



DECISION

Number 98/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 8 Year 1981 concerning the Criminal Procedure against the 1945 Constitution of the State of the Republic of Indonesia, filed by:

[1.2] **The Indonesian Anti-Corruption Society (*MAKI*)**, represented by:

1. Name : **Boyamin**
Date of Birth : July 20, 1968
Occupation : Private Person
Position : Coordinator and Founder of *MAKI*
Address : Jalan Jamsaren
Number 60, Serengan, Surakarta

2. Name : **Supriyadi**
Date of Birth : February 8, 1981

Occupation : Private Person
 Position : Founder of *MAKI*
 Address : Jalan Denpasar II (YBR
 V) Number 46, South Jakarta

In this case by virtue of Special Power of Attorney dated October 31, 2012 granting authority to **Kurniawan Adi Nugroho, S.H.** and **Poltak Ike Wibowo, S.H.**, both of them being advocates at **Boyamin Saiman and Kurniawan Law Firm** having its legal domicile at Jalan Setu Pagelarang 8, Cilangkap, East Jakarta, jointly and severally acting for and on behalf of the Principal;

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 September 26, 2012 received at the Registrar's Office of the Constitutional Court (hereinafter referred to as the Registrar's Office of the Court) on September 26, 2012, based on Deed of Petition File Receipt Number 344/PAN.MK/2012 and recorded in the Constitutional Case Registry under Number 98/PUU-X/2012

dated October 2, 2012, which was revised by and received at the Registrar's Office of the Constitutional Court on October 29, 2012, which principally describes the following matters:

AUTHORITIES OF THE CONSTITUTIONAL COURT

The Petitioners in the intended petition describe that the provisions regulating the authorities of the Constitutional Court to review Article 80 of Law Number 8 Year 1981 concerning the Criminal Procedure (Criminal Procedure Code) against Article 1 paragraph (3) and Article 28D paragraph (1) of the 1945 Constitution are as follows:

1. The provisions of Article 24C paragraph (1) of the 1945 Constitution *juncto* Article 10 paragraph (1) sub-paragraph a of Law Number 24 Year 2003 concerning the Constitutional Court (the Constitutional Court Law) stating that one of the Constitutional Court's authorities is to conduct the judicial review of Laws against the 1945 Constitution of the State of the Republic of Indonesia (the 1945 Constitution);
2. Article 24 paragraph (2) of the Third Amendment to the 1945 Constitution stating that "*Judicial power shall be exercised by a Supreme Court and its inferior courts and by a Constitutional Court*";
3. Article 10 paragraph (1) sub-paragraph a of Law Number 24 Year 2003 concerning the Constitutional Court stating that "*to review laws against*

the 1945 Constitution of the State of the Republic of Indonesia”;

4. Article 7 of Law Number 10 Year 2004 concerning the Formulation of Laws and Regulations stating that the position of the 1945 Constitution is hierarchically higher than a Law. Therefore, any provision of a Law may not be inconsistent with the 1945 Constitution (*constitutie is de hoogste wet*). Any provision of a Law which is inconsistent with the 1945 Constitution can be petitioned for review through the Judicial review mechanism;
5. Based on the matters described above, the Petitioners are of the opinion that the Constitutional Court has the authority to examine and decide upon the petition for judicial review in this case.

LEGAL STANDING OF THE PETITIONERS

Whereas in accordance with the provisions of Article 51 paragraph (1) of Law Number 24 Year 2003 concerning the Constitutional Court (the Constitutional Court Law), in order that a person or a party can be accepted as a Petitioner in a petition for review of a Law against the 1945 Constitution, such person or party shall explain:

- a. His/her position in the petition, namely either as an individual Indonesian citizen, a group of customary law communities, a legal entity, or a state institution;

- b. The impairment of his/her constitutional rights and/or authorities, in the position as referred to in letter (a), resulting from the coming into effect of the law petitioned for review;

Pursuant to such provisions, the Petitioners shall first explain their position, their constitutional rights as well as the specific impairments they will suffer, as follows:

1. Whereas the Petitioners as legal entities also have the rights and obligations in the legal system similar to persons. It is also similar to the case of petition for review of a Law against the 1945 Constitution of the State of the Republic of Indonesia; such legal entity, either private or public, may suffer impairment affecting its constitutional rights due to the coming into effect or enactment of a Law. This is in line with the jurisprudence of the Constitutional Court Number 005/PUU-I/2003 filed by several organizations engaging in the field of radio and television, and also Law Number 32 Year 2002 concerning Broadcasting filed by journalist organizations, namely among other things, Indonesian Private Television Association (*ATVSI*), and Indonesian Television Journalist Association (*IJTI*) claiming themselves to be legal entities and in this case, the Constitutional Court acknowledges that they have legal standing as Legal Entities;
2. Whereas the Petitioners have been formally incorporated under the

Deed of Establishment drawn up by Notary Ikke Lucky A., S.H. Number 175 dated April 30, 2007 and have been registered with the Registrar's Office of the Sukoharjo District Court Number 8/2007/PN.SKH. dated 3-5-2007 (*vide* exhibit P.5). It can be compared to a limited partnership (CV) legal entity which requires a Deed of Establishment drawn up by a notary and the registration with the Registrar's Office of the local District Court in order to obtain a legal status.

3. Whereas a private legal entity is defined as an agreement entered into between more than 2 (two) persons constituting multiple legal actions or conducted by more than 2 (two) persons, which separates a part of their assets for the entity formed under such agreement, and the Petitioners are a legal entity in the form of social association whose founders are domiciled in several provinces of Indonesia, and accordingly, it is clearly proved that the Petitioners are a legal entity in the form of a social organization of association because its legal actions are multiple in nature;
4. Whereas the purposes and objectives and the business activities of the establishment of the Petitioners are set forth expressly in the Articles of Association of the Indonesian Anti-Corruption Society (*MAKI*/ the Petitioners), namely, as regulated in Article 4 and Article 5 of the Articles of Association of the Petitioners, which read as follows:

PURPOSES AND OBJECTIVES

Article 4

The Purposes and Objectives of the establishment of this Association shall be:

To assist the Government and the State of the Republic of Indonesia in the field of community empowerment for enforcing the law, justice, human rights, and for preventing and eradicating any form of corruption, collusion and nepotism in order to improve public welfare as proclaimed by the founders of the Republic of Indonesia pursuant to Regulation of Wartime Authorities Number PRT/PERPU/013/1958 concerning the Eradication of Corruption *juncto* Law Number 24/PRP/1960 concerning Investigation, Prosecution and Examination of Criminals Act of Corruption, and later continued by the next generations as regulated in Law Number 3 Year 1971 concerning the Eradication of Criminal Acts of Corruption *juncto* Law Number 21 Year 2001 concerning the Eradication of Criminal Acts of Corruption. (As quoted from the original Deed of Establishment of the Association of Indonesian Anti-Corruption Society).

