Decision

Number 56/PUU-XIV/2016

IN THE NAME OF JUSTICE UNDER ALMIGHTY GOD

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF INDONESIA

[1.1] [hereinafter the Court], hearing constitutional cases at the first and final instance, has handed down a decision in the case of Review of Law No. 23/2014 on Local Government against the 1945 Constitution of the Republic of Indonesia [hereinafter the Constitution], filed by:

1. Name : **Abda Khair Mufti**
   Age : 47
   Occupation : Employee
   Address : Bumi Cikampek Baru, Blok AA2/9 RT.014 RW.007, Kelurahan Balonggandu, Kecamatan Jatisari, Kabupaten Karawang
2. Name : **Muhammad Hafidz**
   Age : 36
   Occupation : Employee
   Address : Padurenan, RT.001, RW.09, Kelurahan Pabuaran, Kecamatan Cibinong, Kabupaten Bogor
3. Name : **Amal Subkhan**
   Age : 37
   Occupation : Employee
   Address : Blok Kidas, RT.002, RW.03, Desa Kebonturi, Kecamatan Arjawinangun, Kabupaten Cirebon
4. Name : S**olihin**
   Age : 40
   Occupation : Employee
   Address : Perum Telaga Pesona Blok L46, Nomor 16, RT.001, RW.017, Telaga Murni, Kecamatan Cikarang Barat, Kabupaten Bekasi;
5. Name : **Totok Ristiyono**
   Age : 29
   Occupation : Employee
   Address : Cikiwul, RT.002, RW.01, Bantargebang, Kota Bekasi

Hereinafter referred to as **The Petitioners**;

[1.2] Having read the petition of the Petitioners;

Having heard the testimony of the Petitioners;

Having heard and read the testimony of the President;

Having heard and read the expert testimony on behalf of the Petitioners;

Having heard expert testimony called by the Court;

Having examined evidence from the Petitioners;

Having read the concluding statement from the Applicant;

2. Facts of the Case

[2.1] Considering whereas the Applicant submitted the petition dated 30 June 2016, received by the Registrar's Office of the Court [hereinafter Registrar's Office] on 30 June 2016 under Deed of Filing, Petition No. 115/PAN.MK/2016 and recorded in the Registry of Constitutional Cases on 21 July 2016 under Number 56/PUU-XIV/2016, and revised the Petition and resubmitted to the Registrar's Office on 2 August 2016, principally describing the following matters:

I. Authorities of the Court

1. Whereas Article 24 Paragraph (2) of the Constitution states:
   "The judicial power shall be implemented by a Supreme Court and judicial bodies underneath it in the form of public courts, religious affairs courts, military tribunals, and state administrative courts, and by a Constitutional Court."
   Furthermore, Article 24C Paragraph (1) of the Constitution states:
   "Constitutional Court shall have the authority to hear cases at the first and final instance, the decisions of which shall be final to conduct review on laws under the 1945 Constitution of the State of the Republic of Indonesia, to decide disputes concerning the authority of state institutions whose authority is granted by the 1945 Constitution of the State of the Republic of Indonesia, to make decisions on the dissolution of political parties and to decide disputes concerning the results of general elections."
2. Whereas Article 10 Paragraph (1) of Law No. 24/2003 on The Constitutional Court (State Gazette of the Republic of Indonesia 2011/70, Supplement to State Gazette of the Republic of Indonesia No. 5226)[hereinafter Law 8/2011, evidence P-3A] later amended by Law No. 8/2011 on Amendment to Law No. 24/2003 on the Constitutional Court:
   "The Constitutional Court shall have the authority at the first and final instance, the decisions of which shall be final, to (1) review the legislation against the Constitution"
3. Whereas, given that the Petition is for the review of the contents of Article 251 Paragraph (1), Paragraph (2), Paragraph (7) and Paragraph (8) of Law No. 23/2014 against the Constitution, the Court has the authority to examine, hear and decide upon the Petition in question.

II. Legal standing of the Petitioners

1. Whereas the Petitioners are individual citizens of the Republic of Indonesia [exhibit P-4, exhibit P-4A, exhibit P-4B, exhibit P-4C and exhibit P-4D] presently in gainful employment;
2. Whereas the Petitioners feel that their constitutional rights and/or authorities have been impaired by Article 251 Paragraph (1), Paragraph (2), Paragraph (7) and Paragraph (8) of Law No. 23/2014, which state:
   Article 251 Paragraph (1)
   "*Provincial Regulations and Gubernatorial Regulations that contradict higher legislation, public interest and/or morals shall be annulled by the Minister*."
   Article 251 Paragraph (2)
   "*City/District Regulations and Mayoral Regulations in conflict with the provisions of higher legislation, public interest and/or morals shall be annulled by the Governor as the representative of the Central Government.*"
   Article 251 Paragraph (7)

"*Should the Local Government object to the annulment of Provincial Regulations or the Governor object to the annulment of Gubernatorial Regulations as referred to in Paragraph (4) for any reason supported by provisions of the law, the Governor may submit such objections to the President no more than 14 days following said annulment.*"

Article 251 Paragraph (8)

"*Should the Local Government object to the annulment of City/District Regulations or the Mayor or Regent object to the annulment of Mayoral Regulations as referred to in Paragraph (4) for any reason supported by provisions of the law, the Governor may submit such objections to the Minister no more than 14 days following said annulment.*"

The Petitioners claim that the above provisions are in conflict with Article 24A Paragraph (1) and Article 27 Paragraph (1) of the Constitution, which states:

Article 24A Paragraph (1)

"*The Supreme Court shall have the authority to hear appeals, review provisions of laws against the legislation and shall have other authorities granted to it by the legislation.*"

Article 27 Paragraph (1)

"*All citizens shall be equal before the law and the government and shall be required to respect the law and the government without exception.*"

3. Whereas pursuant to Constitutional Court Ruling No. 006/PUU-III/2005 dated 31 May 2005 *juncto* Ruling No. 11/PUU-V/2007 dated 20 September 2007 and rulings thereafter, any constitutional impairment claimed by the Petitioner must fulfil the following conditions:
   a. the Petitioner's constitutional rights exist as granted by the Constitution;
   b. the constitutional rights in question are considered by the Petitioner to have been impaired by the law petitioned for review;
   c. the constitutional impairment claimed by the Petitioner is specific and actual in nature or at least have the potential to occur according to logical reasoning;
   d. there is a causal relationship (*causal* verband) between the constitutional impairment and the law petitioned for review; and
   e. there is the possibility that in granting the petition, the claimed constitutional impairment will cease.
4. Whereas pursuant to Article 27 Paragraph (2) and Article 28H Paragraph (1) of the Constitution, the Petitioners as Indonesian Citizens in gainful employment with private employers, are entitled to, as well as their occupations, an existence deemed proper for a human being, a home and a safe and secure living environment.

   In an effort to establish and develop a citizenry that holds justice and prosperity as ideals of the nation and the state, the Petitioners have participated in the process of electing local government, and at the level of province and City/District by electing regional heads and members of the regional representative council, which have the authority to produce legislation in the form of Provincial Regulations and City/District Regulations with a view to realising these tenets of society.

   However, Provincial or City/District Regulations enacted through a process of legislation and communication between the Regional House of Representatives (DPRD) and the Governor or Mayor/Regent can be revoked by ministers and governors as representatives of the Central Government.

   These authorities of the governors and minsters, granted by Article 251 Paragraphs (1) and (2) of Law No. 23/2014, have the potential to impair the constitutional rights of the Petitioners inasmuch as they allow province and City regulations, which in principle regulate that which is not yet regulated

by the higher legislation, to be annulled without any mechanism for reviewing provisions of laws against higher legislation.

Regarding the review of Article 251 Paragraphs (1) and (2) of Law No. 23/2014 under the *a quo* petition, the following Local Regulations are seen by the Petitioners as being affected:

(a) City Regulation of Karawang No. 1/2011 on Manpower Administration (City Gazette of Karwang 2011 No. 1 Issue E)[exhibit P-8];

(b) City Regulation of Siak No. 11/2001 on Placement of Local Labour (City Gazette of Siak 2001 No. 11 Issue C)[exhibit P-9]; and

(c) City Regulation of Pekanbaru No. 4/2002 on Placement of Local Labourers (City Gazette of Pekanbaru 2002 Issue D No. 4)[exhibit P-10];

These regulate manpower services with a view to enhancing the welfare of the local population, including by ensuring that 50–100% of jobs filled by local workers and by offering a 5% pay bonus on top of the minimum wage for workers in contractual jobs.

Furthermore, the enactment of Article 251 Paragraphs (7) and (8) of Law 23/2014, which recognises only government officials at the City and provincial levels as those entitled to file objections to the annulment of provincial and City regulations, impairs the rights of the Petitioners to participate in maintaining and upholding the regulations in question since it is possible that the relevant government officials will not exercise their rights to file objections to the annulment of Local Regulations.

5. Whereas, therefore, the Petitioners meet the requirements referred to in Article 51 Paragraph (1) Letter a of Law No. 8/2011 and, as such, have legal standing to petition for the review of Article 251 Paragraphs (1), (2), (7) and (8) of Law No. 23/2014 against the Constitution.

III. Reasons for the Petition

Article 251 Paragraph (1) and Paragraph (2) of Law No. 23/2014 are contrary to the Article 24A Paragraph (1) of the Constitution.

(1) Whereas, following the amendment to the Constitution, there were foundational changes to Indonesian's state administration. These changes are enshrined in Article 18 Paragraphs (1), (2) and (3) and Article 22E Paragraph (2) of the Constitution, namely that authority is shared between the Central Government and Local Governments, with provinces and Cityities having autonomy and each being run by its own regional head as well as there being a Regional Representative Council (DPRD) for each region at the Province and the City levels, whereby regional heads are elected in general elections and the legislative members of the DPRD are elected directly and democratically by the people.

(2) Whereas, the authorities of the Central Government include absolute responsibility for foreign affairs, defense, security, justice, monetary and fiscal matters and religious affairs. Meanwhile, concurrent authorities shared by both the Central Government and Local Governments at both the Provincial and City levels include peace and public order, protection of the people, investment and manpower services and are implemented in accordance with Local Regulations at the province and City levels.

In order to implement autonomy and co-administration, such as regional concurrent authorities, the regional heads, consisting of the Governor or Mayor/Regent, are granted the authority with approval of the Provincial or City DPRD to issue Local Regulations, as regulated by Article 18 Paragraph (6) of the Constitution.

Local Regulations at the province and City are recognised and legally binding as a form of legislation

that has been issued by a governor in conjunction with the provincial DPRD or by a mayor or regent in conjunction with the City DPRD.

Although concurrent duties are carried out by the Central and Local Governments in collaboration through Local Regulations issued with approval of the relevant DPRD, the Mayor or Governor has an obligation to submit draft regulations to the Governor or Minister respectively within 3 days, as stipulated in Article 242 Paragraphs (3) and (4) of Law No. 23/2014.

(3) Whereas a Minister or Governor, as representatives of the Central Government, are granted an authority that scholars refer to as executive review, to appoint registration numbers to draft regulations at the provincial and City levels respectively no more than 7 days after the draft has been received. For those drafts that are yet to be appointed a registration number by the relevant government representative, it is regulated under Article 242 Paragraph (5) and Article 243 Paragraph (1) of Law No. 23/2014 that such unregistered drafts may not be enacted in the regional gazette.

The authority of executive review, which is possessed by Ministers and Governors and implemented in relation to Provincial and City Regulations respectively, is a mechanism for harmonization, accumulation, and consolidation of draft regulations and is coordinated by the ministries responsible for legal matters as regulated by Article 58 Paragraph (2) and Article 63 of Law No. 12/2011.

This coordination, complete with clarification and evaluation, is intended to ensure that draft provincial and City regulations are not in conflict with the higher legislation, public interest—which relates to the disruption of harmony amongst citizens, public services, peace and public order, economic activity of the people, and all forms of discrimination—or morals. Should evaluation of any draft Local Regulation discover any such conflict then the Governor and DPRD or the Mayor/Regent and DPRD are instructed to improve the draft accordingly. However, if the evaluation of the draft Local Regulation is not followed up by the governor or mayor/regent in conjunction with the relevant DPRD, said Local Regulation can only be revoked in accordance with the prevailing legislation.

(4) Whereas Indonesia is bound by Rule of Law, law enforcement and justice in the name of guaranteeing the basic rights of the people as an instance of independent judicial power, realised and carried out by the Supreme Court and the lower courts—he civil courts, religious courts, military courts, state administrative courts—and the Constitutional Court pursuant to the mandate enshrined in Article 1 Paragraph (3), Article 24 Paragraphs (1) and (2) and Article 28I Paragraph (5) of the Constitution.

As one of the two aforementioned judicial institutions, the Supreme Court (Mahkamah Agung, MA) has the authority to conduct judicial review of provisions of the law against the legislation, as regulated in Article 24A Paragraph (1) of the Constitution, *juncto* Article 31 Paragraph (1) of Law No. 14/1985 on The Supreme Court (Indonesian State Gazette 1985 No. 73, Supplement to the State Gazette No. 3316)[hereinafter referred to as Law 14/1985, Exhibit P-5] *sub.* Article 22 Paragraph (2) Letter b of Law No. 48/2009 on Judicial Powers (State Gazette 2009 No. 157, Supplement to the State Gazette No. 5076)[hereinafter referred to as Law 48/2009, Exhibit P-6] *sub* Article 9 Paragraph (2) of Law No. 12/2011 on Establishment of Laws and Regulations (State Gazette 2011 No. 82, Supplement to the State Gazette No. 5234)[hereinafter referred to as Law 12/2011, exhibit P-7].

(5) Whereas Article 251 Paragraphs (1) and (2) of Law 23/2014, which grants Ministers with the authority to revoke Provincial Regulations and Governors City Regulations, not only for those Local Regulations that involve evaluation and approval by the Central Government, RPJPD, RPJMD, APBD, perubahan APBD, pertanggungjawaban APBD, pajak daerah, retribusi daerah dan tata ruang daerah, but for all Provincial or City Regulations that relate to harmony amongst citizens, access to public services, peace and public order, economic activities to improve the welfare of the local

population and discrimination against ethnicity, religion or faith, race, and gender which make up the foundations of Eastern wisdom concerning public life.

(6) Whereas, aside from Local Regulations, Governors and Mayors/Regents are granted the authority to autonomously enact regional head regulations in the form of Gubernatorial Regulations and Mayoral/Regent Regulations. The Governor, referred to in Law 23/2014 as a representative of the Central Government, and the Mayor/Regent who stands as a representative of the provincial government, are the implementers of co-administration. As such, regional head regulations formed and enacted by the Governor or the Mayor/Regent do not possess the same standing as Provincial or City Regulations enacted by agreement between the Governor or Mayor/Regent and the relevant DPRD.

Therefore, executive review carried out by the Governor, in conjunction with the DPRD, against Provincial Regulations takes the form of annulment of or amendment to provisions considered in contradiction with higher legislation, public interest and/or morals following the Minister's review of the draft regulation. Likewise, should a draft regulation at the City level be found to conflict with the higher legislation, public interest and/or morals following evaluation by the Governor, the regulation can be revoked or amended by the Mayor/Regent in conjunction with the DPRD.

This differs from draft regional head regulations, which are formulated and enacted by the regional head without any involvement from DRPD and which, should they be found to conflict with the higher legislation, public interest and/or morals, the Minister may order the amendment or annulment thereof by the Governor as representative of the Central Government, while the Governor may order the same from the Mayor/Regent.

Thus, the authorities of the Governor or Minister to revoke Provincial or City Regulations evidently violate Article 24A Paragraph (1) of the Constitution. As such, in order that Article 251 Paragraph (1) and Paragraph (2) of Law 23/2014 not conflict with the Constitution, the absolute authority of the Governor and Minister must be limited.

Article 251 Paragraphs (1) and (2) of Law 23/2014 must, therefore, be declared conditionally unconstitutional insofar as they are not interpreted as meaning that Provincial Regulations or City Regulations that conflict with higher legislation, public interest and/or morals, can be brought by the Minister or Governor in front of the Supreme Court for review.

Article 251 Paragraphs (7) and (8) of Law 23/2014 are contradictory to Article 27 Paragraph (1) of the Constitution.

(7) Whereas the Constitution of the Republic of Indonesia recognises legal rights. The principle of equal standing before the law must be upheld by every citizen.

Equal standing without exception also applies,, before the state administration or government, as stipulated in Article 27 Paragraph (1) of the Constitution, which states:

"All citizens shall be equal before the law and the government and shall be required to respect the law and the government, with no exceptions."

(8) Whereas the equal standing of citizens must also be recognised by legal subjects, with regard to the constitutional rights granted by Article 28C Paragraph (2) of the Constitution, in order to fight for their collective right to establish a people, a nation and a state, in particular regarding decisions that directly or indirectly impact on society.

In Article 251 Paragraphs (7) and (8) of Law 23/2014, explicitly recognises only Local Government officials at the province and City level as having the authority to raise objections to the Minister regarding the annulment of City Regulations or Mayoral/Regent Regulations by the Governor. Likewise, for the raising of objections to the President regarding the annulment of Provincial Regulations or Gubernatorial Regulations by the Minister.

Article 251 Paragraph (7) of Law 23/2014 states:
"In the event that the Provincial Government objects to the annulment of a Provincial Regulation or the Governor objects to the annulment of a Gubernatorial Regulation, as referred to in Paragraph (4), for a legally valid reason, the Governor can submit such an objection to the President within no more than 14 days after the annulment occurs."
Article 251 Paragraph (8) of Law 23/2014 states:
"In the event that the City Government objects to the annulment of a City Regulation or the Mayor/Regent objects to the annulment of a Mayoral/Regent Regulation, as referred to in Paragraph (4), for a legally valid reason, the Mayor/Regent can submit such an objection to the Minister within no more than 14 days after the annulment occurs."
However, the annulment of Provincial or Gubernatorial Regulation by a Minister or the annulment of a City or Mayoral/Regent Regulation by a Governor affects public affairs, particularly with regard to labour regulations at the level of the province or City.

(9) Whereas Article 251 Paragraph (7) and (8) of Law No. 23/2014 stipulates a time limit of no more than 14 days for the raising of objections to be counted from the time the regulation is annulled by the Minster for Provincial or Gubernatorial Regulations or the Governor for City or Mayoral/Regent Regulations, such that, after 14 days, there is no more opportunity for the Governor to raise objection with the President or for the Mayor/Regent to raise objection with the Governor, and the annulment is final and no longer requires any further approval as a result of the Governor or Mayor/Regent not choosing use the rights granted them by the law.

(10) Whereas the Governor's decision to annul a City or Mayoral/Regent Regulation or the Minister's decision to annul a Provincial or Gubernatorial Regulation, once it has been made final, falls under the scope of state administrative decisions and can become the object of disputes and can be an object of dispute.
Therefore, should Article 251 Paragraph (7) and Paragraph (8) of Law No. 23/2014 be declared unconstitutional on the condition that it impairs the rights of individuals or of civil entities who experience harm from a decision of the state administration to file an objection to the relevant court in order that the disputed decision be annulled or invalidated, granting the Petitioner an active role in upholding the law in question.

