DECISION
Number 77/PUU-XIV/2016

FOR THE SAKE OF JUSTICE BASED ON THE ONE AND ONLY GOD
THE CONSTITUTIONAL COURT OF THE REPUBLIC OF INDONESIA

[1.1] Adjudicating the constitutional case at the first and final instance, handing its ruling in the case of Review on the Law Number 14 of 2008 regarding the Public Information Transparency against the Constitution of the Republic of Indonesia of 1945, submitted by:

1. **Foundation for the Strengthening of Initiative Participation and Partnership of the Indonesian Society (*Yayasan Strengthening of Partisipasi Inisiatif dan Kemitraan Masyarakat Indonesia*, YAPPIKA),** in this matter represented by:
   Name : **Lili Hasanudin**
   Chair Title : Executive Board YAPPIKA
   Address : Jalan Pedati Raya Number 20, Rawa Bunga, Jatinegara, Jakarta Timur (East Jakarta)
   referred to as ------------ **the Petitioner I;**
2. **Foundation Review Center and Regional Information (*Yayasan Pusat Telaah dan Informasi Regional*, PATTIRO),** in this matter represented by:
   Name : **Maya Rostanty**
   Chair Title : Chairperson of the Executive Board of Pattiro
   Address : Jalan Mawar Komplek Kejaksaan Agung Blok G Number 35 Pasar Minggu, Jakarta Selatan (South Jakarta)
   referred to as ------------ **the Petitioner II;**
3. **Foundation Association For General Elections and Democracy (*Yayasan Perkumpulan Untuk Pemilu dan Demokrasi*, PERLUDEM),** in this matter represented by:
   Name : **Titi Anggraini, S.H., M.H**
   Chair Title : Chairperson of the Executive Board of Perludem
   Address : Jalan Tebet Timur IVA Number 1 Tebet, Jakarta Selatan (South Jakarta)
   referred to as ------------ **the Petitioner III;**
4. Name : **Muhammad Djufryhard**
   Citizenship : Indonesian
   Address : Jalan Imam Bonjol Number 21 RT 004, RW 003, Village (*Kelurahan*) Limba, Sub-Regency (*Kecamatan*) Kota Selatan, Kota Gorontalo (City of Gorontalo)
   referred to as ------------- **the Petitioner IV;**
5. Name : **Desiana Samosir**
   Citizenship : Indonesian
   Address : Jalan M. Shaleh RT.001, RW. 003 Village (*Kelurahan*) Suka Menanti, Sub-Regency (*Kecamatan*) Bukit Kemuning, Regency (*Kabupaten*) Lampung Utara (North Lampung);
   referred to as --------------- **the Petitioner V;**

Based on a Special Power of Attorney, dated 8 August 2016, granting a power of attorney to **Wahyudi Djafar, S.H., Veri Junaidi, S.H., M.H., Fadli Ramadhanil, S.H., Ahmad Hanafi,**

S.H.I., Dessy Eko Prayitno, S.H., Astrid Debora, S.H., M.H., Lintang Setianti, S.H., Miftah Fadhli, S.H., Bernhard Ruben F. Sumigar, S.H. Azhar Nur F. Alam, S.H., Sekar Banjaran Aji, S.H., Adam M. Bunga Mayang, S.H., all of them being advocates, legal aid devotees and activists for public information transparency, electing their legal domicile in Jalan Tebet Utara III D Number 12 A Tebet Jakarta Selatan (South Jakarta), acting either jointly or severally for and on behalf of the Principal:
Hereinafter referred to as --------------------- **the Petitioners**;
[1.2] Reading the petition of the Petitioners;
Hearing the testimony of the Petitioners;
Examining evidences submitted by the Petitioners;

2. STATE OF THE CASE

[2.1] Considering whereas the Petitioners have submitted their petition by a letter of petition dated 18 August 2016 as received by the Office of the Clerk of the Constitutional Court (hereinafter referred to as "the Office of the Clerk of the Court") on the date 18 August 2016, based on the Deed of Receipt of the Dossier of the Petition Number 146/PAN.MK/2016 and registered in the Book of Registry of Constitutional Cases under Number 77/PUU-XIV/2016 on the date 19 September 2016, which has been corrected by the petition dated 10 October 2016 and received at the Office of the Clerk of the Court on the date 11 October 2016, which describes the following matters:

A. INTRODUCTION

Human rights are one of the important pillars of the constitution, the Constitution of 1945 post its amendment, which is the fruit of democratic reform. The Second Amendment to the Constitution, legalized on 18 August 2000 legalized among others Chapter XA regarding Human Rights, wherein there are at least ten articles, starting from Article 28A up to Article 28J. Those provisions contain recognition, respect, fulfillment, and protection of a set of basic rights, which are qualified as constitutional rights for every Indonesian citizen, without exception, and the state has the obligation to implement them;
The protection guaranty of human rights is regulated in a set of articles of the Constitution mentioned herein-above, one among the others is the protection guaranty to seek, to keep, and to disseminate information, which is particularly regulated in the provision of Article 28F of the Constitution of 1945. Moreover as a part of the efforts to perform that constitutional mandate, the state has also made the Law Number 14 of 2008 regarding Public Information Transparency, which simultaneously also established the Commission of Information, as an *"... autonomous institution which bear the function to perform this Law and its implementing regulations to stipulate the technical standard guidance for Public Information service and to settle Disputes on Public Information through non-litigation Mediation and/or Adjudication,";*

With its role in mediation and adjudication, the existence of the Commission of Information becomes vital for the steps and efforts to fulfill the need of information of the public. Bearing in mind its role which is very important, the process of the nomination of the members of the Central Commission of Information, the Commission of Information of the Province as well as the Commission of Information of the Regency (*Kabupaten*)/City must be conducted professionally in accordance with the provisions as required by the laws. The provision for the nomination of the leaders or the members of the Commission of Information is regulated from Article 30 up to Article 33 of the Law regarding Public Information Transparency;

Generally, the replacement of the members of the Commission of Information is almost the same as the process of the replacement which is provided for the other independent state commissions. The replacement is conducted through a selection mechanism by a committee established by the President for the Central Commission of Information, by a selection committee established by a Governor for the Commission of Information of a Province, and by a selection committee established by a Regent (*Bupati*)/Mayor (*Walikota*) for a Commission of Information of a Regency/City. The nominations are subject to the approval of respectively the People's Representative Council (*Dewan Perwakilan Rakyat,* DPR; hereinafter, the "Parliament") or the Regional People's Representatives Council (*Dewan Perwakilan Rakyat Daerah*, DPRD;

hereinafter, the “Regional Parliament”);

In its development, particularly in the selection process of the Commission of Information of the Province, a different interpretation came up about the formulation of Article 33 of the Law regarding Public Information Transparency, particularly regarding the phrase “be re-appointed,” The provision of Article 33 *per se* completely states: *“A member of the Commission of Information is appointed for a tenure of 4 (four) years and can be re-appointed for one subsequent period.”* This phrase “can be re-appointed” later raises a different understanding in its interpretation in some regions;

After the first four-year tenure of a member of a Commission of Information expires, a selection committee for the subsequent period is formed, like the mechanism as regulated by the Article 32 of the Law regarding Public Information Transparency. The process is conducted through the formation of a selection committee by a Head of a Region, then the selection committee would conduct the process of selection, commencing from the announcement of the registration of a candidate, to receive the registration and to announce the registering candidate to the public for input. Furthermore, the selection committee would propose 10 (ten) up to 15 (fifteen) candidate names to the Governor/Regent/Mayor for submission to the Regional Parliament of a Province or the Regional Parliament of a Regency/City, and then the Regional Parliament of a Province or the Regency/City would elect candidate members of the Commission of Information through a fit and proper test;

Nevertheless, in some regions, the provision of Article 33 of the Law regarding Public Information Transparency, particularly the phrase “be re-appointed”, is interpreted as such (*a quo*) that members of a Commission of Information, whose first four-year tenure has lapsed, should no more be re-selected, and could be directly appointed by the head of a region by issuing a Decree (*Surat Keputusan*, SK) of Appointment. This is what happens among others in the Province of Gorontalo. This phenomenon indicates that the formulation of the provision of Article 33 of the Law regarding Public Information Transparency, has created legal uncertainty vis-à-vis the process of election of the members of the Commission of Information. A more extensive consequence of the formulation of this article is the obstruction of opportunity of the citizens for self-nomination to become members of the Commission of Information, due to the non-performance of the open process of selection. From the perspective of institutional work, there is a strong possibility that the guaranty for the right of citizens to obtain information is not fulfilled;

Besides, the process of election of the state independent commissions conducted by only one authority of power has breached one of the main characteristics of the independent state commissions. This characteristic emphasizes the nomination process of its members which shall involve more than one institution or power, with the objective to safeguard the autonomy, impartiality, and the independence of the commission. This situation bears the potential to worsen in the future, bearing in mind that every level of the Commission of Information, either at the center, the province, or the regency/city, is institutional-wise independent. That said, every level of the commission has its own space of interpretation on the formulation of the Laws. Therefore, the formulation of provisions or norms in the laws should be certain, so that no loophole for various interpretations would be opened. Based on that, the Petitioners propose the review of Article 33 of the Law Number 14 of 2008 regarding Public Information Transparency, particularly to the extent of the phrase “be re-appointed” against Article 1 section (3), Article 27 section (1), Article 28D section (1), Article 28D section (3); and Article 28F of the Constitution of 1945;

B. THE AUTHORITY OF THE CONSTITUTIONAL COURT

1. Whereas the political transition from authoritarianism to democracy has led to the amendment to the Constitution of 1945, which one among the others has produced an amendment to Article 24 section (2) of the Constitution of 1945, which states that: *“The judicial powers shall be carried out by a Supreme Court and by its subordinate judicatory bodies dealing with general, religious, military, state administrative judicial environment, and by a Constitutional Court”*;