Activities

Article 5

In order to achieve the purposes and objectives as referred to in article 4

of this deed, the Association will carry out activities which are in accordance with and not inconsistent with an association, namely, among other things:

1. To provide assistance and advocacy to the community, the nation, and the state in protecting the assets of the community and the state.
2. To promote the community life which is free from the practices of corruption, collusion and nepotism.
3. To encourage and empower the community in order to be willing to assist the government in eradicating corruption, collusion, and nepotism.
4. To assist the relevant parties, namely, the Police Force, the Corruption Eradication Commission (*KPK*), and the Prosecutor's Offices in the investigation, inquiry and prosecution of cases of corruption, collusion and nepotism.
5. To submit a report on any alleged criminal act of corruption to the relevant parties, namely, the Police Force, the Corruption Eradication Commission (*KPK*), and the Prosecutor's Offices and further to control the progress of such report.
6. To file a civil action or a pretrial petition to the relevant parties,

namely, the Police Force, the Prosecutor's Offices, and the Corruption Eradication Commission (*KPK*) if there is any indication that such parties do not perform the legal proceedings or are slow to take actions against the criminal acts of corruption, collusion and nepotism. (As quoted from the original Deed of Establishment of the Indonesian Anti-Corruption Society) (exhibit P.5)

5. All this time, the Petitioners, who have been actively involved in the efforts for the Prevention and Eradication of Corruption as well as Law Enforcement in General, are participating in the Association of Indonesian Anti-Corruption Society (MAKI) whose constitutional rights have been impaired and will be impaired by the coming into effect of Article 80 of Law Number 8 Year 1981 concerning the Criminal Procedure (Criminal Procedure Code) in relation to the narrow interpretation of third party in interest which is limited to victims and or victims being represented state apparatuses, namely the Police and Public Prosecutor Office..
6. The Petitioners filed a pretrial petition for the cases of corruption as a third party in interest, but it was not accepted for the reason that the right of the Petitioners to file a suit as a third party in interest has not been regulated in the Law and there are provisions limiting the Petitioners' movement to participate in preventing and eradicating corruption as well

as enforcing the law. (*vide* exhibit P7 – Decision Number 215/PID/PRAP/2008/PT.DKI and *vide* exhibit P8 – Decision Number 17/Pid.Prap/2008/PN.JKT.SEL).

7. Whereas based on Pretrial Decision of Semarang District Court Number 05/PRA.PID/2012/PN.SMG dated May 11, 2012 filed by an NGO, namely Corruption, Collusion and Nepotism Investigation and Eradication Committee (*KP2KKN*) of Central Java, with the injunctions that the petition cannot be accepted because the parties having the right to file the pretrial petition are limited to Investigators or Prosecutors only. (to become an exhibit)
8. Whereas the Petitioners once filed a pretrial petition and the whole demurrer and substance of the case were granted and they were acknowledged as third parties in interest having the rights and obligations to file pretrial petition as regulated in Article 80 of the Criminal Procedure Code. (*vide* exhibit P-6 Decision Number 04/Pid.Prap/2008/PN.JKT.SEL dated May 06, 2008)
9. Based on all the matters described above, it is evident that the Petitioners have been established for the purpose of public interest advocacy which, in this matter, may file a petition for judicial review of a Law against the 1945 Constitution *juncto* Judicial Review of Article 80 of Law Number 8 Year 1981 concerning the Criminal Procedure (Criminal

Procedure Code) which reads, “*Any investigator or public prosecutor or third party in interest may request the Head of the Court to examine whether a termination of investigation or prosecution is valid or not by stating the reasons therefor*”.

10. Whereas based on the matters described above, the Petitioners as a Legal Entity have legal standing in filing the petition *a quo* to the Constitutional Court and it is regulated in Article 51 paragraph (1) of Law Number 24 Year 2003 concerning the Constitutional Court.

IMPAIRMENT SUFFERED BY THE PETITIONERS

1. Whereas the Petitioners have the reason to file the petition *a quo*, namely to uphold the people’ sovereignty constituting the absolute right of Indonesian people as regulated in Article 1 paragraph (2) of the 1945 Constitution, and the Petitioners’ action of filing the petition *a quo* is intended to uphold the law and government as regulated in Article 27 paragraph (1) of the 1945 Constitution *juncto* Article 1 paragraph (3) of the 1945 Constitution. Article 1 paragraph (3) of the 1945 Constitution reads as follows, “(1) *The State of Indonesia is a state based on law*”.
2. Whereas public participation in the government administration constitutes the people’s right and responsibility as regulated in Article 27 paragraph (1) of the 1945 Constitution as affirmed by Article 8, Article 9, and Article 41 of Law Number 28 Year 1999 concerning State

Administrators Who Are Clean and Free of Corruption.

3. Whereas the impairment of the constitutional rights and/or authorities due to the coming into effect of a Law, pursuant to Article 51 paragraph (1) of Law Number 24 Year 2003 concerning the Constitutional Court, must meet 5 (five) requirements, namely:
 - a) the existence of constitutional rights of the Petitioners granted by the 1945 Constitution;
 - b) the Petitioners consider that their constitutional rights have been impaired by the Law being reviewed;
 - c) the intended constitutional impairment of the Petitioners must be specific (special) and actual or at least potential in nature which, pursuant to logical reasoning, can be assured of occurring;
 - d) there is a causal relationship (*causal verband*) between the 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 impairment argued will not or will no longer occur.
4. Whereas based on the matters described above, the Petitioners have been the appropriate parties considering that their constitutional rights

and/or authorities are impaired by the coming into effect of the provision of Article 80 of Law Number 8 Year 1981 concerning the Criminal Procedure. In addition, the intended constitutional impairment of the Petitioners must be specific (special) or at least potential in nature which, pursuant to logical reasoning, can be assured of occurring, and there is a causal relationship (*causal verband*) between the impairment and the coming into effect of the Law being petitioned for review.

5. Whereas a criminal act may result in expanding impairment or the victims of a criminal act are all citizens (the criminal acts of corruption, terrorism, narcotics and drugs), and thus, a medium for citizens constituting victims is necessary to control the law enforcement process performed by the state apparatuses.
6. Whereas therefore, all impairments resulting from the criminal act of corruption become the impairments of all Indonesian citizen, while any mass organization (*Ormas*) or NGO (*LSM*) can no longer become a third party in interest, and thus, no party can file a pretrial petition if any investigator or public prosecutor terminates his/her investigation or prosecution.
7. Whereas the narrow interpretation of Article 80 of the Criminal Procedure Code is inconsistent with the 1945 Constitution.

NORMS PETITIONED FOR REVIEW

A. MATERIAL NORM

The petitioned norm in Law Number 8 Year 1981 concerning the Criminal Procedure, is:

Article 80

Any investigator or public prosecutor or third party in interest may request the head of the district court to examine whether a termination of investigation or prosecution is valid or not by stating the reasons therefor

B. NORMS OF THE 1945 CONSTITUTION OF THE STATE OF THE REPUBLIC OF INDONESIA

There are 4 (four) norms, namely:

1. Article 1 paragraph (3)

The state of Indonesia is a State based on Law.

2. 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.

3. Article 28H paragraph (2)

Every person shall have the right to obtain facilities and special treatment in obtaining equal opportunities and benefits for achieving equality and justice.

4. Article 27 paragraph (1)

All citizens shall have an equal position before the law and government and shall be obligated to uphold such law and government without exception.