IV. Petitum

Based on the above details and reasons, which are based in law and supported by evidence submitted to the Constitutional Court, the Petitioners request that the Constitutional Court declare as follows:

- Article 251 Paragraph (1) of Law No. 23/2014 on Local Government (State Gazette 2014 No. 244, Supplement to the State Gazette No. 5587), which states,
"Provincial Regulations and Gubernatorial Regulations that conflict with the higher legislation, public interest and/or morals shall be annulled by the Minister"
is itself in conflict with the Constitution insofar as it is not interpreted as meaning that Provincial Regulations in conflict with the higher legislation, public interest or morals may be disputed by the Minister before the Supreme Court.

- Article 251 Paragraph (1) of Law No. 23/2014 on Local Government (State Gazette 2014 No. 244, Supplement to the State Gazette No. 5587), which states,
"Provincial Regulations and Gubernatorial Regulations that conflict with the higher legislation, public interest and/or morals shall be annulled by the Minister"
is found to be not legally binding insofar as it is not interpreted as meaning that Provincial

Regulations in conflict with the higher legislation, public interest or morals may be disputed by the Minister before the Supreme Court.

- Article 251 Paragraph (2) of Law No. 23/2014 on Local Government (State Gazette 2014 No. 244, Supplement to the State Gazette No. 5587), which states,
  "City Regulations and Mayoral/Regent Regulations that conflict with the higher legislation, public interest and/or morals shall be annulled by the Governor as a representative of the Central Government"
  is itself in conflict with the Constitution insofar as it is not interpreted as meaning that City Regulations in conflict with the higher legislation, public interest or morals may be disputed by the Governor before the Supreme Court.

- Article 251 Paragraph (2) of Law No. 23/2014 on Local Government (State Gazette 2014 No. 244, Supplement to the State Gazette No. 5587), which states,
  "City Regulations and Mayoral/Regent Regulations that conflict with the higher legislation, public interest and/or morals shall be annulled by the Governor as a representative of the Central Government"
  is found to be not legally binding insofar as it is not interpreted as meaning that City Regulations in conflict with the higher legislation, public interest or morals may be disputed by the Governor before the Supreme Court.

- Article 251 Paragraph (7) of Law No. 23/2014 on Local Government (State Gazette 2014 No. 244, Supplement to the State Gazette No. 5587), which states,
  "In the event that the Provincial Government objects to the annulment of a Provincial Regulation or the Governor objects to the annulment of a Gubernatorial Regulation, as referred to in Paragraph (4), for a legally valid reason, the Governor can submit such an objection to the President within no more than 14 days after the annulment occurs."
  is in conflict with the Constitution insofar as is interpreted as impairing the rights of citizens or legal entities who feel that their interests have been harmed by the decision of the state administration to file a written objection with the relevant court so that a disputed state decision may be annulled.

- Article 251 Paragraph (7) of Law No. 23/2014 on Local Government (State Gazette 2014 No. 244, Supplement to the State Gazette No. 5587), which states,
  "In the event that the Provincial Government objects to the annulment of a Provincial Regulation or the Governor objects to the annulment of a Gubernatorial Regulation, as referred to in Paragraph (4), for a legally valid reason, the Governor can submit such an objection to the President within no more than 14 days after the annulment occurs."
  is found to be not legally binding insofar as it is interpreted as impairing the rights of citizens or legal entities who feel that their interests have been harmed by the decision of the state administration to file a written objection with the relevant court so that a disputed state decision may be annulled.

- Article 251 Paragraph (8) of Law No. 23/2014 on Local Government (State Gazette 2014 No. 244, Supplement to the State Gazette No. 5587), which states,
  "In the event that the City Government objects to the annulment of a City Regulation or the Mayor/Regent objects to the annulment of a Mayoral/Regent Regulation, as referred to in Paragraph

(4), for a legally valid reason, the Mayor/Regent can submit such an objection to the Minister within no more than 14 days after the annulment occurs."
is in conflict with the Constitution insofar as is interpreted as impairing the rights of citizens or legal entities who feel that their interests have been harmed by the decision of the state administration to file a written objection with the relevant court so that a disputed state decision may be annulled.

- Article 251 Paragraph (8) of Law No. 23/2014 on Local Government (State Gazette 2014 No. 244, Supplement to the State Gazette No. 5587), which states,
"In the event that the City Government objects to the annulment of a City Regulation or the Mayor/Regent objects to the annulment of a Mayoral/Regent Regulation, as referred to in Paragraph (4), for a legally valid reason, the Mayor/Regent can submit such an objection to the Minister within no more than 14 days after the annulment occurs."
is found to be not legally binding insofar as it is interpreted as impairing the rights of citizens or legal entities who feel that their interests have been harmed by the decision of the state administration to file a written objection with the relevant court so that a disputed state decision may be annulled.

- To record this decision in the Official Gazette of the Republic of Indonesia
or
should the Constitutional Court be of a different opinion, then to issue the fairest Decision.

[2.2] Considering that, in order to strengthen their argument, the Petitioners have submitted written evidence, listed below from P-1 to P-10.

Exhibit P-1: Photocopy of Law No. 23/2014 on Local Government (State Gazette 2014 No. 244, Supplement to the State Gazette No. 5587);

Exhibit P-2: Photocopy of the 1945 Constitution of the Republic of Indonesia;

Exhibit P-3: Photocopy of Law No. 24/2003 on the Constitutional Court (State Gazette of the Republic of Indonesia 20013/98, Supplement to State Gazette of the Republic of Indonesia No. 4316);

Exhibit P-3A: Photocopy of Law No. 8/2011 on Amendment to Law No. 24/2003 on the Constitutional Court (State Gazette of the Republic of Indonesia 2011/70, Supplement to State Gazette of the Republic of Indonesia No. 5226);

Exhibit P-4: Photocopy of ID card of Abda Khair Mufti;

Exhibit P-4A: Photocopy of ID card of Muhammad Hafidz;

Exhibit P-4B: Photocopy of ID card of Amal Subkhan;

Exhibit P-4C: Photocopy of ID card of Solihin;

Exhibit P-4D: Photocopy of ID card of Totok Ristiyono;

Exhibit P-5: Photocopy of Law No. 14/1985 on the Supreme Court (State Gazette of the Republic of Indonesia 1985/73, Supplement to State Gazette of the Republic of Indonesia No. 3316);

Exhibit P-6: Photocopy of Law No. 48/2009 on Judicial Powers (State Gazette of the Republic of Indonesia 2009/157, Supplement to State Gazette of the Republic of Indonesia No. 5076);

Exhibit P-7: Photocopy of Law No. 12/2011 on Establishment of Laws and Regulations (State Gazette 2011 No. 82, Supplement to the State Gazette No. 5234);

Exhibit P-8: Photocopy of City Regulation of Karawang No. 1/2011 on Manpower Administration (City Gazette of Karwang 2011 No. 1 Issue E);

Exhibit P-9: Photocopy of City Regulation of Siak No. 11/2001 on Placement of Local Labour (City Gazette of Siak 2001 No. 11 Issue C);

Exhibit P-10: Photocopy of City Regulation of Pekanbaru No. 4/2002 on Placement of Local Labourers (City Gazette of Pekanbaru 2002 Issue D No. 4).

Furthermore, the Petitioners also called one expert witness whose testimony was given under oath before the trial on 21st September 2016 and one whose written testimony was received by the Registrar's Office of the Court on 5th October 2016, which reported as following:

1. Dr. Boli Sabon Max, S.H., M.Hum.

Whereas that being reviewed under this petition is Article 251 Paragraphs (1), (2), (7) and (8) of Law No. 23/2014, therefore said provisions will be laid out here before the expert testimony:

(1) Provincial Regulations and Gubernatorial Regulations that conflict with the higher legislation, public interest and/or morals shall be annulled by the Minister;

(2) City Regulations and Mayoral/Regent Regulations that conflict with the higher legislation, public interest and/or morals shall be annulled by the Governor as a representative of the Central Government;

(7) In the event that the Provincial Government objects to the annulment of a Provincial Regulation or the Governor objects to the annulment of a Gubernatorial Regulation, as referred to in Paragraph (4), for a legally valid reason, the Governor can submit such an objection to the President within no more than 14 days after the annulment occurs;

(8) In the event that the City Government objects to the annulment of a City Regulation or the Mayor/Regent objects to the annulment of a Mayoral/Regent Regulation, as referred to in Paragraph (4), for a legally valid reason, the Mayor/Regent can submit such an objection to the Minister within no more than 14 days after the annulment occurs.

Dr. Boli Sabon Max, S.H., M.Hum. is a lecturer of Constitutional Law (State Administration Laws, Regional Autonomy Laws, Human Rights, Comparative State Administration Laws and Philosophy of Indonesian Law). His testimony was divided into 5 parts: (a) the concept of judicial review; (b) regulations for the judicial review of Local Regulations and regional head regulations prior to the 1945 amendment to the Constitution; (c) regulations for the judicial review of Local Regulations and regional head regulations after the 1945 amendment to the Constitution; (d) authotrities of executive review; (e) conclusion.

1. The Concept of Judicial Review

It is common for experts to translate Judicial Review into Indonesian as "hak menguji". However, in his statement, Dr. Boli Sabon Max chose to use instead the translation "wewenang menguji", where "wewenang" carries the meaning of 'authority' as opposed to 'right'. According to Prof. Purnadi Purbacaraka, one holding rights may choose to implement those rights or may choose not to. Under this understanding, if Judicial Review is translated as Hak Menguji, the justices have the choice of reviewing or not reviewing a law. However, it is a fundamental principal of the law that a judge may not refuse a case and, in accordance with Article 10 Paragraph (1) of Law No. 48/2009 on Judiciary Powers, must try

all cases brought before him/her. This principle is referred to as *ius curia novit*. Furthermore, according to Dr. Boli Sabon Max, Prof. Purnadi's explanation of rights is oriented more towards civil law rather than public law.

The expert notes that in the field of public law, the terms "authority" and "duty" are more commonly used than "right" and "obligation". J.H.A. Logemann writes that the work environment and the kelompok jabatan give rise to professional obligations. This is because the functions of any position always serve the objectives of the organisation of which it is a part. Professional obligations can be interpreted both generally and more narrowly. In the general sense, professional obligation includes certain facultative constraints or authorities, while more narrowly, it refers to the imperative work environment or duties. According to Prajudi, in general, an authority is the power to take actions in public law, while a right is the power to take actions in private law.

As such, given that Judicial Review exists in the context of public law, the expert chose to use the Indonesian term "Wewenang Menguji"

With this in mind, the expert explores the concept of Judicial Review, which, according to Ph. Kleintjes, is the authority to evaluate the contents of a piece of legislation with respect to its conformity or compatibility with higher legislation and to evaluate whether a certain power possesses the relevant authority to issue certain legislation. These two objectives can be described in more detail thus:

(a) Assess whether the content of a piece of legislation conforms to or contradicts higher legislation (Material Judicial Review); and

(b) Assess whether an institution that has reviewed a piece of legislation as described above indeed has the legal authority to annul legislation or declare it void of legally binding force (Formal Judicial Review).

Regarding the second objective, it is recognised principle of legality within a state bound by Rule of Law that every state official implementing his or her competencies must do so within the boundaries of legitimate authority granted by the legislation prior to the implementation of said competencies and authorities. Theoretically speaking, in the context of state administrative law, there are three possible sources of competency for any state official, namely,

(a) *attribution*: the granting of a new authority by legislation to carry out the full function of the position;

(b) *delegation*: the partial handing down of an existing authority derived from an attributed authority to a state official, such that delegation is always preceded by attribution or else is not legitimate; and

(c) *mandate*: the assigning of a task to be carried out on behalf of or in the name of the assignor.

Philipus M. Hadjon, on the other hand, is of the opinion that the authority to make decisions can only be granted from two sources, namely attribution and delegation, where attribution is the granting of new authorities and delegation is the reassignment of existing authorities. If the authority is not full or complete, then any decision taken under such partial authority cannot be legitimate. In the case of a mandate, there is no recognition of authority or

reassignment of authority; there is only an agreement between the superior and the subordinate. Such a mandate affords the recipient the authority to take certain decisions and/or sign off on certain decisions but only on behalf of or in the name of the assignor, such that, according to law, it is the assignor that truly holds the authority and only the assignor that can be held accountable for the decisions taken in any such case.

These theories have been affirmed through Law No. 30/2014 on Government Administration. Article 1 Number 22, Number 23 and Number 24 thereof stipulate as follows:

(a) Attribution is the granting of authority to a Governmental Body and / or Government Official by the 1945 Constitution of the State of the Republic of Indonesia or the Law;

(b) Delegation is the delegation of an authority of a higher Governmental Body and / or Government Official to a lower Governmental Body and / or Government Official with responsibility and accountability fully transferred to the recipients.

(c) Mandate shall be the delegation of Authority of a higher Governmental Body and / or Government Officer to a lower Body and / or Government Official with responsibility and accountability remaining with the mandator.

Pursuant to Law No. 30/2014, three things that the expert wished to raise three points for discussion:

(a) Regarding attribution, it is clear that there is limitation in that not all regulations can grant attribution but only the Constitution and Legislation;

(b) As such, delegation can only implemented in the case that the superior body or official possesses authorities granted through attribution by the Constitution of the Legislation;

(c) The authority to carry out Judicial Review, Executive Review and/or Legislative Review can only be granted through attribution by the Constitution of the Legislation, such that, if the authority is delegated, it can only be legitimate if there is an previously existing attributive stipulated in the Constitution or the Legislation.

2. Regulations for Judicial Review of Local Regulations and Regional Head Regulations prior to the amendment to the Constitution

When exploring the existence or non-existence of authority for Judicial Review prior to the amendment to the Constitution, it is important to understand that prior to the amendment, Indonesia had already come through three constitutional periods between the time of the state's independence and the amendment, namely the adoption of the initial 1945 Constitution, on 17 August 1945, the adoption of the Temporary Constitution on 17 August 1950, and the return to the 1945 Constitution on 5 July 1959. The fourth amendment to the 1945 Constitution was officially adopted on 10 August 2002. Nevertheless, for the purposes of this testimony, it is sufficient to look to the 1945 Constitution, whether during its initial adoption from 17 August 1945 to 17 August 1950 or its re-adoption from 5 July 1959 to the official adoption of the fourth amendment on 10 August 2002.

Within this context, the first question to consider is whether the Constitution recognised the authority of Judicial Review prior to the amendment. To answer this question, we must look to the Constitution itself.

From the provision of the unamended Constitution, including the Preamble, there is not one provision that explicitly recognises the authority of Judicial Review, nor is there any indication of any kind that such an authority should exist.

Historically speaking, the importance of the authority of Judicial Review was first proposed by Prof. Hadji Muhammad Yamin in his address at the time of the drafting of the Constitution in the meeting of the Investigating Committee for Preparatory Work for Indonesian Independence on 15 July 1945. When he spoke of the 6 powers, namely the President and Vice President, Ministerial Powers, Supreme Court, Supreme Advisory Council, Parliament and the People's Consultative Assembly, he said, in part, the following:

> *The Supreme Court implements judiciary powers and assesses laws to ensure their consistency with customary laws, Syariah and the Constitution and handles the annulment of laws, handing down its Decision to the President who then delivers it before Parliament* [underlining author's].

In the same meeting, Prof. Hadji Muhammad Yamin further said the following:

> *The Supreme Court must not only carry out Judicial functions but should also assess whether the legislation created by Parliament are consistent with the Constitution or with recognised customary laws* [underlining author's].

From these excerpts, we can conclude the following:

(a) Yamin recommended that the authority of Judicial Review be included in the Constitution as an authority of the Supreme Court, which should not only carry out judicial functions but also should conduct reviews against legislation ratified by the President and Parliament.

(b) The legal consequence of reviews conducted by the Supreme Court include the authority of the Supreme Court to annul laws that have been enacted, whether the entire law or specific articles or provisions of the law.

(c) Therefore, the provision, as stipulated in Article 20 *Algemene Bepalingen van Wetgeving voor Indonesie* (AB) and Article 95 Paragraph (1) of the 1950 Temporary Constitution, that laws may not be compromised is no longer legally valid given that laws may indeed be compromised as they may be reviewed with regard to their consistency with the Constitution.

However, Soepomo does not agree with these opinions offered by Yamin and instead argues as follows:

(a) The system proposed by Yamin is appropriate for those countries adhering absolutely to the principle of *Trias Politica*, whereby the Supreme Court is given the authority to exercise control over the legislator. However, in the draft of the Constitution, there is no such principle to be found.

(b) The review of legislation against the constitution is not a judicial function but rather a political matter.

(c) Indonesian legal experts have no experiencein this matter and must be reminded that in Austria, Czechoslovakia and Germany during the Weimar period it was not the Supreme Court but a special court, *constitutioneel-hof*, that was assigned to handle

constitutional matters. As a young nation, it is perhaps premature to be discussion such matters.

In response to Soepomo's opinion, the question must be asked whether it is true that Judicial Review is an authority found only in nations adhering to the principle of *Trias Politica*.

The basic concept of separation of powers that would later come to be known as *Trias Politica* was first proposed by John Locke and developed by Montesquieu before being given the name *Trias Politica* by Immanuel Kant.

According to John Locke, in order that the powers within the state not overlap one another, they should be separated into three branches of power, namely,

(a) Legislative Power: the power to create legislation;

(b) Executive Power: the power to implement legislation, the power of government;

(c) Judicial Power: the power to judge, the power of the judiciary.

According to Montesquieu, the division of government bodies into these three organs is of great significance for ensuring individual citizens' political freedom . Without such division of powers, there can be no freedom, as Montesquieu firmly states:

> *When the legislative and executive power are united in the same person, or in the same body of magistrates, there can be no liberty, because apprehensions may arise; lest the same monarchy or senate should enact tyrannical laws, to execute than in a tyrannical manner. Again, there is no liberty, if the judiciary power be not separated from the legislative and executive. Where it joined with the legislative, the live and liberty of the subject would be then the legislator. Where it joined to executive power, the judge might behave with violence and oppression.*

That the doctrine of *Trias Politica* is founded upon the principle of freedom is further supported by the following quote from C. F. Strong:

> *"..., a theory that the basic of liberty lay in not only the convenient speciallisation of these functions but tlteir absolute distinction in different hands."*

Further developed, the doctrine of *Trias Politica* gives rise to two interpretations, namely,

(a) the extreme interpretation, which proposes complete isolation amongst the three organs; and

(b) The broader interpretation, which suggests that the three powers need not be granted to three separate organs.

Returning to the core of the question, we must decide whether Soepomo is correct to say that the authority of Judicial review is only found in countries where *Trias Politica* is observed. In other words, is it possible for the authority of Judicial Review to be found in countries that do not observe *Trias Politica*?

In the US, for example, *Trias Politica* is observed. The US Constitution firmly separates the state's powers into three separate branches, namely, the legislative powers, which are placed with Congress, the executive powers, which are placed with the President, and the judicial powers, which are placed with the Supreme Court. According to Soepomo's view, there should therefore be a provision in the US Constitution that grants the authority of Judicial Review. However, there is no such provision in the US Constitution. Judicial

Review as it exists in the US presently is in fact derived from a separate theory developed later and is not a result of the principle of *Trias Politica*.

As such, Soepomo's rejection of Yamin's view is unfounded. Therefore, based on the practice in the US and the lack of theoretical foundation, though Indonesia's Constitution does not observe the principle of *Trias Politica*, provided there is no explicit prohibition, there is no reason that the authority of Judicial Review cannot exist.