2. Whereas furthermore Article 24C section (1) of the Constitution of 1945 states that: *"The Constitutional Court shall have the authority to make final decisions in cases of first and last instance handling the review of laws against the Constitution, to decide on authority disputes among state institutions whose competence is granted by the Constitution, to decide on the dissolution of political parties, and to decide on disputes regarding general election results";*
3. Whereas based on the provision mentioned herein-above, the Constitutional Court is authorized to conduct review of the laws against the Constitution of 1945, which is also based on the Article 10 section (1) of the Law Number 24 of 2003 regarding the Constitutional Court as has been amended by the Law Number 8 of 2011 regarding the Amendment to the Law Number 24 of 2003 regarding the Constitutional Court which states that: *"The Constitutional Court is authorized to adjudicate at the first and final level which ruling is final to: (a) to review laws against the Constitution of the Republic of Indonesia of 1945";*
4. Whereas in line with the provision of the Law regarding the Constitutional Court mentioned herein-above, the authority of the Constitutional Court to review Laws against the Constitution of 1945 is also confirmed in the provision of Article 29 section (1) letter a of the Law Number 48 of 2009 regarding the Judicial Powers. This is also mentioned in the provision of Article 9 section (1) of the Law Number 12 of 2011 regarding the Making of Laws and Regulations, which states that: *"If a Law is assumed to be contrary to the Constitution of the State of the Republic of Indonesia of 1945, its review is conducted by the Constitutional Court";*
5. Whereas the Constitutional Court is established as the guardian of the Constitution. If there is a Law which contains or which has been made contrary to the Constitution (being unconstitutional), the Constitutional Court may annul it by revoking that Law entirely or article wise;
6. Whereas being the guardian of the Constitution, the Constitutional Court is also entitled to render an interpretation on the provisions of articles in a Law to harmonize it with the values of the Constitution. The interpretation of the Constitutional Court on the constitutionality of the articles in that Law shall be the sole interpretation (the sole interpreter of the Constitution) having the force of law. Therefore, the Constitutional Court can also be sought to interpret articles which have ambiguous meaning, being unclear, and/or are multi-interpretable. In some cases of the review on Laws, the Constitutional Court has also declared several times that a part of a certain Law was conditionally constitutional to the extent it is interpreted in accordance with the interpretation rendered by the Constitutional Court; or reversely to be unconstitutional: if it is not interpreted in accordance with the interpretation of the Constitutional Court;
7. Whereas to the Petitioners have assumed that the provision of Article 33 of the Law Number 14 of 2008 regarding Public Information Transparency has created a situation of legal uncertainty, gives rise to ambiguous interpretation, is unclear, and is multi-interpretable, and bear the potential to obstruct the fulfillment of the constitutional rights, mainly the right of information of the citizens, and particularly of the Petitioners, so that it harms the constitutional rights of the Petitioners;
8. Whereas therefore, through the petition of the Petitioners to propose the review of Article 33 of the Law Number 14 of 2008 regarding Public Information Transparency, particularly to the extent of the phrase *"be re-appointed"*, against the Constitution of 1945;
9. Whereas based on the matters mentioned herein-above, as this petition to review is a petition to review the Laws against the Constitution of 1945, in accordance with the provisions of the prevailing laws and regulations, as regulated by the Constitution of 1945, the Law regarding the Constitutional Court, the Law regarding the Judicial Powers, the Law regarding the Making of Laws and Regulations; and the Regulation of the Constitutional Court, *in casu* Article 33 of the Law Number 14 of 2008 regarding Public Information Transparency, to the extent of the phrase "be re-appointed", against Article 27 section (1), Article 28D section (1), Article 28D section (3), and Article 28F of the Constitution of 1945 is a review of the Laws against the Constitution of 1945, then the Constitutional Court is authorized to examine, to adjudicate and to rule on the petition as such (*a quo*);

C. THE LEGAL STANDING OF THE PETITIONERS

10. Whereas the recognition of rights of every Indonesian citizen to propose a petition for the review of Laws against the Constitution of 1945 is one of the indicators of a positive constitutional development, which reflects the progress for the strengthening of principles of the state based on law, the constitutionality of the Laws as political product of the Parliament and the President can be reviewed by a judicial institution, so that the system of "checks and balances" functions effectively;
11. Whereas the Constitutional Court functions among others as the "guardian" of the "constitutional rights" of every citizen of the Republic of Indonesia. The Constitutional Court is a judicial body having the task to safeguard human rights as constitutional and legal rights of every citizen. By this awareness the Petitioners then decided to propose the petition for the material review of Article 33 of the Law Number 14 of 2008 regarding Public Information Transparency against the Constitution of 1945;
12. Whereas the provision of Article 51 section (1) of the Law regarding the Constitutional Court in conjunction with Article 3 of the Regulation of the Constitutional Court Number 06/PMK/2005 regarding Guidance to Proceed in Cases of Review of Laws states that: The Petitioners are a party who assume that their constitutional rights and/or authorities have been harmed by the applicability of a law, namely:
    a. an Indonesian individual citizen;
    b. unities of the *adat* law societies to the extent that they are still alive and are in accordance with the development of the public and the principle of the Unitary State of the Republic of Indonesia as is regulated by Laws;
    c. public or private legal entities; or
    d. state institutions.
13. Whereas the elucidation to Article 51 section (1) of the Law regarding the Constitutional Court states that:" …constitutional rights are rights as regulated by the Constitution of the Republic of Indonesia of 1945." That elucidation is then elaborated in the Ruling of the Constitutional Court Number 006/PUU-III/2005 and the subsequent Rulings of the Constitutional Court, stating that the Constitutional Court has determined 5 requirements regarding the constitutional loss as mentioned in Article 51 section (1) of the Law regarding the Constitutional Court, which are as follow:
    a. there shall be constitutional rights and/or authorities of the Petitioner granted by the Constitution of the Republic of Indonesia of 1945;
    b. those constitutional rights and/or authorities are assumed to have been harmed by the applicability of the Law petitioned for review;
    c. the loss of those constitutional rights and/or authorities are specific and actual, or at least bears the potential which can be ascertained according to normal reasoning that it will happen;
    d. there is causal relation (Dutch: *causal verband*) between the loss of constitutional rights and/or authorities and the enactment of the Law petitioned for review; and
    e. there is the possibility that by the granting of the petition, the postulated loss of those constitutional rights and/or authorities will not happen or will not happen again.

14. Whereas besides the five requirements to become a Petitioner in a case of review on a Law against the Constitution, as determined by the Ruling of the Constitutional Court Number 006/PUU-III/2005 and the Case No. 11/PUU-V/2007, the Constitutional Court through its Ruling Number 27/PUU-VII/2009 in the formal review of the Law Number 3 of 2009 regarding the Second Amendment to the Law Number 14 of 1985 regarding the Supreme Court, also mentioned some other requirements to become a Petitioner, confirmed by the Constitutional Court as follows: "From the practice of the Court (2003-2009), the Court regards private persons Indonesian citizens, particularly tax payers (vide the Ruling Number 003/PUUI/2003) various associations and non-governmental organizations which are concerned about a Law for the sake of public interest, legal entities, regional governments, state institutions, *et cetera*, have legal standing to propose a petition for the review of, either formal or material, Laws against the Constitution of 1945 (see also Lee Bridges, *et al*. in *Judicial Review in Perspective*, 1995) ";

15. Whereas the opinion of the Constitutional Court regarding the requirements to become a Petitioner in a case of review on a Law against the Constitution as mentioned herein-above has been reconfirmed in the Ruling of the Constitutional Court Number 022/PUU-XII/2014, which states that: "citizens being the tax paying public are deemed to have interest in accordance with Article 51 of the Law Number 24 of 2003 regarding the Constitutional Court. This is in accordance with the adagium "no taxation without participation" and reversely "no participation without tax." The Constitutional Court confirms that *"every tax paying citizen has the constitutional right to question every Law"*;

PRIVATE LEGAL ENTITIES AS PETITIONER

16. Whereas the Petitioner I up to the Petitioner III are private legal entities, which have legal standing and making use of their right to propose this petition by utilizing the procedure of legal standing of organizations (organizational standing);
17. Whereas the Petitioner I up to the Petitioner III have legal standing as Petitioner in the review of Laws because there is causal relation (Dutch: *causal verband*) with the applicability of the Law No. 14 of 2008 regarding Public Information Transparency, which harms the constitutional rights of the Petitioners;
18. Whereas the doctrine of "organizational standing" is a proceeding which is not only known in doctrine but is also adhered to in various laws and regulations di Indonesia, like the Law Number 23 of 1997 regarding the Management of the Environment, the Law Number 8 of 1999 regarding Consumer Protection, and the Law Number 41 of 1999 regarding Forestry;
19. Whereas in the judiciary practice in Indonesia, including also at the Constitutional Court, to "have legal standing" has been accepted and is recognized as a mechanism in the efforts to seek justice, which can be substantiated among others:
    a. In the Ruling of the Constitutional Court Number 001-021-022/PUU-I/2003 regarding the Review of the Law Number 20 of 2002 regarding Electricity;
    b. In the Ruling of the Constitutional Court Number 060/PUU-II/2004 regarding the Review of the Law Number 7 of 2004 regarding Water Resources against the Constitution of 1945;
    c. In the Ruling of the Constitutional Court Number 140/PUU-VII/2009 regarding the Review of the Law Number 1/PNPS/of 1965 regarding the Prevention of Abuse and/or Desecration of Religion;
    d. In the Ruling of the Constitutional Court Number 7/PUU-X/2012 regarding the Review of the Law Number 17 of 2011 regarding State Intelligence against the Constitution of 1945;
    e. In the Ruling of the Constitutional Court Number 3/PUU-XII/2012 regarding the Review of the Law Number 17 of 2013 regarding Social Organizations against the Constitution of 1945;
20. Whereas an organization which may act to represent public interest is an organization which fulfills the requirements as determined by various laws and regulations as well as jurisprudence, namely:
    a. having the form of a legal entity or foundation;
    b. the articles of association of the respective organization mention expressly regarding the objective of the establishment of the organization;
    c. it has performed activities in accordance with its articles of association.
21. Whereas the Petitioner I up to the Petitioner III are Non-Governmental Organizations which have grown-up and developed independently, on their own wish and desire amidst the public which have been established based on the concern to be able to contribute in various social and humanitarian and social activities, including to enhance the participation and initiative of the people, to encourage transparency and accountability in the performance of the state, and to advance the protection of human rights (Evidence P-3);
22. Whereas the task and the role of the Petitioner I up to the Petitioner III in the execution of activities is to be able to contribute in various social and humanitarian activities, including to enhance the participation and initiative of the people, to encourage transparency and accountability of the performance of the state, and to advance the protection of human rights, including the fulfillment and protection of the right of information, has been continuously

conducted by utilizing its institution as facility for the fight for those various objectives, and the aspiration of the nation as stated in the Preamble of the Constitution of 1945;