THE GROUNDS OF THE PETITIONERS WITH RESPECT TO THE APPLICATION OF ARTICLE 80 OF THE CRIMINAL PROCEDURE CODE WHICH IS INCONSISTENT WITH THE 1945 CONSTITUTION OF THE STATE OF THE REPUBLIC OF INDONESIA

The Petitioners in the Judicial Review of the Law raise objections with the arguments which principally become the basis for the petition of objections, as follows:

I. BROAD DEFINITION OF THIRD PARTY

1. Whereas the criminal act of corruption causes great losses to the state finance or the state's economy and obstructs national development so that it must be eradicated in order to achieve a fair and prosperous society based on *Pancasila* and the 1945

Constitution;

2. Whereas besides causing great losses to the state finance or the state's economy, criminal acts of corruption which has occurred all this time obstruct national growth and development sustainability requiring high efficiency;
3. Whereas the actions of law enforcement apparatuses shall not deviate from law enforcement efforts and they shall not commit corruption in enforcing the law itself by terminating the investigation or prosecution using weak legal bases because such law enforcement apparatuses are reasonably suspected of taking a bribe or facing political barriers and pressures, so that active participation of any citizen is required to supervise and control the law enforcement apparatuses in order to comply with the applicable provisions by pretrial efforts.
4. Whereas based on the provisions, the public shall have the rights and responsibilities to prevent and eradicate criminal acts of corruption which may be realized in the form of pretrial efforts as regulated in Article 80 of the Criminal Procedure Code if the law enforcement apparatuses are reasonably suspected of deviating from and committing errors in performing their duties.
5. The public participation is regulated in Law Number 31 Year 1999

juncto Law Number 20 Year 2002 which principally describes as follows:

- a. the right to search for, obtain, and provide information on the alleged occurrence of a criminal act of corruption.
- b. the right to obtain services to search for, obtain and provide information on the alleged occurrence of a criminal act of corruption to the law enforcers handling the case of the criminal act of corruption;
- c. the right to give suggestions and express opinions responsibly to the law enforcers handling the case of the criminal act of corruption;
- d. the right to receive the answer to the question about his/her report delivered to the law enforcers by no later than 30 (thirty) days;
- e. the right to obtain legal protection in the event that:
 - (1). He/she exercises his/her rights as referred to in letter a, letter b, and letter c;
 - (2). He/she is required to attend the process of investigation, inquiry, and court hearing as a

whistleblower, a witness, or an expert witness in accordance with the provisions of the applicable laws and regulations;

- f. The public as referred to in Law Number 31 Year 1999 *juncto* Law Number 20 Year 2002 shall have the rights and responsibilities to prevent and eradicate criminal acts of corruption.
6. Whereas based on Article 41 of Government Regulation Number 71 Year 2000, with respect to the period of 30 days, any complaint about the handling of the corruption cases must be responded to, while all this time in reality, it has not been implemented effectively due to the lack of criminal sanction, so that public participation will be optimal through extended pretrial institutions.
7. Whereas the definition of *third party in interest* must be interpreted broadly. It should not be limited only to the victim's witness or whistleblower, but it should also include the people at large represented by Non-Government Organizations (NGOs). Basically, the relevant criminal act is properly and proportionally settled in order to grant the Right to the public. If the weight of public interest is appropriate and proportional in order to grant the right to the public represented by NGOs or community

organizations to file a pretrial petition for unlawful termination of investigation or prosecution and arrest or detention.

8. Whereas according to Jurisprudence, the phrase *third party in interest* formulated in Article 80 of the Criminal Procedure Code is categorized as the broad term or it has unclear meaning (unplain meaning). By referring such formulation, the will of the Lawmaker complies with the public will (public purpose). (Considerations of the Judges in Pretrial Decision Number 04/Pid/Prap/2008/PN.JKT.SEL, *vide* exhibit P-6)
9. Whereas in Article 1 sub-article 24 of the Criminal Procedure Code a report is defined as a notice of criminal events which have occurred, which are occurring, or which will allegedly occur, delivered by a person related to his/her rights and obligations based on the Laws to the competent authorities. In principle, all parties shall have the rights and obligations to report the occurrence of a violation of law. This interest may include individual interest and the interest of a group, organization, or public interest adjusted to the purposes and objectives or goals which will be achieved through such complaint.
10. Whereas the Criminal Procedure is included in the domain of Criminal Law Concept so that the grounds of the interest and the

impairments of the *third party in interest* as regulated in the Civil Law Concept become irrelevant. Therefore, *the third party in interest* is any citizen, the people at large represented by NGOs or community organizations. (Considerations of the Judges in Decision of Review of the Supreme Court Number 4 PK/Pid/2000 dated November 26, 2001, to become an exhibit).

11. Whereas Article 80 of the Criminal Procedure Code states that any investigator or public prosecutor or third party in interest may request the Head of the District Court to examine whether a termination of investigation or prosecution is valid or not by stating the reasons therefor and the Elucidation thereof states that Article 80 of the Criminal Procedure Code is intended to enforce the law, justice, and truth by means of horizontal supervision.
12. Whereas the Petitioners act as the managers and founders of an NGO called the Indonesian Anti-Corruption Society (*MAKI*) in the deed of establishment drawn up by Notary Ikke Lucky A., S.H. Number 175 dated April 30, 2007 and registered with the Registrar's Office of the Sukoharjo District Court Number 8/2007/PN.SKH, dated 3-5-2007 (exhibit P.5) stating that they shall be authorized to file a pretrial petition in the capacity of "the third party in interest" because in this case, MAKI has purposes and concerns for preventing and eradicating corruption, collusion

and nepotism in Indonesia pursuant to the provisions of its Articles of Association.

13. Whereas with due observance of Article 80 of the Criminal Procedure Code, the managers or the founders acting as *the third parties in interest* may file the pretrial petition subject to the following requirements:

1. The weight of public interest in the relevant criminal act.
2. The relevant NGO must have articles of association.
3. The articles of Association of the relevant NGO must expressly state that the NGO engages in the field of criminal acts of corruption as a manifestation of public concern and participation.
4. They shall actively and continuously achieve the purposes and objectives of Eradication of Criminal Acts of Corruption included in such Articles of Association. (considerations in Decision Number 04/PID/PRAP/2008/PN.JKT.Sel dated May 06, 2008, *vide* exhibit P-6).

14. Whereas with regards to *the third party in interest*, DR. Chairul Huda, S.H., M.H. states that the criteria must be clear so that it is not simply the “loss” and since the definition of such third party in

interest is not explained in the Criminal Procedure Code, thus, by quoting Yongker's opinion, the Expert witness states that the (pretrial) judges may interpret such definition. (considerations in Decision Number 04/PID/PRAP/2008/PN.JKT.Sel dated May 06, 2008, *vide* exhibit P-6).

15. Whereas the purposes and objectives of the establishment of such NGO expressly included in the Articles of Association are intended to assist the Government and the State of the Republic of Indonesia in preventing and eradicating Corruption, Collusion and Nepotism in Indonesia and the NGO has been conducting such activities actively and continuously following its establishment on April 30, 2007 until now. (considerations in Decision Number 04/PID/PRAP/2008/PN.JKT.Sel dated May 06, 2008, *vide* exhibit P-6).

16. Whereas with regards to the criteria of the weight of public interest in a criminal act, the extent of the weight of public interest in such criminal act must be assessed. The weight of public interest must be to a certain extent that it must involve the livelihood of the people at large, and must cause losses to the general public, in this case the cases of Corruption, Collusion and Nepotism. (considerations in Decision Number 04/PID/PRAP/2008/PN.JKT.Sel dated May 06, 2008, *vide* exhibit

P-6).

17. Whereas the Criminal Act of Corruption is the criminal act causing losses to the state finance and the state's economy which ultimately has a great impact on the livelihood of the people at large, and that it is proportional for any community organization and/or NGO showing concerns for preventing and eradicating corruption, collusion and nepotism in Indonesia to be granted the right and legal standing to file a pretrial petition in the capacity as an third party in interest because the true victims of the criminal act of corruption are the Indonesian people. (considerations in Decision Number 04/PID/PRAP/2008/PN.JKT.Sel dated May 06, 2008, *vide* exhibit P-6).