Based on this argument, the Second National Law Seminar in Semarang, 1968 raised Muh. Yamin's suggestion once more in a discussion concerning the possibility Judicial Review in Indonesia. This was a matter of great importance during the seminar, and the seminar ultimately decided that Muh. Yamin's proposal should be implemented. Following this conclusion, in 1970, Article 26 of Law No. 14/1970 on Basic Provisions of Judicial Power stipulated as follows:

(a) The Supreme Court has the authority to declare any regulation below the Law (*Undang-Undang*) invalid on the grounds that it conflicts with higher legislation;

(b) Such decisions regarding the invalidity of legislation shall be taken during appeals;

(c) The revocation of invalid legislation shall be carried out by the relevant body.

This provisions raise several implications concerning Judicial Review, namely,

(a) for the first time, a piece of legislation, i.e. Law No. 14/1970, granted the authority of Judicial Review to the Supreme Court;

(b) the Supreme has the authority to carry out Judicial Review of regulations below the Law against the Law; as such, the Law and Decrees of the People's Consultative Assembly (MPR) are not subject to review by the Supreme Court;

(c) Judicial Review can only be carried out during appeals;

(d) following the Judicial Review, regulations found to be invalid shall be annulled by the body that issued them.

Article 26 of Law No. 14/1970 stipulates that review of legislation against the Constitution is a constitutional provision, and as such, it is not the authority of the legislature to regulate Judicial Review in the form of legislation. It remains to be asked whether constitutional provisions are limited to those specified by the Constitution and MPR Decrees. The answer is that constitutional provisions are not, in fact, limited to those specified by the Constitution and MPR Decrees but can also be derived from general principles of the Constitution or principles contained within the Constitution. Constitutional provisions can also be found in state administration practice, whether in the form of convention or jurisprudence.

The next matter to be resolved is whether or not Local Regulations and Regional Head Regulations are considered legislation and are subject to Judicial Review by the Supreme Court. The term 'legislation' (*peraturan perundang-undangan*) first appears in MPRS Decree No. XX/MPRS/1966 on Sources of Law and Hierarchy of Legislation. According to this decree, the hierarchy of legislation in Indonesia, beginning with the highest law, is laid out as follows:

1. The Constitution
2. MPR(S) Decree

3. Law or Government Regulations in Lieu of Law
4. Government Regulations
5. Presidential Regulations
6. Other Regulations

The Decree in question does not stipulate explicitly whether Local Regulations or Regional Head Regulations are included in the hierarchy. The concept of a hierarchy of legislation was first laid out by Hans Kelsen in his Pure Theory of Law, which was later developed by Hans Nawiasky, who proposed the following hierarchy:

1. Staatsfundamentalnorm
2. Staatgrundgesetz
3. Formellgesetz
4. Verordnung
5. Autonome Satzung

A. Hamid S. Attamimi then translated and further developed this theory in his dissertation under the title of Hierarchy of Legal Norms in Indonesia (Tata Susunan Norma Hukum Indonesia) as follows:

1. Indonesian State Ideology (*Pancasila*; Preamble to the Constitution)
2. Body of the Constitution
3. MPR Decree
4. Constitutional Convention
5. Law
6. Government Regulations
7. Presidential Decree
8. Ministerial Decree
9. Head of Non Departmental Government Body Decree
10. Director General Decree
11. State Body Decree
12. Level I Local Regulation
13. Gubernatorial (Level I Regional Head) Decree
14. Level II Local Regulation
15. Mayoral/Regent (Level II Regional Head) Decree

From this we can see that Local Regulations and regional head regulations can be considered legislation and thus can be reviewed by the Supreme Court against the Law, even though such is not formally regulated in juridical terms.

Nevertheless, A. Hamid S Attamimi's proposed hierarchy of norms cannot be automatically considered a hierarchy of legislations as not all norms constitute legislation, such as the norms contained within the Constitution. The constitution is built upon the preamble as *staatsfundamentalnorm*, the fundamental norms of the state. The

staatsfundamentalnorm, the highest norm, is pre-supposed in nature and forms the philosophical foundation and contains the basic rules for administration of the state. The articles of the constitution stand as *staatsgrundgesetz*, the outline or overview of the state's policy on formulating legislation. These are primary norms, not yet associated with secondary laws to regulate the procedures and sanctions should the primary norm(s) be violated. The same is true for the MPR Decree, which is also an example of *staatsgrundgesetz*. Therefore, the question whether regional and regional head regulations should be considered legislation is yet to be resolved. Maria Farida is of the opinion that Local Regulations are indeed a part of the legislation and need not only be regulations for implementation.

MPRS Decree No. XX/MPRS/1966 was later replaced with MPR Decree No. III/MPR/2000. Under this decree, the hierarchy of legislation is as follows:

1. 1945 Constitution
2. MPR Decree
3. Law
4. Presidential Regulation
5. Government Regulation
6. Presidential Decree
7. Local Regulation

Here our question is answered. According to MPR Decree No. III/MPR/2000, which constitutes an example of *staatsgrundgesetz*, prior to the Amendment to the 1945 Constitution, Local Regulations were a form of legislation below the level of the Law, and therefore they fell within the authority of the Supreme Court to review against the Law. Nevertheless, there is still the matter of Article 26 of Law No. 14/1970, which stipulates that the authority to review legislation can only be acted upon at the cassation level. This limits the authority, such that not only can the authority only be implemented by a certain body, namely, the Supreme Court, but also, it can only be implemented in a certain context, namely, during the trial of an appeal. This means that there must first be a trial conducted at a lower court before an appeal can be filed with the Supreme Court.

The extended timeframe that these provisions generate is not in keeping with the basic principle that justice should be simple, fast and low cost. However, the aforementioned provision significantly impairs citizens in their efforts to seek justice. This problem was later addressed by Supreme Court Regulation (Perma) No. 1/1993 on Judicial Review, which was issued on the Supreme Court's own authority in accordance with MPR Decree No. III/MPR/1978 Article 11 Paragraph (4), Law No. 14/1970 Article 26 and Articles 31 and 79 of Law No. 14/1985 on the Supreme Court.

MPR Decree No. III/MPR/1978 Article 11 Paragraph (4) states, "*The Supreme Court shall have the authority to conduct Judicial Review of legislation below the Law*."

Law No. 14/1985 Article 31 states as follows:

(1) The Supreme Court shall have the authority to conduct Judicial Review of legislation below the level of the Law;

(2) The Supreme Court shall have the authority to declare invalid any piece of legislation below the level of the Law that it finds to be in conflict with higher legislation;

(3) Such a decision regarding the invalidity of a piece of legislation may be taken at the level of cassation. Such invalid legislation shall be annulled in timely fashion by the relevant institution.

Article 79 of the same further states, "*The Supreme Court may further regulate matters related to the smooth conduct of the judiciary should they not be sufficiently regulated herein.*"

Based on these provisions, the Supreme Court is authorised to conduct Judicial Review not only at the level of cassation but also at the first instance and at the appellate level with the issuance of MPR Decree No. 1/1993, which states as follows:

(1) The Panel of Judges at the first instance and the appellate level examining and deciding on the Material Test Rights suit may state that legislation contrary to higher laws has no legal effect and does not bind the litigants.

(2) Should the Justices of the Supreme Court find that the claim is justified, then they shall grant the claim and declare the contested regulation invalid because it is in conflict with the Law or with higher legislation.

The provisions of Article 3 of Perma 1/1993 delegate the authority of Judicial Review to the court of the first instance and the appellate courts as well as the Supreme Court with their decisions each having different impacts. The courts of the first instance and the appellate courts have the authority through their decisions to declare a piece of legislation that contradicts the higher legislation to have no legal effect and to be not legally binding on the litigants. This means that such a decision is limited in its effect to the litigants only. Meanwhile, decisions in Judicial Review conducted by the Supreme Court may declare the contested legislation invalid due to a contradiction with higher legislation or the Law. Thus, such decisions issued by the Supreme Court affect all who are subject to regulation in question.

3. Regulations for Judicial Review of Local Regulations and Regional Head Regulations after the amendment to the Constitution

Unlike before the amendment, where provisions concerning the authority of Judicial Review by the Supreme Court were only found at the level of the Law or, in the highest instance, the level of Perma, after the amendment, the authority is granted attributively by the Constitution. Article 24A Paragraph (1) of the Constitution stipulates, "*The Supreme Court shall have the authority at the level of cassation to review <u>legislation below the level of the Law against the Law</u> and shall have other authorities as granted by the Law.*"[underline authors] We can discern the following four points from this provision:

(a) No institution other than the Supreme Court has the authority to review legislation below the level of the Law against the Law. The source of this competency of the Supreme Court is the Constitution;

(b) Should any other institution in fact conduct judicial review of legislation in this manner, the authority to do so much be granted as a delegation by the Supreme Court;

(c) If such authority is not delegated by the Supreme Court then any such review is not valid and has no legally binding force;

(d) The Supreme Court is granted the attributive authority to conduct judicial review of legislation below the level of the Law against the Law, both in material and formal cases. Material review assesses whether the content of a piece of legislation conforms

to or contradicts higher legislation, while formal review assesses whether an institution that has reviewed a piece of legislation as described above indeed has the legal authority to annul legislation or declare it void of legally binding force.

These provisions of the Constitution are further regulated in Law No. 5/2004 on Amendment to Law No. 14/1985 on The Supreme Court. Article 31 of Law No. 5/2004 states as follows:

(1) The Supreme Court shall have the authority to conduct Judicial Review of legislation below the level of the Law;

(2) The Supreme Court may declare legislation below the level of the Law invalid on the grounds that it conflicts with higher legislation or its formulation does not meet the applicable requirements;

(3) The decision that a piece of legislation is invalid, as regulated in Paragraph (2) may be taken either at the level of cassation or pursuant to petition submitted to the Supreme Court;

(4) Legislation declared invalid as regulated in Paragraph (3) has no legally binding force;

(5) Such as decision, as regulated in Paragraph (3) must be recorded in the State Gazette of the Republic of Indonesia within 30 days of the decision being taken.

These provisions were later replaced by Article 31 Paragraph (5) of Law No. 5/2004 on the Second Amendment to Law No. 14/1985 on the Supreme Court.

Law No. 5/2004 Article 31 is in line with Article 24A Paragraph (1) of the Constitution, stating that the authority of judicial review of legislation below the level of the Law against higher legislation is possessed solely by the Supreme Court. Prior to the amendment to the Constitution, this authority could also be delegated to the courts of the first instance and the appellate courts in accordance with Perma 1/1993, but this authority ceased to exist with the issuance of Law No. 5/2004. Nevertheless, in order to maintain the principle of a simple, fast and low cost judiciary, it was stipulated that the Supreme Court may conduct judicial review either at the level of cassation **or** based on direct petition to the Supreme Court. Furthermore, Article 31 Paragraph (2) of Law No. 5/2004 further regulates that the Supreme Court has the authority to conduct both Material and Formal Judicial Review.

Article 31A of Law No. 5/2004 states as follows:

(1) Petitions for review of legislation below the level of the Law against the Law shall be submitted by the petitioner to the Supreme Court in written form in Indonesian;

(2) The Petition as regulated in Paragraph (1) may only be submitted by a party who claims to have experienced an impairment of rights by the issuance of a piece of legislation below the Law; such a Petitioner must be

a. an Indonesian citizen;

b. a group under customary law provided that the group is still extant and in accordance with the development of society and the principles of the Republic of Indonesia as regulated by Law; or

c. a public or private legal entity;

(3) The Petition must include at least the following:

a. Name and address of Petitioner;

b. A description of the events that form the basis of the petition, including at least a clear account of the following:

1) the content of paragraphs, articles, and/or statutory sections deemed to be in conflict with higher laws and regulations; and/or

2) how the formulation of the contested legislation does not comply with applicable regulations; and

c. the details of what is to be decided upon.

(4) The Petition, as regulated in Paragraph (1), shall be carried out by the Supreme Court within no more than 14 days of the receipt of the Petition; [sic]

(5) Should the Supreme Court determine that the Petitioner or Petition, as regulated in Paragraph (1), does not meet the requirements, the Decision shall declare the Petition not accepted;

(6) Should the Supreme Court determine that the Petitioner or Petition has valid grounds, the Decision shall declare the Petition granted;

(7) Should the Petition be granted, as regulated in Paragraph (6), the Decision shall declare the content of the article, paragraph and/or other part of the legislation below the Law, which is in conflict with higher legislation [sic];

(8) The Supreme Court's granting of a Petition, as regulated in Paragraph (7), shall be recorded in the State Gazette or Regional Gazette within no more than 30 days of the handing down of the Decision;

(9) Where the contested legislation is found to be not in conflict with the higher legislation, nor its formulation to be invalid, the Decision shall declare the Petition rejected;

(10) Provisions regarding the procedure for judicial review of legislation below the Law are regulated in Supreme Court Regulations.

The expert observes that Paragraph (7) of this Law [Paragraph (5) before the amendment] requires closer examination. The original Indonesian is written, "*Dalam hal permohonan dikabulkan sebagaimana dimaksud pada ayat (6), amar putusan menyatakan dengan tegas materi muatan ayat, pasal, dan/atau bagian dari peraturan perundang-undangan di bawah undang-undang yang bertentangan dengan peraturan perundang-undangan yang lebih tinggi*", approximately, "*Should the Petition be granted, as regulated in Paragraph (6), the Decision shall declare the content of the article, paragraph and/or other part of the legislation below the Law, which is in conflict with higher legislation*". This sentence, according to the expert, is incomplete. There should be an additional phrase to the effect of "*tidak sah atau tidak mempunyai kekuatan mengikat*" or "*invalid or void of legally binding force."* With this addition, the complete test of Paragraph (7) above would be, "*Should the Petition be granted, as regulated in Paragraph (6), the Decision shall declare the content of the article, paragraph and/or other part of the legislation below the Law, which is in conflict with higher legislation invalid or void of legally binding force.*"

The expert further addresses Paragraph (4) of the same article, which is written, "*Permohonan pengujian sebagaimana dimaksud pada ayat (1) dilakukan oleh Mahkamah Agung paling lama 14 (empat belas) hari keija terhitung sejak tanggal diterimanya*

permohonan", approximately, "*The Petition, as regulated in Paragraph (1), shall be carried out by the Supreme Court within no more than 14 days of the receipt of the Petition*". Here, the expert asks, what is meant by "*carried out [dilakukan oleh] by the Supreme Court*" in this paragraph? Does it mean that the Supreme Court will inspect the petition? Does it mean that the Supreme Court will decide the case? Or is there something else that the Supreme Court should do within the given 14 days? It seems more clarification is required.

Pursuant to Article 31A Paragraph (10) above [Paragraph (7) before the amendment], which delegates to the Supreme Court the authority to further regulate the judicial review of legislation below the Law, the Supreme Court has since issued Supreme Court Regulation No. 1/2004 on Material Judicial Review. This regulation does not explicitly regulate Formal Judicial Review, only Material.

Following the second amendment to Law No. 14/1985, the Supreme Court also issued Supreme Court Regulation No. 1/2011 on Material Judicial Review. There is one point in this regulation that stands out:

(a) In accordance with Law No. 5/2004 Article 31 Paragraph (2): *The Supreme Court declares legislation below the Law invalid on the grounds that it is in conflict with higher legislation or that its formulation was not compliant with the applicable regulations*. This provision attributively grants the Supreme Court the authority to review the contents of legislation below the Law against higher legislation (Material Judicial Review) and to review the formulation process of a piece of legislation to assess whether it is consistent with the law-making procedure according to higher legislation (Formal Judicial Review). preme Court Regulation No. 1/2011 does not explicitly regulate formal judicial review, even though the authority is reaffirmed in Law No. 3/2009 Article 31A Paragraph (3.b) number 2 and Paragraph (9).

(b) Although the lower courts no longer have the authority to carry out Judicial Review, they may still be involved in the process, in particular because the petition for review, which may be submitted to the Supreme Court directly, may also be submitted via the regional courts that oversee the judiciary of the Petitioner's domicile (Supreme Court Regulation No. 1/2011 Article 2).

(c) Law No. 1/2011 Article 6 Paragraph (2) further stipulates, "*The Supreme Court…, shall instruct the relevant body to revoke the invalid legislation.*" Must legislation that has been declared invalid or void of legally binding force be revoked? Does the Supreme Court have the authority to give instructions to bodies outside of its power? What happens in the event that the body in question refuses to revoke the invalidated legislation? Prof. Sri Soemantri answers these questions by positing that once a piece of legislation has been declared invalid, then necessarily, it is no longer in effect, meaning that it bears no legal consequence, whether for litigants or in general, and whether or not it is revoked by the relevant body.

4. Authorities of the Executive Body to Carry Out Executive Review

Throughout sections 2 and 3 of this statement, we have seen no legislation governing the authority of executive review of legislation under the Law. However, it is regulated by Law No. 32/2004 and Law No. 23/2014 on Local Government. For example Article 251 paragraphs (1) and (2) of Law No. 23/2014 provides as follows:

(1) *Provincial Regulations and Gubernatorial Regulations in conflict with higher legislation, public interest or morals shall be annulled by the Minister;*

(2) *City/District Regulations in conflict with higher legislation, public interest or morals shall be annulled by the Governor as a representative of the Central Government;*

This raises the question whence does the Minister and Governor receive the authority to carry out the Judicial Review of Regional and Regional Head Regulations? Does Law No. 23/2014 itself grant the attributive authority as allowed by Law No. 30/2014? Or is it delegated by the Supreme Court ?

Sections 2 and 3 of this statement the authority of Judicial Review is granted by the Constitution to the Supreme Court alone. Thus if Law No. 23/2014 also gives the attributive authority of Executive Review to the Minister and the Governor, then the general principle of *lex superior derogate legi inferiori* applies.

This is the general legal principle that teaches that when something is set out in higher legislation (*lex superior*) and then differently regulated in lower legislation (*legi inferiori*), then the higher legislation applies and the lower legislation is disregarded (*derogat*). In this case, the attributive authority granted to the Supreme Court by the Constitution as the higher law of the land overrules the granting of the same attributive authority by Law No. 23/2014 to the Minister and Governor.

Given that Judicial Review is an attributive authority granted to the Supreme Court alone, only the Supreme Court may delegate that authority to another institution. Examining the legislation has failed to find any provision in which the Supreme Court delegates the authority to review legislation below the Law against higher legislation to either minister or governor. Thus, the authority of the Governor or Minister to review legislation below the Law against higher legislation is invalid and has no legally binding force.

5. Conclusion

Based on the explanations above, the expert witness concludes as follows:

(a) No institution other than the Supreme Court possesses the authority to carry our material or formal Judicial Review of legislation below the Law against higher legislation. This competency is attributive in nature, granted by the Constitution;

(b) Law No. 23/2014 Article 251 Paragraphs (1), (2), (7) and (8) are in conflict with the Article 24A Paragraph (1) of the Constitution, and in accordance with the principle of *lex superior derogat legi inferiori* are invalid and possess no legally binding force;

(c) Given that only the Supreme Court possess the authority to review legislation below the Law against higher legislation, only the Supreme Court may delegate that authority to another institution;

(d) There has been found no provision in which the Supreme Court delegates the authority to any other institution, including the governor or minister, to review Regional nor Regional Head Regulations. Given that neither the Governor nor the Minister possess the competency to carry out judicial review, Article 251 Paragraphs (1), (2), (7) and (8) of Law No. 23/2014 are invalid and possess no legally binding force.

