something because such person has juridical power at his/her will, thus, such person can also determine legal conditions for himself/herself.

Therefore, the Court is of the opinion that a deed of birth is very important for a person because by having a deed of birth, the person will obtain the recognition, guarantee, protection and legal certainty because his/her birth is recorded by the state, and thus, such deed of birth will create legal rights and obligations, and it will give the person the private status and the status of citizenship.

On the other hand, the organization of Population Administration is also important for state administrators because the state needs population data to plan and implement directed and on-target development programs. Such provisions indicate the importance of the organization of Population Administration as part of the efforts to achieve good governance. For that purpose, a deed of birth becomes very important to protect and provide

services in relation to the rights arising from any event of population affairs and for important events to be organized in an orderly and efficient manner;

**[3.17]** Whereas according to the Court, the phrase “*approval*” used in Article 32 paragraph (1) of Law 23/2006 may result in legal uncertainty and injustice as referred to in Article 28D paragraph (1) of the 1945 Constitution in the recording and issuance process of deed of birth because such approval is internal in nature in the Implementing Agency. Therefore, according to the Court, to determine legal certainty of just laws, to record or not to record the birth being reported late as referred to in Article 32 paragraph (1) of Law 23/2006, a decision of the Head of Implementing Agency is required based on the evaluation on the accuracy of data submitted in accordance with the laws and regulations. Thus, the phrase “*approval*” in Article 32 paragraph (1) of the Law *a quo* must be interpreted as “*decision*” of the Head of Implementing Agency.

**[3.18]** Whereas services related to deed of birth have become lengthy and complicated because the birth being reported late to the local Implementing agency exceeding the time limit of 60 days up to 1 (one) year as referred to in Article 27 paragraph (1) of Law 23/2006 must obtain an approval of the Head of the local Implementing Agency as referred to in Article 32 paragraph (1) of Law 23/2006 and it must be based on a court stipulation after the expiry of 1 (one) year as referred to in Article 32 paragraph (2) of Law 23/2006.

According to the Court, delayed birth reporting for more than one year requiring a court stipulation would be burdensome not only for the people living in remote areas but also for those living in urban areas. Moreover, as considered above, court proceedings are not easy for common people so that it may result in the violation of the constitutional rights of citizens to legal certainty. The process of obtaining a deed of birth requiring the lengthy administrative procedures and period of time as well as more costs may impair the citizens, while in fact, such deed of birth constitutes an important document required for various purposes. Therefore, Article 32 paragraph (2) of Law 23/2006 is inconsistent with the provisions of Article 28D paragraph (1) of the 1945 Constitution and Article 28D paragraph (4) of the 1945 Constitution and it is also inconsistent with the principle of justice because justice delayed is equal to justice denied;

**[3.19]** Whereas the phrase “*up to 1 (one) year*” in Article 32 paragraph (1) of Law 23/2006 is no longer relevant after Article 32 paragraph (2) of Law 23/2006 is declared inconsistent with the 1945 Constitution, and therefore, it does not have any binding legal effect. Therefore, the phrase “*up to 1 (one) year*” in Article 32 paragraph (1) of Law 23/2006 shall be also declared inconsistent with the 1945 Constitution and does not have any binding legal effect;

**[3.20]** Whereas because Article 32 paragraph (2) of Law 23/2006 is



declared inconsistent with the 1945 Constitution and does not have any binding legal effect, the phrase “*and paragraph (2)*” in Article 32 paragraph (3) of Law 23/2006 is no longer relevant so that it shall be declared inconsistent with the 1945 Constitution and it does not have any binding legal effect;

**[3.21]** Whereas based on all the considerations above, the arguments of the Petitioner’s petition 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 the authority to hear the petition *a quo*;

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

**[4.3]** The Arguments of the Petitioner’s petition have 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 of the Republic of Indonesia Number 5076);

## 5. INJUNCTIONS OF DECISION

### Passing the Decision,

#### To declare:

- 1 To grant the petition of the Petitioner in part;
  - 1.1 The word “approval” in Article 32 paragraph (1) of Law Number ~~32~~<sup><</sup> Year 2006 concerning Population Administration (State Gazette of the Republic of Indonesia Year 2006 Number 124, Supplement to the State Gazette of the Republic of Indonesia Number 4674) is inconsistent with the 1945 Constitution of the State of the Republic of Indonesia to the extent it is not interpreted as “decision”;
  - 1.2 The word “approval” in Article 32 paragraph (1) of Law Number ~~32~~<sup><</sup> Year 2006 concerning Population Administration (State Gazette of the Republic of Indonesia Year 2006 Number 124, Supplement to the State Gazette of the Republic of Indonesia Number 4674) does not have any binding legal effect, to the

extent it is not interpreted as “decision”;

