



## DECISION

Number 49/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 30 Year 2004 concerning Notary Position against the 1945 Constitution of the State of the Republic of Indonesia, filed by:

**[1.2]** Name : **Kant Kamal**  
Occupation : Self-employed  
Address : Jalan Dr. Nurdin I Number 24, Neighborhood  
Ward/Neighborhood Block 008/007, Grogol  
Sub-District, Grogol Petamburan District,  
West Jakarta.

In this case by virtue of special Power of Attorney dated May 14, 2012 granting authority to 1). **Tomson Situmeang, S.H;** 2). **Charles A.M Hutagalung, S.H;** 3). **Natalia Hutajulu, S.H;** 4). **Jupryanto Purba, S.H;** 5). **Mangembang Hutasoit, S.H;** all of them are Advocates/Assistant Advocates at RB Situmeang & Partners Law Firm having its address at Jalan Hayam Wuruk

Number 103-104 West Jakarta, either jointly or severally acting for and on behalf of 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 heard and read the statements of the Government;  
Having read the statements of the People's Legislative Assembly;  
Having examined the evidence of the Petitioner;  
Having read the conclusions of the Petitioner;

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

**[2.1]** Considering whereas the Petitioner filed a petition dated May 16, 2012 received at and registered with the Registrar's Office of the Constitutional Court (hereinafter referred to as the Registrar's Office of the Court) on May 16, 2012 based on Deed of Petition File Receipt Number 183/PAN.MK/2012, and recorded in the Constitutional Case Registry under Number 49/PUU-X/2012 dated May 28, 2012, which was revised and received at the Registrar's Office of the Court on June 21, 2012, which describes the following matters:

### **AUTHORITY OF THE CONSTITUTIONAL COURT**

1. Whereas Article 24 paragraph (2) of the 1945 Constitution and Article 18 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) state that:

*“Judicial power shall be exercised by a Supreme Court and its Inferior Courts in the jurisdiction of general courts, the religious affair courts, the military tribunal, the state administration courts, and by a Constitutional Court”;*

2. Whereas Article 24C paragraph (1) of the 1945 Constitution states that:

*“The Constitutional Court shall have authority to hear at the first and final level, the decision of which shall be final, to conduct judicial review of Laws against the Constitution, to decide upon disputes over the authorities of State institutions whose authorities are granted by the Constitution, to decide upon the dissolution of political parties, and to decide upon disputes over the results of general elections”*

3. Whereas 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) [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) state that:

*“The Constitutional Court shall have authority to hear at the first and final level, the decision of which shall be final, to conduct judicial review of Laws against the 1945 Constitution of the State of the Republic of Indonesia”;*

4. Whereas Article 9 paragraph (1) of Law Number 12 Year 2011 concerning the Formulation of the Laws and Regulations (State Gazette of the Republic of Indonesia Year 2011 Number 82, Supplement to the State Gazette of the Republic of Indonesia Number 5234) states that:

*“In the event that a Law is allegedly inconsistent with the 1945 Constitution of the State of the Republic of Indonesia, its judicial review is conducted by the Constitutional Court”;*

5. Whereas Article 1 sub-article 3 sub-sub-article a of the Constitutional Court Law states that:

*“A petition shall be a written request submitted to the Constitutional Court for judicial review of laws against the 1945 Constitution of the State of the Republic of Indonesia”;*

6. Whereas, therefore, based on the provisions mentioned above, it is clear that the Constitutional Court has authority to review Article 66 paragraph (1) of the Notary Position Law [exhibit P-1) against Article 27 paragraph (1) and Article 28D paragraph (1) of the 1945 Constitution [exhibit P-2];

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

1. Whereas Article 51 paragraph (1) of the Constitutional Court Law states that:

*“The petitioners shall be the parties considering that their constitutional rights and/or authorities are impaired by the coming into effect of a Law, namely: a. individual Indonesian citizens; b. customary law community groups insofar as they are still in existence and in line with the development of the communities and the principle of the Unitary State of Republic of Indonesia as regulated in Law; c. public or private legal entities, or d. state institutions”;*

Whereas in the elucidation of Article 51 paragraph (1) of the Constitutional Court Law, “constitutional rights” are the rights regulated in the 1945 Constitution of the State of the Republic of Indonesia;

Whereas “the constitutional rights” of the Petitioner as contained in the 1945 Constitution are “equal position before the law” and “protection and legal certainty of just laws” as regulated in Article 27 paragraph (1) and Article 28D paragraph (1) of the 1945 Constitution;

Whereas the Petitioner who is an individual Indonesian citizen in accordance with the identity card (exhibit P-3) made a Police report on an alleged Criminal Act of Giving False Statements in an Authentic Deed as referred to in Article 266 of the Indonesian Criminal Code in

accordance with Proof of Report Police Number TBL/240/VII/2011/Bareskrim dated July 4, 2011 (exhibit P-4);

Whereas “the constitutional rights” of the Petitioner to obtain “equal position before the law” and “protection and legal certainty of just laws” have been impaired by the coming into effect of Article 66 paragraph (1) of the Notary Position Law to the extent of the phrase/sentence “upon the approval of the District Supervisory Committee” [exhibit P-1];

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

- a) the constitutional rights and/or authorities of the Petitioner granted by the 1945 Constitution;

Whereas “the constitutional rights” of the Petitioner are “equal position before the law” and “protection and legal certainty of just laws” as regulated in Article 27 paragraph (1) and Article 28D paragraph (1) of the 1945 Constitution [exhibit P-2];

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

Whereas “the constitutional rights” of the Petitioner have been impaired by the coming into effect of the phrase/sentence “upon the approval of the District Supervisory Committee” as contained in the provision of Article 66 paragraph (1) of the Notary Position Law [exhibit P-1), stating that:

*“For the purpose of judicial process, the investigator, public prosecutor, or judge upon the approval of the District Supervisory Committee shall be authorized:*

- a. to take the photocopy of the Minutes of Deed and/or documents attached to the Minutes of Deed or Notary Protocol retained by Notaries; and*
- b. to summon Notaries to attend the examination in relation to the deed drawn up by them or the Notary Protocol retained by Notaries”;*
- c) such rights and authorities must be specific (special) and actual or at least potential in nature which, pursuant to logical reasoning, can be assured of occurring;

Whereas “the constitutional rights” of the Petitioner have obviously been impaired because the Investigators of the Police Force (Metropolitan Police Force of Greater Jakarta) experienced

difficulties in conducting the Investigation process of the Police Report made by the Petitioner on the alleged criminal act of giving false statements in an authentic deed as referred to in Article 266 of the Indonesian Criminal Code in accordance with Proof of Report Police Number TBL/240/VII/2011/Bareskrim dated July 4, 2011 [exhibit P-4] because they did not obtain the consent/approval from the District Notary Supervisory Committee of Cianjur, in accordance with the 3<sup>rd</sup> Notice on Investigation Progress (*SP2HP*) [exhibit P-5], the 5<sup>th</sup> Notice on Investigation Progress [exhibit P-6], and the 6<sup>th</sup> Notice on Investigation Progress [exhibit P-7] issued by the investigators of the Metropolitan Police Force of Greater Jakarta in relation to the investigation process with respect to the Police Report made by the Petitioner;

- d) there is a causal relationship (*causal verband*) between the intended impairment and the coming into effect of the Law being petitioned for review;

Whereas it is clear that there is a causal relationship (*causal verband*) between the impairment of “constitutional rights” of the Petitioner and the coming into effect of Article 66 paragraph (1) of the Notary Position Law to the extent of the phrase “upon the approval of the District Supervisory Committee” [exhibit P-1],



namely:

- i. Whereas the Petitioner has made the Police Report in relation to the alleged Criminal Act of Giving False Statements in an Authentic Deed as referred to in Article 266 of the Indonesian Criminal Code in accordance with Proof of Report Police Number TBL/240/VII/2011/Bareskrim dated July 4, 2011 [exhibit P-4];

Whereas there are False Statements in an Authentic Deed, namely: Deed of Document Retention Number 7 dated December 19, 2010 drawn up before Syane Runtulalo, S.H., Notary in Cianjur [exhibit P-8], the source of which is the Share Sale and Purchase Document dated December 7, 2010 [exhibit P-9], namely:

- Whereas Article 7 of Share Sale and Purchase Document dated December 7, 2010 stating that “.... The Parties acting in their respective capacities referred to above state that the approval of the General Meeting of Shareholders of the Company to Sell and Purchase Shares as contained in this Share Sale and Purchase Agreement has been

obtained....” is not dated December 19, 2010;

- Whereas in fact, Article 7 on page 6 of the Deed of Document Retention Number 7 dated December 19, 2010 drawn up before Syane Runtulalo, S.H., Notary in Cianjur reads“.... The Parties acting in their respective capacities referred to above state that the approval dated December 19 (nineteen), 2010 of the General Meeting of Shareholders of the Company to Sell and Purchase Shares as contained in this Share Sale and Purchase Agreement has been obtained...”;
  
- Whereas it is strange and impossible that the sale and purchase made on December 7, 2010 was declared to be approved in the General Meeting of Shareholders on December 19, 2010 and the False Statements in the Authentic Deed, namely: Deed of Statement on the Resolutions of the Shareholders of PT. BKRA Number 6 dated December 19, 2010 drawn up before Syane Runtulalo, S.H., Notary in Cianjur [exhibit P-10], the source of which is the Statement on the Resolution of Shareholders of PT. BKRA [exhibit P-11], namely:

- Whereas such Statement on the Resolution of Shareholders of PT. BKRA [exhibit P-11] does not mention “....an unanimous resolution was approved without convening the General Meeting of Shareholders on December 19 (nineteen), 2010 (two thousand and ten)...”;
- Whereas after it was set forth in an Authentic Deed, namely: Deed of Statement on the Resolutions of the Shareholders of PT. BKRA Number 6 dated December 19, 2010 drawn up before Syane Runtulalo, S.H., Notary in Cianjur [exhibit P-10], the sentence or phrase “.....an unanimous resolution was approved without convening the General Meeting of Shareholders on December 19 (nineteen), 2010 (two thousand and ten)...” has been added;
- Whereas with such addition, Deed of Statement on The Resolutions of the Shareholders of PT. BKRA seemed to be drawn up and approved as well as signed on December 19, 2010 which has impaired/denied the petitioner’s rights in PT. BKRA;