2. Imam Nasima, LL.M. (Written Statement)

"Ubi iudicia deficiunt incipit bellum."

1. Muhammad Hafidz, dkk., in his petition within this case (Case No. 56/PUU-XIV/2016) raises two interests that should be carefully considered by the Court. On the one hand, with the implementation of regional autonomy in Indonesia, the Central Government has an interest in ensuring that Local Regulations do not conflict with higher legislation so that there may be legal harmony and the objectives found within the Constitution may be realised across all regions of Indonesia. In the past, this endeavour was regulated in Article 145 *juncto* Article 136 of Law No. 32/2004, which was the precursor to Article 251 of Law No. 23/2014 on Local Governments, which is the focus of the petition that this case responds to.
2. The Central Government's efforts in this endeavour are essentially not entirely flawed, because they also represent an effort to realise the constitutional mandate. However, on the other hand, it should also be remembered that the Constitution grants authority to the Local Governments to implement autonomy to the greatest possible extent insofar as the Constitution does not stipulate that a given matter is the responsibility of the Central Government (Article 18 Paragraph (5) of the Constitution). That is to say that this matter should be examined against fundamental principles found within the Constitution, in particular Article 1 Paragraph (3) which instantiates the principle laid out by the founders of the state in the Preamble to the Constitution, namely that Indonesia be a state bound by rule of law (*Rechtsstaat*) rather than sheer power (*machtstaat*). Constitutional principles that uphold the system of checks and balances should also be observed carefully, which is manifested in, amongst others, the guarantee of independent judicial power under Article 24 of the Constitution.
3. Derived from the guarantee of independent judicial power is an integral impact upon the guarantee of access for citizens to independent justice in their efforts to defend their rights. After all, the Constitution regulates the right to recognition, security, protection and legal certainty (Constitution Article 28D Paragraph (1)) which, under Rule of Law, is realised by regulating the implementation of authorities by such an independent judiciary (Constitution Article 1 Paragraph (3) *juncto* Article 24). Specifically, rights being defended may be any one of the basic human rights regulated in Chapter XA of the Constitution, in relation to Local Regulations reviewed and annulled by the Government. Indeed, the expert suggests that this, in particular, the Petitioner's union membership, is the basis for the Petitioner's legal standing in the collective defense of rights (Constitution Article 28C Paragraph (2))—in this case, concerning government policy in the field of employment. Referring to previous rulings of the Court, No. 006/PUU-III/2005 and No 010/PUU-III/2005, the Petitioner should be considered to fulfil the normative criteria for legal standing, namely that there has been an impairment of constitutional rights as a result of the bringing into force of the contested regulation—specifically, limitation of the right to legal protection—and that this impairment is both specific and at least potential in nature (because the Petitioner has an interest in the annulment of a Local Regulation that regulated employment policy), that there is a causal relationship between the contested regulation and the impairment of rights (Article 251 Paragraphs (1), (2), (7) and (8) of Law No. 23/2014 on Local Governments demonstrably withdraws the right to file objections or petitions with a judge) and that these rights would be restored with the granting of the Petition by the Court, which is demonstrated below.
4. Subsequently, the statement will discuss the constitutionality of Article 251 Paragraphs (1), (2), (7), and (8) of Law 23/2014 on Local Governments from two perspectives, as follows. First, it should be clarified, what regulations may be tested and annulled by the Central Government, as regulated by law. It must also be addressed whether Article 251 has

complied with the principle of checks and balances inherent in the Constitution, as set forth in Article 1 Paragraph (3) *juncto* Article 24 of the Constitution.

Local Regulations subject to Judicial Review and Annulment

5. Article 18 Paragraph (5) of the Constitution grants extensive autonomy to Local Governments, limited only insofar as the relevant matter is not already regulated as a responsibility of the Central Government by the Law. With this in mind, looking at the contents of repealed Law No. 32/2004 Article 10 on Local Governments, it is apparent that the Law did observe this principle mandated by the Constitution by recognising the authority of Local Governments to handle matters autonomously except where those matters were stipulated the responsibility of the Central Government, which are those that include (1) foreign affairs, (2) security, (3) defence, (4) justice, (5) national fiscal and monetary policy, and (6) religious affairs.
6. Article 145 *juncto* Article 136 of Law No. 32/2004 concerning Local Governments (repealed) also regulated the annulment of Local Regulations that conflict with public interest or higher legislation. The meaning and the limits of public interest here are debatable, but that of higher legislation has been determined by the division of responsibilities above. This means that the Central Government has the authority to determine, and by itself review and annul, governmental matters related to foreign affairs, security, defence, justice, national fiscal and monetary policy, and religious affairs in accordance with legislation issued previously by the Central Government. In theory, such an instrument can be realised through the implementation of a legislative hierarchy (such as Hans Kelsen's *Pure Theory of Law*, 1967). In this regard, the power of a given piece of legislation is determined by the hierarchy in place and, finally, regulated in Article 7 Law No. 12/2011 on Establishment of Laws and Regulations, such that the above position retains its legality. However, while the concept of public interest is a *Norma Terbuka* (open norm), its application as a standard for evaluating has seemingly not been questioned with regard to its legality.
7. However, in relation to the division of government affairs, Law No. 23/2014 on Local Government uses a different paradigm from its predecessor. In the new law introduces three new terms: 'absolute governmental affairs', 'concurrent governmental affairs', and 'general governmental affairs'. Absolute governmental affairs, as with the previous law, covers government affairs which are the sole authority of the Central Government, which include (1) foreign affairs, (2) security, (3) defence, (4) justice, (5) national fiscal and monetary policy, and (6) religious affairs. Also consistent with the previous law, the Central Government has the authority to conduct reviews and annulments of Governmental matters as listed above. However, unlike the previous law, Law No. 23/2014 provides in more detail those responsibilities delegated to the local governments (concurrent government affairs) and those that come under the authority of the president as the head of the government (general government affairs).
8. Thus, pursuant to Law No. 23/2014 on Local Governments, Local Regulations that may be reviewed and annulled are those that relate to the six areas listed above as Absolute Government Affairs, Concurrent Government Affairs listed in the appendix of said Law and those government affairs that have been made the responsibility of the president as the head of the government. In the expert's opinion, this provision is not necessarily unconstitutional because in Article 18 Paragraph (5), the Constitution delegates regulation to the Law, insofar

as it clearly stipulates the limits of the local government's authority. Such limitations, according to the expert, are fully within the Court's authority to review.

9. Regarding the legal standing of the Petitioners in this case, the Court should note that regulations that may be reviewed and annulled by the Central Government, including the policies which in its decision-making are not only the execution of the duties of the regional head but also the result of a consensus or political process at the regional level involving public participation. This includes the policies in the employment sector, in which the Petitioner in this case has the potential to become an interested party. Therefore, the question then is whether the Petitioner or an Indonesian citizen Indonesia living in the region—whoever that may be—who may be concerned with the cancellation of a Local Regulation by the Central Government, also obtains sufficient space to defend his right before an independent judge under Law 23/2014 Article 251. As the scope of authority of the Central Government becomes wider, the supervision of other branches of power over the use of this authority becomes increasingly narrow.

Mechanism for review a decision to annul a Local Regulation.

10. The instrument for revoking a Regulation is regulated in the aforementioned Article 251 Law No. 23/2104 on Local Governments (repealed). As with the repealed regulation, the law stipulates as a reason for revoking a law its inconsistency with higher legislation or public interest and added to these reasons conflict with morals.
    As the expert has already conveyed, the authority of executive view, at least in theory, has grounds for being upheld based on the hierarchy of legislation and/or on the principle of unity of executive power, such as the practice of Office of Information and Regulatory Affairs (OIRA) in the United States (see James F. Blumstein's explanation in '*Regulatory Review by The Executive Office of The President: An Overview and Policy Analysis of Current Issues*', *Duke Law Journal*, Volume 51, Number 3, December 2001).

11. Therefore, the existence of the executive review function may indeed not be completely erroneous, assuming, as a national legislator, the executive needs to (and must) carry out its mandate based on the hierarchy of regulations prevailing throughout the country. This may be necessary to ensure good governance, to ensure legal certainty and equal standing before the law for citizens, or, as expressed by the Central Government, to ensure a conducive business climate. In with reference to the practices of OIRA in the United States, such instruments can also be used as a means to harmonize and align government planning and budgeting functions.

12. Nevertheless, regarding Article 251 of Law No. 23/2014, there are two important points that the Court must examine closely. First, the decision to annul Local Regulations is evidently not based solely on conflict with higher legislation but also considers public interest and morals. This provision introduces a *norma terbuka* that is in practice related not only to government administration and budgeting but also to the evaluation of unwritten norms, which provides a lot of room for discretion. Compared with OIRA, there are a number of foundational differences that distinguish the implementation of Executive Review in Indonesia from that in the US, namely that there is no explanation regarding signification (OIRA reviews only certain regulations), accountability (OIRA applies a criteria or methodology that make it accountable) and transparency (transparency is built into the aforementioned control systems). As such, if the Indonesian Central Government is to use the practice in the US as a reference for creating legal policy, it should be noted that this is not quite comparing apples to apples. Secondly, as explained, the annulment of regulations

at the regional level by the Central Government has the potential to not only cause disputes over authority between the Central and Local Governments but also may infringe upon the rights of citizens in the region wherein something that has been, through a participatory process, entered into legislation has then been removed unilaterally.

13. Therefore, insofar as possible and as the Court is aware, the fundamental difference between Law No. 23/2014 Article 251 and Law No. 32/2004 Article 145 is in the mechanism provided for objections to the annulment of a Local Regulation. While Paragraph (5) of the latter provides that objections may be filed with the Supreme Court, Paragraphs (7) and (8) of the former stipulates that such objections must be filed instead with the President or with a Minister who represents the Central Government. This difference clearly undermines the guarantee of an independent judiciary as the objective and neutral judge and in turn its legitimacy under Rule of Law to state the prevailing legal provisions (*rechtsprekende macht*) rather than the President or Minister who should in fact be responsible for implementing those provisions (*uitvoerende macht*). In its implementation of the law, the executive body can do so based only on its own interpretation, which has the potential of leading to arbitrary action.

14. As stated at the beginning of this statement, the interests of the Central Government in carrying out the constitutional mandate by implementing control mechanisms and annulling Local Regulations in the name of common prosperity is not necessarily contrary to the Constitution. However, it must be remembered that any actions taken must be considered with regard to their validity. In a situation where provisions of the law are subject to varied interpretation or have the potential to cause disputes over authority or to infringe upon the rights of citizens, the role of the judiciary as mediator and sayer of the final word is most necessary. As outlined by leading international legal expert Hugo Grotius, "*Ubi iudicia deficiunt incipit bellum*" or "where justice fails, war begins". In a mature environment, amidst the efforts of the Government to increase public trust in the state bodies, the consequences of regulatory control by the executive without a system of checks and balances from the judiciary are contrary to such efforts.

15. Thus, the Court must heed the Constitution, in particular, Article 1 Paragraph (3), Article 24 and Article 24A. As referred to previously, the separation of authorities between the Central and Local Governments mandated in Article 18 Paragraph (5) of the Constitution may be regulated by the Law. However, such regulation need not conflict with the principle of legal supremacy (Article 1 Paragraph (3) of the Constitution) whereby law and justice are upheld by an independent judiciary (Article 24 of the Constitution). Executive Review, as regulated in Article 251 of Law 23/2014, especially with regard to the mechanism for objections found in Paragraphs (7) and (8), clearly closes the possibility of settling disputes before a judge and as such contradicts the Constitution. The expert asserts that, while there is a value to the Central Government's control over Local Regulations, he finds no valid reason for revoking the authority of judicial review by judge of the annulment of Local Regulations. Similarly, no support is found in the relevant academic works. Furthermore, the *a quo* provision also clearly reduces the effectiveness of Article 24A of the Constitution, because it withdraws the authority for the Supreme Court to review the annulment of legislation against the Law (as further regulated in Article 31A of Law No. 3/2009 on Amendment to Law No. 14/1985 on the Supreme Court) whether from the perspective of substance or process. This, even though the implementation of Judicial Review as described would not infringe on the authority of the Central Government to conduct Executive Review as a part

of its control over Local Regulations. In fact, the government's authority fulfils the principle of checks and balances mandated by the Constitution. Moreover, although it may not be directly related to the Petitioner in this case, the conflict of authority arising between the Central Government and the Local Government regarding the distribution of governmental affairs by the Law shall also not reduce the authority of the Constitutional Court as the interpreter of the Constitution, according to Article 24C of the 1945 Constitution.

16. In closing, the Court must consider the possible consequences of annulling Article 251 Paragraphs (7) and (8), which the expert has called unconstitutional. In the expert's opinion, the review function found therein should be retained in order that there be a mechanism in place to uphold the principle of checks and balances, implemented by the judiciary. However, in accordance with Constitutional norms, objections or petitions for review should be able to be brought before a judge by the interested parties. It might not be the right time to discuss in detail here the actual form the annulment should take based on administrative law theory. Nevertheless, when considering the practical effects, the Expert holds that annulment should be equal to with objects of material review by the Supreme Court, as regulated in Article 31A of Law 3/2009 on the Second Amendment to Law 14/1985 on the Supreme Court. Furthermore, as is generally the case in judicial review, the objection should not only be allowed from the Local Government, but by all parties interested in the annulment.
17. However, this applies also to the opposing scenario, where interested parties are also permitted by the Law to petition Supreme Court for judicial review of local regulations that contradict higher legislation with a view to having those regulations annulled. As a representative of a union with significant interest in clarity and certainty in the formulation of regional labour policies, and in the defense of his rights (in the process of drafting relevant local regulations) before a judge as guaranteed by Article 24 juncto Article 24A of the 1945 Constitution, the Petitioner has therefore had his constitutional rights violated in a manner that is specific and can at least be reasonably called potential, due to the coming into effect of Article 251 paragraph (7) and paragraph (8) of Law 23/2014 on Local Government.
18. Based on these opinions of the Expert, we can conclude that Article 251 Paragraphs (7) and (8) of Law No. 23/2014 on Local Governments contradicts Article 1 Paragraph (3) *juncto* Article 24 *juncto* Article 24A of the Constitutional. These provisions can still be considered constitutional, as with the previous Law, as long as the mechanism regulated therein for filing objections to annulled regulations is interpreted as meaning that objections may be filed by interested parties to the Supreme Court, as is appropriate in judicial review cases.

[2.3] Considering that the President gave a statement in a hearing on 6 September 2016 and submitted a written statement to the Registrar's Office on 27 October 2016 to the following effect:

I. Petition

1. Whereas the Petitioners are of the opinion that the authority of Executive Review, which may result in the annulment of City/District Regulations, Mayoral/Regent Regulations, Provincial Regulations or Gubernatorial Regulations are local authorities that risk being arbitrarily undermined by the Central Government, which appears to advocate recentralisation;
2. Whereas Executive Review as regulated in Article 251 Paragraph (1) and Paragraph (2) of Law No. 23/2014 is the authority of the Supreme Court as the state's highest court of general, religious,

military and state administrative matters, as stipulated in Article 24A Paragraph (1) of the Constitution, and as such, Article 251 Paragraphs (1) and (2) of Law No. 23/2014 contradict Article 24A Paragraph (1) of the Constitution;

3. Whereas, based on these claims, according to the Petitioners, Article 251 Paragraphs (1) and (2) of Law No. 23/2014 must be declared conditionally unconstitutional insofar as they are not interpreted as meaning, "the Governor or Minister may file a request for the annulment of City/District Regulations and Mayoral/Regent Regulations or Provincial Regulations or Gubernatorial Regulations that contradict higher legislation, public interest and/or morals to the Supreme Court within 14 days of the regulation being brought into force";
4. Whereas Law No. 23/2014 is recognised expressly by only Local Government officials at the level of province or City/District as the only legal subjects who may object to the annulment of a City/District Regulation by a minister or governor or of a Provincial Regulation by a minister;
5. Whereas Local Regulations are a general regulation outside of the category of state administrative decrees, such that the annulment of Local Regulations as referred to in Article 251 Paragraph (7) and Paragraph (8) of Law No. 23/2014 is part of a hierarchy of legislation as stipulated in Article 8 Paragraph (1) of Law No. 12/2011 on the Establishment of Laws and Regulations; Therefore, the annulment by a Governor or Minister of a Local Regulation that is closely related to public life and that the public believes should be sustained may be subject to petition to the Supreme Court for Judicial Review;
6. Whereas, according to the Petitioners, should Article 251 Paragraphs (1) and (2) of Law No. 23/2104 be declared conditionally unconstitutional, then, in the name of equal standing before the Law, Paragraphs (7) and (8) of the same Article must also be declared contrary to Article 28C Paragraph (2) of the Constitution and thus cease to possess any legal force.

II. Petitioners' Legal Standing

An explanation of the Petitioners' legal standing shall be given in further detail in the Government Statement, which will be delivered in a later hearing or via the Registrar's Office. However, the Government requests that the Justices of the Court examine whether the Petitioners have legal standing or not, in accordance with Article 51 Paragraph (1) of Law No. 24/2003 on the Constitutional Court, later amended by Law No. 8/2011 or based on previous Court Rulings (since Court Ruling No. 006/PUU-III/2005 and Court Ruling No. 11/PUU-V/2007).

III. Government Statement Regarding the Petition

Regarding the Petition, the Government gives the following statement:

1. The Government first refers to Article 4 Paragraph (1) of the Constitution, "the President of the Republic of Indonesia shall possess of government according to the Constitution ", which contains the philosophy that the possessor of the power of the Government in the Unitary State of the Republic of Indonesia is the President, including the function of evaluation, clarification, supervision of regulations issued by the Local Government. Thus, we can conclude analogically that regulations issued by the Local Government / Regional Head must be in line with regulations issued by the Government / President in order to realise a positive nation and state and achieve the ideals set forth in the Preamble to the Constitution. It must be understood that the Central Government and the Local Government are a unified whole, such that everything within is a unity of commitment that must be understood and carried out with full discretion by its officials.
2. Whereas Article 18 Paragraph (5) of the Constitution has granted to the Government and the DPR the authority, in the form of open legal policy, to regulate and implement autonomy as extensively as

possible, as follows:
"*The Local Government shall implement regional autonomy as extensively as possible, except regarding matters that have been regulated by Law to be matters of the Central Government.*"
Whereas, the intent of the *a quo* article is to bring about a hierarchical control between the Central and/or Provincial Government over the City Government, which is an essential realisation of Republic of Indonesia. The City Government is a part of the Provincial Government and of the Central Government.

3. Whereas, the annulment of regulations by the Governer is not arbitrary but is conditional, namely the annulment of City Regulations that contradict higher legislation, public interest and/or morals.

4. Whereas, following the annulment of a regulation by a governor, the Mayor has the opportunity to file an objection with the Minister of Home Affairs as regulated in Article 251 Paragraph (8) of Law No. 23/2014.

5. Monitoring the freedom and autonomy cannot be viewed as control or oversight that tends towards excessive centralisation. On the contrary, this supervision is a safeguard against excessive decentralisation. There can be no autonomy without supervision, and thus it is with the Central Government's supervision of Local Governments.

6. Through the transference and/or delegation and addition of governmental affairs by the Government or the upper-level Local Government, they become the affairs of autonomous regions, and those government affairs which have been transferred/delegated to the region grant the freedom to the Local Government to form legislation at the local level. Furthermore, how should the further control of local regulations be supervised, including the limitation of authority, duty and responsibility of the regions to regulate certain governmental affairs?