23. Whereas the task and the role of the Petitioner I up to the Petitioner III in the execution of those activities mentioned herein-above, in this matter by utilizing its respective institution as facility to involve as much as possible the members of the public to be able to contribute in various social and humanitarian activities, including to enhance the participation and initiative of the people, to encourage transparency and accountability of the performance of the state, and to advance the protection of human rights, including the fulfillment and protection of the right of information, is conducted without discriminating gender, tribe, race, religion, *et cetera*. This is reflected in the Articles of Association and/or Deed of Establishment of the Petitioners (Evidence P-4);
24. Whereas the legal base and interest of the Petitioner I up to the Petitioner III to propose the petition to review Article 33 of the Law Number 14 of 2008 regarding Public Information Transparency can be substantiated by the articles of association and/or bylaws of the Petitioners. The Articles of Association and/or Bylaws of the respective Petitioners mentioned expressly the objective of the establishment of the organization, and the Petitioners have also performed activities in accordance with their respective Articles of Association (vide Evidence P-4):
    a. Article 2 of the Articles of Association of the Petitioner I mention that YAPPIKA has the purpose and the objective in the social and humanitarian field;
    b. Article 2 of the Articles of Association of the Petitioner II mention that PATTIRO has the purpose and the objective in the social and humanitarian field;
    c. Article 2 of the Articles of Association of the Petitioner III mention that PERLUDEM has the purpose and the objective of in the social and humanitarian field;
25. Whereas to achieve their purpose and objective, the Petitioner I up to the Petitioner III have conducted various kinds of efforts/activities conducted continuously as those have become public knowledge (Dutch: *notoire feiten*). The form of activities which have been conducted by the Petitioners is as follows:
    a. Being active in every process of policy making of the state, including in the making of the Law as such (*a quo*), by means of rendering critical inputs and study result, in the frame of ascertaining that every policy produced is in harmony with the obligation of the state to advance, to fulfill and to protect the human rights of every citizen;
    b. Actively performing various activities to enhance the participation and initiative of the people in the frame of empowerment of the public in the social and humanitarian field;
    c. To conduct monitoring policy and various studies in the frame of strengthening democratization, the system of general elections, the protection of human rights, and ascertaining transparency and accountability in the performance of the state;
    d. To publish various kinds of books, reports, journals, as well as other forms of publications in the frame of encouraging the participation of the public in every process of policy making of the state as well as material input for the policy makers, which in its process requires transparency and data access from every state organizer;
26. Whereas the efforts and a series of activities which have been conducted by the Petitioner I up to the Petitioner III are in the frame of performing constitutional rights they own, to fight for their rights jointly in the interest of the nation and the state, as confirmed by the provision of Article 28C section (2) of the Constitution of 1945, which states that: *"Every person shall be entitled for self-advancement in the struggle of his/her rights collectively in order to develop the society, the nation, and his/her country";*
27. Whereas besides the guaranty of constitutional protection for a space of participation of the public in the development of the nation and the state, such confirmation came also to the forefront in some laws and regulations. The provision of Article 8 and Article 9 of the Law Number 28 of 1999 regarding the Performance of a State which is Clean and Free from Corruption Collusion and Nepotism, expressly mentioned that the participation of the public is much needed in the frame of manifestation of the performance of a clean state;
28. Whereas a resembling provision in Article 15 of the Law Number 39 of 1999 regarding Human Rights, also confirmed that every person, either personally as well as collectively is entitled to self-development in the frame of developing the public, the nation, and the state. Article 16 of

the Law regarding Human Rights mentions particularly the right of individuals or groups to establish an organization for social and virtue objectives, including to perform education and teaching of human rights;

29. Whereas the problem which is the object of the Law Number 14 of 2008 regarding Public Information Transparency petitioned for material review by the Petitioners is the problem of every citizen due to its universal character, which is certainly not only the business of the Petitioner I up to the Petitioner III, particularly regarding the continuity of a space of participation of the public in the development of the nation and the state, including ascertaining the transparency and accountability of the performance of the state, which are important pre-requirements of democracy;
30. Whereas furthermore, the submission of the petition to review the Law as such (*a quo*), is a manifestation of the concern and efforts of the Petitioner I up to the Petitioner III to continuously encouraging the participation and initiative of the public in development, including in the efforts to fulfill and to protect human rights, the eradication of corruption, as well as the performance of the government of a clean, transparent, and accountable state;
31. Whereas particularly the Petitioner I have conducted various efforts jointly with other civilian public organizations, as joined in the Freedom of Information Network Indonesia (FOINI, *Jaringan Kebebasan Memperoleh Informasi Indonesia*), to encourage the birth of the Law Number 14 of 2008 regarding Freedom of Public Information, including also being involved in the monitoring of its implementation, like the advocacy of election of the members of the Central Commission of Information as well as the Provincial Commissions of Information;
32. Whereas the efforts of the Petitioner I do not solely halt with the election of the members of the Commission of Information, but also by continuously conducting various studies in the frame of encouraging the freedom of information in Indonesia, like by conducting independent monitoring regarding the implementation of “Open Government Partnership” in Indonesia, in 2013. This monitoring is conducted to measure the extent of transparency of government institutions in Indonesia, particularly in the execution of the Law as such (*a quo*) (Evidence P-5);
33. Whereas the ambiguous formulation of the article as such (*a quo*) in its implementation leads to legal uncertainty and has threatened the efforts to date as conducted by the Petitioner I, in ascertaining the advancement of the right of information of every citizen. Therefore, the article as such (*a quo*) has caused constitutional loss to the Petitioner I, either actual as well as potential;
34. Whereas the norm formulation in that article has obviously also caused constitutional loss to the Petitioner II. This loss is a consequence of the flexibility of interpretation of that article, which, if based on its formulation can be interpreted by the law enforcers as such (*a quo*), as it is in accordance with their own wish and interest;
35. Whereas that flexibility of interpretation may cause the absence of the selection process of candidate commissioners of the Commission of Information, at the central level and/or at the level of the provinces/the regencies/the cities, as required the Law, which may bear implication or affect the independence and the credibility of the Commission in carrying out its authority, duty, and function;
36. Whereas that condition bears the potential to thwart various efforts which have been conducted by the Petitioner II in the frame of encouraging information transparency, as part of the efforts of ascertaining the presence of transparency and accountability in the performance of government, which have been conducted by the Petitioner II since long ago. Those efforts are very important and integral parts in the frame of achieving the purpose and the objective of the establishment of the organization of the Petitioner II. For example, in 2010 the Petitioner II jointly with other networks of civilian public organizations have intensively conducted monitoring on the implementation of the Law Number 14 of 2008 regarding Public Information Transparency (Evidence P-6);
37. Whereas the Petitioner III has been active to date in the efforts of the advancement of democratization and improvement of the system of general elections, which also includes renewals of ownership data, to ascertain the most extensive participation of citizens in general elections. Those efforts have become hampered and threatened in its achievement and sustainability, being a consequence of formulation obscurity of that article;

38. Whereas the Petitioner III is currently developing General Elections data transparency (General Elections Open Data), as a part of the efforts to encourage public information transparency, which is one of the mandates of the Law as such (*a quo*). Nevertheless, those efforts risk failure being a consequence of the interpretation flexibility of that article, which bear the potential to endanger the achievement of the objective of the Law as such (*a quo*), which has also led to the constitutional loss of the Petitioner III (Evidence P-7);
39. Whereas that article has harmed the constitutional rights of the Petitioner I up to the Petitioner III, because either factually or at least potentially it has hampered various kinds of activities which have been conducted by the Petitioner I up to the Petitioner III as mandated by their respective Articles of Associations/Bylaws to encourage the creation of various policies which are related to the efforts to encourage information transparency, which includes the ascertaining of transparency and accountability of the government;
40. Whereas that article either or indirectly, it has generally also harmed various kinds of efforts which have been conducted continuously by the Petitioner I up to the Petitioner III in the frame of carrying out their task and role to encourage the protection, the advancement and fulfillment of human rights, particularly in ascertaining the fulfillment and protection of the right of information, which is also an integral part of one of the constitutional rights of citizens;
41. Whereas legal uncertainty regarding the re-election mechanism of the commissioners of the Commission of Information as caused by the regulation of that article also substantiate the more, that the presence of that article has factually thwarted the efforts of the Petitioner I up to the Petitioner III, and simultaneously also gives rise to the potential loss to the constitutional rights of the Petitioners due to that situation of legal uncertainty;

INDONESIAN INDIVIDUAL CITIZEN

42. Whereas the Petitioner IV is an Indonesian individual citizen (Evidence P-8), who has the intention to make use of his rights as citizen as guaranteed by Article 27 section (1) and Article 28D section (3) of the Constitution of 1945, by registering him as a candidate commissioner of the Commission of Information of the Province of Gorontalo;
43. Whereas the Petitioner IV has then failed to make use of his rights as a citizen to register himself as a candidate member of the Commission of Information, because the Government of the Province of Gorontalo indeed did not open the process of selection as regulated by the Law as such (*a quo*). The Governor of Gorontalo instead directly issued his Decree Number 323/11/VIII/2015 regarding the Appointment of members of the Commission of Information of the Province of Gorontalo for the Period of 2015-2019, without a selection process as required by the Law as such (*a quo*) (namely to appoint commissioners of the previous period);
44. Whereas the decision of the Governor of Gorontalo was issued by referring to the provision of that article, which raised the interpretation that a Commissioner of the Commission of Information can be re-appointed for one subsequent tenure, without a selection process as required by the Law as such (*a quo*). This appears from the consideration for the issuance of the Decision Letter, which directly refers to the provision of that article, without considering the other articles in the Law as such (*a quo*), which regulate the process of selection;
45. Whereas the Petitioner IV has conducted legal efforts against that decision of the Governor, by submitting a lawsuit to the Court of State Administration (*Pengadilan Tata Usaha Negara*, PTUN) in Manado (vide Evidence P-8). Nevertheless, in its ruling the Court of State Administration in Manado declared the lawsuit not-acceptable, with the reason that the claimant has no sufficient legal base to sue the mentioned Decision Letter. The Petitioner IV is currently conducting legal efforts to appeal to the High Court of State Administration in Makassar against that ruling,
46. Whereas the lack of access for the Petitioner IV to obtain the equal opportunity in government has been caused by the waiver of the selection process of the members of the Commission of Information of the Province of Gorontalo, which is a consequence of the interpretation ambiguity on the formulation of that article, so that it clearly demonstrates that the Petitioner IV has suffered constitutional loss, due to the formulation obscurity of that article;
47. Whereas Petitioner V is a private person Indonesian citizen (Evidence P-9), who works as a researcher at the Indonesian Parliamentary Center (IPC). The Petitioner is also an activist in the advocacy of public information transparency and is currently carrying out the mandate as a

secretariat coordinator of the Freedom of Information Network Indonesia (FOINI), which daily safeguards the implementation of the Law regarding Public Information Transparency;