- ii. Whereas in fact, the Investigators of the Police Force of the Republic of Indonesia (Metropolitan Police Force of Greater Jakarta) experienced difficulties in conducting the Investigation process with respect to the Police Report made by such Petitioner in order to determine/disclose the perpetrator of the alleged criminal act of giving False Statements in an Authentic Deed;
  
- iii. Whereas the Investigators of the Police Force (Metropolitan Police Force of Greater Jakarta) experienced difficulties in determining/disclosing the perpetrator of the alleged Criminal Act of Giving False Statements in an Authentic Deed because they did not obtain the consent/approval of the District Notary Supervisory Committee of Cianjur. The Investigators of the Police Force of the Republic of Indonesia (Metropolitan Police Force of Greater Jakarta) admitted it through the 3<sup>rd</sup> Notice on Investigation Progress [exhibit P-5], the 5<sup>th</sup> Notice on Investigation Progress [exhibit P-6], and the 6<sup>th</sup> Notice on Investigation Progress [exhibit P-7] issued by the investigators of the Metropolitan Police Force of Greater Jakarta in relation to the investigation process with respect to the Police Report made by the Petitioner;

iv. Whereas the consent/approval given by District Supervisory Committee to the Investigators to examine a Notary is based on the coming into effect of Article 66 paragraph (1) of the Notary Position Law [exhibit P-1] stating that:

*“For the purpose of judicial process, the investigator, public prosecutor, or judge upon the approval of the District Supervisory Committee shall be authorized:*

*a. to take the photocopy of the Minutes of Deed and/or documents attached to the Minutes of Deed or Notary Protocol retained by Notaries; and*

*b. to summon Notaries to attend the examination in relation to the deed drawn up by them or the Notary Protocol retained by Notaries”;*

v. Whereas since the District Supervisory Committee did not give the consent/approval to the Investigators to examine the Notary who drew up the Authentic Deed in which false statements were allegedly included, the Investigators experienced difficulties in continuing the investigation process with respect to the Police Report made by the

Petitioner;

- vi. Whereas because of the constraint on the examination/investigation process with respect to the Police Report made by the Petitioner, “the constitutional rights” of the Petitioner are clearly violated. It has a causal relationship (*causal verband*) with the coming into effect of Article 66 paragraph (1) of the Notary Position Law to the extent of the phrase “upon the approval of the District Supervisory Committee” [exhibit P-1];
  
- e) there is a possibility that with the granting of the Petitioner’s petition, such constitutional impairment will not or will no longer occur;

Whereas if the petition of the Petitioner is granted by declaring the phrase/sentence “upon the approval of the District Supervisory Committee” in the provision of Article 66 paragraph (1) of the Notary Position Law [exhibit P-1] inconsistent with the provisions of Article 27 paragraph (1) and Article 28D paragraph (1) of the 1945 Constitution [exhibit P-2], it does not have any binding legal effect, and the Investigators will be able to examine the Notary who drew up the Authentic Deed in which false statements are allegedly included;

Whereas Since the Investigators may determine/disclose the perpetrator of the alleged Criminal Act of Giving False Statements in an Authentic Deed, they will be able to continue the investigation process with respect to the Police Report made by the Petitioner, thus resulting in “equal position before the law” for any Indonesian citizen including the Notary and “protection and legal certainty of just laws” especially for the Petitioner and for Indonesian people in general as contained in the provisions of Article 27 paragraph (1) and Article 28D paragraph (1) of the 1945 Constitution [exhibit P-2];

3. Whereas the Petitioner is an individual Indonesian citizen (in accordance with the Identity Card [exhibit P-3] made the Police Report in relation to the alleged Criminal Act of Giving False Statements in an Authentic Deed as referred to in Article 266 of the Indonesian Criminal Code, in accordance with Proof of Report Police Number TBL/240/VII/2011/Bareskrim dated July 4, 2011 [exhibit P-4] and he has the qualifications for legal standing and the interest to file/submit a petition for judicial review as referred to in the provisions of Article 51 paragraph (1) sub-paragraph a of the Constitutional Court Law concerning the occurrence of violation resulting from the coming into effect of Article 66 paragraph (1) of the Notary Position Law to the extent of the phrase “upon the approval of the District Supervisory Committee”

[exhibit P-1];

4. Whereas the provisions of Articles in the 1945 Constitution constituting the constitutional rights of the Petitioner which have been violated by the coming into effect of Article 66 paragraph (1) of the Notary Position Law [exhibit P-1] are as follows:

Article 27 paragraph (1) of the 1945 Constitution which reads “*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) of the 1945 Constitution 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*”;

5. Whereas, therefore, based on the explanations above, the Petitioner has the qualifications for legal standing and the interest to file the petition for judicial review of Article 66 paragraph (1) of the Notary Position Law to the extent of the phrase/sentence “upon the approval of the District Supervisory Committee” [exhibit P-1] against the provisions of Article 27 paragraph (1) and Article 28D paragraph (1) of the 1945 Constitution [exhibit P-2];

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



1. Whereas the matters described with respect to Authority of the Constitutional Court and Legal Standing of the Petitioner constitute an inseparable part of the Substance of the Petition;

2. Whereas Article 1 sub-article 10 of Law Number 2 Year 2002 concerning the National Police Force of the Republic of Indonesia (State Gazette of the Republic of Indonesia Year 2002 Number 2, Supplement to the State Gazette of the Republic of Indonesia Number 4168) [hereinafter referred to as the Police Force Law] and Article 1 sub-article 1 and Article 6 paragraph (1) sub-paragraph a 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 the Criminal Procedure Code] principally state that:

“An investigator is an official of the National Police Force of the Republic of Indonesia granted authority by law to conduct an investigation”;

3. Whereas Article 1 sub-article 13 of the Police Force Law and Article 1 sub-article 2 of the Criminal Procedure Code principally state that:

*“An investigation is a series of actions taken by an investigator in the matters and manners as regulated by law to find and collect any proof in order to disclose a criminal act which occurred and to find out the*

*suspect”;*

4. Whereas Article 2 of the Police Force Law states that:

*“The function of the police force is one of the functions of state administration in the field of maintaining public safety and order, enforcing the law, providing the protection, aegis and services for the public”;*

5. Whereas Article 13 of the Police Force Law states that:

*“The main duties of the Police Force of the Republic of Indonesia are: a. to maintain public safety and order; b. to enforce the law; and c. to provide the protection, aegis, and services for the public”;*

6. Whereas Article 14 paragraph (1) sub-paragraph g of the Police Force Law states that:

*“In performing the main duties as referred to in Article 13, the Police Force of the Republic of Indonesia shall have duties to: g. conduct investigation of and inquiry into all criminal acts in accordance with the criminal procedure and other laws and regulations”;*

7. Whereas Article 15 paragraph (1) sub-paragraph a of the Police Force Law and Article 7 paragraph (1) sub-paragraph a of the Criminal Procedure Code principally state that:

*“In order to perform the duties, in general, an Investigator of the National Police Force of the Republic of Indonesia shall have authority to: a. receive any report and/or complaint”;*

8. Whereas Article 16 paragraph (1) sub-paragraph f of the Police Force Law and Article 7 paragraph (1) sub-paragraph g of the Criminal Procedure Code principally state that:

*“In order to perform the duties, an Investigator of the National Police Force of the Republic of Indonesia shall have the authority to: f. summon any person to be heard and examined as a suspect or a witness”;*

9. Whereas the Petitioner made the Report/Complaint to the National Police Force of the Republic of Indonesia in relation to the alleged Criminal Act of Giving False Statements in the Authentic Deed as referred to in Article 266 of the Indonesian Criminal Code in accordance with Proof of Report Police Number TBL/240/VII/2011/Bareskrim dated July 4, 2011 [exhibit P-4], in line with the duties and authorities of the Police Force of the Republic of Indonesia/Investigators based on the provisions of Article 15 paragraph (1) sub-paragraph a of the Police Force Law and Article 7 paragraph (1) sub-paragraph a of the Criminal Procedure Code;

10. Whereas based on such Police Report, the Police Force of the Republic

of Indonesia / Investigators of the Police Force of the Republic of Indonesia have the duty to investigate and inquire all criminal acts (including the Police Report made by the Petitioner), in line with the duties and authorities of the Police Force of the Republic of Indonesia /Investigators of the Police Force of the Republic of Indonesia based on the provisions of Article 14 paragraph (1) sub-paragraph 9 of the Police Force Law;

11. Whereas in order to conduct the investigation of the criminal act based on the Police Report made by the Petitioner, the Police Force of the Republic of Indonesia / Investigators of the Police Force of the Republic of Indonesia shall be authorized to summon any person to be heard and examined as a suspect or a witness, it is in line with the provisions of Article 16 paragraph (1) sub-paragraph f of the Police Force Law and Article 7 paragraph (1) sub-paragraph g of the Criminal Procedure Code;
12. Whereas based on the Police Report made by the Petitioner in relation to the alleged Criminal Act of Giving False Statements in an Authentic Deed as referred to in Article 266 of the Indonesian Criminal Code in accordance with Proof of Report Police Number TBL/240/VII/2011/Bareskrim dated July 4, 2011 [exhibit P-4], the Investigators of the Metropolitan Police Force of Greater Jakarta have conducted the examination/investigation process in order to determine the Suspect/Perpetrator related to such Police Report;