18. Whereas this is in line with the purposes of Article 4 of Law Number 31 Year 1999 *juncto* Law Number 20 Year 2001 concerning the Eradication of Criminal Acts of Corruption which encourage public participation to prevent and eradicate corruption in Indonesia, and thus, the definition of third party in interest in Article 80 of the Criminal Procedure Code should not be interpreted narrowly which is limited only to the victim's witness or the heir, but such definition must also be interpreted broadly according to the weight of public interest or public interest which is impaired or interrupted because of such act. (considerations in

Decision Number 04/PID/PRAP/2008/PN.JKT.Sel dated May 06, 2008, *vide* exhibit P-6).

19. Whereas scientifically, the third party in interest already has a broad definition, namely that it includes the people at large represented by NGOs or community organizations. (Yahya Harahap; *Pembahasan Permasalahan dan Penerapan KUHAP, Pemeriksaan Sidang Pengadilan, Banding, Kasasi, dan Peninjauan Kembali* (Discussion of Issues and Application of the Criminal Procedure Code, *Court Hearing, Appeal, Cassation Appeal and Judicial Review*); Second Edition; Sinar Grafika Publisher; tenth Printing, in July 2008; *vide* exhibit P-9).

II. NARROW DEFINITION OF THE RIGHT OF THIRD PARTY IN INTEREST TO FILE A SUIT

1. Whereas the considerations in Case Decision Number 215/PID/PRAP/2008/PT.DKI consider and evaluate whether the Petitioners as a non-government organization may be classified as the third parties in interest pursuant to Article 80 of the Criminal Procedure Code in order that they have legal standing to act as legal subjects or parties who shall have the right to file a pretrial petition. (considerations in Decision Number 215/PID/PRAP/2008/PT.DKI dated September 22, 2008, *vide*

exhibits P-7 and P-8).

2. Whereas in fact, either the theory or the practice has not had a uniform interpretation/opinion on the definition of third party in interest as a community organization and or an NGO acting as a legal subject which shall have the right to file a suit (legal standing) in order to file a Pretrial petition. (considerations in Decision Number 215/PID/PRAP/2008/PT.DKI dated September 22, 2008, *vide* exhibits P-7 and P-8).

3. Whereas the suit filed by the community organization and or NGO as the third party in interest is evidently clear and different, based on Decisions of South Jakarta District Court Number 09/Pid.Prap/2006/PN.Jkt.Sel., Number 10/Pid.Prap/2006/PN.Jkt.Sel., Number 11/Pid.Prap/2006/PN.Jkt.Sel., dated June 12, 2006, in which the court acknowledged and accepted the NGO as *the third party in interest*. On the other hand, based on Decision of South Jakarta District Court Number 13/Pid.Prap/2006/PN.Jkt.Sel., dated November 8, 2003, the court did not acknowledge and accept the NGO as the third party in interest because the right of NGO to file a suit was not regulated in the Corruption Eradication Law (considerations in Decision Number 215/PID/PRAP/2008/PT.DKI dated September 22, 2008, *vide* exhibits P-7 and P-8).

4. Whereas it must be considered whether any community organization acting on behalf of public interest has always the right to file a suit (legal standing) and may act as a legal subject in any suit or petition with due observance of the procedures and requirements determined by the laws and regulations. (considerations in Decision Number 215/PID/PRAP/2008/PT.DKI dated September 22, 200, *vide* exhibit P-7 and exhibit P-8).
5. Whereas with regard to the certainty of legal standing of a community organization or an NGO which may act as a party in any suit or petition, the Judges in their Decisions are of the opinion that not all community organizations or NGOs have the right to file a suit unless it is expressly and clearly regulated in the Law, regulations or the implementing regulations (considerations in Decision Number 215/PID/PRAP/2008/PT.DKI dated September 22, 2008 *vide* exhibit P.7 and exhibit P.8).
6. Whereas legal standing of NGOs is regulated in Article 37 paragraph (1) of Law Number 23 Year 1997 concerning Environmental Management which provides that *“the public shall have the right to file a class action to the Court and/or to report various environmental issues which harm the livelihood of the public to the law enforcers”*. (considerations in Decision Number

215/PID/PRAP/2008/PT.DKI dated September 22, 2008, *vide* exhibit P-7 and exhibit P-8).

7. Whereas subsequently, Article 38 paragraph (3) of Law Number 23 Year 1997 provides that any environmental organization shall have the right to file a suit as referred to in paragraph (1) if it meets the following requirements:
 - a. It is in the form of a legal entity or a foundation;
 - b. The Articles of Association of the relevant Environmental Organization must expressly state that the establishment of such organization is for the interest of preserving environmental functions;
 - c. It shall conduct activities in accordance with its articles of association; (considerations in Decision Number 215/PID/PRAP/2008/PT.DKI dated September 22, 2008, *vide* exhibit P-7 and exhibit P-8).

8. Whereas the implementing regulations of the provisions of Article 37 paragraph (1) and Article 38 paragraph (3) of Law Number 23 Year 1997 are further regulated in Government Regulation Number 54 Year 2000 concerning the Out-of-Court Environmental Dispute Settlement Service Provider.

(considerations in Decision Number 215/PID/PRAP/2008/PT.DKI dated September 22, 2008, *vide* exhibit P.7 and exhibit P.8).

9. Whereas legal standing of NGOs is also regulated in Article 44 and Article 46, particularly the provisions of Article 2 and Article 7 of Law Number 8 Year 1999 concerning Non-Government Organizations on Consumer Protection. (considerations in Decision Number 215/PID/PRAP/2008/PT.DKI dated September 22, 2008, *vide* exhibit P.7 and exhibit P.8).
10. Whereas in addition to the both Laws, the right to file a suit and the requirements for NGOs are also regulated particularly in Article 71 up to Article 73 of Law Number 41 Year 1999 concerning Forestry. (considerations in Decision Number 215/PID/PRAP/2008/PT.DKI dated September 22, 2008, *vide* exhibit P.7 and exhibit P.8).
11. Whereas based on the provisions of Law Number 23 Year 1997 *juncto* Government Regulation Number 54 Year 2000, Law Number 8 Year 1999 *juncto* Government Regulation Number 59 Year 2001 and Law Number 41 Year 1999, the Appellate Court is of the opinion that NGOs having the right to file a suit (legal standing) and the procedures and requirements for the NGOs having such right are clearly and expressly regulated in the

relevant Laws. (considerations in Decision Number 215/PID/PRAP/2008/PT.DKI dated September 22, 2008, *vide* exhibit P.7 and exhibit P.8).

12. Whereas Law Number 31 Year 1999 as amended and supplemented by Law Number 20 Year 2000 and Government Regulation Number 71 Year 2000 and some of its implementing regulations do not regulate legal standing and the procedures and requirements for NGOs. It is also the case for the implementing regulations of Government Regulation Number 71 Year 2000 concerning the Procedures for the Implementation of Public Participation and the Granting of Award for Enforcement and Eradication of Criminal Acts of Corruption. (considerations in Decision Number 215/PID/PRAP/2008/PT.DKI dated September 22, 2008, *vide* exhibit P.7 and exhibit P.8).