1.3 The phrase “up to 1 (one) year” in Article 32 paragraph (1) of Law Number ~~32~~<sup><</sup> Year 2006 concerning Population Administration (State Gazette of the Republic of Indonesia Year 2006 Number 124, Supplement to the State Gazette of the Republic of Indonesia Number 4674) is inconsistent with the 1945 Constitution of the State of the Republic of Indonesia;

1.4 The phrase “up to 1 (one) year” in Article 32 paragraph (1) of Law Number ~~32~~<sup><</sup> Year 2006 concerning Population Administration (State Gazette of the Republic of Indonesia Year 2006 Number 124, Supplement to the State Gazette of the Republic of Indonesia Number 4674) does not have any binding legal effect;

1.5 Article 32 paragraph (1) of Law Number ~~32~~<sup><</sup> Year 2006 concerning Population Administration (State Gazette of the Republic of Indonesia Year 2006 Number 124, Supplement to the State Gazette of the Republic of Indonesia Number 4674) shall completely become, *“Birth reporting as referred to in Article 27 paragraph (1) exceeding the time limit of 60 (sixty) days as from the date of birth shall be conducted after obtaining a decision of the head of the local implementing agency”*;

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- 1.6 Article 32 paragraph (2) of Law Number ~~32~~<sup><</sup> Year 2006 concerning Population Administration (State Gazette of the Republic of Indonesia Year 2006 Number 124, Supplement to the State Gazette of the Republic of Indonesia Number 4674) is inconsistent with the 1945 Constitution of the State of the Republic of Indonesia;
- 1.7 Article 32 paragraph (2) of Law Number ~~32~~<sup><</sup> Year 2006 concerning Population Administration (State Gazette of the Republic of Indonesia Year 2006 Number 124, Supplement to the State Gazette of the Republic of Indonesia Number 4674) does not have any binding legal effect;
- 1.8 The phrase “and paragraph (2)” in Article 32 paragraph (3) of Law Number ~~32~~<sup><</sup> Year 2006 concerning Population Administration (State Gazette of the Republic of Indonesia Year 2006 Number 124, Supplement to the State Gazette of the Republic of Indonesia Number 4674) is inconsistent with the 1945 Constitution of the State of the Republic of Indonesia;
- 1.9 The phrase “and paragraph (2)” in Article 32 paragraph (3) of Law Number ~~32~~<sup><</sup> Year 2006 concerning the Population Administration (State Gazette of the Republic of Indonesia Year 2006 Number 124, Supplement to the State Gazette of the

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Republic of Indonesia Number 4674) does not have any binding legal effect;

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 Petitioner;

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, Muhammad Alim, Harjono, M. Akil Mochtar, Ahmad Fadlil Sumadi, Anwar Usman, and Hamdan Zoelva, respectively as Members, on **Wednesday, the fourteenth of March, two thousand and thirteen**, which was pronounced in the Plenary Session of the Constitutional Court open to the public on **Tuesday, the thirtieth of April, two thousand and thirteen**, and the pronouncement was completed at **14.30 WIB** (West Indonesian Time), by nine Constitutional Court Justices, namely M. Akil Mochtar as Chairperson and concurrent Member, Achmad Sodiki, Maria Farida Indrati, Muhammad Alim, Harjono, Ahmad Fadlil Sumadi, Anwar Usman, Hamdan Zoelva, and Arief Hidayat, respectively as Members, assisted by Yunita Rhamadani as the Substitute Registrar, in the presence of the Petitioner, the Government or its representative, as well as the People's Legislative

Assembly or its representative.

**CHIEF JUSTICE,**

**sgd**

**M. Akil Mochtar**

**JUSTICES,**

**sgd**

**Achmad Sodiki**

**sgd**

**Muhammad Alim**

**sgd**

**Ahmad Fadlil Sumadi**

**sgd**

**Hamdan Zoelva**

**sgd**

**Maria Farida Indrati**

**sgd**

**Harjono**

**sgd**

**Anwar Usman**

**sgd**

**Arief Hidayat**

**SUBSTITUTE REGISTRAR,**

**sgd**

**Yunita Rhamadani**