13. Whereas in fact, in order to determine the Suspect/Perpetrator related to such Police Report in the examination/investigation process, the Investigators of the Metropolitan Police Force of Greater Jakarta need to hear the Statements of the Notary as the Witness drawing up the Authentic Deed in which false statements are allegedly included;
14. Whereas since the party summoned is the Notary, the Investigators of the Metropolitan Police Force of Greater Jakarta shall first request for the consent of the District Notary Supervisory Committee of Cianjur, it is in line with the provision of Article 66 paragraph (1) of the Notary Position Law [exhibit P-1] article of which becomes the object of judicial review in this petition. It is evident in the 3<sup>rd</sup> Notice on Investigation Progress [exhibit P-5] issued by the Investigators of the Metropolitan Police Force of Greater Jakarta;
15. Whereas in fact, the request for the consent filed by the Investigators of the Metropolitan Police Force of Greater Jakarta is not granted by District Notary Supervisory Committee of Cianjur, thus, in line with the 5<sup>th</sup> Notice on Investigation Progress [exhibit P-6] and the 6<sup>th</sup> Notice on Investigation Progress [exhibit P-7] issued by the INVESTIGATORS of the Metropolitan Police Force of Greater Jakarta in relation to the investigation process with respect to the Police Report made by the Petitioner, the Investigators and the Petitioner cannot exercise any

remedy for such refusal. Therefore, the Petitioner feels that his constitutional rights are severely impaired to obtain “equal position before the law” for any Indonesian citizen including the Notary and “the protection and legal certainty of just laws” for the Petitioner in particular and for Indonesian people in general as provided for in Article 27 paragraph (1) and Article 28D paragraph (1) of the 1945 Constitution [exhibit P-2];

16. Whereas since the District Notary Supervisory Committee of Cianjur did not give/grant the consent required by to the Investigators of the Metropolitan Police Force of Greater Jakarta, it has caused difficulty for the Investigators of the Metropolitan Police Force of Greater Jakarta to perform the Investigation process with respect to the Police Report made by the Petitioner in relation to the alleged Criminal Act of Giving False Statements in an Authentic Deed as referred to in Article 266 of the Indonesian Criminal Code in accordance with Proof of Report Police Number TBL/240/VII/2011/Bareskrim dated July 4, 2011 [exhibit P-4], in line with the 3<sup>rd</sup> Notice on Investigation Progress [exhibit P-5], the 5<sup>th</sup> Notice on Investigation Progress [exhibit P-6], and the 6<sup>th</sup> Notice on Investigation Progress [exhibit P-7] issued by the Investigators of the Metropolitan Police Force of Greater Jakarta in relation to the investigation process of the Police Report made by the Petitioner;
17. Whereas it is clear that due to the coming into effect of the

phrase/sentence “upon the approval of the District Supervisory Committee” in the provision of Article 66 paragraph (1) of the Notary Position Law [exhibit P-1], the Investigators of the Metropolitan Police Force of Greater Jakarta experienced difficulties in performing the Investigation process with respect to the Police Report made by the Petitioner. Thus, it has violated the “constitutional rights” of the Petitioner to obtain “equal position before the law” for any Indonesian citizen including the Notary and “the protection and legal certainty of just laws” for the Petitioner in particular and for Indonesian people in general as provided for in Article 27 paragraph (1) and Article 28D paragraph (1) of the 1945 Constitution [exhibit P-2];

- 17.a. Whereas based on the aforementioned matters in point 17, it is not necessary for the phrase/sentence "upon the approval of the District Supervisory Committee” in the provision of Article 66 paragraph (1) of the Notary Position Law to be applied because “the approval of the District Supervisory Committee” is not required to examine a Notary either as an Expert, a Witness, or a Suspect involved in a Criminal Act. However, it is sufficient for the Notary Organization or the Notary Supervisory Committee to be notified, in line with rule of law state principles guaranteeing legal certainty, order, and protection the core of which is truth and justice;
- 17.b. Whereas the legal certainty, order and protection require the legal traffic

within the community life requiring a means of proof which has a strong substantiation value, namely an authentic deed;

17.c. Whereas an authentic deed known as a notarial deed is a means of proof which is substantially an absolute means of proof, so that it has its own consequences because of such absolute nature. (R. Soegondo Notodisoerjo [1993] states that “A Notarial Deed may be accepted as an absolute means of proof in terms of its content in the hearing of the court even though the witnesses may still deny it by showing the reverse burden of proof and proving that the content of such deed is not true”);

17.d. Whereas a notarial deed is drawn up not only as a record or a means of proof to recall any event which has occurred, but also it is intended for its substantiation force, so that it is expected to be able to give legal certainty in the future;

17.e. Whereas the rapid legal traffic and public demand for the importance of substantiation force for a deed require a Notary as a public official to always follow the legal developments in providing his/her services to the public and to always guarantee that deeds drawn up by him/her have legal certainty;

17.f. Whereas if an authentic deed/notarial deed drawn up by a Notary involved in a criminal case, such Notary shall justify that such deed drawn up by him/her must be free from any indication of a criminal act,



thus requiring the notary to attend the examination, either at the investigation level in the Police Force, at the prosecution level in the Public Prosecutor's Office up to the trial proceedings in the court;

17.g. Whereas the Summons on a Notary and the presence of the notary either as an Expert, a Witness, or a Suspect/Accused are vitally important in examining any criminal case for the following reasons:

- i. as an Expert, in this matter the notary is summoned and his/her presence is needed in the examination of any criminal case as a legal expert authorized to draw up an authentic deed, so that the special legal considerations according to his/her expertise in relation to the authority and responsibility of the notary and the matters which can provide any explanation to any Investigator, Public Prosecutor, Judge, and justice seeker are required;
- ii. as a Witness, in this matter the notary is summoned and his/her presence is needed in the examination of a criminal case in his/her capacity as a public official drawing up an authentic deed because his/her testimony regarding what he/she sees, hears, and any supporting evidence in drawing up such authentic deed are required to identify whether there are signs of a criminal act or not in such process;
- iii. as a Suspect, in this matter the notary is summoned and his/her

presence is needed in the examination of a criminal case as a suspect based on the initial evidence for reasonably suspecting the commission of any criminal act by the notary drawing up such authentic deed either individually or collectively, so that such notary shall account for such act before the law;

17.h. Whereas in addition to the aforementioned matters, the summoning and presence of the notary are extremely required to examine any criminal case, either as an Expert, a Witness or a Suspect/Accused because there are many provisions in the Indonesian Criminal Code in relation to a Notarial Deed, namely, among other thing, as follows:

- i. to draw up and use a false letter or to ask another person to use such false letter;
- ii. to use a false letter deliberately;
- iii. to falsify letters, namely authentic deeds, debentures, debt certificates, talon, receipt of dividends, letters of credit, or commercial papers;
- iv. to ask another person to include false statements in an authentic deed;
- v. to commit, ask another person to commit and/or participate in committing criminal acts in the provisions of previous articles

(Article 55 of the Indonesian Criminal Code *juncto* Article 263 paragraph (1) and paragraph (2) of the Indonesian Criminal Code or Article 264 of the Indonesian Criminal Code or Article 266 of the Indonesian Criminal Code);

vi. to assist in committing criminal acts in the provisions of previous articles (Article 56 of the Indonesian Criminal Code *juncto* Article 263 paragraph (1) and paragraph (2) of the Indonesian Criminal Code or Article 264 of the Indonesian Criminal Code or Article 266 of the Indonesian Criminal Code);

vii. any official receives a gift or a promise because of his/her power or authority in relation to his/her position (Article 418 of the Indonesian Criminal Code);

viii. any official receives a gift or a promise which influences him/her to do or not to do something in his/her position (Article 419 of the Indonesian Criminal Code);

17.i. Whereas if the Notary is found involved in committing one of the Criminal Acts (to deliberately commit, ask another person to commit, participate in committing, to ask another person to use false letters, to ask another person to include false statements in an authentic deed, and to receive a gift or a promise which influences him/her to do or not to do something related to his/her position) and if such Notary is also found guilty, he/she

shall be subject to the criminal sanctions;

17.j. Whereas the aforementioned matters are also in line with the provisions of Article 244 of the Indonesian Criminal Code in which any citizen/community member shall attend the criminal examination as a witness, an expert witness or an interpreter. This also applies to the Notary as a Public Official based on the provision of Article 65 of the Notary Position Law stating that “A Notary shall be responsible for any deed drawn up by him/her even though the notary protocol has been retained by the notary protocol. This means that the notary is still responsible for it even though such notary has been retired/superannuated, so that at any time such notary may be asked for his/her accountability for any deed drawn up by him/her if there is any indication of a criminal act in the process of drawing up such authentic deed in which based on Article 184 of the Criminal Procedure Code, “a means of proof in the form of the statements of witnesses shall be a primary means of proof in addition to any other means of proof”;

17.k. Thus, the consent of the District Supervisory Committee is not required to summon the Notary for the purpose of examining the criminal act as regulated in the provision of Article 66 of the Notary Position Law in order to guarantee legal certainty and the responsibility for the deed issued by the Notary;

17.l Whereas the Summons on a Notary in relation to the deed which is drawn up by him/her and with indication of the existence of a criminal act in the process of drawing up/issuing such deed, are required because in conducting the investigation, the Investigators really need the statements of the Notary. Thus, the Notary shall be legally responsible starting from the examination in the investigation process up to the substantiation process in the court and shall implement decisions of the judges having permanent legal force;

17.m. Whereas protection of the Notary in performing his/her official duty has been expressly and clearly regulated in the provision of Article 16 paragraph (1) sub-paragraph e of the Notary Position Law which reads as follows:

*“...in performing his/her position, a Notary shall be obligated to: e. keep confidential all matters concerning to deeds drawn up by him/her and all statements obtained to draw up such deeds according to the oath/pledge of position unless otherwise stipulated by law...”;*

17.n. Whereas based on all the aforementioned matters, the implementation/coming into effect of the phrase “upon the approval of the District Supervisory Committee” in the provision of Article 66 paragraph (1) of the Notary Position Law is no longer appropriate;

18. Whereas the provision of Article 66 paragraph (1) of the Notary Position

Law [exhibit P-1], to the extent of the phrase/sentence “upon the approval of the District Supervisory Committee” is very inconsistent with the provisions of Article 27 paragraph (1) and Article 28D paragraph (1) of the 1945 Constitution [exhibit P-2] because if the phrase/sentence “upon the approval of the District Supervisory Committee” in Article 66 paragraph (1) of the Notary Position Law [exhibit P-1] remains to be in effect, it will be possible for the perpetrators who have the modus to use an Authentic Deed drawn up by a Notary to hide behind Article 66 paragraph (1) of the Notary Position Law [exhibit P-1] with the expectation that the Notary concerned cannot be examined by the Investigators of the Police Force of the Republic of Indonesia, so that such perpetrators will not be disclosed;