48. Whereas the attention of the Petitioner V to efforts to encourage public information transparency is also demonstrated by the seriousness of the Petitioner V in studying various matters, which are related to information transparency, including the institutionality of the Commission of Information. This is one among others as demonstrated by the publication of the Petitioner V who wrote a book regarding *The Renewal of the Commission of Information: Towards an Independent and Professional Commission of Information* (*Pembaruan Komisi Informasi: Menuju Komisi Informasi yang Mandiri dan Profesional*) (vide Evidence P-9);
49. Whereas besides conducting studies, the Petitioner V is currently also active in conducting monitoring of the selection process of the Commission of Information of the Provinces, in Nanggroe Aceh Darussalam, East Kalimantan, Southeast Sulawesi, North Kalimantan, Riau, North Sumatera, and Central Sulawesi, as a manifestation of the Law as such (*a quo*);
50. Whereas the selection process in various regions as monitored by the Petitioner V became disturbed by the applicability of that article, which raises various interpretations regarding the procedure of re-appointment of the Commissioner of the Commission of Information;
51. Whereas due to such situation, various efforts which have been conducted by the Petitioner V as a part of the steps to encourage public information transparency, including through reform of the Commission of Information, have become hampered due to the applicability of that article. Therefore, the Petitioner V has factually suffered constitutional loss due to formulation of that article;
52. Whereas besides referring to the legal base as mentioned herein-above, the Petitioner IV and Petitioner V are also tax payers, as is substantiated by the photocopy of the National Tax Identification Number (*Number Pokok Wajib Pajak*, NPWP) (vide Evidence P-8 and Evidence P-9). Whereas the Petitioner IV and Petitioner V as tax payers have declared that their constitutional interest has been violated by the provision of that article, because it creates legal uncertainty, and obstructs the fulfillment of the right of participation in law and in government, and the right to obtain information. Being tax payers, the Petitioner IV and Petitioner V are entitled to have their constitutional rights fulfilled by the state. Therefore, the requirements of having legal standing as mentioned in the Ruling of the Court Number 27/PUUVIII/ 2009 as well as the Ruling of the Constitutional Court Number 022/PUU-XII/2014 are complied with;
53. Whereas based on the above mentioned description, clearly all the Petitioners have fulfilled the quality well as the capacity as Petitioner for the review of Laws against the Constitution 1945 as determined by Article 51 letter c of the Law Number 24 of 2003 regarding the Constitutional Court as has been amended by the Law Number 8 of 2011 regarding the Amendment to the Law Number 24 of 2003 regarding the Constitutional Court, as well as the Regulation of the Constitutional Court and some rulings of the Constitutional Court which render the elucidation regarding the requirements to become a petitioner for the review of a Law against the Constitution 1945. Therefore, it is also clear that all the Petitioners have the rights and legal interest to represent the public interest to submit the petition for the material review of Article 33 of the Law Number 14 of 2008 regarding Public Information Transparency against the Constitution of 1945;

D. REASONS FOR THE PETITION

The Scope of the Article to be Reviewed

Whereas this petition is submitted for the review of the constitutionality of Article 33 of the Law Number 14 of 2008 regarding Public Information Transparency, particularly to the extent of the phrase “be re-appointed” against the Constitution of 1945.

the constitutional base used for the material provision:

1. Article 1 section (3), *“The State of Indonesia is a state based on law.”*
2. Article 27 section (1), *“All citizens shall be equal before the law and in government and shall uphold the law and government without exception.”*
3. Article 28D section (1), *“Every person shall be entitled to recognition, guaranty, protection, and equitable legal certainty as well as equal treatment before the law.”*
4. Article 28D section (3), *“Every citizen shall be entitled to obtain equal opportunity in government.”*

5. Article 28F, *"Every person is entitled to communicate and to obtain information for the development of his/her personality and social environment, as well as be entitled to seek, to obtain, to own, to store, to process, and to convey information by means of all kinds of available channels."*

The Argument of the Petition

The Provision of Article 33 of the Law as such (*a quo*) has Created a Situation of Legal Uncertainty, which is Caused by the Room of Multi-Interpretation on its Formulation, so that it Contravenes Article 1 section (3) and Article 28D section (1) of the Constitution of 1945

54. Whereby one of the most important pillars of the establishment of the state Indonesia besides leaning on the principle of the sovereignty of the people, is also confirmation on the principle of the state based on law, which is expressly stated in the provision of Article 1 section (3) of the Constitution of 1945: *"The State of Indonesia is a state based on law"*;
55. Whereas being one of the most important elements of the state based on law is the assurance and the upholding of the principle of legal certainty, as has been stated by Gustav Radbruch who explained that the idea of law (German: *Idee des Rechts*), which became institutionalized in a form of the state based on law, may be classified into three general principles, namely: *purposiveness* (German: *Zweckmässigkeit*), *justice* (German: G*erechtigkeit*), and *legal certainty* (German: *Rechtssicherheit*) (Evidence P-10);
56. Whereas in line with the theory regarding that idea of law, the Constitution of 1945 has also confirmed the presence of the assurance of legal certainty for every citizen in a space of the state of Indonesia based on law, as is mentioned in Article 28D section (1) of the Constitution of 1945, *"Every person shall be entitled to recognition, guaranty, protection, and equitable legal certainty as well as equal treatment before the law"*;
57. Whereas legal certainty is also one of the main elements the morality of law. Lon L. Fuller, stated that a regulation of law shall be subject to internal morality, therefore, its formation shall pay regard to the following four requirements:
    a. The laws shall be made as such, that they can be understood by the common people. Fuller also named this as the desire for clarity;
    b. Regulations shall not be contradictive one to the other;
    c. There shall be assertiveness in law. The law shall not be amended at times, so that every person does no longer orientate his/her activities thereto;
    d. There shall be consistency among rules as published with their real implementation (Evidence P-11);
58. Whereas the importance of legal certainty is not only adhered to in the tradition of *Rechtsstaat*, because the tradition of the rule of law also renders confirmation regarding the importance of legal certainty. The rule of law *per se* is interpreted as *"*a legal system in which rules are clear, well-understood, and fairly enforced*"* - a system of law which is clear (there is little possibility for abuse), easy to understand, and to safeguard the upholding of justice. Legal certainty is one of the characteristics of the rule of law, as it contains the principles of legality, predictability, and transparency;
59. Whereas according to the opinion of Friedrrich von Hayek, "legal certainty" in the classical tradition of the rule of law is one of the main attributes of the rule of law, besides two other attributes, namely the attribute of generality, and the attribute of equality (Evidence P-12);
60. Whereas according to the opinion of Hayek legal certainty means that law can be predicted, or to fulfill the element of predictability, so that a legal subject may predict which regulation underlies their attitude, and how that rule is interpreted and executed. Legal certainty is an important aspect which is closely related to the freedom to act of a person (vide Evidence P-12);
61. Whereas the collision among articles in the Law as such (*a quo*) is clearly contrary to the principle of legal certainty, which requires formulation clarity of a Law. Charles Eisenmann, a French expert in law has stated that: *"Let no one claim that the legislator is precluded from creating law. No, he is still free to create whatever he likes, but everything that he validly creates will be regular law. What is more, in this way the certainty of law is guaranteed by means of the uniformity and homogeneity of legislative law"* (Evidence P-13);

62. Whereas legal uncertainty being an implication of the formulation of that article appears from the different practice of selection of the members of the Commission of Information of the Province of Gorontalo with the selection of the members of the Commission of Information of the Province of the Special Capital Region of Jakarta, the Province of West Nusa Tenggara, the Province of Bali, the Province of East Kalimantan, the Province of North Sulawesi, the Province of Nanggroe Aceh Darussalam, as well as the nomination of the members of the Central Commission of Information (*Komisi Informasi Pusat*, KIP);
63. Whereas the nomination of the members of the Commission of Information of the Province of Gorontalo is conducted by direct re-appointment, without the conduct of a process of selection. While the nomination of the members of the Commission of Information of the Province of the Special Capital Region of Jakarta, the Province of West Nusa Tenggara, the Province of Bali, the Province of East Kalimantan, the Province of North Sulawesi, the Province of Nanggroe Aceh Darussalam, and the Central Commission of Information (KIP) has been conducted through a selection process as required by the Law as such (*a quo*);
64. Whereas this new situation came to the forefront at the time of the process of selection for the second period in the nomination of the Commission of Information of the Provinces. A debate arises in its process regarding the purpose and meaning of that article, so that later a Province like Gorontalo dares to directly conduct a re-appointment of the members of its Commission of Information by referring to the provision of that article, without prior selection;
65. Whereas the nomination of the leaders or the members of the Commission of Information is indeed already regulated in detail and systematically in Part Eight "the Appointment and Dismissal" in Article 30 through Article 33 of the Law as follows:

Provision	Material
Article 30	(1) Requirements for the appointment of the members of the Commission of Information: a. Indonesian citizen; b. having integrity and is beyond reproach; c. has never been criminally sentenced because of committing a criminal act which carries an imprisonment of 5 (five) years or more; d. having the knowledge and understanding in the field of Public Information Transparency as part of human rights and public policy; e. having the experience in activities of public bodies; f. willing to relinquish his/her membership and office in public bodies if appointed as a member of the Commission of Information; g. willing to work full time; h. is not younger than 35 (thirty-five) years old; and i. is physically and mentally healthy. (2) The Government executes the recruitment of candidate members of the Commission of Information publicly, honest, and objectively. (3) The list of candidate members of the Commission of Information shall be published to the public. (4) Every person is entitled to propose his/her opinion and assessment on the candidate members of the Commission of Information as mentioned in section (3) with the reasons.
Article 31	(1) The President submits 21 (twenty-one) candidate members of the Central Commission of Information produced by the recruitment as mentioned in Article 30 section (2) to the Parliament of the Republic of Indonesia. (2) The Parliament of the Republic of Indonesia elects the members of the Central Commission of Information through a fit and proper test. (3) The President would then confirm a member of the Central

	Commission of Information having been appointed by the Parliament of the Republic of Indonesia.
Article 32	(1) The candidate members of the Commission of Information of the provinces and/or the Commission of Information of the regencies/cities produced by the recruitment as mentioned in Article 30 section (2) is submitted to the Regional Parliament of a Province and/or the Regional Parliament of a Regency/City by a Governor and/or Regent/Mayor at least 10 (ten) candidates and at the most 15 (fifteen) candidates. (2) The Regional Parliament of a Province and/or a Regency/City elects the members of the Commission of Information of a Province and/or the Commission of Information of a Regency/City through a fit and proper test. (3) A Governor and/or Regent/Mayor would then confirm a member of the Commission of Information of a Province and/or the Commission of Information of a Regency/City having been appointed by the Regional Parliament of a Province and/or the Regional Parliament of a Regency/City.
Article 33	A member of the Commission of Information is appointed for a tenure of 4 (four) years and can be re-appointed for one subsequent period.