7. Supervision is very important, because it is one method of ensuring the implementation of government, of maintaining harmony between the governance of regions with the Government, and of ensuring smooth governance in a valuable and effective manner within a unitary state. Supervision over the authority of local government is based on, amongst others, the supervision of local regulations.

8. Article 251 Paragraphs (1) and (2) of Law 23/2014 does not contradict Article 24A Paragraph (1) of the Constitution, which reads, "*The Supreme Court shall possess the authority to try cases at the cassation level, review legislation below the level of the Law agains higher legislation and shall possess other authorities granted by the law."* This provision regulates the authorities of the Supreme Court as one of the implementors of judicial powers and does not specifically stipulate the limitations of other agencies to supervise the local legislature through the annulment of City/District Regulations, Mayoral/Regent Regulations, Provincial Regulations or Gubernatorial Regulations based on different benchmarks than those used by the Supreme Court. This is to say, in reviewing and annulling City/District Regulations, Mayoral/Regent Regulations, Provincial Regulations or Gubernatorial Regulations, the Governor or Minister does not only review the contested regulation against higher legislation but also against public interest and/or morals.

9. Article 251 Paragraphs (1) and (2) of the Local Governments Law also does not undermine or revoke the authority of the Supreme Court to review Local Regulations or Regional Head Regulations wherever a contingent of the public or citizenry petitions for such review or objects to the establishment of such a regulation. This is proven in the 2015 Annual Report of the Supreme Court, wherein it is shown that throughout that year the Supreme Court received 72 petitions for judicial review of lower legislation against higher, divided across the following categories: 19 petitions concerning Government Regulations; 13 concerning Ministerial Decrees; 12 concerning KPU

Decrees; and 10 concerning Local Regulations with the remainder, fewer than 10, concerning Presidential Decrees, Gubernatorial Regulations, Mayoral Regulations and Qanun Aceh (laws issued in Aceh, where Islamic Law is implemented).

10. In accordance with Article 18 Paragraph (6) of the Constitution, Local Governments are granted the authority to establish Local Regulations and other legislation as a function of autonomy and concurrent government. In order that these authorities be used in the best and most responsible manner possible, supervision of local authorities in their establishment of Local Regulations and Regional Head Regulations is required. Such supervision is necessary to ensure harmony between legislation at the local and national levels as well as to ensure that no regulations violate the basic principles of statehood such as the protection of human rights, public interest and morality.
11. There is a theoretical distinction between internal and external control. Internal control in this case refers to control implemented by a body that organisationally/structurally exists within the Government itself. This form of control can be classified as built-in control. Meanwhile, external control is that which is conducted indirectly through the judicature, called judiciary control, should a dispute or case arise involving the Government.
12. In the context of control over the establishment of legislation, the concepts of internal and external control are manifested through Executive Review and Judicial Review respectively, where Executive Review is a form of control over legislation exercised by the Government, which represents the Executive Power, while Judicial Review is a form of control over legislation exercised by the Constitutional Court (for the Law) and the Supreme Court (for legislations below the Law), which together represent the Judicial Power, both of which forms of control may result in the annulment of legislation.
13. In the context of control over Local Regulations and Regional Head Regulations, Judicial Review (in this case by the Supreme Court) is regulated in Article 24A Paragraph (1) of the Constitution, whereas Executive Review is not regulated in the Constitution, such that Article 251 Paragraphs (1) and (2) of Law 23/2014, which regulates control over Local Regulations and Regional Head Regulations by the Minister and the Governor as representative of the Central Government can be considered filling a legal void within the Constitution with regard to the lack of regulation therein of Executive Review.
14. One limitation of the Supreme Court's authority of Judicial Review is that reviews carried out by the Supreme Court are passive in nature, meaning that the Supreme Court may not actively, on its own initiative, review a local or regional head regulation without a petition from an interested contingent of the public or citizenry (*vide* Supreme Court Regulation No. 01/2011 on Judicial Review). Therefore, control over Local Regulations and Regional Head Regulations by the Minister or Governor as a representative of the Central Government are intended to resolve any failings in the control implemented by the Supreme Court, namely, Judicial Review.
15. For comparison, in 2015, the Supreme Court received only 10 petitions concerning Local Regulations, whereas there are a total of 542 autonomous regions, comprising 34 provinces, 415 Districts (*kabupaten*) and 93 Cities (*kota*). Clearly, there would be a great many Local Regulations and Regional Head Regulations overlooked were the Government not granted the authority of Executive Review. Of course, there is no guarantee that regulations that are not objected to therefore have no problems contained within. As evidence of this notion, the majority of Local Regulations and Regional Head Regulations that are in fact problematic are not submitted for review by the Supreme Court, as was shown by an investigation carried out by the National Commission on Human

Rights in 2011, which found that there were approximately 3,200 Local Regulations that contained violations of human rights, ignored the rights of minorities and enclosed discriminatory content.

16. Article 251 Paragraph (7) and Paragraph (8) of Law 23/2014 has no direct relationship with Article 27 Paragraph (1) of the Constitution, which is intended to ensure the principle of equality before the Law and to oblige all citizens to respect the Law with no exceptions. This, of course, means that not only ordinary citizens but government officials must also respect the Law.
17. If we are to draw even an indirect relationship between Article 251 Paragraphs (7) and (8) of the Local Governments Law and Article 27 Paragraph (1) of the Constitution, it seems in fact that these provisions of the former are intended to realise the objectives of the latter, specifically the concept of quality before the Law, which ensures that the weaker members of the citizenry have the same standing and treatment before the law as the stronger members. With this understanding of the purpose of Article 27 Paragraph (1) of the 1945 Constitution, the Provincial Government in relation to the annulment of the Provincial Regulations by the Minister of Home Affairs and the Governor in relation to the annulment of the Governor's Regulation by the Minister of Home Affairs has the opportunity, granted by Article 251 paragraph (7) Law 23/2014, to file an objection to the annulment with the President, and, similarly, officials of the City/District in relation to the annulment of the City/District Regulations by the Governor and the Regent/Mayor in relation to the annulment of the Regent/Mayoral Regulations by the Governor have the opportunity, granted by Article 251 paragraph (8) 23/2014, to file an objection to the annulment with the Minister of Home Affairs, Thus these provisions of Law 23/2014 should be interpreted in the framework of guaranteeing equal standing and treatment before the law for the weak and the strong.
18. Article 251 Paragraph (7) and Paragraph (8) of Law 23/2014 embody the concept of an administrative effort conducted by the superior of the official who issued a state administrative decree or any agency that issues such decrees. Such administrative appeals grant a party who feels harmed by a state administrative decree made by a state administrative or government official the legal protection to file an objection with the superior of the official who issued the contested decree.
19. Administrative efforts internal to the government are related to the system of functional control, implemented by the superior official towards the subordinate, either in an oppressive or repressive manner. An example of a repressive act of control is the annulment or revoking of a state administrative decree issued by the subordinate.
20. Article 251 Paragraph (7) and Paragraph (8) of the Local Governments Law realise the ability to settle disputes through administrative appeal filed with the superior of an official or other state administrative agency/body that has issued a decree to review, based on its authority to do so, the contested state administrative decree. In particular, under Paragraph (7) of Article 251 Law 23/2014, the President is the superior to the Minister for Home Affairs, while under Paragraph (8) of the same, the Minister for Home Affairs, representing the President, is the superior to the Governor as a representative of the Central Government.
21. The Government further states that Article 251 Paragraphs (7) and (8) of the *a quo* Law can be seen as an attempt to simplify the legal process for filing objections to the annulment of Local or Regional Head Regulations by the Minister of Home Affairs or Governor representing the Central Government. Any continuation of the petitioning process from the superior of the issuing official to the Supreme Court would only extend the bureaucracy and suspend the realisation of legal certainty. Meanwhile, article 28D Paragraph (1) of the Constitution already assures legal certainty: "*Every person shall have the right to just legal recognition, guarantee, protection and certainty and to equal standing before the Law.*"

22. The filing of an objection to the annulment of a Local Regulation or Regional Head Regulation with the Supreme Court as regulated in Article 145 Paragraph (3) of Law 32/2004 on Local Governments (prior to the amendment under Law 23/2014), which states: *Should the province, City or district refuse the annulment of a Local Regulation as referred to in Article (3) without a valid legal reason, the Regional Head may file an objection with the Supreme Court.*" There Paragraph contains some weakness, in particular, that it does not provide any limit on the time allowed for the Supreme Court to examine and decide upon the case. As a result, there is the potential for legal uncertainty over the status of a particular Local Regulation of Regional Head Regulation that has been annulled, to which an objection has been filed with the Supreme Court, but no Decision has been passed down.

23. The Government recognises that the establishment of Laws and Regulations is the authority of the legislature under an open legal policy. Nevertheless, regarding the review of Law 23/2014, in principle, the Government is of the opinion that the *a quo* Law should be an legal instrument capable realising the Government administration in line with AAUPB, the welfare of the community through the improvement of services, empowerment, community participation, and enhancement of regional competitiveness by taking into account the principles of democracy, equity, justice and uniqueness.

24. This notion is consistent with Article 4 Paragraph (1) of the Constitution, which states, "*The President of the Republic of Indonesia shall hold the power of government in accordance with the Constitution*", which confirms that the absolute responsibility of Government administration, including within it Local Government administration, lies with the Central Government, in this case, the President, and thus, the responsibility for annulling Local Regulations lies with the President.
    It would be inefficient for the President to annul Local Regulations directly. The President, therefore, delegates the authority to annul Provincial Regulation to the Minister as an assistant to the President responsible for Regional Autonomy. Similarly, the authority to annul District/City Regulations is delegated to the governor as the Central Government's Representative in the Region.

25. In order to avoid arbitrary annulments of Local Regulations, the Local Governments at the Province level may file objections to the Minister's annulment of a Provincial Regulation. Meanwhile the District/City Government may file objections to annulments of District/City Regulations by the Governor as the representative of the Central Government with the Minister. Decisions made by the President and Minister with regard to administration of the Local Government are final.

26. Thus, given that the responsibility for the administration of government powers lies with the President, decisions on government policy, including the regulation of the annulment of local regulations, are legal policy of the Government and such policies cannot be reviewed other than arbitrarily (*willekeur*), surpassing the authority of the legislature (*detournement de pouvoir*).

27. Whereas, in principle, every regulation issued by the state exists solely for the achieve of a better public life in order to sustain the continuity of the Government and to promote progress in all aspects of life in an effort to realise the nation's ideals as mandated in the Constitution, so it is with the *a quo* regulation under review.

28. Whereas the Government greatly values the efforts made by the public in contributing to and participating in the establishment of an understanding of state administration. These contributions are a valuable reference for the Government in particular and for the Indonesian people in general. Pursuant to the thoughts developed through this process, the Government is hopeful that the dialogue between the Government and the people may continue with the common goal of developing the state and the nation for a brighter future for Indonesia and improving the governance of the state with a view to contributing to the realisation of the ideals of the Indonesian nation as written in the Fourth Paragraph of the Constitution.

IV. Petitum

Pursuant to the above statement, the Government requests the Honourable Justices of the Constitutional Court, who shall examine, hear and decide upon the petition to review Law No. 23/2014 on Local Governments against the Constitution, to give the following Decision:

1. To accept the statement from the Government in full;
2. To reject the Petition in full or at least to declare the Petition inadmissible (*niet onvankelijke verklaard*);
3. To declare Article 251 Paragraphs (1), (2), (7) and (8) of Law No. 23/2014 on Local Governments not contrary the Constitution.

However, should the Honourable Justices arrive at a different conclusion, the Government requests only that they hand down a Decision that is judicious and just (*ex aequo et bono*).

[2.4] Considering, whereas, the Court summons three experts to deliver their statements under oath in hearings on 5 October 2016 and 18 October 2016 as follows, which were as follows:

1. Prof. Dr. Ni'matul Huda, S.H., M.Hum

1999 was an important turning point in the history of decentralisation in Indonesia, as it marked the point when the Central Government finally decided to decentralise its authority, which was realised on 7 May 1999 with the establishment of Law Number 22/1999 on Regional Administrations and further on 19 May 1999 with the establishment of Law Number 25/1999 on Financial Balance between the Central and Local Government.

Law 22/1999 on Local Government substantively altered the paradigm of Central and Local Relations, moving from a centralised approach under Law Number 5/1974 on Regional Governance towards a decentralised system of government. Law 22/1999 stipulates that all government affairs shall be the affairs of the Regional Government, except authorities in the areas of: a) foreign policy; b) security and defence; c) justice; d) monetary and fiscal; e) religion, as well as authorities in other fields. Law 22/1999 reduces the scope of de-concentration, which is limited to the provincial government. District and City Governments are freed from strong interventions from the Central Government by the implementation of concurrent functions of Head of the Local Self-government and the Field Administrative Head. The Regent and the Mayor shall be the Head of the Autonomous Region only. Meanwhile, the position of the Head of Region at the district and the city (formerly the City) is no longer known.

Regents and Mayors are elected directly by the District/City DPRD without involving the Provincial and Central Governments. Therefore, the Regent/Mayor must be responsible to and may be dismissed by the DPRD before their term of office is over. Meanwhile, the Central Government (President) is only given the power to 'temporarily suspend' a Regent/Mayor if the incumbent is perceived to endanger national integration.

Law 22/1999 provides a fundamental change in the design of relations policy between the Central and Local Governments with a significant amount of decentralisation of authorities to District and City Governments. The Government provides an enormous opportunity for the regions to regulate their territories in accordance with the potential and aspirations that develop locally, as long as such regulation does not infringe upon those matters that are still the authority of the Central Government. As a guideline at the local level, Local Governments that have the capacity to implement regional autonomy are allowed to regulate their regional affairs in the form of Local Regulations (Perda).

Autonomous regions as self-governing units possessing attributive powers—moreover as public legal entities (*publiek rechspersoon*)—are authorised to make rules in the name of self-maintenance. This

authority lies with the Local Government (state administrative officials) and the DPRD as the regional legislature. The Local Regulation is the implementation of the legislative function of the DPRD.

The scope of the authority to form Local Regulations is to regulate domestic affairs in the field of autonomy and support functions and the elaboration of higher legislation. In the field of autonomy, Local Regulations may regulate all Government affairs and public interests not regulated by the Central Government.

Law 22/1999 regulates that Local Regulations be established by the Regional Head together with the DPRD. The draft of a Local Regulation that has been mutually agreed by both parties may immediately come into effect without having to wait for approval from the Governor on behalf of the Minister of Home Affairs for District/City Regulations or the Minister of Home Affairs on behalf of the President for Provincial Regulations. Law 22/1999 abolished the authority of the Central Government to conduct preventive supervision.

On August 18 2000, the MPR through its Annual Session agreed to make a second amendment to the 1945 Constitution by amending and/or supplementing, among others, Chapter VI on Local Government, Article 18, Article 18A and Article 18B. The provisions of Article 18 are amended and supplemented to read as follows:

(1) The Unitary State of the Republic of Indonesia shall be divided into Provinces and those provinces shall be divided into Districts (kabupaten) and Cities (kota), each of which shall have regional authorities which shall be regulated by law.

(2) The regional authorities of the Provinces, Districts and Municipalities shall administer and manage their own affairs according to the principles of regional autonomy and the duty of assistance (tugas pembantuan).

(3) The authorities of the provinces, Districts and municipalities shall include for each a Regional People's House of Representatives (DPRD) whose members shall be elected through general elections.

(4) Governors, Regents (bupati) and Mayors (walikota), respectively as head of regional government of the provinces, Districts and municipalities, shall be elected democratically.

(5) The regional authorities shall exercise wide-ranging autonomy, except in matters specified by law to be the affairs of the central government.

(6) The regional authorities shall have the authority to adopt regional regulations and other regulations to implement autonomy and the duty of assistance.

(7) The structure and administrative mechanisms of regional authorities shall be regulated by law.

These amended paragraphs constitute both a conceptual and legal paradigm shift and mark a new direction politically for Local Governments, which includes the following principles:

(i) *The regions shall regulate and handle matters of local government in accordance with autonomy and duty of assistance (Article 18 Paragraph (2)).* This provision stipulates that the Local Government is an autonomous government within the state of Indonesia. In Local Governments, there is only autonomous government, including duty of assistance. This new principle is more consistent with the idea of Local Governments as self-governing units within a democratic region. There is no longer any involvement of the Central Government in the Local Government. The Governor, Regent and Mayor are the sole administrators of regional autonomy.

(ii) *Autonomy shall be implemented as extensively as possible (Article 18 Paragraph (5)).* As confirmation of the agreement introduced in the Constitution and to prevent the enfeeblement of

autonomy in favour of centralisation, it is appropriate that Article 18 asserts the implementation of wide-ranging autonomy. The regions possess the right to regulate and handle matters and functions that are not otherwise regulated by the Law as belonging to the authorities of the Central Government.

(iii) *The representative bodies in the regions shall be elected directly through general election (Article 18 Paragraph (3)).* This has been realised through the 2004 general election of DPRD members, wherein the Governors, Regents and Mayors as Heads of their respective regions were democratically elected.

(iv) The regions shall regulate matters of regional government through Local Regulations. The Local Government possesses the right to establish Local Regulations and other legislation to implement its autonomy and duties of assistance. This provides firm grounds for local governments to regulate and handle local matters through the establishment of Local Regulations.

Following the amendment of Law 22/199 by Law 32/2004, the distribution of government affairs between the Central and Local Governments was reaffirmed as before, that the local governments shall administer all government affairs excepting those that are determined by the Law to be the authority of the Central Government, namely, Security, Defence, Justice, Monetary and Fiscal and Religious affairs.

After ten years of implementation, Law 32/2004 was repealed and replaced with Law 23/2014 on Local Governments on 30 September 2014. Law 23/2014 Article 4 stipulates the following:

(1) The Province, as well as its status as a region (*daerah*), is also an administrative region (*wilayah administratif*) and the designated region of operations of the Governor in administrating government affairs in the Province.

(2) The City/District, as well as its status as a region, is also an administrative region and the designated region of operations of the Mayor/Regent in administrating government affairs in the City/District.

The regulation of Districts and Cities as both autonomous regions and administrative regions strengthens the views of and criticism from the community that this Law represents a setback to the centralistic era of Law 5/1974 (*orde baru*). Based on past experience, the head of the *wilayah* tends to predominate over the head of the *daerah*. The implementation of regional autonomy through decentralisation may be overridden by *deconcentration*.

Within the unitary state the responsibility for the execution of government duties remains essentially in the hands of the Central Government. However, since the Indonesian system of government embraces the principle of a decentralised unitary state, there are certain tasks which are administered on their own, resulting in a reciprocity and engendering a relationship of authority and oversight.

The Central Government shall provide guidance and supervision over the administration of government affairs by the regions. The President is ultimately responsible for the implementation of Government Affairs carried out by the Central and Regional Governments. Guidance and supervision by the Central Government over the implementation of government affairs by the Province is conducted by Ministers / heads of non-ministerial government agencies. Guidance and supervision by the central government over the implementation of government affairs by Districts/Cities is carried out by the Governor as the representative of the Central Government. Guidance and supervision by the Central Government coordinated by the Minister.