19. Whereas, the Petitioner feels that his constitutional rights to obtain “equal position before the law” for any Indonesian citizen including the Notary and “the protection and legal certainty of just laws” for the Petitioner in particular and for Indonesian people in general in the provisions of Article 27 paragraph (1) and Article 28D paragraph (1) of the 1945 Constitution [exhibit P-2] are severely impaired by the coming into effect of the phrase/sentence “upon the approval of the District Supervisory Committee” in Article 66 paragraph (1) of the Notary Position Law [exhibit P-1]. Therefore, the phrase/sentence “upon the approval of the District Supervisory Committee” in the provision of Article 66 paragraph

(1) of the Notary Position Law [exhibit P-1] should be declared inconsistent with the provisions of Article 27 paragraph (1) and Article 28D paragraph (1) of the 1945 Constitution [exhibit P-2] and having no binding legal effect /it shall be declared to be revoked;

20. Whereas the granting of this petition, namely by declaring the phrase/sentence “upon the approval of the District Supervisory Committee” in Article 66 paragraph (1) of the Notary Position Law [exhibit P-1] inconsistent with the provisions of Article 27 paragraph (1) and Article 28D paragraph (1) of the 1945 Constitution [exhibit P-2] and not having any binding legal effect/declared to be revoked, will be able to recover the constitutional impairment suffered by the Petitioner as a justice-seeking reporting person and by the justice-seeking community members, particularly relation to the disclosure of crime related to/in connection with the Authentic Deed or the Notary;

Whereas therefore, “equal position before the law” and “the protection and legal certainty of just laws” are the constitutional rights of each Indonesian people and also the recognition of Human Rights which may not be reduced under any circumstance or situation;

21. Whereas if the phrase/sentence “upon the approval of the District Supervisory Committee” in the provision of Article 66 paragraph (1) of the Notary Position Law [exhibit P-1] is not revoked/declared to have no

binding legal effect/not declared inconsistent with Article 27 paragraph (1) and Article 28D paragraph (1) of the 1945 Constitution [exhibit P-2], it will be possible for the “Criminal Mafia”, particularly related to/in connection with the Authentic Deed drawn up by the Notary, to hide behind the consent for examination of the Notary granted by the District Supervisory Committee and in the end, it will facilitate and protect the perpetrators and will violate/deny the constitutional rights and human rights of the Justice Seekers. Subsequently, the mandate contained in the 1945 Constitution will not be achieved and realized properly;

22. Whereas therefore, it is absolute that the phrase/sentence “upon the approval of the District Supervisory Committee” in the provision of Article 66 paragraph (1) of the Notary Position Law [exhibit P-1] must be revoked/declared having no binding legal effect/declared inconsistent with Article 27 paragraph (1) and Article 28D paragraph (1) of the 1945 Constitution [exhibit P-2] to prevent impairment of the constitutional rights and the human rights of any Justice Seeker and the perpetrators cannot hide behind the consent granted by the District Supervisory Committee for examining the Notary;

#### **IV. PETITION**

Based on the matters described above, the Petitioner hereby files the petition (*Petitum*) for the Constitutional Court hearing this petition to be willing to pass



the decision with the following injunctions:

1. To accept and grant the petition of the Petitioner in its entirety;
2. To declare the provision of Article 66 paragraph (1) of Law of the Republic of Indonesia Number 30 Year 2004 concerning Notary Position (State Gazette of the Republic of Indonesia Year 2004 Number 117, Supplement to the State Gazette of the Republic of Indonesia Number 4432) to the extent of the phrase/sentence “upon the approval of the District Supervisory Committee” inconsistent with the 1945 Constitution of the State of the Republic of Indonesia;
3. To declare that the provision of Article 66 paragraph (1) of Law of the Republic of Indonesia Number 30 Year 2004 concerning Notary Position (State Gazette of the Republic of Indonesia Year 2004 Number 117, Supplement to the State Gazette of the Republic of Indonesia Number 4432) the phrase/sentence “upon the approval of the District Supervisory Committee” does not have any binding legal effect, so that the provision of Article 66 paragraph (1) of Law of the Republic of Indonesia Number 30 Year 2004 concerning Notary Position (State Gazette of the Republic of Indonesia Year 2004 Number 117, Supplement to the State Gazette of the Republic of Indonesia Number 4432) must be read, as follows:

*“For the purpose of judicial process, the investigator, public prosecutor, or judge shall be authorized:*

c. *to take the photocopy of the Minutes of Deed and/or documents attached to the Minutes of Deed or Notary Protocol retained by Notaries; and*

d. *to summon Notaries to attend the examination in relation to the deed drawn up by them or the Notary Protocol retained by Notaries”;*

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

OR

If the Constitutional Court 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 Petitioner presented the documentary/written evidence marked as exhibits P-1 through P-12 as follows:

1. Exhibit P-1 : Photocopy of Law Number 30 Year 2004 concerning the Notary Position;
2. Exhibit P-2 : Photocopy of the 1945 Constitution of the State of the Republic of Indonesia;
3. Exhibit P-3 : Photocopy of Identity Card in the name of Kant Kamal;
4. Exhibit P-4 : Photocopy of Proof of Report Police Number

TBL/240/VII/Bareskrim;

5. Exhibit P-5 : Photocopy of Letter Number B/17562/XII/2011/Dit Reskrimum concerning the Notice on Investigation Progress;
6. Exhibit P-6 : Photocopy of Letter Number B/2085/III/2012/Ditreskrimum concerning the Notice on Investigation Progress;
7. Exhibit P-7 : Photocopy of Letter Number B/2826/V/2012/Direskrimum concerning the Notice on Investigation Progress;
8. Exhibit P-8 : Photocopy of the Deed of Document Retention Number 7;
9. Exhibit P-9 : Photocopy of the Sale and Purchase of Shares;
10. Exhibit P-10 : Photocopy of Statement of the Resolutions of Shareholders of the Limited Liability Company PT. Bukit Kemilau Restu Anugrah;
11. Exhibit P-11 : Photocopy of Statement of the Resolutions of Shareholders of the Limited Liability Company PT. Bukit Kemilau Restu Anugrah;
12. Exhibit P-12 : Photocopy of Letter Number B/3378/V/2012/Ditreskrimum concerning the Notice on Investigation Progress.

**[2.3]** Whereas the oral statements of the Government were heard at the hearing on July 5, 2012 and the Government presented its written statements on July 31, 2012 at the Registrar's Office of the Court that principally describe as follows:

## I. SUBSTANCE OF THE PETITIONER' PETITION

1. Whereas according to the Petitioner, the coming into effect of the provision of Article 66 paragraph (1) of the Notary Position Law has violated the constitutional rights of the Petitioner to obtain an equal position before the law and the legal certainty of just laws for any Indonesian citizen as referred to in Article 27 paragraph (1) of the 1945 Constitution.
2. Whereas the Petitioner made the Report/Complaint to the Police Force in relation to the alleged Criminal act of Giving False Statements in an Authentic Deed as referred to in Article 266 of the Indonesian Criminal Code, however, the investigators of the police force experienced difficulties in performing the investigation process because the District Notary Supervisory Committee of Cianjur did not give the consent to summon the notary to ask for his statements as a witness as stated in the provision of Article 66 paragraph (1) of the Notary Position Law.
3. Whereas the provision of the article *a quo* is inconsistent with Article 27 paragraph (1) and Article 28D paragraph (1) of the 1945 Constitution. If such article remains in effect, it will allow the perpetrators with modus of using the Authentic Deed drawn up by the Notary to hide behind the Article *a quo* with the expectation

that the Notary concerned cannot be examined by the Investigators of the police force so that the perpetrators will not be disclosed. Thus, it may paralyze/eliminate the constitutional rights and human rights of the justice seekers;

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

The provision of Article 51 paragraph (1) of Law Number 24 Year 2003 concerning the Constitutional Court as amended by Law Number 8 Year 2011 states that the Petitioners are the parties considering that their constitutional rights and/or authorities are impaired by the coming into effect of the law, namely:

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

The aforementioned provision is affirmed by its elucidation stating that “constitutional rights” are the rights regulated in the 1945 Constitution of

the State of the Republic of Indonesia.

Therefore, in order that a person or a party can be accepted as a Petitioner having legal standing in a petition for judicial review of a Law against the 1945 Constitution of the State of the Republic of Indonesia, such person or party shall explain and substantiate:

- a. his/her qualification in the petition *a quo* as referred to in Article 51 paragraph (1) of Law Number 24 Year 2003 concerning the Constitutional Court as amended by Law Number 8 Year 2011;
- b. his/her constitutional rights and/or authorities in the intended qualification which are considered to have been impaired by the coming into effect of the Law being reviewed;
- c. the impairment of constitutional rights and/or authorities of the Petitioner due to the coming into effect of the Law being petitioned for review.

Furthermore, following its Decision Number 006/PUU-III/2005 and Decision Number 11/PUU-V/2007 as well as subsequent decisions, the Constitutional Court has provided the cumulative interpretation and definition of the impairment of constitutional rights and/or authorities arising from the coming into effect of a law and based on Article 51 paragraph (1) of Law Number 24 Year 2003 concerning the

Constitutional Court as amended by Law Number 8 Year 2011, which must meet 5 (five) requirements, namely:

- a. the existence of constitutional rights of the Petitioner granted by the 1945 Constitution of the State of the Republic of Indonesia;
- b. whereas the Petitioner considers that such constitutional rights are impaired by the Law being reviewed;
- c. whereas such constitutional impairment of the Petitioner 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;

With regard to the aforementioned matters, according to the Government, it is necessary to question whether the interest of the Petitioner has been appropriate as the party considering that his rights and/or authorities are impaired by the provision of Article 66 paragraph (1) of Law Number 30 Year 2004 concerning Notary Position, and

whether the intended constitutional impairment of the Petitioner is specific (special) and actual or at least potential in nature which, pursuant to logical reasoning, can be assured of occurring, and also whether there is a causal relationship (*causal verband*) between the impairment and the coming into effect of the Law being petitioned for review.