66. Whereas if perceived from the provision of Article 30 up to Article 33 of the Law mentioned herein-above, the process and mechanism of the replacement of the leaders or the members of the Commission of Information have been regulated systematically, in terms that the provision of one article is inter-related with the provision of the other articles, or they shall be read in sequence from the provision of Article 30 down to Article 33;
67. Whereas the provisions regarding the process and mechanism of the election of the leaders or the members of a Commission of Information which are systematically and inter-related one with the other, also includes the provision of Article 33 particularly to the extent of the phrase “be re-appointed”, so that its process should surely refer to the election mechanism as regulated by the Law as such (*a quo*);
68. Whereas in fact, the different mechanisms which have been conducted in the process of the nomination of leaders and members of the Commission of Information, is a consequence of the ambiguous interpretation of the formulation of the phrase “be re-appointed” in Article 33 of the Law;
69. Whereas that is what happen in the Province of Gorontalo, thanks to the Decree of the Governor of Gorontalo Number 323/11/VIII/2015 dated 13 August 2015 (Evidence P-14), which (re-)appoints the leaders or the members of the Commission of Information of Gorontalo for the Period of 2015-2019, without the process and mechanism of election as regulated by the Law as such (*a quo*). The Consideration part of that the Decree of the Governor of Gorontalo explicitly based his ruling on the provision of that article, without fully considering the articles regarding the appointment of the members of the Commission of Information;
70. Whereas that what has been conducted by the Governor of Gorontalo has nullified at least three important stages in the election of the leaders or the members of the Commission of Information of the Province of Gorontalo: Firstly, it did not open the opportunity for the public (the citizens in Gorontalo) to register him/herself as a member of the Commission of Information; Secondly, it did not convey to the public who are the candidate leaders or the candidate members of the Commission of Information to the public; Thirdly, it did not involve the Regional Parliament of a Province of Gorontalo as an institution of the state which is a balancing force which shall be involved in the fit and proper test of the candidate leaders/the candidate members of the Commission of Information;
71. Whereas that what has been conducted by the Governor of Gorontalo, is inversely vis-à-vis the process of election of the leaders or the members of the Commission of Information of the Province of the Special Capital Region of Jakarta, the Province of West Nusa Tenggara, the Province of Bali, the Province of East Kalimantan, the Province of North Sulawesi, the Province of Nanggroe Aceh Darussalam, as well as the Central Commission of Information

(*Komisi Informasi Pusat*, KIP), which interpreted the provision of Article as such (*a quo*) differently, while they keep referring to the other articles regarding the process and requirements of the appointment of the members of the Commission of Information;

72. Whereas the Province of the Special Capital Region of Jakarta, the Province of West Nusa Tenggara, the Province of Bali, the Province of East Kalimantan, the Province of North Sulawesi, the Province of Nanggroe Aceh Darussalam, and the Central Commission of Information (KIP), have established selection committees to conduct elections for the re-occupation of the offices of the leaders or the members of the Commission of Information, as have been done by the Governor of the Province of the Special Capital Region of Jakarta, the Province of West Nusa Tenggara, the Province of Bali, the Province of East Kalimantan, the Province of North Sulawesi, the Province of Nanggroe Aceh Darussalam, and the Central Government;
73. Whereas the different processes applied by some provinces, among others by the Province of Gorontalo, which is different from the Provinces of the Special Capital Region of Jakarta, the Province of West Nusa Tenggara, the Province of Bali, the Province of East Kalimantan, the Province of North Sulawesi, the Province of Nanggroe Aceh Darussalam, as implementation or execution of that article, particularly the phrase “be re-appointed”, indicates the interpretation ambiguity of the formulation of that article, and leads to legal uncertainty in the process of election of the leaders or the members of the Commission of Information;
74. Whereas regarding that problem the Central Commission of Information as an institution, which coordinates the execution of the task and function of all the Commissions of Information, particularly through some Regulations on the Commission of Information, has issued a guidance through a Policy Paper of the Central Commission of Information of July 2014, regarding the Appointment and Dismissal of a member of the Commission of Information;
75. Whereas in that Policy Paper the Central Commission of Information has confirmed the mandatory linking of Article 33 with Article 30, Article 31, and Article 32 in its interpretation. Therefore, according to the Central Commission of Information, a re-appointment according to Article 33, shall first go through a procedure as regulated by Article 30, Article 31, and Article 32 of the Law as such (*a quo*) (Evidence P-15);
76. Whereas, although the Central Commission of Information has rendered its elucidation regarding the debate on the interpretation of that article, yet, due to the absence of ladder of hierarchy and structure among the Central Commission of Information, the Commissions of Information of the Provinces, and the Commissions of Information of the Regencies/Cities, then that elucidation has not become a structural reference as well. Even in the subsequent process, the absence of interpretation clarity on that article bears the potential to raise resembling problems in the nomination process of the members of the Central Commission of Information for the subsequent period;
77. Whereas referring to the Law as such (*a quo*), institutional-wise each of the Commissions of Information, either at the central level, the provinces, and the regencies/cities is an autonomous institution, without structural relation one to the other, the Central Commission of Information cannot influence the decisions made at the Commissions of the Provinces and of the Regencies/Cities;
78. Whereas a comparison of the phrase “be re-appointed” in various laws and regulations which regulate the mechanism of nomination of the leaders or the members of the independent State Commissions, it used to be interpreted that it shall first go through the procedure of selection, as regulated by the Laws. The regulation indeed mentions that “can be RE-ELECTED” or “can be RE-APPOINTED”, yet its process shall go through the same mechanism, namely through the stages of the process and mechanism of selection/recruitment like before (see table):

Provision	Material	Mechanism	Execution
The Law Nr. 30 of 2002 regarding the Commission of the Eradication of Criminal Acts of	Article 34: The Leaders of the Commission of the Eradication of Corruption hold office for 4 (four) years	The Government conducts selection by establishing Selection Committees, involving the public, and the	Election

Corruption	and can be re-elected only for one tenure.	Parliament to conduct fit and proper test.	
The Law Nr. 14 of 2008 Regarding Public Information Transparency	Article 33: A member of the Commission of Information is appointed for a tenure of 4 (four) years and can be re-appointed for one subsequent period.	The Government conducts selection by establishing Selection Committees, involving the public and the Parliament to conduct fit and proper test.	An election was held for the Central Commission of Information for the period 2013-2017, while at the level of the province there is still debate between re-election or direct re-appointment.
The Law Nr. 5 of 1999 regarding Prohibition of Monopolistic Practices and Unfair Competition	Article 31 section (3): The tenure of a member of The Commission is 5 (five) years and can be re-appointed for 1 (one) subsequent tenure.	The Government conducts selection by establishing a Selection Committee, involving the public and the Parliament to conduct fit and proper test.	Election
The Law Nr. 39 of 1999 regarding Human Rights	Article 83 section (4): The tenure of membership of the National Commission of Human Rights is 5 (five) years and following expiry can be re-appointed only for 1 (one) tenure.	The National Commission of Human Rights conducts selection by establishing a Selection Committee, involving the public and the Parliament to conduct fit and proper test.	Election
The Law Nr. 22 of 2004 regarding the Judicial Commission	Article 29: A member of the Judicial Commission holds office for 5 (five) years subsequently can be re-elected for 1 (one) more tenure.	The Government conducts selection by establishing a Selection Committee, involving the public and the Parliament to conduct fit and proper test.	Election
The Law Nr. 32 of 2002 regarding Broadcasting	Article 9 section (3): The tenure of the chairperson, the vice-chairperson and member of the Central Indonesian Commission of Broadcasting (*Komisi Penyiaran Indonesia*, KPI) and Regional Indonesian Commission of Broadcasting is 3 (three) years and can be re-elected only for 1 (one) subsequent tenure.	The Government conducts selection by establishing Selection Committees, involving the public, and the Parliament to conduct fit and proper test.	Election

79. Whereas from the table mentioned herein-above a comparison appears about the presence of the in-consistency in the use of terms, which are related to the nomination process of members or leaders of the independent state commissions. There are Laws which make use of the term "appointed" (*diangkat*), while some other Laws make use of the term "elected" (*dipilih*). This certainly demonstrates the still absent clear design in the regulation regarding the institutionality of the independent state commissions, which leads to the rise of the use of various terms;
80. Whereas nevertheless, a comparison table of various laws and regulations, which regulate the mechanism of nomination of the leaders or the members of the state independent commissions mentioned herein-above also demonstrates that the phrase "be re-appointed" is almost always interpreted as "can be re-elected," In other words a selection process shall first be conducted as required by the Laws;
81. Whereas the re-selection process for the second tenure for the leaders or members of independent state commissions, particularly the Commission of Information is important to ascertain that the leaders or members of the Commission who are re-elected still fulfill the requirements as mandated by the Laws, so that they can carry out their task and function as it should be;
82. Whereas it appears from the picture of argument mentioned herein-above, although generally the phrase "be re-appointed" is interpreted that it shall go through the re-selection process, the implementation of that article has given rise to different practices, so that the formulation of that article obviously has failed to fulfill the norm of legal certainty, being one of the principles and morals of the constitution as has been described in the argument mentioned herein-above; The formulation of Article 33 of the Law has caused violation against the principle of equality to obtain equality before the law and in government, so that it contravenes Article 27 section (1) and Article 28D section (3) of the Constitution of 1945;
83. Whereas Article 27 section (1) of the Constitution of 1945 states that: "All citizens shall be equal before the law and in government and shall uphold the law and government without exception." A resembling statement is also confirmed by Article 28D section (3) of the Constitution of 1945 which states that: "Every citizen shall be entitled to obtain equal opportunity in government";
84. Whereas the principle of equality before the law and in government is one of the main pillars of a state based on law (the rule of law). A.V. Dicey (*Relocating the Rule of Law*, 2009: 199) confirmed this by stating that a the state based on law shall at least have three characteristics, namely: the upholding of supremacy of the law, equality before the law, and the presence of the assurance and protection mechanism of the self over rights, due process of law (Evidence P-16);
85. Whereas Dicey explained that linked with equality before the law, all groups of the public shall be equally subject to the law of the state as implemented by the general judiciary. The rule of law does not recognize exceptions for the officials of the Government or certain people vis-à-vis the law which regulates the citizens, like it is with the administrative court (*droit administratif*);
86. Whereas while referring to the tradition of the rule of law, Brian Tamanaha (2004: 33) stated that, if equality is an escort of freedom, they are like a coin, which is based on the moral equality is rendered to all individuals being autonomous right holding creatures. He confirmed furthermore, that equation (*persamaan*) or equality (*kesetaraan*) requires that every citizen shall have the same political rights, which includes the equality before the law (Evidence P-17);
87. Whereas in line with the thought of Tamanaha, Larry May in *Getting to the Rule of Law* (2011: 260) stated that the rule of law was developed based on the equality before the law and the consideration for equality, by respecting every person who is a member of the public as its key. Therefore, this principle rejects discriminative treatment against fellow citizens (Evidence P-18);
88. Whereas to ascertain it, according to Robert A. Dhal (2006: 35) there is one thing which shall be provided by the state, namely to render access for political equality, including in spaces of

government politics. This thought of Dhal departs from the theory justice as is stated by John Rawls (1971), which emphasizes that: (i) every person has equal rights for the largest freedom and equal with the freedom of others; and (ii) every person shall have equal chance or opportunity, including to achieve certain positions in government (Evidence P-19);

89. Whereas equal position in government is later manifested by among others the equal right for participation in government, either in the executive or the legislative branches as provided by Article 28D section (3) of the Constitution of 1945. These rights in government can be interpreted as rights for every citizen to have and to gain equal access to hold certain positions in government, including in the Commissions of the state established in the frame of supporting the performance of government;
90. Whereas the consequence of formulation obscurity of that article is the absence of equal access for every citizen to obtain equal position in government, including the participation in government, as guaranteed by the Constitution of 1945;
91. Whereas that difference access to hold office and to in participate in government is apparent from the different mechanism of the nomination of the leaders or the members of the Commission of Information as has occurred in the Province of Gorontalo and the other provinces, like Nangroe Aceh Darussalam and the Special Capital Region of Jakarta;
92. Whereas charging the leaders or members of the Commission of Information of the Province of Gorontalo is done by direct appointment, without re-selection process, so that there is no access for citizens who wish to be involved in the contest for the nomination of that office. While in the other provinces the re-nomination of the leaders or the members of the Commission of Information shall be an open selection process, so that every person can contests publicly;
93. Whereas the different situations which have occurred in Gorontalo and the other provinces certainly cannot be interpreted as merely a problem of practice, but rather as a condition which is created due to the obscure interpretation of the formulation of that article, which, if it is not immediately clarified, bears the potential to obstruct the fulfillment of the constitutional rights of citizens;
94. Whereas therefore, the formulation of that article has obviously given rise to presence of difference in access to hold certain offices or positions in government, as illustrated in the situation mentioned herein-above, for fellow Indonesian citizens, but having different access to participate in government. Therefore, the provision of that article is obviously contrary to Article 27 section (1) and Article 28D section (3) of the Constitution of 1945;