13. Whereas since Law Number 31 Year 1999 as amended and supplemented by Law Number 20 Year 2001 and Government Regulation Number 71 Year 2000 as its implementing regulations do not regulate legal standing and the procedures and requirements for NGOs as regulated in Law Number 23 Year 1997 *juncto* Government Regulation Number 54 Year 2000, Law Number 8 Year 1999 *juncto* Government Regulation Number 59 Year 2001, and Law Number 41 Year 1999, the Petitioners as an

NGO is declared having no capacity to act as a legal subject to file a pretrial petition; (considerations in Decision Number 215/PID/PRAP/2008/PT.DKI dated September 22, 2008, *vide* exhibit P.7 and exhibit P.8).

14. Whereas the third party in interest being intended in Article 80 of the Criminal Procedure Code is a third party according to the narrow definition, namely a witness of the victim of a criminal act or whistleblower, instead of a third party according to the broad definition, including the people at large represented by NGOs because it is not regulated in Law Number 31 Year 1999 as amended and supplemented by Law Number 20 Year 2001. (considerations in Decision Number 215/PID/PRAP/2008/PT.DKI dated September 22, 2008, *vide* exhibit P.7 and exhibit P.8).
15. Whereas Decision of the South Jakarta District Court Number 17/Pid.Prap/2008/PN.Jak.Sel dated October 16, 2008 gave similar considerations to the considerations in Decision Number 215/PID/PRAP/2008/PT.DKI, and thus they become the basis for passing the Decision since the Petitioners as an NGO in the case of the termination of investigation and prosecution do not have any capacity to act as a legal subject in filing a pretrial petition. (*vide* exhibit P.7 and exhibit P.8).

16. Whereas considerations in Decision Number 04/PID/PRAP/2008/PN.JKT.Sel dated May 06, 2008 (*vide* exhibit P.6), considerations in Decision Number 215/PID/PRAP/2008/PT.DKI dated September 22, 2008 (*vide* exhibit P.7) and considerations in Decision of the South Jakarta District Court Number 17/Pid.Prap/2008/PN.Jak.Sel dated October 16, 2008 always state that the Petitioners as a subject in filing a pretrial petition are a legal entity which has been registered or has not been registered, while in the pretrial case Decision Number 05/PRA.PID/2012/PN.SMG, the Petitioners are the Foundation of Corruption, and Nepotism Investigation and Eradication Committee in the form of a legal entity having its purposes and objectives of establishment stated clearly and expressly in the Articles of Association, namely to assist the Government and the State of the Republic of Indonesia in preventing and eradicating Corruption, Collusion and Nepotism in Indonesia and it has been conducting such activities actively and continuously.

17. Whereas the interpretation of Article 80 of the Criminal Procedure Code stating that "*any investigator or public prosecutor or third party in interest may request the Head of the District Court to examine whether a termination of investigation or prosecution is*

valid or not by stating the reasons therefor in considerations of the judges in Decision Number 05/PRA.PID/2012/PN.SMG states that the party referred to in the third party definition is not explained in the Criminal Procedure Code, and thus, it is only interpreted narrowly for the following reasons:

- The *third parties in interest* in the act of terminating an investigation refer to the parties having greatest interest related to such termination because their legal interest is not accommodated in accordance with their rights as citizens;
- Such third parties in interest may be analogically translated as parties who have become the victims in such case, in this matter, victims (victim's witness) or other witnesses whose interest is directly interrupted;
- Dr. Andi Hamzah, S.H. translates *third party in interest* as a whistleblower who has become a victim of a criminal act, while Andi Taher Hamid, S.H. also states that *third party in interest* is a victim's witness or a party who suffers impairment directly;
- With respect to the definitions of third party in interest given by several legal experts above in such case of the criminal

acts of corruption, the party who suffers impairment directly in this matter is the state/government because the main element (*bestanddel delict*) of the criminal act of corruption is an act causing losses to the state finance, and thus, the state constitutes the aggrieved party;

- In taking legal actions, the State as a public legal entity is represented by its law enforcement apparatuses, in this matter the prosecutor's office or police force;
- With respect to the object of adjudication and the provisions of Article 80 of the Criminal Procedure Code, the party who shall have authority to file a pretrial petition to the District Courts in order to repeal the Termination of Investigation and Prosecution Letter (SP3) issued by the Respondent (the Central Java Provincial Prosecutor's Office) is the police force representing the interests of the state and the public;
- Since the criminal act of corruption enters the public law domain and the party who shall represent the state in the pretrial case to examine whether a termination of investigation and prosecution is valid or not has been regulated in Article 80 of the Criminal Procedure Code in a

limitative manner, the Semarang District Court is of the opinion that the provision of Article 80 of the Criminal Procedure Code can no longer be breached by broadening its interpretation;

- In order to confirm this petition, the Petitioners has also presented exhibit P-3, namely Decision of the Supreme Court of the Republic of Indonesia Number 4PK/Pid/2000 set out in *Varia Peradilan* magazine deciding that the definition of *third party in interest* includes the pretrial petitioner either as a citizen or a chairperson of a community institution having the rights and obligations to enforce the law, justice, and truth for the public (general) interest;
- With respect to exhibit P-3, the Semarang District Court is of the opinion that although such decision is decision of the Superior Court (Supreme Court of the Republic of Indonesia), the legal norm resulting from such decision has not become permanent jurisprudence because it has not been followed by other decisions of the judges and that Indonesian legal system does not follow “the principle of *Stare Desicis*” (decision of superior judges is binding and must be followed by inferior judges) just like in the *Anglo*

Saxon legal system, and thus, the judges are not bound by such legal norm even though it is a Decision of the Supreme Court.

- In addition, the Semarang District Court is of the opinion that the suit related to legal standing is not recognized in the field of criminal law/public law, but it is only recognized by the field of civil law/private law which is usually applied to claim for damages or recover a condition resulting from a tort committed by individuals, legal entities, or public entities, for example, in the cases of environment and consumer protection;

III. THE THIRD PARTY IN INTEREST SHALL HAVE THE RIGHT TO FILE A SUIT

1. Whereas the Elucidation of Article 80 of the Criminal Procedure Code states that this article is intended to enforce the law, justice, and truth by means of horizontal supervision (read Supplement to the State Gazette of the Republic of Indonesia Number 3209) and such horizontal supervision amidst the current legal system in the unitary state of the Republic of Indonesia is a principle to enforce the law, justice, and truth, either as the human rights or as the rights and obligations of citizens including any citizen, state

administrator, state institution, community institution, or non-government organization (NGO), either at the central level or at the local level, because of the participation which they realize. (As quoted from the original on Page 27, *Varia Peradilan*, Legal Magazine Year XVII Number 201 in June 2002) (to become an exhibit)

2. Whereas since the Lawmakers do not give an authentic interpretation to the term *third party in interest* in Article 80 of the Criminal Procedure Code, just like an authentic interpretation of Investigator in Article 1 sub-article 3 and Public Prosecutor in Article 1 sub-article 6 sub-sub- article b of the Criminal Procedure Code, in an *a contrario in terminis* manner, the term investigator and Public Prosecutor being positioned preceding the term third party in interest means that any person except for the investigator and public prosecutor and/or any person granted a right by such investigator and public prosecutor / *rechtsverkrijgende* (compare Article 1917 of the Civil Procedure Code, Article 176 sub 2 RV), including any pretrial petitioner either as a citizen or as a chairperson of community institution has the rights and obligations to enforce the law, justice, and truth for the public (general) interest which is beneficial for him/her, instead of the individual interest or the interest of an individual or a group of local and

particular (narrow) people. (As quoted from the original on Page 27, *Varia Peradilan*, Legal Magazine Year XVII Number 201 in June 2002) (to become an exhibit).