With respect to the aforementioned questions, according to the Government, the Petitioner does not have legal standing because the impairment as argued by the Petitioner in relation to the refusal of the District Supervisory Committee to grant the request of investigators tends to be the issue of application or implementation of the norm of Article 66 paragraph (1) of the Notary Position Law, and thus, the Constitutional Court is not authorized to apply a norm. Moreover, the provision *a quo* have also provides the balanced protection between the efforts to maintain the confidentiality of any authentic deed constituting the state archives and the law enforcement efforts through the judicial process applicable to all citizens without exception. Thus, the provision *a quo* is consistent with Article 27 paragraph (1) and Article 28D paragraph (1) of the 1945 Constitution.

Based on the aforementioned matters, according to the Government, the Petitioner in this petition does not meet the qualification as the party having legal standing and it is appropriate for the Chief Justice/Panel of



Justices of the Constitutional Court to prudently declare that the Petitioner's petition cannot be accepted (*niet ontvankelijk verklaard*).

However, the Government fully leaves it to the Chief Justice/ Panel of Justices of the Constitutional Court to consider and assess whether the Petitioner has legal standing or not as provided for by Article 51 paragraph (1) of Law Number 24 Year 2003 concerning the Constitutional Court as amended by Law Number 8 Year 2011 and based on previous decisions of the Constitutional Court [*vide* Decision Number 006/PUU-III/2005 and Decision Number 11/PUU-V/2007].

### **III. THE GOVERNMENT'S EXPLANATION OF THE SUBSTANCE BEING PETITIONED BY THE PETITIONER**

1. The 1945 Constitution of the State of the Republic of Indonesia expressly provides that the state of the Republic of Indonesia is a state based on law. The rule of law state principles guarantee the legal certainty, order, and protection the core of which is truth and justice. The legal certainty, order and protection require, among other things, that the legal traffic within the community life requires a means of proof to clearly determine the rights and obligations of a person as a legal subject within the community.
2. In order to guarantee legal certainty and provide legal protection, one of the strongest and fullest means of proof which plays an

important role is an authentic deed. The authentic deed serves as the strongest and fullest means of proof playing an important role in every legal relationship in the community life. In various business relationships, and activities in the field of banking, land affairs, social work, etc, the written proof in the form of an authentic deed is increasingly required in line with the increasing demand for legal certainty in various economic and social relationships, either at the national, regional or global levels.

3. The Notary Position Law states that a Notary shall have authority to draw up authentic deeds in relation to all acts, agreements, and stipulations required by the laws and regulations and/or desired by interested parties to be set forth in such authentic deeds, to guarantee the certainty of the dates of drawing up of deeds, retain deeds, and give grosse, copies, and excerpts of such deeds, all being to the extent that the drawing up of such deeds is not assigned to or excluded for other officials or persons stipulated by Law. (*vide* Article 15 of the Notary Position Law)
  
4. An authentic deed basically contains formal truth in accordance with any matter told by the parties to a Notary. However, the Notary is obligated to guarantee that any matter set forth in a Notarial deed has been really understood by, and in accordance with the request of, the parties, namely by reading it out so that

the content of such Notarial Deed becomes clear, and provides access to any information including access to the relevant laws and regulations for related to the signatories of the deed. Considering that a Notarial deed as an authentic deed is the strongest and fullest written means of proof as regulated in the Notary Position Law which regulates the form and nature of Notarial Deeds and Minutes of Deeds, Grosse Deeds, Copy of Deeds, as well as Excerpt of Notarial Deeds. As the strongest and fullest written means of proof, any matter set forth in a Notarial Deed must be accepted unless the interested parties can satisfactorily prove otherwise before the court hearing.

5. In performing his/her position, one of the Notary's obligations is to draw up a deed in the form of the Minutes of Deed and to retain it as a part of the Notary Protocol. The Notary Protocol is a collection of documents constituting the state archives which must be retained and maintained by the Notary.

The obligations of a Notary to keep confidential the contents of deeds, Grosse Deeds, Copy of Deeds or Excerpt of Deeds drawn up and supervised by him/her are explained in several articles in the Notary Position Law, namely, among other things,

- a. Article 4 paragraph (2) of the Notary Position Law which

regulates the oath/pledge of Notary Position stating that “*I will keep confidential the contents of the deed and any statements obtained in performing my position*”.

- b. Article 16 paragraph (1) sub-paragraph e of the Notary Position Law stating that: *In performing his/her position, a Notary shall be obligated to: e. keep confidential all matters concerning deeds drawn up by him/her and all statements obtained to draw up such deeds according to the oath/pledge of position unless otherwise stipulated by law;*
- c. Article 54 of the Notary Position stating that *a Notary may only give, present, or disclose the contents of deeds, Grosse Deeds, Copy of Deeds or Excerpt of Deeds to parties having a direct interest in such deeds, heirs, or entitled parties unless otherwise determined by the laws and regulations.*

Based on such provisions, a Notary, due to his/her position, is given the right of refusal (*verschoningsrecht*) and the obligation of refusal (*verschoningsplicht*) constituting the right to be discharged from giving any statement related to any deed drawn up by him/her as affirmed by the Indonesian Civil Code and the Indonesian Criminal Code:

Article 1909 paragraph (3) of the Indonesian Civil Code states that *all persons competent to be witnesses, are required to submit their testimonies in court. However, anyone, who due to their status, position or function, is pledged to secrecy, but only to the extent of the information entrusted to them in connection with their above-mentioned status, position or function, may be excused from testifying.*

Article 322 of the Indonesian Criminal Code states that *any person who with deliberate intent reveals a secret which he by reason of either his present or earlier office or profession is obliged to keep secret, shall be punished by a maximum imprisonment of nine months or a maximum fine Nine hundred rupiah.*

Such Notary is obligated to keep confidential the contents of a deed and any statement obtained in order to draw up any Notarial Deed unless it is required by Law that such Notary is not obligated to keep it confidential and to give any necessary statement related to such deed.

6. Whereas the Notary Position is based on trust between a Notary and a party using his/her services so that such Notary may only give, present or disclose the contents of deeds, Grosse Deeds,

Copy of Deeds or Excerpt of Deeds to parties having a direct interest in such deeds, the heirs.

7. In order to supervise the implementation of the code of conduct and the performance of Notary position, the Notary Position Law has established a Supervisory Committee one of authorities of which is to receive any report and to hold court hearings to examine alleged violations of the Notary Code of Conduct or the performance of Notary position. Thus, such Supervisory Committee serves a function as a bridge / an assessor whether the request filed by any person and/or any investigator, public prosecutor or judge for taking the minutes of deed and/or summoning notaries may be granted or not.

8. Whereas Article 66 paragraph (1) of the Notary Position Law states that:

*(1) For the purpose of judicial process, the investigator, public prosecutor, or judge upon the approval of the District Supervisory Committee shall be authorized:*

*a. to take the photocopy of the Minutes of Deed and/or documents attached to the Minutes of Deed or Notary Protocol retained by Notaries; and*

*b. to summon Notaries to attend the examination in*

*relation to the deed drawn up by them or the Notary Protocol retained by Notaries”.*

With regard to the judicial process requiring the examination of a Notary by law enforcement apparatuses, the Government may convey the following matters:

- a. whereas the minutes of deed or documents attached thereto are the notary protocol constituting the state archives and a notary due to his/her position is obligated to keep confidential all matters concerning deeds drawn up by him/her and all statements obtained to draw up such deeds according to the oath/pledge of position unless otherwise stipulated by Law (*vide* Article 16 paragraph (1) subparagraph e of the Notary Position Law);
- b. based on the aforementioned considerations, to take the photocopy of the Minutes of Deed and/or documents attached thereto and to summon a Notary in order to attend the examination in relation to the deed drawn up by him/her or the Notary Protocol retained by such Notary may be only allowed for the purpose of the court hearing and must be upon the approval of the District Supervisory Committee.
- c. Further arrangements for the provision of Article 66 of the

Notary Position Law are regulated in Regulation of the Minister of Law and Human Rights Number: M.03.HT.03.10 Year 2007 concerning the Taking of the Minutes of Deed and the Summons on a Notary.

- d. CHAPTER III concerning the requirements and Procedures for Taking the Minutes of Deed and/or Documents Attached To the Minutes of Deed Or the Notary Protocol Retained by Notaries in Regulation of the Minister of Law and Human Rights Number: M.03.HT.03.10 Year 2007 regulates the procedures for taking the minutes of deed as follows:

*Article 9:*

*The District Supervisory Committee grants approval to take the Minutes of Deed and/or documents attached to the Minutes of Deed or the Notary Protocol retained by Notaries as referred to in Article 8 paragraph (1) if:*

- a. *there is an alleged criminal act related to the Minutes of Deed and/or documents attached to the Minutes of Deed or the Notary Protocol retained by Notaries;*
- b. *the right to sue has not expired based on the*



*criminal provisions of the laws and regulations on the expiration;*

- c. the validity of signatures by the parties is denied;*
- d. there is any reduction or addition to the Minutes of Deed; or*
- e. Notaries allegedly change the date of the deed (antidatum).*

#### *Article 10*

*The District Supervisory Committee shall grant the approval as referred to in Article 9 after hearing the statements of the Notary concerned.*

#### *Article 11*

*The District Supervisory Committee shall not grant the approval to take the Minutes of Deed and/or documents attached to the Minutes of Deed or the Notary Protocol retained by Notaries as referred to in Article 8 paragraph (1) if the provisions as referred in Article 9 are not fulfilled.*

#### *Article 12*

- (1) *The District Supervisory Committee shall be obligated to grant the written approval or not to grant the written approval by no later than 14 (fourteen) days as from the receipt of the request.*
- (2) *If such period of time as determined in paragraph (1) has expired, the District Supervisory Committee is deemed to have granted the approval.*

Based on the such explanation, the Government is of the opinion that the approval of the District Supervisory Committee as referred to in Article 66 of the Notary Position Law is required to maintain the balance between the obligation of refusal owned by a notary and law enforcement process.