The formulation of Article 33 of the Law as such (*a quo*) has Actually and Potentially Hampered the Fulfillment of the Right of Information, so that it Contravenes Article 28F of the Constitution of 1945

95. Whereas the provision of Article 28F of the Constitution of 1945 states that: "Every person is entitled to communicate and to obtain information for the development of his/her personality and social environment, as well as be entitled to seek, to obtain, to own, to store, to process, and to convey information by means of all kinds of available channels";
96. Whereas being one of the efforts to fulfill those rights, which are constitutional and basic rights of every citizen, the state has promulgated the Law Number 14 of 2008 regarding Public Information Transparency, thereby also establishing independent state commissions, to ascertain the fulfillment of those rights;
97. Whereas this Commission *per se* is established as an autonomous institution which bear the function to carry out this Law and its implementing regulations to stipulate the technical standard guidance for Public Information service and to settle Disputes on Public Information through non-litigation Mediation and/or Adjudication (Article 23 of the Law as such (*a quo*);
98. Whereas therefore, the establishment of the Commission of Information being one of the state independent commissions has the objective to fulfill the need of information of the citizens, which is one of the important characteristics of a democratic state which upholds the sovereignty of the people to manifest the well performance of the state;
99. Whereas besides, the presence of the Commission of Information has the objective to support public information transparency as a facility to optimize public supervision vis-à-vis the performance of the state and public bodies and all which is in the public interest;

100. Whereas being one of the aspects which needs attention regarding the institutionality of an independent state commissions, including the Commission of Information, is how the selection process and the recruitment of members of those commissions are conducted. State independent commissions require that the nomination process of their leaders or their members is not only determined by one institution, but by several institutions, as a manifestation of the principle of "checks and balances";
101. Whereas the consideration mentioned herein-above is based on the thought that an institution cannot work independent and autonomous, if only one institution or only one political power conducts the nomination process of its leaders. Therefore, the public shall be fully involved in the selection process of the leaders or the members of the Commission of Information, including also the representatives of the people (the Parliament) as a representation of the people;
102. Whereas the direct re-appointment of the leaders or the members of the Commission of Information without a selection process has eliminated the rights of the public to participate in, and simultaneously supervise the performance of the Commission, including also eliminating the role of the Parliament/the Regional Parliaments which should also play the role in supervising/control of the Commission of Information, which one among the others is manifested in their role in the selection process of the leaders or the members of the Commission of Information;
103. Whereas the absence of periodical control through the re-election process as required by the Law as such (*a quo*) has eliminated the opportunity of the public to conduct control and evaluation of the capacity, the quality and the competence of the leaders or the members of the Commission of Information;
104. Whereas the absence of control to re-measure the independence, the impartiality, the capacity, and the quality of the leaders or the members of the Commission of Information can affect the fulfillment and protection of the right of information, which is the objective of the Law as such (*a quo*). The more, if the Commission of Information is appointed merely based on the consideration of the Government (Governor/Regent/Mayor), without the involvement of the other institutions/powers as regulated by the Law, the performance of the Commission of Information bears the potential be subject to the biased interest of the Government, and would not guarantee and protect the right of the public of information;
105. Whereas the failed achievement of the objective of the Law as such (*a quo*), including the potential of biased interest of the Commission of Information caused by the re-appointment without the process of selection is a consequence of the obscure formulation of that article, which will not only affect the non-compliance with the right of information of the citizens, particularly public information, so that the provision of that Article also is contrary to Article 28F of the Constitution of 1945;

E. PETITUM

Based on the legal and constitutional reasons as described herein-above, we beg the Tribunal of Justices of the Constitutional Court to be able to examine and to rule on the petition for the material review as follow:

1. To accept and to grant the entire petition for the Review of the Law submitted by the Petitioners;
2. To declare Article 33 of the Law Number 14 of 2008 to the extent of the phrase "be re-appointed" to be contrary to the Constitution of 1945, to the extent of not to read "re-elected through a selection process as regulated by Article 31 and Article 32";
3. To declare Article 33 to the extent of the phrase "be re-appointed" has no binding legal force, to the extent of not to read "be re-elected through a selection process as regulated Article 31 and Article 32";

Or if the Tribunal of the Constitutional Court opines otherwise, we beg to be given a ruling *ex aequo et bono*.

[2.2] Considering whereas to substantiate their postulates, the Petitioners have submitted instruments of Evidence in the form of letters/writings which have been marked as Evidence P-1 up to Evidence P-19 as follow:

1. Evidence P-1 : Photocopy of the Law Number 14 of 2008 regarding Public Information

Transparency;

2. Evidence P-2 : Photocopy of the Constitution of the State of the Republic of Indonesia of 1945;
3. Evidence P-3 : Photocopy of the Legalization of Documents of Yappika and Perludem from the Ministry of Law and Human Rights, Resident Identity Card of the Petitioner I, the Petitioner II, and the Petitioner III, and the Deed of the Amendments to Yappika and Pattiro;
4. Evidence P-4 : The Deed of Establishment (AD/ART) of Yappika, Pattiro, and Perludem;
5. Evidence P-5 : Photocopy of the Report of Independent Monitoring Result of the Implementation of "Open Government Partnership" in Indonesia 2012-2013 (the Petitioner I);
6. Evidence P-6 : Photocopy of the Annual Report of the Implementation of the Law Number 14 of 2008 regarding Public Information Transparency (the Petitioner II);
7. Evidence P-7 : Photocopy of the Open Data Module of the General Elections (the Petitioner III);
8. Evidence P-8 : Photocopy of the Resident Identity Card and the National Tax Identification Number of the Petitioner IV, and the Ruling of the State Administration Lawsuit submitted by the Petitioner IV;
9. Evidence P-9 : The Resident Identity Card and the National Tax Identification Number of Petitioner V, and the Book *Renewal of the Commission of Information: Towards an Autonomous and Professional Commission of Information* (*Buku Pembaruan Komisi Informasi: Menuju Komisi Informasi yang Mandiri dan Profesional*), written by the Petitioner V;
10. Evidence P-10 : Photocopy of the Article of Torben Spaak, *Meta-Ethics, and Legal Theory*: *The Case of Gustav Radbruch*;
11. Evidence P-11 : Photocopy of the Book of Lon L. Fuller, *Morality of Law*. New Heaven and London: Yale University Press. 1969;
12. Evidence P-12 : Photocopy of the Book of Friedrich A. von Hayek, *The Constitution of Liberty*. Chicago: The University of Chicago Press, 2011;
13. Evidence P-13 : Photocopy of the Book of Pietro Costa and Danilo Zolo (eds.), *The Rule of Law History, Theory and Criticism*. Dordrecht: Springer, 2007;
14. Evidence P-14 : Photocopy of the Decree of the Governor of Gorontalo Number 323/11/VIII/2015 dated 13 August 2015 regarding the Appointment of a Member of the Commission of Information of the Province of Gorontalo for the Period of 2015-2019;
15. Evidence P-15 : Photocopy of the *Policy Paper* of the Central Commission on Information of July 2014 regarding the Appointment and Dismissal of a Member of the Commission of Information;
16. Evidence P-16 : Photocopy of the Book of Gianlugi Palombella and Neil Walker (eds.), *Relocating the Rule of Law*. Oxford and Portland: Hart Publishing, 2009;
17. Evidence P-17 : Photocopy of the Book of Brian Z. Tamanaha. *On the Rule of Law. Cambridge*: Cambridge University Press. 2004;
18. Evidence P-18 : The Book of James E. Flaming (ed.). *Getting to the Rule of Law*. New York: New York University Press, 2011;
19. Evidence P-19 : The Book of Robert A. Dahl. *On Political Equality*. New Heaven: Yale University Press, 2006.

[2.3] Considering whereas to abridge the description of this ruling, then all which have been noted in the Minutes of the Trials have been contained and is an inseparable part of this ruling;

3. LEGAL CONSIDERATION

The Authority of the Court

[3.1] Considering whereas based on the Article 24C section (1) of the Constitution of the State of the Republic of Indonesia of 1945 (hereinafter referred to as the Constitution of 1945), Article 10 section (1) letter a of the Law Number 24 of 2003 regarding the Constitutional Court as has been amended by the Law Number 8 of 2011 regarding the Amendment to the Law Number 24 of 2003 regarding the Constitutional Court (Gazette of the State of the Republic of Indonesia of

2011 Number 70, Supplement to the Gazette of the State of the Republic of Indonesia Number 5226, hereinafter referred to as the Law regarding the Constitutional Court), and Article 29 section (1) letter a of the Law Number 48 of 2009 regarding the Judicial Powers (Gazette of the State of the Republic of Indonesia of 2009 Number 157, Supplement to the Gazette of the State of the Republic of Indonesia Number 5076), one of the constitutional authority of the Court is to examine the Laws against the Constitution;

[3.2] Considering whereas the petition of the Petitioner is regarding the review of the norm constitutionality of the Laws, *in casu* the Law Number 14 of 2008 regarding Public Information Transparency (Gazette of the State of the Republic of Indonesia of 2008 Number 61, Supplement to the Gazette of the State of the Republic of Indonesia Number 4846, hereinafter referred to as the Law 14/2008) against the Constitution of 1945, then the Court is authorized to adjudicate on the petition of as such (*a quo*);

The Legal Standing of the Petitioners

[3.3] Considering whereas based on the Article 51 section (1) of the Law regarding the Constitutional Court along with its Elucidation, one may act as a petitioner in the review of a Law against the Constitution of 1945, if one assumes that his/her constitutional rights and/or authorities have been harmed by the applicability of a Law which is petitioned for review, namely:

a. an Indonesian individual citizen (including groups of people sharing similar interests);
b. unities of the *adat* law societies to the extent that they are still alive and are in accordance with the development of the public and the principle of the Unitary State of the Republic of Indonesia as is regulated by the Laws;
c. public or private legal entities; or
d. state institutions.