Supervision over the implementation of local government is a process of activities intended to ensure that Local Governments run in accordance with plans and prevailing legislation. Supervision over the implementation of local government is implemented by the Government, which includes the following:

a. Supervision of the implementation of government affairs by the regions;

b. Supervision of Local Regulations and Regional Head Regulations.

The Government has the authority to conduct guidance and supervision of the Regions. This authority allows the Government to ensure that Local Regulations and decrees made by Regional Heads are consistent with public interest, higher legislation and/or other legislation.

As stated in Article 18 Paragraph (6) of the Constitution, as the product of the representatives of the people together with the government, Local Regulations—as with the Law—may be referred to as legislative acts, while other forms of regulation are executive acts. The difference between a regional regulation and a Law is only the territorial scope, namely, whether it applies nationally or locally. The law applies nationally, whereas local regulations apply only within the territory of the Local Government concerned, ie within the territory of the relevant province, district, or city. Therefore, the local regulation is not "local law" or "locale wet", but local legislation (*Undang-undang bersifat local*).

The Central Government's authority to annul Local Regulations and Regional Head Decrees is better known as repressive supervision. Supervision under Law No. 22/1999 emphasises repressive supervision in order to give more freedom to the Autonomous Region in making decisions and to grant the role to DPRD to realise its function as a supervisory body to the implementation of regional autonomy. Therefore, the regulations set forth by the Autonomous Region do not require prior authorisation by the competent authorities.

The Central Government's oversight of the regions' legal products was revised in Law No. 32/2004, which re-established preventive controls, authorising the Minister of Home Affairs to evaluate Local Regulations and Regional Head Regulations on APBD, APBD Changes and Accountability for APBD Implementation. In addition, there is also the authority to clarify all local regulations except APBD, APBD Changes and Accountability for APBD Implementation. Local Regulations must be submitted to the Minister of Home Affairs for provinces and Governors for districts to obtain clarification. Local Regulations that contradict public interest and/or higher legislation may be annulled in accordance with applicable mechanisms.

Similarly, as stipulated in Law No. 23/2014, the authority of preventive monitoring in the form of evaluation of draft Local Regulations was granted to the Minister to allow the evaluation of Provincial Draft Regulations governing RPJPD, RPJMD, APBD, APBD changes, accountability of APBD implementation, regional taxes, regional fees and regional spatial planning before being established by the Governor. This Law also authorises the Governor as the representative of the Central Government to evaluate draft District/City Regulations governing RPJPD, RPJMD, APBD, APBD changes, accountability of APBD implementation, regional taxes, regional retribution and regional spatial planning prior to being established by the Regent/Mayor.

Law No. 23/2014 confirms that Local Regulations and Regional Head Regulations are prohibited from contradicting higher legislation, public interest, and/or morals. Provincial Regulations and Gubernatorial Regulations that contradict higher legislation, public interest and/or morals shall be annulled by the Minister. District/City Regulations and Regent/Mayoral Regulations that contradict higher legislation, public interest, and/or morals shall be annulled by the Governor as the representative of the Central Government. The annulment of Provincial Regulations and Gubernatorial Regulations shall be decided by the Minister and the annulment of the District/City Regulations and Regent/Mayoral Regulations shall be decided by the Governor as the representative of the Central Government. The mechanism for review by the Minister of Home Affairs or the Governor is Executive Review.

According to Law No. 22/1999, Law No. 32/2004 and Law No 23/2014, Local Regulations that have been enacted at the regional level can be annulled, at which point they become invalid immediately on

the same date. The original term used, (*membatalkan*, annul) is inadequate; the more appropriate term would be *batal Demi hukum* (null and void), with the meaning that invalidation takes effect retroactively from the regulation's enactment, thus also invalidating all legal consequences arising prior to the cancellation. In this matter, supervision is conducted through two channels, namely executive supervision by the Central Government and judiciary supervision by the Supreme Court.

The drafting of local regulations must fulfil three aspects, namely juridical, philosophical, and sociological. Often the drafting of Local Regulations ignores the sociological aspect, namely the laws prevailing in society, and because they overlook the potential and characteristics of the community, the implementation of local regulations is often disrupted. Furthermore, problematic Local Regulations are, in general, those contrary to higher legislation or those that cause an overlap between Central and Local policy or between tax and collection. Frequently, officials in the regions lack deep understanding of the law-making process and have a tendency to implement laws with short-term benefits without sufficiently considering the long-term consequences.

With many regulations being revoked by the Central Government on the grounds that they contradict public interest, higher legislation and/or morals, the Government should also take steps prior to the implementation of repressive supervision in providing guidance to the regions, particularly in the case of regulations in the draft stage so that problematic draft Local Regulations can be immediately returned for revision, minimising the frequency of problematic regulations being established.

Since Local Regulations are a legislative product, problems arise concerning the authority for their review and annulment. Which institutions are authorised to annul Local Regulations? Should it be found that many of the Local Regulations established by these areas are contrary to higher legislation or central regulations, does the Central Government, represented by the Minister of Home Affairs/Governor, have the authority to annul the offending Local Regulation?

As a consequence of the separation of the executive, legislative and judicial powers in the Constitution, legislative products of the regions are likely to conflict with executive products at the central level. For example, if a Provincial Regulation or a District/City Regulation contradicts a Ministerial Regulation at the central level, then the court shall determine that the Local Regulation prevails within the territory of the region.

According to Bagir Banan, considering that Local Regulations (including *Peraturan Desa*, Village Regulations) are produced by an autonomous government with autonomous authorities, the review of such regulations against higher legislation may not be conducted purely on the basis of escalation but must also appeal to the authoritative environment. A Local Regulation that contradicts higher legislation (except the Constitution) cannot be automatically guaranteed wrong or invalid; it must first be confirmed that the higher legislation in question does not itself infringe upon the rights and obligations of the region as granted by the Constitution or the Local Governments Law.

Although the territories of the unitary state are not independents state units, the people in those areas still have sovereignty within their Provinces or Districts/Cities in addition to the sovereignty in the context of the Republic of Indonesia, based on the Constitution.

Therefore, legislative products in the Provinces or Districts/Cities in the form of Regional Regulations resulting from the collaboration of two institutions, namely the Regional Head and the Regional People's Legislative Council, both elected directly by the people through general elections and regional head elections, may not be annulled unilaterally by the Central Government.

The implementation of such mechanism relates to the rationale that Indonesia is a unitary state, and thus it is rational that the Central Government as the superior government should possess the authority to control the legal system within the realm of Local Government. However, it is irrational for the Central

Government to not be authorised to take action to regulate and control the establishment of local regulations that are not consistent with the original intent behind the very formation of the mechanism for local regulation by Provincial, District and City Governments throughout Indonesia. Insofar as it is in objective national interest, should not the Central Government be authorised to exercise control over and give guidance to Local Government units? It is with this rationale that the Central Government is authorised to annul Local Regulations by Presidential Regulation.

According to Law No. 12/2011 on the Establishment of Laws and Regulations, Local Regulations are clearly referred to as one form of official legislation below the level of the Law within the hierarchy of norms. As long as a legal norm is set forth in the form of a regulation, as referred to in Law 12/2011, and it is below the level of the Law, then, as determined by Article 24A Paragraph (1) of the Constitution, it can be reviewed only by the Supreme Court, not by any other institution. Similarly, Law Number 12/2011 Article 9 Paragraph (2) affirms, "Legislation below the level of the Law claimed to contradict the Constitution shall be reviewed by the Supreme Court".

Because Local Regulations belong to that category of legislation below the level of the Law, it may certainly be interpreted that the Central Government should not be authorised by Law to assess and annul Local Regulations, as regulated in the Law on Local Governments. The authority to review Local Regulations, according to Article 24A Paragraph (1) of the Constitution, shall be the Supreme Court.

According to Laica Marzuki, it is a mistake to place Local Regulations at the bottom of the legislative hierarchy, below the Presidential Regulation. The *locale wet* is made as an implementation of the Law, *wet* or *Gesetz*. Local Regulations should not be annulled by the Central Government. Any regulation deviating from the law may at any time be brought to the Supreme Court, and at the time the Local Regulation deviating from the Law may be declared not legally binding by the Supreme Court.

Thus, the annulment of the Local Regulation by the Minister of Home Affairs or by the Governor as a representative of the Central Government, as stipulated in Article 251 of Law 23/2014, is contradictory to Article 24A Paragraph (1) of the Constitution.

In a system applying representative democracy and direct democracy to fill positions in the legislative and executive bodies, the role of political parties is very prominent. Thus, Laws and Local Regulations are both political products that reflect the conflict of interests between the legislative and executive powers, whether at the regional and central levels, and, as such, should not be examined or reviewed by another political institution. Review of Laws and Local Regulations must be done through the mechanism of "judicial review" by an objective and impartial judge as a third party.

According to Jimly Asshiddiqie, if we are consistent with our understanding of the Establishment of Laws and Regulations Law, then we necessarily must interpret the Local Regulation as included in the meaning of legislation below the Law as intended in Article 24A paragraph (1) of the Constitution. Moreover, regarding the definition of "primary legislation" versus "secondary legislation", whereby it can be said that "primary legislation" is the law, while Local Regulations are products of "secondary legislation", the Local Regulation is a form of "delegated legislation", an implementation of the Law (subordinate legislation). Therefore, the Local Regulation should be placed directly under the Law. With this understanding, the Local Regulation remains positioned below the Law and, as determined by Article 24A paragraph (1) of the Constitution, is included as an object of review within the authority of the Supreme Court.

From the perspective of a unitary state, (*eenheidsstaat*) it is logical to develop the notion that the superior government is authorised to exercise control over subordinate government units. This means that the Central Government, in the context of the Unitary State of the Republic of Indonesia, based on the Constitution, can certainly be said to have the authority to control the units of Provincial, District and

City Governments. Similarly, Provincial Governments can also be given a certain amount of authority to control the District/City Governments in the field of arrangement. Control by the superior government includes the control over legal norms established by subordinate governments through what is known as the "general norm control mechanism". This mechanism of norm control is commonly referred to as "abstract review" and can be conducted by the executive, the legislative, or by the courts. If the abstract review is carried out by the executive, for example, review of Provincial Regulations by the Central Government, then such mechanism is called Executive review. If the abstract review is conducted by the DPRD and the Local Government that establishes local regulations, then such a mechanism is called Legislative Review and may result in amendment of a regulation. Abstract Reviews conducted by the court are commonly referred to as Judicial Review.

In addition to the Abstract Review, norm control can also be applied through Abstract Preview, i.e. controls performed before the relevant legal norms are binding to the public. For example a draft of a local regulation passed by parliament may be reviewed and even rejected by the superior government before it is properly enacted. Such a mechanism can be called Executive Abstract Preview by the superior government.

The authority to conduct an executive abstract preview is what should be granted to the superior government rather than a mechanism for reviewing Local Regulations that are already binding on the public. If a regulation established by executive and legislative bodies jointly elected directly by the people through elections may be abrogated only by top-level executive officials, the the "principle of a unitary state" is being used as a pretext to enfeeble the aspirations of the people through actions based solely on political considerations. Therefore, it is better that Local Regulations as legislative products be only previewed by the superior government while its is still a draft local regulation and is not yet binding on the public. If the Local Regulation is already legally binding, then it should be the judiciary, which is in no way involved in the process of producing Local Regulations, that acts as the relevant third party.

Which courts should be authorised to conduct judicial review? The system adopted and developed according to the Constitution is a "centralised model of judicial review", not a "decentralised model". As such, the appropriate reviewer is the Supreme Court.

If the authority to review all laws and regulations should be unified under the authority of the Constitutional Court, then the form and substance of Local Regulation should be seen as law in the broad sense. The Constitutional Court may interpret that the Local Regulation, as a *locale wet in materialele zin*, may also serve as an object of constitutional review, which must then be implemented by the guardian of the Constitution.

Article 24C Paragraph (1) of the Constitution refers only to "laws" with a lower case ‘l’. That is to say that the qualification of the "law" in question has not been explained in detail. If it is interpreted that the word "law" can be mean laws in the material sense (*wet in materialele zin*), then the substance of the Local Regulation can be considered *wet in materialele zin* in the form of a Local Regulation.

Based on the description above, it can be concluded that in terms of its production, the standing of Local Regulations, both Provincial and the District/City Regulations, should be seen as equivalent to the Law in the sense that they are all products of the legislature. However, in terms of its contents, regulations governing the region are of a narrower scope and thus are considered to have lower standing than the regulations with a wider scope in that they govern the larger territory. Thus, the Law is higher than the Provincial Regulation, and the District/City Regulation.

Review against higher legislation should not be based solely on the principle of escalation, but also on the sphere of authority. A regional regulation that is contrary to a higher-level legislation (except the Constitution) is not necessarily false, if it turns out that high-level legislation violates the rights and

obligations guaranteed to the regions by the Constitution or the Local Government Law. For that reason, the annulment of such regulation should not be decided by the Government, but by the Supreme Court through the process of judicial review.

The Central Government, represented by the Minister and the Governor, may conduct an Executive Preview in the form of an evaluation of a draft Provincial Regulation regulating RPJPD, RPJMD, APBD, APBD amendments, implementation of APBD accountability, local taxes, regional levies and spatial planning prior to being established by the Governor, and of a draft District/City Regulation regulating RPJPD, RPJMD, APBD, APBD amendments, implementation of APBD accountability, local taxes, regional levies and spatial planning prior to being established by the Regent/Mayor, as regulated in Article 245 Law 23/2014.

2. Prof. Dr. Ryas Rasyid, MA.

Dr. Ryas Rasyid shares the opinion of Dr. Ni'matul Huda, above, that there are two characteristics within the provisions of Law 23/2014 that are somewhat inelegant.

First, the Provincial Government and the Central Government both possess the authority to review, improve and advise the annulment of draft Local Regulations.

Local Regulations may not be immediately granted by the DPRD and Local Government without first being approved by the Mistry of Home Affairs for Provincial Regulations and the Governor for District/City Regulations. Should a Local Regulation be passed and later be found to contradict higher legislation or public interests, this indicates negligence in the application of the process of supervision by the responsible party.

Therefore, the annulment of the Local Regulation does not inherently imply punishment of those who made it. Instead, punishment is directed towards those who allowed the problematic regulation to be established, i.e. those who are sanctioned are those who failed to implement their functions and authorities effectively to avoid the establishment of Local Regulations that are later found to contradict higher legislation of public interests. In the expert's opinion, this is somewhat concerning.

The authority for the Province or the Minister of Home Affairs to annul a Local Regulation is the same as the veto right. Indonesia, however, does not observe the veto system because what is produced by the legislative bodies is also vetoed by them, because the Local Governments—Province, District and City—are involved in the creation, drafting and establishment of the regulations. Veto rights apply when the whole process of creating legislation lies solely in the hands of the legislature, whereby the executive is granted the authority to review and to veto the contested regulation.

Secondly, if we assume that the Governor has the authority to annul a District/City Regulation that has been approved by the DPRD, of course with a green light from the Ministry of Home affairs, or that the Minister of Home Affairs has the authority to annul a Regional Head Regulation or a Provincial Regulation based on the principle of escalation, then it is natural to assume that the President should have the authority to annul Laws. From the perspective of process, both Local Regulations and Laws are products of the same political process.

Why then does the President not possess the authority to annul Laws? It is not logical, given that the Governor has the authority to annul District Regulations and the Minister of Home Affairs to annul Provincial Regulations, which are a product of two bodies in collaboration. This, the expert believes, must be rectified.

Law 23/2014 indeed departs from flawed thinking and philosophy. It assumes that basically all the authority of the Central Government lies with the President and that it is for the President to decide whether to delegate these authorities to the regions or to withdraw them, as the majority of drafters of the

Law explain. According to the expert, this is a big mistake. If it is indeed so, what is the need for a Law to delegate authority when a Presidential Regulation would suffice? The expert suggests that, in fact, what is delegated is authorities of the state and to the region rather than to the Governor in particular, such that the Central Government should similarly not be personified as meaning the President in particular.

The mistake is found again when the expert discusses with colleagues, who state, "Yes, this country is a unitary state, the central government has the right to organise everything." But the expert reminds us that the Republic of Indonesia is formed not solely by the actions of the Central Government but is the product of a general agreement between the Centre and the people in Java and those outside Java. Regional votes should be considered, and the expert finds it very regrettable that the process of drafting Laws is never brought for consultation from the stakeholders, the Regent/Mayor and the Governor.

Government is a negotiation; it is the process moving towards agreement. This is especially true for the Law. According to the Expert, from an empirical, historical perspective, the Republic of Indonesia is a new project. The Republic of Indonesia was established on August 18, 1945, before which time there was no Republic of Indonesia, though there were already political entities in the form of kingdoms and administrative regions administered by local rulers. It is this history that makes their voices of support and their declarations to join the Republic of Indonesia so important.

How was Bung Karno able to negotiate with Sultan Hamengkubowono IX, to be able to secure that support? How are negotiations conducted with the regions? How did the founding fathers themselves succumb to the threats of people from Eastern Indonesia when discussing the country and the foundation of the state, when they accepted the use of Pancasila as the state’s ideology, taken from the Jakarta charter, but that seven words about the Shari'a were to be removed. People from Eastern Indonesia threatened the founding fathers that, if those seven words were included, Eastern Indonesia would not join the Republic of Indonesia. This is an example of the negotiations we are talking about, whereby the regions can not be ignored. Thus, it should be avoided that, following the nation’s independence and the subordination of the regions under the Central Government, the Central Government treat the regions arbitrarily. This, according to the expert, is not fair, not historical, and not empirical.

Therefore, according to the expert, there must be a mutual respect between the Central and the Local Governments. The success of the region is the success of the centre, that is, they are subjected to suspicion. Some say that regional autonomy is a failure, that its contribution has not bee significant. If that is so, the expert asks the question, who is responsible for the failure? The policy of autonomy is a central policy; the Law requires the Central Government to provide supervision, evaluation, monitoring, and so on for the success of regional autonomy, not to merely be an observer such that, once authority is delegated, then the regions are responsible, and if there are mistakes, then the region will be punished. According to the expert, this is not how the government should be administered.

According to public statement from Jusuf Kalla, that there must be a correction to the Law, because it can not be right that all authorities are thrown to the Province just so, as there are certain authorities that naturally relate to the District/City.

Hierarchy in the context of regional autonomy is a debate that emerged in 1999 when the expert was a drafter of Law Number 22/1999, at which time Constitutional Court Justice Maria Farida, stated that in the context of regional autonomy there is no hierarchy. Autonomy means autonomous in authority, as has been granted by the Law. Autonomy is independent within the scope granted to it by Law. Thus, in fact there is no concept of graded autonomy. However, in Indonesia the government has many perspectives: there is decentralisation, there is deconcentration, there are politics, there is administration. In the context of deconcentration and administration, indeed there is hierarchy.