- e. CHAPTER IV concerning the Requirements and Procedures for Summoning Notaries in Regulation of the Minister of Law and Human Rights Number: M.03.HT.03.10 Year 2007 also regulates the procedures for Summoning Notaries, as follows:

*Article 14*

- (1) *The Investigator, Public Prosecutor, or Judge may,*

*for the purpose of judicial process, summon a Notary as a witness, suspect or accused by filing a written request to the District Supervisory Committee.*

*(2) A copy of the request referred to in paragraph (1) shall be given to the Notary.*

*(3) The request referred to in paragraph (1) shall contain the reasons for summoning such Notary as a witness, suspect or accused.*

#### *Article 15*

*The District Supervisory Committee shall grant the approval to summon a Notary as referred to in Article 14 paragraph*

*(1) if:*

*a. there is an alleged criminal act related to the Deed and/or documents attached to the Minutes of Deed or the Notary Protocol retained by such Notary, or;*

*b. the right to sue has not expired based on the criminal provisions of the laws and regulations on the expiration.*

#### *Article 16*

*The District Supervisory Committee shall grant the approval as referred to in Article 15 after hearing the statements of the Notary concerned.*

*Article 17*

*The District Supervisory Committee shall not grant the approval to the Investigator, Public Prosecutor, or Judge to summon a Notary as a witness, suspect or accused if the provisions as referred to in Article 15 are not fulfilled.*

*Article 18*

*(1) The District Supervisory Committee shall be obligated to grant the written approval or not to grant the written approval by no later than 14 (fourteen) days as from the receipt of the request referred to in Article 14.*

*(2) If such period of time as determined in paragraph (1) has expired, the District Supervisory Committee is deemed to have granted approval.*

Based on the explanation, the Government is of the opinion that the approval of the District Supervisory Committee referred to in Article 66 of the Notary Position Law is

required to maintain the balance between the obligation of refusal owned by a notary and law enforcement process. It is required to provide legal protection for a notary in performing his/her duties.

9. In order to guarantee credibility and accountability of decisions passed by the Supervisory Committee on the request referred to in Article 66 of the Notary Position Law, the Notary Position Law has regulated the composition of the Supervisory Committee consisting of government elements (3 persons), Organization of Notaries (3 persons) and experts/academicians (3 persons), so that it is expected that the assessment made will be objective and accountable.
10. The government may inform that there is a Memorandum of Understanding among the National Police Force of the Republic of Indonesia, the Indonesian Notary Association of and the Association of Land Deed Officials Pol. Number B/1056/V/2006 Number 01/MOU/PP-INI/V/2006 stating that the summoning of Notaries – Land Deed Officials must be made in writing and signed by the investigators. The summoning of Notaries – Land Deed Officials is made after the investigators obtain the approval of the Supervisory Committee which is an agency having authorities and obligations to develop and supervise.

#### IV. CONCLUSIONS

Based on the explanations above, the Government requests for the Chief Justice/Panel of Justices of the Constitutional Court examining, deciding upon and hearing the petition for judicial review of Law Number 30 Year 2004 concerning Notary Position against the 1945 Constitution of the State of the Republic of Indonesia to pass the decision as follows:

1. *To declare that the Petitioner does not have legal Standing;*
2. *To reject the Petitioner's petition for judicial review in its entirety or at least to declare that the Petitioner's petition for judicial review cannot be accepted (niet ontvankelijk verklaard);*
3. *To accept the Statement of the Government in its entirety;*
4. *To declare the provision of Article 66 paragraph (1) of Law Number 30 Year 2004 concerning Notary Position **not inconsistent with** the provisions of Article 27 paragraph (1) and Article 28D paragraph (1) of the 1945 Constitution of the State of the Republic of Indonesia.*

However, if the Chief Justice/Panel of Justices of the Constitutional Court of the Republic of Indonesia is of a different opinion, requesting for the decision to be passed according to what is just and good (*ex aequo et*

*bono*).

**[2.4]** Whereas the People’s Legislative Assembly submitted its written statements at the Registrar’s Office of the Court on July 25, 2012 that principally describes as follows:

**THE PROVISIONS OF THE NOTARY POSITION LAW BEING PETITIONED FOR JUDICIAL REVIEW AGAINST THE 1945 CONSTITUTION OF THE STATE OF THE REPUBLIC OF INDONESIA**

The Petitioner filed his petition for judicial review of Article 66 paragraph (1) of the Notary Position Law which reads as follows:

*“For the purpose of judicial process, the investigator, public prosecutor, or judge upon the approval of the District Supervisory Committee shall be authorized:*

- a. to take the photocopy of the Minutes of Deed and/or documents attached to the Minutes of Deed or Notary Protocol retained by Notaries; and*
- b. to summon Notaries to attend the examination in relation to the deed drawn up by them or the Notary Protocol retained by Notaries”.*

**B. THE PETITIONER CONSIDERS THAT THE CONSTITUTIONAL**

**RIGHTS AND/OR AUTHORITIES HAVE BEEN IMPAIRED BY THE COMING INTO EFFECT OF ARTICLE 66 PARAGRAPH (1) OF THE NOTARY POSITION LAW.**

The Petitioner in the petition *a quo* states that his constitutional rights have been impaired and violated or at least, pursuant to logical reasoning, may be potentially impaired by the coming into effect of Article 66 paragraph (1) of the Notary Position Law which is principally as follows:

1. Whereas the Investigators of the Police Force of the Republic of Indonesia experienced difficulties in performing the investigation process with respect to the police report made by the Petitioner, namely that they did not obtain the consent/approval of the District Supervisory Committee to summon the Notary to ask for his statements. Therefore, the Petitioner feels that his constitutional rights to obtain an equal position before the law and the protection and legal certainty of just laws are severely impaired.
2. Whereas based on the aforementioned matters, the Petitioner is of the opinion that the phrase “upon the approval of the District Supervisory Committee” in the provision of Article 66 paragraph (1) of the Notary Position Law has resulted in difficulties for the investigators to perform the investigation process with respect to



the police report made by the Petitioner. Thus, it has violated the constitutional rights of the Petitioner to obtain an equal position before the law and the protection and legal certainty of just laws as guaranteed by Article 27 paragraph (1) and Article 28D paragraph (1) of the 1945 Constitution which read as follows:

**Article 27**

(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**

(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.*

**C. THE STATEMENTS OF THE PEOPLE'S LEGISLATIVE ASSEMBLY OF THE REPUBLIC OF INDONESIA**

With regard to the arguments of the Petitioner as described in the Petition *a quo*, the People's Legislative Assembly in giving its opinions first explains legal standing as follows:

**I. Legal Standing of the Petitioner**

The Petitioner as the party shall meet the qualifications as regulated in the provision of the Article 51 paragraph (1) of Law Number 24 Year 2003 concerning the Constitutional Court (hereinafter referred to as the Constitutional Court Law) stating that *“The Petitioners are the parties considering that their constitutional rights and/or authorities are impaired by the coming into effect of the Law, namely:*

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

The constitutional rights and/or authorities referred to in the provisions of Article 51 paragraph (1) are affirmed by the elucidation thereof, namely that **“constitutional rights” are the rights regulated in the 1945 Constitution of the State of the Republic of Indonesia.**” The elucidation of the provision of Article 51 paragraph (1) affirms that only the rights expressly

regulated in the 1945 Constitution of the State of the Republic of Indonesia constitute the “constitutional rights”.

Therefore, according to the Constitutional Court Law, in order that a person or a party can be accepted as a Petitioner having legal standing in the petition for judicial review of a Law against the 1945 Constitution of the State of the Republic of Indonesia, such person or party shall explain and substantiate:

- a. his/her qualifications as a Petitioner in the petition *a quo* as referred to in Article 51 paragraph (1) of Law Number 24 Year 2003 concerning the Constitutional Court as amended by Law Number 8 Year 2011;
- b. his/her constitutional rights and/or authorities as referred to in the “Elucidation of Article 51 paragraph (1)” which are considered to have been impaired by the coming into effect of the Law.

With regard to parameter of constitutional impairment, the Constitutional Court has provided the cumulative interpretation and definition of the constitutional impairment arising from the coming into effect of a law which must meet 5 (five) requirements (vide Decision Number 006/PUU-III/2005 and Number 011/PUU-V/2007), namely:

- a. the existence of constitutional rights of the Petitioner granted by the 1945 Constitution of the State of the Republic of Indonesia;
- b. whereas the Petitioner considers that his/her constitutional rights and/or authorities have been impaired by a Law being reviewed;
- c. whereas the intended impairment of constitutional rights and/or authorities of the Petitioner 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 impairment of constitutional rights and/or authorities as argued will not or will no longer occur;

If the Petitioner does not fulfil such five requirements in the case of judicial review of the Law *a quo*, the Petitioner does not have the qualification for legal standing as a Petitioner.

In response to the petition *a quo* of the Petitioner, according to the People's Legislative Assembly, the Petitioner shall first substantiate whether it is true that Petitioner is the party considering that his constitutional rights and/or authorities are impaired by the provision being petitioned for review, particularly in construing the existence of impairment of his constitutional rights and/or authorities as an impact of the application of the provision being petitioned for review.

With regard to legal standing of the Petitioner, the People's Legislative Assembly fully leaves it to the Panel of Justices of the Constitutional Court to evaluate whether the Petitioner meets the requirements for legal standing as regulated in the provision of Article 51 paragraph (1) of Law concerning the Constitutional Court as amended by Law Number 8 Year 2011 and Decision of the Constitutional Court Number 006/PUU-III/2005 and Decision Number 011/PUU-V/2007.

## **II. Judicial Review of Article 66 paragraph (1) of the Notary Position Law**

With regard to the judicial review of Article 66 paragraph (1) of the Notary Position Law, the People's Legislative Assembly gives the following statements:

1. Whereas Article 1 paragraph (3) of the 1945 Constitution of the State of the Republic of Indonesia confirms that the state of the Republic of Indonesia is a state based on law. Thus, the rule of law state principles uphold and guarantee the existence of legal certainty, order, and protection the core of which is truth and justice.
2. the life of community and state is not separate from the existence of any legal relationships between the community members either among individuals, between an individual and a group, between a group and a group or between an individual or a group and a state.
3. In order to guarantee the legal certainty, order and protection in any legal relationship within the life of community and state, a means of proof in the form of an authentic deed is required to determine clearly the rights and obligations of a person as a legal subject within the community.
4. An authentic deed as the strongest and fullest means of proof plays an important role in every legal relationship within the community life. In various business relationships and activities in the field of banking, land affairs, social work, etc, the demand for the written proof in the form of an authentic deed is increasingly

required in line with the increasing demand for legal certainty in various economic and social relationships, either at the national, regional or global levels. It is expected that such authentic deed may clearly determine the rights and obligations, guarantee the legal certainty, and also prevent the occurrence of any dispute. Although such dispute cannot be avoided, in the process of such dispute settlement, such authentic deed constituting the strongest and fullest written means of proof gives a real contribution to the settlement of any case in an inexpensive and quick manner.