Therefore, the Petitioners in the review of the Laws against the Constitution of 1945 shall first explain and substantiate that:

a. their standing as Petitioners as mentioned in Article 51 section (1) of the Law regarding the Constitutional Court;
b. the loss of constitutional rights and/or authorities granted by the Constitution of 1945 which has been caused by the applicability of the Law which is petitioned for review;

[3.4] Considering whereas the Court as of its Ruling Number 006/PUU-III/ 2005, dated 31 May 2005 and its Ruling Number 11/PUU-V/2007, dated 20 September 2007 and the subsequent rulings have opined that the loss of constitutional rights and/or authorities as mentioned in Article 51 section (1) of the Law regarding the Constitutional Court shall comply with five requirements, namely:

a. the existence of constitutional rights and/or authorities of the Petitioners granted by the Constitution of 1945;
b. the Petitioners assume that those constitutional rights and/or authorities have been harmed by the applicability of the Law which is petitioned for review;
c. the loss of those constitutional rights and/or authorities are specific and actual, or at least bears the potential which can be ascertained according to normal reasoning that it will happen;
d. there is causal relation (Dutch: *causal verband*) between the loss of constitutional rights and/or authorities and the enactment of the Law petitioned for review; and
e. there is the possibility that by the granting of the petition, the postulated loss of those constitutional rights and/or authorities will not happen or will not happen again.

[3.5] Considering whereas based on the provision of Article 51 section (1) of the Law regarding the Constitutional Court and the requirement of loss of constitutional rights and/or authorities as described herein-above, furthermore the Court shall consider the legal standing of the Petitioners in accordance with the description of the Petitioners and evidences submitted by the Petitioners as follow:

Whereas the Petitioner I up to the Petitioner III qualify themselves as private legal entities in the form of Non-Governmental Organization which have grown-up and developed independently, by their own wish and desire in the midst of the public which have been established based on the concern to contribute in various social and humanitarian activities, including to enhance the participation and initiative of the people, to encourage transparency and accountability

of the performance of the state, and to advance the protection of human rights;

The private legal entity of the Petitioner I up to the Petitioner III has been substantiated by their respective Articles of Association which have been drawn-up before Notary, namely for the Petitioner I by the Deed of Notary Number 06, dated 30 October 2006 on behalf of the Foundation for the Strengthening of Initiative Participation and Partnership of the Indonesian Society (*Yayasan Strengthening of Partisipasi Inisiatif dan Kemitraan Masyarakat Indonesia*, YAPPIKA) which has been amended by the Deed of Notary Number 1, dated 06 April 2016; for the Petitioner II by the Deed of Notary Number 24, dated 07 December 2009 on behalf of the Foundation Review Center and Regional Information (*Yayasan Pusat Telaah dan Information Regional*, PATTIRO); and for the Petitioner III by the Deed of Notary Number 279, dated 15 November 2011 on behalf of the Foundation Association for General Elections and Democracy (*Yayasan Perkumpulan Untuk Pemilu dan Demokrasi*, PERLUDEM) [vide Evidence P-3 and/or Evidence P-4];

The purpose and objective of the establishment of the organizations of the Petitioner I up to the Petitioner III are regulated by the Article 2 of the Articles of Association as such (*a quo*) in the efforts in the social and humanitarian field by conducting activities, among others, in the form of enhancing the participation and initiative of the people, to encourage transparency and accountability of the performance of the state, and to advance the protection of human rights, including the fulfillment and protection of the right of information, have been continuously conducted by utilizing those institutions as facility for the fight for those various objectives, and the aspiration of the nation as stated in the Preamble of the Constitution of 1945. The activities which have been conducted by the Petitioner I up to the Petitioner III are as follow:

a. Active in every process of policy making of the state, including in the making of the Law as such (*a quo*) which have been conducted by means of rendering critical input and study result in the frame of ascertaining that every policy produced is in harmony by the obligation of the state to advance, to fulfill and to protect the human rights of every citizen;
b. Actively performing various activities for enhancing the participation and initiative of the people in the frame of empowerment of the public in the social and humanitarian field;
c. To conduct monitoring policy and various studies in the frame of strengthening democratization, the system of general elections, the protection of human rights, and ascertaining transparency and accountability in the performance of the state;
d. To publish various kinds of books, reports, journal, as well as other forms of publications in the frame of encouraging the participation of the public in every process of policy making of the state, as well as rendering material input for the policy makers, which in its process requires transparency and data access from every state organizer;

According to the Petitioner I up to the Petitioner III the phrase "be re-appointed" in Article 33 of the Law 14/2008 has harmed the constitutional rights of the Petitioners as guaranteed in Article 28C section (2) of the Constitution of 1945. The loss of the constitutional rights of the Petitioners as such (*a quo*), is namely:

a. Whereas the phrase in that article has caused legal uncertainty in its implementation and threatens the efforts which have been conducted by the Petitioner I in ascertaining the advancement of the right of information of every citizen;
b. Whereas the phrase in that article bears the potential to thwart various efforts which have been conducted by the Petitioner II in the frame of encouraging information transparency, as part of the efforts of ascertaining transparency and accountability in the performance of government. Those efforts have become very important and integral parts in the frame of achieving the purpose and objective of the establishment of the organization of the Petitioner II. For instance, in 2010 the Petitioner II jointly with other networks of civilian public organizations have intensively conducted monitoring on the implementation of the Law as such (*a quo*) (vide Evidence P-6);
c. Whereas the phrase in that article has hampered and threatens the activities which have been conducted by the Petitioner III in the achievement and the advancement of democratization, and improvement of the system of general elections, which includes the renewals of data ownership, to ascertaining the most extensive participation of citizens in general elections;

Based on the reasons mentioned herein-above, according to Petitioners as such (*a quo*) (the Petitioner I up to the Petitioner III), the applicability of the phrase of Article 33 of the Law 14/2008, has factually or at least bears the potential to hamper various kinds of activities which

have been conducted by the Petitioner I up to the Petitioner III, as mandated in their respective Articles of Associations/Bylaws to encourage the creation of various policies which are related to the efforts to encourage information transparency, which includes the ascertaining transparency and accountability of the government;

The Petitioner IV qualifies himself as an Indonesian individual citizen who has the intention to make use of his rights as guaranteed by Article 27 section (1) and Article 28D section (3) of the Constitution of 1945 to register himself as a candidate commissioner of the Commission of Information of the Province of Gorontalo (vide Evidence P-8). According to the Petitioner IV, the applicability of the phrase in that article has led to the failure of the Petitioner IV to register himself as a candidate member of the Commission of Information, because the Government of the Province of Gorontalo did not open the selection process for candidate members of the Commission of Information as regulated by the Law as such (*a quo*), yet the Governor of Gorontalo indeed directly issued his Decree Number 323/11/VIII/2015 regarding the Appointment of a Member of the Commission of Information of the Province of Gorontalo for the Period of 2015-2019 which appointed the members of the Commission of Information of the previous period;

The Petitioner V qualifies herself as an Indonesian individual citizen who works as a researcher at the Indonesian Parliamentary Center (IPC). Besides, the Petitioner V is also an activist in the advocacy of public information transparency, which is carrying out the mandate as the Secretariat Coordinator of the Freedom of Information Network Indonesia (FOINI) having the task of safeguarding the implementation of the Law as such (*a quo*). The Petitioner V is currently active conducting monitoring of the selection process of the Commission of Information of the Province of Nanggroe Aceh Darussalam, the Province of East Kalimantan, the Province of Southeast Sulawesi, the Province of North Kalimantan, the Province of Riau, the Province of North Sumatera, and the Province of Central Sulawesi. Based on her monitoring, the Petitioner has found various interpretations on the phrase of that article which obstructs efforts which have been conducted by the Petitioner V to encourage public information transparency. Therefore, the Petitioner V has factually suffered constitutional loss due to the formulation of that article;

[3.6] Considering whereas based on the description of the Petitioner I up to Petitioner V mentioned herein-above (hereinafter referred to as the Petitioners) linked with Article 51 section (1) of the Law regarding the Constitutional Court, and the Ruling of the Court as described herein-above, the Court opines that the Petitioners have clearly described the loss of their constitutional rights and there is a causal relation (*causal verband*) between the loss of the Petitioners and the applicability of the Law as such (*a quo*). The constitutional loss of the Petitioners is of actual nature or has the potential which according to normal reasoning can be ascertained that it will occur and the possibility that by the granting of the petition, the constitutional loss of the Petitioners will not or will no longer occur. Based on assessment and that legal consideration, according to the Court the Petitioners have the legal standing to petition for the review as such (*a quo*);

[3.7] Considering whereas the Court is authorized to adjudicate on the petition as such (*a quo*) and the Petitioners have the legal standing to submit the petition of as such (*a quo*), then the Court shall furthermore consider the subject matter of the petition;

The Subject Matter of the Petition

[3.8] Considering whereas the Petitioners have submitted their petition for the review of Article 33 of the Law 14/2008 to the extent of the phrase "can be re-appointed" against Article 1 section (3), Article 28D section (1) and section (3), Article 27 section (1), and Article 28F of the Constitution of 1945 with the reason which in essence is as follow:

Article 33 of the Law 14/2008 states that: *"A member of the Commission of Information is appointed for a tenure of 4 (four) years and can be re-appointed for one subsequent period,"* According to the Petitioners the phrase "can be re-appointed" in the Article as such (*a quo*) has given rise to interpretation ambiguity, which leads to legal uncertainty due to the nomination mechanism of a Member of the Commission of Information as such for the second period, in practice is executed differently between the Province of Gorontalo and some other provinces, like the Province of the Special Capital Region of Jakarta, the Province of West Nusa Tenggara, the Province of Bali, the Province of East Kalimantan, the Province of North Sulawesi, the Province of Nanggroe Aceh Darussalam, as well as the nomination of the members of the Central Commission of Information. The charging of the members of the Commission of Information of the Province of

Gorontalo is conducted by the direct re-appointment, without the conduct of a selection process as set out in the Decree of the Governor of Gorontalo Number 323/11/VIII/2015 regarding the Appointment of a Member of the Commission of Information of the Province of Gorontalo for the Period of 2015-2019, dated 13 August 2015. While the nomination of the members of the Commission of Information of the Province of the Special Capital Region of Jakarta, the Province of West Nusa Tenggara, the Province of Bali, the Province of East Kalimantan, the Province of North Sulawesi, and the Province of Nanggroe Aceh Darussalam, and the Central Commission of Information is conducted through a selection process as required by the Law as such (*a quo*) [Article 30 section (2), Article 32 section (1), section (2), and section (3)];

Whereas the formulation obscurity of that article affects the absence of equal access for every citizen to obtain equal position in government, including the participation in government as guaranteed by the Constitution of 1945. That difference in access to hold office and the participation in government is apparent from the different nomination mechanism of the leaders or the members of the Commission of Information which occurs in the Province of Gorontalo compared to the other Provinces, as explained in paragraph **[3.8]** mentioned herein-above.