3. Whereas principle of horizontal supervision in Article 80 of the Criminal Procedure Code and the Elucidation thereof applied by the third party in interest to enforce the law, justice, and truth within the life as the unitary state of the Republic of Indonesia is a demand as well as a need which are universal for any citizen, and thus, it should have been understood, and realized (appreciated) as the psychological and social context because it is intended for any person. However, in reality, such demand and need *a quo* are not accommodated which become one of the weaknesses and deficiencies (As quoted from the original on Page 27, *Varia Peradilan*, Legal Magazine Year XVII Number 201 June 2002) (to become an exhibit).
4. Whereas the principle of horizontal supervision as provided for in the Elucidation of Article 80 of the Criminal Procedure Code includes the principles of justice and public legal awareness and it also requires the interested party's participation (the third party's participation) to enforce the law consciously in order to achieve justice and truth, at least, in order to get closer to their achievement; (As quoted from the original on Pages 31-32, *Varia*

Peradilan, Legal Magazine Year XVII Number 201 June 2002) (to become an exhibit).

5. Whereas the *third party in interest* as provided for in Article 80 of the Criminal Procedure Code is the victim's witness in a criminal event and who suffers the impairment directly because pursuant to principle of horizontal supervision in the Elucidation of Article 80 of the Criminal Procedure Code, the implication of such principle which is to enforce the law, justice and truth may be implemented effectively by involving public participation, and therefore, the term third party in interest is not necessarily limited to the witness of the victim in a criminal event and who suffers the impairment directly, but it shall include any person, either a natural person (*naturlijke persoon*) or a legal person (*rechtelijke persoon*), except for the investigator and public prosecutor (in the text of Article 80 of the Criminal Procedure Code, the position of Investigator and Public Prosecutor precedes the term third party in interest) as well as the pretrial petitioners. (As quoted from the original on Pages 31-32, *Varia Peradilan*, Legal Magazine Year XVII Number 201 June 2002) (to become an exhibit).
6. Whereas the filing of a pretrial petition by using a class action as provided for in Article 37 paragraph (1) of Law Number 23 Year 1997 may be applied to the procedural law process concerning

the environment, but it may not be applied to the pretrial examination. Meanwhile, the impairment suffered by the pretrial petitioners cannot be clearly specified so that it cannot be proved, and therefore, the pretrial petition must be rejected and it also constitutes the negligence or other concrete mistakes of the Judges because the *Judex Factie* mixes the concept of class action consisting of the components of class representatives and class members, the concept of the right of environmental organizations to file a suit (legal standing or *persona standi in judicio* or *ius standi*) which is debatable because on the one hand, it is not the party suffering the impairment, but it is based on a consideration that the environment is the common property (*communal bezit*), and the concept of pretrial petition which does not debate the right of the pretrial petitioners to file a suit (legal standing) on the other hand. The first-mentioned concept is included in the scope of civil procedure, while the second concept mentioned is included in the scope of criminal procedure and they respectively have different characteristics either in lawsuits or law of evidence. If the first concept is related to the impairment suffered by such organizations (concrete injured parties), the Court applies a mechanism in which the members provide a confirmation that it constitutes a part of class action or declaring it beyond such class action. If it is not related to monetary damages,

it is not necessary for the court to give a notice for the class members. Meanwhile, the last-mentioned concept, namely the pretrial petition for the termination of such investigation or prosecution does not claim for damages at all, but it creates a declaratory demand or seeks an injunction (interim injunction), thus considering, reviewing the claim *a quo* not useful (*overbodig*) even though the provisions of Article 77 *juncto* Article 81 of the Criminal Procedure Code give a chance for that. (As quoted from the original on Pages 31-32, *Varia Peradilan*, Legal Magazine Year XVII Number 201 June 2002) (to become an exhibit).

7. Whereas in the Law on the Eradication of Narcotics and Drugs and the Law on the Eradication of Terrorism, any person who knows such criminal acts, but who does not report it may be imposed with criminal sanctions, and therefore, in the case of corruption, all components, any citizen, the people at large represented by NGOs or community organizations may file a pretrial petition as regulated in Article 80 of Law Number 8 Year 1981 (the Criminal Procedure Code). (*vide* exhibit P-3 and exhibit P-4).
8. Whereas if the interpretation of the Justices of Article 80 of Law of the Criminal Procedure Code stating that the *third party in interest* is limited only to the direct victim's witness, does not include any

citizen, the people at large represented by NGOs or community organizations, the process of preventing and eradicating corruption will not run in a balanced manner, and it will be one-sided, and thus ignoring the principle of justice regulated in Article 28D paragraph (1), Article 28H paragraph (2), Article 27 paragraph (1), Article 1 paragraph (3) of the 1945 Constitution, as law enforcement apparatuses will become immune and arbitrary because they cannot be supervised and controlled by any citizen, the people at large represented by NGOs or Community Organizations as referred to in the purposes and objectives of the eradication of corruption.

9. Whereas the term *third party in interest* in Article 80 of the Criminal Procedure Code should have been interpreted as the people at large represented by any NGO and/or community organization in accordance with the purpose, objective, and area of such NGO and/or community organization and then, the right of such NGO and/or Community Organization to file a suit does not require a special regulation in the relevant Law for filing of a pretrial petition.
10. Whereas the interpretation that the pretrial justices in issuing their decision considering that the rights of any citizen, the people at large represented by any NGO or community organization to file a

pretrial petition must be first regulated in the Law is not correct because it is not necessary for the right of any investigator or public prosecutor to file a pretrial petition to be regulated in an separate Law. (*vide* exhibit P.10 and exhibit P.11).

11. Whereas in order to achieve appropriate law enforcement, it is necessary for the definition of third party in interest as regulated in Article 80 of Law of the Criminal Procedure Code to have a broad meaning explaining that any citizen, the people at large represented by any NGO or community organization and it is not necessary to regulate the right of *third party in interest* to file a suit in an separate Law;
12. Whereas the term *interest third party* must be applicable to criminal acts with the victims being the people at large such as the criminal acts of corruption, narcotics and drugs, and terrorism in filing the pretrial petition;

IV. CONCLUSIONS

1. Whereas Article 80 of Law Number 8 Year 1981 concerning the Criminal Procedure (State Gazette of the Republic of Indonesia Year 1981 Number 76 and Supplement to the State Gazette of the Republic of Indonesia Number 3209) shall be conditionally constitutional, namely that it shall be constitutional to the extent

that *“the Third party in interest”* shall be *any citizen, the people at large represented by NGOs or community organizations*” in accordance with the purpose, objective, and area of the NGOs and/or community organizations according to the weight of public interest which is interrupted by a criminal act with the victims being the people at large (at least the extended victims are due to the criminal acts of corruption, narcotics and drugs, and terrorism);

2. Whereas it is not necessary for the right of such NGO and/or Community Organization to file a suit to have a special regulation in a Law in respect of the filing of a pretrial suit;

PETITUM

Therefore, based on all matters described above, the Panel of Justices is requested to decide:

In the Substance of the Case

1. To accept and grant the petition of the Petitioners to review the provision of Article 80 of Law Number 8 Year 1981 concerning the Criminal Procedure Code;
2. To declare Article 80 of Law Number 8 Year 1981 concerning the Criminal Procedure (State Gazette of the Republic of Indonesia Year