5. A notary is a public official authorized to draw up an authentic deed to the extent that the drawing up of such deed is not restricted to other public officials. Some deeds are required by the laws and regulations to be drawn up in order to create legal certainty, order and protection.
  
6. Whereas in order to protect the legal interests of the parties directly related to an authentic deed drawn up before a Notary, the Notary is obligated to keep confidential the contents of the deed and any statement obtained from such parties. The matter is regulated in Article 4 *juncto* Article 16 paragraph (1e) of the Notary Position Law which read as follows:

#### **Article 4**

(1) *before performing his/her position, a Notary shall be obligated to take an oath / a promise according to his/her religion before the appointed Minister or official.*

(2) *The oath / promise as referred to in paragraph (1) shall read as follows:*

*“I swear /promise:*

*.....that I will keep confidential the contents of deeds and any statement obtained in performing my position.....”*

#### **Article 16**

(1) *In performing his/her position, a Notary shall be obligated to:*

*e. keep confidential all matters concerning deeds drawn up by him/her and all statements obtained to draw up such deeds according to the oath/pledge of position unless otherwise stipulated by law.*

7. Whereas in order to keep confidential the matters concerning deeds drawn up by him/her and any statement obtained to draw up such deeds, a Notary may only give, present or disclose the contents of deeds, Grosse Deeds, Copy of Deeds or Excerpt of Deeds to parties having a direct interest in such deeds, heirs or



entitled parties unless otherwise determined by the laws and regulations.

8. with regard to the violation of such obligations, based on Article 85 of the Notary Position Law, a Notary may be imposed with sanctions in the form of:

- a. verbal reprimand;
- b. written reprimand;
- c. temporary suspension;
- d. honorable dismissal; or
- e. dishonorable dismissal.

9. Whereas in order to protect the legal interests of parties directly related to an authentic deed drawn up before a Notary and to provide legal certainty and legal protection for a Notary in performing his/her duties and obligations especially the obligations to keep confidential any matter in relation to a deed drawn up by him/her and any statement obtained to draw up such deed, Article 66 paragraph (1) regulates the taking of the minute of deeds and the summoning of the Notaries for the purpose of judicial process, the investigator, public prosecutor or judge upon

the approval of the District Supervisory Committee.

10. In addition, a Notary is an official who retains the Minutes of Deeds and who is obligated to keep confidential the matter concerning deeds drawn up by him/her and any statement obtained to draw up such deeds according to his/her oath/pledge of position based on Laws. A Notary is given authority directly by the executive, which means that a Notary exercises a part of executive authorities, namely, among other things, to include any legal action, either sale and purchase, lease and so forth which are in the scope of civil law, in a deed serving as an authentic means of proof.
  
11. In the beginning, the confiscation of the Minutes of Notarial Deed had been performed upon the consent of the Head of District court. In addition, M. Yahya Harahap in his book titled "*Hukum Perseroan Terbatas (Law on Limited Liability Companies)*" states that the confiscation of Notarial Deed is based on Letter of the Supreme Court Number MA/Pemb/3429/86 dated April 12, 1986 and Article 43 of the Criminal Procedure Code. Following the enactment of Law Number 30 Year 2004 concerning Notary Position, for the first time in years, Indonesia had the national legal basis regulating the profession of notaries as State apparatuses in providing their services to the public. The

arrangements for “the Taking of the Minutes of Deed and the Summons on a Notary” are further regulated in the provision of Article 66 of this Law. This provision is affirmed by the coming into effect of Regulation of the Minister of Law and Human Rights Number: M.03.HT.03.10 Year 2007 concerning the Taking of the Minutes of Deed and the Summons on a Notary.

12. The formulation of the Notary Position Law does not constrain the investigation process, which may be seen from the construction of the formulation of sentence of Article 66 paragraph (1) stating that “For the purpose of judicial process, the investigator, public prosecutor, or judge upon the approval of the District Supervisory Committee shall be authorized to take the photocopy of the Minutes of Deed and/or documents attached to the Minutes of Deed or Notary Protocol retained by Notaries.” The construction on the formulation of such article provides a great opportunity for the investigators to obtain a means of proof in order to facilitate the investigation process, and it is proper for the District Supervisory Committee to provide such means of proof for the purpose of investigation. The subsequent emergence of a unique case in which the District Supervisory Committee does not grant the consent is a different matter which cannot become a reason to blame the formulation of regulation in Article 66 of the Law on Notary Position for being inconsistent with the 1945 Constitution

of the State of the Republic of Indonesia.

13. The provision of Article 66 of this Law is affirmed by the issuance of Regulation of the Minister of Law and Human Rights Number: M.03.HT.03.10 Year 2007 concerning the Taking of the Minutes of Deed and the Summons on a Notary regulating that the photocopy of the Minutes of Deed and the Minutes of Deed may be taken upon the approval of the District Supervisory Committee according to the domicile of the Notary concerned. Article 8 of Regulation of the Minister of Law and Human Rights Number: M.03.HT.03.10 Year 2007 regulates that for the purpose of judicial process, any Investigator may take the Minutes of Deed and/or any document attached to the Minutes of Deed or the Notary Protocol retained by a Notary by requesting the notary concerned to bring the Minutes of Deed and or any document attached to the Minutes of Deed or the Notary Protocol retained by such Notary and by filing a written request including the reasons for it to the District Supervisory Committee; the copy of the request is given to the Notary concerned. Such procedures are also applicable to the taking of the photocopy of the Minutes of Notarial Deed based on Article 2 of Regulation of the Minister of Law and Human Rights Number: M.03.HT.03.10 Year 2007;
14. The District Supervisory Committee will grant the approval to take

the photocopy of the Minutes of Deed and the Minutes of Deed after hearing the statements of the Notary concerned (Article 4 *juncto* Article 10 of Regulation of the Minister of Law and Human Rights Number: M.03.HT.03.10 Year 2007). The District Supervisory Committee is obligated to grant the written approval or not to grant the written approval by no later than 14 (business) days as from the receipt of the intended request, and if such period of time has expired, the District Supervisory Committee is deemed to have granted the approval (Article 6 *juncto* Article 12 of Regulation of the Minister of Law and Human Rights Number: M.03.HT.03.10 Year 2007).

15. If the District Supervisory Committee does not grant the approval to the Investigators to take the photocopy of the minutes of deed and or any document attached to the Minutes of Deed or the notary protocol retained by a notary, the Police Force as the Investigators and law enforcers should make another effort to obtain such means of proof, for example, by filing the request to the District Court to issue a stipulation on the taking of the photocopy of the minutes of deed/documents attached to the minutes of deed or the notary protocol for the progress of the investigation process. Thus, this is not a normative issue, but rather, it is the enrichment of ways the law enforcers may follow to

collect a means of proof.

16. Furthermore, if it is true that the District Supervisory Committee does not grant the approval to the Investigators to take the photocopy of the minutes of deed and/or documents attached to the minutes of deed or the notary protocol retained by a notary for the purpose of judicial process, such decision of the District Supervisory Committee should also be attached to this petition for judicial review as a means of proof. If such decision of the District Supervisory Committee is also attached to it, the reasons of the District Supervisory Committee for not granting the approval will be found out. In this petition, the Petitioner may only submit the refusal of the District Supervisory Committee as a means of proof only based on the acknowledgement of the investigators in the form of the 3<sup>rd</sup> Notice on Investigation Progress, the 5<sup>th</sup> Notice on Investigation Progress and the 6<sup>th</sup> Notice on Investigation Progress.

Hence, the statements of the People's Legislative Assembly are delivered to become the considerations for the Panel of Justices of the Constitutional Court to examine, decide upon and hear the Case *a quo* and to pass the decision as follows:

1. To reject the Petitioner's petition for judicial review in its entirety or at

least to declare that the Petitioner's petition for judicial review cannot be accepted;

2. To accept the Statement of the People's Legislative Assembly in its entirety;
3. To declare Article 66 paragraph (1) to the extent of the phrase "upon the approval of the District Supervisory Committee" not inconsistent with Article 27 paragraph (1) and Article 28D paragraph 91) of the 1945 Constitution.
4. To declare that Article 66 paragraph (1) of Law Number 30 Year 2004 concerning Notary Position still has binding legal effect.