Whereas the difference in the way of appointment of the members of the Commission of Information which occurs in the Province of Gorontalo compared to the other Provinces cannot be interpreted merely as a problem of practice, but as a condition which is created by the obscure interpretation of the formulation of that article, which, if its meaning is not immediately clarified, it bears the potential to obstruct the fulfillment of the constitutional rights of citizens;

Whereas the direct re-appointment of the leaders or the members of the Commission of Information without a selection process, besides being contrary to Article 30 section (2), Article 32 section (1), section (2), and section (3), it has also eliminated the rights of the public to participate and simultaneously supervise and evaluate the performance of the Commission of Information, including also eliminating the role of the Parliament/the Regional Parliaments which should play the role in the supervision/control on the Commission of Information, which among others is manifested in their role in the selection process of the leaders or the members of the Commission of Information. Besides, the absence of that control can affect the fulfillment and protection of the right of information, which is the objective of the Law as such (*a quo*). Even more, if the Commission of Information is appointed based on merely the consideration as decided by the Government (Governor/Regent/Mayor), without involving other institutions/powers, that bears the potential of biased interest of the Government and would not guarantee and protect the right of information of the public;

[3.9] Whereas prior to considering the subject matter of the petition, based on Article 54 of the Law regarding the Constitutional Court, as the petition as such (*a quo*) is clear, then the Court opines that there is no urgency to hear the testimony of the parties as mentioned in Article 54 of the Law regarding the Constitutional Court, but shall directly examine the subject matter of the petition;

[3.10] Considering whereas after the Court scrutinized meticulously the petition of the Petitioners, the Evidences in the form of letters/writings submitted by the Petitioners, the Court opines that the subject matter which is questioned by the Petitioners is the petition for the review of Article 33 of the Law 14/2008 to the extent of the phrase "can be re-appointed" which by the Petitioners is deemed to give rise to legal uncertainty as substantiated by the real case regarding the direct appointment of the members of the Commission of Information of the Province of Gorontalo for the second period by the Governor of Gorontalo without selection process as determined by Article 31 and Article 32 of the Law as such (*a quo*);

[3.11] Considering whereas the Commission of Information is one of the independent institutions, which despite its existence is not regulated in the Constitution, it is deemed constitutionally important in the performance of the life in a state, particularly to manifest the idea of a democratic state which is based on law. Therefore, the Commission of Information is granted the status as an autonomous institution by the Law as such. The autonomy of the Commission of Information as such is stated in Article 1 figure 4 and is reconfirmed in Article 23 of the Law 14/2008, which states that: *"The Commission of Information is an autonomous institution which bear the function to carry out this Law and its executing regulations, to stipulate the technical standard guidance of public information service and to settle disputes regarding public information through non-litigation mediation and/or adjudication,"* The word "autonomous" in that article is furthermore explained in the Elucidation to Article 23 of the Law 14/2008 which states that: *"Understood by the term*

"autonomous" is independence in carrying out its authority and task and function including do decide on Disputes on Public Information based on this Laws, justice, public interest, and interest of the Unitary State of the Republic of Indonesia";

That autonomy of the Commission of Information is similar to the autonomy which is possessed by the other commissions, like the National Commission of Human Rights as regulated by the Article 1 figure 7 of the Law Number 39 of 1999 regarding Human Rights; Indonesian Commission of Broadcasting (*Komisi Penyiaran Indonesia*, KPI), as regulated by the Article 1 figure 13 of the Law Number 32 of 2002 regarding Broadcasting; the Commission for the Supervision of Business Competition (*Komisi Pengawas Persaingan Usaha,* KPPU), as regulated by the Article 30 section (2) of the Law Number 5 of 1999 regarding the Prohibition of Monopolistic Practices and Unfair Competition (*Larangan Praktik Monopoli dan Persaingan Usaha Tidak Sehat*); the Commission on General Elections (*Komisi Pemilihan Umum*, KPU), as regulated by the Article 22E section (5) of the Constitution of 1945 and Article 1 figure 6 of the Law Number 15 of 2011 regarding the Organizer of the General Elections (*Penyelenggara Pemilu*); the Press Commission (*Komisi Pers*, KP), as regulated by the Article 15 section (1) of the Law Number 40 of 1999 regarding the Press; The Commission of Ombudsman (*Komisi Ombudsman*, KO), as regulated by the Article 2 of the Law Number 37 of 2008 regarding Ombudsman of the Republic of Indonesia; and the Commission of the Eradication of Corruption (*Komisi Pemberantasan Korupsi*, KPK), as regulated by the Article 3 of the Law Number 30 of 2002 regarding the Commission of the Eradication of Criminal Acts of Corruption (*Komisi Pemberantasan Tindak Pidana Korupsi*). Nevertheless, regarding the nomination of the office for the subsequent period, there is no uniformity in the use of the terminology in some of the Laws mentioned herein-above. For instance the nomination of the office of the Commission of Information, the Commission for the Supervision of Business Competition, and the National Commission of Human Rights to make use of the phrase *"can be re-appointed,"* The nomination of the office of the Commission of the Eradication of Corruption, the Commission of Broadcasting, and he Commission of Ombudsman to make use of the phrase *"can be re-elected,"* The absence of uniformity in the phrase as such (*a quo*) gives rise to different interpretations as happened with the nomination of the office of the Commission of Information of the Province of Gorontalo which apparently is conducted by utilizing a different mechanism if compared to the nomination of the office of the Commission of Information of the other Provinces as has been described herein-above.

Whereas according to the Court the phrase "can be re-appointed" in Article 33 of the Law cannot be interpreted as the unilateral granting of authority, *in casu* by a Governor or Regent/Mayor, because it is related to the appointment of the members of the Commission of Information, which has been firmly regulated by the Article 30 section (2) in conjunction with Article 32 section (1), section (2), and section (3) of the Law as such (*a quo*). Therefore, the nomination of the office of the members of the Commission of Information cannot be interpreted without selection which involves other parties, because, if it is interpreted as such, that can influence the independence or autonomy of the Commission of Information. The Court opines that the formulation of the phrase as such (*a quo*) is an optional terminology of the lawmakers which indeed is not intended for discrimination due to the phrase "can be re-elected";

Whereas to be able to understand the provision of Article 33 of the Law, it shall be linked with the other provisions, particularly in **CHAPTER VII "THE COMMISSION OF INFORMATION" Part Eight "The Appointment and Dismissal"**, among others Article 30 and Article 32 of the Law 14/2008. Those articles regulate in essence:

a. the requirements for the appointment of the members of the Commission of Information;
b. the Government shall conduct the recruitment publicly, honestly, and objectively and to announce the candidate members of the Commission of Information to the public in order to obtain response or assessment;
c. the Governor or Regent/Mayor submits the result of the recruitment of the Commission of Information of the Province of or Regency/City to the Regional Parliament of a Province or the Regional Parliament of a Regency/City;
d. the Governor or Regent/Mayor to stipulate candidate members of the Commission of Information of a Province or Regency/City having been appointed by the Regional Parliament of a Province or by the Regional Parliament of a Regency/City;

Based on the provision mentioned herein-above, the Central Government (the President) as well as the Government of the Regions (the Governor or Regent/Mayor) have the obligation as mandated by the Law as such for conducting the process of the recruitment of the members of the Commission of Information (at the central level as well as in the regions) publicly, honest, and objectively;
Therefore, basically it is the public which has the role to determine the process of the recruitment or selection of the members of the Commission of Information. The Central Government as well as the Regional Governments have indeed only the role of a facilitator;

According to the Court, the legal act of a Governor or Regent/Mayor to stipulate the members of the Commission of Information of a Province of or Regency/City is merely an administrative act and is not to determine the election of those officials. Such is also with the acts of a Governor or a Regent/Mayor to appoint the members of the Commission of Information for the second tenure as regulated by the Article 33 of the Law 14/2008;

Whereas the lawmakers have placed the Commission of Information in an important position. Article 1 figure 4, Article 23, and the Elucidation to Article 23 of the Law 14/2008, regulate in essence that the Commission of Information is an autonomous institution. In the frame of safeguarding the autonomy, impartiality, and independence of the Commission of Information, the nomination mechanism of the office of the members of the Commission of Information needs the selection process which involves other parties. That has the purpose to render the Commission of Information a strategic authority to conduct public supervision against the organizers of the state and the public bodies including to settle disputes of public information, and to carry out its duty autonomously and invulnerably vis-à-vis any party or institution whatsoever;

Based on the assessment and the consideration mentioned herein-above, it is apparent for the Court that the phrase "can be re-appointed" in Article 33 of the Law 14/2008 in practice has given rise to legal uncertainty, so that it is contrary to Article 28D section (1) of the Constitution of 1945, to the extent it is not interpreted as an appointment mechanism of the members of the Commission of Information as regulated by the Article 33 of the Law 14/2008, and shall refer to appointment mechanism of the Commission of Information as regulated by the Article 30 and Article 32 of the Law 14/2008.

[3.12] Considering whereas based on the consideration as mentioned herein-above, according to the Court the petition of the Petitioners is reasoned according to the law;

4. **CONCLUSION**

Based on the assessment on the facts and the law as mentioned herein-above, the Court concludes that:

[4.1] the Court is authorized to adjudicate on the petition of the Petitioners as such (*a quo*);
[4.2] the Petitioners have the legal standing to submit the petition as such (*a quo*);
[4.3] **the p**ostulates of the Petitioners are reasoned according to the law;

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

5. **VERDICT OF THE RULING**

Adjudicating,

1. To grant the petition of the Petitioners entirely;
2. To declare the phrase *"can be re-appointed"* in Article 33 of the Law Number 14 of 2008 regarding Public Information Transparency (Gazette of the State of the Republic of Indonesia of 2008 Number 61, Supplement to the Gazette of the State of the Republic of Indonesia Number 4846) to be conditionally contradictive with the Constitution of the State of the Republic of Indonesia of 1945 and has no binding legal force to the extent it is not interpreted as *"re-elected through a selection process as regulated by the Article 30 and Article 32 of the Law Number 14 of 2008 regarding Public Information Transparency"*;

3. To order the placing of this ruling in the Gazette of the state of the Republic of Indonesia as it should be;

Thus is ruled in the Consultative Meeting of the Justices by nine Constitutional Justices, namely Arief Hidayat, being the Chief Justice and concurrently a Member, Anwar Usman, Aswanto, Wahiduddin Adams, I Dewa Gede Palguna, Maria Farida Indrati, Patrialis Akbar, Suhartoyo, and Manahan M.P Sitompul, respectively as Members, on **Tuesday,** dated **the eighth,** the month of **October,** the year **two thousand sixteen**, and the day **Wednesday,** dated **the eighteenth,** the month of **January,** the year **two thousand seventeen,** pronounced in the Plenary Session of the Constitutional Court open for the public on the day of **Tuesday,** dated **the seventh,** the month of **February,** the year **two thousand seventeen**, completely pronounced at **15.41 hours West Indonesian Time**, by eight Constitutional Justices, namely Arief Hidayat, being the Chief Justice and concurrently a Member, Anwar Usman, Aswanto, Wahiduddin Adams, I Dewa Gede Palguna, Maria Farida Indrati, Suhartoyo, and Manahan M.P Sitompul, respectively as Members, in the presence of Sunardi being the Substitute Clerk, in the presence of the Petitioners, the President or his representative, and the Parliament or its representative.

CHIEF JUSTICE,
signed
Arief Hidayat
MEMBER JUSTICES,

signed
Anwar Usman

signed
Aswanto

signed
Wahiduddin Adams

signed
I Dewa Gede Palguna

signed
Maria Farida Indrati

signed
Suhartoyo

signed
Manahan MP Sitompul

SUBSTITUTE REGISTRAR,
signed
Sunardi