At that time, the Expert supported the strengthening of the role of the Governor as a representative of the Central Government, because the Central Government did not want to expand autonomy to the provinces for fear of becoming a nation of states. The Expert encouraged that the provinces be strengthened as representatives of the Central Government, increasing authority through the process of deconcentration and administrative authorities. The question then is whether there is an alternative review of regulations to that submitted to the Supreme Court? According to the Expert, the alternative is not to transfer the authority to review a law from the Judiciary to the Executive. The authority should remain with the Judiciary. The Expert then asks whether it is possible that the authority of the Supreme Court may be delegated to the lower courts in testing Local Regulations? According to the Expert, this is merely an internal matter because of the extra burden that the Supreme Court will receive from the accumulation of cases filed with the Supreme Court. The expert suggests that one of the solutions to this problem is to increase the number of Supreme Court Justices. The delegation of the Supreme Court's authority to the lower courts is actually a form of abuse to the Supreme Court itself, and this certainly can not be tolerated. Then it must be asked whether it is possible to find, in the Law on the Supreme Court, delegation of the authority of judicial review and, if so, when this may be applied to executive or regional head decisions. The decision of the regional head, according to the expert, is an executive decision; but can it be annulled by a higher government? We must answer these questions in the context of deconcentration, in which the government is structured with superiors and subordinates. In accordance with the context of deconcentration, executive decisions may be annulled by a higher state institution, meaning, in this case, that the decision of the Regent/Mayor may be annulled by the Governor.

According to the expert, autonomy is to improve service, amongst other things, in the reformation of the spirit of decentralization in 1999, when there was a recentralisation of authority. This is a failure of the Central Government in fostering and managing the authority of decentralisation.

The question that arises then is why authority was withdrawn by the Central Government? It has not yet been answered and the government has not yet offered specific reasons for the withdrawal of these authorities, which causes confusion amongst regional heads. For example, when the authority to manage educational activities, which had been granted to the regions and which they had administered well, was suddenly taken back by the Central Government, no explanation was provided, and the people were left to interpret the scenarion themselves and to find their own solutions to the problems that later arose as a result of the transfer of authority. In this case, some local government education policies were even annulled by the Central Government after reclaiming control.

In relation to the annulment of legislative products, including regulations, the Supreme Court in this case has the authority to overturn Local Regulations. Before a Local Regulation is enacted, the draft of the regulation should be brought for consultation and inspection throughout the hierarchy, starting from the District, to the Province and then the Ministry. This mechanism, according to the expert, is essential if the Government is serious about implementing control. What in fact happens frequently is that regulations are created by the DPRD and are only later inspected and consulted upon while awaiting approval, which the Expert suggests is not efficient. The making of Local Regulations must be efficient both in terms of time and budget.

Whereas the authority to draft of Local Regulations is delegated from the Central Government to the regions, therefore it is necessary to have the approval of the DPRD and then the DPR RI. If the President were to implement these authorities alone as the head of government, then there would be no need to use the Law to regulate local governance. Thus, we should not think that after the President is elected, all government authorities are lie with the President; there are certain elements, especially the transfer of authority from the Central Government to the regions, that must be governed by the Law, and, according to the expert, this has not so far led to centralisation as feared.

Whereas the president is in charge of a country's policy. The Constitution stipulates as such, but this does not mean that the president works alone; indeed full support from the rest of the state is necessary.

According to the expert, based on the Law, the function of legislature lies with the DPR as well as the DPRD, and in the Law on Local Governments it is written that the rights of the DPR are the same as the rights of the DPRD.

In conclusion, in the formation of Local Regulations, supervision is necessary from all levels up to the central level, so that there be no further regulations enacted and later annulled due to contradiction with Laws and other regulations.

3. Prof. Dr. Bagir Manan, S.H., MCL.

The expert begins outlining the provisions of Law 23/2014 that have been petitioned for review and the provisions of the Constitution that form the basis of the review:

1. Article 251 Paragraph (1)

   Provincial Regulations and Gubernatorial Regulations that contradict higher legislation, public interests and/or morals shall be annulled by the Minister.

2. Article 251 Paragraph (2)

   District/City Regulations and Regent/Mayoral Regulations that contradict higher legislation, public interests and/or morals shall be annulled by the Governor as representative of the Central Government.

3. Article 251 Paragraph (7)

   Should the Local Government object to the annulment of Provincial Regulations or the Governor object to the annulment of Gubernatorial Regulations as referred to in Paragraph (4) for any reason supported by provisions of the law, the Governor may submit such objections to the President no more than 14 days following said annulment.

4. Article 251 Paragraph (8)

   "Should the Local Government object to the annulment of District/City Regulations or the Mayor/Regent object to the annulment of Mayoral Regulations as referred to in Paragraph (4) for any reason supported by provisions of the law, the Governor may submit such objections to the Minister no more than 14 days following said annulment.

The four provisions listed above can be grouped as follows:

1. Article 251 Paragraph (1) and Paragraph (2) prohibit that the contents of Provincial, District or City Regulations, Gubernatorial Regulations, Mayoral Regulations or Regent Regulations contradict higher legislation, public interests and/or morals.
2. Article 251 Paragraph (7) and Paragraph (8) regulate objections from the following:

   2.1. Local Government to the annulment of Local Regulations; and

   2.2. The Governor to the annulment of Gubernatorial Regulations, the Regent to the annulment of Regent Regulations and the Mayor to the annulment of Mayoral Regulations.

The Petitioners claim that the above provisions, Article 251 Paragraphs (1), (2), (7) and (8) contradict the following provisions of the Constitution:

(1) Article 24A Paragraph (1)
The Supreme Court shall have the authority to hear appeals, review provisions of laws against the legislation and shall have other authorities granted to it by the legislation."

(2) Article 27 Paragraph (1)

All citizens shall be equal before the law and the government and shall be required to respect the law and the government without exception.

Why do the Petitioners claim that Article 251 Paragraphs (1), (2), (7) and (8) of Law 23/2014 contradict Article 24A Paragraph (1) and Article 27 Paragraph (1) of the Constitution?

Concerning Article 24A Paragraph (1), which authorises the Supreme Court to conduct judicial review of regulations below the Law, Local Regulations (Province, District and City), and Gubernatorial Regulations, Regent Regulations and Mayoral Regulations are all below the hierarchical level of the Law.

According to the Article 24A Paragraph (1) of the Constitution, "only" the Supreme Court is authorised to "assess" and declare invalid Local Regulations, Gubernatorial Regulations, Regent Regulations and Mayoral Regulations. This raises the following questions:

First: Does the authority of the Supreme Court, as regulated by the Constitution in Article 24A Paragraph (1), constitute an exclusive power that may not be conducted by any other institution?

Second: The authority of the Supreme Court regulated in Article 24A of the Constitution is a judicial power, as can be inferred from the term Judicial Review. Does Article 251 Paragraph (1) and Paragraph (2) of Law 23/2014 represent a judicial authority?

Third: The basis of the review as regulated in the Constitution, Article 24A Paragraph (1) is the phrase "contradict the laws", which means to contradict legislation in the formal sense. Law 23/2014, Article 251 Paragraph (7) and (8) contradicts higher legislation (not only contrary to the Law in the formal sense), public interests and/or morals.

From these three questions, we can see clearly that the Article 251 Paragraphs (1) and (2) regulate differently from Article 24A Paragraph (1) of the Constitution. In other words, though they both sets of provisions are relevant to review, that which is regulated in the Constitution is judicial review because it is *pro justitia* in nature, while that which is regulated in Law 23/2014 exists within the scope of administrative functions.

The Petitioners also claim that Law 23/2014 Paragraphs (1), (2), (7) and (8) contradict Article 27 Paragraph (1) of the Constitution, in articular the phrase, "equal standing before the law and government." Implicitly, the Petitioner argues that the provisions of Law Number 23 Year 2014, Article 251 Paragraph (7) and Paragraph (8) which grants only the Local Government the opportunity to object to the annulment of the Local Regulations—the Governor to the annulment of Gubernatorial Regulations, the Regent to the annulment of Regent Regulations and the Mayor to the annulment of Mayoral Regulations—violates the right of equal opportunity of the Petitioners to file an objection. This is contrary to the provisions of the 1945 Constitution, Article 27 paragraph (1) on equality before the law. The provisions of Law Number 23/2014 Article 251 Paragraph (1), Paragraph (2), Paragraph (7), and Paragraph (8), are provisions on supervision (*toezicht*) within the state administration (*bestuur*) that recognise the authorities of the state official and state administrative bodies (*bestuuresaparat*).

To further clarify the position and function of Law 23/2014, Article 251 Paragraph (1), Paragraph (2), Paragraph (7) and Paragraph (8), here follows a description of the concept of autonomy and of supervision or control by the Central Government in organising autonomy and co-administration (*medebewind*).

First: concerning the concept of autonomy and co-administration. There are several fundamentals of autonomy, including the following:

(1) Autonomy is a subsystem of the unitary state. In other words, autonomy is a concept whereby a unitary state implements a decentralised system of government.

(2) Autonomy is a system for implementing functions of government or functions of *bestuur* (*bestuursfuntie*). Autonomy is the order of administering the power of government that lies with the executive power. Law concerning and regulating autonomy are administrative laws (*administratiefrecht, bestuursrecht*).

(3) Autonomy contains independence (*zelfstandingheid*), which comprises freedom to manage and regulate (*regelen en besturen*) partially government affairs and partially local affairs (*huishouding*).

(4) The substance of autonomy is derived from the delegation of government affairs by the Central Government or by Autonomous Governments at a higher level.

(5) The rules and decrees established or decreed by a governmental affair or an autonomous apparatus shall not contradict higher-level legislation.

Second: concerning the concept of supervision over autonomy. Regarding supervision, relevant is the principle, "*geen autonomie zonder toezicht*" or "no autonomy without supervision".

Why is supervision or control so necessary?

To illustrate, the expert gave an account of autonomous regions (*gemeente*) in the Dutch Kingdom. In the *memorie van toelickting* an Article concerning the Supervision of Gemeente stipulates as follows:

Widespread freedom within the bounds of a unitary state with a decentralised system (i.e. autonomy and co-administration), will not exist without the provision of certain corrections from higher Government.

According to the Working Group for the Amendment of the Gemeente Law (final report, 1980), there are five supervisory motives: coordination (*coordinatie*), policy security (*beleidsbewaking*), finance (*financiele motieven*) and protection of citizens' rights and interests (*recht-en belangrechtsbeschering van de burgers*). The Petitioners do not deny the need for supervision with the motives mentioned above, especially those relating to the motive for the protection of the rights and interests of the citizens. However, the Petitioners claim that supervision as regulated in Law 23/2014 Article 251 paragraph (1), paragraph (2), paragraph (7) and paragraph (8) contradicts the Article 24A Paragraph (1) of Constitution. The Petitioners believe that supervision can only be done in the framework of "judicial review" as stipulated in the Constitution, Article 24A Paragraph (1), whereas the supervision regulated in Law 23/2014 does not refer to judicial review as intended in the Constitution.

It has been stated then that Law 23/2014, Article 251 Paragraph (1), Paragraph (2), Paragraph (7) and Paragraph (8) regulate not judicial review, but a form of supervision in the environment by a higher *bestuur* of a lower *bestuur*. At the very least, there are two main forms of control over a lower *bestuur* from a higher *bestuur*: administrative control (*administratief toezicht*) and administrative appeals (*beroep administrators*). Administrative control can manifest as preventive control (*preventief touzicht*) and repressive control (*repressief toezicht*).

Law 23/2014, Articles (1) and (2) regulate repressive control in the authority to annul (*vernietiging*) regulations that have been enacted and later found to contradict higher legislation, public interests (*publik belongen*) or morals (*goede zeden*). Paragraphs (7) and (8) relate to administrative appeals (*administratief beroep*).

The question then is whether supervision as regulated in Article 251 Paragraphs (1) and (2) is still necessary. Is it not enough to implement Article 24A Paragraph (1) of the Constitution? Indeed, there are several bases for the existence of supervision as regulated in Article 251 Paragraphs (1) and (2) is still necessary:

(1) Internal supervision (within the *bestuur* itself)—in this case, supervision by a higher *bestuur* of a lower *bestuur*—is a control function and one of a number of managerial functions.

(2) As a means of protecting the unitary state, autonomy must be an integral part of the efforts to strengthen the unitary state, not weaken it.

(3) The Central Government as an element of the unitary state, in this case represented by the President, the Minister of Home Affairs and the Governor in his capacity as an element of the Central Government (formerly: Governor, Regent, or Mayor as Regional Head), is ultimately responsible for guaranteeing legal unity, harmonization of law, unity of policy, public interests, legal order, and protection of citizens throughout the Republic of Indonesia, including the interests of citizens who are outside the territory of Indonesia. Thus—as has been stated—the supervision regulated in Law 23/2014, Article 251 Paragraph (1) and Paragraph (2) is necessary.

Here follows an explanation of Article 251 Paragraphs (7) and (8) of Law 23/2014:

It has been stated that these provisions constitute a form of administrative appeal (*administratief beroep*). Is such a provision necessary?

We are familiar with the general principles of good administration, (*algemene beginselen van behoorlijk*). These principles can even be found in the State Administrative Judicature Law and Government Administration Law. As such, they are not merely general principles (*algemen beginselen*), but at the same time form a part of the positive law. In addition, the Republic of Indonesia as a state is bound by rule of law. As such, all state and government actions must be based on law.

One implementation of the general principles of good governance and the rule of law is the prohibition of acting beyond authority in the form of illegal conduct (*onrechtmetigedaad, ultra vires*), arbitrary conduct (*willekeur*) or improper conduct whether excessive, contrary to ethics/morals, contrary to public interests and/or contrary to public order. Conduct that is inconsistent with the general principles of good governance and the principles of the rule of law may also be engaged in by the organs of the *bestuur* when performing the supervisory function.

In addition, the lower-level *bestuur* under supervision bears the responsibility to defend the interests of the government as well as public interest in its territory. To correct the possibility of such “mistakes" is the function of Law 23/2014, Article 251 paragraph (7) and paragraph (8) as a form of checks and balances. When asking whether this is possible or indeed allowed, it should be kept in mind that both legally and scientifically, autonomous units are public legal entities (*publiek lichaam*), because they are subject to legal rights and obligations, including defending their regional interests.

Though the Petitioners claim **only** that Law 23/2014, Article 251 paragraphs (1), (2), (7) and (8) contradict the Constitution, Article 24A Paragraph (1) and Article 27 Paragraph (1), but this implies also that the aforementioned provisions limit the constitutional rights of the Petitioners as guaranteed in articles 24A and 27 of the Constitution.

The expert asserts that Article 251 Paragraphs (1), (2), (7) and (8) of Law 23/2014 in no way infringe upon the constitutional rights of the Petitioners.

First; if the Petitioner finds a Local Regulation or a Governor's Regulation, a Regent's Regulation or a Mayor's Regulation that contradicts the Law that harms the Petitioners’ interests, the Petitioners may still exercise their rights to file an petition to the Supreme Court to conduct judicial review of the contested legislation.

Second; regarding the authorised decision annul or not annul the Local Regulation or a Governor's Regulation, a Regent's Regulation or a Mayor's Regulation that harms the interests of the petitioner, the Petitioner may file a lawsuit with the Administrative Court.

Third; the Petitioner may also file a civil lawsuit on the basis of "*onrechtmetigedaad*" or "*onrechtmatigeoverheidsdaad*", if in fact the Local Regulation or a Governor's Regulation, a Regent's Regulation or a Mayor's Regulation should cause harm to the Petitioner's interests.

These are some notes on Law 23/2014, Article 251 paragraph (1), paragraph (2), paragraph (7), paragraph (8). The Petitioners also questioned Article 251 paragraph (3) paragraph (4). However, the above notes systematically include the linkage of Article 251 paragraph (3) and paragraph (4), with the 1945 Constitution Article 24A paragraph (1) and Article 27 paragraph (1). No further details are required.

The legal issues governed by Article 251 of Law 23/2014 are within the scope of administrative law, whereas the legal issues regulated by the Supreme Court Law are within the scope of judicial matters. As such, they are separate matters. Perhaps the Petitioners thought they could kill two birds with one stone by petitioning the Supreme Court. However, it should be remembered that Petitioners may not assemble multiple or separate legal matters into a single case". In fact, before an informed judiciary, such practices can be a reason to declare the case unacceptable (*niet ontvankelijk verklraad*). As a former judge, the expert wishes to remain faithful to this principle.

[2.5] Considering, whereas, the Petitioners have submitted their written conclusion, received by the Secretariat on 27 October 2016, which, in principle, maintains the Petitioners' position;

[2.6] Considering, whereas, in order to keep this Decision brief, it is sufficient to record the detailed happenings of the hearings in the proceedings, which are inseparable from this Decision.

3. Facts of the Case

Authorities of the Court

[3.1] Considering, whereas, pursuant to Article 24C Paragraph (1) of the 1945 Constitution of the Republic of Indonesia (Constitution), Article 10 Paragraph (1) Letter a of Law 24/2003 on the Constitutional Court amended by Law 8/2011 on Amendment to Law 24/2003 on the Constitutional Court (State Gazette 2011 No. 70, Supplement to the State Gazette No. 5226, hereinafter Constitutional Court Law) and Article 29 Paragraph (1) Letter a of Law 48/2009 on Judicial Powers (State Gazette 2009 No. 157, Supplement to the State Gazette No. 5076) the Constitutional Court has the authority to hear at the first and final instance, and the Court's Decisions on judicial review of the Law against the Constitution are final;

[3.2] Considering, whereas, since the Petition is for review of the constitutionality of a Law, *in casu* Law 23/2014 on Regional Government (State Gazette 2014 No. 244, Supplement to the State Gazette No. 5587, hereinafter Law 23/2014) against the Constitution, the Court has the authority to hear the Petition;

Petitioners' Legal Standing

[3.3] Considering, whereas, pursuant to Article 51 Paragraph (1) of the Constitutional Court Law and the Preamble, any party who claims to have had constitutional rights impaired by the enactment of a Law:

a. A person of Indonesian nationality;

b. A community group espousing customary law in existence and in conformity with development in society within the principles of the Unitary State of the Republic of Indonesia as prescribed by law;

c. A public or a private legal entity; or

d. A state institution.

Therefore, the Petitioners for the judicial review of Laws against the Constitution must first prove the following:

a. legal standing to file a petition as regulated in Article 51 Paragraph (1) of the Constitutional Court Law;

b. impairment to constitutional rights or obligations granted by the Constitution caused by the enactment of the contested Law;

[3.4] Considering, whereas, the Court, subsequent to Constitutional Court Decision No. 006/PUU-III/2005, dated 31 May 2005 and Decision No. 11/PUU-V/2007, dated 20 September 2007, it has been established that the impairment of constitutional rights and/or obligations as regulated in Article 51 Paragraph (1) of the Constitutional Court Law must meet five requirements, as follows:

a. there must be a right/obligation granted by the Constitution;

b. that right/obligation must have been impaired, according to the Petitioner, by the enactment of the Law being brought for review;

c. this harm must be both specific and actual or at the very least potential according to logical reason;

d. there must be a clear causal relationship (*causal verband*) between the harm experienced and the enactment of the Law being brought for review;

e. there must be the possibility that by granting the Petition, the impairment of rights/obligation will not occur or will cease.