**[2.5]** Whereas the Petitioner filed his written conclusions at the Registrar's Office of the court on July 19, 2012;

**[2.6]** Whereas to shorten the description in this decision, everything taking place during the court hearing shall be sufficiently indicated 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 Petitioner are to review the constitutionality of Article 66 paragraph (1) to the extent that the phrase "*upon the approval of the District Supervisory Committee*" in Law

Number 30 Year 2004 concerning Notary Position (State Gazette of the Republic of Indonesia Year 2004 Number 117, Supplement to the State Gazette of the Republic of Indonesia Number 4432) hereinafter referred to as the Notary Position Law being considered inconsistent with Article 27 paragraph (1), and Article 28D paragraph (1) of the 1945 Constitution of the State of the Republic of Indonesia, hereinafter referred to as the 1945 Constitution stating that:

- 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”.*

**[3.2]** Whereas before entering the substance of the petition, the Constitutional Court, hereinafter referred to as the Court, shall first consider the following matters:

1. Authority of the Court to hear the petition *a quo*;
2. Legal standing of the Petitioner;



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

### **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), Article 29 paragraph (1) sub-paragraph a of Law Number 48 Year 2009 concerning Judicial Power (State Gazette of the Republic of Indonesia Year 2009 Number 157, Supplement to the State Gazette of the Republic of Indonesia Number 5076), one of the Court's authorities is to review Laws against the 1945 Constitution;

**[3.4]** Whereas the petition of the Petitioner concerns the judicial review of the constitutionality of a Law *in casu* Article 66 paragraph (1) to the extent of the phrase "*upon the approval of the District Supervisory Committee*" in the Notary Position Law against Article 27 paragraph (1) and Article 28D paragraph (1) of the 1945 Constitution, which becomes one of the authorities of the Court; Therefore, the Court has authority to hear the petition *a quo*;

## **Legal standing of the Petitioner**

**[3.5]** Whereas based on Article 51 paragraph (1) of the Constitutional Court Law and the elucidation thereof, the Petitioners in the judicial review of a Law against the Constitution are the parties considering that their constitutional rights and/or authorities granted by the 1945 Constitution are impaired by the coming into effect of the Law being petitioned for review, namely:

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

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

- a. his/her position as the 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]** Whereas also, with respect to the impairment of constitutional rights and/or authorities as referred to in Article 51 paragraph (1) of the Constitutional Court Law, following its Decision Number 006/PUU-III/2005 dated May 31, 2005 and Decision Number 11/PUU-V/2007 dated September 20, 2007 as well as subsequent decisions, the Court is of the opinion 5 (five) requirements must be fulfilled, 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 (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 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, the impairment

of constitutional rights and/or authorities as argued will not or will no longer occur;

**[3.7]** Whereas based on the explanations described in paragraphs **[3.5]** and **[3.6]** above, the Court shall subsequently consider the legal standing of the Petitioner in the petition *a quo*, as follows:

Whereas the Petitioner argues that as an individual Indonesian citizen, he feels impaired by the coming into effect of Article *a quo*. The Petitioner who made a report to the police force in relation to the alleged criminal act of giving false statements in an authentic deed as referred to in Article 266 of the Indonesian Criminal Code, experienced difficulties because the investigators could not process his report for which, according to Article 66 paragraph (1) of the Notary Position Law on *a quo*, the consent/approval must be obtained from the District Supervisory Committee to examine a notary in a criminal case. According to the Petitioner, such impairment is clear and if there is no such article, the impairment of the Petitioner will be cured. Based on such arguments, according to the Court, there is potential impairment of constitutional rights of the Petitioner, there is a causal relationship (*causal verband*) between such impairment of the Petitioner, there is a possibility that with the granting of the petition, and the constitutional impairment of the Petitioner will not or will no longer occur. Therefore, the Petitioner has legal standing to file the petition for review of the article *a quo*;

**[3.8]** Whereas since the Court has authority to hear the petition *a quo* and the Petitioner meets the legal standing requirements for filing the petition *a quo*, the Court shall subsequently consider the substance of the petition;

### **Substance of the Petition**

### **Opinion of the Court**

**[3.9]** Whereas after thoroughly examining the petition of the Petitioner, the statements of the Government, the statements of the People's Legislative Assembly, the documentary/written evidence presented by the Petitioner, the written conclusions of the Petitioner as contained in the Facts of the Case, the Court is of the following opinion:

**[3.10]** Whereas the Petitioner principally argues that Article 66 paragraph (1) of the Notary Position Law, to the extent of the phrase "*upon the approval of the District Supervisory Committee*" is inconsistent with Article 27 paragraph (1) and Article 28D paragraph (1) of the 1945 Constitution because the investigators of the Police of Force the Republic of Indonesia experienced difficulties in performing the investigation process of the police report on a notary related to the criminal act of giving false statements in the authentic deed as referred to in Article 266 of the Indonesian Criminal Code. Since the party summoned is the notary, the police investigators shall first request for the consent of the District Supervisory Committee to examine the notary in the criminal case. According to the Petitioner, such provision is inconsistent with the

principle of “equal position before the law” for any Indonesian citizen, including the notary, as provided for in Article 27 paragraph (1) and Article 28D paragraph (1) of the 1945 Constitution;

**[3.11]** Whereas the notary is a public official authorized to draw up authentic deeds concerning all acts, agreements and stipulations required by the laws and regulations and/or desired by any interested party to be set forth in such authentic deeds, to guarantee the certainty of the drawing up dates of deeds, to retain deeds, and to give grosse, copies, and excerpts of deeds, all of which being to the extent of the drawing up of such deeds is not assigned or restricted to other officials or persons stipulated by Law; (*vide* Article 15 of the Notary Position Law)

**[3.12]** Whereas pursuant to Article 1870 of the Indonesian Civil Code, a notarial deed serves as strong substantiation to the parties drawing up such deed. It means that the position of notaries is very important because they are given authority by the Law to create an absolute means of substantiation in a sense that what is referred to in an authentic deed is principally deemed true for the sake of legal certainty for legal subjects as set out in such deed until it is proven to the contrary by with a decision of the court having permanent legal force;

**[3.13]** Whereas Article 4 and Article 16 paragraph (1) sub-paragraph e of the Notary Position Law require a notary to keep confidential any matter

concerning any deed drawn up by him/her and any statement obtained to draw up such deed according to the oath/promise of position unless otherwise stipulated by Law. Moreover, with regard to the violation of such obligations, based on Article 85 of the Notary Position Law, a notary may be imposed with sanctions in the form of verbal reprimand up to dishonorable dismissal;

**[3.14]** Whereas since the Petitioner bases his petition on the violation of the principle of equal position before the law and government and the principle of equal treatment, the Court needs to refer to the opinion of the Court in Decision Number 024/PUU-III/2005 dated March 29, 2006 stating that whether there is any discrimination issue in a Law may also be seen from the perspective of how the constitution formulates the protection of a constitutional right, whether right protected by the constitution is placed in the context of due process or in the context of equal protection. It is important to mention such differentiation because if a law factually eliminates a right to some persons while giving such right to other persons, such condition can be considered to be a violation of the principle of equal protection;

**[3.15]** Whereas according to the Court, the judicial process performed by the investigator, public prosecutor, or judge to take any document retained by a notary and to summon a notary to attend the examination in relation to such document made by him/her performed only upon the approval of the District Supervisory Committee, is included in a group of regulation which should not have contained any different treatment which is inconsistent with the principle of

equal protection as guaranteed by Article 27 paragraph (1) and Article 28D paragraph (3) of the 1945 Constitution, namely equal position before the law and government;

**[3.16]** Whereas all criminal law enforcement processes against notaries as formulated in paragraphs above must be performed without any intervention from other authorities outside the court. This is in line with the principle of the exercise of independent judicial power as regulated in Article 24 of the 1945 Constitution and Article 3 paragraph (2) of Law Number 48 Year 2009 concerning Judicial Power stating that, “ *any intervention in judicial affairs by any other party outside judicial power is prohibited except in the matters referred to in the 1945 Constitution of the State of the Republic of Indonesia*”;

**[3.17]** Whereas a different treatment for notaries as referred to in Article 66 paragraph (1) of the Notary Position Law may be justified to the extent that such treatment is related to any action within the scope of the code of conduct, namely the attitude, behavior, acts of notaries in performing their duties in relation to morality. According to the Court, such different treatment of the notary position is regulated and protected in the Code of Conduct of Notaries, while any notary as a citizen at all stages of the law enforcement process must be treated equal before the law as referred to in and guaranteed by Article 27 paragraph (1) and Article 28D paragraph (3) of the 1945 Constitution. Therefore, the requirement of the approval of the District Supervisory Committee is inconsistent with the principle of independence in the judicial



process and is inconsistent with the obligations of a notary as a citizen having an equal position before the law. This will prevent the existence of lengthy and complicated judicial process resulting in the lengthy and complicated justice enforcement effort which in the end may result in the denial of such justice. Justice delayed justice denied;

**[3.18]** “Whereas on the other hand, the Court also understands the importance of maintaining the authority of a notary as a public official whose honor must be maintained so that a special treatment is required for the purpose of maintaining the honor and dignity of such notary in the judicial process and also a prudent attitude toward a notary is required by the law enforcers in taking any legal action. However, such treatments may not be inconsistent with the principles of a rule of law state, namely, among other things, equal position before the law and the principle of judicial independence;

**[3.19]** Whereas based on all considerations above, the arguments of the Petitioner in the constitutionality review of Article 66 paragraph (1) of the Notary Position Law, to the extent of the phrase “*upon the approval of the District Supervisory Committee*” against the 1945 Constitution 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 authority to hear the petition *a quo*;
- [4.2] The Petitioner has legal standing to file the petition *a quo*;
- [4.3] The substance of the Petitioner' petition has 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 Petitioner in its entirety:
  - 1.1 The phrase "*upon the approval of the District Supervisory Committee*" in Article 66 paragraph (1) of Law Number 30 Year 2004 concerning Notary Position (State Gazette of the Republic of Indonesia Year 2004 Number 117, Supplement to the State

Gazette of the Republic of Indonesia Number 4432) is inconsistent with the 1945 Constitution of the State of the Republic of Indonesia;

1.2 That the phrase *“upon the approval of the District Supervisory Committee”* in Article 66 paragraph (1) of Law Number 30 Year 2004 concerning Notary Position (State Gazette of the Republic of Indonesia Year 2004 Number 117, Supplement to the State Gazette of the Republic of Indonesia Number 4432) does not have any binding legal effect;

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 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, Harjono, Anwar Usman, and Muhammad Alim, 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-eighth of May two thousand and thirteen**, and the pronouncement was completed at **17.10 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, Anwar Usman, Muhammad Alim, and Arief Hidayat, respectively as Members, assisted by Ida Ria Tambunan as the Substitute Registrar, in the presence of the Petitioner / his attorneys, the Government or its representative, and the People's Legislative Assembly or its representative;

**CHIEF JUSTICE,**

**sgd.**

**M. Akil Mochtar**

**JUSTICES,**

**sgd.**

**Achmad Sodiki**

**sgd.**

**Maria Farida Indrati**

**sgd.**

**Anwar Usman**

**sgd.**

**Hamdan Zoelva**

**sgd.**

**Ahmad Fadlil Sumadi**

**sgd.**

**Muhammad Alim**

**sgd.**

**Arief Hidayat**

**SUBSTITUTE REGISTRAR,**

**sgd.**

**Ida Ria Tambunan**