1981 Number 76 and Supplement to the State Gazette of the Republic of Indonesia Number 3209) inconsistent with the 1945 Constitution of the State of the Republic of Indonesia to the extent that the definition of *“third party in interest”* in Article 80 of Law Number 8 Year 1981 concerning the Criminal Procedure (State Gazette of the Republic of Indonesia Year 1981 Number 76 and Supplement to the State Gazette of the Republic of Indonesia Number 3209) is not interpreted as including *“the people at large represented by any Non-Government Organization or community organization”* in accordance with the purpose, objective and area of such Non-Government Organization and/or Community Organization according to the weight of public interest which is interrupted by a criminal act with the victims being the people at large. Subsequently, it is not necessary for the right of such Non-Government Organization and/or Community Organization to have a special regulation in a Law in respect of the filing of a pretrial suit;

3. To declare that Article 80 of Law Number 8 Year 1981 concerning the Criminal Procedure (State Gazette of the Republic of Indonesia Year 1981 Number 76 and Supplement to the State Gazette of the Republic of Indonesia Number 3209) does not have any binding legal effect to the extent that the definition of *third party in interest* is not interpreted as including *“the people at large represented by Non-Government Organizations or community organizations”* in accordance with the

purpose, objective and area of such Non-Government Organization and/or Community Organization. Subsequently, it is not necessary for the right of such Non-Government Organization and/or Community Organization to file a suit to have a special arrangement in a Law in respect of filing a pretrial suit.

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, requesting 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 have presented written evidence marked as exhibit P-1 up to exhibit P-16, approved in the hearing on October 31, 2012, as follows:

1. Exhibit P-1 : Photocopy of Law Number 8 Year 1981 concerning the Criminal Procedure;
2. Exhibit P-2 : Photocopy of Law Number 31 Year 1999 concerning the Eradication of Criminal Acts of Corruption;
3. Exhibit P-3 : Photocopy of Law Number 35 Year 2009 concerning Narcotics ;

4. Exhibit P-4 : Photocopy of Government Regulation in Lieu of Law Number 1 Year 2002 concerning the Eradication of Criminal Acts of Terrorism;
5. Exhibit P-5 : Photocopy of the Deed of Establishment of the Indonesian Anti-Corruption Society, drawn up by Notary Ikke Lucky A., S.H. Number 175 dated April 30, 2007 ;
6. Exhibit P-6 : Photocopy of Decision of the South Jakarta District Court Number 04/Pid.Prap/2008/PN.JKT.Sel dated May 6, 2008;
7. Exhibit P-7 : Photocopy of Decision of the South Jakarta District Court Number 215/PID/PRAP/2008/PT.DKI dated September 22, 2008;
8. Exhibit P-8 : Photocopy of Decision of the South Jakarta District Court Number 17/Pid.Prap/2008/PN.Jkt.Sel dated March 30, 2010;
9. Exhibit P-9 : Photocopy of the book written by Yahya Harahap entitled "*Pembahasan Permasalahan dan Penerapan KUHAP, Pemeriksaan Sidang Pengadilan, Banding, Kasasi, dan Peninjauan Kembali* (Discussion of Issues and Application of the Criminal Procedure Code, *Court Hearing, Appeal, Cassation Appeal and Judicial Review*)"; Second Edition;

Sinar Grafika Publisher; tenth Printing, in July 2008;

10. Exhibit P-10 : Photocopy of Law Number 16 Year 2004 concerning the Prosecutor's Office of the Republic of Indonesia;
11. Exhibit P-11 : Photocopy of Law Number 2 Year 2002 concerning the State Police of the Republic of Indonesia;
12. Exhibit P-12 : Photocopy of the Taxpayer Registration Number (*NPWP*) of the Indonesian Anti-Corruption Society (*MAKI*);
13. Exhibit P-13 : Photocopy of Decision of the Supreme Court Number 4 PK/Pid/2000 in *Varia Peradilan* Number 201 Year 2000;
14. Exhibit P-14 : Photocopy of Decision of the Semarang District Court Number 05/PRA.PID/2012/PN.SMG dated May 11, 2012;
15. Exhibit P-15 : Photocopy of article entitled "*Interpol Boss Ronald Noble Sees Red over Red Notices*" accessed from <http://www.thecuttingedgenews.com/index.php?article=53080> on 26/9/12, at 10:08 PM;
16. Exhibit P-16 : Photocopy of the Elucidation of Law Number 8 Year 1981.

[2.3] Whereas to shorten the description of this decision, everything taking place during the court hearing shall be set out in the minutes of the hearing, and constitutes 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 the phrase *“third party in interest”* in Article 80 of Law Number 8 Year 1981 concerning the Criminal Procedure (State Gazette of the Republic of Indonesia Year 1981 Number 76, Supplement to the State Gazette of the Republic of Indonesia Number 3209), hereinafter referred to as Law 8/1981, against Article 1 paragraph (3), Article 27 paragraph (1), Article 28D paragraph (1), and Article 28H paragraph (2) of the 1945 Constitution of the State of the Republic of Indonesia, hereinafter referred to as the 1945 Constitution;

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

- a. authorities of the Court to hear the petition *a quo*;
- b. legal standing of the Petitioners 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 based on Article 24C paragraph (1) of the 1945

Constitution, Article 10 paragraph (1) sub-paragraph a of Law Number 24 Year 2003 concerning the Constitutional Court as amended by Law Number 8 Year 2011 concerning 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 since the petition *a quo* concerns the review of the constitutionality of a Law, *in casu* Law 8/1981 against the 1945 Constitution, the Court has authority to hear the petition *a quo*;

Legal Standing of the Petitioners

[3.5] Whereas based on Article 51 paragraph (1) of the Constitutional Court Law and the Elucidation thereof, the parties eligible to file the petition for the judicial review of a Law 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;

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 following its Decision Number 006/PUU-III/2005 dated May 31, 2005 and Decision of the Constitutional Court 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 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 impairment must be specific (special) and actual or at least potential in nature which, pursuant to logical reasoning, can be assured of occurring;
- d. there is a causal relationship (*causal verband*) between 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 impairment as argued will not or will no longer occur;

[3.7] Whereas based on the description in paragraph **[3.5]** and paragraph **[3.6]** above, the Court shall subsequently consider the Petitioners' legal standing in the petition *a quo* as follows:

Whereas the Petitioners claim to be an association called as the association called the Indonesian Anti-Corruption Society (*MAKI*) which has

been incorporated under the Deed of Establishment drawn up by Notary Ikke Lucky A., S.H. Number 175, dated April 30, 2007 and registered with the Registrar's Office of Sukoharjo District Court Number 8/2007/PN.SKH., dated 3-5-2007 [*vide* exhibit P-5]. The purposes and objectives of the establishment of such association are to assist the Government and the State of the Republic of Indonesia in the field of community's empowerment in enforcing the law, justice, and human rights and preventing as well as eradicating any form of corruption, collusion and nepotism in order to improve the people's welfare as proclaimed by the founders of the Republic of Indonesia. [*vide* exhibit P-5]

Whereas the Petitioners as the association argue that they have the constitutional rights protected by Article 1 paragraph (3), Article 27 paragraph (1), Article 28D paragraph (1) and Article 28H paragraph (2) of the 1945 Constitution. According to the Petitioners, their constitutional rights have been impaired by the coming into effect of Article 80 of Law 8/1981 because of the existence of the narrow interpretation of the phrase "*third party in interest*", being the witness of the victim of a criminal act or the whistleblower instead of the third party according to the broad definition including the people at large represented by any Non-Government Organization and regulated in the Law. With the existence of such narrow interpretation, the Petitioners cannot file a pretrial petition directly for the cases of corruption so that the process of preventing and eradicating corruption does not run in a balanced manner and it ignores the principle of justice as regulated in the 1945 Constitution;