[3.5] Considering, whereas, the Petitioners claim that they have been harmed by the enactment of Law 23/2014, specifically Article 251 Paragraphs (1), (2), (7) and (8) for the following reasons, essentially:

1. Whereas Local Regulations at the Province or District/City level, which are enacted through a legislative process and communication between the DPRD and the Governor or Regent/Mayor in an effort to realise a just and healthy society, may be annulled by the Governor or Minister representing the Central Government.
2. Whereas the authority of the Governor and Minister, granted by Article 251 Paragraph (1) and Paragraph (2) of Law 23/2014, has the potential to impair the rights of the Petitioners given that the Local Regulation may be annulled without any review of the regulation against higher legislation. In this context, the Petitioners suggest a number of Local Regulations that they believe face such annulment:
   (a) City Regulation of Karawang No. 1/2011 on Manpower Administration (City Gazette of Karwang 2011 No. 1 Issue E)[exhibit P-8];
   (b) City Regulation of Siak No. 11/2001 on Placement of Local Labour (City Gazette of Siak 2001 No. 11 Issue C)[exhibit P-9]; and
   (c) City Regulation of Pekanbaru No. 4/2002 on Placement of Local Labourers (City Gazette of Pekanbaru 2002 Issue D No. 4)[exhibit P-10];

   These Local Regulations, which regulate labour services, in order to improve the progress of local communities, regulate matters such as the fulfilment of 50–100% of job vacancies in a company with members of the local community, and the addition of 5% of the minimum wage to the wage of workers who are employed with formal work contracts. In the event that Article 251 paragraph (1) and paragraph (2) of Law 23/2014 is implemented in these cases, it potentially impairs the constitutional rights of the Petitioners;
3. Whereas, furthermore, the enactment of Article 251 Paragraphs (7) and (8) of Law 23/2014, which only acknowledges government officials at the district / provincial and provincial levels as having the authority to object to the annulment of Provincial or District/City Regulations and Gubernatorial or Regent/Mayoral Regulations, ignores the right of the Petitioners to participate in maintaining the Law. It follows that it is possible for government officials at the district and provincial levels to not exercise their right to file an objection to the annulment of a Local Regulation. which is clearly detrimental to the constitutional rights of the Petitioners.

[3.6] Considering, whereas, based on the deliberations in Sections [3.3] to [3.5], the Court considers as follows:

[3.6.1] Whereas, based on Exhibit P-4, Exhibit P-4A, Exhibit P-4B, Exhibit P-4C and Exhibit P-4D, the Petitioners are Indonesian Citizens;

[3.6.2] Whereas the Petitioners posses constitutional rights guaranteed by the 1945 Constitution of the Republic of Indonesia, particularly Article 24A Paragraph (1) and Article 27 Paragraph (1);

[3.6.3] Whereas the annulment of Local Regulations as regulated in Article 251 Paragraph (1), Paragraph (2), Paragraph (7) and Paragraph (8) of Law 23/2014 closely relate to the position of the Petitioners as workers. If a Local Regulation is annulled directly by the Governor or by the Minister without going through a judicial review mechanism at the Supreme Court, it has the potential to impair the constitutional rights of the Petitioners. Moreover, the Petitioners do not have the right to file for an executive review, should the Regent, Mayor or Governor fail to object to the annulment of a Law; indeed, no more parties can file an objection, even though the contents of the local regulation concerns the immediate position of the Petitioners as workers.

There are several Local Regulations in particular that stand to be annulled and that will have an impact upon the Petitioners if they are annulled, namely:

(a) City Regulation of Karawang No. 1/2011 on Manpower Administration (City Gazette of Karwang 2011 No. 1 Issue E)[exhibit P-8];

(b) City Regulation of Siak No. 11/2001 on Placement of Local Labour (City Gazette of Siak 2001 No. 11 Issue C)[exhibit P-9]; and

(c) City Regulation of Pekanbaru No. 4/2002 on Placement of Local Labourers (City Gazette of Pekanbaru 2002 Issue D No. 4)[exhibit P-10];

[3.6.4] Whereas the potential loss of constitutional rights of the Petitioners has a causal relationship with the enactment of Article 251 Paragraph (1), Paragraph (2), Paragraph (7) and Paragraph (8) of Law 23/2014, such that, should the Petition be granted, the loss of constitutional rights shall cease;

Based on the above deliberations, the Court can conclude that the Petitioners face potential harm due directly to enactment of Article 251 Paragraphs (1), Paragraph (2), Paragraph (7) and Paragraph (8) of Law 23/2014, so that the Petitioners have legal standing to file the *a quo* petition;

[3.7] Considering, whereas, granted that the Court has the authority to hear the Petition and the Petitioners have the legal standing to file the *a quo* petition, the Court shall further consider the principal issue of the petition;

Basis of Petition

[3.8] Considering, whereas the Petitioners argue principally that Article 251 paragraph (1), paragraph (2), paragraph (7), and paragraph (8) of Law 23/2014 contradict with Article 24A paragraph (1) and Article 27 paragraph (1) of the 1945 Constitution;

[3.9] Considering, whereas, after carefully examining the Petition, the statements of the President, the evidence of the Petitioners, the Petitioners' statements, the statements of experts submitted by the Petitioners and those summonsed by the Court and read the complete Petitioners' conclusions, which are included in full in the proceedings, the Court considers the following:

[3.9.1] Whereas, in relation to Regional Head Regulations, the Court, in Constitutional Court Decision No. 137/PUU-XIII/2015, dated April 5 2017, in paragraph **[3.12.4]**, states:

Whereas, according to Article 1 number 26 of the Local Governments Law, Regional Head Regulations (Perkada) are Gubernatorial Regulations and Regent/Mayoral Regulations. Subsequently, Article 246 paragraph (1) of the Local Governments Law states that the Regional Head is authorised to issue Perkada in the framework of implementing Local Regulations or under the power of legislation. In contrast to the District/City Regulations established by the DPRD with the approval of the Regent/Mayor [Article 1 number 8 of Law 12/2011], Regent/Mayoral Regulations are established by the Regent/Mayor without involving the DPRD at any level.

Whereas, given that Perkada is a type of legislation based on Article 8 Paragraph (2) of Law 12/2011, but since they can be formed only by the Regional Head as the embodiment of the bestuur *in implementing the Local Regulation and mandatory government affairs as stipulated in the Local Governments Law, so that within the framework of the unitary state, the Central Government as the higher* bestuur *has the authority to annul the Perkada. Annulments and the mechanism for filing objections to annulments regulated In the Local Governments Law are a part of the supervisory mechanism of the President or the Minister and the Governor as the representative of the Central Government in the Local Government or in other words as a form of supervision—rather than Judicial Review—of the lower bestuur by the higher bestuur.*

*Whereas in the previous Laws on Local Governments, both Law 22/1999 and Law 32/2004, there is no provision for the annulment of Perkada nor any mechanism for filing objections to annulments, unlike the provisions in place for Local Regulations. There are in fact two terms of reference for Regional Head Regulations, Regional Head Regulation and Regional Head Decision might both be used [vide Article 146 of Law Number 32 Year 2004 regarding Local Governments] or just Regional Head Decision might be used [vide Article 72 of Law Number 22 Year 1999 on Local Governments]. In its development, the Local Governments Law regulates the annulment of Perkada and the mechanism for filing objections to annulments along with the provisions for Local Regulations. Based on these developments, according to the Constitutional Court, the law establishes Perkada as a decision of the Regional Head, also referred to as a State Administrative Decision, even though the legal product is a Regent/Mayoral Regulation, which means that the mechanism for control by the government can be applied without contradicting the 1945 Constitution. This control mechanism lies within the scope of state administration functions (*bestuursfunctie*).*

Based on the above description, the regulations for annulment in the case of Regent/Mayoral Regulations and the mechanism for filing objections to annulments as found in Article 251 Paragraph (2), Paragraph (3), Paragraph (4) and Paragraph (8) of the Local Governments Law, according to the Court, do not contradict the Constitution, therefore the claims of Petitioner II up to Petitioner VII, Petitioner IX up to Petitioner XVII, Petitioner XX, Petitioner XXII, Petitioner XXV up to Applicant XXXV, and Petitioner XXXVII up to Petitioner XXXIX with regard to Regent/Mayoral Regulation have no legal grounds.

Therefore, based on the deliberations in Decision No. 137/PUU-XIII/2015, Perkada is a Regional Head Decision or a State Administrative Decision, such that Perkada *in casu* Regent/Mayoral Regulations may be annulled by Executive Review. Such control mechanism lies within the scope of the State Administrative Functions (*bestuursfunctie*), which do not contradict the Constitution. Given that the *a quo* Petition, in addition to making claims about Gubernatorial Regulations, also includes claims about the annulment of Regent/Mayoral Regulations, according to the Court, as long as Regent/Mayoral Perkada has already been decided upon by the Court in Decision Number 137/PUU-XIII/2015, dated April 5 2017, the Petition, in relation to its claims about Regent/Mayoral Perkada is considered *nebis in idem*. As for Gubernatorial Perkada, given that the substance of the norms are the same as the norms regulating the Regent/Mayoral Perkada, the deliberations of the Court in Decision Number 137/PUU-XIII/2015, dated April 5 2017 shall

also apply to the a quo Petition, meaning that the Petition, with regard to the claims about the annulment of Gubernatorial Perkada, as referred to in Article 251 Paragraphs (1) and (7), has no legal grounds;

[3.9.2] Whereas, with regard to Local Regulations, the Constitutional Court, in Decision No. 137/PUU-XIII/2015, dated 5 April 2017, in particular Paragraph **[3.12.4]**, states as follows:

Whereas the existence of Article 251 Paragraph (2) and Paragraph (3) of the Local Governments Law, which authorises the Minister and the Governor as representatives of the Central Government to annul the District/City Regulations that contradict higher legislation, aside from departing from the logic and the foundations of Indonesia as a country bound by Rule of Law as mandated in Article 1 Paragraph (3) of the Constitution, also negates the role and function of the Supreme Court as the institution authorised to review legislation under the Law in casu *District/City Regulations, as stipulated in Article 24A Paragraph (1) of the Constitution. So it is for the application of public interest and/or morality, which are used as further benchmarks in the annulment of Local Regulations as stipulated in Article 251 paragraph (2) and paragraph (3) of the Local Governments Law, and which, according to the Court, are also the domain of the Supreme Court, as stipulated by Law such that the Supreme Court can also use public interest and/or morality as benchmarks in the judicial review process. Article 250 Paragraph (1) of the Local Governments Law contradicts public interest, which is understood in the following ways: 1. disruption of harmony among citizens; 2. disruption of access to public services; 3. disruption of public order and tranquility; 4. disruption of economic activities to improve the welfare of the people; and / or 5. discrimination against tribes and ethnicities, religion and belief, race, inter-group, and gender. The meaning of morality, according to the Elucidation of Article 250 paragraph (1) of the Local Governments Law, is any norm related to culture/society and good manners, good habits and noble etiquette.*

Whereas the annulment of District/City Regulations by the Governor as the representative of the Central Government as referred to in Article 251 paragraph (4) of the Local Governments Law, according to the Court, is inconsistent with Indonesia's legislative regime. Article 7 Paragraph (1) and Article 8 of Law 12/2011 do not recognise the Governor in the hierarchy of legislation. Thus, the Governor's decision is not part of the legislative regime and cannot be used as legal product to annul the District/City Regulation. In other words, according to the Court, it is a mistake for the District/City Regulation to be annulled by a decision of the Governor (beschikking). Furthermore, the excess of the legal product in the form of the annulment within the executive scope alongside the legal product in the form of the Governor's decision, as stipulated in Article 251 paragraph (4) of the Local Governments Law, has the potential to generate a duality of Judicial Decisions should the authorities to review and to annul lie with both the executive and judicial institutions.

In the case of a District/City Regulation annulled by a Governor's decision, the legal remedy is provided by the State Administrative Court, and if such legal action is granted, the District/City Regulation annulled by the governor's decision shall become effective once again. On the other hand, there is another legal remedy available in the form of Judicial Review of the Local Regulation by the Supreme Court, which may be implemented by the Government, the people in the related region or those who feel disadvantaged by the enactment of the law. Should the legal effort through the Supreme Court be granted, then the law is declared invalid. Thus arises dualism. The potential of dualism of court rulings between the decision of the Administrative Court and that of the Supreme Court on the substance of the same case, will create legal uncertainty, whereas legal certainty is the right of every person guaranteed and protected by Article 28D Paragraph (1) of the Constitution. Therefore, for the sake of legal certainty, and in accordance with the Constitution, according to the Court, the review or annulment of Local Regulation shall be constitutional authority of the Supreme Court alone.

Based on the above description, the claim that Article 251 Paragraph (2), Paragraph (3) and Paragraph (4) of the Local Governments Law regarding District/City Regulations is contradictory to the Constitution, as argued by Petitioner II up to Petitioner VII, Petitioner IX to Petitioner XVII, Petitioner XX, Petitioner XXII, Applicant XXV up to Applicant XXXV, and Applicant XXXVII up to Applicant XXXIX is legally grounded. Consequently, Article 251 Paragraph (8) of the Local Governments Law, which regulates the mechanism for filing an objection to the annulment of a District/City Regulation as stipulated in Article 251 paragraph (2), paragraph (3) and paragraph (4) of the Local Governments Law, which has been declared contradictory to the Constitution, has no relevance and, therefore, with regard to District/City Regulations must also be declared contrary to the Constitution …"

Based on the deliberations of the Court in the above decision, the annulment of District/City Regulations through executive review is contrary to the Constitution. Given that Article 251 paragraph (1) and paragraph (4) of Law 23/2014 regulates the annulment of Provincial Regulations through executive review then the legal considerations in Decision Number 137 / PUU-XIII / 2015, dated April 5, 2017 shall also apply to the *a quo* Petition. Therefore, the Court is of the opinion that Article 251 paragraph (1) and paragraph (4) of Law 23/2014, with regard to the phrase "*Provincial Regulations and*" contrary to the Constitution.

Regarding the consideration in Decision Number 137/PUU-XIII/2015 dated April 5, 2017 that District/City Regulations in Article 251 paragraph (2) of Law 23/2014 be declared contradictory to the Constitution, according to the Court, the Petitioners' claims regarding "*District/City Regulations*" in Article 251 paragraph (2) of Law 23/2014 has no object;

[3.9.3] Whereas, with respect to the arguments of the Petitioners concerning Article 251 paragraph (7) of Law 23/2014, since it relates to the Provincial Regulation, which has been declared contradictory to the Constitution as the consideration of the Court in paragraph **[3.9.2]** above, the time period of fourteen days for the filing of objection to the annulment of Provincial Regulations has lost its relevance so that the phrase "*Provincial Regulation and*" contained in Article 251 paragraph (7) of Law 23/2014 must also be declared contradictory to the Constitution;

Meanwhile, in relation to the arguments of the Petitioners concerning District/City Regulations in Article 251 paragraph (8) of Law 23/2014, it has been considered by the Court and declared contradictory to the Constitution in Decision Number 137/PUU-XIII/2015 dated April 5 2017, such that, according to the Court, the arguments of the Petitioners concerning Article 251 paragraph (8) of Law 23/2014, especially regarding the phrase "Regency / Municipal Regulation" have lost their object;

[3.9.4] Whereas, with respect to Article 251 paragraph (5) of Law 23/2014, stating, "No longer than 7 (seven) days after the decision to annul, as referred to in paragraph (4), the Regional Head must cease implementation the regulation and the DPRD along with the Regional Head shall revoke the Regulation,", though this was not part of the Petitioners' argument, loses its relevance because Article 251 paragraph (5) of Law 23/2014 regulates the procedure for the cessation and revocation of the Regulation related directly to Article 251 paragraph (4) of Law 23/2014 where the phrase "Provincial Regulation" has been declared contradictory to the Constitution, such that Article 251 paragraph (5) of Law 23/2014 must also be declared contradictory to the Constitution;

[3.10] Considering, whereas, based on the above deliberations, the Court is of the opinion that the Petitioners' arguments are legally grounded in part;

[3.11] Considering, whereas, as long as it pertains to the annulment of Local Regulations, both at the Provincial and District/City level, four Constitutional Justices have dissenting opinions as contained in Constitutional Court Decision No. 137/PUU-XIII/2015, dated April 5 2017, thus, those dessenting opinions from Arief Hidayat, I Dewa Gede Palguna, Maria Farida Indrati, and Manahan MP Sitompul also apply to the *a quo* petition.

4. Conclusion

Based on the assessment of the facts and the Law as outlined above, the Court concludes as follows:

[4.1] The court has the authority to hear the quo application;

[4.2] The Petitioners have legal standing to file the *a quo* Petition;

[4.3] The Petition concerning the annulment of Regent/Mayoral Regulations in Article 251 Paragraph (2) and Paragraph (8) of Law No. 23/2014 on Local Governments is *nebis in idem*;

[4.4] The Petition concerning the annulment of Regent/Mayoral Regulations in Article 251 Paragraph (2) and Paragraph (8) of Law No. 23/2014 on Local Governments has lost its object;

[4.5] The Petition concerning the annulment of Gubernatorial Regulations in Article 251 Paragraph (1) and Paragraph (7) of Law No. 23/2014 on Local Governments has no legal grounds;

[4.6] The Petition is legally grounded in part.

Based on the 1945 Constitution of the Republic of Indonesia, Law No 24/2003 on the Constitutional Court as amended by Law No. 8/2011 on the Amendment to Law No 24/2003 on the Constitutional Court (State Gazette of the Republic of Indonesia 2011 No. 70, Supplement to State Gazette of the Republic of Indonesia No. 5226), as well as Law No. 48/2009 on Judicial Power (State Gazette of the Republic of Indonesia 2009 No. 157, Supplement to State Gazette of the Republic of Indonesia No. 5076).

5. Decision

1. Approve the Petition in part;
2. Declare the Petition regarding the review of Article 251 Paragraph (2) and Paragraph (8) of Law No. 23/2014 on Local Governments (State Gazette of the Republic of Indonesia 2014 No. 244, Supplement to State Gazette of the Republic of Indonesia No. 5587) in reference to the phrase "*Regent/Mayoral Regulation*" not accepted;
3. Declare the Petition regarding the review of Article 251 Paragraph (2) and Paragraph (8) of Law No. 23/2014 on Local Governments (State Gazette of the Republic of Indonesia 2014 No. 244, Supplement to State Gazette of the Republic of Indonesia No. 5587) in reference to the phrase "*District/City Regulation*" not accepted;
4. Declare the phrase "*Provincial Regulation and*" in Article 251 paragraph (1) and paragraph (4), and the phrase "*Provincial Regulation and*" in Article 251 paragraph (7), and Article 251 Paragraph (5) of Law No. 23/2014 on Local Governments (State Gazette of the Republic of Indonesia 2014 No. 244, Supplement to State Gazette of the Republic of Indonesia No. 5587) contradictory to the 1945 Constitution of the Republic of Indonesia and to have no legally binding force;
5. Reject the remainder of the Petition;
6. Record this decision in the State Gazette of the Republic of Indonesia as mandated.

Thus it was decided in Judicial Hearing by nine Constitutional Justices, Arief Hidayat, as Chief Justice, Anwar Usman, Manahan MP Sitompul, Wahiduddin Adams, I Dewa Gede Palguna, Suhartoyo, Aswanto, Maria Farida Indrati and Saldi Isra on Tuesday, the thirtieth day of the month of May in the year two thousand and seventeen and pronounced in the Plenary Session of the Constitutional Court open to the public on Wednesday, the fourteenth day of the month of June in the year two thousand and seventeen, concluding at 09.24 pm by nine Constitutional Judges, namely Arief Hidayat as Chief Justice, Anwar Usman, Manahan MP Sitompul, Wahiduddin Adams, I Dewa Gede Palguna, Suhartoyo, Aswanto, Maria Farida Indrati and Saldi Isra, accompanied by Cholidin Nasir as Substitute Registrar and attended by The President or a representative and the House of Representatives or a representative, without the presence of the Petitioners.