[3.8] Whereas by referring to Decision of the Court Number 27/PUU-VII/2009 dated June 16, 2010, the Court granted legal standing to individuals and non-government organizations (NGOs) in filing the petition for the review of a Law based on the following considerations, namely among other things, as follows:

“Based on the practice of the Court (2003-2009), the Court considers that individual Indonesian Citizens, especially tax payers (tax payer, vide Decision Number 003/PUU-I/2003), various associations and NGOs showing concerns for a Law for the public interests, legal entities, regional Government, state institutions, and etc. have legal standing to file a petition for either formal or substantive review of Laws against the 1945 Constitution”;

[3.9] Whereas based on the considerations in paragraph **[3.7]** and paragraph **[3.8]** as well as in relation to the arguments of the petition of the Petitioners above, the Court is of the opinion that there is constitutional impairment suffered by the Petitioners due to the existence of Article 80 of Law 8/1981 to the extent of the phrase *“third party in interest”*, and there is a causal relationship between the constitutional impairment of the Petitioners and Article *a quo* so that according to the Court, the Petitioners have legal standing to file the petition *a quo*;

[3.10] Whereas since 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

[3.11] Whereas the petition of the Petitioners is to review the constitutionality of Article 80 of Law 8/1981 to the extent of the phrase “*third party in interest*”, stating that: “*Any investigator or public prosecutor or third party in interest may request the Head of the District Court to examine whether a termination of investigation or prosecution is valid or not by stating the reasons therefor*” against Article 1 paragraph (3), Article 27 paragraph (1), Article 28D paragraph (1), and Article 28H paragraph (2) of the 1945 Constitution, stating that:

Article 1 paragraph (3)

The state of Indonesia is a State based on Law.

Article 27 paragraph (1)

All citizens shall have an 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 28H paragraph (2)

Every person shall have the right to obtain facilities and special treatment in obtaining equal opportunities and benefits for achieving equality and justice.

Whereas according to the Petitioners, the existence of the narrow interpretation of phrase “*third party in interest*” in Article 80 of Law 8/1981, namely the witness of the victim of a criminal act or the whistleblower, instead of the third party according to the broad definition which includes the people at large represented by NGOs is inconsistent with the constitution, namely the principle of the legal certainty of just laws as regulated in the 1945 Constitution;

[3.12] Whereas the Court has thoroughly examined the documentary/written evidence presented by the Petitioners [*vide* exhibit P-1 up to exhibit P-16], as completely set out in the Facts of the Case section;

Opinion of the Court

[3.13] Whereas before considering further the petition of the Petitioners, the Court shall quote Article 54 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) stating, “*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" in conducting the review of a Law. 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 and 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 pass the decision directly on the petition *a quo*;

[3.14] Considering, after thoroughly examining the petition of the Petitioners and the documentary/written evidence presented by the Petitioners as contained in the facts of case, the Court is of the following opinion:

[3.14.1] Whereas with respect to the interpretation of the phrase "*third party in interest*" in Article 80 of Law 8/1981, the Court has passed the decision in the case Number 76/PUU-X/2012 dated January 8, 2013, the considerations of which, among other things, are as follows:

- paragraph **[3.15]** stating, "*....although the interpretation upon any party*

who may be categorized as the third party in interest is not clearly defined in the Criminal Procedure Code, the Court is of the opinion that such referred to as third party in interest shall include not only the witness of the victim of a criminal act or the whistleblower, but it must also be interpreted broadly. Thus, the interpretation of third party as intended in the article a quo shall not be limited only to the victim's witness or the whistleblower, but it must also include the people at large which, in this matter, may be represented by any association of the people having a common interest and purpose to advocate the public interest, namely, among other things, Non-Government Organizations or other Community Organizations because the Criminal Procedure Code is basically the legal instrument to enforce the criminal law. The criminal law is the law intended to protect public interest";

- paragraph **[3.16]** stating, *"....public participation of either any individual citizen or any group of citizens having a common interest and purpose to advocate public interest is greatly needed in supervising law enforcement.*

[3.14.2] Whereas the norm petitioned by the Petitioners in the case *a quo* is the same as the norm petitioned in petition Number 76/PUU-X/2012, but the petition in the case Number 76/PUU-X/2012 is intended to narrow the interpretation of phrase *"third party in interest"* in Article 80 of Law 8/1981, thus, their petition is rejected, while the petition of the Petitioners *a quo* has a

different purpose, namely, to broaden the interpretation of phrase “*third party in interest*” in Article 80 of Law 8/1981. Since the purpose of petition in the petition *a quo* has been in line with the considerations of the Court in the aforementioned case Number 76/PUU-X/2012, the legal considerations in Decision of the Constitutional Court Number 76/PUU-X/2012 shall also become, *mutatis mutandis*, the considerations in the petition *a quo*;

[3.15] Whereas based on all the considerations above, the Court considers that the arguments of the Petitioners have legal grounds;

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 Petitioners have legal standing to file the petition *a quo*;

[4.3] The arguments of the Petitioners’ petition have legal grounds;

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;
 - 1.1 The phrase *“third party in interest”* in Article 80 of Law Number 8 Year 1981 concerning the Criminal Procedure (State Gazette of the Republic of Indonesia Year 1981 Number 76, Supplement to the State Gazette of the Republic of Indonesia Number 3209) inconsistent with the 1945 Constitution of the Republic of Indonesia to the extent that it is not interpreted as *“including any victim-witness or whistleblower, any non-government organization or community organization”*;
 - 1.2 That the phrase *“third party in interest”* as contained in Article 80 of Law Number 8 Year 1981 concerning the Criminal Procedure (State Gazette of the Republic of Indonesia Year 1981 Number 76, Supplement to the State Gazette of the Republic of Indonesia Number 3209) does not have any binding legal effect to the extent

that it is not interpreted as *“including any victim-witness or whistleblower, any non-government organization or community organization”*;

2. To order due promulgation of this decision in the Official Gazette of the Republic of Indonesia;

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, Hamdan Zoelva, Maria Farida Indrati, Ahmad Fadlil Sumadi, M. Akil Mochtar, Muhammad Alim, Harjono, and Anwar Usman, and respectively as Members, on **Tuesday, the twenty-sixth of March, two thousand and thirteen**, and was pronounced in the Plenary Session of the Constitutional Court open to the public on **Tuesday, the twenty-first of May, two thousand and thirteen**, and the pronouncement was completed at **14.40 WIB** (West Indonesia Time), by eight Constitutional Court Justices, namely M. Akil Mochtar, as Chairperson and concurrent Member, Achmad Sodiki, Hamdan Zoelva, Maria Farida Indrati, Ahmad Fadlil Sumadi, Muhammad Alim, Anwar Usman, and Arief Hidayat, respectively as Members, assisted by Rizki Amalia as the Substitute Registrar, in the presence of the Petitioners and/or their attorneys, the Government or its representative, the People’s Legislative Assembly or its representative.

CHIEF JUSTICE,

sgd.

M. Akil Mochtar

JUSTICES,

sgd.

Achmad Sodiki

sgd.

Hamdan Zoelva

sgd.

Maria Farida Indrati

sgd.

Ahmad Fadlil Sumadi

sgd.

Muhammad Alim

sgd.

Anwar Usman

sgd.

Arief Hidayat

SUBSTITUTE REGISTRAR,

sgd.

Rizki Amalia